

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS



Petitioner,

vs.

Case No. 13-3871E

SEMINOLE COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice, a formal hearing was held on November 5, 2013, in Sanford, Florida, before J. D. Parrish, a designated Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: ■, on behalf of ■
(Address of record)

For Respondent: Ned N. Julian, Jr., Esquire
Serita D. Beamon, Esquire
Seminole County Public Schools
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and

Ramon Vazquez, Esquire
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STATEMENT OF THE ISSUE

As is explained more particularly below, the issue in this case is whether the Seminole County School Board (Respondent or District) has provided Petitioner, ■, with a free appropriate public education (FAPE). For convenience sake and to preserve the anonymity of Petitioner, references to Petitioner will be to "the student" or "■."

PRELIMINARY STATEMENT

This case was initiated by the parents of ■. To preserve Petitioner's anonymity, the student's father, who is an attorney, is referenced above only by his initials. It is the parents' position that the student was moved from one class assignment to another class without their permission and in violation of law. The request for a due process hearing was filed with the District on October 7, 2013. An Amended Request for Due Process Hearing was filed on October 8, 2013. The case was referred to the Division of Administrative Hearings (DOAH) for formal proceedings.

Respondent filed a response to the request for due process on October 17, 2013, that challenged the proposed resolutions sought by Petitioner. Essentially, the District maintains that DOAH does not have jurisdiction or authority to provide the parents with the relief sought in this case. Petitioner sought:

- a. Put [REDACTED] back into the competition class to provide a challenging math curriculum and to support [REDACTED] emotional and social needs as a highly-gifted child. In addition, to place [REDACTED] in an environment with other high achieving math students.
- b. In the competition class, for grading purposes, give all the students the same traditional honors tests and traditional honors test's timing as is done in traditional honors classes in Seminole County.
- c. Practice competition-style mu alpha theta tests are taken, but not used to form grades for transcripts, progress reports, etc.
- d. Instruct the teacher to differentiate instruction based on student abilities and progress.
- e. Have the course curriculum in the competition class aligned with the Florida Benchmarks/course description as required by the State Board rules, and for * to have the opportunity to do well as [REDACTED] has done in years past without exception and be able to join Mu Alpha Theta along with [REDACTED] "Mathlete" friends to encourage gifted instruction in a challenging math curriculum.
- f. For the instructor to tailor his instruction and testing not only for the trophy winners, but also for the success of all the students in the class, including [REDACTED]. Per the Florida Department of Education staff which has been advised and consulted on this case, "Differentiating instruction means teaching differently depending on individual student needs. It is for all students, not just those at the top or those who are struggling. Differentiation is meant to maximize achievement for all students."
- g. Enjoin [REDACTED] and the SEMINOLE COUNTY SCHOOL BOARD from transferring [REDACTED] out

of the subject "Competition Algebra 2 Honors class" without parental consent.

h. Enjoin Defendants from taking any further retaliatory actions against ■ or ■ parents for advocating for ■ education.

The parties were afforded a telephone conference call to address the preliminary matters pertinent to the case, as well as the District's claims regarding jurisdiction. In an effort to resolve the confusion and to clarify the issues for trial, an order was entered that provided, in pertinent part:

To clarify the issues in this cause and to provide direction to the parties, this order is entered.

Section 1003.01(3)(a), Florida Statutes (2012), provides, in part:

(3)(a) "Exceptional student" means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted.

Florida Administrative Code Rule 6A-6.03313 provides the procedural safeguards for exceptional students who are gifted. Pertinent to this case are the provisions of paragraph (7) of the rule:

Due process hearings. Due process hearings shall be available to parents of students who are gifted and to school districts to resolve matters related to the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student.

In this case, Petitioner has not alleged the school district failed to identify the

student. Petitioner has not alleged the school district failed to evaluate the student. Petitioner's claim asserts the school district moved the student from one class to another. As a matter of law, "educational placement" does not mean a specific class or teacher. When a class provides a meaningful opportunity for a student to learn at a level appropriate to his abilities, the school is providing a free appropriate public education. In this case, Petitioner bears the burden of proof to establish that the educational opportunity afforded to this student does not provide a free appropriate public education.

At the hearing, Petitioner presented the testimony of the student's [REDACTED], [REDACTED], [REDACTED], and the student's [REDACTED]. Over objection, Petitioner's exhibits were received in evidence as detailed in the transcript of the proceeding; however, hearsay evidence offered has not been used to support a finding of fact. The perceptions of the parents if not supported by unbiased, objective evidence have not been deemed persuasive in this cause. Hearsay not otherwise supported in the record has not been accepted as fact.

FINDINGS OF FACT

1. Petitioner, [REDACTED], is a student enrolled in a [REDACTED] school in the Seminole County School District.
2. At the beginning of the 2013/2014 school year, the student was placed in an Algebra II Honors Pre-IB class (the first math class) taught by [REDACTED]. The students in the first math class are high achievement, higher learning participants who

may also engage in an extra-curriculum activity known as Mu Alpha Theta, a math competition club whose participants call themselves "mathletes." Although the student's parents did not select the first class, ■ was placed there.

3. Prior to filing the instant case, the student was transferred to a second Algebra II Honors Pre-IB class (the second class) taught by a different instructor, ■■■■■. According to the parents, the student wanted to stay in the first class. The student was moved without parental consent.

4. The parents maintain that the transfer described above was unlawful and inappropriate. For purposes of this case, the student has been accepted as "gifted" and entitled to services as an exceptional education student. Accordingly, the parents argue that the student is entitled to remain in the first class and that moving ■ to the second class denied ■ a FAPE.

5. Like the first class, the student's current assignment is designed to accommodate students with higher learning abilities. There is no evidence that the student is not making acceptable academic progress in the second class. To the contrary, credible evidence would suggest that the student is doing well in the second class.

6. Moreover, the student is enrolled in a math course of study designed to provide a meaningful opportunity for higher learning students to make significant accomplishments. Nothing

in the student's current assignment precludes the student from engaging in Mu Alpha Theta or other math competitions.

7. The parents want ■ to be challenged academically, want ■ to be with "mathlete" peers, and want ■ to have meaningful participation in the development of the student's academic program of study. The parents argue that the student was moved in retaliation for rude behavior by one of them when the parents tried to intervene in the student's academic program. The parents presented only their testimony to support this claim.

8. Issues raised by the parents at the formal hearing that were not a part of the Amended Request for Due Process are addressed in the Conclusions of Law.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties to and the subject matter of these proceedings. §§ 120.57(1) and 120.60, Fla. Stat. (2013). All references to law cite the 2013 Florida Statutes.

10. Section 1003.01(3)(a), Florida Statutes, provides, in part:

(3)(a) "Exceptional student" means any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes students who are gifted.

11. Florida Administrative Code Rule 6A-6.03313 provides the procedural safeguards for exceptional students who are

gifted. Pertinent to this case are the provisions of paragraph (7) of the rule:

Due process hearings. Due process hearings shall be available to parents of students who are gifted and to school districts to resolve matters related to the identification, evaluation, or educational placement of the student or the provision of a free appropriate public education to the student. (Emphasis added.)

12. The IDEA, 20 U.S.C. §§ 1400 et seq., provides that the local education agency must provide children with disabilities with a FAPE, which must be tailored to the unique needs of the child by means of an individualized educational program. Bd. of Educ. Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982). In this case, the student is gifted and not a disabled student, nevertheless, federal guidelines defining FAPE are instructive.

13. The determination of whether a school district has provided FAPE to an exceptional student involves a twofold inquiry as addressed in Rowley. First, has the District complied with the procedures set forth governing gifted students; and second, is the educational program developed for this student reasonably calculated to enable the child to receive educational benefits?

14. Federal cases have clarified what "reasonably calculated to enable the child to receive educational benefits"

means. Assuming gifted students should be afforded the same exceptional educational opportunities disabled students receive, then educational benefits provided must be more than trivial or de minimis. J.S.K. v. Hendry Cnty. Sch. Dist., 941 F.2d 1563 (11th Cir. 1991); Doe v. Alabama State Dep't of Educ., 915 F.2d 651 (11th Cir. 1990). Although they must be "meaningful," there is no requirement to maximize each child's potential. Rowley, 458 U.S. at 192, 198. The issue is whether the "placement [is] appropriate, not whether another placement would also be appropriate, or even better for that matter. The school district is required by the statute and regulations to provide an appropriate education, not the best possible education, or the placement the parents prefer." Heather S. by Kathy S. v. State of Wisconsin, 125 F.3d 1045, 1045 (7th Cir. 1997) (citing Bd. of Educ. of Cmty. Consol. Sch. Dist. 21 v. Illinois State Bd. of Educ. and Lachman v. Illinois State Bd. of Educ., 852 F.2d 290, 297 (7th Cir. 1988)). Thus, if a student progresses in a school district's program, the courts should not examine whether another method might produce additional or maximum benefits. See Rowley, 458 U.S. at 207-208; O'Toole v. Olathe Dist. Sch. Unified Sch. Dist. No. 233, 144 F.3d 692, 709 (10th Cir. 1998); Evans v. District No. 17, 841 F.2d 824, 831 (8th Cir. 1988).

15. Petitioner bears the burden of proof in this matter to establish the District failed to identify, evaluate, or place the

student in an educational placement wherein FAPE is provided. Petitioner presented no evidence to establish the curriculum or program of the student's Algebra II Honors Pre-IB class fails to address the academic needs of a gifted student. More specifically, with regard to the resolutions sought by the parents:

a. There is no proof that the math curriculum in the second class fails to offer a challenge or that students in that class are not high-achieving math students or that [REDACTED] is not receiving a FAPE;

b. There is no provision of law that allows parents to craft how a school district grades students in "traditional honors classes" or "competitive classes";

c. There is no provision of law that allows parents to dictate how practice tests or Mu Alpha Theta tests may be used in connection with a class or for grading purposes;

d. There is no evidence that Respondent has failed to differentiate instruction for this student;

e. There is no evidence that the curriculum offered to this student fails to comply with Florida standards, and there is no evidence that the student would perform differently if placed back in the first class;

f. There is no authority to direct a school district to require teachers to grade differently based upon the performance

of students in competition; and

g. DOAH does not have injunction jurisdiction or authority. In this case, Petitioner failed to meet its burden of proof.

16. Finally, Petitioner suggested at hearing that Respondent failed to timely review Petitioner's educational plan and thereby procedurally failed to provide FAPE. Additionally, the student's parents have argued that school administrators should have allowed their child to remain in the first class as the "stay put" placement. The parents wrongly suggested that the student's move was in retaliation for their efforts to advocate for their child. Other than a rude e-mail, the parents have no evidence to support such allegation. Further, educational plans do not dictate how a teacher teaches, grades, or interacts with students. Professional educators are to be accorded the respect and support befitting their challenging careers. It is inappropriate to dictate how a gifted student should be taught, graded, or selected for extra-curricula activities.

17. There was no evidence, aside from the unsupported assertions of the students' parents, that retaliation played any part in the decision to move the student from the first class to the one taught by [REDACTED]. Except the self-serving testimony of the parents, Petitioner presented no evidence to support the contentions that the District failed to provide the student with FAPE. It is suspected that the issues of this case arose because

the parents incorrectly presumed the student should be able to select a math teacher. In this case, the class was the same, only the teacher and the manner of presenting materials and grading was different. A school district is not required by law to allow gifted students to select the teacher they want.

18. Typically, school districts re-visit a gifted student's educational plan periodically to determine if the student's needs are being appropriately addressed. It may be advantageous in this case to update the student's testing to determine current levels of ability and performance. Appropriately challenging gifted students by an objectively measured evaluation may prove beneficial. In this case, there is no credible evidence that Respondent has failed to timely update the student's educational plan. Petitioner's claim of procedural failures is not supported by the record.

19. Petitioner's claim for sanctions against Respondent is denied.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's request for due process hearing be dismissed.

DONE AND ORDERED this 23rd day of January, 2014, in Tallahassee, Leon County, Florida.

S

J. D. PARRISH
Administrative Law Judge
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Filed with the Clerk of the
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this 23rd day of January, 2014.

COPIES FURNISHED:



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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(b), Florida Statutes (2011), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).