

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 14-0279E

█,

Respondent.

_____ /

FINAL ORDER

This case came before Administrative Law Judge Darren A. Schwartz for final hearing on May 28, 2014, by video teleconference at sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioner: Laura E. Pincus, Esquire
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

For Respondent: Respondent's father and mother, pro se
(Address of Record)

STATEMENT OF THE ISSUES

Whether Petitioner's December 2013 individual education plan ("IEP"), which recommends placement of Respondent at an exceptional student education center, fails to provide Respondent with a free appropriate public education ("FAPE") in the least restrictive environment ("LRE").

PRELIMINARY STATEMENT

On January 17, 2014, the Palm Beach County School Board ("School Board" or "Petitioner") filed a request for due process hearing, seeking a determination of the appropriateness of its December 2013 IEP for Respondent. The School Board's request for hearing resulted from Respondent's parents' failure to consent to the School Board's IEP, which seeks to change the placement of Respondent from his neighborhood public high school, to an exceptional student education center.^{1/}

On January 22, 2014, the undersigned issued a Notice of Hearing that scheduled the due process hearing requested by the School Board for February 18, 2014. In response to the parties' Joint Motion to Continue Hearing, filed February 6, 2014, the final hearing was rescheduled to March 28, 2014. On March 18, 2014, Petitioner filed the Case Status Report, in which the parties requested a telephonic conference regarding a new date for the hearing. On March 18, 2014, a telephonic conference was held, the undersigned granted the parties' request to reschedule the hearing, and the final hearing was rescheduled to May 28 and 30, 2014.

At the final hearing, the School Board presented the testimony of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The School Board's

Exhibits 1, 2, 2a, 2b, 3, and 5 through 10 were received into evidence without objection.

The father and mother testified on behalf of the Respondent. In addition, the parents presented the testimony of [REDACTED]. No exhibits from the parents were received into evidence.^{2/}

The Transcript of the final hearing was filed on June 9, 2014. At the final hearing, the parties agreed to file their proposed final orders by June 20, 2014, and that the undersigned's final order would be due by July 15, 2014. The parties timely filed proposed final orders, which were given consideration in the preparation of this Final Order.

For stylistic convenience, the undersigned will use masculine pronouns in this Final Order when referring to Respondent. The masculine pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

All citations to the Florida Statutes and Florida Administrative Code are to the 2013 version, unless otherwise indicated.

FINDINGS OF FACT

1. Respondent was born on [REDACTED]. [REDACTED] resides with [REDACTED] parents in [REDACTED], Florida. [REDACTED] is approximately [REDACTED] feet tall and weighs [REDACTED] pounds.

2. Respondent has been diagnosed with [REDACTED]. In the Fall of 2012 (2012-2013 school year), Respondent was enrolled as a [REDACTED]-grade student at [REDACTED] neighborhood [REDACTED] in Palm Beach County, receiving special education services pursuant to the primary eligibility category of [REDACTED], and the additional category of [REDACTED].

3. Respondent's neighborhood school has approximately 3,000 students, and encompasses a large campus.

4. During the early part of Respondent's [REDACTED]-grade year, [REDACTED] exhibited incidents of aggressive behaviors and yelling uncontrollably, which caused school board personnel to request a meeting with Respondent's parents. On October 3, 2012, school board personnel held a conference/staffing meeting with Respondent's father to address Respondent's aggressive behaviors.

5. Unfortunately, the aggressive behaviors continued during the remainder of Respondent's [REDACTED]-grade year, during which time [REDACTED] exhibited in the classroom physical aggression, verbal outbursts, and self-injurious behaviors. These behaviors occurred while Respondent was in an [REDACTED] classroom full-time, with a constant one-on-one paraprofessional. The behaviors were typically triggered when Respondent had non-preferred, academic tasks placed upon [REDACTED] (i.e., reading, writing, math, science).

6. In an effort to address these behaviors, Respondent's teacher tried several different strategies throughout the year, which were unsuccessful.

7. [REDACTED] is a board certified assistant behavior analyst. [REDACTED] holds a bachelor's degree in psychology, with a concentration in behavior analysis and special education. [REDACTED] has extensive experience in completing functional behavior assessments, creating and implementing behavior intervention plans, and reviewing and collecting data on target behaviors.

8. In May 2013, [REDACTED] conducted a functional behavior assessment of Respondent, pursuant to a contract [REDACTED] employer ([REDACTED]) has with the School Board. The assessment involved several observations by [REDACTED] of Respondent in the classroom, as well as input from Respondent's teacher, paraprofessionals in the classroom, and other school personnel.

9. On May 28, 2013, [REDACTED] prepared a Functional Behavior Assessment & Behavior Plan ("FAB") for Respondent. [REDACTED] found that Respondent engaged in the following severe target behaviors at a high frequency: 1) physical aggression (Respondent will hit, kick, punch, ram, or pinch staff or students); 2) verbal outbursts (Respondent will scream or squeal for longer than two seconds); 3) elopement (Respondent will leave

or attempt to leave an enclosed area through doorway or outside designated area); and 4) self-injurious behavior (Respondent will pinch and squeeze skin, twist nipples, and throw ██████ against a door or down to the ground).

10. ██████ determined that the functions of Respondent's physical behaviors are sensory, escape, and access to tangibles. ██████ then determined appropriate goals to replace the target behaviors. ██████ provided Respondent's teacher with a detailed Behavior Plan with many suggested behavior strategies designed to decrease the target behaviors. These behavior strategies included such things as: 1) providing Respondent with a variety of reinforcers so that ██████ would be able to accept a change in schedule; 2) increasing ██████ tolerance of academic tasks and delayed gratification through waiting skills; 3) increasing ██████ communication skills; and 4) increasing ██████ calming strategies to help ██████ de-escalate prior to engaging in the target behaviors.

11. At the beginning of Respondent's ██████-grade year (2013-2014 school year), ██████ teacher implemented the strategies suggested by ██████ FAB. In addition, during the Fall of 2013, ██████ continued to provide assistance in the classroom by working directly with Respondent, and by training the teacher, paraprofessionals, and other persons who worked with

Respondent in the classroom. However, Respondent's behaviors escalated.

12. During the Fall of 2013, Respondent engaged in severe and repeated acts of self-injurious behaviors, such as hitting ██████ in the head, pinching his nipples, throwing himself on the ground, and taking off █████ shoes and kicking corners of the cabinets with █████ bare feet.

13. During the Fall of 2013, Respondent also engaged in severe and repeated acts of aggressive physical behavior toward other persons. █████ slapped other children in the classroom, and █████ physically hit and hurt █████ teacher and other adults who worked in the classroom.

14. During the Fall of 2013, Respondent also destroyed physical property in the classroom.

15. During the Fall of 2013, the target behaviors were again typically precipitated when Respondent was asked to do non-preferred, academic tasks.

16. During the Fall of 2013, two █████ resource teachers employed by the School Board were assigned to assist Respondent in █████ classroom.

17. Due to the increased frequency of the severe target behaviors during Respondent's █████-grade year, however, Respondent's teacher and █████ developed a plan to have Respondent do neutral activities rather than academic work.

18. Neutral activities include tasks such as spelling three words, sorting, doing puzzles, coloring, and matching pictures with words. Respondent was rewarded after [REDACTED] completed the neutral tasks, and [REDACTED] target behaviors decreased after [REDACTED] was asked to do neutral tasks as opposed to academic tasks.

19. Performing the neutral tasks is not cognitively appropriate for Respondent. The neutral activities were designed to keep Respondent and the persons that worked with [REDACTED] safe. Respondent is capable of performing much higher cognitive work than in [REDACTED] current classroom setting at [REDACTED] neighborhood [REDACTED] [REDACTED].^{3/}

20. By November 2013, Respondent was in a classroom by [REDACTED] due to the high frequency of [REDACTED] severe target behaviors. All other students were removed from the classroom for safety reasons. The only persons in the classroom were Respondent, [REDACTED] teacher, and two paraprofessionals.

21. The School Board provided many supports and strategies in an effort to maintain Respondent at [REDACTED] neighborhood [REDACTED] [REDACTED].

22. Respondent's IEP team met on December 4, 2013, and recommended that [REDACTED] be placed in the [REDACTED] and [REDACTED]-grade Dual Diagnosis Program at an exceptional student education center.

23. Respondent's father asked the IEP team to wait and see if Respondent's medication would make a difference in [REDACTED]

behaviors. The IEP team agreed to the father's request, and reconvened another IEP meeting on December 19, 2013.

24. At the December 19, 2013, IEP meeting, the IEP team noted that Respondent was a "little more calm" since beginning the medication and more verbal. While ■■■ behavior improved during neutral tasks, the target behaviors still occurred. Moreover, ■■■ was receiving no more than 70 minutes of academic tasks per day, and the target behaviors during academic tasks were still high. The IEP team again recommended that Respondent be placed in the Dual Diagnosis Program at the exceptional student education center, effective after the December 2013 holiday break.

25. Placement of Respondent at the exceptional student education center is appropriate and in the least restrictive environment.

26. The classroom recommended for Respondent at the exceptional student education center has three students in the classroom with one teacher, two paraprofessionals, a behavior intervention associate, and a speech language pathologist who comes in daily and meets with groups and individuals based on their needs.

27. The exceptional student education center is a one-story, exceptional student education center in Palm Beach County, which is much quieter and smaller in size than Respondent's

neighborhood school. The exceptional student education center nevertheless has a lot of property, and provides ample room for students to move around. There is an outside area with multiple playgrounds, gardens, and a fenced-in area for walking. The school is very secure and quiet. Distractions such as bells ringing and a lot of people moving around are eliminated from the school setting. There are approximately 120 students at the exceptional student education center in grades Kindergarten through 12th grade.

28. The exceptional student education center has a behavior resource teacher for the entire school and a behavior intervention associate, so there is behavioral support throughout the school.

29. The Dual Diagnosis Program at the exceptional student education center is specifically designed for students who have intellectual disabilities, autism spectrum disorder, and challenging behaviors that make it difficult for them on a comprehensive campus. All staff have been trained on behavior interventions and how to de-escalate students with behavioral issues.

30. Teachers within the Dual Diagnosis Program account for students who may be higher or lower functioning than other students. Student schedules include language arts, math, and functional skills. There is an intensive language component,

which is one of Respondent's deficits. There is differential instruction, so each child has his or her own individual IEP, and each child is provided with multiple curricula. The teachers utilize Unique Learning System, which is an individualized, visual, computer-based program, which allows students to work on their individualized goals at their own level.

31. Moreover, there is a token economy where students earn tokens, which they can use to purchase reinforcers. There is a job board where students earn "fake money." There is a behavioral interventionist in the classroom collecting data all of the time.

32. Respondent's parents refused to provide consent to the IEP's proposed placement of Respondent at the exceptional student education center.

33. As a result of the filing of the School Board's due process hearing request in January 2014, the parents were entitled to invoke the "stay-put" provision, thereby allowing Respondent to remain at [REDACTED] "current educational assignment," that is, [REDACTED] neighborhood school, pending the outcome of this proceeding.

34. Nevertheless, in February 2014, Respondent's parents unilaterally removed Respondent from [REDACTED] neighborhood school, and enrolled [REDACTED] in a private school in [REDACTED], Florida. At the final hearing, Respondent's parents indicated they have no

intention of ever returning Respondent to his neighborhood school in Palm Beach County.

CONCLUSIONS OF LAW

35. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 1003.57(1)(b) and 120.57(1), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

36. School Boards are required by the Florida K-20 Education Code to provide for an "appropriate program of special instruction, facilities, and services for exceptional students [ESE] as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(1) & 1003.57, Fla. Stat. (2013).

37. The Florida K-20 Education Code's imposition of the requirement that exceptional students receive special education and related services is necessary in order for the State of Florida to be eligible to receive federal funding under the Individuals with Disabilities Education Act ("IDEA"), which mandates, among other things, that participating states ensure, with limited exceptions, that a "free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21." 20 U.S.C. § 1412(a)(1).

38. In enacting IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012).

39. The Florida Legislature recently enacted a statute to address a situation, as in the present case, where a school board proposes to change the placement of a student from [REDACTED] neighborhood school to an exceptional student education center. Pursuant to section 1003.5715(5), Florida Statutes (2013), a school board may not implement a change of placement of a student to an exceptional student education center without parental consent "unless the school district documents reasonable efforts to obtain the parent's consent and the child's parent has failed to respond or the school district obtains approval through a due process hearing in accordance with 34 C.F.R. ss. 300.507 and 300.508 and resolution of appeals."

40. In the present case, the School Board filed its due process complaint pursuant to section 1003.5715, Florida Statutes, because Respondent's parents do not consent to the proposed placement of Respondent at the exceptional student education center.^{4/}

41. As the party instituting the due process complaint, the School Board bears the burden of proof to establish by a preponderance of the evidence that its December 2013 IEP, which recommends placement of Respondent at the exceptional student education center, is appropriate, and in the least restrictive environment. Schaffer v. Weast, 546 U.S. 49, 62 (2005).

42. The components of FAPE are recorded in an IEP developed by an IEP team, which, among other things, identifies the child's "present levels of academic achievement and functional performance," establishes measurable annual goals, addresses the services and accommodations to be provided to the child and whether the child will attend mainstream classes, and specifies the measurement tools and periodic reports that will be used to evaluate the child's progress. Id. § 1414(d)(1)(A)(i) and (d)(1)(B); 34 C.F.R. §§ 300.320 and 300.321.

43. In Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), the Supreme Court established a two-part inquiry that must be undertaken in determining whether a school board has provided a child with FAPE. First, it is necessary to examine whether the school board has complied with the IDEA's procedural requirements. Id. at 206-07.

44. Pursuant to the second step of the Rowley test (the substantive component), the undersigned must determine if the IEP

developed pursuant to the IDEA is reasonably calculated to enable the child to receive "educational benefits." Id.

45. In the present case, the issue centers on the substantive, second step of the Rowley inquiry. Thus, the undersigned must determine whether the School Board's recommended placement of Respondent at the exceptional student education center is reasonably calculated to enable Respondent to receive some educational benefit in the least restrictive environment. A.K. v. Gwinnett Cnty. Sch. Dist., 2014 U.S. App. LEXIS 2774, *4-5 (11th Cir. 2014).^{5/}

46. As to the second step, the Eleventh Circuit Court of Appeals has clarified that the IDEA does not require the school board to maximize a child's potential; rather, the educational services need provide "only a 'basic floor of opportunity,' i.e., education which confers some benefit." Todd D. v. Andrews, 933 F.2d 1576, 1580 (11th Cir. 1991); C.P. v. Leon Cnty. Sch. Bd., 483 F.3d 1151, 1153 (11th Cir. 2007) ("This standard, that the local school system must provide the child 'some educational benefit,' has become known as the *Rowley* 'basic floor of opportunity standard'"); see also, A.K. v. Gwinnett Cnty. Sch. Dist., 2014 U.S. App. LEXIS 2774, *4-5 (11th Cir. 2014) ("The IEP is not meant to provide the absolute maximum benefit to the child, but is instead required only to provide 'the basic floor of opportunity' to the child.").

47. In other words, "the IDEA sets modest goals: it emphasizes an appropriate, rather than an ideal, education; it requires an adequate, rather than an optimal, IEP." L.J. v. Sch. Bd., 850 F. Supp. 2d 1315, 1390 (S.D. Fla. 2012), quoting, D.B., a minor, by his next friend and mother, Elizabeth B., 675 F.3d 26 (1st Cir. 2012), citing Lenn v. Portland Sch. Comm., 998 F.2d 1083, 1086 (1st Cir. 1993). In determining whether an IEP is substantively adequate, the undersigned must pay great deference to the educators who developed the IEP. A.K. v. Gwinnett Cnty. Sch. Dist., 2014 U.S. App. LEXIS 2774, *4-5 (11th Cir. 2014).

48. On the issue of least restrictive environment, the IDEA mandates that:

To the maximum extent appropriate, children with disabilities . . . are educated with children who are not disabled, and special schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aides and services cannot be achieved satisfactorily.

20 U.S.C. § 1412(a) (5) (A) .

49. In evaluating whether an IEP places a student in the least restrictive environment, a two-part test is applied:

First we ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily. If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second,

whether the school has mainstreamed the child to the maximum extent appropriate.

Greer v. Rome City Sch. Dist., 950 F.2d 688, 696 (11th Cir. 1991).^{6/}

50. No single factor is dispositive under this test. Rather, the analysis involves a case-by-case, fact-specific inquiry that requires an examination of the nature and severity of the child's handicapping condition, ■■■■ needs and abilities, and the schools' response to the child's needs. Id. at 696.

51. In deciding the first part of the test, the following factors are considered: (1) the relative educational benefits the child would receive in the regular classroom versus a special education classroom; (2) the effect that a handicapped child in a regular classroom would have on other children in that classroom; and (3) the cost of the supplemental aids and services that will be necessary to educate the child in a regular classroom. Id. at 696-97.

52. Pursuant to the findings of fact contained herein, Petitioner has demonstrated that its December 2013 IEP, which recommends placement of Respondent at the exceptional student education center, provides Respondent with FAPE, in the least restrictive environment.

53. The persuasive evidence adduced at hearing establishes that Respondent's instruction cannot appropriately take place at

■■ neighborhood school. Although many supports and services were provided to Respondent at his neighborhood school, ■ is unable to make progress on ■ IEP goals because of the frequency of ■ severe, aggressive behaviors toward ■ and others.

54. The record is replete with evidence that Respondent exhibited severe, aggressive behaviors that negatively impacted not only ■ own education, but the ability of other students around ■ to learn. Respondent lacks the skills for a less restrictive environment, based on the high frequency of aggressive behaviors exhibited at ■ neighborhood school. A decrease in aggressive behaviors at Respondent's neighborhood school occurred principally when non-preferred, academic instruction was replaced with neutral tasks.

55. The exceptional student education center offers Respondent the services ■ needs in order to make some educational progress. Placement at the exceptional student education center is appropriate, and in the least restrictive environment for Respondent to make educational progress.

56. In their proposed final order, Respondent's parents urge the undersigned to consider any other school in Palm Beach County, excluding the exceptional student education center at issue. Such a request is beyond the purview of the undersigned in this case. The only schools that are properly the subject of

this proceeding are the specific exceptional student education center at issue and Respondent's neighborhood school.^{7/}

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that: the School Board's December 2013 IEP, which recommends placement of Respondent at the exceptional student education center, provides Respondent with FAPE, in the least restrictive environment.

DONE AND ORDERED this 2nd day of July, 2014, in Tallahassee, Leon County, Florida.

S

DARREN A. SCHWARTZ
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of July, 2014.

ENDNOTES

^{1/} An exceptional student education center is "a public school to which non-disabled peers do not have access."
§ 1003.57(1)(a)1.a., Fla. Stat. (2013). For confidentiality purposes, the undersigned will not refer to the specific exceptional student education center at issue.

^{2/} During the hearing, Respondent's father indicated that he had sent a packet of exhibits to DOAH by "priority mail." By the time the hearing commenced, the undersigned had not received the exhibits. The exhibits were not received by the undersigned until after the parties had completed their presentations of evidence at the final hearing.

The proposed exhibits consist of documents which are approximately one-quarter-inch thick. A list accompanying the proposed exhibits reflects that they consist of the following four categories of documents: 1) Daily logs from February 18 through May 2014; 2) Subpoena information for ██████████"; 3) PBS Behavior @ Home Charts - Report date March 21, 2014; and 4) Daily Log Charts from November 26, 2013, to February 4, 2014 (characterized on the list as "All Positive Feedback"). Notably, no documents were received by the undersigned which correspond to the fourth category.

Although the proposed exhibits were not received into evidence at the hearing, the documents received by the undersigned have nevertheless been considered as if they had been proffered by Respondent at the hearing. The undersigned's review of the documents demonstrates that they are irrelevant to the issues in this proceeding, and that they would not change any of the findings of fact made by the undersigned.

^{3/} Respondent is not on grade level with regard to reading/literacy or written language due to ██████████ cognitive ability. ██████████ is able to spell up to ten words when given a picture, and ██████████ can alphabetize six words using the first letter of a word with minimal prompting. When given a picture of community signs, ██████████ can match the picture to the correct word. ██████████ is able to enter six simple data entries on a computer. ██████████ can write five sentences about ██████████ weekend. ██████████ handwriting is large, ██████████ needs reminders to write small, but ██████████ handwriting is legible when told to slow down. Respondent is able to type very fast and accurately on the computer.

Respondent is not on grade level with regard to mathematics due to ██████████ cognitive ability. ██████████ can do basic math such as addition, subtraction, and multiplication. ██████████ can answer simple word problem questions dealing with simple addition and subtraction. ██████████ can multiply numbers zero through eight, but struggles with division problems. ██████████ can do 1:1 correspondence with simple numbers to 25.

With regard to social, emotional, and communication skills, Respondent can communicate certain wants and needs. ■ can also state to adults when ■ has completed a specific task. However, ■ has difficulty expressing wants, needs, and frustration without displaying the targeted behaviors.

Respondent is independent regarding toiletry needs and eating food, but ■ needs supervision for safety reasons. Respondent enjoys watching movies, and working with puzzles and a computer.

^{4/} Section 1003.5715(6), Florida Statutes, provides: "[D]uring the pendency of a due process hearing or appellate proceeding regarding a due process complaint, the student shall remain in his or her current educational assignment while awaiting the decision of any impartial due process hearing or court proceeding, unless the parent and the district school board otherwise agree." As discussed above, the School Board and Respondent's parents did not agree to the removal of Respondent from his neighborhood school, and the parents unilaterally removed Respondent from his current educational assignment during the pendency of this proceeding.

^{5/} In any event, a procedural error does not automatically result in a denial of FAPE. G.C. v. Muscogee Cnty. Sch. Dist., 668 F.3d 1258, 1270 (11th Cir. 2012). Indeed, FAPE is denied only if the procedural flaw impeded the child's right to a FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. Winkelman v. Parma City Sch. Dist., 550 U.S. 516, 525-26 (2007). In the present case, the evidence presented at hearing fails to establish a procedural violation, amounting to a denial of FAPE.

^{6/} The Greer court adopted the Fifth Circuit's opinion in Daniel R.R. v. State Board of Education, 874 F.2d 1036, 1045 (5th Cir. 1989).

^{7/} Notably, at the final hearing, Respondent's parents asked, if Respondent was to go to the exceptional student education center, would it be a "free school or would he have to give up the McKay Scholarship." In their proposed final order, however, the parents indicate that they are paying for Respondent's tuition at ■ current private school "out of pocket."

No evidence was presented at the final hearing regarding the details of Respondent's McKay Scholarship. The parties discussed

the issue during the hearing, and the undersigned encouraged the parties to continue their discussion following the hearing.

The undersigned need not address, and makes no finding, in this case, whether Respondent would have to "give up the McKay Scholarship" if ■ were to attend the exceptional student education center. However, as indicated previously, the IDEA requires a "free appropriate public education." "The term 'free appropriate public education' means special education and related services that have been provided at public expense, under public supervision and direction, and without charge." 20 U.S.C. § 1401(9) (A) (emphasis added). The requirement to provide a "free appropriate public education" would be thwarted if Respondent's parents were required to pay for Respondent to attend the exceptional student education center, which is the school proposed by Petitioner in the present IEP.

COPIES FURNISHED:

Respondent
(Address of Record)

Liz Conn
Bureau of Exceptional Education
and Student Services
Suite 614
325 West Gaines Street
Tallahassee, Florida 32399-0400

Laura E. Pincus, Esquire
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

E. Wayne Gent, Superintendent
Palm Beach County School Board
3300 Forest Hill Boulevard, C-316
West Palm Beach, Florida 33406-5869

Matthew Carson, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

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).