

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 21-3267E

vs.

BROWARD COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held as duly noticed on January 4, 2022, via Zoom video-teleconference, before Jessica E. Varn, an administrative law judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Petitioner, pro se
(Address of record)

For Respondent: Susan Jane Hofstetter, Esquire
School Board of Broward County, Florida
K.C. Wright Administration Building
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUE

Whether the School Board, for a few weeks prior to October 26, 2021, failed to provide safe and timely transportation for the student, as detailed in the student's individual education plan (IEP).

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on behalf of the student on October 26, 2021. On that same date, the Complaint was

forwarded to DOAH. The parties participated in a resolution session on November 8, 2021, but were unable to resolve the issue raised in the Complaint. A scheduling telephonic conference was held on November 18, 2021, and the due process hearing was scheduled for January 4, 2022.

The hearing was held as scheduled. Petitioner testified, but called no other witnesses, and offered no exhibits. The School Board presented no witnesses and offered no exhibits.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned will use female pronouns in this Final Order when referring to Petitioner. The female pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. The student is eligible for exceptional student education (ESE) services and has an IEP which includes transportation as a related service.
2. Petitioner filed a Complaint because she was concerned about the timeliness of the bus route, and the staff working on the bus.
3. Petitioner agreed that as of November 2021, just a week after the Complaint was filed, the School Board changed the bus routes, and the timeliness issue was resolved.
4. Petitioner insisted that the quality of the transportation was not appropriate, and stated many times during the hearing that the student was not safely transported before the filing of the Complaint.
5. Petitioner, however, provided no credible or persuasive evidence establishing that the School Board failed to provide timely and safe transportation during the weeks leading up to the filing of the Complaint.

CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. *See* § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

7. Petitioner bears the burden of proof with respect to each of the issues raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

8. In enacting the Individuals with Disabilities Education Act (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). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on each agency's compliance with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

9. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of their child, or the provision of a free appropriate public education (FAPE). 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

10. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with FAPE, which is defined as:

[S]pecial education services that –

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

11. The components of FAPE are recorded in an IEP, 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 indicates 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. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017)(quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. at 181).

12. Here, Petitioner alleges that the IEP's requirement of safe and timely transportation was not provided for a few weeks prior to October 26, 2021. Petitioner offered no credible or persuasive evidence of this alleged violation, and therefore failed to meet the burden of proof.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all requests for relief are DENIED. The file of the Division of Administrative Hearings is closed with prejudice.

DONE AND ORDERED this 14th day of January, 2022, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 14th day of January, 2022.

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)(c), Florida Statutes (2014), 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).