

**STATE OF FLORIDA DIVISION OF
ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 21-2086E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held on March 14, 2022, by Zoom 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: Sara M. Marken, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

Stefanie S. Copelow, Esquire
Rachel K. Beige, Esquire
Cole, Scott & Kissane, P.A.
222 Lakeview Avenue, Suite 120
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUE

Whether the student is placed in the least restrictive environment, as required by the Individuals with Disabilities Education Act (IDEA).

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on behalf of the student on or about June 29, 2021. After several efforts to resolve the issue raised in the Complaint, and multiple periods of abeyance, the due process hearing was scheduled, by agreement of the parties, on March 14, 2022. The hearing was held as scheduled, and was completed in less than 45 minutes. Petitioner testified, but called no other witnesses and offered no exhibits. The School Board presented no witnesses and offered no exhibits.

At the conclusion of Petitioner's testimony, which was the only evidence offered, the undersigned ruled that Petitioner had failed to meet the burden of proof. This Final Order memorializes the ruling.

The Transcript was filed on March 29, 2022. An Order Extending Final Order Deadline was entered on March 30, 2022, indicating that the Final Order would be entered no later than April 12, 2022.

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 male pronouns in this Final Order when referring to Petitioner. The male 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 under the eligibility category of Intellectual Disability (IND) and has an individual education plan (IEP).

2. Petitioner filed the Complaint because she disagreed with the eligibility category and she wants the student placed in a general education class, rather than a self-contained special education classroom.

3. Petitioner agreed that the [REDACTED] school where the student is enrolled is unable to implement the student's IEP, but that the School Board was able to implement the IEP at a different public school.

4. Petitioner presented no credible or persuasive evidence establishing that the School Board has failed to place the student in the least restrictive environment.

CONCLUSIONS OF LAW

5. 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).

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

7. In this case, Petitioner presented no evidence establishing that the School Board has failed to place the student in the least restrictive environment.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Complaint is dismissed with prejudice, and all requests for relief are denied.

DONE AND ORDERED this 4th day of April, 2022, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the Division
of Administrative Hearings this 4th
day of April, 2022.

COPIES FURNISHED:

Amanda W. Gay, Esquire Department
of Education
325 West Gaines Street
Tallahassee, Florida 32399-0400

Gabrielle L. Gonzalez, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

Stefanie S. Copelow, Esquire Cole,
Scott & Kissane, P.A.
222 Lakeview Avenue, Suite 120
West Palm Beach, Florida 33401

Sara M. Marken, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 33132

Anastasios Kamoutsas, General Counsel
Department of Education
325 West Gaines Street
Tallahassee, Florida 32399-0400

Turlington Building, Suite 1244
Michael Newsome
Educational Program
Department of Education
325 West Gaines Street
Tallahassee, Florida 32399

Petitioner
(Address of Record)

Rachel K. Beige, Esquire
Cole, Scott & Kissane, P.A.
222 Lakeview Avenue, Suite 120
West Palm Beach, Florida 33401

Walter J. Harvey, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 430
Miami, Florida 33132

Dr. Jose Dotres, Superintendent
Miami-Dade County School Board
1450 Northeast Second Avenue, Suite
912
Miami, Florida 33132-1308

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).