

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case Nos. 21-3880E
22-0582E

CITRUS COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

A due process hearing was held on March 30, 2022, by Zoom conference, before Todd P. Resavage, an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH).

APPEARANCES

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

For Respondent: Terry Joseph Harmon, Esquire
 Sniffen & Spellman, P.A.

123 North Monroe Street

Tallahassee, Florida 32301

STATEMENT OF THE ISSUES

Whether, as alleged, Respondent violated the procedural requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, by failing: 1) to respond to a prior written notice that Petitioner's parent

faxed and emailed to Respondent and 2) to consider an individualized educational program presented by Petitioner and Petitioner's parent; and, if so, whether the procedural flaws impeded Petitioner's right to a free appropriate public education (FAPE), significantly infringed Petitioner's parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Petitioner, or caused a deprivation of education benefits; and whether Respondent's enrollment procedures violated the IDEA.

PRELIMINARY STATEMENT

Respondent received Petitioner's Request for Due Process Hearing (Complaint) on December 20, 2021. Respondent forwarded the Complaint to DOAH on December 29, 2021, and the matter (DOAH 21-3880E) was assigned to the undersigned.

Respondent filed a motion for an extension of time to respond to the Complaint, which was granted. On January 10, 2022, Respondent filed its Notice of Insufficiency. On January 14, 2022, an Order of Insufficiency was entered where it was determined that Petitioner's Complaint did not meet the pleading requirements of Florida Administrative Code Rule 6A-6.03311(9)(d). Pursuant to this Order, Petitioner was permitted to file, within 10 days, an amended due process complaint.

Petitioner timely filed an Addendum of Complaint and Motion for Addendum to Complaint (Amended Complaint), and Respondent filed a timely response to Petitioner's Amended Complaint. Following a telephonic scheduling conference, the due process hearing was scheduled for March 30, 2022.

On February 17, 2022, Respondent received a separate due process complaint from Petitioner. This complaint was forwarded to DOAH on

February 23, 2022. This matter (DOAH Case No. 22-0582E) was also assigned to the undersigned. On March 7, 2022, Respondent filed its Notice of Insufficiency. On the same date, an Order of Insufficiency was entered where it was determined that Petitioner's Complaint did not meet the pleading requirements of rule 6A-6.03311(9)(d). Pursuant to this Order, Petitioner was ordered to file, within 10 days, an amended due process complaint that met the pleading requirements or the matter would be dismissed. Petitioner did not file an amended due process complaint.

On January 24, 2022, Respondent received yet another request for due process hearing from Petitioner. That matter, DOAH Case No. 22-0294E, was assigned to ALJ Jessica E. Varn.

On March 10, 2022, Respondent's Opposed Motion to Consolidate and Continue Due Process Hearing (Motion) was filed. Pursuant to Respondent's Motion, Respondent sought to consolidate DOAH Case Nos. 21-3880E, 22-0294E, and 22-0582E, and to continue the matters to allow the parties sufficient time to prepare for a hearing. Pursuant to the undersigned's Order on Consolidation, committed March 11, 2022, it was determined that consolidation was appropriate; however, a continuance was not warranted. Respondent was ordered to advise, in writing, whether it wished to proceed with consolidation and proceed to a due process hearing on all three cases on March 30, 2022; or, in the alternative, whether Respondent wished to withdraw the Motion.

On March 11, 2022, DOAH Case No. 22-0294E was dismissed. On the same day, Respondent filed its response and advised that it desired to proceed with consolidation (of the two remaining cases) and the due process hearing, as scheduled. Accordingly, on March 12, 2022, an Order of

Consolidation was entered whereby DOAH Case Nos. 21-3880E and 22-0582E were consolidated pursuant to Florida Administrative Code Rule 28-106.108.

The hearing proceeded, as scheduled, on March 30, 2022. At the outset of the hearing, the undersigned dismissed DOAH Case No. 22-0582E, as Petitioner had not filed an amended due process complaint, as previously ordered. With respect to DOAH Case No. 21-3880E, Petitioner did not testify or present the testimony of any other witness. Petitioner's Exhibits A and B were admitted in evidence. At the conclusion of Petitioner's case, Respondent made an *ore tenus* motion for judgment on the administrative record on the grounds that Petitioner had failed to present any evidence to establish a violation of the IDEA as set forth in Petitioner's Amended Complaint. The motion was granted. This Final Order memorializes the ruling.

The Transcript was filed on April 14, 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 FACT¹

1. Petitioner is eligible for exceptional student education (ESE) services under the eligibility category of Hearing Impaired.
2. Petitioner is [REDACTED] years old and he is deaf.
3. Petitioner previously attended the [REDACTED]. In the summer of 2021, he relocated to Citrus County, Florida.

¹ Based on the evidentiary presentation, the undersigned is severely limited in performing his fact-finding function.

CONCLUSIONS OF LAW

4. DOAH has jurisdiction over the subject matter of this proceeding and the parties thereto pursuant to sections 1003.57(1)(b) and 1003.5715(5), Florida Statutes, and rule 6A-6.03311(9)(u).

5. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

6. In this case, Petitioner presented no evidence establishing the allegations as set forth in the Amended Complaint.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Complaints in DOAH Case Nos. 21-3880E and 22-0582E are dismissed, with prejudice, and all requests for relief are denied.

DONE AND ORDERED this 21st day of April, 2022, in Tallahassee, Leon County, Florida.

S

TODD P. RESAVAGE
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
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www.doah.state.fl.us

Filed with the Clerk of the Division
of Administrative Hearings this
21st day of April, 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).