

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

Case No. 22-0783E

vs.

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.

*I*

FINAL ORDER

Administrative Law Judge Brittany O. Finkbeiner conducted the due process hearing in this case for the Division of Administrative Hearings ("DOAH") on May 16, 2022, by Zoom conference.

APPEARANCES

For Petitioner:     Petitioner, prose  
                          (Address of Record)

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

STATEMENT OF THE ISSUE

The issue in this case is whether the individualized education plan ("IEP"), developed on March 19, 2021, was not reasonably calculated to provide the student with a free appropriate public education ("FAPE"), where it did not provide the student with access to his education through a modified curriculum.

PRELIMINARY STATEMENT

Petitioner's Request for Due Process Hearing was filed on March 14, 2022. At the due process hearing, Respondent offered the testimony of school psychologist, [REDACTED]; and supervisor for compliance, [REDACTED]. Respondent's Exhibits 6 and 9 were admitted into evidence. Petitioner's parent testified on his behalf and did not offer exhibits into evidence.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders 20 days after the transcript was filed with **DOAH**. The one-volume Transcript was filed on May 24, 2022. Respondent submitted a Proposed Final Order, which was taken into consideration in the drafting of this Final Order. Petitioner did not submit a proposed final order.

For stylistic convenience, the undersigned will use male pronouns in the 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. Petitioner is a student with a disability. At the time this case was initiated, he was a [REDACTED]-grade student at School A. Petitioner is, and was at all relevant times, eligible for Exceptional Student Education ("ESE") services under the category of Autism Spectrum Disorder.

2. [REDACTED] is a certified school psychologist, which has been her occupation for over 25 years. On January 15, 2021, [REDACTED] re-evaluated Petitioner to assess his current levels of functioning and to determine if he had a continued need for special education support. [REDACTED] conducted several assessments, including the Wechsler Nonverbal Intelligence Scale. [REDACTED] testified that [REDACTED] conducted the nonverbal assessment because, in

█ professional judgment, it was the most accurate way to measure Petitioner's full intellectual potential based on his significant challenges verbally engaging in an educational setting. █ further testified that, if a student with language impairment is given a language comprehension test, it merely confirms the language difficulties and may not accurately measure that student's intellectual potential.

3. Petitioner's score on the Wechsler Nonverbal Intelligence Scale showed a full-scale Intelligence Quotient (IQ) score of 81.

4. Petitioner's IEP team met on March 19, 2021, to review the results of █ evaluation and develop an annual IEP. As part of the IEP, the team made a determination as to whether Petitioner would access his education under a standard or modified curriculum. In determining the appropriate curriculum, the team must determine if the student has a significant cognitive disability. Ultimately, the IEP team determined that Petitioner is best served through the standard curriculum because his IQ does not reflect a significant cognitive disability. The threshold for a significant cognitive disability is an IQ score below 67, which would indicate the need for a modified curriculum.

5. Petitioner has a documented language impairment. However, such an impairment alone does not support a decision to modify a student's curriculum. Based on the persuasive testimony of █, placing a student on a modified curriculum when that student has the cognitive ability to make gains on the standard curriculum is a roadblock to his or her overall academic success. █ has worked in education for 38 years and has held █ current position for approximately 21 years.

6. Petitioner's parent was credible in her testimony that Petitioner has struggled academically; the parent was also sincere in her belief that Petitioner would be better served through a modified curriculum. However, the greater weight of the evidence does not support Petitioner's requested relief.

CONCLUSIONS OF LAW

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

8. Petitioner bears the burden of proof, by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005)("The burden of proof in an administrative hearing challenging an **IEP** is properly placed upon the party seeking relief.").

9. The Individuals with Disabilities Education Act ("IDEA") entitles all children to "a free appropriate public education that emphasizes 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).

10. Local school systems are required to satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

Special education and related 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 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. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320.

12. "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)).

13. "To meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F.*, 137 S. Ct. at 999. As discussed in *Andrew F.*, "[a]ny review of an IEP must appreciate that the question is whether the IEP is *reasonable*, not whether the court regards it as ideal." *Id.*

14. Deference should be accorded to the reasonable opinions of the professional educators who helped develop an IEP. *Id.* at 1001. In the present case, the professional educators who testified did so reasonably and credibly as to why Petitioner is currently best served through the standard curriculum.

15. States are required to develop challenging academic achievement standards and assessments for all students. 34 C.F.R. § 200.1. For students with the most significant cognitive disabilities, states may define and develop alternative achievement standards. 34 C.F.R. § 200.1(d). In Florida, "most significant cognitive disability" is measured, in relevant part, by "[a] statistically significant below average global cognitive score that falls within the first percentile rank (i.e., a standard, full-scale score of sixty-seven (67) or under)[.]" Fla. Admin. Code R. 6A-1.0943(1)(f)1.

16. In the present case, Petitioner's parent contends that the IEP fails to provide FAPE to the student because it does not provide for a modified curriculum. Guided by the above-cited principles, the undersigned finds that the student's IEP is reasonably calculated to enable the student to make progress appropriate in light of his circumstances, and finds that Petitioner did not meet the burden of proof to establish the need for a modified curriculum to be added to the IEP at this point in the student's education.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that that all requests for relief are DENIED.

DONE AND ORDERED this 6th day of July, 2022, in Tallahassee, Leon County, Florida.

*d*

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BRITTANY O. FINKBEINER  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 6th day of July, 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).