

PRELIMINARY STATEMENT

On April 19, 2023, Petitioner submitted a request for a due process hearing (Complaint) and the School Board filed the request with DOAH the next day. On April 21, 2023, a Case Management Order was issued, reminding the parties of the deadlines they needed to meet. On May 2, 2023, the School Board filed a response.

On May 5, 2023, the School Board filed a status report indicating that the parties had participated in a resolution meeting, but since the parties had been unable to reach a resolution, a hearing was necessary. A pre-hearing telephonic conference was held on May 15, 2023, and the next day a Notice of Hearing by Zoom Conference was issued for June 5, 2023.

The hearing was held as scheduled. At the hearing, Petitioner presented the testimony of the student's father, and a neighbor who often babysat the student. Petitioner sought to introduce videos stored in his cell phone as evidence, and the School Board had no objection. Petitioner had difficulties uploading the videos to the online exhibit portal during the hearing, so the undersigned gave Petitioner until 5:00 p.m. on June 6, 2023, to upload the videos to the online exhibit portal. The School Board kindly offered to help Petitioner meet this deadline, and filed the videos on behalf of Petitioner. Petitioner's videos 1 through 8 were admitted as exhibits.

The School Board presented the testimony of [REDACTED], principal; [REDACTED], ESE teacher; and [REDACTED], program planner for the ESE Department. School Board Exhibits 1, 2, 9, 12, and 14 were admitted into evidence.

At the end of the due process hearing, the parties agreed to file proposed final orders by no later than June 30, 2023. The parties also agreed that the

Final Order would issue no later than July 25, 2023. A transcript of the due process hearing was not filed with DOAH, so the Final Order was prepared without the benefit of a transcript.

The School Board timely filed its Proposed Final Order, which was considered in preparing the Final Order. Unless otherwise indicated, all rules 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 ■ years old, and has been found eligible for ESE services under the educational category of ASD. His parents are divorced and share responsibility for educational decisions.

2. The student was first enrolled at ■ Elementary School in August ■. Within days of starting school, the teachers had to manage the student's defiance and his tendency to flee assigned areas. By mid-September, the child find team had received consent from the student's mother to evaluate for ESE eligibility.

3. The student's mother shared a private evaluation with the team, which listed three diagnoses: mixed expressive/receptive language disorder, developmental articulation disorder, and delayed milestone in childhood.

4. A psychoeducational evaluation was completed by mid-October, by a bilingual school psychologist, since the student speaks Spanish at home. The findings included a description of the student's mother's and teacher's observations, which included difficulty in using the bathroom independently, hyperactivity, aggression, depression, somatization, attention problems, withdrawal, and issues with social skills and functional communication.

5. A bilingual speech and language evaluation was completed by early December. The speech and language pathologist (SLP) observed the student requiring repetition and redirection during one-to-one testing, and that he struggled to transition back to the classroom after lunch because the routine of going to the playground after lunch was changed. The SLP concluded that the student's decreased language skills and social pragmatic skills interfere with his academic performance and overall success; specifically, they impact his ability to answer questions and demonstrate knowledge during the rigors of daily educational activities. They also interfere with his ability to communicate appropriately with others in the academic setting, which results in difficulty expressing his needs and wants and participating in class lessons with peers and teachers.

6. The child find team met with the student's mother in February [REDACTED], and until then, no one at the school knew that the student's father had shared parental responsibility over educational decisions or that the parents were divorced.

7. The team met on March 14, [REDACTED], to develop an Individualized Education Plan (IEP) for the student. The team decided to place the student in an ESE classroom at [REDACTED] Elementary School, so that his needs could be met, and so that he could receive a free and appropriate public education (FAPE) in the least restrictive environment.

8. Two weeks later, the student's father requested information from the school, and soon after filed his Complaint.

9. The record, including all exhibits filed by both parties and all the testimony presented by the witnesses, establishes that the student was properly identified as a student who is eligible for ESE under the category of ASD and that he will receive a FAPE in the placement identified in the IEP. The School Board, once it knew about the student's father and his shared responsibility in education decisions, appropriately included the father and will continue to do so.

10. The student's father and his neighbor both testified that the student does not seem autistic, and that the student is just like his same aged peers. The rest of the witnesses, however, were more persuasive because their testimony is corroborated by the rest of the record, which includes the evaluations and the IEP created by the student's IEP team.

11. Petitioner provided no persuasive evidence establishing that the School Board erred in finding the student eligible for ESE services under the category of ASD or that it willfully violated the student's father's rights to participate in the education decisions made for his son.

12. The record as a whole establishes that even if the father had been present for the IEP meeting, he would have been the sole voice disagreeing with the rest of the IEP team, which included the student's mother, on the issues of eligibility and placement. This, of course, is his right as a parent. His opinions would have been, and will be considered, in the future. The IEP team, though, would have reached the same conclusions about eligibility and placement. Ultimately, the IEP team, which includes the parents and school staff, is charged with the duty to focus solely on what the student needs. The evidence shows that this student needs ESE services, that he is eligible for ESE services under the ASD category, and that the current placement provides him a FAPE.

CONCLUSIONS OF LAW

13. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

14. Petitioner bears the burden of proof for each of the issues raised here. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

15. The School Board is a local education authority (LEA) as defined under 20 U.S.C. § 1401(19)(A). Through receipt of federal funding, the School

Board must comply with certain provisions of the IDEA, 20 U.S.C. § 1401, *et seq.*

16. Parents and children with disabilities are given 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 have a right to examine their child's records and participate in meetings concerning their child's education; receive written notice before any proposed change in the educational placement of their child; and file an administrative due process complaint about any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. 20 U.S.C. § 1415(b)(1), (b)(3), (b)(6).

17. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a student with FAPE. First, it is necessary to examine whether the school district has complied with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 206-07. A procedural error does not automatically result in a denial of FAPE. *See G.C. v. Muscogee Cnty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw impeded the students right to 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).

18. In this case, Petitioner's Complaint contains one alleged procedural violation: that the School Board violated the father's right to meaningfully participate in the creation of the IEP, because the School Board never invited him to the IEP meeting. The record shows that the School Board, once it knew of the father's existence, included him in the process. The record also shows that even if the father had been present, and had expressed his disagreement on the eligibility category, the student would have been found

eligible for ESE services under the category of ASD and his placement would have remained the same.

19. Petitioner also alleges a substantive violation; that is, that the IEP was flawed in its design because his son is not autistic.

20. 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).

21. Under the second step of the *Rowley* test, it must be determined whether the IEP developed pursuant to the IDEA is reasonably calculated to enable the child to receive educational benefits. *Rowley*, 458 U.S. at 206-07. In *Andrew F. v. Douglas County School Board District RE-1*, 137 S. Ct. 988 (2017), the Supreme Court held that “[t]o 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.” *Id.* at 999.

22. The components of FAPE are recorded in an IEP, which, among other things, identifies the student’s present levels of academic achievement and functional performance; establishes measurable annual goals; addresses the services and accommodations to be provided to the student; whether the student will attend mainstream classes; and specifies the measurement tools and periodic reports to be used to evaluate the student’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.*, 137 S. Ct. at 994 (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 *Rowley*, 458 U.S. at 181).

23. Most importantly, the IDEA provides that an IEP must be individualized to the student and include measurable annual goals and services designed to meet *each* of the educational needs that result from the child’s disability. 20 U.S.C. § 1414(d)(1)(A)(i)(II); *Alex R. v. Forrestville Valley Cmty. Unit Sch. Dist. #221*, 375 F.3d 603, 613 (7th Cir. 2004)(explaining that an IEP must respond to all significant facets of the student’s disability, both academic and behavioral); *CJN v. Minneapolis Pub. Schs.*, 323 F.3d 630, 642 (8th Cir. 2003)(“We believe, as the district court did, that the student’s IEP must be responsive to the student’s specific disabilities”).

24. Here, Petitioner presented no evidence establishing that the IEP team erred in any aspect when creating the IEP for this student. The School Board presented persuasive evidence that the IEP properly identified the student’s levels of performance and academic achievement, properly determined the student’s eligibility category; and, based on the student’s needs, properly determined his placement.

ORDER

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

DONE AND ORDERED this 21st day of July, 2023, 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 21st day of July, 2023.

COPIES FURNISHED:

Amanda W. Gay, Esquire
(eServed)

Laura E. Pincus, Esquire
(eServed)

Petitioner
(Address of Record)

Petitioner
(Address of Record)

Bryce D. Milton
Educational Program Director
(eServed)

Michael J. Burke, Superintendent
(eServed)

Andrew King, General Counsel
(eServed)

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).