

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

██████████, ██████,

Petitioner,

vs.

Case No. 13-1363E

BROWARD COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on May 23, 2013, in Lauderdale Lakes, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: Barbara J. Myrick, Esquire
Broward County School Board
Eleventh Floor
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

STATEMENT OF THE ISSUES

The issues are as follows:

1. Whether Broward County School Board ("School Board") appropriately dismissed ██████████, ██████ ("██████████" or "Petitioner"),

from special education and related services under the eligibility of speech impairment on May 29, 2012; and,

2. Whether the School Board appropriately determined [REDACTED] did not meet eligibility criteria in the area of speech impairment on April [2], 2013.

PRELIMINARY STATEMENT

The parents of [REDACTED] filed for a due process hearing on April 12, 2013, and the matter was forwarded to the Division of Administrative Hearings for assignment of an Administrative Law Judge. The due process hearing was held as scheduled on May 23, 2013.

At the hearing, Petitioner presented the testimony of five witnesses: [REDACTED], teacher, [REDACTED] Elementary School, Broward County Public Schools; [REDACTED], speech and language pathologist, [REDACTED] Elementary School, Broward County Public Schools; [REDACTED], speech and language pathologist, [REDACTED] Elementary School, Broward County Public Schools; [REDACTED], mother of [REDACTED]; and [REDACTED], father of [REDACTED]

The School Board presented the testimony of five witnesses: [REDACTED], speech and language pathologist, [REDACTED] Elementary School, Broward County Public Schools; *** [REDACTED], teacher, [REDACTED] Elementary School, Broward County Public Schools; [REDACTED], speech and language pathologist, [REDACTED] Elementary School, Broward County Public Schools; [REDACTED]

█████, teacher, ██████ Elementary School, Broward County Public Schools; and ██████, program specialist for Speech and Language Services, Broward County Public Schools.

By stipulation, the parties jointly offered Exhibits 1 through 31, which were admitted into evidence.

At the conclusion of the hearing, the parties requested an extension of the final order deadline due to workload, and the undersigned granted the request, allowing the parties to file their proposed final orders by June 24, 2013. With the extension, the final order deadline was extended to August 5, 2013.

The Transcript of the hearing was filed on June 11, 2013, with the Division of Administrative Hearings. The School Board filed a timely Proposed Final Order, which has been considered in the preparation of the Final Order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following Findings of Fact are made:

1. ██████ was born on ██████, and resides in Broward County, Florida, with ██████'s mother, ██████, and father, ██████ ("█████'s parents").
2. In 2009, ██████ began attending ██████ Elementary School ("█████") as a kindergarten student.

3. At the beginning of the 2009-2010 school year, ██████'s parents signed consent for an initial evaluation to determine if ██████ met eligibility criteria for special education and related services.

4. ██████ ("█████"), speech and language pathologist at ██████, conducted the initial speech evaluation for ██████. On October 23, 2009, upon completion of the evaluation, the individualized education program ("IEP") eligibility committee determined that ██████ met eligibility criteria as a student with ██████. At the time, the criteria for eligibility was one sound error and one word error. ██████ had a speech sound error as well as a word error which qualified ██████ for eligibility.

5. On October 23, 2009, an IEP was development, and ██████ started receiving special education services. ██████ worked on the /s/ sound in speech therapy with Bott during first grade and made progress.

6. On both January 22, 2010, and January 11, 2011, new IEPs were developed for ██████

7. During the 2011-2012 school year, ██████ was in ██████'s ("█████") second grade class at ██████. ██████ was informed of ██████'s articulation disorder at the beginning of the year. ██████ read ██████'s IEP in order to assist ██████. Had

█ not been informed that █ had a speech impairment, █ might not have noticed any of █'s sound differences.

8. At the beginning of █'s second grade year, █ observed that █ was able to correctly articulate sounds in the speech room but struggled with the carryover of the correct sounds in the classroom and everyday life.

9. █ allowed █ to keep up with speech therapy progress by a visual representation. █ worked hard to correct all target sounds in the speech room.

10. On October 12, 2011, an interim IEP meeting was held. The team added the service of consultation to █'s services to assist with the carryover of the speech sounds from therapy to the classroom.

11. On November 1, 2011, █ was transferred from █ to █ ("█"), a speech and language pathologist at █, and █ started providing speech therapy. At the time of the transfer, █ was not ready to be dismissed from speech therapy. █ provided therapy to █ twice a week for 30 minutes each session.

12. On January 5, 2012, the IEP team met. █ participated in the meeting for █ as █'s speech and language pathologist. The IEP team determined that █ had mastered the IEP goals from the previous year's IEP. New goals were developed to work on maintaining the correct articulatory

production of the target sounds while reading aloud and participating in unstructured settings.

13. At the IEP meeting, the IEP committee reduced [REDACTED]'s direct speech services from two times a week for 30 minutes of direct speech therapy and monthly consultation to consultation two times a week in the general education classroom and 15 minutes a month of direct speech therapy. The committee reduced [REDACTED]'s services because the data demonstrated [REDACTED] was making progress and mastering [REDACTED]'s goals.

14. The same day [REDACTED]'s parents signed consent for a reevaluation in the area of Speech: Articulation, Fluency and Voice to determine if [REDACTED] continued to have a disability and continued to need special education and/or related services.

15. [REDACTED] informed [REDACTED] of the target sounds [REDACTED] was working on and the goals that were established in the IEP meeting to assist with carryover from the speech room to the classroom and throughout [REDACTED]'s school day.

16. [REDACTED] taught [REDACTED] all the skills in speech therapy that [REDACTED] needed to acquire to produce the target sounds correctly. In the speech room, [REDACTED] followed the techniques to correct the speech impairment and no longer had any difficulty producing the sounds correctly.

17. █████ monitored █████'s progress by utilizing the tally calendar █████ provided to record the number of cues that █████ needed to provide █████ to correctly produce the target sounds.

18. █████ would prompt █████ to correct speech sound errors by a tap on the desk, projector, and/or █████ leg, etc. Each prompt reminded █████ that █████'s sound was not produced correctly and to try again.

19. █████ saw improvements in █████'s speech during the 2011-2012 school year. █████ teacher progress reports indicated that █████ was doing well in █████ class.

20. At the end of the year, █████ did not believe that █████'s articulation disorder affected █████'s spelling. Additionally, █████ did not observe █████ having any problem with any peers understanding █████ █████ never heard anyone ask █████ to repeat what had been said. Further, █████ did not perceive any academic concerns related to speech at the end of █████'s second grade year.

21. █████'s three-year reevaluation was due on September 24, 2012. However, █████'s reevaluation was conducted during the spring of 2012 due to the parental request.

22. On April 5, 2012, the Goldman Fristoe Test of Articulation was administered to █████ as a formal assessment measure to determine █████'s educational needs as they related to █████'s speech. █████ ("█████"), a District program

specialist for speech and language, was present during [REDACTED]'s evaluation. The test/data interpretation concluded:

. . . . [REDACTED] has mastered all [REDACTED]'s] speech goals according to [REDACTED]'s] IEP. [REDACTED] demonstrates successful achievement in the regular curriculum without the support of the speech-language pathologist. Speech performance does not interfere with [REDACTED]'s] ability to participate in school.

23. On May 20, 2012, the IEP team met. They met again on May 29, 2012. [REDACTED] reviewed the results of the reevaluation, and the team determined [REDACTED] no longer met criteria to receive ESE services because [REDACTED]'s articulation disorder with mild sound distortions was not impacting [REDACTED]'s academic performance and social growth. The IEP committee also did not believe that [REDACTED]'s speech sound disorder had a significant impact on [REDACTED]'s intelligibility. After the complete review, [REDACTED]'s IEP team decided that [REDACTED] met dismissal criteria from special education services.

24. [REDACTED] was in agreement with the IEP committee's determination in May 2012 that [REDACTED] no longer needed speech services.

25. [REDACTED] disagreed with the IEP committee determination to dismiss [REDACTED], and [REDACTED] informed the IEP committee of such.

26. During the 2012-2013 school year, [REDACTED] was in [REDACTED] [REDACTED]'s (" [REDACTED] ") third grade general education class

at [REDACTED]. [REDACTED] noticed minor articulation issues in [REDACTED]'s speech.

27. On November 8, 2013, [REDACTED]'s parents had a private evaluation of [REDACTED] performed at [REDACTED] ("[REDACTED] Evaluation"). The [REDACTED] Evaluation concluded [REDACTED] has a mild articulation disorder.

28. [REDACTED] contacted [REDACTED] regarding [REDACTED]'s speech and the impact of [REDACTED]'s speech on academics and/or social progress.

29. In [REDACTED]'s class, [REDACTED] was at or above grade level in reading. However, [REDACTED] required extra instruction in spelling. [REDACTED] determined that [REDACTED]'s articulation did not affect [REDACTED]'s spelling.

30. [REDACTED] collected data regarding [REDACTED]'s speech including [REDACTED] reading sentences aloud to [REDACTED] and having [REDACTED] write down what the student heard [REDACTED] say, which [REDACTED] performed successfully.

31. When [REDACTED] spoke aloud, [REDACTED] was able to understand everything that [REDACTED] said. At no time did [REDACTED] ask [REDACTED] to repeat, slow down, or to clarify, even though [REDACTED] did hear a mild articulation error. However, the error did not impact [REDACTED]'s communication skills.

32. [REDACTED] also read aloud in the classroom and was understood at the beginning of third grade and at the end.

33. [REDACTED] also observed [REDACTED] outside [REDACTED] classroom at lunch and other social activities, like recess, and [REDACTED] determined that [REDACTED]'s mild articulation disorder did not impact or adversely affect [REDACTED]'s behavior or performance during any of the activities.

34. [REDACTED] completed progress reports for [REDACTED] while [REDACTED] was in [REDACTED] classroom. No areas of concern were noted by [REDACTED].

35. On January 22, 2013, a reevaluation plan meeting was held, and [REDACTED]'s parents signed consent for a reevaluation in the area of speech. [REDACTED]'s parents provided the team with the [REDACTED] Evaluation.

36. [REDACTED] did not conduct a formal evaluation of [REDACTED]'s articulation. The [REDACTED] Evaluation was for voice-resonance.

37. On April 1, 2013, [REDACTED] conducted the Goldman Fristoe Test of Articulation II upon request of the parents to assess [REDACTED]'s current articulatory precision. Informal observations were also performed to evaluate [REDACTED]'s speech, and a teacher and parent checklist was utilized.

38. [REDACTED] observed [REDACTED] interacting with both peers and the teacher in the classroom. [REDACTED] participated in class and volunteered to answer a question with a raised hand.

39. While working with [REDACTED], [REDACTED] never recognized any concerns regarding [REDACTED]'s phonetic or phonological inventory during second or third grade.

40. On April 2, 2013, [REDACTED]'s IEP team met. The team reviewed the results of the reevaluation and criteria for eligibility for speech sound disorder. The team determined that [REDACTED] did not meet eligibility criteria for special education and related services, because [REDACTED]'s speech sound disorder did not have a significant impact on [REDACTED]'s intelligibility or an adverse effect on [REDACTED]'s ability to perform or function in the classroom setting or social activities. [REDACTED] agreed with the decision, and [REDACTED] also agreed with the determination again.

41. [REDACTED] provided the School Board a second professional opinion regarding [REDACTED]'s eligibility criteria for speech services and concurred with the testing methods and IEP team's recommendation.

42. [REDACTED]'s parents maintain that [REDACTED] meets the criteria for speech services. When the family goes out to eat, waiters ask the parents to repeat [REDACTED]'s order, the grandparents refuse to talk to [REDACTED] on the phone long distance because they say they cannot understand [REDACTED], and, even recently, [REDACTED] performed in a play at the Synagogue, and it was

difficult to understand what [REDACTED] was saying when [REDACTED] presented.

43. Petitioner filed a request for a due process hearing on April 12, 2013, alleging that the School Board inappropriately dismissed [REDACTED] from special education services in May 2012 and failed to make [REDACTED] eligible for special education services on April [2], 2013, despite [REDACTED]'s having a speech articulation disability.

CONCLUSIONS OF LAW

44. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this cause pursuant to section 1003.57(4)(b), Florida Statutes (2012),^{1/} and Florida Administrative Code Rule 6A-6.03311(9).

45. The Individuals with Disabilities Education Act ("IDEA") provides procedural safeguards to ensure that students with disabilities receive a free appropriate public education ("FAPE"). 20 U.S.C. § 1415(a). Specifically, IDEA requires that states provide parents with the opportunity to present complaints with respect to any matter relating to the identification, evaluation, educational placement of the child, or the provision of a FAPE to such child. Id. 20 U.S.C. § 1415(b)(6)(A).

46. As in this case where Petitioner asserts a denial of a FAPE, Petitioner has the burden of proof to demonstrate such in

this proceeding. Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 163 L. Ed. 2d 387 (2005); Fla. Admin. Code R. 6A-6.03311(6)(g)2. The standard of proof Petitioner must meet is preponderance of the evidence. § 120.57(1)(j), Fla. Stat.

47. IDEA regulations define speech impairment in 34 C.F.R. section 300.8(c)(11), which provides in pertinent part:

(11) Speech or language impairment means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, that adversely affects a child's educational performance.

48. The Florida Administrative Code defines speech impairment and categorizes three types, including speech sound disorder. Rule 6A-6.03012(1) provides in pertinent part:

(1) Speech impairments are disorders of speech sounds, fluency, or voice that interfere with communication, adversely affect performance and/or functioning in the educational environment, and result in the need for exceptional student education.

(a) Speech sound disorder. A speech sound disorder is a phonological or articulation disorder that is evidenced by the atypical production of speech sounds characterized by substitutions, distortions, additions, or omissions that interfere with intelligibility. A speech sound disorder is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

1. Phonological disorder. A phonological disorder is an impairment in the system of

phonemes and phoneme patterns within the context of spoken language.

2. Articulation disorder. An articulation disorder is characterized by difficulty in the articulation of speech sounds that may be due to a motoric or structural problem.

(b) Fluency disorder. A fluency disorder is characterized by deviations in continuity, smoothness, rhythm, or effort in spoken communication. It may be accompanied by excessive tension and secondary behaviors, such as struggle and avoidance. A fluency disorder is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

(c) Voice disorder. A voice disorder is characterized by the atypical production or absence of vocal quality, pitch, loudness, resonance, or duration of phonation that is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

49. Florida also provides four requirements in order to meet the eligibility criteria for a speech sound disorder.

Rule 6A-6.03012(6) provides in pertinent part:

(6) Criteria for eligibility. A student is eligible as a student with a speech impairment in need of exceptional student education if the student meets the following criteria for one or more of the following disorders as determined by the procedures prescribed in this rule and subsection 6A-6.0331(6), F.A.C.

(a) Speech sound disorder. A student with a speech sound disorder is eligible for exceptional student education if there is evidence, based on evaluation results, of a significant phonological or articulation

disorder that is characterized by the atypical production of speech sound(s). The atypical production of speech sound(s) may be characterized by substitutions, distortions, additions, or omissions. Evaluation results must reveal all of the following:

1. The speech sound disorder must have a significant impact on the student's intelligibility, although the student may be intelligible to familiar listeners or within known contexts;
2. The student's phonetic or phonological inventory must be significantly below that expected for his or her chronological age or developmental level based on normative data;
3. The speech sound disorder must have an adverse effect on the student's ability to perform and/or function in the student's typical learning environment, thereby demonstrating the need for exceptional student education; and
4. The speech sound disorder is not primarily the result of factors related to chronological age, gender, culture, ethnicity, or limited English proficiency.

50. In this matter, ██████'s parents' assertion that ██████ had a speech sound disorder is undisputed. However, the record is void of evidence to demonstrate ██████ meets all four current criteria for speech impairment eligibility. To the contrary, the evidence demonstrates that, at school, ██████ was intelligible in both second and third grade, which fails to meet criterion one. The record also does not demonstrate criterion two; no evidence was presented that ██████'s phonetic or phonological inventory was significantly below what was expected for ██████'s age.

There is no denying that not everyone can understand ██████'s mild articulation disorder as evidenced by both the restaurant and Synagogue incidents. However, the third criterion narrows the adverse effect to the student's typical learning environment. And, the greater weight of the evidence is that ██████ functions fine in ██████'s typical learning environment, school. Additionally, no evidence was presented to prove criterion four. Therefore, Petitioner failed to present sufficient credible evidence to meet its burden of establishing ██████ met the eligibility criteria for a student with speech impairment on May 29, 2012, or April [2], 2013.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. The Broward County School Board appropriately dismissed ██████ from special education and related services under the eligibility of speech impairment on May 29, 2012.

2. The Broward County School Board appropriately determined ██████ did not meet eligibility criteria as a student with a speech impairment on April 2, 2013.

3. All claims for relief are denied.

DONE AND ORDERED this 26th day of July, 2013, in
Tallahassee, Leon County, Florida.

S

JUNE C. MCKINNEY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of July, 2013.

ENDNOTE

^{1/} References to Florida Statutes are to the (2012) version,
unless otherwise indicated.

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)(b), Florida Statutes (2011), 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).