

Clay County School District
No. 07-5041E
Initiated by: Parent
Hearing Officer: Lisa Shearer Nelson
Date of Final Order: January 17, 2008

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

█,)
)
Petitioner,)
)
vs.) Case No. 07-5041E
)
CLAY COUNTY SCHOOL BOARD,)
)
Respondent.)
_____)

FINAL ORDER

On December 10, 2007, a hearing was held in Green Cove Springs, Florida. The case was considered by Lisa Shearer Nelson, Administrative Law Judge.

APPEARANCES

For Petitioner: █
(address of record)

For Respondent: J. Bruce Bickner, Esquire
900 Walnut Street
Green Cove Springs, Florida 32403

STATEMENT OF THE ISSUE

Whether the Respondent, Clay County School Board's (CCSB or the School Board) proposed placement for Petitioner provides a free appropriate public education (FAPE) in the least restrictive environment.

PRELIMINARY STATEMENT

This case originated with the filing of a request for a due process hearing filed by the parents of ■■■ with the Clay County School District on October 15, 2007. The request was forwarded to the Division of Administrative Hearings on November 1, 2007, for the assignment of an administrative law judge.

That same day, the case was assigned to the undersigned, and on November 2, 2007, an Order was issued directing the parties to provide a status report no later than November 5, 2007, concerning the results of any resolution session. On November 7, 2007, a Pre-hearing Conference was conducted, and ■■■ was advised that attendance at either a resolution session or mediation was required in order for the due process hearing to proceed. By agreement of the parties, the case was noticed for hearing Monday, December 10, 2007.

At the time and place noticed for hearing, Respondent and all of its witnesses were assembled. However, Petitioner did not appear. A recess was taken and an effort was made to reach ■■■. After contacting her by telephone, ■■■ made an appearance at hearing and the proceedings were recommenced. Petitioner presented the testimony of ■■■, ■■■, and Petitioner's Exhibits numbered 1 and 2 were admitted into evidence. The School Board presented six witnesses and Respondent's Exhibits numbered 1 through 10 were admitted into evidence. Petitioner agreed to extend the time-frames for issuance of the final order in order to give both parties an opportunity to submit recommended final

orders. By agreement of the parties, recommended final orders were to be submitted on or before January 7, 2008, with the Final Order to be issued no later than January 21, 2008. The Respondent timely filed a Recommended Order. No timely submission was received by Petitioner. After careful consideration of the evidence presented at hearing, the following findings of fact and conclusions of law are made.

FINDINGS OF FACT

1. ■■■ is a ■■■ old child. At present, ■■■ is in a language impaired, self-contained setting at an elementary school within Clay County, Florida. ■■■ is in a third-grade class with eight other children. However, at present, ■■■ is functioning in most respects at a first-grade level.

2. An accommodation to a curriculum requirement is providing a child with an alternate method to achieve the same benchmarks. Examples of accommodations include limiting the number of assignments a child is required to complete, doing an assignment as a group, or providing extra time for completion of assignments. A modification is a change to the curriculum itself.

3. The function of the language-impaired program is to work on a regular education curriculum with accommodations, but not modifications, with a goal of having the student eventually enter the mainstream in education. Students in the language-impaired

program are expected to take and pass the FCAT in order to progress.

4. ■■■ is a child who tries very hard and is well-liked. However, despite ■■■'s efforts, ■■■ is unable to perform at a third-grade level. ■■■ currently performs almost two full grades below the next lowest performer in class.

5. In order for ■■■ to progress in the current setting, one-on-one instruction is required. ■■■'s comprehension and retention skills are poor and vocabulary is on a kindergarten level. Further, ■■■ is not able to interact academically with the other children in the classroom because of the disparity in performance between ■■■ and the other children.

6. As a result, the current program is not meeting ■■■'s needs. Moreover, given the level of ■■■ abilities, ■■■'s instructors do not believe ■■■ would be able to pass the FCAT and would be retained in third grade.

7. In early 2007, ■■■'s teachers expressed concerns about the ability to progress and whether the current placement was meeting ■■■'s needs. As a result, further testing was performed to evaluate ■■■'s abilities.

8. ■■■'s scores obtained during this testing were in the educable mentally-handicapped range with a language impairment. On April 2, 2007, a student services meeting was held to discuss the evaluation results. At that time, ■■■'s parents voiced their view that ■■■ was appropriately placed in the language-impaired

self-contained unit, but agreed to continue the assessment process to see if another placement was preferable.

9. On September 10, 2007, an IEP (individualized education plan) review was convened to review ■■■'s placement. At the IEP meeting, all participants from the School Board agreed that the appropriate placement for ■■■ would be in an educably mentally handicapped self-contained setting (EMHSC placement) at a different school. Such a setting would be an alternative setting outside the academic FCAT-based curriculum, and would focus on providing ■■■ with social skills training, functional living skills, functional academics and counseling services. ■■■ would receive comparable language services to that received in the language impaired class currently attended.

10. The proposed setting would also provide a structured environment with a low student-teacher ratio. The ultimate goal would be to prepare ■■■ for job training to become a successful member of society. ■■■ would have more opportunities to be in learning situations with other students on a similar level.

11. The proposed EMHSC placement would provide to ■■■ a free appropriate public education in the least restrictive environment.

12. ■■■ parents are opposed to the change in placement. ■■■ testified at hearing that ■■■ thought ■■■ was doing well and that any perceived difficulties were a result of chronic ear infections.

13. No competent evidence was presented that indicated [REDACTED] was capable of progressing in the language impaired, self-contained class where [REDACTED] currently attends.

14. No competent evidence was presented that indicated the proposed placement would not provide a free appropriate public education for [REDACTED]. To the contrary, the evidence indicates that the most appropriate setting for [REDACTED] is the one proposed by the School Board.

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter and the parties to this action pursuant to Section 1003.57(5), Florida Statutes; Florida Administrative Code Rule 6A-6.03311; and 20 U.S.C. Section 1402, et seq. (The Individuals with Disabilities Education Act, or IDEA).

16. Petitioner is the party seeking relief under the IDEA. Accordingly, Petitioner bears the burden of proof in this proceeding as the party seeking relief. Schaffer v. Weast, 546 U.S. 49, 51 (2005). For the reasons stated below, Petitioner has failed to meet this burden.

17. Under both state and federal law, a student is entitled to FAPE. See 20 U.S.C. § 1400 et seq. In Florida, district school boards are charged with providing an appropriate program for special instruction, facilities, and services for exceptional students in accordance with Section 1003.57, Florida Statutes.

§ 1001.42, Fla. Stat. Section 1003.57, Florida Statutes,
provides in pertinent part:

(1) Each district school board shall provide for an appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable, including provisions that:

(a) The district school board provide the necessary services for diagnosis and evaluation of exceptional students.

* * *

(e) A student may not be given special education instruction or services as an exceptional student until after he or she has been properly evaluated, classified, and placed in the manner prescribed by rules of the State Board of Education. The parent of an exceptional student evaluated and placed or denied placement in a program of special education shall be notified of each such evaluation and placement or denial. . . . Notwithstanding any law to the contrary, during the pendency of any proceeding conducted pursuant to this section, unless the district school board and the parents otherwise agree, the student shall remain in his or her then-current educational assignment or, if applying for initial admission to a public school, shall be assigned, with the consent of the parents, in the public school program until all such proceedings have been completed.

(f) In providing for the education of exceptional students, the district . . . shall utilize the regular school facilities and adapt them to the needs of exceptional students to the maximum extent appropriate. Segregation of exceptional students shall occur only if the nature or severity of the exceptionality is such that education in

regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

18. The requirements for FAPE under both IDEA and Florida law mandate that Respondent provide access to specialized instruction and related services individually designed to provide educational benefits to the student. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982), cited in Winkelman v. Parma City School District, 127 S.Ct. 1994, 2001 (2007). To determine whether a child is receiving FAPE, the finder of fact must consider whether the school system has complied with the procedures of the IDEA and whether the IEP developed through the IDEA procedures is reasonably calculated to enable the child to receive educational benefits. Rowley.

19. The proposed placement for [REDACTED] clearly meets these requirements. The placement described in [REDACTED]'s IEP is designed to provide educational benefits that cannot be received in the current placement. No evidence was presented indicating that the appropriate procedures were not followed in developing the IEP.

20. While [REDACTED]'s parents do not agree with the placement, they have presented no evidence that it fails to provide FAPE to their child. While the parents must be allowed to participate in the decisions regarding their child's placement, the School Board is not required to provide an education according to the parents' wishes. Weiss v. School Board of Hillsborough County, 141 F. 2d

990, 997 (11th Cir. 1998). The parents were notified of the proposed placement and participated in the process. No competent evidence was presented that demonstrated ■■■ was able to receive an appropriate education in the current placement. Indeed, nothing was presented at hearing beyond ■■■'s subjective belief that ■■■ was doing well. Given ■■■ particular needs and abilities, ■■■ is best served by placement in the EMHSC setting described in ■■■ September 10, 2007, I.E.P.

CONCLUSION

Based upon the foregoing Findings of Fact and Conclusions of Law, it

ORDERED that Respondent implement the IEP dated September 10, 2007.

DONE AND ORDERED this 17th day of January, 2008, in Tallahassee, Leon County, Florida.

S

LISA SHEARER NELSON
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 17th day of January, 2008.

COPIES FURNISHED:



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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- (a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); or
- (b) brings a civil action within 30 days in the appropriate state circuit court pursuant to Section 1415 (i)(2)(A) of the IDEA and Section 1003.57(5), Florida Statutes; or
- (c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(5) and 120.68, Florida Statutes.