

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 24-2909E

vs.

PALM BEACH COUNTY SCHOOL
BOARD,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice, a final hearing in this case was conducted before Administrative Law Judge (“ALJ”) Mary Li Creasy of the Division of Administrative Hearings (“DOAH”) by Zoom conference on October 24, 2024.

APPEARANCES

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

For Respondent: Laura E. Pincus, Esquire
 Damia Gordon, Esquire
 The School District of Palm Beach County, Florida
 3318 Forest Hill Boulevard, Suite C-331
 West Palm Beach, Florida 33406

STATEMENT OF THE ISSUES

Whether the Parent Participation Form (“PPF”) dated July 25, 2024, provided by the School District of Palm Beach County (“the District”) for an Individualized Education Plan meeting (“IEP meeting”) set for August 7, 2024, resulted in a procedural violation because:

1. The PPF did not identify that the student's mother opted to bring an advocate with her to the meeting;¹ and/or
2. The PPF failed to indicate that a new behavior resource teacher would attend and present evaluations and observations.

If so, whether that procedural violation resulted in a denial of a free and appropriate public education ("FAPE") for Petitioner.

PRELIMINARY STATEMENT

Petitioner filed a Request for Due Process Hearing ("Complaint") on August 7, 2024. The due process hearing was originally scheduled for September 18, 2024, but by agreement of the parties, it was rescheduled for October 24, 2024. With agreement from both parties, the due process hearing was held as scheduled, by Zoom conference.

Petitioner's father, T.M., testified on his own behalf, and Petitioner offered the testimony of five witnesses: [REDACTED], Program Support in the Exceptional Student Education ("ESE") Department; [REDACTED], ESE Coordinator for [REDACTED] ([REDACTED]); [REDACTED], North Area ESE Coordinator; [REDACTED], Director of Education for Gold Coast Down Syndrome Organization; and R.C., Petitioner's mother. Petitioner's Exhibits 5A and 5C were admitted into evidence.

At the conclusion of the hearing, the parties agreed to file proposed final orders within ten days of the filing of the hearing transcript with DOAH and that the final order would be due 20 days thereafter.

¹ The Request for Due Process Hearing did not identify this as an issue, but it was heard with the agreement of the parties.

The one-volume Transcript was filed with DOAH on November 13, 2024. Respondent timely submitted a proposed final order, which was considered in the preparation of this 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 uses male pronouns 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

Background

1. Petitioner is a [REDACTED]-year-old, [REDACTED]-grade student at Timber Trace. Petitioner receives ESE services under the exceptionality of Intellectual Disability. Petitioner's annual IEP was developed on February 27, [REDACTED].

2. Based on Petitioner's current IEP, he receives instruction in an ESE classroom for language arts and math. He is in a general education classroom for science and social studies. He also attends fine arts, recess, and lunch with his general education class.

3. Since pre-kindergarten, Petitioner's parents co-parent from separate households. Petitioner's parents have a somewhat acrimonious relationship and do not communicate well or agree with one another regarding the best interest of the student. However, they share educational decision-making authority. Respondent acknowledges and respects that both parents are actively engaged in their child's education.

4. During a parent conference at the end of the school year in May [REDACTED], Petitioner's mother suggested that placement be modified to "full inclusion" for instruction in general education classroom settings.

5. Because the May [REDACTED] meeting was noticed to be a parent conference, rather than an IEP meeting, the discussion was tabled. In addition, the

meeting did not have the requisite participants for an IEP meeting, and, therefore, no changes to the IEP could be made at that time. The placement discussion was anticipated for the next IEP meeting, which was subsequently scheduled for August 7, [REDACTED].

Notice of the August 7, [REDACTED], IEP Meeting

6. On July 25, [REDACTED], [REDACTED], Timber Trace's ESE Coordinator, sent both parents an email notifying them of a meeting that was scheduled at Timber Trace on August 7, [REDACTED], at 8:30 a.m. The PPF stated:

The purpose of the meeting is to [d]evelop a new Specialized Educational Plan (IEP/TIEP/PSSP/EP). Your child's existing Specialized Educational Plan will be reviewed, goals and objectives will be developed, and placement options will be discussed. ... If the committee is unable to complete these tasks another meeting will be scheduled.

7. The PPF identified 13 individuals who would form the IEP team and their roles, including the parents.

8. Upon receipt of the PPF, Petitioner's father signed the form, indicating he would attend the meeting, and returned it to the school. Petitioner's mother did not sign and return the form. Neither parent completed an option section of the PPF which seeks parent input in advance of the meeting.

9. Petitioner's mother sent an email to [REDACTED], indicating she would be attending the IEP meeting virtually which was necessary due to an illness.

10. In accordance with Florida law, both parents were advised by the PPF of their right to bring persons of their choosing to the IEP meeting. The PPF provides, in relevant part:

Note: Parents/Guardians have the right to invite other individuals who have special knowledge or expertise regarding their child. As a courtesy to the school, if you wish to invite additional participants, please add their names and titles to the above list

indicating that you have contacted them and invited them to participate.

11. The day prior to the IEP meeting, Petitioner's mother informed [REDACTED] that [REDACTED] would also be attending the meeting virtually.

12. [REDACTED] is the Director of Education for the Gold Coast Down Syndrome Organization. In that role, [REDACTED] serves as an educational advocate for parents and children. Petitioner's mother requested assistance from [REDACTED] because she was concerned with her son's classroom behavior. Approximately a year and a half prior to the IEP meeting, [REDACTED] conducted an observation to see how Petitioner was operating in the classroom and gave suggestions to the parent and his teacher.

13. [REDACTED] philosophically believes in full inclusion of ESE students as being their least restrictive environment, with a reported 95% inclusion rate of students involved with the Gold Coast Down Syndrome Organization. Prior to the IEP meeting, [REDACTED] has attended meetings regarding other students within the District at the invitation of a parent. She has never received an invitation from Respondent but receives notification of scheduled meetings by receiving forwarded calendar invitations from a parent. To her knowledge, she has never been identified on a PPF.

14. After being notified of [REDACTED] anticipated participation at the IEP meeting, [REDACTED] notified Petitioner's father of the same on August 6, [REDACTED].

The August 7, [REDACTED], IEP Meeting

15. Consistent with Respondent's practice, notes were taken at the August 7, [REDACTED], IEP meeting. In this case, the notes were taken by ESE Manager, [REDACTED]. The notes reflect that both [REDACTED],

Petitioner's behavior resource teacher for the [REDACTED] school year, and [REDACTED], Petitioner's behavior resource teacher for the upcoming [REDACTED] school year, participated in the meeting.

16. The PPF was generated in July [REDACTED], at which time [REDACTED] was not yet assigned to Timber Trace. She was invited by [REDACTED] after it was clear [REDACTED] would work with Petitioner in the new school year. Although [REDACTED] was not identified as a member of the IEP team on the PPF, both parents were advised of her role at the outset of the IEP meeting and consented to her staying in the meeting.

17. Coincidentally, [REDACTED] worked with Petitioner during the [REDACTED] summer extended school year program. This was not known to [REDACTED] when she invited [REDACTED] to the meeting. During the IEP meeting, [REDACTED] offered to share her summer notes and observations with the IEP team. Prior to the meeting, [REDACTED] received copies of the extended school year goal reports and the data that was attached to them; however, she did not have [REDACTED] notes to which she referred at the IEP meeting. Accordingly, they were not made available to the parents for review prior to the meeting.

18. As the IEP meeting progressed, it became apparent that Petitioner's father was unhappy with the direction of the discussion. The record is unclear whether Petitioner's father was distressed by the data presented by [REDACTED] of which he was previously unaware, or whether he was agitated by [REDACTED] advocacy for a change in the IEP for full inclusion. Regardless of the reason, the IEP was abruptly ended by Petitioner's father who jumped up and disconnected Petitioner's mother and [REDACTED] from the video chat.

19. Because the IEP meeting ended prematurely, the IEP team reached no conclusion regarding a possible change in placement, and Petitioner's placement remained the same. To date, none of Petitioner's teachers have

shared any concerns that his placement is not correct or that he is not receiving FAPE.

20. Petitioner offered no testimony or evidence that the student was affected in any way as a result of the alleged deficient notice or the August 7, [REDACTED], IEP meeting itself.

CONCLUSIONS OF LAW

21. DOAH has jurisdiction over the subject matter of this proceeding, as well as the parties. *See* § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.0331(9)(u).

22. As the party seeking relief, Petitioner bears the burden of proving each issue raised in the Complaint. *See Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Devine v. Indian River Cnty. Sch. Bd.*, 249 F.3d 1289, 1291 (11th Cir. 2001).

23. Congress passed the Individuals with Disabilities Education Act (“IDEA”) “to ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasize[s] 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); *Phillip C. ex rel. A.C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012).

24. In enacting the IDEA, Congress intended to address inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public education system. 20 U.S.C. § 1400(c)(2)(A)-(B). To achieve these aims, Congress provides funding to participating state and local educational agencies and requires such agencies to comply with the IDEA’s procedural and substantive requirements. *Doe v. Ala. State Dep’t of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

25. Respondent, a local education agency under 20 U.S.C. § 1401(19)(A), receives federal IDEA funds and is, thus, required to comply with certain provisions of that Act. *See* 20 U.S.C. § 1401, *et seq.*

26. The IDEA provides parents and children with disabilities with substantial procedural safeguards. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents can 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. *See* 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

27. 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).

28. The components of FAPE are recorded in an IEP, which, among other things: 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; indicates 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. “The IEP is the centerpiece of the statute’s education delivery system for disabled children.” *Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (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).

29. 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, a school board only denies a student FAPE where: the procedural flaw impedes the student’s right to FAPE; significantly infringes on the parents’ opportunity to participate in the decision-making process; or causes an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007); 2000 U.S.C. § 1415(f)(3)(E)(ii); 34 CFR § 300.513(a)(2).

30. In evaluating whether a procedural defect has deprived a student of FAPE, “the [c]ourt must consider the impact of the procedural defect, and not merely the defect per se.” *Weiss ex rel. Weiss v. Sch. Bd. of Hillsborough Cnty.*, 141 F.3d 990, 995 (11th Cir. 1998). For example, in *Weiss*, the court determined that although a procedural violation had occurred, it did not rise to the level of a substantive deprivation of rights because the child was placed in the program where his parents initially wanted him, and they actively participated in his educational placement. The Eleventh Circuit explained that it was concerned with the purpose behind the procedural requirements—full and effective participation in the IEP process. *Id.* at 996.

31. In this case, Petitioner alleges two procedural violations: inadequate notice of the IEP meeting because the participation of [REDACTED]

was not listed on the PPF; and that the notes and evaluation materials of [REDACTED] were not available for review prior to the meeting.

32. Florida law requires that parents be given the opportunity to bring representatives/advocates of their choosing to the IEP meeting. “School district personnel may not object to the attendance of any such adult or discourage or attempt to discourage ... the parents of students with disabilities from inviting another person of their choice to attend a meeting.” Further, at the end of the meeting, the parents and school district personnel are asked to sign a statement indicating that the school district personnel did not prohibit, discourage, or attempt to discourage the parents from inviting a person of their choice to the meeting. § 1002.20(21)(a)1. and 2., Fla. Stat.

33. There is no legal requirement that the parent notify the school or other participants of the attendance of these persons prior to the meeting. Similarly, there is no obligation on the part of the district to notify one parent of the other parent’s selection of a representative or advocate, particularly when it is not known at the time of issuance of the PPF.

34. Petitioner asserts that 34 C.F.R. § 300.322(b)(1)(i) obligates Respondent to provide notification of “who will be in attendance” and that the PPF issued July 25, [REDACTED], was deficient because [REDACTED] was not identified. This ignores the obligation under Florida law to provide notice to the parents to bring an advocate or representative of their choosing and that such individual is not a member of the IEP team until they are actually in attendance.

35. Petitioner’s father was given notice, as soon as Respondent had notice, that Petitioner’s mother intended for [REDACTED] to participate. [REDACTED] attendance did nothing to preclude the father’s attendance or his ability to participate at the IEP meeting. Because the meeting was terminated prematurely by Petitioner’s father, no determination was made, nor was there any change in placement. Assuming arguendo that the failure to list [REDACTED] on the PPF constituted a procedural

violation, no substantive violation occurred because there was no denial of FAPE.

36. Petitioner also argues that the failure of Respondent to make [REDACTED] notes available to the parents prior to the IEP meeting was also a procedural violation. Again, this ignores the fact that the ESE Coordinator was unaware of the notes or that [REDACTED] would discuss her observations at the IEP meeting until the meeting itself.

37. No evidence was presented that [REDACTED] input had any negative effect on Petitioner's IEP or the parents' ability to meaningfully participate at the IEP meeting. Because of the abrupt termination of the meeting, no action was taken, there was no denial of FAPE, and no remedy is necessary. Prior to further assessment of the appropriateness of Petitioner's placement and IEP, both parents should have an opportunity to fully review [REDACTED] evaluations and assessments of Petitioner.

38. To summarize, Petitioner presented no evidence that the alleged procedural flaws impeded the student's right to FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits.

ORDER

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

DONE AND ORDERED this 12th day of December, 2024, in Tampa, Hillsborough County, Florida.


Case No. 24-2909E

MARY LI CREASY
Administrative Law Judge
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Filed with the Clerk of the
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this 12th day of December, 2024.

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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).