STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted],

Petitioner,

vs. Case No. 14-3040E

LEON COUNTY SCHOOL BOARD,

Respondent.

_____/

FINAL ORDER

Pursuant to notice, a final hearing was held in this case on August 11, 2014, in Tallahassee, Florida, before E. Gary Early, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Eric D. Schab, Esquire
Sarah Bailey, Qualified Representative
Matthew Sulkin, Qualified Representative
Florida State University College of Law
Public Interest Law Center
425 West Jefferson Street
Tallahassee, Florida 32306-1601

For Respondent: Opal McKinney-Williams, Esquire
Ausley & McMullen, P.A.
123 South Calhoun Street
Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

The issue in this case is whether the Leon County School Board (Respondent or School Board) denied Petitioner

("Petitioner" or the "student"), a free, appropriate public education (FAPE) within the meaning of the Individuals With Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., by virtue of the refusal to reinstate Petitioner's eligibility as a homebound student eligible for specially-designed instruction.

PRELIMINARY STATEMENT

On or about June 26, 2014, Petitioner filed a Request for Exceptional Student Education (ESE) Due Process with Respondent. The request was forwarded to the Division of Administrative Hearings (DOAH) on June 30, 2014, for a formal administrative hearing. The Pre-hearing Order was entered on July 2, 2014, and the case was thereafter set for hearing on August 11, 2014.

On August 4, 2014, the parties filed a Joint Statement of Undisputed Facts advising the undersigned of a number of factual stipulations. Those stipulations are hereby incorporated in this Final Order.

The final hearing was held on August 11, 2014, as scheduled.

At the final hearing, Petitioner called the following witnesses: Dr. [redacted], who was accepted as an expert in exceptional student education; [redacted][1/], Petitioner's [redacted]-grade teacher during the 2013-2014 school year; and Petitioner's mother. Petitioner's Exhibits 1 through 39 were received in evidence by stipulation. Petitioner's Exhibit 40, which

consists of the deposition transcript of [redacted], was received in evidence without objection, and is accepted as having the evidentiary weight as though he testified in person. [redacted] was tendered as an expert in pediatric [redacted] and [redacted], and is accepted as such.

At the final hearing, Respondent called the following witnesses: [redacted], Respondent's compliance specialist for Respondent's homebound and hospitalized student program; [redacted], Respondent's ESE program specialist; [redacted], principal of Petitioner's elementary school; and [redacted], a division director for Respondent, whose duties included oversight over Exceptional Student Education services. Respondent's Exhibits 1 through 35 were received in evidence by stipulation.

As to any exhibits that constitute hearsay evidence, such exhibits may be used for the purpose of supplementing or explaining other evidence, but shall not be used to support a finding of fact unless it is subject to an exception to the hearsay rule, would otherwise be admissible over objection in a civil action, or is being used for a purpose other than proof of the truth of the matter asserted. Hearsay evidence not meeting one of those criteria has not been considered in the development of the findings of fact herein.

The two-volume Transcript was filed on August 13, 2014. The parties timely filed their Proposed Final Orders on August 25, 2014, which have been considered in the preparation of this Final Order.

All statutory references are to Florida Statutes (2014).

FINDINGS OF FACT

1. At all times relevant to this proceeding, Petitioner has been, and continues to be, enrolled at a public elementary school operated by the School Board.

2. The School Board is responsible for the operation, control, and supervision of all free public schools in the county school district (School District or District). See Art. IX, § 4(b), Fla. Const.; § 1001.32(2), Fla. Stat.

3. During the [redacted] school year, Petitioner's [redacted]-grade year, Petitioner had not been diagnosed with a disability, and did not receive special education services. The child was, by all accounts, a healthy, energetic, and athletic child, who participated in activities including dancing, gymnastics, and swimming. During the [redacted] school year, Petitioner received grades of A in all subjects, except for one B in the third nine-week grading period, and 5s in Reading and Math on the Florida Comprehensive Assessment Test (FCAT).

4. In early May 2013, shortly after having returned from a swim-meet, Petitioner began to experience signs of lethargy and

weakness. [redacted] was taken to the doctor, and was diagnosed with [redacted]. [redacted] was treated and sent home.

5. By the third week of May, Petitioner was becoming progressively weaker, and had developed a rash and swelling. On the Friday before the Memorial Day weekend, Petitioner's mother called the doctor's office, but most of the staff, including Petitioner's doctor, had left for the extended holiday. Petitioner's mother was advised that if Petitioner's condition worsened, [redacted] should be taken to the emergency room.

6. Over the Memorial Day weekend, Petitioner had become so weak that she could barely sit up. On the Tuesday following Memorial Day, Petitioner was taken to [redacted] doctor's office. The doctor recommended that [redacted] be taken to the emergency room, where [redacted] was seen and admitted to the hospital. Fortunately, a pediatric specialist was on-call. The specialist examined Petitioner and, recognizing [redacted] symptoms as being those associated with [redacted], a rare [redacted], recommended that [redacted] be taken to [redacted] in [redacted], Florida.

7. The following day, Petitioner was transported by ambulance to [redacted]. By that time [redacted] condition had progressed to the point that [redacted] was having difficulty swallowing and speaking.

8. At [redacted], Petitioner was seen by [redacted], who confirmed the diagnosis of [redacted].

9. [redacted] is a chronic autoimmune/autoinflammatory condition causing inflammation of the vasculature of the body, which can manifest in a number of ways, including joint inflammation, muscle weakness, and skin rash. In severe cases, the weakness can compromise a person's ability to swallow, and can be life-threatening. The disease cannot be cured, but can be treated and controlled. Even when controlled, a person with [redacted] can go through periods of "flares" and remission.

10. [redacted] immediately started Petitioner on an aggressive course of treatment. Petitioner stayed at [redacted] for 11 days, after which [redacted] was transferred to an inpatient rehabilitation facility in [redacted].

11. By July 2013, Petitioner's mother began to question whether Petitioner would be capable of returning to school in the fall. She spoke with the School Board ESE office, and was provided with the paperwork necessary for Petitioner to qualify for ESE services as a hospital/homebound student.

12. [redacted] provided a Leon County Schools Medical Recommendation for Hospital Homebound Instruction, in which he certified that, among other things, Petitioner was "[u]nable to attend school for at least 15 consecutive school days due to an acute physical or psychiatric condition or at least 15 (not

necessarily consecutive) school days due to a chronic condition" and that Petitioner was "[c]onfined to the home or hospital."

13. On August 15, 2013, an eligibility determination meeting for IDEA special education services was held. The Eligibility and Assignment Staffing Committee (Committee) consisted of: [redacted]; [redacted]; the school's ESE teacher; [redacted]; and Petitioner's parents. Based on [redacted] medical recommendation, the Committee determined that Petitioner was eligible for hospital/homebound instruction.

14. Hospital/homebound instruction is a service delivery model offered under the IDEA to "a student who has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time." Fla. Admin. Code R. 6A-6.03020(1). The purpose of hospital/homebound instruction, which is among the most restrictive means of providing educational services, is to provide students who are confined and unable to attend school with structure and access to the general curriculum in preparation for their return to the classroom.

15. Upon the determination of Petitioner's eligibility for hospital/homebound instruction, the Committee developed an

Individual Education Plan (IEP) for Petitioner for the 2013-2014 school year. The IEP provided for "individual instruction at home in academic areas" to be provided at a frequency of three times per week. The primary purpose of the service was to allow for regular educational progression.

16. Except for homebound or hospitalized students, IEPs are typically written for students who need academic, behavioral, or social interventions. Petitioner does not require those services.

17. During the August 15, 2013, meeting, Petitioner's mother executed a Consent for Release of Information to Leon County Schools that allowed school representatives to receive Petitioner's health and medical records from [redacted].

18. During the early part of the school year, Petitioner continued to have difficulty sitting up on [redacted] own for long periods, had difficulty walking, and had issues with [redacted] fine motor skills. [redacted] was receiving physical therapy three times per week, occupational therapy two times per week, and speech therapy once per week. [redacted] was, however, improving as the treatments took effect.

19. Over the following months, [redacted] provided homebound educational services to Petitioner, on average, three times per week, for four hours per week. [redacted] would come, depending on

[redacted] schedule, on two days for two-hour sessions, three days for varying periods, or four days for one hour sessions.

20. [redacted] sessions generally focused on social studies, current events, reading, and math. Some assignments were shortened by, e.g., doing every other question in math rather than all questions. [redacted] and Petitioner would pick-and-choose among topics depending on the day. Petitioner took the same tests as [redacted] other students.

21. [redacted] generally found Petitioner to be an agreeable, hard-working child, though lacking in stamina. Throughout this period, Petitioner maintained her superior academic performance.

22. By February 2014, Petitioner's physical condition had improved to the point that [redacted] believed it would be advantageous for [redacted] to return to school on a part-time basis. Petitioner's mother spoke with the school guidance counselor to determine what they would need to do to set up a part-time school schedule for Petitioner, and was advised to have [redacted] provide a letter confirming Petitioner's ability to attend school. Thereafter, [redacted] instructed his staff to prepare a letter stating that Petitioner could return to school on a part-time basis beginning on March 3, 2014. His letter to that effect was provided to the school.

23. Upon receipt of [redacted] letter, the school scheduled an IDEA re-evaluation conference and parent/case

conference to discuss Petitioner's status, to be conducted on February 24, 2014. A Parent Invitation/Participation Form was provided to Petitioner's mother, receipt of which was acknowledged on February 19, 2014.

24. On February 24, 2014, the conference was held, with the following participants: the school's assistant principal; [redacted]; the school psychologist; the school referral counselor; [redacted]; and Petitioner's parents.

25. Based on the letter from [redacted], the Committee determined that Petitioner was no longer confined to the home or hospital. Based thereon, and combined with the fact that Petitioner required no academic, behavioral, or social interventions and was maintaining her previous exemplary academic performance, the Committee determined that Petitioner was no longer eligible, as a homebound or hospitalized student or otherwise, for special education services under the IDEA.

26. Petitioner's mother testified that [redacted] was confused and upset at the action of the Committee, and did not understand that the meeting was for the purpose of re-evaluating Petitioner's eligibility for services as a homebound student. Despite [redacted] dissatisfaction with the outcome of the February 24, 2014, meeting, Petitioner's mother signed a statement indicating that she consented to the recommendation of the Committee, and that she understood her rights under the IDEA.

27. At the conclusion of the re-evaluation conference, a meeting was convened with the same participants to discuss whether Petitioner's part-time status could be accommodated within the classroom or school setting in accordance with Section 504 of the Rehabilitation Act of 1973. A Section 504 plan is designed to provide support and accommodations for a disabled student who cannot come to school full-time. The Committee determined that Petitioner was eligible for accommodations under Section 504. The initial accommodations to be provided included assistance with "bubbling" test answers if needed, extended time for length of sessions, tests to be taken in several brief periods with frequent breaks, class participation in a small group setting, a sanitized desk and bathroom, and modification of the length of in-class and homework assignments. The substance and procedures of the Section 504 plan are described herein for context, and are not the subject of this proceeding.

28. Before the conclusion of the conference, Petitioner's mother revoked the Consent for Release of Information to Leon County Schools, thereby preventing school representatives from contacting [redacted] regarding Petitioner's health or medical condition. Petitioner's mother testified as to her belief that the action of the Committee was not in Petitioner's best interest, and did not want Respondent to have access to the

personal relationship that existed between a doctor and the family of a sick child. However, she testified that she could arrange a conference call with [redacted] with the school and the family participating, or could provide the doctor with a list of written questions from the school or the School District. Given [redacted] letter, the Committee did not believe further information was necessary.

29. Petitioner began to attend school on a part-time basis beginning on March 3, 2014. [redacted] generally came to school around noon. Petitioner's mother indicated that Petitioner spent the mornings "at home resting, or [redacted] might have a medical appointment." Petitioner had physical therapy four times per week, which lasted for approximately one hour per session, which would have accounted for some of the missed time.

30. When Petitioner returned to school, [redacted] implemented the type of curriculum modifications that had been practiced while Petitioner was homebound. For example, Petitioner was allowed to do every other math problem, and [redacted] accelerated reader goals were modified to require fewer minutes of daily independent reading.

31. After Petitioner began part-time attendance, Petitioner's mother continued her effort to obtain specially-designed instruction for Petitioner as a homebound or hospitalized student on an intermittent basis. Her discussions

with various persons, including [redacted], resulted in an agreement to continue one hour of in-home services to Petitioner, pending a further re-evaluation of Petitioner at a meeting of the Eligibility and Assignment Staffing Committee to be held on March 31, 2014.

32. At the request of the School Board, Petitioner's parents provided a new Medical Recommendation for Hospital/Homebound Instruction from [redacted] for consideration at the March 31, 2014, meeting. Although [redacted] checked the box that Petitioner was confined to the home or hospital, [redacted] modified the statement to provide that "full days to be completed half in school and half homebound."

33. On March 31, 2014, a meeting was convened to discuss and re-evaluate Petitioner's eligibility for exceptional student education services as a homebound or hospitalized student. In attendance were [redacted]; [redacted]; the school nurse; the school referral counselor; [redacted]; [redacted]; and Petitioner's parents. Petitioner's mother read a statement, described as an essay, describing the ordeal that Petitioner had been, and continued to be, subjected to and reiterating their desire that [redacted] continue to receive homebound student services.

34. Based on the letter from [redacted], the Committee restated that, under their reading of the standards applicable to specially-designed instruction for students who are homebound

or hospitalized, Petitioner remained ineligible for such services since [redacted] was not "confined" to the home.

35. At the conclusion of the March 31, 2014, meeting, [redacted] provided Petitioner's parents with an Informed Notice of Refusal to Take a Specific Action. As to the specific parental request for "'home access' through hospital/homebound services for the part of the day that [Petitioner] is not in school," the Committee determined that "[Petitioner] is not confined to the home and is not in need of special education services."

36. As a result of the March 31, 2014, meeting, Petitioner's existing Section 504 plan was modified to allow for a shortened day as necessary, Petitioner being able to have water at [redacted] desk, Petitioner being able to have school materials and textbooks at home, a waiver of physical activity at school as necessary, and having an assigned "buddy" while outside of the classroom. Offered--but not accepted--was the provision of missed core classes by "jump drive" recording, internet connection, or video conferencing, so that Petitioner would have access not just to the bare curriculum, but to any actual instruction missed during the school day. That Section 504 accommodation was rejected by Petitioner's parents as not being a "good fit" for Petitioner.

37. Around the time of the March 31, 2013, meeting, Petitioner's parents ran into [redacted] at the School Board office. Petitioner's [redacted] had been a student at [redacted] School during [redacted] tenure there as principal, and [redacted] recognized them from that time.

38. After some discussion, and given that the school year was coming to a close and FCAT testing was approaching, [redacted] agreed to provide Petitioner with one hour per week of special instruction. The special instruction was not provided as homebound or hospitalized-student instruction or as a listed accommodation under the Section 504 plan, but was paid from discretionary general revenue.

39. The one hour per week of special instruction was provided by [redacted] at the school. Petitioner stayed after school twice a week for a half-hour. In addition, [redacted] occasionally stayed longer, as was [redacted] practice with some other students who attended the school's after-school program.

40. During the last nine-week session of school, while Petitioner was attending, Petitioner was well-received by [redacted] classmates. [redacted] testified that [redacted] was happy and fit right in. Petitioner participated in class activities, including the class trip to St. Augustine. Petitioner took the FCAT tests with the rest of the [redacted]grade students.

41. Petitioner completed [redacted] [redacted]grade, 2013-2014 school year, with straight As on [redacted] report card, 5s on FCAT Reading and Math, and a 4 on FCAT Writing.

42. [redacted] testified that, during the final nine weeks of the 2013-2014 school year, [redacted] had no recollection of Petitioner "missing that many, if any half-time days." Petitioner's report card indicates that [redacted] had two excused absences during that nine-week period.

43. The preponderance of the evidence supports a finding that the one hour per week of additional time at school with [redacted] after class was sufficient to keep Petitioner on track and maintaining straight As. There was no evidence to suggest that there were any difficulties with Petitioner keeping up in class without instruction being provided at Petitioner's home. Thus, there is no evidence that such an accommodation must be done as a homebound service due to Petitioner's confinement to the home.

44. Over the course of the summer, Petitioner took several trips with [redacted] family, attended church, and went to the mall. Although accommodations were made by the family to account for the heat during trips and the lack of stamina during outings, it is clear that Petitioner is not "confined" to [redacted] home as that term is commonly used. See MERRIAM WEBSTER ONLINE DICTIONARY, at http://www.merriam-webster.com/dictionary/confine, which

provides the medical definition of "confine" as "to keep from leaving accustomed quarters (as one's room or bed) under pressure of infirmity, childbirth, or detention."

45. Given Petitioner's ability to attend school on a regular basis, it is found that Petitioner failed to prove, by a preponderance of the evidence, that [redacted] meets the criteria to receive specially-designed instruction for students who are homebound or hospitalized, in that Petitioner's illness, in its present manifestation, does not keep [redacted] confined to [redacted] home or to the hospital.

CONCLUSIONS OF LAW

46. DOAH has jurisdiction over the subject matter and parties to this case pursuant to sections 120.569, 120.57(1), and 1003.57(5), Florida Statutes. See also Fla. Admin. Code R. 6A-6.03311(9).

Free Appropriate Public Education (FAPE)

47. The IDEA is designed "to ensure that all children with disabilities have available to them a free appropriate public education." See 20 U.S.C. § 1400(d)(1)(A).

48. FAPE is defined as:

> [S]pecial 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 section 614(d) [20 USC § 1414(d)].

20 U.S.C. § 1401(9).

49. FAPE is tailored to the unique needs of the student through the evaluation of the needs of the student, and development of an individual education plan (IEP) for each eligible student by the school district. (emphasis added). See 20 U.S.C. § 1414; 34 C.F.R. §§ 300.320-324; Fla. Admin. Code R. 6A-6.03311(1) and (2).

50. Section 1003.01(3)(a) defines an "exceptional student" as "any student who has been determined eligible for a special program in accordance with rules of the State Board of Education. The term includes . . . students who are hospitalized or homebound . . . ."

51. Petitioner has requested services as a homebound or hospitalized student. Petitioner is not eligible for, nor does [redacted] seek, services as a result of any intellectual, emotional, behavioral, or learning disability.

Burden of Proof

52. Petitioner has the burden of proving by a preponderance of the evidence that IDEA has been violated, thereby denying FAPE to Petitioner. Schaffer v. Weast, 546 U.S. 49 (2005); Loren F. v. Atlanta Indep. Sch. Sys., 349 F.3d 1309, 1313 (11th Cir. 2003); Ross v. Bd. of Educ. Township High Sch. Dist., 486 F.3d 279, at 270-271 (7th Cir. 2007) ("[T]he burden of proof in a hearing challenging an educational placement decision is on the party seeking relief."); Brown v. Bartholomew Consol. Sch. Corp., 442 F.3d 588, 594 (7th Cir. 2006) ("The Supreme Court recently has clarified that, under the IDEA, the student and the student's parents bear the burden of proof in an administrative hearing challenging a school district's IEP."); Devine v. Indian River Cnty. Sch. Bd., 249 F.3d 1289 (7th Cir. 2001); M.M. v. Sch. Bd. of Miami-Dade Cnty., 437 F.3d 1085, 1096, n.8 (11th Cir. 2006); and Sebastian M. v. King Philip Reg'l Sch. Dist., Case No. 09-10565-JLT, 2011 U.S. Dist. LEXIS 35501 (D. Mass. Mar. 31, 2011).

Due Process Violation

53. Petitioner has alleged that the Parent Invitation/ Participation Form provided to Petitioner's parents on February 19, 2014, was insufficient to meet the procedural requirements established in Florida Administrative Code Rule 6A-

6.03311(1) for notice of the February 24, 2014, re-evaluation conference.

54. The IDEA requires that the appropriate public educational agency provide notice to the parents of a child of specified actions and to provide an opportunity to participate in planning the child's education. 34 C.F.R. § 300.322(a); 34 C.F.R. § 300.501(b). The School District complied with the notice and participation requirements of IDEA in regard to each of the eligibility and re-evaluation conferences at issue in this proceeding, including that held on February 24, 2014.

55. The fact that the outcome desired by Petitioner was not accepted in the final determination of eligibility for homebound/hospitalized student services is not a procedural error in the process of providing FAPE, as "[t]he right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such." White ex rel. White v. Ascension Parish Sch. Bd., 343 F.3d 373, 380 (5th Cir. 2003). See also J.C. v. New Fairfield Bd. of Educ., Case No. 3:08-cv-1591 (VLB), 2011 U.S. Dist. LEXIS 34591 *48-49 (D. Conn. Mar. 31, 2011) ("Thus, the Parents may attend and participate collaboratively, but they do not have the power to veto or dictate the terms of an IEP . . . . The mere fact that the [p]arents were unsuccessful in securing all of their wishes

. . . does not equate [to] a lack of meaningful opportunity for parental involvement.").

56. For a procedural violation to rise to the denial of FAPE, a finding must be made that "the procedural inadequacies impeded the student's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the student; or caused a deprivation of educational benefit." Fla. Admin. Code R. 6A-6.03311(9)(v)4.

57. Petitioner's mother expressed her consent to the outcome of the February 24, 2014, re-evaluation conference, and indicated that she understood her rights under the IDEA.

58. Based on the foregoing, there were no procedural defects or violations that deprived Petitioner of FAPE, nor was there any demonstrated harm as a result of any deficiency in the School District's notice of the February 24, 2014, re-evaluation conference.

Eligibility for Homebound/Hospitalized Services

59. Florida Administrative Code Rule 6A-6.03020, entitled Specially Designed Instruction for Students Who Are Homebound or Hospitalized, provides, in pertinent part, that:

> (1) Homebound or hospitalized. A homebound or hospitalized student is a student who has a medically diagnosed physical or psychiatric condition which is acute or catastrophic in nature, or a chronic

illness, or a repeated intermittent illness due to a persisting medical problem and which confines the student to home or hospital, and restricts activities for an extended period of time. The medical diagnosis shall be made by a licensed physician.

* * *

(3) Criteria for eligibility. A student, who is homebound or hospitalized, is eligible for specially designed instruction if the following criteria are met:

(a) A licensed physician must certify that the student:

1. Is expected to be absent from school due to a physical or psychiatric condition for at least fifteen (15) consecutive school days, or the equivalent on the block schedule, or due to a chronic condition, for at least fifteen (15) school days, or the equivalent on a block schedule, which need not run consecutively;

2. Is confined to home or hospital;

3. Will be able to participate in and benefit from an instructional program;

4. Is under medical care for illness or injury which is acute, catastrophic, or chronic in nature; and

5. Can receive instructional services without endangering the health and safety of the instructor or other students with whom the instructor may come in contact.

60. The issue in this case is not whether the development and provision of services to Petitioner complied with the procedures set forth in IDEA or whether the IEP developed

through IDEA's procedures was reasonably calculated to enable Petitioner to receive educational benefit, issues that are common to most cases under the IDEA. Bd. of Educ. of the Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 102 S. Ct. 3034, 73 L. Ed. 2d 690 (1982). Rather, the issue is simply whether Petitioner continues to meet the criteria for eligibility as a homebound or hospitalized student under Florida Administrative Code Rule 6A-6.03020.

61. In this case, Respondent has construed the eligibility criteria of rule 6A-6.03020(3) that a student be "confined" to the home or hospital in a manner that is consistent with the plain meaning of that term. Thus, the construction of the rule by the implementing entity is not only entitled to deference (see, DeLong v. Fla. Fish & Wildlife Conser. Comm'n, ___ So. 3d ___, 39 Fla. L. Weekly D1128 (Fla. 3rd DCA 2014); Fla. Wildlife Fed'n v. Collier Cnty., 819 So. 2d 200, 203 (Fla. 1st DCA 2002)), it is the more logical construction.

62. An administrative tribunal may not substitute its own notions of sound educational policy for those of school authorities that are under review. Bd. of Educ. Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 208 (1982); Johnson v. Metro Davidson Cnty. Sch. Sys., 108 F. Supp. 2d 906, 914 (M.D. Tenn. 2000). Further, state and local educational agencies are deemed to possess expertise in educational policy and practice

and their educational determinations predicated upon their expertise should be given great weight. Johnson v. Metro Davidson Cnty. Sch. Sys., 108 F. Supp. 2d at 914 (citing Burilovich v. Bd. of Educ. of the Lincoln Consol. Sch. Sys., 208 F.3d 560, 567 (6th Cir. 2000)). The appropriateness of an educational program for educating a child is precisely the kind of issue which is properly resolved by local educators and experts. O'Toole By and Through O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233, 144 F.3d 692, 709 (10th Cir. 1998).

63. Petitioner, through [redacted] parents, sought additional instruction to help make up for time lost as a result of Petitioner's physical therapy appointments and otherwise spent at home. The additional homebound services were not sought as a substitute for less restrictive classroom instruction, but as a supplement to an otherwise meaningful and effective provision of FAPE and access to the curriculum during Petitioner's attendance at the school. Though Petitioner may have benefited from additional instruction, the education provided by the School Board met the standards imposed by the IDEA and its Florida statutory and regulatory counterparts.

CONCLUSION

64. The evidence in this case, including that provided through the medical recommendation of **. ********, demonstrates that Petitioner is not confined to home or hospital, and is

therefore not eligible for specially-designed instruction for students who are homebound or hospitalized.

WHEREFORE, based on the foregoing, it is ORDERED:

A. That the School Board has not denied Petitioner a free and appropriate public education as a result of its decision that Petitioner no longer meets the criteria to receive specially designed instruction as a homebound or hospitalized student; and

B. That the Petitioner's Request for Exceptional Student Education (ESE) Due Process, and the relief requested therein, is dismissed.

DONE AND ORDERED this 5th day of September, 2014, in Tallahassee, Leon County, Florida.

S

E. GARY EARLY
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of September, 2014.

ENDNOTE

[1/] In order to maintain the confidentiality of Petitioner's identity, the school attended by Petitioner shall be referred to as the "elementary school" or "school" rather than its full name, and Petitioner's [redacted]grade teacher and the elementary school principal will be referred to as "[redacted]" and "[redacted]," respectively.

COPIES FURNISHED:

Liz Conn
Bureau of Exceptional Education
and Student Services
Suite 614
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Opal L. McKinney-Williams, Esquire
Ausley and McMullen
123 South Calhoun Street
Post Office Box 391
Tallahassee, Florida 32302
(eServed)

Eric D. Schab, Esquire
FSU College of Law
Public Interest Law Center
425 West Jefferson Street
Tallahassee, Florida 32306

Lois S. Tepper, Interim General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(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)(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).