

During a telephonic scheduling conference held on March 6, 2024; the parties agreed to schedule the hearing on March 18, 2024.

The final hearing was held as scheduled. Petitioner's mother testified at the hearing. No other witnesses or exhibits were presented by Petitioner or Respondent. The final hearing Transcript was filed at DOAH on March 22, 2024. At the conclusion of the hearing, the parties agreed the Final Order would be entered April 9, 2024. Both parties filed timely proposed orders, which were considered in preparing the Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the filing of the request for due process. 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. At the time of the due process hearing, the student was a [REDACTED]-grade student at a school within the Broward County School Board.
2. The student has historically excelled academically. In Kindergarten, while attending school in Kentucky, [REDACTED] was identified as a possible gifted student.
3. Since, the student has been educated along other high performing students in either gifted or advanced classes.
4. No credible evidence was presented that the student was evaluated and met criteria for gifted programs, while attending school in Kentucky, or that an Education Plan was ever developed for the student in Kentucky or Florida.

5. During this school year, the student was tested for gifted eligibility. The results were shared with the parents. The score did not meet the criteria required for eligibility under rule 6A-6.03019.

6. Petitioner presented no credible or persuasive evidence establishing that the student has met or currently meets criteria for gifted programs.

CONCLUSIONS OF LAW

7. DOAH has jurisdiction over the parties and the subject matter of this proceeding under rule 6A-6.03313(7).

8. The burden of proof is on Petitioner to prove the claims by a preponderance of the evidence. *See, e.g., Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

9. To qualify for gifted programs, the student must demonstrate:

1. Need for special program;
2. A majority of characteristics of gifted students according to a standard scale or checklist; and
3. Superior intellectual development as measured by an intelligence quotient of two (2) standard deviations or more above the mean on an individually administered standardized test of intelligence.

Fla. Admin. Code R. 6A-6.03019(2)

10. An intelligence quotient of two standard deviations above the mean requires a score of 130 or more in a standardized test of intelligence. No evidence was presented that the student scored 130 or above when evaluated by the District.

11. As such, no credible or persuasive evidence was presented establishing that the student has met or meets criteria for gifted programs; or that the student has been improperly exited from Respondent's gifted program.

ORDER

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

DONE AND ORDERED this 5th day of April, 2024, in Miami, Dade County, Florida.



SARA M. MARKEN
Administrative Law Judge
DOAH Miami Office

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Filed with the Clerk of the
Division of Administrative Hearings
this 5th day of April, 2024.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 30 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 (2021), and Florida Administrative Code Rule 6A-6.03313(7)(j).