

Miami-Dade County School District  
No. 09-0972E  
Initiated By: District and Parent  
Hearing Officer: June C. McKinney  
Date Of Final Order: August 17, 2009

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

█, )  
)  
Petitioner, )  
)  
vs. ) Case No. 09-0972E  
)  
MIAMI-DADE COUNTY SCHOOL BOARD, )  
)  
Respondent. )  
\_\_\_\_\_ )

FINAL ORDER

Pursuant to notice, a due process hearing was held in this case on May 12, 2009, in Miami, Florida, and June 18, 2009, by video teleconference at sites in Tallahassee and Miami, Florida, before June C. McKinney, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Maria Consuegra, Esquire  
11428 South West 109th Road  
Miami, Florida 33176

For Respondent: Mary Lawson, Esquire  
Miami-Dade County School Board  
1450 Northeast Second Avenue, Suite 400  
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STATEMENT OF ISSUE

Whether the Miami-Dade County School Board's ("School Board" or "Respondent") proposed placement for [REDACTED] ("Petitioner") to be changed to a separate class provides a free appropriate public education ("FAPE") in the least restrictive environment.

PRELIMINARY STATEMENT

This case originated with the filing of a due process complaint filed by the parents of [REDACTED] with the School Board on February 17, 2009. The request was forwarded to the Division of Administrative Hearings on February 19, 2009, for the assignment of an administrative law judge. The case was assigned to the undersigned.

On February 26, 2009, a Case Management Order was issued directing the parties to provide a status report concerning the results of their resolution session and setting a pre-hearing conference for March 5, 2009, and due process hearing for April 15, 2009. On March 4, 2009, the pre-hearing conference was rescheduled to March 12, 2009, so that a mediation session could take place on March 6, 2009.

On March 12, 2009, a pre-hearing conference was held for the purpose of identifying the specific issues to be presented at hearing April 15, 2009. On March 15, 2009, the parties filed a joint motion for continuance and requested an extension of the 45-day requirement due to the unavailability of the parties to

proceed to hearing until May 12, 2009. Due to the unavailability of the parties, the April 15, 2009, hearing date was reset for May 12, 2009, and the undersigned granted an extension of time, 27 days, which moved the final order deadline to May 31, 2009. The hearing conducted on May 12, 2009, was not completed and the parties were unavailable to reconvene until June 18, 2009, and a 37-day extension was granted, which moved the final order deadline to July 7, 2009.

At the hearing, [REDACTED] presented the testimony of the following witnesses: [REDACTED]'s father and mother; Amanda Brown, Teacher; Mosezell Aguilar, Paraprofessional; Deetra Anderson, Assistant Principal; Maria Correa, ESE Program Specialist; and Grace Paugam, RSWCI. Petitioner's Exhibit numbered 1 was admitted into evidence. The School Board presented 12 witnesses: Mosezell Aguilar, Paraprofessional; Deetra Anderson, Assistant Principal; Amanda Brown, Teacher; Maria Correa, ESE Program Specialist; Cristina Cruz, ESE Teacher; Jorge Garcia, Psychologist; Adrienne D. Green, Autism Support Teacher; Santrel King-Elston, Teacher; Maria Marin, ESE Teacher; Jose Ramirez, Ph.D., Psychologist; Teresa Rodriguez, Speech-Language Pathologist; and Dr. Ann Marie Sasseville, Instructional Supervisor, Special Education, Expert in Education of Children with Autism. Respondent's Exhibits numbered 1 through 14 were admitted into evidence.

The hearing was completed on June 18, 2009, and the parties asked for additional time to file proposed final orders and requested a July 20, 2009, deadline for filing, a 32-day extension of the 45-day requirement moving the final order deadline to August 18, 2009. On July 14, 2009, the parties filed a Joint Motion for Extension of Time to file proposed final orders due to unavailability and requested that the proposed final orders deadline be extended to August 3, 2009. The undersigned granted the motion and extended the deadline 14 days, which made the final decision deadline September 1, 2009.

Respondent timely filed a Proposed Final Order on August 3, 2009. Petitioner filed a late Proposed Final Order on August 4, 2009, which Respondent has no objection to the undersigned considering in this matter. The undersigned has considered both Proposed Final Orders.

#### FINDINGS OF FACT

1. ■■■ is a ■■■-year-old child. ■■■ has been attending Miami-Dade County Public Schools continuously from pre-kindergarten through third grade. ■■■ is eligible for Exceptional Student Education ("ESE") programs for autism spectrum disorder and language impairment. During the 2008-2009 school year, ■■■ attended third grade at a Miami-Dade elementary School.

2. On May 23, 2007, at the end of ■■■'s second grade year, the Individual Educational Plan ("IEP") team placed ■■■ in a self-contained class for reading, language arts, and math, and general education for science, social studies, art, music, and P.E. ■■■'s parents disagreed with the placement of the self-contained class. The IEP team met again on September 10, 2008, and changed ■■■ IEP placement to "Resource Room" meaning 41 percent to 79 percent placement with non-disabled peers for math, language arts, and reading for the 2008-2009 school year. ■■■ attended language arts, reading, and math in an ESE Resource Room class, and science, social studies, music, art, and P.E., in a General Education class.

3. ■■■ is a child who is well-liked. However, ■■■ was unable to perform at third-grade level and was not making progress in the Resource Room/General Education placement. ■■■ is very far behind the third grade level. ■■■ was non-verbal, functioned at the pre-K level in reading, had no recognition of numbers in math, and required hand-over-hand assistance for all exercises. ■■■ has significant delays in receptive and expressive language and cannot communicate either ■■■ wants or needs. Additionally, ■■■ had a difficult time paying attention for more than a couple of minutes at a time. ■■■ is unable to function independently.

4. During third grade, Ms. Aguilar was the one-to-one paraprofessional assigned to assist [REDACTED] at all times during the school day, with the exception of P.E., language therapy sessions, and when the paraprofessional took her breaks. Ms. Aguilar had been [REDACTED]'s one-to-one paraprofessional two years prior to third grade. During classes, Ms. Aguilar provided constant redirection, prompting, hand-over-hand assistance during writing activities, and guidance for [REDACTED]'s fingers during reading activities. Ms. Aguilar also assisted [REDACTED] using the restroom. [REDACTED] was virtually non-verbal with Ms. Aguilar.

5. [REDACTED]'s teachers substantially modified the third grade curriculum for [REDACTED] by utilizing the FCAT Access Points at a participatory level, which is the lowest level. The teachers also adapted [REDACTED]'s curriculum for her needs. Modifications were even made relating to response modes since [REDACTED] was unable to communicate verbally. [REDACTED]'s IEP exempts her from taking the FCAT.

6. [REDACTED]'s IEP accommodations included extended time to complete assignments, breaking assignments into smaller steps, visual and verbal cueing, positive reinforcement, preferential seating, manipulatives, and a special pencil. [REDACTED]'s teachers received assistance from a District Autism Support Teacher to implement her IEP and also utilized suggestions of [REDACTED]'s mother.

Still, ■■■ was unable to demonstrate mastery at the participatory level.

7. ■■■ also exhibited behavioral problems while in third grade. ■■■ had outbursts, crying out loud or screaming. ■■■ touched ■■■ private parts, flapped ■■■ hands, and constantly picked at strings on ■■■ clothing.

8. ■■■'s IEP goals and accommodations were implemented but ■■■ made very little progress in either the Resource Room or General Education placement for third grade.

9. On January 28, 2009, the IEP team met and recommended a "Separate Class" meaning 0 percent to 40 percent placement with non-disabled peers for ■■■ because ■■■ was not progressing satisfactorily in the Resource Room classroom, due to the nature and extent of ■■■'s disabilities. The team determined that ■■■ would receive important benefits from placement in a special education Separate Classroom because it could provide ■■■ with structure, allow educational emphasis on acquisition of language and social interaction skills, and place her in a smaller class with a low teacher student ratio so that ■■■ could get more direction. The proposed Separate Class placement would provide ■■■ a FAPE in the least restrictive environment.

10. ■■■'s parents are opposed to the change in placement. ■■■'s mother testified at the hearing that she thought ■■■ was doing well and that any perceived difficulties were because the

School Board had not trained any of the individuals working with [REDACTED] on selective mutism.

11. No competent evidence was presented that indicated that [REDACTED] was capable of progressing in the Resource Room/General Education placement. Petitioner's witness, Ms. Paugam, who works with [REDACTED] at home, provided no persuasive testimony to contradict the testimony of the School Board witnesses that the appropriate educational placement for [REDACTED] is in a Separate Class.

12. No competent evidence was presented that indicated that the proposed placement would not provide a FAPE 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

13. 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 (2008); Florida Administrative Code Rule 6A-6.03311; and 20 U.S.C. Section 1402, et seq. (the Individuals with Disabilities Education Act, or IDEA).

14. 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).

15. Under both state and federal law, a student is entitled to FAPE. See 20 U.S.C. § 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. Section 1003.57, Florida Statutes, provides in pertinent part:

(1)(a) 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:

1. The district school board provide the necessary professional services for diagnosis and evaluation of exceptional students.

\* \* \*

b) A student may not be given special 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. . . .

\* \* \*

c) 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.

d) In providing for the education of exceptional students, the district school superintendent, principals, and teachers 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.

16. 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 Central School District v. Rowley, 458 U.S. 176 (1982), cited in Winkleman 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.

17. The proposed placement for ■ clearly meets these requirements. The placement described in ■'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.

18. While ■'s parents do not agree with the placement, they have presented no persuasive 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).

19. In this matter, the parents were notified of the proposed placement and participated in the process. No competent evidence was presented that demonstrated the new placement is not the most appropriate one for ■. Indeed, nothing was presented at hearing beyond the parents' subjective belief that ■ can perform in the current placement. The School Board proved that, giving her particular needs and abilities, ■ is best served by placement in the Separate Class described in the January 28, 2009, IEP.

ORDER

In view of the foregoing, the Parents' due process challenge fails, and the relief they have requested in their due process complaint is denied.

DONE AND ORDERED this 17th day of August, 2009, in Tallahassee, Leon County, Florida.

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JUNE C. McKINNEY  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 17th day of August, 2009.

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 90 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 90 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(1)(b), Florida Statutes; or
- c) only if the student is identified as "gifted", files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(b) and 120.68, Florida Statutes.