

**Miami-Dade County School District
No. 07-1335E
Initiated by: District
Hearing Officer: Patricia M. Hart
Date of Final Order: June 4, 2007**

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MIAMI-DADE COUNTY SCHOOL BOARD,)
)
Petitioner,)
)
vs.) Case No. 07-1335E
)
█,)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on May 8, 2007, in Miami, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Laura E. Pincus, Esquire
Miami-Dade County School Board
1450 Northeast 2nd Avenue, Suite 400
Miami, Florida 32399-0400

For Respondent: █
(Address of record)

STATEMENT OF THE ISSUE

Whether the Petitioner should be permitted to conduct a psycho-educational evaluation of the Respondent to determine if

■ is eligible for exceptional student education ("ESE") services and, if so, to determine ■ educational needs.

PRELIMINARY STATEMENT

On March 15, 2007, the Miami-Dade County School Board ("School Board") filed a request for a due process hearing because. ■'s parents refused to consent to the School Board's conducting a psycho-educational evaluation of ■. Pursuant to notice, the due process hearing was held on May 8, 2007. An interpreter was present during the hearing to assist ■'s mother, in participating fully in the hearing in her native language of Spanish. The School Board presented the testimony of Retta Molina, a general education teacher who was ■'s second grade teacher; Elena Haddad, a school psychologist at South Hialeah Elementary school; and Mary Paz, the ESE instructional supervisor for the Miami-Dade County School District's Regional Center III. Petitioner's Exhibits 1, 2, 8, and 11 were offered and received into evidence. ■ testified on behalf of ■ but offered no exhibits.

During the hearing, ■ stated that she had not received the School Board's exhibits or witness list, which had been sent to her correct address by Federal Express. ■ was offered the opportunity to re-schedule the hearing for a later date to allow *** time to review the School Board's exhibits and witness list.

*** declined the offer and stated that ■ wanted to complete the hearing on May 8, 2007.

No transcript of the proceedings was filed with the Division of Administrative Hearings. The School Board timely filed proposed findings of fact and conclusions of law; ■ did not file any post-hearing submission. The due process hearing request was filed on March 15, 2007; the resolution period expired on April 20, 2007; this order is entered within the 45-day period for entered the final order.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. *** is nine years old and is a student in the second grade at *** School. ■ was retained for a second year in the first grade, and school personnel have made the decision to retain ■ for a second year in the second grade due to deficiencies in reading, language, and mathematics. ■ does not meet the Sunshine State Standards.

2. ■ is currently in the general education program for ESOL students. ■ is the lowest performer in ■ second grade class. ■ can barely read, has great difficulty recognizing the letters of the alphabet, usually fails to get any words correct

on vocabulary tests, is not able to do simple addition and subtraction, and has difficulty writing ■ name and the date.

3. ■'s second grade teacher seated ■ next to a peer student from whom ■ could request assistance; she repeated instructions and explanations to ■ and she graded ■ on less work than the other students in the class because ■ often could not complete ■ assignments or did not give answers to the questions.

4. Spanish is ■ primary language and is the only language spoken in ■ home ■ can speak English socially and has sufficiently mastered English to understand ■ teacher's instructions. Although ■ cannot read or write in English, ■ lack of mastery of English is not the source of ■ problems with reading, language, and mathematics.

5. On March 3, 2006, a School Support Team met and drafted a School Support Team Intervention Plan ("Intervention Plan") for ■ and a new, more extensive Intervention Plan was developed for ■ on November 9, 2006. In accordance with the Intervention Plan, four different interventions were implemented to assist ■ to learn to read and do mathematics at or close to grade level. The interventions included small-group instruction using a remedial reading program and one-to-one tutoring. Even with these interventions, ■ has not progressed and remains far below grade level in reading and mathematics.

6. School Board personnel at both the school and the district level have explained ■■■'s problems to ■■■ parents and attempted to obtain consent from them for a psycho-educational evaluation. Although they did consent at one time, they withdrew their consent and have subsequently consistently refused to consent to the psycho-educational evaluation.

7. School personnel want to administer the following tests to ■■■ to determine if ■■■ is eligible for ESE services and to determine ■■■ educational needs: vision screening; speech and language screening; auditory screening; a social history; a bilingual assessment; an intellectual evaluation; academic levels in reading, mathematics, and written language; teacher observations; personality testing; and behavior observation scales.

8. Although ■■■ parents recognize ■■■ need for intensive educational services, they believe that ■■■ deficiencies can be remedied if ■■■ has effective general education teachers.

CONCLUSIONS OF LAW

9. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to Sections 1003.57(1)(e) and 120.57(1), Florida Statutes (2006), and Florida Administrative Code Rule 6A-6.03311(11).

10. The School Board has the burden of proving the need for a psycho-educational evaluation for ■■■. by a preponderance of the evidence. See Schaffer v. Weast, 546 U.S. 49 (2005).

11. The School Board is responsible for the identification, evaluation, and placement of students requiring ESE services. § 1003.57(1), Fla. Stat.

12. The School Board is required to conduct an initial evaluation before it can provide ESE services to a child, which evaluation must determine if the child is eligible for ESE services as a child with a disability and to determine the educational needs of the child. 20 U.S.C. § 1414 (2004); 34 C.F.R. § 300.301 (2006).

13. The refusal of ■■■'s parents to consent notwithstanding, the School Board has met its burden of proving that ■■■ needs a psycho-educational evaluation, with all of the tests, assessments, and evaluations necessary to determine if ■■■ is eligible for ESE services and, if so, to determine ■■■ educational needs.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Miami-Dade County School Board conduct a psycho-educational evaluation of ■■■ to determine if ■■■ is eligible for ESE services as a child with a disability and to determine his educational needs.

DONE AND ORDERED this 4th day of June, 2007, in
Tallahassee, Leon County, Florida.

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PATRICIA M. HART
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 4th day of June, 2007.

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); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] 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(1)(e), Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(e) and 120.68, Florida Statutes.