STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

Case No. 21-2857E

vs.

PALM BEACH COUNTY SCHOOL BOARD,

Respondent.
_____/

FINAL ORDER

A due process hearing was held on February 28, 2022, before Jessica E. Varn, an administrative law judge with Florida's Division of Administrative Hearings (DOAH), via Zoom teleconferencing.

APPEARANCES

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

Student's Mother
(Address of record)

For Respondent: Laura E. Pincus, Esquire
The School Board of Palm Beach County, Florida
3300 Forest Hill Boulevard, Suite C-331
West Palm Beach, Florida 33406

STATEMENT OF THE ISSUE

Whether the student should remain in a bilingual program at School A, where the student communicates using sign language and voice; or be transferred to School B, where sign language is not utilized.

PRELIMINARY STATEMENT

The request for a due process hearing (Complaint) was filed with the School Board on September 16, 2021, and filed with DOAH on September 17, 2021. The case was initially assigned to Judge Diane Cleavinger.

On September 21, 2021, the School Board filed a motion seeking that the case be placed in abeyance pending the outcome of a family law court proceeding, and allow the student to "stay put" at School A during the pendency of the litigation. On October 5, 2021, Judge Cleavinger issued an Order Granting Abeyance and Determining Stay Put, stating, in part:

> In this case, it is clear that pursuant to the Final Judgment of Paternity dated October 6, 2014, and the Parenting Plan entered by the Circuit Court, the parents have shared parental responsibility and joint decision-making rights regarding the Student. Further, the record shows that the Student's IEP [Individualized Education Plan] placed him in School A where the Student received a hearing-impaired bilingual program learning American Sign Language and English. The non-filing parent challenged that placement in DOAH Case No. 21-2548E and unilaterally reached a settlement in the case, which changed the Student's placement and program to School B. Petitioner's parent, who filed the Complaint in this case, did not attend the resolution meeting in the earlier case and did not agree to the placement of the Student in a different hearing-impaired program at another school. Accordingly, the last agreed-upon IEP placed the Student at School A in a hearing-impaired bilingual program. Given these facts and the filing parent's lack of agreement to the non-filing parent's resolution agreement, the stay put placement for the Student is in the bilingual program at School A.

Judge Cleavinger placed the case in abeyance until January 14, 2022, allowing the parents time to settle their parenting dispute in family court.

On October 27, 2021, the case was transferred to Judge Brittany Finkbeiner. On November 5, 2021, the case was transferred to the undersigned.

On January 13, 2022, the School Board requested that the case remain in abeyance, pending a determination by a family law judge, or in the alternative, requested that the due process hearing be scheduled because the parties were at an impasse. On February 2, 2022, a telephonic conference was held, wherein the parties agreed to schedule the due process hearing for February 28, 2022, via Zoom teleconferencing.

The due process hearing was held as scheduled, and, by agreement of the parties, the student's mother was added as a party to the case. The Student's father testified on his son's behalf, and called his wife as a witness. The student's mother testified on her son's behalf, and called the student's grandfather as a witness. The School Board presented the testimony of six witnesses; and the parties agreed to admit School Board Exhibits 1 through 24 as Joint Exhibits.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders 20 days after the transcript was filed with DOAH. The parties also agreed that this Final Order would issue no later than 40 days after the transcript was filed with DOAH. The Transcript was filed on March 21, 2022. Accordingly, proposed final orders were due on April 11, 2022, and the deadline for this Final Order was extended to May 2, 2022. One parent and the School Board filed timely Proposed Final Orders, which were considered in the preparation of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. 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 this time, the student is a [redacted] grader enrolled at School A, where he has attended school since [redacted]. He has been eligible for exceptional student education (ESE) since he was [redacted] years old, under a few eligibility categories, including Deaf or Hard of Hearing (DHH).

2. School A has a [redacted], who communicate both orally and with sign language. School B also has a [redacted], for children who do not utilize sign language.

3. When the student was transitioning from [redacted] to [redacted], his IEP team determined that he should remain at School A, in a mainstream program with a sign language interpreter, in order to enhance his oral and sign language skills.

4. In making the decision on which DHH program best meets a student's needs, the IEP team considers parental preference, the student's mode of communication, and evaluation data.

5. As he entered [redacted], the student was placed in a general education classroom with a full-time sign language interpreter, ESE support in language arts, language therapy, and DHH counseling services.

6. The IEPs from [redacted] through the current school year, [redacted] grade, reflect that the student is bilingual; he uses spoken language and sign language for both receptive and expressive communication.

7. The student's current sign language interpreter testified that the student can hear quite well; however, the student relies on the interpreter

when there exists background noise and when he does not have a direct line of sight to the speaker.

8. The student's audiologist testified that when the student wears his hearing aids, he hears very well. [redacted] emphasized that the student could be successful in a cluster program without a sign language interpreter, such as the program at School B, if he always wore his hearing aids.

9. The evidence established that at this age, the student does not wear his hearing aids consistently, and that he, on occasion, does not bring them to school; therefore, his communication needs can only be met at School A's cluster program, which supports and enhances his bilingual skills.

CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. *See* §§ 120.65(6) and 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

11. Petitioner bears the burden of proof with respect to the issue raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

12. In enacting the Individuals with Disabilities Education Act (IDEA), Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education [FAPE] that emphasized 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. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public-school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on each agency's compliance with the IDEA's

procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

13. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE. 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

14. 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).

15. The components of FAPE are recorded in an IEP, which, among other things, identifies the student's present levels of academic achievement and functional performance; establishes measurable annual goals; addresses the services and accommodations to be provided to the student, and whether the student will attend mainstream classes; and specifies the measurement tools and periodic reports that will be used to evaluate the student'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 *Bd. of Educ. v. Rowley*, 458 U.S. at 181).

16. In *Endrew F.*, the Supreme Court held that, "[t]o meet its substantive obligation under the IDEA, a school must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Endrew F.*, 137 S. Ct. at 999. As discussed in *Endrew F.*, "[t]he 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials," and that "[a]ny review of an IEP must appreciate that the question is whether the IEP is reasonable, not whether the court regards it as ideal." *Id.*

17. This case concerns one discreet issue: which school can provide a free and appropriate public education for this bilingual student. The student's IEP teams have developed IEPs since kindergarten that reflect the student's ability to communicate using spoken language and sign language. Each IEP also identified the student's need for a sign language interpreter in the classroom. The evidence established that at this point in time, the student needs a sign language interpreter in the classroom, and that his needs can only be met at School A, in a cluster program that provides bilingual communication support.

18. The IEPs, which identify this need and place the student in School A, are reasonably calculated to enable this student to make appropriate progress in light of his current circumstances.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board has properly placed the student at School A, which provides bilingual education.

DONE AND ORDERED this 21st day of April, 2022, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
Administrative Law Judge
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Tallahassee, Florida 32399-3060
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Filed with the Clerk of the
Division of Administrative Hearings
this 21st day of April, 2022.

COPIES FURNISHED:

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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).