

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 22-1456E

MIAMI-DADE COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

Administrative Law Judge Brittany O. Finkbeiner conducted the due process hearing in this case for the Division of Administrative Hearings (“DOAH”) on February 9, 2023, by Zoom conference.

APPEARANCES

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

For Respondent: Sarah M. Marken, Esquire
 Miami-Dade County School Board
 1450 Northeast 2nd Avenue, Suite 400
 Miami, Florida 33132

STATEMENT OF THE ISSUES

The issues in the case are whether Respondent failed to provide the student with a free and appropriate public education (“FAPE”), based on a failure to: 1) provide additional paraprofessional support; or 2) conduct a timely reevaluation of the student.

PRELIMINARY STATEMENT

Petitioner's Due Process Hearing Request ("Complaint") was transmitted by Respondent to DOAH on May 17, 2023. The Complaint alleges that Respondent failed to provide the student with FAPE based on failure to provide additional paraprofessional support and to conduct a timely reevaluation. The due process hearing was originally set for June 15, 2022. After several orders granting a continuance at the request of the parties, the hearing proceeded on February 9, 2023.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders 14 days after the transcript was filed with DOAH. The one-volume Transcript was filed on February 21, 2023. Respondent submitted a Proposed Final Order, which was taken into consideration in the drafting of this Final Order. Petitioner did not submit a proposed final order.

For stylistic convenience, the undersigned will use male pronouns in the Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender. All statutory references refer to the current codification.

FINDINGS OF FACT

1. Petitioner is a student with a disability. At the time of the due process hearing, he was a [REDACTED]-grade student at School A. Petitioner is, and was at all relevant times, eligible for Exceptional Student Education ("ESE") services under the category of Autism Spectrum Disorder and Language Impairment.

2. The student has a full-scale IQ of [REDACTED]. The student is performing at an overall [REDACTED] level.

3. The student is accessing his education on a modified curriculum in a small, [REDACTED] classroom setting with an ESE teacher and ESE

students. Specifically, the classroom setting where the student was observed at the time of his reevaluation had nine students with four adults assisting—the classroom teacher and three paraprofessionals.

4. Petitioner requested a reevaluation, and a reevaluation team meeting took place on April 27, [REDACTED]. Petitioner, however, does not believe that the reevaluation was conducted in a timely manner.

5. On May 10, [REDACTED], the student was reevaluated. His reevaluation report did not result in a modification to any of his existing supports or services.

6. As part of the reevaluation, [REDACTED] observed the student in his classroom setting. [REDACTED] observed the student working independently on a math computer program, which he was performing successfully. [REDACTED] also observed the student independently navigating the classroom; serving as the line leader when the students exited the classroom; and generally remaining on task.

7. Ultimately, the individualized education plan (“IEP”) team determined that additional paraprofessional assistance was not warranted. The student’s June 1, [REDACTED], IEP states, in pertinent part:

[The student] is currently serviced in an ASD Self-Contained classroom, which is a very small, structured setting, with a certified teacher and 3 full-time classroom paraprofessional assistants (8 students, 4 adults). [The student] is making progress at his instructional levels in all areas. He continues to show improvement in the areas of academics, social-emotional, independent functioning, and communication. Due to a low teacher/student ratio, currently in his educational placement, his needs in all areas are addressed by the adults assigned to the classroom and the M- Team is in agreement that an additional paraprofessional is not warranted at this time.

8. Petitioner presented credible testimony that the student has struggled academically; the parents were also sincere in their belief that the student would be better served through additional paraprofessional support.

However, the greater weight of the evidence does not support Petitioner's requested relief.

CONCLUSIONS OF LAW

9. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. § 1003.57(1)(c), Fla. Stat.; and Fla. Admin. Code R. 6A6.03311(9)(u).

10. Petitioner bears the burden of proof, by a preponderance of the evidence. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005) (“The burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief.”).

11. The Individuals with Disabilities Education Act (“IDEA”) entitles all children to “a free appropriate public education that emphasizes 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).

12. Local school systems are required to satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

Special 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 [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

13. The IDEA provides parents and children with important procedural safeguards, including the right to present complaints regarding “the identification, evaluation, or educational placement of the child, or the provision of [FAPE]” 20 U.S.C. § 1415(b)(6).

14. The components of FAPE are recorded in an IEP, which identifies the child’s “present levels of academic achievement and functional performance,” establishes measurable annual goals, addresses the services and accommodations to be provided to the child and whether the child will attend mainstream classes, and specifies the measurement tools and periodic reports that will be used to evaluate the child's progress. 20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320.

15. “The IEP is ‘the centerpiece of the statute’s education delivery system for disabled children.’” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017) (quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)).

16. “To 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.” *Andrew F.*, 137 S. Ct. at 999. As discussed in *Andrew F.*, “[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. In the present case, Petitioner contends that the IEP fails to provide FAPE to the student because it does not provide the level of paraprofessional support desired by the parents. Guided by the above-cited principles, the undersigned finds that the student’s IEP is reasonably calculated to enable the student to make progress appropriate in light of his circumstances, and finds that Petitioner did not meet the burden of proof to establish the need

for additional paraprofessional support to be added to the IEP at this point in the student's education.

18. Petitioner argues that Respondent failed to timely reevaluate the student. Under Florida Administrative Code Rule 6A-6.0331 and 34 C.F.R. § 300.303, a school district is required to conduct reevaluation meeting at the request of a parent, teacher, or in any event, at least once every three years. Petitioner provided testimony that the reevaluation was delayed, but such testimony lacked specificity. Petitioner did not prove by a preponderance of the evidence that the alleged procedural violation impacted the student's receipt of FAPE.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all requests for relief are DENIED.

DONE AND ORDERED this 15th day of March, 2023, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 15th day of March, 2023.

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).