STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

[redacted]. AND [redacted].,	)	
	)	
Petitioners,	)	
	)	
vs.	)	Case No. 10-2821E
	)	
SEMINOLE COUNTY SCHOOL BOARD,	)	
	)	
Respondent.	)	
	)	

FINAL ORDER

Pursuant to notice to all parties, a final hearing was conducted in this case on August 10, 2010, in Sanford, Florida, before Administrative Law Judge R. Bruce McKibben of the Division of Administrative Hearings. The parties were represented as set forth below.

APPEARANCES

For Petitioners: Michael L. Boswell, Esquire
Jamison Jessup, Qualified Representative
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Deltona, Florida 32725

For Respondent: Ned N. Julian, Jr., Esquire
Serita D. Beamon, Esquire
Seminole County School Board
400 East Lake Mary Boulevard
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STATEMENT OF THE ISSUE

The issue in this case is whether Respondent provided Petitioners with a free and appropriate public education

("FAPE"), as that term is defined by the Individuals with Disabilities Education Act ("IDEA") and more specifically: 1) Whether Respondent was required to convene meetings of the students' IEP teams prior to making a decision to change the students' then current educational assignments; and 2) Whether Respondent failed to follow proper procedures prior to changing the students' then current educational assignment.

PRELIMINARY STATEMENT

On or about May 25, 2010, Petitioners filed a Request for Due Process Hearing with Respondent. The request contained numerous issues, enumerated in paragraphs a through o. The request was forwarded to the Division of Administrative Hearings ("DOAH") so that a formal administrative hearing could be conducted. On the day prior to the final hearing, Petitioners filed a Notice of Voluntary Dismissal as to all but paragraphs a and b of the Request for Due Process Hearing. Respondent objected to the withdrawal as an impermissible amendment of the due process hearing request, but that objection was overruled. The hearing was held on the dates set forth above, and both parties were in attendance.

At the final hearing, Petitioners called one witness, [redacted], Petitioners' mother. Petitioners' Exhibits 1 and 2 were admitted into evidence.

Respondent called four witnesses: Elaine Ferreira, clerk and bookkeeper at [redacted] Elementary School ("[redacted]"); Molly Persaud, secretary at [redacted]; Pam Mozzatta, coordinator of the Choices program; and Britt Smith, executive director of the Exceptional Student Education ("ESE") program. Respondent's Exhibits 2 through 8, 10, 11, 13, 14, 16, 17, 19 through 21, 24, 28, and 54 were admitted into evidence. Official recognition was taken of Respondent's Exhibit 18.

A Transcript of the final hearing was ordered by the parties and filed at DOAH on August 25, 2010. By agreement, the parties were to submit proposed final orders within 20 days of the filing of the transcript at DOAH. Each party timely submitted a proposed final order, and each was duly considered in the preparation of this Final Order. Both parties agreed to the extension of time for filing the Final Order in this matter.

FINDINGS OF FACT

1. At all times relevant hereto, Petitioners were students at [redacted]. Both children are students with disabilities who have been deemed eligible for ESE services under the IDEA. Petitioners have a history of medical problems. [redacted] suffered traumatic brain injury as a result of being in respiratory arrest as an infant. [redacted] has seizure activity, autism, and complex neurological deficits. [redacted] suffers from a number of medical conditions as well.

2. During the 2009-2010 school year, Petitioners were enrolled at [redacted]. [redacted] was receiving services at [redacted] pursuant to an Individualized Education Plan ("IEP"), which was updated or revised on January 7, 2010. [redacted] had an IEP which had been developed on May 26, 2009, and was initiated on August 24, 2009. A subsequent plan dated June 10, 2010, also went into effect. There is no dispute between the parties as to the adequacy of the IEPs for the 2009-2010 school year.

3. On or about February 3, 2010, Petitioners submitted a check to [redacted] in order to purchase a yearbook for their [redacted], [redacted] [redacted] is not an ESE student, but [redacted] also attended [redacted] during the 2009-2010 school year. The check contained an address (in Sanford) that was different from the Lake Mary address of record for Petitioners contained in the [redacted] administrative office. A clerk who processed the check noted the different address and did a routine and usual investigation to ascertain the reason for the discrepancy. Her research included a review of the website for the Seminole County Property Appraiser which indicated Petitioners' parents were claiming the Sanford address on the check as their homestead property. The clerk then determined that the new address was in a school zone other than the [redacted] zone. The new address was in the "northwest cluster," which included five separate elementary schools. The clerk provided her findings to another

administrative person for the purpose of generating a letter of inquiry to the parents.

4. A secretary at [redacted] issued a form letter to Petitioners asking about the new address. The letter advised Petitioners that certain information would have to be provided in order for Petitioners to continue attending [redacted] for the current (2009-2010) school year. The letter asked for a copy of the Lease or Warranty Deed for the new address, a copy of a current electric bill, and a copy of a driver's license or voter identification card for each parent. The letter requested that the information be brought to the [redacted] office no later than February 24, 2010 (five days after the letter was mailed to Petitioners).

5. On February 19, 2010, the date the letter was sent (or otherwise delivered by [redacted]) to Petitioners, their parents filed an Out of Zone Transfer Request form (the "Transfer Forms") for [redacted] and their [redacted], [redacted] The Transfer Forms asked that Petitioners and their [redacted] be allowed to remain at [redacted] through their "highest grade of approved school." By that statement, Petitioners were seeking to remain at [redacted] rather than transfer to a school in the northwest cluster. Further, the request asked for continued placement at [redacted] through fifth grade for each of the students.

6. Meanwhile, Petitioners also each filed a Northwest Cluster Request Form (the "Request Form") dated February 23, 2010. The purpose of the Request Form was to select a preference for the elementary schools in the northwest cluster, ranking them from one to five. Petitioners' parents filed the Request Forms only because they believed they had to do so in order to prevent some unknown penalty by Respondent. The Request Forms listed [redacted] Elementary as Petitioners' first choice and [redacted] Elementary ("[redacted]") as their second choice.

7. Petitioners' request to remain at [redacted] for the remainder of the 2009-2010 school year was approved. Petitioners' [redacted] was also allowed to remain at [redacted] for the remainder of the 2009-2010 school year. The request to remain at [redacted] for the 2010-2011 school year was denied.[1]

8. By letters dated March 17, 2010, Respondent notified Petitioners that their "interest" in [redacted] had resulted in a random selection to attend that school. The random selection was actually done by way of a computer program operated by Respondent's consultant. The program took all requests for placement in the northwest cluster schools and made assignments to the extent possible in accordance with applicants' first choices. In this case, Petitioners received their second choice. The parents' "interest" in [redacted] was actually a secondary qualified interest in that school, only if continued

placement at [redacted] was not possible and only if [redacted] was not available.

9. The March 17, 2010, letters to Petitioners also included the following statement: "The Exceptional Student Support Services Department will contact you and ask that you participate in a student study team meeting. Acceptance is provisional pending a review of your child's [IEP], service needs, and discussion of the academic requirements of the school's program." A letter issued the same day to [redacted] Petitioners' [redacted], did not include the provisional language and discussion of a need to convene an IEP review.

10. An IEP is a requirement for each exceptional student in public schools. An IEP is prepared at least once each year and is updated as often as deemed appropriate by the student's IEP team (made up of teachers, administrators, therapists, parents, and anyone else involved with the student's education process).

11. Both [redacted] and [redacted] had an existing IEP as of March 17, 2010. [redacted]'s IEP was effective from January 7, 2010, until January 6, 2011. [redacted]'s IEP was effective from August 24, 2009, until its annual renewal date. The IEP was renewed on June 10, 2010, with an initiation date of August 23, 2010. There is no dispute as to the propriety of those IEPs.

12. In order to complete the change of assignment from [redacted] to [redacted] IEP conferences were set for [redacted] and [redacted] Both conferences were set for May 7, 2010, and Petitioners' parents were provided advance notice. Due to conflicts relating to one of the parent's work schedule, the conferences were rescheduled for June 10, 2010. Both parents were in attendance at the June 10 IEP conferences. The IEPs for both [redacted] and [redacted] were renewed at the June 10 IEP meeting, but neither IEP was "significantly increased or decreased" in scope of services offered at that time.

13. At the IEP conferences, staff members from both [redacted] and [redacted] were in attendance. The topic of discussion was not where Petitioners would be attending school, because that had already been decided based on the family's move to a new school district. The issue at the IEP conference was whether [redacted] could provide the services set forth in Petitioners' IEPs. A determination was made that [redacted] could adequately provide the services. Petitioners' parents signed the IEP meeting notes "for attendance purposes only." The parents' advocate was also in attendance at the IEP conference.

14. Two issues concerning [redacted] were brought up at the conferences by the parents: (1) The distance from Petitioners' Lake Mary home to the school; and (2) Whether a move to [redacted] would cause harm to Petitioners. These issues were briefly

addressed, but were not fully discussed at the conference. The IEP team did not feel that those issues were relevant to the stated purpose of the conference, i.e., to make a determination of whether [redacted] could provide the services needed to meet Petitioners' needs. The fact that [redacted] is closer in geographic proximity to Petitioners' Lake Mary home than [redacted] was noted. However, the fact was deemed irrelevant to the issues at hand.

15. When Respondent notified Petitioners of the need to comply with certain requirements concerning the change of address, it is unclear whether Respondent provided Petitioners with procedural safeguards. None of Respondent's witnesses could remember providing safeguards, but [redacted] remembers receiving the safeguards. Nonetheless, Petitioners initiated a due process complaint as allowed by the safeguards.

16. Even though Petitioners' family had not "completely" moved into its Sanford home as of the date a check was sent to [redacted] to purchase a yearbook, it appears Petitioners were living in the new home as of the date of the final hearing. There is no dispute that [redacted] is one of the schools within the prescribed zone for the Sanford home.

CONCLUSIONS OF LAW

17. The Division of Administrative Hearings has jurisdiction over the parties to and the subject matter of this proceeding pursuant to the IDEA, 20 U.S.C. Section 1400,

et seq.; Section 1003.57(1)(b), Florida Statutes (2010), and Florida Administrative Code Rule 6A-6.03311. Unless specifically stated otherwise herein, all references to Florida Statutes shall be to the 2010 codification.

18. Subsection 1003.57(1)(a), Florida Statutes, requires each school district to "provide the necessary professional services for diagnosis and evaluation of exceptional students." It is undisputed in this case that Petitioners are exceptional students for whom such services must be provided.

19. The IDEA, 20 U.S.C. Section 1400, et seq., provides that the local education agency must provide children with disabilities a FAPE, which must be tailored to the unique needs of the handicapped child by means of an IEP program. See also Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982). It is clear Petitioners in the instant action were being educated under valid IEPs.

20. In Florida, by statute, a DOAH Administrative Law Judge must conduct an impartial due process hearing to which a complaining parent is entitled under the IDEA. § 1003.57(1)(b), Fla. Stat. In such a hearing, Petitioners have the burden of proof to establish, by a preponderance of the evidence, that Respondent failed to provide Petitioners a FAPE. See Schaffer v. Weast, 546 U.S. 49 (2005). More specifically, Petitioners in

the present case must prove that Respondent failed to provide a FAPE by failing to follow proper procedures and failing to convene meetings prior to making a change in Petitioners' school assignment.

21. The due process complaint filed by Petitioners herein involves alleged procedural inadequacies, i.e., failure to provide procedural safeguards to Petitioners' parents concerning the letters addressing the Transfer Forms. According to Florida Administrative Code Rule 6A-6.03311(9)(v)4.,

> Hearing decisions. An ALJ's determination of whether a student received FAPE must be based on substantive grounds. In matters alleging a procedural violation, an ALJ may find that a student did not receive FAPE only if the procedural inadequacies impeded the student's right to FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the student; or caused a deprivation of educational benefit. This shall not be construed to preclude an ALJ from ordering a school district to comply with the procedural safeguards set forth in Rules 6A-6.03011 through 6A-6.0361, F.A.C. In addition, nothing in Rules 6A-6.03011 through 6A-6.0361, F.A.C., shall be construed to preclude a parent from filing a separate request for due process on an issue separate from a request for due process already filed.

In the instant action, there is no indication that any procedural inadequacies that existed impeded the parents'

opportunity to participate or caused any deprivation of educational benefit to the students.

22. The U.S. Court of Appeals for the Fifth Circuit has articulated a standard for determining whether a student has received a FAPE in compliance with the IDEA. In Cypress-Fairbanks Ind. School District v. Michael F., 118 F. 3d 245, 247-48 (5th Cir. 1997), the court opined:

> [A]n . . . IEP need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit."

Petitioners' IEPs in this action are sufficient and are not a basis for finding denial of FAPE.

23. This is an "educational placement" case, i.e., the issue is whether the change of location from [redacted] to [redacted] constitutes a change in placement, per se. Educational placement, however, refers to the programs provided to a student with disabilities, not to a particular school or building. Hill v. School Board for Pinellas County, et al., 954 F. Supp. 251 (M.D. Fla. 1997), affirmed, 137 F.3d 1355 (11th Cir. 1998). In the present case, neither of Petitioners' IEPs significantly

changed; therefore, they were still in the same "program" whether it was implemented at [redacted] or [redacted]

24. Petitioners are ESE students, but are expected to attend the school for which they are zoned if such school can provide the programs and services set forth in the IEP. Florida Administrative Code Rule 6A-6.03028(3)(i)(4)(c) states in pertinent part:

> [U]nless the IEP of a student with a disability requires some other arrangement, the student is educated in the school that he or she would attend if nondisabled.

Seminole County School Board Policy 5.30 is consistent with the Rule in that it requires students with disabilities to "attend the school that serves the student's residential attendance zone just like the students who are nondisabled, if that zone school provides an adequate program for the student." Under both the Rule and the school policy, Petitioners would attend [redacted] for the 2010-2011 school year.

25. Petitioners have failed to prove that Respondent made a change in the current educational placement. Thus, there was no need to convene a meeting prior to making that change. Rather, Respondent properly implemented rules and policies regulating the attendance of students within the proper zone. Respondent convened the required IEP conferences to ensure that

there would be no change in placement (i.e., change in programs or services being offered to Petitioners).

26. Petitioners have failed to show that any alleged procedural violations impeded their rights to take part in the process concerning a change in placement.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that:

1. Respondent, Seminole County School Board, was not required to convene meetings of Petitioners, [redacted] and [redacted]'s, IEP teams prior to making a change in the students' enrollment from [redacted] to [redacted]

2. Respondent did not fail to follow procedures which resulted in Petitioners being unable to be involved in the process concerning their enrollment at [redacted];

3. The Stay Put Order in effect is hereby terminated. Petitioners shall be enrolled at [redacted] Elementary School for the remainder of the 2010-2011 school year.

DONE AND ORDERED this 30th day of September, 2010, in Tallahassee, Leon County, Florida.

S

R. BRUCE MCKIBBEN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 30th day of September, 2010.

ENDNOTE

[1/] As a result of a Stay Put Order issued by the undersigned on July 26, 2010, Petitioners and their [redacted] are still enrolled at [redacted] pending the outcome of this proceeding.

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)(b), Florida Statutes (2009), 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), and Florida Administrative Code Rule 6A-6.03311(9)(w).