

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

■,

Petitioner,

vs.

Case No. 16-4106E

HIGHLANDS COUNTY SCHOOL BOARD,

Respondent.

_____ /

SUMMARY FINAL ORDER

This matter came before the undersigned on Petitioner's filing entitled, "Response to: Notice of Hearing" (hereinafter "Response") filed August 16, 2016; and Respondent's Motion for Summary Judgment, filed August 17, 2016. For the reasons set forth below, Petitioner's Motion is denied and Respondent's Motion is granted.

PRELIMINARY STATEMENT

On July 19, 2016, Respondent School Board received Petitioner's due process complaint ("Complaint"). Respondent forwarded Petitioner's Complaint to the Division of Administrative Hearings on July 21, 2016, and the matter was assigned to the undersigned.

On July 26, 2016, Respondent filed a Notice of Insufficiency and, on July 27, 2016, Petitioner filed a response to the same. On July 27, 2016, the undersigned issued an Order of Sufficiency,

finding Petitioner's Complaint sufficient regarding one allegation—that Respondent allegedly failed (in the [REDACTED] school year) to properly identify or evaluate the Student for exceptional student education services. Thereafter, a Notice of Hearing was issued scheduling the hearing for August 30 and 31, 2016.

On August 16, 2016, Petitioner filed Petitioner's Response. The gravamen of Petitioner's Response is that Florida Administrative Code Rule 6A-6.0331(3)(g) fails to comply with, or is in violation of, the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §§ 1400 et seq. Petitioner's Response avers that, "[t]he one and only issue of this hearing is: Did [the Student] have a right to be evaluated within 60 days of the signed consent of May 23, 2016 which would be by July 21, 2016." Paragraph 1 of Petitioner's Response provides that, "[a]s the moving party in this due process hearing we are asking for a summary judgment instead of holding the due process hearing."

On August 17, 2016, Respondent filed its Motion for Summary Judgment. Respondent's filing avers that Respondent has complied with rule 6A-6.0331(3)(g), and, as there is no dispute as to the material facts, is entitled to judgment in its favor. The undersigned construes Petitioner's Response and Respondent's Motion for Summary Judgment as cross-motions for summary final order. See Fla. Admin. Code. R. 28-106.204(4).

UNDISPUTED MATERIAL FACTS

1. The Student is [REDACTED] years old and is repeating the [REDACTED] grade at a public [REDACTED] ("School A") in Highlands County, Florida.

2. On or before [REDACTED], Petitioner requested that Respondent conduct an evaluation to determine whether the Student is a child with a disability in need of special education and related services.

3. On [REDACTED], Petitioner provided Respondent with written parental consent to conduct all necessary evaluations.

4. School A's [REDACTED] school year ended on [REDACTED]. School A's [REDACTED] school year began on [REDACTED]. Respondent did not complete the evaluation process for the Student on or before [REDACTED].

CONCLUSIONS OF LAW

5. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education 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 the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

6. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. 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 a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

7. In Florida, pursuant to section 1003.571, Florida Statutes, the Board of Education is mandated to comply with the IDEA and its implementing regulations, and to adopt rules to

implement the same. The Department of Education promulgated rule 6A-6.0331 which sets forth, inter alia, the procedures to be utilized in identifying, locating, and evaluating students who are suspected of having a disability.

8. The parties concur that the resolution of this matter hinges upon the application of rule 6A-6.0331(3). Pursuant to rule 6A-6.0331(3)(a)4. and (3)(c), if a parent requests that the school conduct an evaluation to determine whether their child is a child with a disability in need of special education and related services, the school district must, within thirty (30) days, obtain parental consent for the evaluation. Once the school obtains the consent, the school district has an obligation to ensure that initial evaluations of students suspected of having a disability are timely completed.

9. For the pertinent time period at issue here, Respondent's obligation is specifically set forth in rule 6A-6.0331(3)(g), which provides as follows:

(g) Beginning July 1, 2015, the school district shall ensure that initial evaluations of students and preschool age children age three (3) through kindergarten entry age suspected of having a disability are completed within sixty (60) calendar days after the school district's receipt of parent consent for evaluation. For the purposes of this rule, the following calendar days shall not be counted toward the sixty (60) calendar day requirement:

1. All school holidays and Thanksgiving, winter and spring breaks as adopted by the district school board as required by Rule 6A-10.019, F.A.C.;

2. The summer vacation period beginning the day after the last day of school for students and ending on the first day of school for students in accordance with the calendar adopted by the district school board as required by Rule 6A-10.019, F.A.C. However, the school district is not prohibited from conducting evaluations during the summer vacation period; and,

3. In the circumstance when a student is absent for more than eight (8) school days in the sixty (60) calendar day period, the student's absences shall not be counted toward the sixty (60) calendar day requirement.

10. As noted above, Respondent obtained the requisite consent on [REDACTED], to conduct the evaluations. Excluding school holidays and the summer vacation period from the calculations, Respondent has until [REDACTED], to fulfill its evaluation obligations under rule 6A-6.0331(3)(g). Accordingly, the undersigned concludes that Respondent has not violated rule 6A-6.0331(3)(g).

11. For all that appears, Petitioner does not dispute that [REDACTED], would be the terminus for conducting the necessary evaluations pursuant to the language of the above-referenced rule. Additionally, Petitioner does not allege that Respondent committed a procedural violation in its application of the rule at issue. Petitioner contends that rule 6A-6.0331(3)(g)

fails to comply with, or is in violation of, the IDEA.

Petitioner avers that the "change in the regulation to allow a school district to take 132 days to delay an initial evaluation is not in compliance with IDEA," and requests the undersigned to "find this regulation change is not in compliance."

12. The undersigned cannot address the merits of Petitioner's rule challenge or provide the requested relief in this proceeding. Duly promulgated agency rules are treated as presumptively valid unless and until invalidated in a rule challenge, pursuant to the procedures set forth in section 120.56(3), Florida Statutes, codified as part of the Florida Administrative Procedure Act. City of Palm Bay v. State, Dep't of Transp., 588 So. 2d 624, 628 (Fla. 1st DCA 1991). Here, the Department of Education adopted the rule pursuant to section 120.54, and Petitioner has not challenged the rule under section 120.56(3).^{1/}

ORDER

Based on the foregoing, it is ORDERED that Petitioner's Motion is DENIED and Respondent's Motion is GRANTED. Petitioner's Complaint is dismissed and the hearing scheduled for August 30 and 31, 2016, is cancelled.

DONE AND ORDERED this 22nd day of August, 2016, in
Tallahassee, Leon County, Florida.

S

TODD P. RESAVAGE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of August, 2016.

ENDNOTE

^{1/} While special education due process hearings are "administrative proceedings," they are not administrative proceedings under Florida's Administrative Procedure Act, chapter 120. See A.L. v. Jackson Cnty. Sch. Bd., 127 So. 3d 758 (Fla. 1st DCA 2013) (holding special education due process hearings are not conducted under the two statutes in chapter 120 dealing with administrative hearings, but, under the rules adopted by the Department of Education in Florida Administrative Code Rule 6A-6.03311(9)).

COPIES FURNISHED:

James V. Lobozzo, Jr., Esquire
McClure and Lobozzo, L.L.C.
211 South Ridgewood Drive
Sebring, Florida 33870-3340
(eServed)

Petitioner
(Address of Record-eServed)

Leanne Grillot, Dispute Resolution Program Director
Bureau of Exceptional Education and Student Services
Department of Education
Turlington Building, Suite 614
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Matthew Mears, General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Wallace (Wally) P. Cox, Superintendent
Highlands County School Board
426 School Street
Sebring, Florida 33870-4048

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).