

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 17-3245E

** ,

Respondent.

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FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on August 31, 2017, in Fort Lauderdale, Florida.

APPEARANCES

For Petitioner: Susan Jane Hofstetter, Esquire
School Board of Broward County
K.C. Wright Administration Building
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

For Respondent: No Appearance

STATEMENT OF THE ISSUES

The issues in this case are whether the School Board's decision to deny the Student a [REDACTED] Evaluation and a [REDACTED] Evaluation as Independent Education Evaluations (IEE) at public expense was appropriate and whether Respondent's request for reevaluation of the Student in the areas of [REDACTED]

Impairment, [REDACTED] Functioning, and eligibility for services under the category of [REDACTED] should be granted.

PRELIMINARY STATEMENT

On June 2, 2017, a due process complaint was filed with DOAH by Petitioner Broward County School Board stating that it was seeking consent for the reevaluation of Respondent in the areas of [REDACTED] Impairment, [REDACTED] Functioning, and eligibility for exceptional student education (ESE) services under the category of [REDACTED]. Petitioner further asked that Respondent's request for IEEs in the areas of [REDACTED] evaluation and [REDACTED] evaluation be denied. The complaint was filed because the parent refused to give such consent to any of the above-referenced evaluations. Thereafter, after telephonic discussion with the parties, this matter was set for hearing. The parties were advised both orally and by written Notice of Hearing of the date, time, and location of the hearing.

At the hearing, Petitioner presented the testimony of five witnesses and offered 28 exhibits into evidence. Neither Respondent nor Respondent's parent appeared at the hearing.

After the conclusion of the hearing, a discussion with Petitioner regarding the post-hearing schedule occurred. Based on that discussion it was determined that proposed final orders were to be filed on or before September 29, 2017, with the final order to follow by October 30, 2017. On September 5, 2017, an

Order Memorializing Deadlines for Proposed Orders and Final Order was issued and provided to both parties.

After the hearing, Petitioner filed a Proposed Final Order on September 29, 2017. Respondent did not file a proposed final order. Petitioner's proposed order was accepted and considered in preparing this Final Order. Additionally, unless otherwise indicated, all rule and statutory references contained in this Final Order are to the version in effect at the time the subject IEPs were drafted. Finally, for stylistic convenience, [REDACTED] pronouns are used in the Final Order when referring to the Student. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to the Student's actual gender.

FINDINGS OF FACT

1. The Student was first made eligible for ESE services on [REDACTED], with the eligibilities of [REDACTED] ([REDACTED]) and [REDACTED] ([REDACTED]) when [REDACTED] was [REDACTED] years old. The Student remained eligible for [REDACTED] and [REDACTED] through [REDACTED], at which point [REDACTED] eligibilities were discontinued following a reevaluation and the recommendation of the IEP Team.

2. On January 8, 2015, the parent consented to reevaluation of the Student in the areas of [REDACTED], [REDACTED], [REDACTED], [REDACTED] Functioning, [REDACTED] Functioning, and/or [REDACTED] ([REDACTED]). A [REDACTED] evaluation

of the Student was completed on [REDACTED], by school psychologist, [REDACTED]. In conducting the evaluation, [REDACTED] reviewed the Student's records; observed the Student at school in a variety of settings; interviewed teachers; interviewed the Student; utilized appropriate, normed, and valid objective rating scales; and projective testing. The evaluation of [REDACTED] met the requirements for evaluations as found in Florida Administrative Code Rule 6A-6.0331(5).

3. A report of the evaluation was finalized on [REDACTED]. The report reflects that the Student did not demonstrate "any significant [REDACTED] [REDACTED] that interferes with learning, but that [the Student] does have [REDACTED] issues which could be eased by increased [REDACTED] development and may be related to underlying [REDACTED] and [REDACTED]," which may stem from changes at home or school. The report further indicated that "[REDACTED] [REDACTED] issues are due to [the Student's] [REDACTED], [REDACTED] [REDACTED] of early [REDACTED] [REDACTED], changes in home or school environment, [REDACTED] [REDACTED] relationships and [REDACTED] [REDACTED] issues that are often found with [REDACTED] of [REDACTED] students." [REDACTED] recommended [REDACTED] intervention for [REDACTED] development and positive reinforcement for compliance in the classroom, which recommendations were put into place during the school year. The

■■■■ evaluation covered all the areas of suspected disability at that time.

4. Notably, the school has not conducted a ■■■■ evaluation of the Student. More importantly, the evidence did not demonstrate the need for a ■■■■ evaluation, since the ■■■■ evaluation was sufficient to identify any eligibility or special need required by the Student and because a ■■■■ evaluation is more closely linked to the educational setting than a ■■■■ evaluation. At the time, the parents did not disagree with the ■■■■ evaluation and did not request an IEE.

5. Additionally, a ■■■■ evaluation was initiated on May 1, 2015, and completed on May 7, 2015. The ■■■■ evaluation met the requirements for such evaluations. The report was finalized on May 11, 2015. Based on these evaluations, the Student was made eligible for ESE services for ■■■■ (■■■) and was also designated as "■■■■."

6. On ■■■■, an IEP was developed with the input of the parents, which reflected these eligibilities. The parents of the Student agreed with the IEP developed on ■■■■. The Student's ESE eligibilities remained the same in 2016 and the parents of the Student agreed with the IEP developed ■■■■, ■■■■.

7. One year after the 2015 evaluation, during the [REDACTED], [REDACTED], IEP meeting, the IEP noted per the Student's teacher that "[the Student] demonstrates age appropriate [REDACTED] and [REDACTED] [REDACTED] the majority of the time." Parent input at the meeting was that "[t]his year has been one of the best years for [the Student] at [the Student's school]" and the evidence showed that the Student's [REDACTED] warranting evaluation in 2015 had abated during that year.

8. At the beginning of the [REDACTED] school year, the Student exhibited [REDACTED], which were typical of [REDACTED] children. These behaviors did not raise any educational concerns or impact the Student and [REDACTED] ability to access [REDACTED] education. However, during the second quarter of the 2016-2017 school year, following [REDACTED] [REDACTED], the Student's [REDACTED] changed. [REDACTED] became [REDACTED], [REDACTED], and had [REDACTED]. [REDACTED] behavior resulted in a parent-teacher conference.

9. During the meeting, the Student's parent discussed the Student's changed [REDACTED] and disclosed that there had been some [REDACTED] over the break, that the Student had been [REDACTED] [REDACTED] long-time [REDACTED], and that these might be reasons why the Student was acting differently. The Student's parent indicated that the Student had been [REDACTED] at [REDACTED] and that the Student's [REDACTED] at home were [REDACTED] or [REDACTED] than at school.

10. Unfortunately, the Student's [REDACTED] increased. Due to the increase, the Student's teacher reached out to both parents in late [REDACTED] to discuss the Student. A meeting was scheduled for the first week in [REDACTED], during which meeting the Student's other parent disclosed that the Student had [REDACTED] [REDACTED], was on [REDACTED], had an [REDACTED], and also indicated that the Student had a lot of trouble with [REDACTED] [REDACTED], being able to make [REDACTED], and that no one [REDACTED] [REDACTED]. The other parent also indicated that "[the Student] had a history of problems at school and now may be the time to bring information to school." This information was new to the teacher because [REDACTED] had observed that the Student did have [REDACTED] in the classroom and evidenced [REDACTED]. In response, the teacher placed the Student at the front of the room and let [REDACTED] choose a peer buddy to accommodate [REDACTED] [REDACTED] issues. The teacher also rearranged [REDACTED] classroom into desks (it originally had tables) because [REDACTED] recognized the Student was more comfortable in a [REDACTED] setting. Another intervention included [REDACTED] the Student from [REDACTED] classroom when [REDACTED] got [REDACTED]. Because the Student did not want to be [REDACTED] from [REDACTED] classroom, [REDACTED] [REDACTED] lessened dramatically.

11. In [REDACTED], the teacher began to collect [REDACTED] data on the Student. Because the Student was [REDACTED] the teacher's data sheets, [REDACTED] changed the way [REDACTED] collected the

data to a [REDACTED] log. According to the teacher, the Student stated, "[REDACTED] know what you're doing, they've done this before, you can't [REDACTED] [REDACTED], I'm not going to work for this." [REDACTED] called the teacher "a weak women."

12. On [REDACTED], the teacher gave the Student a discipline referral for [REDACTED] [REDACTED] hands on another child. Following the referral, the other parent stated that there was "more to the [REDACTED]" for the Student and requested an interim IEP meeting so that accommodations could be put in place. The teacher asked the other parent to clarify the need for accommodations and it was then that the other parent disclosed the Student had a [REDACTED] of [REDACTED] [REDACTED].

13. At the end of December 2016, and because of the Student's continuing inappropriate [REDACTED], the teacher also made a referral to the [REDACTED] ([REDACTED]), to get some feedback from the team about whether the interventions commenced at the end of November were working or should be modified. The [REDACTED] is a school-based team. It may be comprised of [REDACTED], [REDACTED], or [REDACTED] [REDACTED] and includes the parents of a student. The purpose of the team is to provide support and recommendations to teachers in regards to at-risk students. In the case of the Student here, the [REDACTED] consisted of the ESE [REDACTED], [REDACTED],

school [REDACTED], the teacher, and at least one of the parents.

14. On [REDACTED], a parent participation form for an interim IEP meeting on [REDACTED], was sent home to schedule a meeting to discuss the newly divulged [REDACTED] diagnosis and to address the parent's request for accommodations. Ultimately, the meeting took place on [REDACTED], because the Student's teacher was out due to a family medical matter and unavailable on [REDACTED].

15. At the [REDACTED] meeting, accommodations requested by the parent were added to the IEP to permit the Student to have [REDACTED], [REDACTED], more [REDACTED] and [REDACTED] [REDACTED] in preparation for the upcoming [REDACTED] Standardized Assessment.

16. There was a second meeting of the [REDACTED] on [REDACTED], [REDACTED], to review the data collected by the teacher. The data collected indicated an improving behavioral trend beginning with the Student having [REDACTED] [REDACTED] times an hour at the end of [REDACTED], [REDACTED] to [REDACTED] times a day by [REDACTED], and further dropping to [REDACTED] [REDACTED] a day by [REDACTED].

17. The teacher continued to collect [REDACTED] data on the Student until [REDACTED], when the Student's classroom was changed to the other [REDACTED] [REDACTED]-grade classroom at the school because one of the parents did not want the teacher to collect

data on the Student. The teacher in the other classroom had privately tutored the Student in the past.

18. In the new classroom, the Student sat near the teacher. The Student's [REDACTED] on most days was fine. However, sometimes [REDACTED] [REDACTED] ([REDACTED], [REDACTED], [REDACTED]) disrupted [REDACTED] peers and only tangentially and minimally impacted the Student's ability to access [REDACTED] education.

19. On [REDACTED], the physician-completed [REDACTED] Evaluation form for [REDACTED] Impaired was returned to the Student's school. Armed with this documentation and information from the [REDACTED], a reevaluation plan meeting was held on [REDACTED], [REDACTED]. At the meeting, the Student's school sought consent for reevaluation to determine [REDACTED] current [REDACTED] abilities and to determine if dismissal of [REDACTED] services should be recommended. The Student's school also sought to evaluate the Student for a [REDACTED] as a result of the [REDACTED] the Student was exhibiting in the classroom and to evaluate for eligibility for [REDACTED] because of the recent [REDACTED] [REDACTED].

20. The reevaluation plan meeting was held as scheduled. One parent participated by phone. The other parent did not attend the meeting. The team recommended reevaluations in the areas of [REDACTED], [REDACTED], and eligibility for ESE services under the category of [REDACTED] based on the recently [REDACTED] of [REDACTED]. The evidence showed that reevaluation

was necessary because such evaluations would help determine what the needs of the Student were, where [REDACTED] classroom behaviors were stemming from, and how the school could best assist [REDACTED] in [REDACTED] education. All of the recommendations by the team were appropriate for the Student and necessary to provide a free appropriate public education (FAPE) to the Student.

21. Further, the evidence showed that during the [REDACTED] school year, [REDACTED] was the [REDACTED] and [REDACTED] therapist for the school attended by the Student. [REDACTED] had previously conducted the [REDACTED] of the Student. The [REDACTED] saw the Student weekly to provide [REDACTED] services for the [REDACTED] "I" and "J." [REDACTED] participated in IEP meetings on [REDACTED], and [REDACTED]; a reevaluation plan meeting on [REDACTED]; and the annual IEP meeting on [REDACTED], as well as served as the local education agency representative at those meetings. Based on the [REDACTED] [REDACTED] report of successful completion of [REDACTED] the team also recommended reevaluation for [REDACTED] because the Student had achieved [REDACTED] [REDACTED] goal and was ready for dismissal from [REDACTED] services. A reevaluation to include formal data evincing the need for such dismissal was needed to document the change in IEP services and, therefore, was necessary under IDEA.

22. The parent agreed that the [REDACTED] eligibility should be pursued but did not want the necessary evaluations done by the

School Board because, for reasons not relevant here, the parent did not trust the School Board's staff. The parent refused consent for any evaluations. On [REDACTED], the Student's parent requested IEEs for a [REDACTED] evaluation and a [REDACTED] evaluation to be conducted by [REDACTED] [REDACTED], an evaluator that was outside the [REDACTED], and [REDACTED] area and outside the reasonable geographic limitations established by Petitioner for IEEs. On [REDACTED], the parent's request for IEEs were reviewed and denied by the School Board.

23. As indicated, an IEP meeting was scheduled for [REDACTED], [REDACTED], to address the team's recommendations for reevaluation, possible [REDACTED] eligibility, and possible dismissal from [REDACTED]. The Student's parents appeared at the IEP meeting, with one parent physically present at the meeting, and the other parent appearing telephonically. At the meeting, staff tried to explain to the Student's telephonically present parent the difference between the [REDACTED] IEP meeting and the [REDACTED] reevaluation plan meeting. However, the telephonically present parent continued insisting on "evaluations" being completed by the third party the parent desired. The parent who was physically present was willing to move forward with the team's recommendations, but the Student's other parent, who appeared by telephone, told the physically present parent to leave and both parents absented themselves from

the meeting. As the team was assembled and both parents were provided a reasonable opportunity to participate in the meeting, the IEP meeting continued and developed IEP goals after the Student's parent left because it was necessary to develop an appropriate IEP for the Student. The eligibilities for [REDACTED] and [REDACTED] remained on the IEP. Dismissal from [REDACTED] services did not occur because consent to evaluate was not provided by the parent.

24. Because the School Board determined the requested evaluations were necessary, the School Board filed for due process on June 2, 2017, and later the same day, Respondent filed [REDACTED] own request for a due process hearing.

25. In this case, the evidence was clear that the evaluations requested by the School Board are appropriate and necessary for the provision of FAPE to the Student. Given this necessity, the School Board's request to complete evaluations in the areas of [REDACTED], [REDACTED], and eligibility for ESE services under the category of [REDACTED] is approved. On the other hand, the evidence demonstrated that no [REDACTED] evaluation of the Student has been completed by the School Board. Because such an evaluation has not been completed and is not necessary for FAPE to be provided to the Student, Respondent is not entitled to an IEE at public expense for a [REDACTED] evaluation. Finally, the evidence showed that the [REDACTED]

██████████ evaluation met all the requirements for such evaluations under Florida law, adequately identified the Student's ██████████ needs, and otherwise made appropriate recommendations regarding those needs, which were effective during ██████ education. The evidence did not demonstrate a need for an independent ██████████ evaluation at public expense.

26. Further, the evidence showed that the School Board has geographical and cost limitations for any evaluation done outside school-contracted staff. Those limitations included that the evaluation be done within the tri-county area (██████████, and ██████████ counties) and placed spending caps on evaluation costs. The parameters are reasonable limitations under IDEA. There was no evidence of special circumstances requiring the evaluations desired by the parent be conducted outside of school staff or outside the tri-county area. Given these facts, the ██████████ and ██████████ evaluations requested by the parent are not approved.

CONCLUSIONS OF LAW

27. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. § 1003.57(1)(b), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

28. This case arises under the IDEA, Part B, 20 U.S.C. § 1400, et seq. (2004), and corresponding Florida Statutes and Florida Administrative Code, which require public schools to

provide exceptional students FAPE as a condition of receiving federal funds.

29. As the party seeking relief, Petitioner has the burden of proving all elements of its claim. Schaffer ex. rel. Schaffer v. Weast, 126 S. Ct. 528 (2005). See also M.H. v. Broward Co. Sch. Bd., Case No. 03-0621E (Fla. DOAH May 27, 2003 (ALJ Rivas)) (citing Devine v. Indian River Co. Sch. Bd., 121 F.3d 576 (11th Cir. 1997)); J.R. v. Duval Co. Sch. Bd., Case No. 03-1132E (Fla. DOAH June 24, 2003 (ALJ Hood)) (citing Fla. Dept. of Trans. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981)).

30. District school boards are required by the Florida K-20 Education Code to provide for an "appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(1) & 1003.57, Fla. Stat.

31. The Florida K-20 Education Code's imposition of the requirement that exceptional students receive special education and related services is necessary in order for the State of Florida to be eligible to receive federal funding under the IDEA, which mandates, among other things, that participating states ensure, with limited exceptions, that a "free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21." 20 U.S.C.

§ 1412(a)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012).

32. Under the IDEA and its implementing regulations, a parent of a child with a disability is entitled, under certain circumstances, to obtain an IEE of the child at public expense. The circumstances under which a parent has a right to an IEE at public expense are set forth in 34 C.F.R. § 300.502(b), which provides as follows:

Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either--

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

33. Florida law, specifically rule 6A-6.03311(6), provides similarly as follows:

(a) A parent of a student with a disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

* * *

(g) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay either:

1. Ensure that an independent educational evaluation is provided at public expense; or
2. Initiate a due process hearing under this rule to show that its evaluation is appropriate or that the evaluation obtained by the parent did not meet the school district's criteria. If the school district initiates a hearing and the final decision from the hearing is that the district's evaluation is appropriate, then the parent still has a right to an independent

educational evaluation, but not at public expense.

(h) If a parent requests an independent educational evaluation, the school district may ask the parent to give a reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the school district's evaluation.

(i) A parent is entitled to only one (1) independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

34. These provisions make clear that a district school board in Florida is not automatically required to provide a publicly funded IEE whenever a parent asks for one. A school board has the option, when presented with such a parental request, to initiate—without unnecessary delay—a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluation is appropriate. T.P. v. Bryan Cnty. Sch. Dist., 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the school board is able to meet its burden and establish the appropriateness of its evaluation, it is relieved of any obligation to provide the requested IEE.

35. Because 34 C.F.R. § 300.502(b) and rule 6A-6.03311(6) require it, on June 2, 2017, the School Board filed a due process

request asserting that the Student was not entitled to either a [REDACTED] or [REDACTED] IEE at public expense and seeking permission to reevaluate the Student in the areas of [REDACTED], [REDACTED], and eligibility for services under the category of [REDACTED].

36. In that regard, the plain language of these provisions related to IEEs require a predicate evaluation with which to disagree prior to requesting an IEE. There is no right to an independent evaluation at public expense unless the parent disagrees with an evaluation previously obtained by the school board. See G.J. v. Muscogee Cnty. Sch. Dist., 58 IDELR 61 (11th Cir. 2012), which held:

Parents have a right, under certain circumstances, "to obtain an independent educational evaluation of the child." 20 U.S.C. § 1415(b)(1); accord 34 C.F.R. § 300.502. The right to a publicly funded IEE only exists "if the parent disagrees with an evaluation obtained by the public agency." 34 C.F.R. § 300.502(b)(1). Here, MCS D did not obtain an evaluation with which Plaintiffs disagreed; Plaintiffs refused to consent to the reevaluation. Therefore, Plaintiffs had no right to a publicly funded IEE at the time of their request for one Though parents have a "right" to a publicly funded IEE under the circumstances discussed above, neither the statute nor the regulations provide for a parental "right" to a privately funded IEE, except if a parent disagrees with the school's evaluation Again, MCS D did not obtain an evaluation with which Plaintiffs disagreed. Therefore, Plaintiffs had no right to a privately funded IEE at the time of their

request for one. The ALJ's decision regarding the IEE is therefore affirmed.

See also Krista P. v. Manhattan Sch. Dist., 255 F. Supp. 2d 873, 889 (N.D. Ill. 2003) ("The [ALJ] did not err in ruling that Parents had not met the prerequisite for requesting an IEE. A parent has the right to an IEE at public expense only if the parent disagrees with an evaluation obtained by the public agency")(internal quotations omitted); see also Sch. Bd. of Manatee Co., Fla. v. L.H., 666 F. Supp. 2d 1285, 1290 (M.D. Fla. 2009) ("Parents of a child with a disability have the right to an IEE at public expense if the parent disagrees with an evaluation obtained by the public agency subject to the conditions set forth in the regulations)(emphasis added); D.Z. v. Bethlehem Area Sch. Dist., 2010 Pa. Commw. LEXIS 438, *38 (Pa. Commw. Ct. July 27, 2010) ("Thus, by the regulation's [REDACTED], an evaluation must first be obtained by the public agency--in this matter, the School District--before D.Z. is vested with any right to disagree with that evaluation, or to request an IEE in connection with that disagreement.").

37. In this case, the evidence was clear that no [REDACTED] evaluation has ever been conducted by the School Board. Therefore, since no such evaluation has been completed, Respondent is not entitled to a [REDACTED] evaluation as an IEE at public expense.

38. Further, assuming arguendo that there was an evaluation in existence, no extraordinary circumstances have been provided by Respondent as to why evaluators within the tri-county area are not appropriate and why [REDACTED] is the only locale appropriate for an IEE.

39. When a request for an IEE is granted, IDEA permits the School Board to set reasonable parameters that can include the evaluation be conducted within a geographic area and placing spending caps on evaluation costs. In this case, the School Board has established such parameters and has restricted evaluations to the tri-county area and placed spending caps on the cost of such evaluations. The parameters are reasonable. Divergence from these restrictions can occur if the person seeking the evaluation can demonstrate unique circumstances and that there are no qualified evaluators within the tri-county area who can perform the evaluation.

40. Unique needs or circumstances would require a departure from a district's policy with reasonable geographic and cost limitations. See Tomah Area Sch. Dist., 114 LRP 20209 (SEA WI 11/12/04); Letter to Petska, 35 IDELR 191 (OSEP 2001)(stating that if a district believes that the expenses are unreasonable, it must request a due process hearing); see also Utah Schs. for the Deaf and the Blind, 113 LRP 31076 (SEA UT 07/31/13)(holding that the Utah Schools for the Blind and Deaf did not have to pay

for a parent and [REDACTED] student with [REDACTED] and a [REDACTED] to travel to Massachusetts for an IEE. The Utah Education Department concluded that the expense was unnecessary, given that qualified evaluators were available within Utah).

41. In this case, the tri-county area of [REDACTED], and [REDACTED] constitute a large metropolitan area with many [REDACTED] and evaluation facilities. [REDACTED] and [REDACTED] are two major cities within [REDACTED] miles of the Student. It is unlikely there are no qualified evaluators within the tri-county area. Moreover, Respondent has not provided any evidence that there are no evaluators within the tri-county area who cannot conduct such an evaluation. Further, Respondent has not demonstrated the need for a departure from the School Board's reasonable restrictions on evaluations and Respondent's request for IEEs outside of the tri-county area is denied.

42. Respondent also demands a [REDACTED] evaluation as an IEE conducted at [REDACTED] at public expense. However, the evidence demonstrated that the School Board's [REDACTED] [REDACTED] evaluation was appropriate and met the criteria detailed in rule 6A-6.0331(5). Moreover, the evaluations conducted by Petitioner in 2015 identified all the areas of suspected disabilities at the time. Since the [REDACTED]

evaluation was appropriate, Respondent's request for a [REDACTED] IEE is denied.

43. The Student now has a suspected disability of [REDACTED], based upon the [REDACTED] documentation provided to the school. Petitioner appropriately wanted to evaluate the Student in this newly identified area. The parents, however, refused consent for evaluation in this area of concern because of their desire that such an evaluation be done at [REDACTED]. The parents demand was not reasonable under the facts of this case.

44. Further, reevaluations are an important educational planning tool and may not occur more than once a year and not less than every three years. See 34 C.F.R. § 300.303. Specifically, schools must ensure reevaluation "if the public agency determines that the educational or related service's needs, including improved academic achievement and functional performance, of the child warrant a reevaluation." See 34 C.F.R. § 300.303(a)(1); See also 20 U.S.C. § 1414(a)(2).

45. Informed parental consent prior to conducting any reevaluation of a student with a disability is required. 34 C.F.R. § 300.303(c). If the parent refuses consent, as in this case, the school district may pursue reevaluation by using the consent override provisions of mediation or due process. 34 C.F.R. § 300.303(d); See also Fla. Admin. Code R. 6A-6.0331(7).

46. In this case, reevaluation was proposed by the School Board because: 1) the educators at the Student's school had data that supported [REDACTED] dismissal from [REDACTED] services; 2) current school year [REDACTED] data indicated a need for a [REDACTED] and/or a [REDACTED]; and 3) an [REDACTED] [REDACTED] from a [REDACTED] practitioner had been provided which required consideration for an [REDACTED] eligibility.

47. In that regard, the evidence was clear that the Student made significant strides in [REDACTED] [REDACTED] goals and that the Student no longer needed [REDACTED] services. Reevaluation was required and being sought to determine whether [REDACTED] [REDACTED] services were still required or whether the Student no longer needed such services. See 34 C.F.R. § 300.305(e); see also Lakeview Pub. Sch., 115 LRP 52589 (SEA MI 2014))(citing S. Pasadena Unified Sch. Dist., 58 IDELR 120 (SEA CA 2011)); Connecticut Technical High Sch. Servs., 112 LRP 49055 (SEA CT 2012); and Victor Elementary Sch. Dist., 50 IDELR 204 (SEA CA 2008).

48. In this case, the evidence also demonstrated that the Student's [REDACTED] took a dramatic turn upon [REDACTED] return from [REDACTED] break. Prior to this date, the school managed any [REDACTED] [REDACTED] with the result that the Student was successful in the classroom.

49. Additionally, the evidence demonstrated that the Student now has a suspected disability of [REDACTED], based upon the

documentation provided to the school, and has engaged in which have prompted the educators at the school to conclude a would be appropriate at this juncture to identify the cause of the noted and to help the Student in the educational setting. The Student's, coupled with, justified the School Board's seeking consent for reevaluation. Moreover, failure to evaluate a child's current needs may amount to a failure to provide FAPE. West-Linn Wilsonville Sch. Dist. v. Student, 63 IDELR 251 (D. Ore. 2014).

50. In the instant case, the Student's school has made accommodations for the Student during an IEP meeting, has done interventions in the classroom, and has not changed placement. However, it now seeks consent to reevaluate to ensure that all needs are met and appropriate academic planning may proceed, so that IEP continues to provide FAPE.

51. As noted on the IEP developed on, "[The Student] can choose appropriate skills, gets along with peers and adults and respects authority There are days when [the Student] has difficulty with peers, at times perceives as if they are or. When [the Student] is it is hard to"

52. Reevaluation is the tool which would assist the school to identify from where the Student's current are

██████████, i.e. whether it was the result of the ██████████ over ██████████ break or some other event, and to put in place formal ██████████ interventions, if needed. See K.K. v. State of Hawaii, Dep't of Educ., 115 LRP 34824 (D. Hawaii 2015).

Moreover, reevaluation is necessary and appropriate pursuant to rule 6A-6.0331(7):

(a) A school district must ensure that a reevaluation of each student with a disability is conducted in accordance with Rules 6A-6.03011-.0361, F.A.C., if the school district determines that the educational or related service's needs, including improved academic achievement and functional performance, of the Student warrant a reevaluation or if the Student's parent or teacher requests a reevaluation.

53. Therefore, given the facts of this case, the evidence established that consent for reevaluation of the Student in the areas of ██████████ and ██████████, and for consideration of ██████████ over Respondent's refusal to give such consent should be granted.

ORDER

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

1. The School Board's request for reevaluation in the areas of ██████████, ██████████, and eligibility for Services under the category of ██████████ is granted.
2. Respondent's request for ██████████ and ██████████ IEEs is denied.

DONE AND ORDERED this 26th day of October, 2017, in
Tallahassee, Leon County, Florida.

S

DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of October, 2017.

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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).