

Sarasota County School District
No. 04-1176E
Initiated by: District
Hearing Officer: John G. Van Laningham
Date of Final Order: August 12, 2004

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SANTA ROSA COUNTY SCHOOL BOARD,)
)
Petitioner,)
)
vs.) Case No. 04-1176E
)
)
)
)
Respondent.)
_____)

FINAL ORDER

Pursuant to Notice, this cause came on for hearing on May 19, 2004, before P. Michael Ruff, duly-designated Administrative Law Judge, in Milton, Florida. The appearances were as follows:

APPEARANCES

For Petitioner: Thomas W. Dickson, Esquire
The Weatherly Law Firm
Monarch Pizza, Suite 1550
3414 Peachtree Road, Northeast
Atlanta, Georgia 30326

For Respondent: [REDACTED] and [REDACTED] parents of [REDACTED]
(address of record)

STATEMENT OF THE ISSUE

The issue to be resolved in this proceeding concerns whether Respondent should be granted its request for an Independent Educational Evaluation (IEE) for the child in question, [REDACTED]

paid for at the expense of the Santa Rosa County School Board (Board). Put another way, the issue to be resolved concerns whether the educational evaluations and assessments performed by the School Board through Dr. Oakland met the requirements of the Individuals with Disabilities Education Act (IDEA), as implemented in Florida.

PRELIMINARY STATEMENT

This cause arose out of an Individual Education Plan (IEP) determination process conducted by the School Board, its officials, and teachers, and the parents of [REDACTED]. As part of that IEP team process, the School Board had the child evaluated by Dr. Oakland. Dr. Oakland's evaluation was used at the IEP meeting as the basis for establishing [REDACTED]'s IEP. The IEP team relied on Dr. Oakland's report, believing it to be very thorough and comprehensive. The team felt that it provided them with enough information to develop an appropriate IEP for [REDACTED]. Based on the information the team had from Dr. Oakland's report regarding [REDACTED]'s strengths and weaknesses, the IEP team was able to write an IEP for [REDACTED]. [REDACTED]'s parents, however, the Respondents, requested that the School Board fund an additional IEE in response to Dr. Oakland's report, with which they had substantial differences. The School Board believed it was not required to fund an additional IEE, and consequently initiated a due process hearing, resulting in this proceeding.

The cause came on for hearing as noticed. The Petitioner presented three witnesses at the hearing and the Petitioner's

Exhibits, 17, 19, 20, 31, 33, and 34 were admitted into evidence. The Respondent presented two witnesses and had no exhibits admitted into evidence. Upon conclusion of the proceeding, a transcript thereof was ordered and the parties requested an extended period of time for submission of proposed orders. After the hearing, a motion was filed by the Respondent seeking an additional period of time to file proposed orders, showing good cause therefor. In the absence of objection, the time period for submission of proposed orders was extended such that they were due and timely filed on or before June 30, 2004. The proposed orders have been considered in the rendition of this Final Order.

FINDINGS OF FACT

1. ██████████ is an 11-year-old child. The Petitioner School Board originally found ██████████ eligible for IDEA services at the pre-school level for a speech impairment and later for a specific learning disability in 1999. ██████████ is currently home-schooled, but the parents are seeking services from the School Board and have a separate proceeding pending which involves the development of ██████████'s IEP.

2. Dr. Thomas Oakland was a member of a three-person team that produced three evaluation reports for ██████████ after ██████ was retained by the School Board in 2003 to participate in a re-evaluation of ██████████ with a view toward development of ██████████ IEP. Separate evaluations were conducted by Dr. Oakland and Dr. Linda Lombardino. These were then summarized in a report by Ms. Beth Hardcastle, a school psychologist with the Board. A summary report such as Ms. Hardcastle's, concerning summarization of

outside evaluators' findings is routine and consistent with professional practice. The purpose of the summary evaluation report was to take the two evaluations done for [REDACTED] by the outside evaluators and combine them into a format used by the School Board. All of the information in the summary report reflecting Dr. Oakland's findings was derived from his original report.

3. Dr. Oakland, the chosen psychological evaluator, is the Foundation research professor and a professor within the Department of Educational Psychology at the University of Florida. He has extensive professional experience and recognition for his work with respect to the evaluation of children with disabilities. He is Board-certified in school psychology and neuropsychology, and is a licensed psychologist in the State of Florida. Dr. Oakland's training, experience, and qualifications are established by Petitioner's Exhibit 33 in evidence, as well as by testimony appearing at pages 36 through 42 of the transcript of the hearing herein. Because of this evidence, which is accepted, Dr. Oakland was recognized as an expert in the conduct of psycho-educational evaluations of children with disabilities, as an expert in psychometric testing, and as an expert in the appropriate application of state and federal regulations and professional standards to the conduct of evaluations.

4. In conducting the evaluation of [REDACTED] multiple sources of information were used by Dr. Oakland. He reviewed all of the records provided by the School Board, consisting of an

extensive record from Board files which included reports from other professionals. Secondly, he conducted multiple interviews of ██████ and ██████'s parents, and the service provider who at the time of the interview was in charge of ██████'s home-based language program. In addition, Dr. Oakland interviewed a number of ██████'s public school service providers, including ██████ third and fourth grade teachers, ██████ school psychologist, ██████ ESE teacher, the school principal, ██████ speech/language therapist, the ESE liaison person, and the ESE resource person. The purpose of the interviews was to gather information from other sources so there would be a more significant historical context with Dr. Oakland's evaluation.

5. Dr. Oakland administered tests and directly interacted with ██████. He began his interactions with ██████ on December 15, 2003. Although Dr. Oakland had planned to complete ██████'s testing that day, it became evident to him that ██████ was tired and not performing at ██████ best. Therefore, he stopped the evaluation and after consulting with Ms. ██████ ██████ ██████, he decided to reschedule the evaluation in order to increase the probability of getting valid information.

6. Dr. Oakland met again with ██████ and conducted assessments on January 6 and 7, 2004. He assessed ██████ over a period of two days in order to optimize testing conditions for ██████. He tested ██████ for a maximum of three hours each day. Additionally, because he knew that ██████ might become tired, he took many breaks from testing throughout both days. He allowed such breaks in a manner that was consistent with the

instructions for proper administration of the tests given. The behaviors ██████ displayed during the evaluation were generally consistent with ██████ behaviors outside of the testing situation.

7. Dr. Oakland's experience in testing and working almost exclusively with children allows him to create conditions that continue to use standardized methods to acquire data while also allowing him to be sensitive to individual characteristics of a child with whom he is working. His experience ensures that he can make modifications in the evaluation to allow a child to do ██████ best work without negatively impacting the standardization process. In conducting the evaluation of ██████ Dr. Oakland sought to acquire information about ██████ including in the following areas: ██████ adaptive behaviors; social and psychological problems that children display; ██████ learning styles; ██████ academic achievement level; ██████ academic aptitude; and ██████ developmental history. Given the possibility that ██████ might have an attention deficit disorder, Dr. Oakland was concerned with acquiring information regarding ██████ attention issues.

8. In order to examine ██████ adaptive behavior, Dr. Oakland used the Adaptive Behavior Assessment System (ABAS), which is published and widely used. Dr. Oakland was one of the developers of this test and is familiar with its administration and able to use it to gather reliable information.

9. In order to look at ██████'s social and psychological problems or issues, Dr. Oakland used the Behavior Assessment System for Children (BASC). The use of this instrument was

consistent with professional practice, and proper procedures were shown to be followed for its scoring.

10. Dr. Oakland used two scales to consider [REDACTED]'s attention issues. One scale relied on the BASC, but he relied principally upon the Attention Deficit Disorder Evaluation Scale, which is a measure that parents complete to provide information about inattentiveness in the home. Dr. Oakland's use of this instrument was consistent with professional practice. He included his findings in his report.

11. In order to test [REDACTED]'s learning styles, the Student Styles Questionnaire was used by Dr. Oakland. This examines the preferred ways that children learn. Dr. Oakland was one of the developers of this testing instrument, as well, is familiar with its administration, and was shown to have complied with all of its instructions. The scale is used by other psychologists and is published by the Psychological Corporation. Dr. Oakland's use of this instrument was consistent with professional practice, and he reported on this information extensively in his report.

12. In looking at the academic achievement of [REDACTED] two measures were used. The Woodcock-Johnson Test for Achievement and the Ekwall Leading Inventory (Ekwall). The Woodcock-Johnson Test for Achievement provides a comprehensive assessment of reading, math, written language, and other areas. Dr. Oakland used all of the necessary subtests of the Woodcock-Johnson Test for Achievement. Supplementation with the Ekwall test provides more extensive context, and allows further understanding of a

student's reading skills. Use of both instruments was shown to be consistent with professional practice, and the instructions were shown to have been followed in the administration of the tests. All the scores from both tests were indicated by Dr. Oakland in his report.

13. In evaluating ██████████'s intelligence level, Dr. Oakland used the Woodcock-Johnson Test of Cognitive Abilities. That test is the most up-to-date measure of intelligence, and is based on the most current theory of intelligence. Current theory indicates there are at least seven permanent qualities contributing to general intellectual ability. The general intelligence score, therefore, is based upon scores from the seven key intellectual qualities. Each of the seven qualities relates to information from two subtests. Therefore, 14 tests are used to generate the general intellectual ability evaluation level, commonly referred to as "IQ." Thus, this Woodcock-Johnson test is an appropriate evaluation instrument in developing an IQ estimate. The test consists of a number of subtests, with each subtest allowing for flexibility when generating an IQ level. This instrument provides a more comprehensive assessment of intellectual abilities and a more up-to-date assessment of cognitive abilities than tests previously administered to ██████████

14. The test is a more reliable instrument to measure IQ than those previously administered to ██████████. In particular, one of the tests administered to ██████████ was out-of-date and not held in high regard in the professional field. In addition, the

test was designed largely to be used with children from minority group backgrounds, and does not provide a comprehensive assessment of intellectual qualities that contribute to general intellectual ability. The other test measure used previously with [REDACTED] the Wechsler Intelligence Scale for Children (Wechsler), is an accepted test for determining intelligence that Dr. Oakland assisted in developing. The Wechsler test, however, is based upon a different concept of intelligence than the Woodcock-Johnson test and considers different qualities to arrive at an IQ score. The Woodcock-Johnson test is based upon the most current theory of intelligence as referenced above and, further, is standardized on 5,400 "nationally-normed" individuals, whereas the Wechsler IQ test, which was administered to [REDACTED] in 2001, is standardized on 2,200 individuals. A larger group of individuals as part of the empirical base for the test demonstrates the validity of the norms established for the Woodcock-Johnson test.

15. Additionally, as established by Dr. Oakland, the Woodcock-Johnson test offers a fuller description of processing skills and lends itself to a more complete measure of intellectual ability. The Woodcock-Johnson test was appropriate for the purposes used by the IEP team in providing information about [REDACTED]'s strengths and weaknesses, cognitively and academically, so that [REDACTED] IEP could be appropriately written.

16. Dr. Oakland's use of this test was consistent with acceptable professional practice. He also followed the publisher's instructions in administering the test. The IQ that

is reported by Dr. Oakland was shown to be a valid and reliable measure of ██████'s IQ. Based upon Dr. Oakland's data obtained from the Woodcock-Johnson test in conjunction with other measures obtained during evaluation, ██████ standard score was shown to accurately represent ██████'s intellectual ability at the present time or at the time of his evaluation.

17. Dr. Oakland reported the information from that test in a narrative fashion, and provided tables containing scores from the various subtests. He reported scores for all subtests that he administered. He established in his testimony that the fact that scores of the subtests were different was not unusual, given ██████'s background. He also reported cluster scores which are a combination of subtest scores. The cluster scores were determined statistically through factor analysis by the authors of the Woodcock-Johnson test. Dr. Oakland's decision on which scores to cluster was derived from the empirical base that supports the Woodcock-Johnson test, and was based on the testing protocol itself. Although the Respondent alleged that there was confusion at the IEP team meeting over the cluster score reports, Ms. Hardcastle, who was a member of the IEP team, established with ██████ testimony that any discussion at the meeting was not a criticism of the evaluation as being flawed, but rather, only that the cluster reports might not have been as useful as the individual sub-test scores. The individual sub-test scores, however, were also included in Dr. Oakland's report so that the IEP team was not required to rely solely on the cluster scores.

18. Upon considering previous evaluations conducted by the School Board's psychologist and the parents' psychologist, Dr. Oakland found his data to be consistent with what had been previously found. This further assured Dr. Oakland that the information he gathered was accurate. He thus believed that the achievement test scores reported are an accurate reflection of ██████████'s current achievement levels. Overall, his evaluation was shown to be consistent with professional practice in the fields of psychology and school psychology.

19. The Respondent raised an issue of Dr. Oakland's purported bias in the conduct of his evaluation or the drafting and completion of his report. Dr. Oakland quite obviously testified that he would never compromise his professional approach or opinions regardless of who had hired him for his services. In response to an inquiry as to whether the fact that the School Board or a law firm had hired him might influence his evaluation and its outcome, he testified that he does not let non-psychologists dictate how he conducts his professional work, and sees his commitment as one requiring that he serve the child above all other interests. There has been no demonstration whatever that Dr. Oakland's work, his findings, and conclusions, nor any aspect of his evaluation of ██████████ was influenced in any way by the entity which may have hired him.

20. Dr. Oakland's report did not actually contain recommendations, because he felt that those should come from the IEP committee itself after it evaluated his and other evaluations. He did offer his services to help the IEP committee

if needed. He refrained from making recommendations because he recognized that he only obtained part of the information needed concerning [REDACTED] because others were also conducting evaluations of [REDACTED].

21. Dr. David Rostetter was accepted without objection as an expert in the area of IDEA administration, and the implementation and compliance with federal and state regulatory requirements regarding the conduct of evaluations under the IDEA. Indeed, Dr. Rostetter was largely responsible for drafting the federal regulations during his tenure with the United States Department of Education. His work with that agency extensively involved administration of the public law that ultimately became the IDEA. He has attended almost 400 IEP meetings, reviewed almost 15,000 IEPs, and has reviewed about half as many evaluation reports. He is also familiar with the requirements imposed by the State of Florida regarding the conduct of IDEA regulations. He explained that it is not a good practice for an outside evaluator, who has never seen a child interact in a school setting and does not interact with the child on a regular basis, to include recommendations. Rather, outside evaluations including recommendations about instruction are often inappropriate.

22. The final summary evaluation report generated by Ms. Hardcastle did itself contain recommendations for [REDACTED] that flowed from Dr. Oakland's evaluation, in part. Therefore, the IEP team used two sets of recommendations based upon Dr. Oakland's and Dr. Lambardino's evaluations.

23. An IEP meeting was held on March 22, 2004. Ms. Hardcastle was present to explain the results of Dr. Oakland's evaluation. A lengthy discussion was had about his results, and those results in the discussion demonstrated that [REDACTED] has a multiplicity of needs that are reflected in Dr. Oakland's findings, and that [REDACTED] needs must be addressed in different ways.

24. Although the Respondent claimed that Dr. Oakland's evaluation was confusing, the IEP team members, including Ms. Hardcastle and Ms. Jenny Chance, who were both members of the IEP Team for [REDACTED] both found Dr. Oakland's report to be a comprehensive report. Contrary to the Respondent's allegations, Ms. Hardcastle was not confused or unable to understand the information about [REDACTED] in Dr. Oakland's report. Ms. Chance, who has extensively reviewed IEP's during [REDACTED] career, noted that the report was an excellent report and was extraordinarily complete. The report simply reflected data indicating that the child is complex. It was [REDACTED]'s complexity, referred to in Dr. Oakland's results, that caused the IEP members to raise questions, not the validity of Dr. Oakland's findings.

25. Dr. Oakland's evaluation was used at the IEP meeting as a basis for establishing [REDACTED]'s IEP. In developing programming for [REDACTED] those at the IEP meeting relied upon the individual sub-test scores from Dr. Oakland's administration of the Woodcock-Johnson test, and what those sub-tests reflected with respect to [REDACTED]'s strengths and weaknesses.

26. Because Dr. Oakland's report was thorough and comprehensive, it provided the IEP team with enough information to develop an appropriate IEP for [REDACTED]. Therefore, the IEP team did not need to refer back to [REDACTED] or secure recommendations directly from Dr. Oakland.

27. In summary, there is no persuasive evidence that would call into question the validity or reliability of the information obtained from Dr. Oakland's evaluation. Based on the information the IEP team obtained from Dr. Oakland in his report, the IEP team was able to consider [REDACTED]'s thus-reported strengths and weaknesses and write an IEP for [REDACTED]. Thus, the School Board saw no need to have performed an additional Independent Educational Evaluation. Accordingly, when [REDACTED]'s parents requested that the Board fund an additional Independent Educational Evaluation in response to Dr. Oakland's report, the Board objected and initiated the instant due process proceeding.

CONCLUSIONS OF LAW

28. The Division of Administrative Hearings has jurisdiction of the subject matter of and the parties to this proceeding. Florida Administrative Code Chapter 6A-6.

29. In accordance with Chapter 34, Code of Federal Regulations, Section 300.533(a)(1), it is the responsibility of the IEP team to review existing information regarding a child and to identify what additional data, if any, is needed to determine:

1. Whether the child continues to have a disability;
2. The present levels of performance and educational needs of the child;

3. Whether the child continues to need special education and related services; and,

4. Whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals written in the IEP and to participate, as appropriate, in the general curriculum.

Thus, the IEP team must determine the nature and extent of evaluative information necessary as a part of its re-evaluation. Here, the IEP team had significant information available to it regarding ██████████ and was not seeking comprehensive evaluative information akin to an initial evaluation. The specific purpose for the assessments requested was to gather more information about ██████████'s strengths and weaknesses to ensure that ████████ IEP appropriately addressed ████████ educational needs, and to determine whether ████████ educational programming was appropriate.

30. Once the need for additional information is identified and parental consent has been obtained, then the school system has an obligation to ensure that those assessments are completed in accordance with state and federal standards. See 34 C.F.R. § 300.532.

31. First, competent evaluation specialists must conduct the evaluation. See Fla. Admin. Code R. 6A-6.0331(1)(a). Under Florida law, with respect to a psychological evaluation, specialists include psychologists licensed in the professional's field, as evidenced by a valid license to practice that profession in Florida. Dr. Oakland is a licensed psychologist in Florida, and is recognized as an expert in the area of psycho-educational evaluations of children with disabilities.

32. Secondly, school systems must ensure that a variety of assessment tools and strategies are used to gather relevant functional and developmental information about the child. These include information provided by the parents and information related to the child's eligibility for special education, the content of the child's IEP, and ability to be involved in and progress in the general curriculum. 34 C.F.R. § 300.532; Fla. Admin. Code R. 6A-6.0331(1)(a). Dr. Oakland used a variety of tools and strategies to gather the necessary information about

██████████ He interviewed numerous persons familiar with ██████████ including ██████████ parents and ██████████ then-current service provider. In addition, he used a variety of instruments to gather information about ██████████ academic aptitude, ██████████ achievement levels, ██████████ learning styles, and ██████████ developmental history. These include the instruments used and referenced in the above Findings of Fact.

33. Additionally, any standardized tests given to a child must be validated for the specific purpose for which they are used, and must be administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the test. See 34 C.F.R. § 300.532; Fla. Admin. Code R. 6A-6.0331(1)(b). Dr. Oakland has extensive qualifications in the area of assessment of students with learning disabilities and, in particular, with the two standardized instruments or tests that he administered to ██████████ Both of those tests were administered in accordance with the published guidelines or

instructions and were used by Dr. Oakland for the specific purpose for which they were validated.

34. Finally, the school system is obligated to ensure that tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient, in accordance with the rules cited above. Dr. Oakland used a variety of evaluation materials, which were tailored to assess specific areas of ██████████'s educational needs. He completed standardized test measures, including the Woodcock-Johnson Test of Achievement and tests of cognitive ability, in a structured way in accordance with the instructions provided by the publishers of the tests. He was careful to develop a complete profile of ██████████'s strengths and weaknesses, including various subtests and cluster scores, that provided much more information than just a single, general, intelligence quotient.

35. Neither state nor federal law requires that an evaluation or re-evaluation contain recommendations. The purpose of a re-evaluation is to determine a student's continuing eligibility for special education, not to develop the IEP. See Cobb County School System, 22 Individuals with Disabilities, Education, Law Reports (IDELR) 836 State Educational Agency (SEA GA 1995); Liberty County Board of Education, 18 IDELR 797 (SEA GA 1992). These cases stand for the proposition that the evaluation itself cannot be used to determine the program the child will receive if the child qualifies for special educational services.

Rather, the information gathered during the evaluation process is only part of the information the IEP committee must consider in developing the IEP. Id. Therefore, Dr. Oakland's testing and his report were just one component of the district's re-evaluation process in arriving at an IEP.

36. Once re-evaluations are completed, it is the IEP team's responsibility to meet and review the information about the student, including the evaluation reports, to determine if the child is eligible for special education and, if so, to review and/or revise the child's IEP and placement. See Fla. Admin. Code R. 6A-6.03411(2)(h)(i)2. Here, the IEP team convened a lengthy meeting to discuss the information provided by Dr. Oakland and to consider its implications for ██████████. The IEP Team included Ms. Hardcastle, who could explain Dr. Oakland's report if the IEP team members required it. The IEP team was able to develop an IEP for ██████████ based on the information provided by Dr. Oakland's report.

37. After a parent makes a request for an IEE, the school system must either ensure that an IEE is provided at public expense, or initiate a due process hearing to prove that its own evaluation was appropriate. See 34 C.F.R. § 300.502(b)(2); Fla. Admin. Code R. 6A-6.0331(1)(d); Evans v. District No. 17, 841 F.2d 824, 830 (8th Cir. 1988).

38. Thus, once the School Board's evaluation has been shown to satisfy the required evaluation procedures set forth in the state and federal regulations, then the standard has been met and the evaluation must be considered appropriate. See Grapevine-

Colleyville Ind. School District v. Danielle R., 31 IDELR 103 (N.D. Tx. 1999).

39. In the instant situation, the School Board incurred considerable expense to secure a psychological evaluation by a preeminent expert in the relevant field. Both the conduct and the results of the assessments fulfill the requirements of law. As the School Board's evaluation was appropriate, the parents do not have an additional right to secure another evaluation at public expense. See Fla. Admin. Code R. 6A-6.03311(4)(f); 34 C.F.R. § 300.502(b)(3).

40. If the parents continue to desire an additional evaluation, they have a right to secure an Independent Educational Evaluation, at their own expense, and to have it considered by the School Board in making educational decisions regarding ██████████ 34 C.F.R. § 300.502(c); Fla. Admin. Code R. 6A-6.03311(4)(c). It is the School Board's demonstrated practice, shown by the record in this case, of entertaining information from the family and to consider such information in the educational decision-making process for ██████████

ORDER

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

ORDERED that the Petitioner, the Santa Rosa County School Board, has provided an adequate Independent Educational Evaluation as described and found herein, and shall not be required to provide another.

DONE AND ORDERED this 12th day of August, 2004, in
Tallahassee, Leon County, Florida.

S

P. MICHAEL RUFF
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of August, 2004.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 30 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 230.23(4)(m)5, Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 230.23(4)(m)5 and 120.68, Florida Statutes.