

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-1776E

** ,

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 [REDACTED], [REDACTED], in Saint Augustine, Florida.

APPEARANCES

For Petitioner: [REDACTED], Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

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

STATEMENT OF THE ISSUES

The issues in this case are whether the School Board's psychoeducational evaluation of Respondent was appropriate and whether Respondent's request for a psychoeducational Independent Education Evaluation (IEE) at public expense should be denied.

PRELIMINARY STATEMENT

On [REDACTED], [REDACTED], a due process complaint was filed with DOAH by Petitioner St. Johns County School Board seeking approval of its psychoeducational evaluation and requesting that Respondent's request for a psychoeducational IEE be denied. 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 one witness and offered seven exhibits, which were admitted into evidence. Respondent did not present any testimony or offer any exhibits.

After the conclusion of the hearing, a discussion with the parties regarding the post-hearing schedule occurred. Based on that discussion it was determined that proposed final orders were to be filed on or before [REDACTED], [REDACTED], with the final order to follow by [REDACTED], [REDACTED]. On [REDACTED], [REDACTED], an Order on Post-Hearing Submissions was issued and provided to both parties.

After the hearing, Petitioner filed a Proposed Final Order on [REDACTED], [REDACTED]. 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 individualized education programs (IEP) were drafted.

Finally, for stylistic convenience, [REDACTED] pronouns are used in the Final Order when referring to Respondent. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

FINDINGS OF FACT

1. Respondent was determined not to be eligible for exceptional student education (ESE) services on [REDACTED], [REDACTED]. At the time of the hearing, Respondent was [REDACTED] years old and finishing [REDACTED] grade. [REDACTED] did not struggle socially and was liked by both teachers and peers.

2. During Respondent's education, the evidence was clear that in math, a non-preferred subject, Respondent struggled and needed intermittent response to intervention (RTI) tier 2 services to help [REDACTED] with math. However, the evidence was also clear that Respondent progressed from grade to grade and was passing math at grade-level during [REDACTED] grade year. Indeed, Respondent's struggles in math were not significantly different from [REDACTED] peers. In [REDACTED] other classes, the evidence showed that Respondent was also progressing from grade to grade and on grade-level or above grade-level.

3. On [REDACTED], [REDACTED], Respondent's parent consented to a psychoeducational evaluation to determine eligibility for ESE

services. The evaluation was to assess the areas of Intellectual/Cognitive Functioning including math problem solving, review academic achievement and review Response to Intervention/Multi-tiered Support System (RTI/MTSS) data.

4. A psychoeducational evaluation of Respondent and review of data was completed on [REDACTED], [REDACTED], by the school psychologist, who was very familiar with Respondent and well-qualified to perform the evaluation. The evidence showed that, as part of [REDACTED] evaluation, the school psychologist reviewed Respondent's education records (including grades, FSA scores, RTI and progress monitoring data, RTI plans, other reading diagnostic assessments, STAR reading and math assessments, and i-Ready data), administered the [REDACTED] ([REDACTED]), the [REDACTED], and the [REDACTED].^{1/} Additionally, the school psychologist collected and reviewed Peer Comparison Data, obtained information from the parent, as well as interviewed and observed Respondent across a variety of academic and non-academic settings.

5. All of these tools were appropriate for the evaluation and provided accurate information about Respondent's functional academic development. In essence, the evidence demonstrated that in conducting the evaluation, the school psychologist reviewed Respondent's records; observed Respondent at school in a variety

of settings; interviewed teachers; interviewed Respondent; utilized appropriate, normed, and valid objective rating scales; and projective testing; covered all the areas of suspected disability at that time; and met the requirements for evaluations as found in Florida Administrative Code Rule 6A-6.0331(5).

6. A report of the evaluation was finalized on [REDACTED], [REDACTED]. Overall, with respect to all of the standardized assessments, Respondent's performance was consistent (IQ, grades, behavior, and academic achievement). Based on the evaluation, the school psychologist did not find that Respondent was struggling significantly in math or any other academic function. The report further reflects, and the evidence showed, that Respondent did not demonstrate any significant cognitive or learning disabilities that interfered with Respondent's education.

7. After the evaluation report was finalized, an IEP team meeting was scheduled for [REDACTED], [REDACTED], to consider, among other things, the results of the psychoeducational evaluation and to further determine eligibility for ESE services. Several individuals attended the meeting, including the school psychologist and the parent. During the meeting, the school psychologist presented [REDACTED] evaluation to the team and answered questions. The team reviewed the report and considered other input from the parent and team members. After that review, the

IEP team determined that Respondent was ineligible for ESE services in the area of [REDACTED]. The parent requested an IEE at the end of the meeting. However, as noted above, the evidence was clear that the [REDACTED] psychoeducational evaluation met all the requirements for such evaluations under Florida law, and adequately identified Respondent's psychological, educational and academic needs. As such, the evidence did not demonstrate a need for an independent psychoeducational evaluation at public expense.

CONCLUSIONS OF LAW

8. 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).

9. 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 Cnty. Sch. Bd., Case No. 03-0621E (Fla. DOAH May 27, 2003 (ALJ Rivas)) (citing Devine v. Indian River Cnty. Sch. Bd., 121 F.3d 576 (11th Cir. 1997)); J.R. v. Duval Cnty. Sch. Bd., Case No. 03-1132E (Fla. DOAH June 24, 2003 (ALJ Hood))(citing Fla. Dep't. of Trans. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981)).

10. 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.

11. 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 Individuals with Disabilities Education Act (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).

12. 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.

13. 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.

14. 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.

15. To satisfy its burden of proof, the School Board must demonstrate that the assessments at issue complied with rule 6A-6.0331(5), which sets forth the elements of an appropriate evaluation. Rule 6A-6.0331(5) provides as follows:

(5) Evaluation procedures.

(a) In conducting an evaluation, the school district:

1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student within a databased problem solving process, including information about the student's response to evidence-based

interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (EP), including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;

2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and,

3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each school district must ensure that assessments and other evaluation materials and procedures used to assess a student are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis;

2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

3. Used for the purposes for which the assessments or measures are valid and reliable; and,

4. Administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials and procedures shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.

(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

(f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability.

16. Based on the Findings of Fact as stated herein, the School Board has proven that its psychoeducational evaluation fully complied with rule 6A-6.0331(5). In particular, the evaluation was conducted by trained and knowledgeable professionals who utilized, and properly administered, a variety

of valid instruments that yielded reliable and comprehensive information concerning the student's educational needs. Further, the evidence showed that the evaluation conducted by Petitioner in [REDACTED] investigated all the areas of suspected disabilities at the time. Since the [REDACTED] psychoeducational evaluation was appropriate, Respondent's request for a psychoeducational IEE at public expense is denied. However, although Respondent is not entitled to an IEE at public expense, the parent is free to present a psychoeducational evaluation obtained at private expense to the School Board, the results of which the School District is required to consider. See Fla. Admin. Code R. 6A-6.03311(6)(j)1. (providing that if a parent "shares with the school district an evaluation obtained at private expense . . . [t]he school district shall consider the results of such evaluation in any decision regarding the provision of FAPE to the student, if it meets appropriate district criteria").

ORDER

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

1. The School Board's psychoeducational evaluation was appropriate, and met all the criteria set forth in Florida Administrative Code Rule 6A-6.0331(5).
2. Respondent's request for a psychoeducational IEE at public expense is denied.

DONE AND ORDERED this 12th day of August, 2019, in
Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of August, 2019.

ENDNOTE

^{1/} The Wechsler and Woodcock-Johnson assessments are widely-accepted, normed, objective, standardized assessments in the school psychology community. The Wechsler Intelligence Scale assesses cognitive processing, including verbal, non-verbal, and visual, as well as processing speed and memory. The Woodcock-Johnson Tests of Cognitive Abilities is an objective measure of a student's academic abilities including individual processing and long-term retrieval. It also compares the assessed student's abilities to other students' abilities in the areas of reading, math, and writing. The STAR reading and math assessments are computer-based, individualized objective assessment tools to determine a student's functioning in those areas. The i-Ready assessments are computer-based assessments to measure a student's performance in reading and math, which can then be compared to grade-level benchmark goals.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).