

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SANTA ROSA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-2750E

** ,

Respondent.

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FINAL ORDER

Pursuant to notice, a final hearing was conducted in Milton, Florida, on [REDACTED], before Administrative Law Judge (ALJ) Todd P. Resavage of the Division of Administrative Hearings.

APPEARANCES

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

For Respondent: No appearance

STATEMENT OF THE ISSUE

Whether the language and psychoeducational evaluations conducted by Petitioner on behalf of Respondent were appropriate and complied with Florida Administrative Code Rule 6A-6.0331(5).

PRELIMINARY STATEMENT

On [REDACTED] Petitioner filed a Due Process Complaint (Complaint) that sought a determination of the appropriateness of its language and psychoeducational evaluations conducted of Respondent. Petitioner's Complaint was necessitated by its decision to deny the request of Respondent's parents to provide an independent educational evaluation (IEE), with respect to both evaluations, at public expense.

The matter was initially assigned to ALJ Diane Cleavinger. ALJ Cleavinger, after conducting a telephonic conference, scheduled the final hearing for [REDACTED]. On [REDACTED], ALJ Cleavinger granted Respondent's Request for Extension, and ordered the parties to file a written joint notice of availability by [REDACTED].

Respondent did not comply with ALJ Cleavinger's Order, and, therefore, a pre-hearing conference was scheduled for [REDACTED]. On [REDACTED], ALJ Cleavinger issued a Notice of Hearing, wherein the final hearing was scheduled for [REDACTED], [REDACTED].

On [REDACTED], Petitioner herein filed a Motion to Consolidate this matter with DOAH Case No. 19-0641E, which was pending before the undersigned. Respondent did not respond to the motion. On [REDACTED], the motion was granted, and the cases were consolidated before the undersigned. The Order of

Consolidation advised the parties that the final hearing for the consolidated cases would proceed as scheduled in DOAH Case No. 19-0641E (the lower case number) on [REDACTED], [REDACTED].

The final hearing was conducted, as scheduled, on [REDACTED]. Despite proper notice, Respondent did not appear at the final hearing. Upon the conclusion of the final hearing, Petitioner stipulated that its proposed final order would be filed within 10 days of the filing of the transcript and that the undersigned's final order would issue within 20 days of the filing of the transcript.

The final hearing Transcript was filed on [REDACTED]. The identity of the witnesses and exhibits and rulings regarding each are as set forth in the Transcript. Petitioner filed a timely Proposed Final Order, which has been considered in this Final Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time Petitioner performed the evaluations at issue. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this 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 began the 2018-2019 school-year as a [REDACTED]-grade student at School A, a public intermediary school in Petitioner's school district.

2. Respondent was experiencing difficulty with answering comprehension questions from grade level texts, reading decoding, and accurately performing mathematical word problems. [REDACTED] teachers had also observed that [REDACTED] was having difficulty sustaining attention to task, persevering in the face of challenging material, completing assignments with quality, and was rushing through material.

3. A meeting was scheduled and conducted on [REDACTED], [REDACTED], to address these concerns. At the meeting, the assembled members determined that further evaluations were necessary to evaluate Respondent's educational needs and determine if [REDACTED] was a student with a disability under the Individuals with Disabilities Education Act (IDEA).

4. On [REDACTED], Petitioner obtained parental consent to conduct a language evaluation (to assess communication skills and language ability) and a psychoeducational evaluation (to assess intellectual, academic, perceptual, behavior or language skills).

5. On [REDACTED], a meeting was conducted to determine [REDACTED] potential eligibility for a Section 504

Accommodation Plan. On that date, Respondent was determined eligible and a Section 504 Plan was developed to address [REDACTED] needs.

6. Respondent was referred to [REDACTED], M.S., CCC-SLP, a speech language pathologist (SLP), to conduct the language evaluation. [REDACTED] is certified by the Florida Department of Education in SLP and possesses a certificate of clinical competence (CCC) from the American Speech Hearing Association. Over [REDACTED] 12-year employment with Petitioner as an SLP, [REDACTED] has conducted over 2,000 language evaluations.

7. The language evaluation consisted of reviewing medical, developmental, and social histories; conducting clinical observations; reviewing teacher concerns/observations; considering parental concerns; and the administration of a standardized assessment, the [REDACTED] of [REDACTED] [REDACTED] and [REDACTED] Skills ([REDACTED]). The [REDACTED] assesses oral and written language skills of school-age students, ages [REDACTED] through [REDACTED] years. It is a standardized, norm-referenced test validated for three purposes: identifying language and literacy disorders, documenting patterns of relative strengths and weaknesses, and tracking changes in language and literacy over time. The TILLS includes 15 subtests that measure skills at two language levels (sound/word and sentence/discourse) across oral and written language modalities (listening, speaking, reading, and writing).

8. [REDACTED] language evaluation report was completed on [REDACTED]. [REDACTED] provided credible and unrefuted testimony that [REDACTED] language evaluation and the administration of the TILLS complied with rule 6A-6.0331(5).

9. Respondent was also referred to [REDACTED], M.A., CSP, one of Petitioner's school psychologists, to conduct a psychoeducational evaluation. [REDACTED] has been employed by Petitioner for 25 years, possesses a Bachelor's Degree in psychology and a Master's Degree in school psychology, and is certified in school psychology by the Florida Department of Education. [REDACTED] has conducted approximately 120 psychoeducational evaluations per year, over the span of [REDACTED] career.

10. The psychoeducational evaluation consisted of reviewing pre-evaluation documentation including social, medical, and developmental history provided by Respondent's parents; review of Respondent's educational records and history; a review of teacher observations and their respective narratives; the administration of several standardized assessments; behavioral observations during the administration of said assessments; and a review of interventions and progress monitoring data.

11. With respect to the standardized assessments, [REDACTED] administered the [REDACTED] [REDACTED] [REDACTED] for [REDACTED], [REDACTED] Edition; the [REDACTED] [REDACTED] of [REDACTED], Fourth Edition; the [REDACTED] of [REDACTED], Fourth

Edition; the [REDACTED],
Second Edition; and the [REDACTED],
Third Edition.

12. On [REDACTED], [REDACTED] completed [REDACTED] evaluations and authored [REDACTED] Psychoeducational Evaluation Report. [REDACTED] provided credible and unrefuted testimony that [REDACTED] psychoeducational evaluation and the administration of the above-noted assessments complied with rule 6A-6.0331(5).

13. On [REDACTED], an individualized education program (IEP) meeting was conducted. At that meeting, the language and psychoeducational evaluations results were discussed and considered. On that date, Respondent was determined eligible as a student with a disability under the IDEA in the eligibility categories of [REDACTED] and [REDACTED].

14. On [REDACTED], Respondent's parents notified Petitioner that they did not agree with the language or psychoeducational evaluations and requested IEEs at public expense.^{1/}

CONCLUSIONS OF LAW

15. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to section 1003.57(1)(b), Florida Statutes, and rule 6A-6.03312(7).

16. District school boards are required by the Florida K-20 Education Code to provide for "appropriate program of special

instruction, facilities, and services for exceptional students [ESE] as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(1) & 1003.57, Fla. Stat.

17. 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); see also J.P. v. Cnty. Sch. Bd of Hanover Cnty., Va., 516 F.3d 254, 257 (4th Cir. 2008) ("Under the IDEA, all states receiving federal funds for education must provide disabled school children with a 'free appropriate public education.'").

18. The IDEA contains "an affirmative obligation of every [local] public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible." L.C. V. Tuscaloosa Cnty. Bd. of Educ., 2016 U.S. Dist. LEXIS 52059 at *12 (N.D. Ala. 2016) quoting N.G. v. D.C., 556 F. Supp. 2d 11, 16 (D.D.C. 2008)(citing 20 U.S.C.

§ 1412(a)(3)(A)). This obligation is referred to as "Child Find," and a local school system's "[f]ailure to locate and evaluate a potentially disabled child constitutes a denial of FAPE." Id. Thus, each state must put policies and procedures in place to ensure that all children with disabilities residing in the state, regardless of the severity of their disability, and who need special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111(a).

19. Rule 6A-6.0331 sets forth the school district's responsibilities regarding students suspected of having a disability. Rule 6A-6.0331(2)(a) sets forth a non-exhaustive set of circumstances, which would indicate to a school district that a student may be a student with a disability who needs special education and related services. Once a request for an initial evaluation has been made (by either the parents or the school district), the school district is mandated to obtain consent for the evaluation or provide the parent with a written notice of refusal. Fla. Admin. Code R. 6A-6.0331(3)(c). After receiving consent, the school district must complete the initial evaluation within 60 calendar days. Fla. Admin. Code R. 6A-6.0331(g).

20. Rule 6A-6.0331(3)(e) sets forth the requisite qualifications of those conducting the necessary evaluations and rule 6A-6.0331(5) sets forth the procedures for conducting the evaluations. In conducting the evaluation, the school district

"must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE." Fla. Admin. Code R. 6A-6.0331(5)(a)(2). To the contrary, the school district "must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student." Fla. Admin. Code R. 6A-6.0331(5)(a). The student shall be assessed in "all areas related to a suspected disability" and an evaluation "shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability." Fla. Admin. Code R. 6A-6.0331(5)(f) & (g).

21. 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 the public's expense. See 34 C.F.R. § 300.502(b); Fla. Admin. Code R. 6A-6.0331(6).

22. Petitioner here, when confronted with the request for an IEE, denied the request and opted to timely initiate a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluations were appropriate. Fla. Admin. Code R. 6A-6.0331(6)(g) 2. If Petitioner is able to meet its burden and establish the appropriateness of its evaluation, it is relieved of any obligation to provide the requested IEE. Id.

23. To meet its burden of proof, Petitioner must demonstrate that the language and psychoeducational evaluations complied with rule 6A-6.0331(5), which provides as follows:

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, including information provided by the parent, that may assist in determining whether the student is eligible for ESE and the content of the student's IEP or 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 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 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 disability category in which the student

is classified.

24. Pursuant to the above Findings of Fact, Petitioner has demonstrated that [REDACTED] and [REDACTED] were trained, knowledgeable, and appropriately qualified to conduct their evaluations. Petitioner further demonstrated that the language and psychoeducational evaluations conducted on behalf of Respondent complied with rule 6A-6.0331(5), and, therefore, has met its burden of proving that the evaluations were appropriate.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's language and psychoeducational evaluations at issue are appropriate.

DONE AND ORDERED this 26th day of December, 2019, in Tallahassee, Leon County, Florida.

S

TODD P. RESAVAGE
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 December, 2019.

ENDNOTE

1/ Based on the evidentiary presentation the undersigned cannot discern why Respondent's parents objected to Petitioners evaluations.

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).