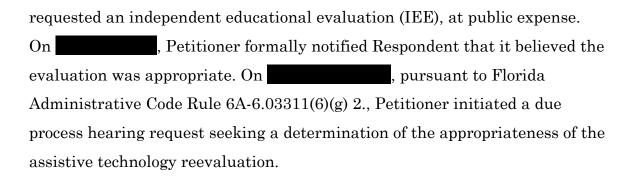
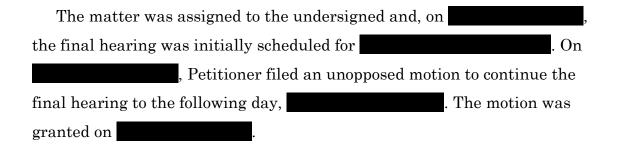
# STATE OF FLORIDA DIVISION OF ADMINISTRATIVE HEARINGS

St. Johns County So	CHOOL BOARD,
Petitioner,	
vs.	Case No. 20-0185E
**,	
Respondent.	1
	FINAL ORDER
Pursuant to notice	e, a final hearing was conducted in St. Augustine,
Florida, on	, before Administrative Law Judge (ALJ)
Todd P. Resavage of	the Division of Administrative Hearings.
	<u>Appearances</u>
For Petitioner:	, Esquire
	Sniffen & Spellman, P.A. 123 North Monroe Street
	Tallahassee, Florida 32301
For Respondent:	Respondent, pro se
r	(Address of Record)
	CTATION OF THE ICCLE
Wile oak boare Alboo o oo is	STATEMENT OF THE ISSUE
	stive technology reevaluation conducted by Petitioner on
behalf of Respondent	was appropriate.
	Preliminary Statement
On or about	, Petitioner completed an assistive technology
(AT) reevaluation of 1	Respondent. On Respondent's
parent notified Petiti	oner that did not agree with the reevaluation and



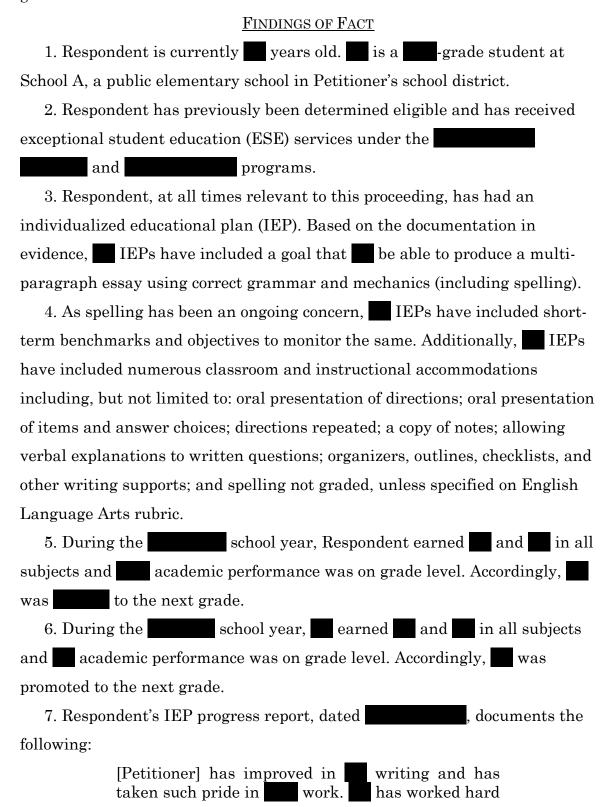


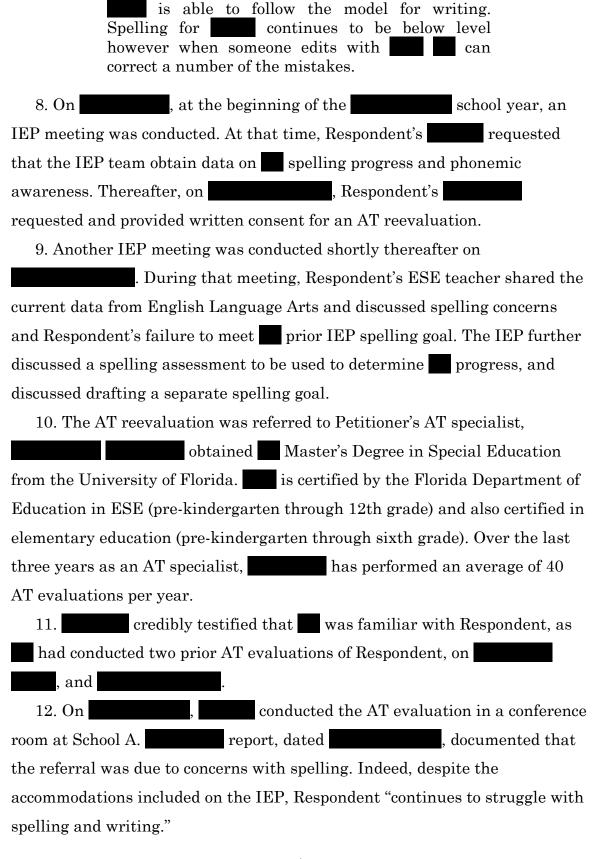
The final hearing was conducted, as scheduled, on Petitioner presented the testimony of one witness, and Petitioner's Exhibits 1 through 13 were admitted. Respondent testified and Respondent's Exhibits 1 through 9 were admitted. Upon the conclusion of the final hearing, the parties stipulated to the filing of proposed final orders within 21 days of the filing of the transcript and that the undersigned's Final Order would issue within 35 days of the filing of the transcript.

The final hearing Transcript was filed on \_\_\_\_\_\_. The identity of the witnesses and exhibits and rulings regarding each are as set forth in the Transcript. Petitioner timely filed a Proposed Final Order. Respondent did not file a proposed final order.

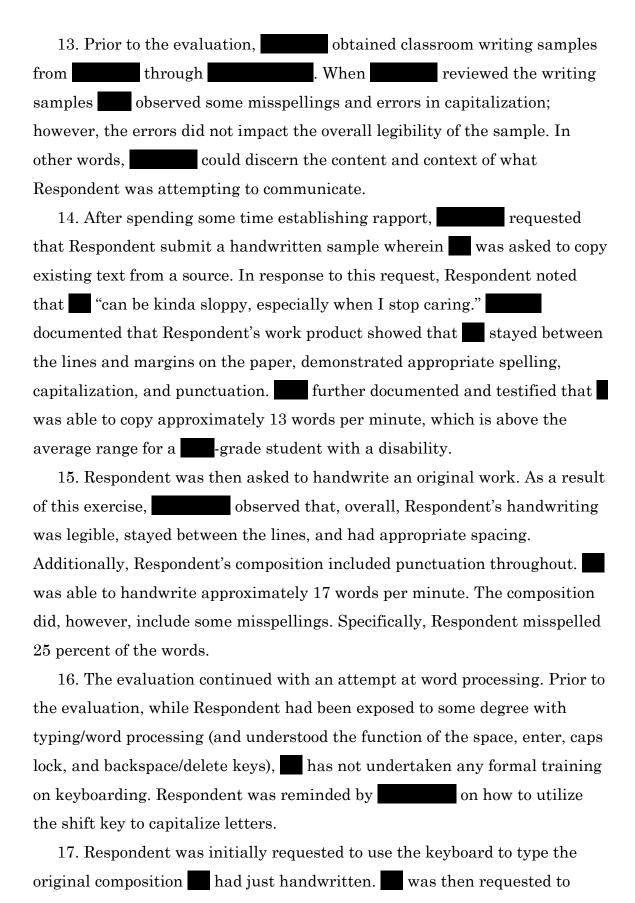
Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time Petitioner performed the reevaluation at issue. For stylistic convenience, the undersigned will use pronouns in this Final Order when referring to Respondent. The pronouns are neither

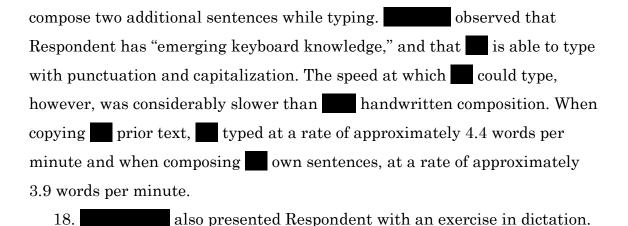
intended, nor should be interpreted, as a reference to Respondent's actual gender.



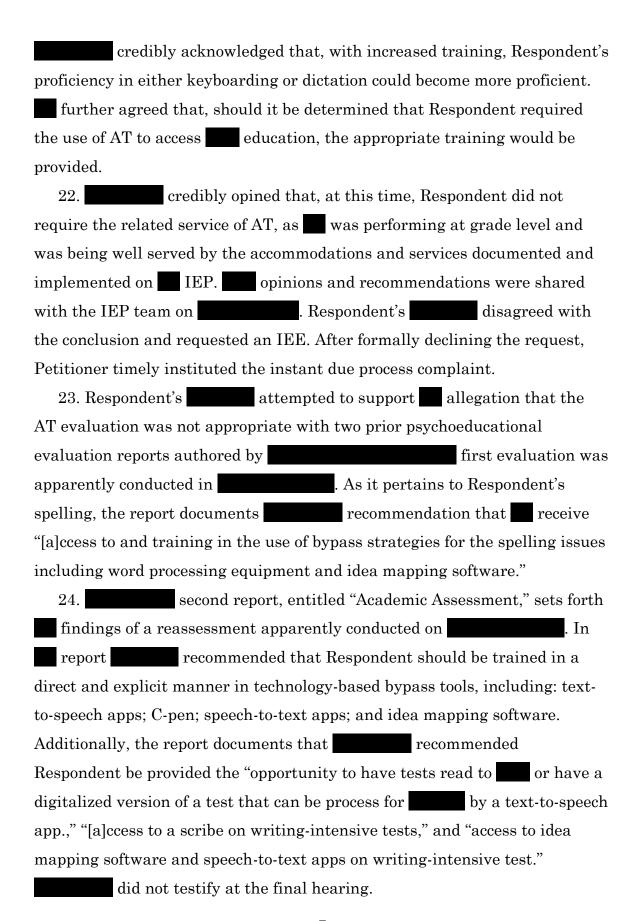


and been motivated when writing this quarter.





- Respondent was then provided three practice opportunities. After the practice rounds, Respondent attempted to utilize dictation, dictating one sentence at a time. Respondent, who has a speech impairment, required encouragement and support to speak clearly and loudly. Ultimately, documented that the software made several errors, which frustrated Respondent. Respondent was able to compose 8.37 words per minute in this setting.
- 19. Finally, Respondent was queried with respect to communication preference. Respondent indicated that believed handwriting was "okay," and that was faster at handwriting than typing.
- 20. The AT assessment was selected and administered in a nondiscriminatory manner; provided and administered in Respondent's native language; used for the purpose for which the assessment is valid and reliable; and administered by a trained, knowledgeable, and certified ESE teacher. Petitioner presented credible evidence that there is no defined criteria for conducting an AT assessment. This is due, in part, to the fact that each student is considered on an individual basis, and the potential "tools" that one might consider for the related service of AT is extremely broad.
- 21. After concluding the evaluation recommended that Respondent continue to complete schoolwork utilizing handwriting.



### CONCLUSIONS OF LAW

- 25. 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 Florida Administrative Code Rule 6A-6.03311(6) and (9).
- 26. 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.
- 27. 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 Cty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012); see also J.P. ex rel. Peterson v. Cty. Sch. Bd. of Hanover Cty., Va., 516 F.3d 254, 257 (4th Cir. 2008)("Under the IDEA, all states receiving federal funds for education must provide disabled schoolchildren with a 'free appropriate public education.").
- 28. 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 Cty. 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).

- 29. Rule 6A-6.0331 sets forth the school districts responsibilities regarding students suspected of having a disability. Rule 6A-6.0331(2)(a) then 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(3)(g).
- 30. 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 initial evaluations. It is undisputed that an initial evaluation was previously conducted wherein Respondent was determined eligible for ESE services.
- 31. At issue here is not the initial evaluation, but rather, a reevaluation to determine whether Respondent requires the related service of AT. Reevaluation requirements are set forth in rule 6A-6.0331(7), which provides, in pertinent part, as follows:
  - (7) Reevaluation Requirements.
  - (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 services 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.

- (b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.
- (c) Each school district must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.
- 32. Here, in compliance with the above-quoted rule, an AT reevaluation was timely conducted following a parental request accompanied by parental consent.
- 33. As the subject reevaluation was neither considering Respondent's initial eligibility nor continuing eligibility, not all of the requirements set forth in rule 6A-6.0331(5) are applicable. The Department of Education, however, has promulgated additional requirements for reevaluations. Specifically, rule 6A-6.0331(8), entitled "Additional requirements for evaluations and reevaluations," provides, in pertinent part, as follows:

As part of . . . any reevaluation, the IEP Team and other qualified professionals, as appropriate, must take the following actions:

- (a) Review existing evaluation data on the student, including:
- 1. Evaluations and information provided by the student's parents;
- 2. Current classroom-based, local, or State assessments and classroom-based observations; and,
- 3. Observations by teachers and related services providers.

(b) Identify, on the basis of that review and input from the student's parents, what additional data, if any, are needed to determine the following:

\* \* \*

- 2. The educational needs of the student:
- 3. The present levels of academic achievement and related developmental needs of the student;

\* \* \*

- 5. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum.
- (c) The group conducting this review may do so without a meeting.
- (d) The school district shall administer tests and other evaluation measures as may be needed to produce the data that is to be reviewed under this section.
- 34. Petitioner presented sufficient evidence to establish that, during the reevaluation process, and the other members of Respondent's IEP team: reviewed evaluations and information provided by Respondent's; conducted current assessments and observations; and observations were conducted by Respondent's teachers.
- 35. Petitioner also presented sufficient evidence to establish that the IEP team concluded, based on their review and input from Respondent's that additional data, in the form of an AT reevaluation, was needed to determine whether any additions or modifications to Respondent's special education and related services were needed to enable Respondent to meet the

measurable goals set out in IEP, ears and to participate, as appropriate, in the general curriculum.

- 36. Petitioner presented sufficient evidence to establish that was appropriately trained, knowledgeable, and qualified to administer the AT evaluation. It is further concluded that Petitioner met its burden of presenting sufficient evidence to establish that the AT reevaluation administered to Respondent was appropriate and in compliance with the IDEA and Florida law.
- 37. While the reports of \_\_\_\_\_\_ (and the recommendations therein) were entered into evidence, the same are insufficient to support the conclusion that Petitioner's AT reevaluation was inappropriate.

### **ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's assistive technology reevaluation was appropriate. Respondent is not entitled to an IEE at public expense.

DONE AND ORDERED this 3rd day of April, 2020, in Tallahassee, Leon County, Florida.

## S

TODD P. RESAVAGE
Administrative Law Judge
Division of Administrative Hearings
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www.doah.state.fl.us

Filed with the Clerk of the Division of Administrative Hearings this 3rd day of April, 2020.

#### COPIES FURNISHED:

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Respondent (Address of Record-eServed)

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325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

St. Johns County School District 40 Orange Street St. Augustine, Florida 32084-3693

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

### 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).