

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-0186E

\*\*,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

Pursuant to notice, a final hearing was conducted in St. Augustine, 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: Respondent, pro se  
(Address of Record)

STATEMENT OF THE ISSUE

Whether the psychoeducational and assistive technology reevaluations conducted by Petitioner, on Respondent's behalf, were appropriate.

PRELIMINARY STATEMENT

On or about [REDACTED], Petitioner completed a psychoeducational reevaluation of Respondent. On or about [REDACTED], Petitioner completed an assistive technology (AT) reevaluation of Respondent. On [REDACTED],

Respondent's parent notified Petitioner that [REDACTED] did not agree with the reevaluations and requested independent educational evaluations (IEEs), at public expense. On [REDACTED] Petitioner notified Respondent that it believed the reevaluations were appropriate. On [REDACTED] pursuant to Florida Administrative Code Rule 6A-6.03311(6)(g) 2., Petitioner initiated a due process hearing request seeking a determination of the appropriateness of the psychoeducational and assistive technology reevaluations.

The matter was assigned to the undersigned and, on [REDACTED] the final hearing was scheduled for [REDACTED]. The final hearing was conducted, as scheduled, on [REDACTED]. Petitioner presented the testimony of [REDACTED] witnesses, and Petitioner's Exhibits 1 through 12 were admitted. Respondent did not testify and did not present any witnesses. 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 [REDACTED]. 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, which has been considered in this 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 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 is currently [REDACTED] years old. [REDACTED] is a [REDACTED]-grade student at School A, a public elementary school in Petitioner's school district.

2. Respondent has previously been determined eligible and has received exceptional student education (ESE) services under the [REDACTED] [REDACTED] and [REDACTED].

3. During the [REDACTED] school year, Respondent earned As and Bs in all subjects and [REDACTED] academic performance was on grade level. Accordingly, [REDACTED] was promoted to the next grade.

4. To date, during the [REDACTED] school year, Respondent has earned an A, a B, and two Cs in [REDACTED] academic subjects and [REDACTED] academic performance has been on grade level.

#### Language Reevaluation

5. Prior to the instant AT reevaluation at issue, Respondent had been previously evaluated. On [REDACTED], an AT referral was made to Petitioner's AT specialist, [REDACTED]. [REDACTED] obtained [REDACTED] Master's Degree in Special Education from the University of Florida. [REDACTED] is certified by the Florida Department of Education in ESE (pre-kindergarten through 12th grade) and also certified in elementary education (pre-kindergarten through sixth grade). Over the last three years as an AT specialist, [REDACTED] has performed an average of 40 AT evaluations per year.

6. Respondent was referred to [REDACTED] due to parental concerns with difficulty reading Respondent's notes. After conducting the evaluation, [REDACTED] did not recommend an AT device, but rather, recommended that Respondent continue to work on handwriting.

7. On [REDACTED], [REDACTED] conducted an informal "check-in." On this occasion, [REDACTED] reviewed writing samples from August through September. Based on the informal check-in, [REDACTED] recommended that [REDACTED] use spellcheck on the word processing software on [REDACTED] classroom computer during the classroom edit/revision process. On [REDACTED], the

recommendation was discussed and adopted by the individualized education program (IEP) team.

8. At the beginning of the [REDACTED] school year, on or about [REDACTED] Respondent's mother requested and provided consent for an AT reevaluation. The reevaluation was again referred to [REDACTED].

9. On [REDACTED], [REDACTED] conducted the AT reevaluation in a separate room at School A. [REDACTED] report documented that the referral was due to spelling concerns. [REDACTED] noted that the current handwriting accommodations on [REDACTED] IEP were rewards, conferences, editing checks, and no grading of spelling. [REDACTED] noted that "[t]hese strategies were not successful for [Respondent] because, [REDACTED] continues to struggle with spelling and writing."

10. Prior to the evaluation, [REDACTED] obtained classroom writing samples from [REDACTED] through [REDACTED]. When [REDACTED] reviewed the writing samples, [REDACTED] observed some misspellings; however, [REDACTED] noted that [REDACTED] was able to utilize words from the text to support [REDACTED] spelling. [REDACTED] also noted that [REDACTED] work was "overall legible." Additionally, [REDACTED] reviewed [REDACTED] operative IEP, observed [REDACTED] in class, and obtained a history of [REDACTED] performance, both academically and functionally.

11. After spending some time establishing rapport, [REDACTED] requested that Respondent submit a handwritten sample wherein [REDACTED] was asked to copy existing text from a source. When asked to describe [REDACTED] as a writer, Respondent explained that "I try some of the time," and that "[s]ometimes I don't know how to spell but I don't try that hard." Respondent provided the handwritten sample; however, for approximately two minutes of the allowable time [REDACTED] did not actively write. The results of this exercise revealed that [REDACTED] was able to copy at approximately 8.49 words per minute, which, [REDACTED] opined, is near the average range for a [REDACTED] grade student with a disability. [REDACTED] credibly opined that the results do not accurately reflect [REDACTED] true ability, as [REDACTED] did not write for the whole time allotted.

12. Respondent was then asked to handwrite an original work. As a result of this exercise, ██████ observed that, overall, ████ had minimal misspellings, wrote with punctuation and capitalization, but did have some incomplete sentences. ████ further observed that ████ handwriting was legible, stayed between the lines, had appropriate spacing, and wrote with punctuation. ████ was able to handwrite approximately 5.32 words per minute. ██████ credibly opined, however, that the results were not a true reflection of ████ ability as ████ was not actively engaged in handwriting for three out of the five minutes allotted for the exercise.

13. The evaluation continued with an attempt at word processing utilizing a tablet with a keyboard. Prior to the evaluation, while Respondent had been exposed to some degree with typing/word processing (and understood the function of the space, enter, caps lock, and backspace/delete keys), ████ has not undertaken any formal training on keyboarding. As indicated above, his IEP provided ██████ the ability to use spell check on ████ classroom computer.

14. Initially, Respondent was asked to type ████ copy sample and then to type ████ original composition. ████ was able to type at approximately 3.8 and 6.2 words per minute, respectively. ██████ documented that ████ was able to utilize the spell check function with support, as well as the word prediction function; however, ████ observed that ████ was simply picking the first word that would appear while using the word prediction function. ██████ opined that ████ would not benefit from that function as “████ demonstrated impulsivity to create a sentence by selecting only the predicted words.”

15 ██████ also presented Respondent with an exercise in speech-to-text dictation. ██████ report documented the following with respect to this technology:

This support offers the user the ability to transpose speech into text. It is accessed by the user talking into a microphone and the software transcribing what the “writer” is saying into characters. Factors that influence the success of the speech recognition

are: articulation, rate of speech, fluency, prosody, breath support, and volume. Additionally, the user must have some idea of content or topics of which they are going to speak about in order to avoid “ums” as well as dictating a body of written work in which the content follows and makes sense to the reader.

16. ██████ provided a brief tutorial of the speech-to-text software. Respondent was then provided multiple practice opportunities. Thereafter, ██████ was encouraged to speak a few sentences. Ultimately, ██████ was able to compose ██████ thoughts at a rate of approximately 13 words per minute. ██████ experienced multiple challenges in this process, including software errors, failing to dictate with punctuation, and run-on sentences.

17. Finally, Respondent was queried with respect to ██████ communication preference. Respondent indicated that ██████ liked word prediction the best, followed by dictation and word processing. Handwriting was ██████ last choice.

18. ██████ credibly testified that, during the reevaluation, Respondent was frequently off-task and needed frequent redirection. Indeed, ██████ opined that ██████ behavioral issues were ██████ largest challenge, as opposed to ██████ spelling or legibility.

19. At the conclusion of the reevaluation, ██████ did not recommend that Respondent obtain additional ██████ devices. ██████ recommended that ██████ continue to complete schoolwork utilizing handwriting. On ██████, ██████ shared ██████ recommendations with the IEP team. Ultimately, the school based members of the team agreed with ██████ recommendation. Respondent’s mother disagreed with the conclusion and requested an IEE. After formally declining the request, Petitioner timely instituted the instant due process complaint.

20. The AT assessment was selected and administered in a non-discriminatory basis; 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. Respondent 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.

#### Psychoeducational Reevaluation

21. On or about [REDACTED], the IEP team conducted a meeting. At that time, the following were reviewed: observations; class assignments and assessments; previous evaluations or screenings; medical reports; and a private report authored by [REDACTED] PhD ([REDACTED] Report). The IEP team determined that more information was needed to determine Respondent’s educational needs and present levels of academic achievement and related developmental needs. Additionally, it was determined that more information was needed to determine if any additions or modifications to the special education and related services were needed to enable Respondent to meet his annual goals of the IEP and participate, as appropriate, in the general education curriculum.

22. Accordingly, on [REDACTED], the IEP team requested and obtained consent from Respondent’s mother to conduct an achievement reevaluation comprised of basic reading, reading comprehension, reading fluency, written expression, math calculation, math problem solving, and observations.

23. Respondent was referred to [REDACTED] NCSP, one of Petitioner’s school psychologists, to conduct a psychoeducational reevaluation. [REDACTED] has been employed by Respondent for the last six years, is certified in school psychology by the Florida Department of Education, and is nationally certified. [REDACTED] has conducted over 100 psychoeducational evaluations.

24. The psychoeducational reevaluation consisted of reviewing pre-evaluation documentation including the following: Respondent’s cumulative

school file; prior IEPs; discussions with IEP team members; report cards; FSA scores; prior evaluations; and assessments.

25. With respect to standardized assessment, [REDACTED] administered the Woodcock Johnson Tests of Achievement, Fourth Edition. This assessment addresses reading, mathematics, spelling, and academic knowledge. [REDACTED] credibly testified that said assessment is a norm-based standardized achievement assessment.

26. As noted above, [REDACTED] has administered this assessment more than 100 times and is proficient in its administration. [REDACTED] credibly testified that [REDACTED] followed the testing protocols from the publisher without variance. The assessment was administered in a nondiscriminatory manner and for the purpose it was created. The assessment was administered to Respondent in a [REDACTED] setting over a period of approximately 80 minutes. Respondent and [REDACTED] communicated in English.

27. From the record evidence, it appears that on [REDACTED] the psychoeducational reevaluation was conducted and completed by [REDACTED]. He provided credible testimony that pursuant to the assessment, [REDACTED] was able to obtain an accurate measure of Respondent's reading, mathematic, and written language abilities.

28. The summary section of [REDACTED] report documents the following:

The Woodcock-Johnson IV Tests of Achievement revealed that [Respondent's] broad reading, mathematic, and written language abilities were within the average range. Results of the evaluation indicated relative weaknesses in Academic Skills or the combined measure of word reading, math calculation, and spelling skills. [Respondent] demonstrated a relative strength on the Academic Applications cluster which is a measure of [Respondent's] ability to apply his skills to solve academic problems.

\* \* \*



A copy of this re-evaluation report will be forwarded to the IEP/Re-evaluation Team to assist them when planning for [Respondent] educationally. ■ teachers will need to continue to provide intensive repetition, practice, and review in learning activities. The learning environment should be structured in such a way as to reduce distracting stimuli (e.g. place [Respondent] in the front row; provide a carrel or quiet place away from distractions, etc.). This is used as a means of reducing stimuli and not as a form of punishment. Due to [Respondent's] attentional problems, ■ is less efficient than ■ peers with comparable academic ability and takes considerably more time to complete ■ assignments. [Respondent] will also benefit from strategies for organizing all types of information and tasks, including the content of reading material, school-related materials and notes, information for a test, and tasks ■ has to accomplish over the month. Incorporating multi-sensory learning experiences including visual illustrations and demonstrations may also prove helpful.

29. The psychoeducational reassessment 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 school psychologist.

#### CONCLUSIONS OF LAW

30. 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).

31. 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.

32. 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.’”).

33. 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).

34. 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).

35. 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.

36. At issue here is not the initial evaluation, but rather, reevaluations to determine whether Respondent requires the related service of AT and to determine updated academic achievement information to determine if any additions or modifications to ■ special education and related services were needed. 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.

37. Here, in compliance with the above-quoted rule, the reevaluations at issue were timely conducted following a parental request accompanied by parental consent.

38. As the subject reevaluations were neither considering Respondent's initial eligibility nor continuing eligibility, not all of the requirements set forth in rule 6A-6.0331(5) are inapplicable. 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.

39. Petitioner presented sufficient evidence to establish that, during the reevaluation process, [REDACTED] and the other members of Respondent's IEP team reviewed evaluations and information provided by Respondent's mother; conducted current assessments and observations; and observations were conducted by Respondent's teachers.

40. Petitioner also presented sufficient evidence to establish that the IEP team concluded, based on their review and input from Respondent's mother, 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 [REDACTED] IEP and to participate, as appropriate, in the general curriculum.

41. Petitioner presented sufficient evidence to establish that [REDACTED] 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.

42. While the private evaluation reports of [REDACTED] (and the recommendations therein) were entered into evidence, the same are insufficient to support the conclusion that either the AT or psychoeducational reevaluations were inappropriate. To the contrary, [REDACTED] credibly testified that [REDACTED] psychoeducational reevaluation is essentially in alignment with the results and conclusions contained in [REDACTED] reports.

43. With respect to the psychoeducational reevaluation, Petitioner has demonstrated that [REDACTED] was trained, knowledgeable, and appropriately qualified to conduct the reevaluation.

44. Petitioner demonstrated that both the AT and psychoeducational reevaluations conducted on behalf of Respondent complied with rule 6A-6.0331(5), (7) and (8), and, therefore, Petitioner has met its burden of proving the reevaluations were appropriate.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Assistive Technology and Psychoeducational reevaluations were appropriate. Respondent is not entitled to an IEE at public expense.

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

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TODD P. RESAVAGE  
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Filed with the Clerk of the  
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this 3rd day of April, 2020.

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).