

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

**,

Petitioner,

Case No. 20-0892E

vs.

ORANGE COUNTY SCHOOL BOARD,

Respondent.

_____ /

FINAL ORDER

A due process hearing was held in this matter before [REDACTED], an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [REDACTED], via Zoom conference.

APPEARANCES

For Petitioner: Petitioner, pro se
(Address of record)

For Respondent: [REDACTED], Esquire
Orange County Public Schools
445 West Amelia Street
Orlando, Florida 32801

STATEMENT OF THE ISSUE

Whether the School Board failed to properly conduct an initial evaluation, upon parental request, to determine if the student is a student with a disability and eligible for exceptional student education (ESE) services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*

PRELIMINARY STATEMENT

Petitioner filed a Request for Due Process Hearing (Complaint) on [REDACTED]. On the following date, the School Board forwarded the Complaint to DOAH, and the Complaint was assigned to Judge [REDACTED] [REDACTED] for further proceedings. On [REDACTED], the School Board filed a Notice of Insufficiency, Motion to Dismiss Claims Outside the Scope of a Due Process Hearing, and Motion to Exclude Attachments. On [REDACTED] [REDACTED], Judge [REDACTED] issued an Order on Notice of Insufficiency, limiting the scope of the due process hearing to one issue: “[t]he undersigned construes Petitioner’s Complaint as sufficiently alleging that Respondent failed to properly conduct an initial evaluation, upon parental request, to determine if the subject student is a student with a disability and eligible for ESE services pursuant to the IDEA.”

A telephonic pre-hearing conference with the parties was held on [REDACTED] [REDACTED], wherein the parties indicated that efforts had been made to coordinate a resolution session, but more time was requested to convene one. On [REDACTED] [REDACTED], Judge [REDACTED] entered an Order Extending Resolution Timeline and Requiring Response.

On [REDACTED], the School Board filed a Motion to Dismiss with Prejudice. A telephonic motion hearing was held on [REDACTED]. On [REDACTED] [REDACTED], Judge [REDACTED] issued an Order Denying Motion to Dismiss. On [REDACTED] [REDACTED], Judge [REDACTED] issued an Order Requiring Response, ordering the parties to provide “several mutually agreeable dates in which the parties are available to conduct the hearing; an estimate of the time required to conduct the hearing; and the parties’ preference as to the mode of conducting the hearing (in-person, video teleconference, or Zoom conference).”

The School Board responded to the Order Requiring Response by indicating availability during the week of [REDACTED]. On [REDACTED], Judge [REDACTED] issued a second Order Requiring Response, stating:

On [REDACTED], the undersigned issued an Order Requiring Response, directing the parties to communicate and provide the undersigned with several mutually agreeable dates to conduct the due process hearing. On [REDACTED], Respondent filed an Amended Notice of Unavailability and Response to Court, wherein it is represented that counsel for the undersigned will not be available from [REDACTED], through [REDACTED]. Respondent further requests that the matter be scheduled for hearing during the week of [REDACTED]. To date, Petitioner has not complied with the prior Order Requiring Response or otherwise advised of Petitioner's availability. Accordingly, it is

ORDERED that Petitioner shall, on or before [REDACTED], file a written response advising of Petitioner's availability and preference for scheduling the due process hearing. Failure to comply with this order shall result in this matter being scheduled during the time period requested by Respondent and shall be construed as an agreement to extend the due process timelines.

On [REDACTED], Petitioner filed a Pretrial Memorandum, indicating a preference for video or Zoom teleconferencing, but not indicating a preference for dates. Judge [REDACTED] issued a Notice of Hearing setting the due process hearing on [REDACTED]. On [REDACTED], Petitioner requested a continuance on the grounds that Petitioner had not had sufficient time to conduct discovery. On [REDACTED], Judge Resavage denied Petitioner's motion to continue the case for failure to show good cause for a continuance. On [REDACTED], this case was transferred to the undersigned for all further proceedings.

The due process hearing was held on [REDACTED], as duly noticed. Petitioner failed to comply with the five-day disclosure of proposed witnesses and exhibits, as required. The School Board complied with the five-day disclosure requirement.

Petitioner presented one witness: the [REDACTED]. School Board Exhibit 1 was admitted without objection. The School Board presented no witnesses.

After Petitioner presented [REDACTED] case, the School Board orally moved to dismiss the matter with prejudice. After hearing from both parties, the Motion to Dismiss with Prejudice was orally granted at the due process hearing.

The due process hearing Transcript was filed on [REDACTED]. Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to Petitioner. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. In [REDACTED], the student was found eligible for ESE services in the category of [REDACTED] and an Individualized Education Plan (IEP) was developed.

2. In late [REDACTED], the [REDACTED] requested related services in [REDACTED] and [REDACTED], and sought a [REDACTED] evaluation in order to determine eligibility in the category of [REDACTED]

3. The School Board sought and received consent from the parent to evaluate the student for [REDACTED]. Later, [REDACTED] revoked

9. To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on each agency's compliance with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990). Thus, parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205-06 (1982).

10. Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child." 20 U.S.C. § 1415(b)(1), (b)(3), and (b)(6).

11. Petitioner bears the burden of proof with respect to the claim raised in the Complaint. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). That is, as applied to this case, Petitioner bears the burden of establishing that the School Board failed to properly conduct a [REDACTED] evaluation, upon parental request, to determine if the student is a student with a [REDACTED] and eligible for related services.

12. Petitioner did not meet this burden of proof. The evidence instead established that the student's parent revoked [REDACTED] consent for the School Board to evaluate the student for [REDACTED].

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is dismissed with prejudice and all relief requested is denied.

DONE AND ORDERED this 10th day of September, [REDACTED], in Tallahassee,
Leon County, Florida.

S

[REDACTED]
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
Fax Filing (850) 921-6847
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 10th day of September, 2020.

COPIES FURNISHED:

[REDACTED], Esquire
Orange County Public Schools
445 West Amelia Street
Orlando, Florida 32801
(eServed)

[REDACTED], Esquire
Department of Education
325 West Gaines Street
Tallahassee, Florida 32399
(eServed)

[REDACTED], Educational Program Director
Department of Education
325 West Gaines Street
Tallahassee, Florida 32399
(eServed)

██████████, Dispute Resolution Program Director
Bureau of Exceptional Education
and Student Services
Department of Education
Turlinton Building, Suite 614
325 West Gaines Street
Tallahassee, Florida 32399-0400
(eServed)

Petitioner
(Address of Record-eServed)

XXXXXXXXXX, Superintendent
Orange County School Board
445 West Amelia Street
Orlando, Florida 32801-0271

██████████, General Counsel
Department of Education
Turlinton 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).