

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

vs.

Case No. 21-0325E

INDIAN RIVER COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

A due process hearing was held before Jessica E. Varn of the Division of Administrative Hearings (DOAH) on May 25, 2021, via Zoom video-conferencing.

APPEARANCES

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

For Respondent: Molly Lauren Shaddock, Esquire  
Sniffen and Spellman  
605 North Olive Avenue, 2nd Floor  
West Palm Beach, Florida 33401

STATEMENT OF THE ISSUES

Whether the School Board's August 31, 2018, Occupational Therapy (OT) reevaluation was appropriate; and

Whether the School Board failed to properly notify the student's parent of the March 13, 2019, Individualized Education Program (IEP) team meeting; and, if so, whether this alleged procedural violation resulted in an impediment to the student's right to a free and appropriate public education

(FAPE), or significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit.

PRELIMINARY STATEMENT

The request for a due process hearing (Complaint) was filed with the School Board on January 15, 2021. The matter was referred to DOAH on January 26, 2021. On February 1, 2021, the School Board filed a Motion to Dismiss Petitioner's Due Process Request, Notice of Insufficiency, and Memorandum of Law in Support, arguing that the issue regarding the appropriateness of the August 2018 OT reevaluation was time-barred by the applicable two-year statute of limitations found in 20 U.S.C. § 1415 and Florida Administrative Code Rule 6A-6.03311(9)(b).

On February 3, 2021, a pre-hearing telephonic conference was held, wherein the parties agreed to schedule the hearing for May 25 through 26, 2021, via Zoom video-teleconferencing. On February 5, 2021, the undersigned issued an Order finding the Complaint sufficient and denying the Motion to Dismiss, but allowing leave to reassert the argument at the due process hearing.

The due process hearing was held as properly noticed. The parties stipulated that the OT reevaluation was completed by August 2018. Petitioner, at the start of the hearing, also agreed that she had received the OT reevaluation by December 2018. Based on these stipulated facts, the undersigned ruled that the first issue, regarding the appropriateness of the August 2018 OT reevaluation, was time-barred. The only issue that was presented at the due process hearing, then, was the procedural issue of whether the parent received proper notice of the IEP meeting held on March 13, 2019.

Petitioner presented the testimony of [REDACTED]; and Petitioner Exhibits 9 and 25 were entered into the record. The School Board presented the testimony of [REDACTED]; and School Board Exhibit 10 was admitted into the record.

The Transcript of the due process hearing was filed on June 14, 2021. The parties agreed to file proposed orders by July 14, 2021, and extended the final order deadline to August 13, 2021. On July 14, 2021, the School Board filed a proposed final order, which was considered in the preparation of this Final Order.

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 male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

#### FINDINGS OF FACT

1. The student, in the Spring of 2019, was a fifth grader who was initially found eligible for exceptional student education (ESE) services in 2013, through the eligibility categories of Autism Spectrum Disorder, Speech Impairment, and Language Impairment.

2. The annual review for his IEP was scheduled for March 2019. On March 4, 2019, a Notice of Team Meeting form was completed by an ESE Resource Specialist, indicating that the IEP team would meet on March 13, 2019. The form was sent to the parent via the student's backpack, and through regular mail, in both English and [REDACTED] because the parent's primary language is [REDACTED].

3. The IEP team meeting was held as scheduled, but the parent did not attend. The meeting notes reflect concerns expressed by the parent, and the

IEP that was drafted also included many issues that were raised by the parent.

4. The meeting notes also reflect that the IEP would be sent to the parent for review, in both English and [REDACTED].

5. Petitioner presented no evidence, in the form of documentation or sworn testimony, establishing that [REDACTED] was unable to participate in the creation of the annual IEP in March 2019.

#### CONCLUSIONS OF LAW

6. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. *See* § 1003.57(1)(c); Fla. Admin. Code R. 6A-6.03311(9)(u).

7. Petitioner bears the burden of proof with respect to the issue raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

8. In enacting the Individuals with Disabilities Education Act (IDEA), Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A); *Phillip C. v. Jefferson Cty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). 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).

9. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *Bd. of Educ. v. Rowley*, 458 U.S. 176, 205-06 (1982). 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 FAPE. 20 U.S.C. § 1415(b)(1), (b)(3), & (b)(6).

10. The components of FAPE are recorded in an IEP, which, among other things, identifies the child's present levels of academic achievement and functional performance; establishes measurable annual goals; addresses the services and accommodations to be provided to the child, and whether the child will attend mainstream classes; and specifies the measurement tools and periodic reports that will be used to evaluate the child's progress.

20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320. "The IEP is the centerpiece of the statute's education delivery system for disabled children." *Andrew F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S. Ct. 988, 994 (2017)(quoting *Honig v. Doe*, 108 S. Ct. 592 (1988)). "The IEP is the means by which special education and related services are 'tailored to the unique needs' of a particular child." *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. at 181). School districts must also ensure that, to the maximum extent appropriate, children with disabilities are educated with children who are not disabled. 20 U.S.C. § 1412(a)(5)(A). In other words, the school district must endeavor to educate each disabled student in the least restrictive environment. *A.K. v. Gwinnett Cty. Sch. Dist.*, 556 Fed. Appx. 790, 792 (11th Cir. 2014).

11. In *Rowley*, the Supreme Court held that a two-part inquiry must be undertaken in determining whether a local school system has provided a student with FAPE. As an initial matter, it is necessary to examine whether the school district has complied with the IDEA's procedural requirements. *Rowley*, 458 U.S. at 206, 207. A procedural error does not automatically result in a denial of FAPE. *See G.C. v. Muscogee Cty. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, FAPE is denied only if the procedural flaw

impeded the students right to FAPE, significantly infringed the parents' opportunity to participate in the decision-making process, or caused an actual deprivation of educational benefits. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

12. In this case, Petitioner claims that the School Board committed a procedural error by failing to give the parent adequate notice of the IEP meeting scheduled for March 13, 2019. Petitioner, however, presented no evidence establishing this alleged procedural violation.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all requests for relief are denied.

DONE AND ORDERED this 11th day of August, 2021, in Tallahassee, Leon County, Florida.



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JESSICA E. VARN  
Administrative Law Judge  
1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 11th day of August, 2021.

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).