

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

SEMINOLE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 24-1422E

**,

*AMENDED AS TO DATE OF
ISSUANCE AND FILE DATE ONLY

Respondent.

_____ /

AMENDED FINAL ORDER

This case came before Administrative Law Judge (ALJ) Sara Marken of the Division of Administrative Hearings (DOAH) for final hearing held by Zoom conference on July 15, 2024.

APPEARANCES

For Petitioner: Stephanie K. Stewart, Esquire
School Board of Seminole County, Florida
400 East Lake Mary Boulevard
Sanford, Florida 32773

For Respondent: Respondent, pro se
(Address of Record)

STATEMENT OF THE ISSUE

Whether the assistive technology (AT) reevaluation conducted by the Seminole County School District (District) was appropriate.

PRELIMINARY STATEMENT

On February 16, 2024, Petitioner completed an AT reevaluation of Respondent. On February 23, 2024, Respondent's parent, through her educational advocate, notified Petitioner that she did not agree with the reevaluation and requested an independent educational evaluation (IEE)

at public expense. On March 8, 2024, Petitioner formally notified Respondent that it believed the evaluation was technically sound, valid, and reliable, and denied the parent's request for an IEE.

On April 12, 2024, pursuant to Florida Administrative Code Rule 6A-6.03311(6)(g)2., Petitioner filed a due process hearing request seeking a determination of the appropriateness of the AT reevaluation. A Case Management Order was issued on April 18, 2024. The court held a telephonic scheduling conference on May 20, 2024. The parties agreed to schedule the hearing on July 15, 2024, and to waive the final order deadline.

The final hearing was held on July 15, 2024, by Zoom conference. Petitioner presented the testimony of the following witnesses: [REDACTED], student staffing specialist; [REDACTED], augmentative communications specialist; and [REDACTED], compliance coordinator. Petitioner's Exhibits 1 through 8 were admitted into evidence, and the court took official recognition of the Florida Department of Education Technical Assistance *Paper-Assistive Technology for Students with Disabilities*. Respondent did not present any witnesses or exhibits.

Upon the conclusion of the due process hearing, both parties agreed to submit the proposed final orders within ten days after the Transcript is filed and the undersigned's final order within 20 days following the Transcript's filing. The Transcript of the due process hearing was filed on July 29, 2024. Proposed final orders were due by August 9, 2024; and the deadline for the Final Order was August 19, 2024. Petitioner filed a timely Proposed Final Order, which the undersigned considered in the drafting of this 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 male pronouns in this Final Order when referring to Respondent. The male pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

FINDINGS OF FACT

1. At the time of the due process hearing, the student was ■ years old and an ■ grade student at School A, a school within the District.
2. The student is eligible for exceptional student education (ESE) in the categories of Autism Spectrum Disorder (ASD) and Language Impaired (LI).
3. The student's disability impacts his ability to communicate. He uses multiple communications modalities, including some spoken words, verbal approximations, bringing items to his communication partner, leading his communication partner to a desired item/location, facial expressions, gestures, modified signs, and his alternative communication (AAC) device.
4. The student's AAC device is a high-tech voice output communication system that utilizes the Proloquo2Go software application. He has been using this system since elementary school. This software application provides the user access to a robust, customizable, vocabulary program. The student's device has been customized over the years to include vocabulary that is highly motivating for him.
5. On December 8, ■, the District convened a meeting at the parent's request. The team reviewed the student's progress monitoring data, including his progress on his current individualized education plan (IEP) goals. During the meeting, the parent requested reevaluations in AT, speech and language, and occupational therapy. The parent provided written consent for the AT reevaluation on December 11, ■.
6. The purpose of the reevaluation was to determine the student's current communication abilities, his needs within the educational environment, and to determine whether his current AT was appropriate.

7. The District assigned [REDACTED], an augmentative communication specialist, to conduct the AT reevaluation. [REDACTED] is a licensed speech-language pathologist and holds a certificate of clinical competency and speech-language pathology from the American Speech-Language and Hearing Association. She has worked as an augmentative communications specialist for the past three years. Previously, she worked as a speech-language pathologist for ten years.

8. [REDACTED] credibly testified that she was familiar with Respondent. She has been supporting his school since she became an augmentative communication specialist for the District.

9. [REDACTED] completed the AT reevaluation between December 13, [REDACTED], and February 16, [REDACTED]. She spent about six to eight hours conducting the evaluation. During that period, she observed the student in his classroom three times, interviewed and observed the professionals working with him—including his teacher, speech-language pathologist, and paraprofessional—and interviewed the student's mother and reviewed his IEP.

10. During the evaluation, the student showed an understanding of his AAC device as a tool to support his communication. He demonstrated the ability to navigate his device, and, on multiple occasions, used his device to initiate requests. [REDACTED] also observed staff using aided language stimulation to model language and communication within the student's educational environment. During the meetings with the student's school-based team and his mother, [REDACTED] provided additional resources to assist the team with programming the device and further customizing the vocabulary in the system.

11. ██████████ concluded that the student's current AAC device is appropriate and he continues to need his device to develop his communication skills. She noted his potential to further develop his communication skills using a high-tech voice output system. She provided several recommendations on how the IEP team can continue to work together to meet the student's needs at school.

12. Petitioner presented credible evidence that there is no defined criteria for conducting an AT evaluation. The IEP team determines what specific processes and procedures are needed to select the appropriate AT device. An AT evaluation is an ongoing process that requires the IEP team to annually review the student's needs and ensure the student's current technology is meeting those needs.

13. Respondent disagreed with the evaluation because ██████████ did not trial other AAC devices during her evaluation, yet ██████████ persuasively testified that new devices are only trialed if the IEP team determines that the student's current technology is not meeting his educational needs.

CONCLUSIONS OF LAW

14. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 1003.57(1)(b) and 1003.5715(5), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(6) and (9).

15. The Florida K-20 Education Code requires district school boards 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.

16. The Florida K-20 Education Code's imposition of the requirement that exceptional students receive special education and related services is necessary 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 Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012); *see also J.P. ex rel. Peterson 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 schoolchildren with a ‘free appropriate public education.’”).

17. 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 public expense. The circumstances under which a parent has a right to an IEE at public expense are set forth in 34 C.F.R. § 300.502(b):

Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

18. Similarly, rule 6A-6.0311(6) provides:

(a) A parent of a student with a disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the school district.

* * *

(g) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay either:

1. Ensure that an independent educational evaluation is provided at public expense; or

2. Initiate a due process hearing under this rule to show that its evaluation is appropriate or that the evaluation obtained by the parent did not meet the school district's criteria. If the school district initiates a hearing and the final decision from the hearing is that the district's evaluation is appropriate, then the parent still has a right to an independent educational evaluation, but not at public expense.

19. A district school board in Florida is not automatically required to provide a publicly funded IEE whenever a parent asks for one. A school board has the option, when presented with such a parental request, to initiate a due process hearing to demonstrate, by a preponderance of the evidence, that its

own evaluation is appropriate. *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the district school board can meet its burden and establish the appropriateness of its evaluation, it need not provide the requested IEE.

20. At issue here is whether Petitioner's AT reevaluation was appropriate. Reevaluation requirements are set forth in rule 6A-6.0331(7):

(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.

21. Following rule 6A-6.0331(7), the District timely conducted the AT reevaluation as a result of the parent's request during the meeting on December 8, 2023.

22. The Department of Education has promulgated additional requirements for reevaluations. Rule 6A-6.0331(8), entitled "Additional requirements for evaluations and reevaluations," provides:

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;
4. Whether the student needs special education and related services or, in the case of a reevaluation of the student, whether the student continues to need special education and related services; and,
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.

23. Additionally, rule 6A-6.03411(1)(c) defines assistive technology service as:

Assistive technology service means any service that directly assists a student with a disability in the selection, acquisition, or use of an assistive technology device. The term includes:

1. The evaluation of the needs of a student with a disability, including a functional evaluation of the student in the student's customary environment;

* * *

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

24. Petitioner presented sufficient evidence to establish that at the request of the parent, the IEP team determined that additional data, in the form of an AT reevaluation, was necessary to determine whether the student's current AT met his needs.

25. Petitioner presented sufficient evidence to establish that [REDACTED] was knowledgeable and qualified to administer the AT reevaluation.

26. [REDACTED] conducted the evaluation in the student's customary environment. The evaluation included observations of the student and the professionals he works with, as well as a review of the student's IEP and input from his parent. The evaluation provided relevant information to determine the student's ongoing need for AT in the form of a high-tech voice output system to access his education.

27. Petitioner met its burden of establishing that the AT reevaluation was appropriate and in compliance with the IDEA and Florida law.

ORDER

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

DONE AND ORDERED this 16th day of August, 2024, in Miami, Dade County, Florida.



SARA M. MARKEN
Administrative Law Judge
DOAH Miami Office

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Filed with the Clerk of the
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this 16th day of August, 2024.

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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).