

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SANTA ROSA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-2748E

** ,

Respondent.

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FINAL ORDER

Pursuant to notice, a due process hearing was held before the Division of Administrative Hearings (DOAH) by Administrative Law Judge Diane Cleavinger, on [REDACTED], in Milton, Florida.

APPEARANCES

For Petitioner: [REDACTED], Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

For Respondent: No appearance

STATEMENT OF THE ISSUES

The issues in this proceeding are whether Petitioner Santa Rosa County School Board's (School Board) psychoeducational evaluation of the Student was appropriate and whether the Student's request for a psychoeducational Independent Education Evaluation (IEE) at public expense should be denied.

PRELIMINARY STATEMENT

On [REDACTED], a due process complaint was filed with DOAH by Petitioner seeking approval of its psychoeducational evaluation and requesting that the Student's request for a psychoeducational IEE be denied. After two telephonic conferences with the parties, the final hearing was scheduled for [REDACTED]. On [REDACTED], the Student requested a continuance of the final hearing based, in part, on the Student's inability to prepare for the hearing due to a death in the family. The continuance was granted and the parties were ordered to file a written joint notice of availability by [REDACTED]. The Student did not comply with the Order, and, therefore, a telephonic pre-hearing conference was scheduled for [REDACTED]. Written notice of the pre-hearing teleconference was timely provided to the parties to allow participation in the pre-hearing teleconference. Petitioner participated in the pre-hearing teleconference. However, neither the Student, nor [REDACTED] parents, participated in the pre-hearing teleconference. On [REDACTED], a written Notice of Hearing was issued wherein the final hearing was scheduled for [REDACTED]. The parties were timely advised in the Notice of Hearing of the date, time, and location of the hearing.

At the hearing and despite proper notice, neither the Student, nor [REDACTED] parents appeared at the hearing. Petitioner did

appear at the hearing, presented the testimony of two witnesses and offered 9 exhibits, which were admitted into evidence.

At the conclusion of the hearing, a discussion with the parties regarding the post-hearing schedule occurred. Based on that discussion it was determined that proposed final orders were to be filed on or before [REDACTED], with the final order to follow by [REDACTED].

After the hearing, Petitioner filed a Proposed Final Order on [REDACTED]. The Student did not file a proposed final order. Petitioner's Proposed Final Order was accepted and considered in preparing this Final Order.

Additionally, unless otherwise indicated, all rule and statutory references contained in this Final Order are to the version in effect at the time the subject evaluation was conducted.

Finally, for stylistic convenience, [REDACTED] pronouns are used in the Final Order when referring to the Student. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to the Student's actual gender.

FINDINGS OF FACT

1. The Student was enrolled in the Santa Rosa County School District around [REDACTED]. Prior to that date, the Student was enrolled in public school in [REDACTED]. During that time, the Student was recognized as [REDACTED], [REDACTED], and eligible

for ESE services under the Individuals with Disabilities Education Act (IDEA). However, the parents revoked consent for such exceptional special education (ESE) services. As previously determined in DOAH Case No. [REDACTED], a case involving the same parties and the same time period, Respondent does not dispute that the Student is [REDACTED], or that [REDACTED], on occasion at home, causes some [REDACTED] behavior and intense focus on topics that interest or are of concern to [REDACTED]. There was no evidence that any of this behavior significantly interfered in the Student's ability to make adequate progress in school or conduct [REDACTED] in a socially appropriate manner.

2. At the time of the hearing, the Student was in [REDACTED] [REDACTED] and was currently enrolled in a [REDACTED]. [REDACTED] is [REDACTED] years old with a date of birth of [REDACTED]. As such the Student is an adult and all [REDACTED] educational rights have transferred to [REDACTED].

3. As found in the prior case, on [REDACTED], the Student's parents transmitted a letter to the School Board requesting an ESE evaluation. This letter began the referral process for determination of eligibility under IDEA and the School Board began within a reasonable amount of time to collect educationally relevant social, psychoeducational, developmental history, and other relevant information on the Student.

4. On [REDACTED], School Board staff emailed the Student's parents and advised that the School Board could not move forward with any evaluations without their consent to evaluate, which the parents had not provided.

5. On [REDACTED], one of the parents provided a signed, written consent for evaluations under IDEA, dated [REDACTED]. In filling out the form, the parent chose evaluations in the areas the parent desired, which included psychoeducational, language, and medical evaluations.

6. On [REDACTED], the Student's assigned guidance counselor advised the parent that the School Board was not going to conduct a medical evaluation since there was no educationally relevant need for such an evaluation. It was determined in the prior case that a medical evaluation of the Student was not educationally relevant to the Student's education. The School Board continued to propose that psychoeducational and language evaluations be conducted and were educationally relevant for the Student given [REDACTED] educational history.

7. On [REDACTED], the parent acquiesced in the School Board's request and provided an informed, written consent.

8. [REDACTED], a well-qualified, licensed school psychologist, conducted the psychoeducational evaluation. As part of [REDACTED] evaluation, [REDACTED] reviewed the Student's entire cumulative file, including previous IEPs and [REDACTED] then-current

Section 504 Plan. [REDACTED] also gathered information from the parents and school staff about the parents' concerns, which included independent living after graduation, organization, time management, and communication skills of the Student. The evidence demonstrated that the psychoeducational evaluation was thorough and assessed and evaluated a number of areas including, but not limited to, [REDACTED], [REDACTED].

The evidence demonstrated that the assessment methods used in the evaluation included the [REDACTED], the [REDACTED], [REDACTED], the [REDACTED], and the [REDACTED]. The evidence also demonstrated that these assessments were generally accepted, valid, reliable, normed and objective assessment methods in the relevant community.

Additionally, all of these tools were appropriate for the evaluation and provided accurate information about the Student's functional academic development. Further, the evidence showed that the evaluation met the requirements for such evaluations in state and federal law and were otherwise appropriate evaluations under IDEA.

9. In the psychoeducational evaluation, the Student scored [REDACTED] in [REDACTED] and [REDACTED]. During the student-input part of the evaluation, the Student reported to the school psychologist that [REDACTED] could be [REDACTED] and could perform better in

school if [REDACTED] put in more effort, especially as related to [REDACTED] performance in math class.

10. The school psychologist also obtained input from [REDACTED] and [REDACTED] (the Student's coach), all of whom were familiar with the Student in the school setting. [REDACTED] was asked to complete a checklist because the Student's teachers were not seeing characteristics of [REDACTED] in their classes. With respect to social skills, the Student's overall scores on school personnel rating scales demonstrated that [REDACTED] functioned as an average, non-disabled teenager. The only area in the psychoeducational evaluation with a clinically significant rating related to [REDACTED] behaviors, which has not been an issue in school for the Student.

[REDACTED] also scored the Student as [REDACTED] for changes in routine activities or behavior. Classroom teachers did not have the same observation as [REDACTED]. In terms of [REDACTED]

[REDACTED] and [REDACTED]), the Student was observed as being [REDACTED] compared to [REDACTED] same-age peers. Finally, with the exception of sensation seeking, the Student's self-reported scores were all typical compared to other same-age peers.

11. On the other hand, [REDACTED] parents' rating scales demonstrated significantly different observations. However, such

discrepancy in behavior is not unusual given the differences in the home and school environments.

12. [REDACTED], a well-qualified, [REDACTED] [REDACTED] ([REDACTED]) conducted the language evaluation. The parents reported to the [REDACTED] that the Student enjoys science but treats the rest of [REDACTED] classes as just something [REDACTED] has to do. The evidence demonstrated that such an attitude is typical of teenage students. In fact, the evidence demonstrated that the Student's attitude did not significantly impact [REDACTED] education. Indeed, the [REDACTED] observed the Student "was in the classroom just like any other student in the classroom. [REDACTED] was able to answer questions the teacher asked. [REDACTED] completed the work that was asked during the class time period, following the classroom directions. So all the expectations that were asked of [REDACTED] during that time period [REDACTED] was able to follow through with."

13. The [REDACTED] also evaluated the Student's [REDACTED] [REDACTED] involving the social aspects of language. None of the subjective teacher checklists reported concerns with [REDACTED] [REDACTED]. However, to objectively measure the Student's language skills, the [REDACTED] administered the [REDACTED] and [REDACTED], 2nd Edition ([REDACTED]) and the [REDACTED], 2nd Edition ([REDACTED]-[REDACTED]) standardized assessments. Both of these assessments are generally recognized standardized assessments in the relevant community for [REDACTED].

14. The evidence demonstrated that the Student's performance on the standardized assessments were in the average/normal range for [REDACTED] chronological age and did not raise any ESE concerns regarding [REDACTED] language skills. As such, the better evidence demonstrated that the Student did not have a need for ESE language services. However, relevant to this case, the evidence also showed that the language evaluation met the requirements for such evaluations in state and federal law and was otherwise an appropriate evaluation under IDEA.

15. On [REDACTED] even though the school psychologist had completed [REDACTED] psychoeducational evaluation, [REDACTED] the School Board's program facilitator who oversees the [REDACTED] program, observed the Student in class, because the school psychologist wanted to see if there was additional insight that could be gained on the Student since testing was not demonstrating a need for ESE services in school and [REDACTED] teachers were not seeing red flags indicating an educational or social need for ESE services in class.

16. [REDACTED] observed the Student during [REDACTED] English and observed the Student "[REDACTED]." [REDACTED] testified that a lot of times [REDACTED] is able to see [REDACTED] students pretty quickly during observations; however, [REDACTED] was not able to do so with this Student. During the observation, the Student sat with [REDACTED] peers and was a part of the group. [REDACTED] did not demonstrate

social difficulties and the evidence did not demonstrate that the Student had such difficulties.

17. On [REDACTED], within a reasonable time after the evaluations were complete, an eligibility meeting was held, and the Student was found eligible under IDEA in the area of [REDACTED]. The evidence did not demonstrate that any other areas of eligibility were appropriate for the Student or needed to be assessed by the School Board. The School psychologist and an [REDACTED] who could interpret the results of the evaluations were present to discuss the evaluations. The Student's parents were invited as well and attended the meeting. The meeting notice also listed the Student as a person who may attend. However, for unknown reasons, the Student did not attend the meeting. The evidence showed that the appropriate people participated in the meeting and that the IEP team was appropriately constituted. However, relevant to this case and as noted above, the evidence was clear that the [REDACTED] psychoeducational and language evaluations met all the requirements for such evaluations under Florida law, and adequately identified the Student's psychological, educational and academic needs. Given these facts, the evidence did not demonstrate a need for an independent psychoeducational evaluation or language evaluation at public expense.

CONCLUSIONS OF LAW

18. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. See §§ 120.65(6) and 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

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

20. District school boards are required by the Florida K-20 Education Code to provide for an "appropriate program of special instruction, facilities, and services for exceptional students as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(1) & 1003.57, Fla. Stat.

21. 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 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).

22. 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), which provides as follows:

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.

23. Florida law, specifically rule 6A-6.03311(6), provides similarly as follows:

(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.

(h) If a parent requests an independent educational evaluation, the school district may ask the parent to give a reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the school district's evaluation.

(i) A parent is entitled to only one (1) independent educational evaluation at public expense each time the school district conducts an evaluation with which the parent disagrees.

24. These provisions make clear that 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—without unnecessary delay—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 school board is able to meet its burden and establish the appropriateness of its evaluation, it is relieved of any obligation to provide the requested IEE.

25. To satisfy its burden of proof, the School Board must demonstrate that the assessments at issue complied with rule 6A-6.0331(5), which sets forth the elements of an appropriate evaluation. Rule 6A-6.0331(5) provides as follows:

(5) Evaluation procedures.

(a) In conducting an evaluation, the school district:

1. Must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student within a databased problem solving process, including information about the student's response to evidence-based interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (EP), including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;

2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and,

3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each school district must ensure that assessments and other evaluation materials and procedures used to assess a student are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis;

2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically,

developmentally, and functionally, unless it is clearly not feasible to do so;

3. Used for the purposes for which the assessments or measures are valid and reliable; and,

4. Administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials and procedures shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.

(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

(f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability.

26. 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 evaluations. In conducting the evaluation, the School Board "must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE." Fla. Admin. Code R. 6A-6.0331(5)(a)2. To the contrary, the School Board "must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student." Fla. Admin. Code R. 6A-6.0331(5)(a)1. Further, the student shall be assessed in "all areas related to a suspected disability" and an evaluation "shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability." Fla. Admin. Code R. 6A-6.0331(5)(f) and (g). Given this criteria, the evidence demonstrated that the evaluations performed by the School Board in determining the Student's eligibility were complete and appropriate for the Student. Additionally, the evidence demonstrated that the Student was assessed in all areas and that the evaluations otherwise met IDEA requirements.

27. Based on the Findings of Fact as stated herein, the School Board has proven that its psychoeducational evaluation fully complied with rule 6A-6.0331(5). In particular, the evaluation was conducted by trained and knowledgeable professionals who utilized, and properly administered, a variety of valid instruments that yielded reliable and comprehensive information concerning the Student's educational needs. Further, the evidence showed that the evaluation conducted by Petitioner in [REDACTED] investigated all the areas of suspected disabilities at the time. Since the [REDACTED] psychoeducational evaluation was appropriate, the Student's request for a psychoeducational IEE at public expense is denied. However, although the Student is not entitled to an IEE at public expense, the parent is free to present a psychoeducational evaluation obtained at private expense to the School Board, the results of which the School Board is required to consider. See Fla. Admin. Code R. 6A-6.0331(6)(j)1. (providing that if a parent "shares with the school district an evaluation obtained at private expense . . . [t]he school district shall consider the results of such evaluation in any decision regarding the provision of FAPE to the student, if it meets appropriate district criteria").

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. The School Board's psychoeducational evaluation was appropriate, and met all the criteria set forth in Florida Administrative Code Rule 6A-6.0331(5).

2. Respondent's request for a psychoeducational IEE at public expense is denied.

DONE AND ORDERED this 15th day of January, 2020, in Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER
Administrative Law Judge
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Filed with the Clerk of the
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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).