

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

VOLUSIA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 19-5717E

\*\* ,

Respondent.

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FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [REDACTED], in Daytona Beach, Florida.

APPEARANCES

For Petitioner: [REDACTED], Esquire  
Wright & Casey, P.A.  
340 North Causeway  
New Smyrna Beach, Florida 32169

For Respondent: No appearance

STATEMENT OF THE ISSUES

The issues in this case are whether the Petitioner Volusia County School Board's (School Board or School District) 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 the School Board seeking approval of its psychoeducational evaluation and requesting that the Student's request for a psychoeducational IEE be denied. Thereafter, written notice scheduling a telephonic pre-hearing conference for [REDACTED], was timely provided to the parties to allow participation in the pre-hearing teleconference and have input in the scheduling of the final hearing. Petitioner participated in the pre-hearing teleconference. However, neither Student, nor [REDACTED] parents, participated in the pre-hearing teleconference. Following the pre-hearing conference, 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.

Despite proper notice, neither Student, nor [REDACTED] parents appeared at the hearing. Petitioner did appear at the hearing, presented the testimony of two witnesses and offered 21 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]. On [REDACTED], an

Order on Post-Hearing Submissions was issued and provided to both parties.

On [REDACTED], Petitioner filed a Proposed Final Order. Student did not file a proposed final order. Petitioner's proposed 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 psychoeducational evaluation was conducted.

Finally, for stylistic convenience, [REDACTED] pronouns are used in this 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 public school with the School Board on [REDACTED], when the Student was enrolled mid-year in the [REDACTED] grade. [REDACTED] was placed in general education classes with non-disabled peers. Prior to enrolling with the District, the Student was home schooled for [REDACTED], [REDACTED], and the first half of [REDACTED] [REDACTED]. At the time of the hearing, the Student was enrolled in [REDACTED] grade at an elementary school operated by the District. While in school, the Student did not struggle socially and was liked by both teachers and peers.

2. On [REDACTED], the School District convened a Problem Solving Team in response to the Parents' concerns that the Student "was barely treading water last year and [REDACTED] the [REDACTED]." The Problem Solving Team determined that the Student needed assistance with the pacing of the material and to improve attendance.

3. On [REDACTED], the School District, with the Parents' consent, screened the Student's hearing and vision. Both were normal.

4. On [REDACTED], the Parents' consented to a psychoeducational assessment of the Student to determine eligibility for exceptional student education (ESE) services because there was a concern regarding the Student's academic progress in the areas of spelling, number sense, writing, reading, and math.

5. The evaluation was to assess the areas of Intellectual/Cognitive Functioning, including math problem solving, spelling, and reading; review academic achievement; review Response to Intervention (RTI) data; and review the Student's academic progress.

6. A psychoeducational evaluation of the Student and review of data was completed on [REDACTED], by the school psychologist who was familiar with the Student and well-qualified to perform the evaluation. The evidence showed that, as part of

evaluation, the school psychologist reviewed the Student's education records (including grades, Florida Standard Assessment (FSA) scores, RTI data and progress monitoring data), and administered the [REDACTED], 3rd Edition ([REDACTED]). The evaluation covered the areas for [REDACTED] and [REDACTED].

7. On the [REDACTED], the Student had some [REDACTED] areas and some [REDACTED] areas. In fact, the Student's [REDACTED] areas where [REDACTED] tested well were not typically in the areas that relate to [REDACTED] [REDACTED], such as [REDACTED] or [REDACTED] areas. The Student tested [REDACTED] in [REDACTED] and [REDACTED]. The Student also showed a [REDACTED] in [REDACTED], which is associated with [REDACTED] and [REDACTED].

8. Additionally, the school psychologist collected and reviewed Peer Comparison Data, obtained information from the parent, as well as interviewed and observed the Student across a variety of academic and non-academic settings. All of these tools were appropriate for the evaluation and provided accurate information about the Student's functional academic development. In essence, the evidence demonstrated that in conducting the evaluation, the school psychologist reviewed the Student's records; observed the Student at school in a variety of settings; interviewed teachers; interviewed the Student; utilized appropriate, normed, and valid objective rating scales and

assessments; covered all the areas of suspected disability at the time; and met the requirements for evaluations as found in Florida Administrative Code Rule 6A-6.0331(5).

9. A report of the evaluation was finalized on [REDACTED]. Overall, the Student showed [REDACTED] in [REDACTED] and [REDACTED] skills, with specific [REDACTED] in [REDACTED] and [REDACTED]. The evaluation recommended a meeting be held to discuss the results of the evaluation and the best educational plan for the Student.

10. After the evaluation report was finalized, an individualized education plan (IEP) meeting with a properly constituted IEP team was scheduled for [REDACTED], to consider, among other things, the results of the psychoeducational evaluation and to further determine eligibility for ESE services. Required IEP team members attended the meeting. The school psychologist and the parent also attended the meeting.

11. During the meeting, the school psychologist presented [REDACTED] evaluation to the team and answered questions. The team reviewed the report and considered other input from the parent and team members. After that review, the IEP team determined that the Student was eligible for ESE services in the area of [REDACTED].

12. That same day, after eligibility was determined, the IEP team, which included the Parents, held an IEP meeting. An

appropriate IEP was created, with the Parents' approval, and put in place for the Student. Specifically, the IEP placed the Student in the general education setting with support facilitation provided to the Student for [REDACTED], [REDACTED], and [REDACTED]. Accommodations, including, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and use of [REDACTED] was also provided to the Student in the [REDACTED].

13. On [REDACTED], the School District convened an appropriate IEP team, which included the Parents, to develop and update the IEP for the Student. At the IEP meeting, the Parents expressed a concern that the Student was [REDACTED] progressing as [REDACTED] as they felt [REDACTED] should. After reviewing relevant information and input from team members, an IEP was created with the Parents' approval and put in place for the Student.

14. However, during the [REDACTED], meeting, the Parents, in a [REDACTED] manner, requested an IEE of the Student to look at processing and to investigate whether or not the Student had [REDACTED] and/or [REDACTED] because they thought additional testing was necessary, including a "[REDACTED]".<sup>1/</sup> However, as noted above, the evidence was clear that the [REDACTED] psychoeducational evaluation met all the requirements for such evaluations under Florida law, and adequately identified the Student's psychological, educational, and academic needs. There was no evidence that demonstrated further testing relative to

learning styles was necessary to develop an appropriate educational plan for the Student. As such, the evidence did not demonstrate a need for an independent psychoeducational evaluation at public expense.

CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. § 1003.57(1)(b), Fla. Stat., and Fla. Admin. Code R. 6A-6.03311(9)(u).

16. As the party seeking relief, Petitioner has the burden of proving all elements of its claim. Schaffer ex. rel. Schaffer v. Weast, 126 S. Ct. 528 (2005). See also M.H. v. Broward Cty. Sch. Bd., Case No. 03-0621E (Fla. DOAH May 27, 2003)(citing Devine v. Indian River Cty. Sch. Bd., 121 F.3d 576 (11th Cir. 1997)); J.R. v. Duval Cty. Sch. Bd., Case No. 03-1132E (Fla. DOAH June 24, 2003)(citing Fla. Dep't. of Trans. v. J.W.C. Co., 396 So. 2d 778 (Fla. 1st DCA 1981)).

17. 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.

18. 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).

19. 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.

20. 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.

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(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.

21. 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 Cty. 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.

22. 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.

23. 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 parents are free to present a psychoeducational evaluation obtained at private expense to the School Board, the results of which the School District is required to consider. See Fla. Admin. Code R. 6A-6.03311(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. The Student's request for a psychoeducational IEE at public expense is denied.

DONE AND ORDERED this 21st day of January, 2020, in  
Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER  
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Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of January, 2020.

ENDNOTE

<sup>1/</sup> The parents also wanted the District to evaluate the Student for possible behavior issues related to parentally-perceived anxiety by the Student. The District agreed to such testing and parental consent for the same was obtained during the IEP meeting. The second evaluation was completed prior to the hearing in this matter and a future IEP team meeting was scheduled. However, at the time of the hearing, the IEP team had not met to review, among other things, the second evaluation. More importantly, the second evaluation in [REDACTED] is not at issue in this case.

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).