

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

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Petitioner,

Case No. 21-0324E

vs.

INDIAN RIVER COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

A due process hearing was held in this matter before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on March 29 and 30, and April 27 and 28, 2021, via Zoom video conference.

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 reevaluation and determination of ineligibility for occupational therapy was appropriate; and

Whether the parent received proper notice of one Individualized Education Program (IEP) meeting held on October 16, [REDACTED], which was held without the parent being present.

PRELIMINARY STATEMENT

Petitioner filed a request for a due process hearing (Complaint) on December 17, 2020. The due process hearing was originally scheduled for March 15 and 16, 2021, but by agreement of the parties, it was rescheduled for March 29 and 30, 2021.

With agreement from both parties, the due process hearing was held as scheduled, by Zoom video conference. The transcript reflects the exhibits introduced and admitted into evidence.

Testimony was heard from the following witnesses: [REDACTED], a resource specialist; [REDACTED], an Exceptional Student Education (ESE) teacher; [REDACTED], an occupational therapist; [REDACTED], a speech and language pathologist; [REDACTED], a general education teacher; and [REDACTED], a local education agency (LEA) representative for the School Board.

At the conclusion of the due process hearing, the parties were given the option to file proposed final orders 30 days after the filing of the transcript, and agreed that the Final Order would be entered 60 days after the filing of the transcript. The Transcript was filed with DOAH on May 12, 2021. The School Board timely 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 female pronouns in this Final Order when referring to Petitioner. The female pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

## FINDINGS OF FACT

### Stipulated Facts

1. The student is ■ years old and, at the time of the due process hearing, in ■ grade. She is eligible for ESE in the categories of Specific Learning Disability (SLD) and Speech Impairment (SI).

2. The student was evaluated for occupational therapy services and language impairment, and found ineligible for both. The parent requested an independent educational evaluation (IEE) in the field of occupational therapy (OT), and the School Board agreed to provide the IEE at no cost to the parent. The parent refused to select any of the offered providers.

### Occupational therapy eligibility

3. The two-year period prior to the filing of the Complaint begins in December of ■. However, some factual findings in this Final Order will reach back further in the past simply to aid in the understanding of the issues presented in this case.

4. In the Fall of ■, the parent requested that the student be evaluated for OT. No members of the school staff saw a need for OT, but a full evaluation was completed nonetheless.

5. The Fall ■ OT evaluation found that the student's fine motor, handwriting, and all school-related activities were within normal limits. Based on the OT evaluation, the student was not found eligible for ■ services.

6. In August of ■, the student was reevaluated for OT services, once again prompted by a parental request. Much like the previous year, the school staff saw no need for OT services.

7. In the ■ OT re-evaluation, which was done over the course of several days, ■ assessed the student in the general education classroom, one-on-one, and in the resource room, and ■ conducted the following evaluations on the student: record reviews; teacher interviews; observations; Beery-Buktenica Developmental Test of Visual Motor

Integration (VMI); BOT-2 Short Form; Sensory Processing Measure; The Print Tool; and Test of Visual Perceptual Skills, 3rd Addition (TVPS-3).

8. While assessing the student, [REDACTED] observed that the student appeared to be functioning like [REDACTED] classmates in the general education classroom.

9. To the extent that the student's scores were below average, [REDACTED] explained that this was due to the student completing the task a bit slower than the allotted time.

10. Ultimately, [REDACTED] found that the student was functional in the classroom setting, but recommended that the student be provided extra time to complete tasks and that she be given short breaks during the school day. Both of these recommendations were placed in the next IEP drafted for the student.

11. The results of the OT re-evaluation were reviewed in detail at four different IEP meetings, all of which the parent attended. Those IEP meetings were held in November [REDACTED], January [REDACTED], March [REDACTED], and September [REDACTED]. The parent had ample opportunity to ask questions and express concerns.

12. Since the parent is not fluent in English, a translator was available for every IEP meeting, to ensure that the parent could meaningfully participate.

13. At the September [REDACTED] IEP meeting, the IEP team finalized its decision on eligibility for OT, and found that the student was not eligible. Only the parent disagreed.

14. The parent was provided with prior written notice and informed that she could request an IEE in OT. The parent did request the IEE, and the School Board agreed to provide an IEE at public expense. The parent ultimately refused to select an IEE provider, choosing instead to file the request for a due process hearing.

15. At the due process hearing, the parent provided no evidence of why the student should have been found eligible for OT services, and failed to provide any evidence establishing that the OT reevaluation was inappropriate.

Parental Notice of October [REDACTED] IEP meeting

16. [REDACTED], who testified at the due process hearing and whose testimony was uncontroverted, sent the IEP meeting notice to the parent for the October [REDACTED] IEP team meeting. [REDACTED] contacted the parent via e-mail on September 21, [REDACTED], to provide numerous possible IEP meeting dates in October prior to scheduling the IEP team meeting. Since the parent did not respond to [REDACTED] email, which had requested that the parent choose a date for the October IEP team meeting, [REDACTED] asked the school principal to forward her email to the parent to ensure that the parent received it. [REDACTED] also sent a hard copy of the October 16, [REDACTED], IEP team meeting notice to the parent in the U.S. Mail, as well as by certified mail.

17. The documents were all sent to the physical address on file for the parent, and the emails were sent to the same email address that the parent had used in the past.

18. The IEP meeting was held, as scheduled, without the parent being present. The IEP team changed some of the services to both reduce some services and provide more support with some services. The student was reading at grade level and had made progress on communication goals; therefore, the English Language Arts (“ELA”) services were slightly reduced. In math, the IEP team increased the services to provide individualized support. As to speech services, the IEP team changed the service model from small group to one-on-one services to provide extra support. The parent was sent the IEP and all required documentation via the U.S. postal service.

19. On November 3, [REDACTED], [REDACTED] sent an email to the parent explaining that the meeting had been held after multiple attempts were made to schedule and confirm a meeting date. In that same

correspondence, [REDACTED] also reminded the parent that the drafted IEP and procedural safeguards had been sent via US Postal Service. A Notice of Prior Written Notice regarding the changes to services was also mailed to the parent. In that same email correspondence, [REDACTED] encouraged the parent to provide feedback.

20. According to [REDACTED], the parent had often requested IEP meetings which were always held at her request. After the October IEP meeting, the parent never asked the IEP team to reconvene.

21. The parent presented no evidence establishing that the School Board failed to give proper notice of the October IEP meeting, and provided no evidence establishing that she was prevented from meaningfully participating in the IEP process, or that the student has been denied a free and appropriate public education (FAPE).

#### CONCLUSIONS OF LAW

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

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

24. 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).

25. 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).

26. To satisfy the IDEA's substantive requirements, school districts must provide all eligible students with FAPE, which is defined as:

[S]pecial education services that –

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;
- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

27. 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 indicates

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).

28. 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 206-07. 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).

29. In this case, Petitioner's Complaint contains one alleged procedural violation: inadequate notice of an IEP meeting. While it is true that the IEP team held an IEP meeting and drafted an annual IEP without the parent's presence, it is also true that the School Board presented uncontroverted testimony and documentary evidence establishing that proper meeting notice was given to the parent in multiple ways, and that the parent was given ample opportunity to provide input for that October IEP.

30. Furthermore, the parent provided no evidence that the alleged 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.



31. Turning to the issue of the OT re-evaluation, the undersigned is guided by Florida Administrative Code Rule 6A-6.0331(7) and (8), which provides, in pertinent part, as follows:

(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.

\* \* \*

(8) Additional requirements for evaluations and reevaluations. As part of an initial evaluation, if appropriate, and 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:

1. Whether the student is a student with a disability or, in case of a reevaluation of the

student, whether the student continues to have a disability;

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 Page 19 of 25 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.

32. Applying the above principles to the facts established in this case, it is evident that the OT re-evaluation done in [REDACTED] complied with all legal requirements and it was appropriate for the IEP team to rely on the OT evaluation conducted by [REDACTED]. In short, Petitioner failed to establish that the OT re-evaluation was inappropriate or incomplete, failed to establish that the student needs OT services, and failed to put forth any evidence establishing that the IEP team erred when finding that the student was not eligible for OT services.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all relief requested is DENIED.

DONE AND ORDERED this 21st day of June, 2021, in Tallahassee, Leon County, Florida.

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JESSICA E. VARN  
Administrative Law Judge  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of June, 2021.

COPIES FURNISHED:

Amanda W. Gay, Esquire  
Department of Education  
325 West Gaines Street  
Tallahassee, Florida 32399

Petitioner  
(Address of Record)

Terry Joseph Harmon, Esquire  
Sniffen & Spellman, P.A.  
123 North Monroe Street  
Tallahassee, Florida 32301

Julian Moreira  
Educational Program Director  
Florida Department of Education  
325 West Gaines Street  
Tallahassee, Florida 32399

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

David Moore, Superintendent  
Indian River County School Board  
6500 57th Street  
Vero Beach, Florida 32967

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).