

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

ST. JOHNS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 21-3420E

\*\*,

Respondent.

/

FINAL ORDER

This case came before Administrative Law Judge (“ALJ”) Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing by Zoom conference on January 6, 2022.

APPEARANCES

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

For Respondent: Respondent’s parents, pro se  
(Address of Record)

STATEMENT OF THE ISSUE

Whether Petitioner’s occupational therapy (“OT”) reevaluation of Respondent is appropriate.

PRELIMINARY STATEMENT

On November 10, 2021, Petitioner, St. Johns County School Board (“School Board” or “Petitioner”), filed a request for due process hearing,

seeking a determination of the appropriateness of its OT reevaluation of Respondent. Petitioner's hearing request resulted from its decision to deny the request of Respondent's mother for an independent OT evaluation at public expense. On November 15, 2021, a telephonic status conference was held with Respondent's parents, and counsel for the School Board, during which the parties agreed to extend the undersigned's deadline for issuance of the final order.

On November 16, 2021, the undersigned issued a Notice of Hearing and Order Extending Deadlines, setting the final hearing for January 6, 2022, live in St. Augustine, Florida. On January 4, 2022, a pre-hearing conference was held with Respondent's parents, and counsel for the School Board, during which the parties agreed to the final hearing being held by Zoom conference.

The final hearing was held on January 6, 2022, by Zoom conference. At the hearing, Petitioner presented the testimony of [REDACTED], a licensed occupational therapist employed by Petitioner. Petitioner's Exhibits 1 through 4 were received into evidence. Respondent's parents testified on their own behalf. Respondent's Exhibits 1 through 3 and 5 through 8 were received into evidence. At the final hearing, the parties agreed that their proposed final orders would be filed within ten days after the final hearing transcript is filed at DOAH, and that the undersigned's final order would be due within 20 days after the final hearing transcript is filed at DOAH.

The one-volume final hearing Transcript was filed at DOAH on January 28, 2022, and, therefore, the parties' proposed final orders were due by February 7, 2022. Petitioner timely filed a Proposed Final Order. However, Respondent did not file a Proposed Final Order until February 11, 2022, four days late. There is no prejudice to Petitioner because of Respondent's late-filed Proposed Final Order. Accordingly, the parties'

Proposed Final Orders have been considered in the preparation of this Final Order.

For stylistic convenience, the undersigned will use masculine pronouns in this Final Order when referring to Respondent. The masculine pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

All citations to the Florida Statutes and Florida Administrative Code are to the 2021 version, unless otherwise indicated.

#### FINDINGS OF FACT

1. Respondent is currently [REDACTED] years old and a [REDACTED]-grade student in a general education class at School A, a public school in Petitioner's school district.

2. Prior to the OT reevaluation at issue in this proceeding, Respondent was determined eligible for and received exceptional student education ("ESE") services in the areas of other health impairment, specific learning disability, and speech impairment.

3. [REDACTED] is a board-certified, licensed occupational therapist employed by Petitioner for the past 14 years. Before that, [REDACTED] worked for 14 years as an occupational therapist for another school board in Florida. Thus, [REDACTED] has a total of 28 years of experience working as an occupational therapist in Florida K-12 public schools, during which she has conducted over 1,000 OT evaluations in school settings.

4. On June 4, [REDACTED], at the very end of the [REDACTED] school year, Respondent was referred to [REDACTED] for an OT reevaluation of Respondent following the individualized education program ("IEP") team's request and parental consent.

5. As part of her OT evaluation, [REDACTED] reviewed Respondent's cumulative records, IEPs, and a private May 20, [REDACTED], psychoeducational report of Respondent prepared by [REDACTED], Psy.D., a private clinical psychologist.

6. As part of her review, [REDACTED] noted that Respondent has a private diagnosis of Attention-Deficit/Hyperactivity Disorder ("ADHD") and that he is provided accommodations in the school setting through his IEPs, such as oral presentation of items and answer choices, directions repeated and clarified, verbal encouragement, extended time, and assignments or tests administered in a small group setting.

7. [REDACTED] conducted at least three observations of Respondent, which is typical for an OT evaluation. [REDACTED] also communicated with Respondent's classroom teacher, ESE teacher, and speech therapists regarding their observations of Respondent's abilities in the school setting, including daily living skills, reversal of letters, and handwriting. Respondent's classroom teacher had no concern that Respondent's writing ability, as compared to his peers', was not at grade level. Respondent's classroom teacher did not disclose any concerns with Respondent's writing ability or reversal of letters. In addition, [REDACTED] did not observe any reversals in Respondent's handwriting during her observations of Respondent.

8. [REDACTED] evaluation included an assessment of Respondent's gross motor skills and fine motor skills/perceptual skills. Gross motor skills reflect an individual's ability to move through the environment, as well as their arm strength and movement. Fine motor skills involve an individual's strength, speed, the ability to use his hands to manipulate school tools (i.e., use of pencils, staplers, scissors), and perceptual skills, meaning an individual's ability "to take in the information and then present it back; how you perceive what you are seeing."

9. With regard to [REDACTED] evaluation of Respondent's fine motor skills, she observed that Respondent is right-handed and uses a good tripod pencil grasp. He displays high average visual motor skills, which is the ability to accurately copy many shapes on a page. Respondent's visual-spatial processing skills, which means having the ability to look at a picture and then interpret it to see "which one goes best with that," is average. Respondent displayed good focus during testing, stating "that he was looking for the best choice." Respondent is able to perform in-hand manipulation from finger to palm and back, though he demonstrates more difficulty with palm to finger due to his small hand size.

10. [REDACTED] tested Respondent's fine motor skills speed, finding his fine motor speed to be decreased, but functional. [REDACTED] observed that Respondent is able to hold and trace a stencil with good success for his age and that his scissor-cutting skills are very good. During writing tasks, [REDACTED] observed Respondent benefitting from prompts to start writing on the right side of the paper in order to fit all of his work in the allotted space. [REDACTED] also observed that Respondent is able to copy work from board to paper with no omissions or reversals.

11. [REDACTED] also administered the Wide Range Assessment of Visual Motor Abilities ("WRAVMA") to Respondent. [REDACTED] has administered the WRAVMA "[h]undreds of times." The WRAVMA is a standardized assessment commonly used in the school setting for students ages 3 through 17 to identify areas for potential OT services. The WRAVMA provides information regarding a student's visual-motor, visual-spatial, and fine motor skills. The WRAVMA is generally accepted among occupational therapists as an appropriate standardized tool.

12. [REDACTED] administered the WRAVMA to Respondent in accordance with the author's instructions. [REDACTED] had no concerns that Respondent was unable to understand the assessment. The assessment was administered in Respondent's native language and is not racially or culturally biased.

████████ found the peg board portion of the WRAVMA fine motor skills evaluation was not likely relevant, because she only identified issues with Respondent's handwriting speed.

13. Based on the results of her evaluation, ██████████ did not recommend that Respondent receive OT, although the ultimate decision was made by Respondent's IEP team. Although ██████████ did not recommend OT for Respondent, she included recommendations in her written evaluation report that may be helpful to Respondent. Respondent's parents disagreed with ██████████ reevaluation and requested an independent educational evaluation ("IEE").

14. In sum, the credible and persuasive testimony presented by ██████████ and the preponderance of the evidence at hearing demonstrate that ██████████ reevaluation of Respondent is appropriate.

#### CONCLUSIONS OF LAW

15. DOAH has jurisdiction over the subject matter of this proceeding and of the parties pursuant to section 1003.57(1)(b), Florida Statutes, Florida Administrative Code Rule 6A-6.03311(6)(g)2. and (9)(u), and 34 C.F.R. § 300.502(b)(2)(i).

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

17. 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).

18. Under the IDEA, a parent of a child with a disability is entitled, under certain circumstances, to obtain an IEE of the child at public expense. 34 C.F.R. § 300.502(b)(2)(i); Fla. Admin. Code. R. 6A-6.03311(6)(i). If a parent requests an IEE, the school district must, without unnecessary delay, either provide the IEE at public expense or initiate a due process hearing to demonstrate, by a preponderance of the evidence, that its reevaluation is appropriate. Fla. Admin. Code. R. 6A-6.03311(6)(g)2.; *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the school district is able to meet its burden and establish the appropriateness of its reevaluation, it is under no obligation to provide the requested IEE.

19. To show that its reevaluation is appropriate, Petitioner must demonstrate, pursuant to rule 6A-6.0331(5)(b), that the assessments and other evaluation materials and procedures used to assess Respondent were:

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.

20. Rule 6A-6.0331(7) further provides, in pertinent part:

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. Rule 6A-6.0331(8) further provides, in pertinent part:

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;

\* \* \*

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.

22. Turning to the instant case, Petitioner proved, by a preponderance of the evidence, that its OT reevaluation of Respondent is appropriate. [REDACTED] was appropriately trained, knowledgeable, and qualified to evaluate and assess Respondent.

23. As part of her reevaluation, [REDACTED] reviewed Respondent's educational records (including work samples) and considered input from Respondent's classroom teacher, ESE teacher, and speech therapists. She also employed the use of a standardized assessment commonly used in the school system to identify areas (including visual-motor, visual-spatial, and fine motor skills) for potential OT services (the WRAVMA). The WRAVMA is a generally accepted standardized assessment utilized by occupational therapists in school settings. [REDACTED] administered the WRAVMA in Respondent's native language and it is not racially or culturally biased.

24. [REDACTED] applied her skilled observations of Respondent performing functional tasks, another acceptable form of an assessment. [REDACTED] evaluated Respondent's handwriting and coordination, grasping skills, motor planning

skills, and use of common tools used in school (pencils, a stapler, and scissors), and performed the evaluation in the educational environment.

25. While the private evaluation report of [REDACTED], and a letter from [REDACTED] were received into evidence, they are insufficient to support the conclusion that [REDACTED] OT reevaluation is inappropriate. [REDACTED] is a clinical psychologist and [REDACTED] is a pediatrician. They are not occupational therapists.

ORDER

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

DONE AND ORDERED this 14th day of February, 2022, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of February, 2022.

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).