

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

VOLUSIA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 23-1273E

**,

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 May 10, 2023.

APPEARANCES

For Petitioner: Barbara Joanne Myrick, Esquire
621 Kensington Place
Wilton Manors, Florida 33305

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

STATEMENT OF THE ISSUE

Whether Petitioner’s functional behavioral assessment (“FBA”) of Respondent is appropriate.

PRELIMINARY STATEMENT

On April 3, 2023, Petitioner, Volusia County School Board (“School Board” or “Petitioner”), filed a request for a due process hearing, seeking a determination of the appropriateness of its FBA of Respondent. Petitioner’s hearing request resulted from its decision to deny the request of Respondent’s

parent for an independent FBA at public expense. On April 10, 2023, a telephonic status conference was held with Respondent's parent and counsel for the School Board, during which the parties agreed to extend the undersigned's deadline for issuance of the final order.

On April 10, 2023, the undersigned issued a Notice of Hearing and Order Extending Deadlines, setting the final hearing for May 10, 2023. The final hearing was held on May 10, 2023. At the hearing, Petitioner presented the testimony of [REDACTED], and [REDACTED]. Without objection, Petitioner's Exhibits 1 through 15 were received into evidence. Respondent's parent testified on her own behalf and did not offer any exhibits into evidence. At the final hearing, the parties agreed that their proposed final orders would be filed within 14 days after the filing of the final hearing transcript, thereby making the undersigned's final order due within 28 days after the filing of the final hearing transcript.

The one-volume final hearing Transcript was filed at DOAH on May 15, 2023. The parties timely filed proposed final orders, which were given consideration 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.

FINDINGS OF FACT

1. Prior to the fall of [REDACTED], Respondent was enrolled in a [REDACTED] program in Volusia County and determined eligible for exceptional student education ("ESE") services as a student with autism spectrum disorder ("ASD"). An individual education program ("IEP") was developed by

Petitioner for Respondent, but Respondent's parent withdrew Respondent from Volusia County Schools during the [REDACTED] school year. In the fall of [REDACTED], Respondent, then [REDACTED] years old, returned to Volusia County schools and enrolled in a regular education [REDACTED] class at School A, a public school in Petitioner's school district.

2. On August 17, [REDACTED], an IEP meeting was held to update Respondent's expired IEP. In addition, a Notice of Evaluation and Request for Consent was signed by Respondent's parent. On September 16, [REDACTED], Respondent's parent verbally consented to add an FBA and occupational therapy evaluation to the Notice of Evaluation.

3. [REDACTED] is a certified behavioral analyst employed by the School Board as a regional behavioral specialist for the past 20 years. [REDACTED] completed the FBA for Respondent on December 12, [REDACTED].

4. In developing the FBA, Respondent was assessed in all areas of the referral questions and his behavior. A variety of assessment tools and strategies was used to gather relevant functional and behavioral information about Respondent and to determine the function of Respondent's behavior. The assessment tools and strategies utilized included "ABC data," daily classroom charts, scatter plots, targeted behavior, reinforcing charts, and observations and notes from Respondent's parents and teachers.

5. The assessment tools and strategies provided relevant information that directly assisted in determining the behavioral needs for Respondent and that a behavior intervention plan ("BIP") was needed for Respondent. No single measurement or assessment was used as the sole criterion for determining the function of Respondent's behavior or determining the appropriate behavioral interventions for him, and the assessment tools and strategies were sufficiently comprehensive and tailored to identify all of Respondent's specific behavioral needs at the time. The assessment tools and strategies that were used to collect the data are technically sound and reliable; developed to understand the function of a student's behavior; were

administered by trained and knowledgeable persons in accordance with the instructions; and were not racially or culturally biased.

6. An IEP meeting was held on January 3, [REDACTED], to determine Respondent's continued eligibility for ESE services. During the meeting, the FBA was reviewed and discussed. In attendance at the meeting were Respondent's parents, [REDACTED] (Respondent's [REDACTED] teacher), and [REDACTED], an ESE support facilitator employed by Petitioner.

7. [REDACTED] is certified by the Florida Department of Education to teach: 1) general education, grades one through six; 2) specific learning disabilities, grades kindergarten through 12; and 3) emotional handicapped, grades kindergarten through 12. [REDACTED] provided support facilitations to Respondent in "reading/ELA" and later for social and emotional learning. [REDACTED] worked with Respondent every day during the fall of [REDACTED], for a total of 100 minutes per week. [REDACTED] was Respondent's general education [REDACTED] teacher beginning November 3, [REDACTED].

8. At the January 3, [REDACTED], meeting, the team determined that Respondent continued to meet the eligibility criteria for ASD as his primary disorder; that he met the eligibility criteria for other health impaired and occupational therapy as related services; and that he needed a BIP as a result of the FBA. [REDACTED] and [REDACTED] agreed with the eligibility determinations made at the meeting, as well as the IEP and BIP that were developed at the meeting.

9. At the hearing, Respondent's parent testified that, at a March 7, [REDACTED], meeting, "multiple people from the school had mentioned that there were significant issues with self-deprecating behavior, and that these issues were not resolving." However, Respondent's parent did not identify any of the persons purportedly making these statements. Moreover, there is no mention of any self-deprecating behavior in the data or information collected by Petitioner. Notably, Respondent's parent acknowledged on cross-examination

that ■■■ could not say that Respondent exhibited any self-deprecating behavior during the fall of ■■■.

10. In sum, the credible and persuasive testimony adduced at hearing demonstrates that Petitioner's FBA of Respondent is appropriate.

CONCLUSIONS OF LAW

11. 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).

12. 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.

13. 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).

14. Under the IDEA, a parent of a child with a disability is entitled, under certain circumstances, to obtain an independent educational evaluation ("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 evaluation 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 evaluation, it is under no obligation to provide the requested IEE.

15. To show that its FBA is appropriate, Petitioner must demonstrate that it complied with the evaluation criteria established in rule 6A-6.0331(5). The rule requires that a school district use a variety of assessment tools and strategies to gather relevant functional behavioral information about the student and information from the student's parent; use tests and other evaluation materials that are comprehensive, technically sound, reliable, tailored to assess specific areas of a student's behavioral needs, and that provide relevant information that directly assists persons in determining the behavioral needs of the student; not use any single measure or assessment as the sole criterion for determining an appropriate educational program for the student; use assessment tools and strategies that are not discriminatory or culturally biased; and administer the assessments by trained and knowledgeable personnel.

16. As detailed above, Petitioner's FBA of Respondent complied with the evaluation criteria of rule 6A-6.0331(5). Petitioner proved, by a preponderance of the evidence, that its FBA of Respondent is appropriate.

ORDER

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

DONE AND ORDERED this 7th day of June, 2023, in Tallahassee, Leon County, Florida.



DARREN A. SCHWARTZ
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 7th day of June, 2023.

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).