

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-0301E

█,

Respondent.

_____ /

FINAL ORDER

Pursuant to notice, a due process hearing was held in this case before Jessica E. Varn, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on February 16, 2015, by video teleconference with sites in West Palm Beach and Tallahassee, Florida.

APPEARANCES

For Petitioner: Laura Pincus, Esquire
Palm Beach County School Board
Post Office Box 19239
West Palm Beach, Florida 33416-9239

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

STATEMENT OF THE ISSUE

Whether Respondent is entitled to an independent educational evaluation (IEE) at public expense.^{1/}

PRELIMINARY STATEMENT

On January 14, 2015, Respondent requested an independent educational evaluation at public expense. On January 16, 2015, the Palm Beach County School Board (School Board) denied Respondent's request by filing a Request for Due Process Hearing (Complaint) that sought a determination of the appropriateness of its psycho-educational re-evaluation of Respondent. On that same date, the School Board sent its request for a due process hearing to DOAH. The due process hearing was scheduled for February 16, 2015, and the undersigned notified the parties that the Final Order would be entered by March 2, 2015.

At the hearing, the School Board presented the testimony of [REDACTED] and [REDACTED]; School Board's Exhibits 1 through 5 were admitted into the record. Respondent's mother testified on the student's behalf, but offered no exhibits into evidence. A telephone conference was held on February 18, 2015, wherein the parties agreed that the transcript would be prepared and filed; the parties would have five business days from the filing date to file proposed final orders, and the undersigned would have ten business days to enter the final order.

A one-volume Transcript was filed with DOAH on February 27, 2015. On that same date, an Order Modifying the Time for Filing Proposed Final Orders and Issuance of the Final Order was entered, allowing the parties to file proposed final orders by

March 6, 2015, and establishing a final order due date of March 13, 2015. Both parties filed proposed final orders timely, which were considered in preparation of this Final Order.

For stylistic convenience, the undersigned will use masculine pronouns in this Final Order when referring to the student. The masculine pronouns are not intended to denote the student's actual gender and should not be understood as doing so.

All citations to the Florida Statutes are to the version in effect at the time the School Board performed the evaluation at issue, unless otherwise indicated.

FINDINGS OF FACT

1. Respondent is a [REDACTED]-year-old student who attends a public [REDACTED] school in the School Board's district. The student has been diagnosed with [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] has been deemed eligible to receive exceptional student education (ESE) in the areas of [REDACTED], [REDACTED], [REDACTED].

2. In September 2007, the student was evaluated by the preschool [REDACTED] was attending, and was found eligible for ESE. At that time, [REDACTED] was found to be delayed in the areas of [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

3. In May 2009, when the student was preparing to enter [REDACTED], a re-evaluation was conducted. Significant delays were found in the areas of [REDACTED], [REDACTED], and

██████████. █████ was deemed eligible for ESE in the areas of ██████████, ██████████, and ██████████.

4. In September 2012, the student underwent a psycho-educational re-evaluation. By the time of the re-evaluation, █████ had also been evaluated by the ██████████, and diagnosed with ██████████, ██████████, and ██████████. During the psycho-educational re-evaluation, the student was found to have skills that were significantly below █████ age, grade, cultural expectations in the areas of academics, psychological processing, and adaptive process. Ultimately, the psychologist recommended that █████ eligibilities continue as they existed.

5. In August 2014, the student underwent a psycho-educational re-evaluation, which is at issue in this proceeding. The school psychologist, ██████████,^{2/} conducted the re-evaluation. █████ holds a Bachelor of Science degree in Psychology and a Master's degree in Health Science. █████ also has experience working with a teacher in implementing and monitoring independent educational plans for students in a school for children with ██████████.

6. ██████████ reviewed the 2012 evaluation, and the paperwork submitted by the family, which indicated that the student had been diagnosed with ██████████, ██████████

██████████, and ██████████. ██████████ considered these diagnoses to determine which assessments ██████████ should utilize with the student.

7. During the evaluation, the student was accompanied by ██████████ paraprofessional. The paraprofessional provided reinforcement when needed.

8. Five tests were administered: Adaptive Behavior Assessment System, Second Edition (ABAS); Behavior Assessment System for Children, Second Edition (BASC); Differential Ability Scales, Second Edition (DAS); Kaufman Tests of Educational Achievement, Second Edition (KTEA); and Social Responsiveness Scale, Second Edition (SRS).

9. The DAS is an intelligence quotient (I.Q.) evaluation, and it was selected because the student's current eligibilities included ██████████ and because of the student's diagnosis of ██████████. The results were consistent with the 2012 evaluation. The student's cognitive ability scored within the ██████████ range, at approximately the ██████████ percentile overall in comparison with children of the same age.

10. The KTEA also tests I.Q., and was selected because it includes many visual supports, which would allow the student to point and answer questions, testing as far back as the kindergarten level. The student's scores were in the ██████████ for I.Q., consistent with ██████████ eligibility.

11. The BASC reviews all types of behaviors in children, such as anxiety, somatization, and hyperactivity. Three adults in the student's life were asked to rate the student's behavior: [REDACTED] mother, [REDACTED] speech pathologist, and [REDACTED] ESE teacher. The test was selected because it gave a variety of topics to evaluate the student's behavior. The results were consistent for a child with [REDACTED] and [REDACTED].

12. The SRS was selected because it reviews social skills, which are considered when a student is diagnosed with [REDACTED]. The same three adults who submitted ratings for the BASC were asked to complete ratings for the SRS, to indicate how much the student's behaviors affect [REDACTED] social interactions. The teachers rated the student in the [REDACTED] range, while the mother rated the student in the [REDACTED] range. This test is designed for children with an I.Q. above [REDACTED]; therefore, its results were limited in utility. [REDACTED] could, however, use it to see which areas needed to be targeted in terms of behavior, and to determine whether the behaviors were consistent with a student with [REDACTED].

[REDACTED] concluded that the student's behaviors were consistent with [REDACTED].

13. The ABAS was selected because it reviewed self-help skills, which were important to assess for a student with

██████████ and ██████████. The results were consistent for a student with ██████████.

14. ██████████ consulted with two other psychologists regarding the proper assessments to use with this student and regarding the interpretation of the results.

15. ██████████ evaluation was presented to a team of professionals and the mother of the student, who were tasked with reviewing the student's eligibilities. The committee determined, based on ██████████ evaluation, that the student did not meet the eligibility criteria for ██████████. The parent disagreed with this conclusion.

16. ██████████, the administrator for the school psychology department, agreed that the assessments used for the student were the appropriate ones for a child with ██████████, ██████████, and ██████████. ██████████ also reviewed all of the tabulation and scores calculated by ██████████; ██████████ found no errors in either.

17. The School Board has established, by a preponderance of the evidence, that the psycho-educational re-evaluation conducted in 2014 was appropriate for this student.

CONCLUSIONS OF LAW

18. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of

the parties thereto pursuant to sections 1003.57(1) (b) and 120.57(1), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9) (u).

19. 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 [ESE] as prescribed by the State Board of Education as acceptable." §§ 1001.42(4) (1) & 1003.57, Fla. Stat.

20. 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).

21. A parent of a child with a disability is entitled, under certain circumstances, to obtain an independent educational evaluation of the child at public expense. The circumstances under which a parent has a right to an independent educational evaluation 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.

22. Florida law, specifically Florida Administrative Code 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.

23. These provisions make clear that a district school board in Florida is not automatically required to provide a publicly funded independent educational evaluation whenever a parent asks for one. A school board has the option, when presented with such a parental request, to initiate a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluation is appropriate. 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 independent educational evaluation.

24. To meet its burden of proof, the School Board must demonstrate that the psycho-educational re-evaluation complied with rule 6A-6.0331(5), which sets forth the elements of a proper evaluation. Rule 6A-6.0331(5) states 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, including information provided by the parent, that may assist in determining whether the student is eligible for ESE and the content of the student's IEP or 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 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 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 disability category in which the student is classified.

25. Turning to the psycho-educational re-evaluation of the student in the present case, the School Board established that [REDACTED] was qualified to conduct the psycho-educational re-evaluation, and that the evaluation complied with rule 6A-6.0331(5). [REDACTED] used assessments that encompassed cognitive ability, intellectual ability, social skills, and adaptive behavior. [REDACTED] reviewed prior evaluations, consulted with other psychologists to ensure that [REDACTED] had administered the proper assessments, and drawn sound conclusions. [REDACTED] opined that the assessments were appropriate for a student with

██████████, ██████, and ████████████████████, and also found that the scores for all the assessments were properly tabulated.

26. The School Board established, by a preponderance of the evidence, that the psycho-educational re-evaluation was appropriate. Respondent is not entitled to an independent educational evaluation at public expense.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board's re-evaluation was appropriate, and Respondent is not entitled to an independent educational evaluation at public expense.

DONE AND ORDERED this 11th day of March, 2015, in Tallahassee, Leon County, Florida.

S

JESSICA E. VARN
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 11th day of March, 2015.

ENDNOTES

^{1/} The student's parent raised other concerns at the hearing and in the post-hearing submission. Those other issues, which appear to be the design of the student's current independent educational

plan, and the student's placement, are not the subject of this proceeding.

^{2/} When the student was evaluated, [REDACTED] went by the name [REDACTED].

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)(b), Florida Statutes (2011), 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).