

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

SEMINOLE COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 16-4606E

█,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

Pursuant to notice, a final hearing was conducted in █, on September 9, 2016, before Administrative Law Judge Jessica Varn of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Stephanie K. Stewart, Esquire  
School Board of Seminole County  
400 East Lake Mary Boulevard  
Sanford, Florida 32773

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

STATEMENT OF THE ISSUE

Whether the School Board's █

█ assessments of Respondent were appropriate.

PRELIMINARY STATEMENT

From November 2015 through January 2016, Petitioner Seminole County School Board ("School Board") conducted assessments in the areas of █. Before the

beginning of the following school year, in [REDACTED], the student's [REDACTED] expressed [REDACTED] disagreement with the assessments and requested an independent educational evaluation ("IEE") in connection with both evaluated areas. On [REDACTED], after a meeting with the [REDACTED] a few days earlier, the School Board filed a Request for a Due Process Hearing ("Complaint"), alleging that its evaluations were appropriate and that the parent's request should be denied.

The final hearing was held on September 9, 2016. The School Board presented the testimony of [REDACTED]. In addition, the following School Board Exhibits were received in evidence: [REDACTED]. The student's [REDACTED] testified on behalf of Respondent, and Respondent Exhibits 1 and 2 were received in evidence.

The final hearing Transcript was filed on September 13, 2016. The School Board submitted a proposed final order, which the undersigned has considered.

For stylistic convenience, the undersigned will use [REDACTED] pronouns 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.

Unless otherwise noted, all statutory and rule citations are to the versions in effect at the time the School Board performed the assessments at issue.

FINDINGS OF FACT

1. The student in this case is a [REDACTED] who is [REDACTED].

At all times relevant to this proceeding, [REDACTED] was eligible for special education and related services, such as a [REDACTED].

2. Because the student was transitioning from [REDACTED], the IEP team asked for [REDACTED] assessments to be conducted.

3. At the hearing, the [REDACTED] explained that the student presents with many deficits, which include [REDACTED].

4. The purpose of both the [REDACTED] [REDACTED] evaluation was to assess the student's needs at [REDACTED] new school location, which was bigger than [REDACTED] previous campus, and had a larger student population. The goal was to evaluate the student's educationally relevant needs.

5. The [redacted] assessment was conducted by [redacted] [redacted]. [redacted] [redacted] during the latter part of the [redacted] semester, when the assessment was initiated, but returned in the [redacted] to complete the assessment. Both [redacted] are licensed professionals who hold [redacted] [redacted]; [redacted] also earned a [redacted] [redacted].

6. The assessment began with a review of previous evaluations and educational records. [redacted] assessed the student on three dates: [redacted] [redacted]. [redacted] conducted the last observation on [redacted]. Each of the [redacted] evaluations lasted approximately 30-60 minutes. [redacted] assessed the student using a variety of reliable tools, which included a [redacted] [redacted]. After reviewing [redacted] assessment, [redacted] also conducted a [redacted] and requested staff input.

7. The [redacted] assessment revealed, among other things, [redacted] [redacted] [redacted] [redacted] [redacted] [redacted]

[REDACTED]

[REDACTED]

[REDACTED].

8. Ultimately, the [REDACTED] concluded that the student was [REDACTED]

[REDACTED]

[REDACTED]. Simply put, the student's [REDACTED]

[REDACTED]

[REDACTED].

9. The [REDACTED] evaluation was performed by [REDACTED] who has performed hundreds of evaluations during [REDACTED] career. Because [REDACTED] is on the staff at the [REDACTED] which the student attends, [REDACTED] was very familiar with the student and felt that the student was assessed daily for any [REDACTED] needs.

10. [REDACTED] did, however, formally assess the student on [REDACTED]. Each of those days, [REDACTED] assessed the student for one to two hours.

11. [REDACTED] assessed the student using a variety of reliable tools, which included a [REDACTED]

[REDACTED].

12. During the assessment, the student demonstrated the

[REDACTED]

[REDACTED]. Although the student could become distracted with [REDACTED], [REDACTED] was [REDACTED] to [REDACTED] task, and would also sometimes [REDACTED]

[REDACTED]

13. [REDACTED] also noted that the student's [REDACTED]

[REDACTED]; in other words, the student's use of [REDACTED] was [REDACTED] for the educational setting.

14. Ultimately, [REDACTED] opined that the student's deficits were [REDACTED] from accessing [REDACTED] educational environment and therefore [REDACTED].

15. The student's [REDACTED] did not dispute the validity of the [REDACTED] assessments, but felt that they were biased because they were conducted by School Board employees.

## CONCLUSIONS OF LAW

16. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to section 1003.57(1)(b), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

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 [ESE] 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 Cnty. 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 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.

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.

\* \* \*

(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 a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluation is appropriate. T.P. v. Bryan Cnty. Sch. Dist., 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the district 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 in this case, 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. Palm Beach Cnty. Sch. Bd. v. \*\*, 66 IDELR 29 (Fla. DOAH July 2, 2015). 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 data-based 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. Pursuant to the findings of fact contained herein, the School Board has proven that the assessments at issue fully complied with rule 6A-6.03311(5). In particular, each assessment was conducted by trained and knowledgeable personnel who utilized—and properly administered—a variety of valid instruments that yielded reliable and comprehensive information concerning Respondent's educational needs. In fact, Respondent's [REDACTED] agreed with the validity of both assessments at the hearing, explaining that [REDACTED] simply wanted a second opinion, just as patients frequently request after being assessed by one physician.

24. It is worth emphasizing that Respondent's educational needs are separate and distinct from Respondent's deficits that are properly addressed in a private therapeutic setting. While it is certainly understandable that Respondent's [REDACTED] has valid concerns over, for example, the student's [REDACTED] or the student's [REDACTED]  
[REDACTED]  
[REDACTED]; therefore, they are properly addressed by private therapists. Respondent is not entitled to a free "second opinion" if the initial evaluations were appropriate, which even the [REDACTED] agrees they were.

25. While Respondent is not entitled to IEEs at public expense, the [REDACTED] is free to obtain independent evaluations at

own expense, which results the School District would be 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 Respondent is not entitled to Independent Educational Evaluations at public expense.

DONE AND ORDERED this 26th day of September, 2016, in Tallahassee, Leon County, Florida.

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JESSICA E. VARN  
Administrative Law Judge  
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Filed with the Clerk of the  
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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).