

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 17-2638E

** ,

Respondent.

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FINAL ORDER

Pursuant to notice, a due process hearing was held on August 4, 2017, in St. Augustine, Florida, and on August 11, 2017, via teleconference with sites in Tallahassee and St. Augustine, Florida. Administrative Law Judge Jessica E. Varn, of the Division of Administrative Hearings, heard the case.

APPEARANCES

For Petitioner: Jeffrey Douglas Slanker, Esquire
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Tallahassee, Florida 32301

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

STATEMENT OF THE ISSUE

Whether the School Board's psychoeducational evaluation was appropriate.

PRELIMINARY STATEMENT

In February of this year, the student's parents provided consent for the student to undergo evaluations to assess cognitive, academic, language, pragmatic language, and written expression needs. The evaluation at issue here is the psychoeducational evaluation that was conducted by [REDACTED], a certified school psychologist. On May 8, 2017, the School Board filed a Request for a Due Process Hearing (Complaint), asserting that [REDACTED] evaluation was appropriate, and that Respondent's request for an independent educational evaluation (IEE) at public expense should be denied.

The due process hearing was first scheduled for June 6, 2017, but rescheduled for July 6, 2017, by request of the parents. The School Board next requested that the hearing be rescheduled due to the unavailability of a key witness, and the parents agreed. The hearing was rescheduled for August 4, 2017.

The hearing commenced as scheduled, but during the hearing, technical difficulties arose during the testimony of one of Respondent's witnesses, who was appearing by telephone. The parties agreed to complete the hearing via teleconference on August 11, 2017.

During the hearing, the School Board presented the testimony of [REDACTED] and [REDACTED]; School Board Exhibits 1

through 4, 6, and 8 were admitted into evidence. Respondent presented the testimony of the student's mother and of [REDACTED]; Respondent Exhibits 4, 6, and 8 were admitted into evidence. The final hearing Transcript was filed on August 25, 2017. The parties thereafter submitted proposed final orders, which the undersigned has considered.

By agreement of the parties, this Final Order was due on September 15, 2017. Due to Hurricane Irma, the State of Florida was in a declared state of emergency, and State offices were closed for a few days. Due to this unexpected circumstance, the undersigned entered an "Order Extending Final Order Deadline Due to Hurricane Irma" on September 13, 2017, when State offices reopened. The deadline for the final order was extended by one week.

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 assessment at issue.

FINDINGS OF FACT

1. The student in this case is a [REDACTED]-year-old, who is currently a [REDACTED]. [REDACTED] relocated from [REDACTED] to Florida

at the beginning of [REDACTED] year of [REDACTED] school and brought with [REDACTED] a [REDACTED] that had been created in [REDACTED]. [REDACTED] is diagnosed with [REDACTED].

2. In February 2017, during [REDACTED] year of [REDACTED] school, the student's parents provided consent for evaluations of the student's [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] skills.

3. [REDACTED] conducted a psychoeducational evaluation in March 2017. [REDACTED] is a certified school psychologist who has worked for the School Board for 12 years; [REDACTED] worked as a school psychologist for 20 years in a different Florida county prior to [REDACTED] arrival in St. Johns County.

4. [REDACTED] reviewed several different items prior to evaluating the student, including: four different teacher observations, one evaluation from a literacy coach, information received during a conference with the student's mother, a parent contact log, a physician report, intervention logs, the student's grades from the first nine weeks of [REDACTED] year^{1/}, and [REDACTED] standardized test scores from the previous school year.^{2/}

5. The evaluation incorporated a few tests: the [REDACTED] [REDACTED], [REDACTED] ([REDACTED]); the [REDACTED] [REDACTED] ([REDACTED]), and the [REDACTED] [REDACTED] ([REDACTED]). All the tests were administered in the student's native language, according to the manuals developed for

each test and in a manner that was most likely to yield accurate information. All three tests were valid, standardized, reliable, and designed to ascertain the student's specific level of [REDACTED] and [REDACTED] functioning.

6. The [REDACTED] was selected because it is widely used and recognized as a reliable test that measures intelligence. It is intended to be used for ages 16 to 90. The student's verbal intelligence was [REDACTED], [REDACTED] non-verbal ability was [REDACTED], [REDACTED] working memory was [REDACTED], [REDACTED] mental awareness was [REDACTED], and [REDACTED] processing speed was [REDACTED].

7. [REDACTED], puzzled by the student's [REDACTED] score in verbal intelligence given [REDACTED] [REDACTED] [REDACTED] performance in academic classes, opted to administer a different intelligence test. The [REDACTED] was developed 12 years ago, and it is also an intelligence measure; it measures pure reasoning, problem solving, and deductive logic. The student's overall score on the [REDACTED] was [REDACTED], which was in the [REDACTED]th percentile, and consistent with the results of the [REDACTED].

8. The [REDACTED] assessment was requested by the student's mother. [REDACTED] explained that the assessment focuses on reading, writing, and arithmetic; and that it measures academic fluency and general academic knowledge. [REDACTED] described it as a general trivia test, gathering data as to the general knowledge the student had retained from [REDACTED] overall

environment in a variety of subjects. [REDACTED] scores were in the [REDACTED] range, with some [REDACTED] scores in areas such as [REDACTED].

9. The parents hired [REDACTED], a licensed clinical psychologist, to also conduct a psychoeducational evaluation. [REDACTED] evaluated the student a few weeks after [REDACTED] did, and ultimately opined that [REDACTED] evaluation did not adequately reflect the student's deficiency in [REDACTED] [REDACTED], which impairs the student's academic functioning. [REDACTED] recommended that more testing be done to fully evaluate [REDACTED] academic deficiencies.

10. When asked to compare the results of [REDACTED] intellectual testing to the results obtained by [REDACTED] [REDACTED] opined that where there was a difference in results, it was statistically [REDACTED]. The undersigned, having reviewed both evaluations, agrees with [REDACTED] testimony in this regard-- both evaluations reflected the student's actual [REDACTED] functioning.

11. [REDACTED] also opined that one of the assessments used by [REDACTED], the [REDACTED], was inappropriate to use because the student should have taken the children's version of an [REDACTED] assessment, rather than an adult version. [REDACTED] administered a different [REDACTED] assessment intended for children in adolescence. The undersigned need not determine

which [REDACTED] assessment should have been administered to the student, since [REDACTED] did not solely rely on one [REDACTED] assessment ([REDACTED] also administered the [REDACTED], which is intended for ages 3-93) and, as stated above, all [REDACTED] assessments had similar results.

12. Turning to the academic achievement testing done, [REDACTED] testified that even though the two professionals chose different assessments, the same pattern of [REDACTED] deficiencies was discovered.

CONCLUSIONS OF LAW

13. 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).

14. 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.

15. 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).

16. Under the IDEA and its implementing regulations, a parent of a child with a disability is entitled, under certain circumstances, to obtain an IEE of the child at public expense. The circumstances under which a parent has a right to an IEE 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.

17. 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.

18. 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 not required to provide the requested IEE.

19. To satisfy its burden of proof, 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. 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.

20. Based on the findings of fact as stated herein, the School Board has proven that its psychoeducational evaluation fully complied with rule 6A-6.0331(5). In particular, it was conducted by a trained and knowledgeable school psychologist who utilized, and properly administered, a variety of valid instruments that yielded reliable and comprehensive information concerning the student's educational needs.

21. Although Respondent is not entitled to an IEE at public expense, the parents are free to present the independent evaluation conducted by [REDACTED] to the School Board, the results of which the School District is required to consider. See Fla. Admin. Code R. 6A-6.0331(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 the School Board's psychoeducational evaluation was appropriate, and met all the criteria set forth in Florida Administrative Code Rule 6A-6.0331(5).

DONE AND ORDERED this 18th day of September, 2017, 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 18th day of September, 2017.

ENDNOTES

^{1/} The student's grades were [REDACTED] in most classes; the student had a grade point average of [REDACTED] on a [REDACTED] scale. As compared to [REDACTED] peers, [REDACTED] had [REDACTED] grades.

^{2/} Many standardized test scores for the current year were not yet available when [REDACTED] conducted [REDACTED] evaluation.

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).