

Sarasota County School District
No. 08-5801E
Initiated by: District
Hearing Officer: Daniel Manry
Date of Final Order: January 12, 2009

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

SARASOTA COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 08-5801E
)
█,)
)
 Respondent.)

)

FINAL ORDER

Administrative Law Judge (ALJ) Daniel Manry conducted the due process hearing of this case for the Division of Administrative Hearings (DOAH), on December 12, 2008, in North Port, Florida.

APPEARANCES

For Petitioner: E. Keith DuBose, Esquire
 Matthews, Eastmoore, Hardy,
 Crauwels & Garcia, P.A.
 1777 Main Street, Suite 500
 Sarasota, Florida 34230-6377

For Respondent: █, parent
 (Address of record)

STATEMENT OF THE ISSUE

The issue for determination is whether Petitioner should grant Respondent's request for an independent educational evaluation (IEE) at public expense pursuant to 20 United States Code (U.S.C.) Section 1400 et seq., the Individuals with Disabilities Education Act (IDEA); 34 Code of Federal Regulations (C.F.R.) Section 300; Subsection 1003.57(1)(e), Florida Statutes (2008); and Florida Administrative Code Rules 6A-6.03311 and 6A-6.0331.¹

PRELIMINARY STATEMENT

On November 19, 2008, Petitioner requested a due process hearing to dispute Respondent's request for an IEE at public expense. At the due process hearing, Petitioner submitted seven exhibits for admission into evidence and presented the testimony of two witnesses. Respondent submitted one composite exhibit and called two witnesses. The identity of the witnesses and exhibits and the rulings regarding each are reported in the Transcript of the hearing filed with DOAH on December 24, 2008.

The undersigned granted Petitioner's unopposed motion to toll the 45-day time requirement during the period required to prepare and file the Transcript and the proposed final orders (PFOs). Petitioner timely filed its PFO on January 7, 2008. Respondent did not file a PFO.

FINDINGS OF FACT

1. Respondent is a disabled student with seizure disorder who is enrolled in the Sarasota County School District (the District), in Sarasota County, Florida. Petitioner conducted a psycho-educational evaluation of Respondent on May 23, 2008 (the evaluation).

2. Petitioner conducted the evaluation to gather information that was used by a Child At-Risk Education (CARE) team to determine the best academic placement for Respondent. The evaluation conducted by Petitioner was appropriate. A trained and knowledgeable person conducted the evaluation, using recognized evaluation instruments, and properly reviewed the results of the evaluation.

3. The school psychologist conducted the evaluation. He is qualified by education and experience to conduct psychological evaluations of disabled students.

4. The school psychologist earned an undergraduate degree from Florida State University with a major in psychology and earned a master's degree from the same institution with a specialization in school psychology. He is a state-certified school psychologist and has conducted psychological evaluations for Petitioner for approximately 4.5 years.

5. The school psychologist administered the evaluation in accordance with Petitioner's policies and procedures. The tests used to evaluate Respondent were appropriate.

6. The evaluation utilized the Wechsler Intelligence Scale for Children - Fourth Edition (WISC-IV) to assess Respondent's current level of intellectual functioning. Respondent's full scale intelligence quotient of 99 was within the average range. The school psychologist properly evaluated other scales and subset scores, which ranged from low average, in one category, to high average, in one category.

7. The evaluation compared the full scale IQ score of 99 to the Woodcock-Johnson Tests of Cognitive Abilities-Third Edition - Normative Update (WJ III COG NU), Comprehensive Test of Phonological Processing (CTOPP), and the Woodcock-Johnson Tests of Achievement-Third Edition-Form A-Normative Update (WJ III ACH NU) to determine educational placement. Respondent demonstrated a deficit in long-term retrieval but no deficits in other categories or subsets.

8. No abnormal circumstances occurred during the evaluation. The school psychologist did not observe any slurred speech, physical deficits, unresponsiveness or other symptoms of seizure disorder.

9. The CARE team considered the results of the evaluation and Respondent's academic performance up to that time. The CARE

team determined that Respondent was not eligible for an individualized education plan (IEP). At the time of the CARE team's determination, Respondent was earning B's and C's in all grade levels.

10. Respondent requested an IEE on September 29, 2008, and Petitioner's executive director of Pupil Support Services (the Director) responded to the request approximately 18 days later, on October 17, 2008. Petitioner filed a due process complaint approximately 42 days later, on November 29, 2008.

11. The delay of approximately 60 days from September 29 through November 29, 2008, was not an unnecessary delay within the meaning of 34 C.F.R. Subsection 300.502(b)(2) and Florida Administrative Rule 6A-6.03311(6)(g). The Director performed a records review prior to responding on October 17, 2008, and the parties attempted resolution between October 17 and November 29, 2008.

12. It is undisputed that Respondent's academic performance has declined significantly since the CARE team determined that Respondent is not eligible for an IEP. Evidence of the decline in academic performance may, or may not, provide an adequate basis to show that Respondent's unique educational needs entitle Respondent to a free appropriate public education (FAPE) and that the current educational placement does not provide Respondent with FAPE. The appropriate forum for

resolving that dispute is a due process hearing alleging a denial of FAPE, and there is no legal impediment that precludes Respondent from filing a due process complaint that will initiate a due process hearing to resolve that issue.

CONCLUSIONS OF LAW

13. DOAH has jurisdiction over the subject matter of this proceeding and the parties. §§ 120.57(1) and 1003.57(1)(e), Fla. Stat. DOAH provided the parties with adequate notice of the due process hearing.

14. Petitioner has the burden of showing by a preponderance of the evidence that the evaluation of Respondent by Petitioner was appropriate and that the delay between Respondent's request for an IEE and the filing of a due process complaint was not an unnecessary delay, within the meaning of 34 C.F.R. Subsection 300.502(b)(2) and Florida Administrative Code Rule 6A-6.03311(6)(g). For reasons stated in the Findings of Fact and not repeated here, Petitioner satisfied the requisite burden of proof.

ORDER

Based upon the foregoing Findings of Facts and Conclusions of Law, it is

ORDERED that Respondent is not entitled to an IEE at public expense.

DONE AND ORDERED this 12th day of January, 2009, in
Tallahassee, Leon County, Florida.

S

DANIEL MANRY
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 12th day of January, 2009.

ENDNOTE

^{1/} References to federal and state statutes and to federal regulations and state administrative rules are to those in effect on December 12, 2008, unless otherwise stated.

COPIES FURNISHED:

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless an adversely affected party:

- a) brings a civil action within 30 days in the appropriate federal district court pursuant to Section 1415(i)(2)(A) of the Individuals with Disabilities Education Act (IDEA); [Federal court relief is not available under IDEA for students whose only exceptionality is "gifted"] or
- b) brings a civil action within 30 days in the appropriate state circuit court pursuant to Section 1415(i)(2)(A) of the IDEA and Section 1003.57(1)(e), Florida Statutes; or
- c) files an appeal within 30 days in the appropriate state district court of appeal pursuant to Sections 1003.57(1)(e) and 120.68, Florida Statutes.