

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

ST. JOHNS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 20-0185E

\*\*,

Respondent.

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FINAL ORDER

Pursuant to notice, a final hearing was conducted in St. Augustine, Florida, on [REDACTED], before Administrative Law Judge (ALJ) Todd P. Resavage of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: [REDACTED], Esquire  
Sniffen & Spellman, P.A.  
123 North Monroe Street  
Tallahassee, Florida 32301

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

STATEMENT OF THE ISSUE

Whether the assistive technology reevaluation conducted by Petitioner on behalf of Respondent was appropriate.

PRELIMINARY STATEMENT

On or about [REDACTED], Petitioner completed an assistive technology (AT) reevaluation of Respondent. On [REDACTED], Respondent's parent notified Petitioner that [REDACTED] did not agree with the reevaluation and

requested an independent educational evaluation (IEE), at public expense. On [REDACTED], Petitioner formally notified Respondent that it believed the evaluation was appropriate. On [REDACTED], pursuant to Florida Administrative Code Rule 6A-6.03311(6)(g) 2., Petitioner initiated a due process hearing request seeking a determination of the appropriateness of the assistive technology reevaluation.

The matter was assigned to the undersigned and, on [REDACTED], the final hearing was initially scheduled for [REDACTED]. On [REDACTED], Petitioner filed an unopposed motion to continue the final hearing to the following day, [REDACTED]. The motion was granted on [REDACTED].

The final hearing was conducted, as scheduled, on [REDACTED]. Petitioner presented the testimony of one witness, and Petitioner's Exhibits 1 through 13 were admitted. Respondent testified and Respondent's Exhibits 1 through 9 were admitted. Upon the conclusion of the final hearing, the parties stipulated to the filing of proposed final orders within 21 days of the filing of the transcript and that the undersigned's Final Order would issue within 35 days of the filing of the transcript.

The final hearing Transcript was filed on [REDACTED]. The identity of the witnesses and exhibits and rulings regarding each are as set forth in the Transcript. Petitioner timely filed a Proposed Final Order. Respondent did not file a proposed final order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time Petitioner performed the reevaluation at issue. For stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to Respondent. The [REDACTED] pronouns are neither

intended, nor should be interpreted, as a reference to Respondent's actual gender.

FINDINGS OF FACT

1. Respondent is currently [REDACTED] years old. [REDACTED] is a [REDACTED]-grade student at School A, a public elementary school in Petitioner's school district.

2. Respondent has previously been determined eligible and has received exceptional student education (ESE) services under the [REDACTED] [REDACTED] and [REDACTED] programs.

3. Respondent, at all times relevant to this proceeding, has had an individualized educational plan (IEP). Based on the documentation in evidence, [REDACTED] IEPs have included a goal that [REDACTED] be able to produce a multi-paragraph essay using correct grammar and mechanics (including spelling).

4. As spelling has been an ongoing concern, [REDACTED] IEPs have included short-term benchmarks and objectives to monitor the same. Additionally, [REDACTED] IEPs have included numerous classroom and instructional accommodations including, but not limited to: oral presentation of directions; oral presentation of items and answer choices; directions repeated; a copy of notes; allowing verbal explanations to written questions; organizers, outlines, checklists, and other writing supports; and spelling not graded, unless specified on English Language Arts rubric.

5. During the [REDACTED] school year, Respondent earned [REDACTED] and [REDACTED] in all subjects and [REDACTED] academic performance was on grade level. Accordingly, [REDACTED] was [REDACTED] to the next grade.

6. During the [REDACTED] school year, [REDACTED] earned [REDACTED] and [REDACTED] in all subjects and [REDACTED] academic performance was on grade level. Accordingly, [REDACTED] was promoted to the next grade.

7. Respondent's IEP progress report, dated [REDACTED], documents the following:

[Petitioner] has improved in [REDACTED] writing and has taken such pride in [REDACTED] work. [REDACTED] has worked hard

and been motivated when writing this quarter. [REDACTED] is able to follow the model for writing. Spelling for [REDACTED] continues to be below level however when someone edits with [REDACTED] [REDACTED] can correct a number of the mistakes.

8. On [REDACTED], at the beginning of the [REDACTED] school year, an IEP meeting was conducted. At that time, Respondent's [REDACTED] requested that the IEP team obtain data on [REDACTED] spelling progress and phonemic awareness. Thereafter, on [REDACTED], Respondent's [REDACTED] requested and provided written consent for an AT reevaluation.

9. Another IEP meeting was conducted shortly thereafter on [REDACTED]. During that meeting, Respondent's ESE teacher shared the current data from English Language Arts and discussed spelling concerns and Respondent's failure to meet [REDACTED] prior IEP spelling goal. The IEP further discussed a spelling assessment to be used to determine [REDACTED] progress, and discussed drafting a separate spelling goal.

10. The AT reevaluation was referred to Petitioner's AT specialist, [REDACTED] [REDACTED] obtained [REDACTED] Master's Degree in Special Education from the University of Florida. [REDACTED] is certified by the Florida Department of Education in ESE (pre-kindergarten through 12th grade) and also certified in elementary education (pre-kindergarten through sixth grade). Over the last three years as an AT specialist, [REDACTED] has performed an average of 40 AT evaluations per year.

11. [REDACTED] credibly testified that [REDACTED] was familiar with Respondent, as [REDACTED] had conducted two prior AT evaluations of Respondent, on [REDACTED] [REDACTED], and [REDACTED].

12. On [REDACTED], [REDACTED] conducted the AT evaluation in a conference room at School A. [REDACTED] report, dated [REDACTED], documented that the referral was due to concerns with spelling. Indeed, despite the accommodations included on the IEP, Respondent "continues to struggle with spelling and writing."

13. Prior to the evaluation, [REDACTED] obtained classroom writing samples from [REDACTED] through [REDACTED]. When [REDACTED] reviewed the writing samples [REDACTED] observed some misspellings and errors in capitalization; however, the errors did not impact the overall legibility of the sample. In other words, [REDACTED] could discern the content and context of what Respondent was attempting to communicate.

14. After spending some time establishing rapport, [REDACTED] requested that Respondent submit a handwritten sample wherein [REDACTED] was asked to copy existing text from a source. In response to this request, Respondent noted that [REDACTED] “can be kinda sloppy, especially when I stop caring.” [REDACTED] documented that Respondent’s work product showed that [REDACTED] stayed between the lines and margins on the paper, demonstrated appropriate spelling, capitalization, and punctuation. [REDACTED] further documented and testified that [REDACTED] was able to copy approximately 13 words per minute, which is above the average range for a [REDACTED]-grade student with a disability.

15. Respondent was then asked to handwrite an original work. As a result of this exercise, [REDACTED] observed that, overall, Respondent’s handwriting was legible, stayed between the lines, and had appropriate spacing. Additionally, Respondent’s composition included punctuation throughout. [REDACTED] was able to handwrite approximately 17 words per minute. The composition did, however, include some misspellings. Specifically, Respondent misspelled 25 percent of the words.

16. The evaluation continued with an attempt at word processing. Prior to the evaluation, while Respondent had been exposed to some degree with typing/word processing (and understood the function of the space, enter, caps lock, and backspace/delete keys), [REDACTED] has not undertaken any formal training on keyboarding. Respondent was reminded by [REDACTED] on how to utilize the shift key to capitalize letters.

17. Respondent was initially requested to use the keyboard to type the original composition [REDACTED] had just handwritten. [REDACTED] was then requested to

compose two additional sentences while typing. [REDACTED] observed that Respondent has “emerging keyboard knowledge,” and that [REDACTED] is able to type with punctuation and capitalization. The speed at which [REDACTED] could type, however, was considerably slower than [REDACTED] handwritten composition. When copying [REDACTED] prior text, [REDACTED] typed at a rate of approximately 4.4 words per minute and when composing [REDACTED] own sentences, at a rate of approximately 3.9 words per minute.

18. [REDACTED] also presented Respondent with an exercise in dictation. [REDACTED] provided a brief tutorial of the speech-to-text software. Respondent was then provided three practice opportunities. After the practice rounds, Respondent attempted to utilize dictation, dictating one sentence at a time. Respondent, who has a speech impairment, required encouragement and support to speak clearly and loudly. Ultimately, [REDACTED] documented that the software made several errors, which frustrated Respondent. Respondent was able to compose 8.37 words per minute in this [REDACTED] setting.

19. Finally, Respondent was queried with respect to [REDACTED] communication preference. Respondent indicated that [REDACTED] believed [REDACTED] handwriting was “okay,” and that [REDACTED] was faster at handwriting than typing.

20. The AT assessment was selected and administered in a nondiscriminatory manner; provided and administered in Respondent’s native language; used for the purpose for which the assessment is valid and reliable; and administered by a trained, knowledgeable, and certified ESE teacher. Petitioner presented credible evidence that there is no defined criteria for conducting an AT assessment. This is due, in part, to the fact that each student is considered on an individual basis, and the potential “tools” that one might consider for the related service of AT is extremely broad.

21. After concluding the evaluation [REDACTED] recommended that Respondent continue to complete [REDACTED] schoolwork utilizing handwriting.

██████████ credibly acknowledged that, with increased training, Respondent's proficiency in either keyboarding or dictation could become more proficient. █████ further agreed that, should it be determined that Respondent required the use of AT to access █████ education, the appropriate training would be provided.

22. ██████████ credibly opined that, at this time, Respondent did not require the related service of AT, as █████ was performing at grade level and was being well served by the accommodations and services documented and implemented on █████ IEP. █████ opinions and recommendations were shared with the IEP team on ██████████. Respondent's ██████████ disagreed with the conclusion and requested an IEE. After formally declining the request, Petitioner timely instituted the instant due process complaint.

23. Respondent's ██████████ attempted to support █████ allegation that the AT evaluation was not appropriate with two prior psychoeducational evaluation reports authored by ██████████ first evaluation was apparently conducted in ██████████. As it pertains to Respondent's spelling, the report documents ██████████ recommendation that █████ receive "[a]ccess to and training in the use of bypass strategies for the spelling issues including word processing equipment and idea mapping software."

24. ██████████ second report, entitled "Academic Assessment," sets forth █████ findings of a reassessment apparently conducted on ██████████. In █████ report ██████████ recommended that Respondent should be trained in a direct and explicit manner in technology-based bypass tools, including: text-to-speech apps; C-pen; speech-to-text apps; and idea mapping software. Additionally, the report documents that ██████████ recommended Respondent be provided the "opportunity to have tests read to █████ or have a digitalized version of a test that can be process for █████ by a text-to-speech app," "[a]ccess to a scribe on writing-intensive tests," and "access to idea mapping software and speech-to-text apps on writing-intensive test."

██████████ did not testify at the final hearing.

## CONCLUSIONS OF LAW

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

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

27. 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 Cty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012); *see also J.P. ex rel. Peterson v. Cty. Sch. Bd. of Hanover Cty., Va.*, 516 F.3d 254, 257 (4th Cir. 2008)(“Under the IDEA, all states receiving federal funds for education must provide disabled schoolchildren with a ‘free appropriate public education.’”).

28. The IDEA contains "an affirmative obligation of every [local] public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible." *L.C. v. Tuscaloosa Cty. Bd. of Educ.*, 2016 U.S. Dist. LEXIS 52059 at \*12 (N.D. Ala. 2016) quoting *N.G. v. D.C.*, 556 F. Supp. 2d 11, 16 (D.D.C. 2008)(citing 20 U.S.C. § 1412(a)(3)(A)). This obligation is referred to as "Child Find," and a local school system's "[f]ailure to locate and evaluate a potentially disabled child constitutes a denial of FAPE." *Id.* Thus, each state must put policies and procedures in place to ensure that all children with disabilities residing in



the state, regardless of the severity of their disability, and who need special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111(a).

29. Rule 6A-6.0331 sets forth the school districts responsibilities regarding students suspected of having a disability. Rule 6A-6.0331(2)(a) then sets forth a non-exhaustive set of circumstances, which would indicate to a school district that a student may be a student with a disability who needs special education and related services. Once a request for an initial evaluation has been made (by either the parents or the school district), the school district is mandated to obtain consent for the evaluation or provide the parent with a written notice of refusal. Fla. Admin. Code R. 6A-6.0331(3)(c). After receiving consent, the school district must complete the initial evaluation within 60 calendar days. Fla. Admin. Code R. 6A-6.0331(3)(g).

30. Rule 6A-6.0331(3)(e) sets forth the requisite qualifications of those conducting the necessary evaluations, and rule 6A-6.0331(5) sets forth the procedures for conducting the initial evaluations. It is undisputed that an initial evaluation was previously conducted wherein Respondent was determined eligible for ESE services.

31. At issue here is not the initial evaluation, but rather, a reevaluation to determine whether Respondent requires the related service of AT. Reevaluation requirements are set forth in rule 6A-6.0331(7), which provides, in pertinent part, as follows:

(7) Reevaluation Requirements.

(a) A school district must ensure that a reevaluation of each student with a disability is conducted in accordance with rules 6A-6.03011-.0361, F.A.C., if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation.

(b) A reevaluation may occur not more than once a year, unless the parent and the school district agree otherwise and must occur at least once every three (3) years, unless the parent and the school district agree that a reevaluation is unnecessary.

(c) Each school district must obtain informed parental consent prior to conducting any reevaluation of a student with a disability.

32. Here, in compliance with the above-quoted rule, an AT reevaluation was timely conducted following a parental request accompanied by parental consent.

33. As the subject reevaluation was neither considering Respondent's initial eligibility nor continuing eligibility, not all of the requirements set forth in rule 6A-6.0331(5) are applicable. The Department of Education, however, has promulgated additional requirements for reevaluations. Specifically, rule 6A-6.0331(8), entitled "Additional requirements for evaluations and reevaluations," provides, in pertinent part, as follows:

As part of . . . any reevaluation, the IEP Team and other qualified professionals, as appropriate, must take the following actions:

(a) Review existing evaluation data on the student, including:

1. Evaluations and information provided by the student's parents;
2. Current classroom-based, local, or State assessments and classroom-based observations; and,
3. Observations by teachers and related services providers.

(b) Identify, on the basis of that review and input from the student's parents, what additional data, if any, are needed to determine the following:

\* \* \*

2. The educational needs of the student;

3. The present levels of academic achievement and related developmental needs of the student;

\* \* \*

5. Whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the student's IEP and to participate, as appropriate, in the general curriculum.

(c) The group conducting this review may do so without a meeting.

(d) The school district shall administer tests and other evaluation measures as may be needed to produce the data that is to be reviewed under this section.

34. Petitioner presented sufficient evidence to establish that, during the reevaluation process, [REDACTED] and the other members of Respondent's IEP team: reviewed evaluations and information provided by Respondent's [REDACTED]; conducted current assessments and observations; and observations were conducted by Respondent's teachers.

35. Petitioner also presented sufficient evidence to establish that the IEP team concluded, based on their review and input from Respondent's [REDACTED], that additional data, in the form of an AT reevaluation, was needed to determine whether any additions or modifications to Respondent's special education and related services were needed to enable Respondent to meet the

measurable goals set out in [REDACTED] IEP, ears and to participate, as appropriate, in the general curriculum.

36. Petitioner presented sufficient evidence to establish that [REDACTED] was appropriately trained, knowledgeable, and qualified to administer the AT evaluation. It is further concluded that Petitioner met its burden of presenting sufficient evidence to establish that the AT reevaluation administered to Respondent was appropriate and in compliance with the IDEA and Florida law.

37. While the reports of [REDACTED] (and the recommendations therein) were entered into evidence, the same are insufficient to support the conclusion that Petitioner's AT reevaluation was inappropriate.

#### ORDER

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

DONE AND ORDERED this 3rd day of April, 2020, in Tallahassee, Leon County, Florida.

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TODD P. RESAVAGE  
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).