

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

PALM BEACH COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 15-2345E

█,

Respondent.

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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 May 19, 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 Independent Educational Evaluations (IEEs), at public expense, in the fields of language and speech.

PRELIMINARY STATEMENT

On April 23, 2015, Respondent wrote the Palm Beach County School Board (School Board) a letter requesting a fluency assessment, and specifying the type of expert [REDACTED] requested for this evaluation. The School Board had already completed a speech evaluation on April 22, 2015, and therefore considered Respondent's letter as a request for an independent educational evaluation at public expense which would focus on the student's speech. On April 24, 2015, Respondent also requested an independent educational evaluation at public expense that would assess the student's language skills. On that same date, the School Board denied Respondent's requests by filing a Request for Due Process Hearing (Complaint) that sought a determination of the appropriateness of its speech and language evaluations of Respondent. On April 30, 2015, Respondent filed a Motion to Dismiss, stating that an independent educational evaluation of the student's speech was not being requested. On May 11, 2015, after receiving a Response from the School Board, the Motion to Dismiss was denied, and the due process hearing was scheduled for May 19, 2015.

At the hearing, the School Board presented the testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]; School Board Exhibits 2-5 were admitted into the record. Respondent's mother testified on the student's behalf; Respondent

Exhibits A-1, B-1, G-1, H-1, J-1, O, and P-2 were admitted into the record. At the conclusion of the hearing, the parties agreed that the Transcript would be prepared and filed; the parties would have ten business days from the filing date to file proposed final orders, and the undersigned would have twenty business days to enter the Final Order. This agreement was memorialized in an Order dated June 5, 2015.

A one-volume Transcript was filed with DOAH on June 8, 2015. On that same date, a Notice of Filing Transcript was entered, allowing the parties to file Proposed Final Orders by June 22, 2015, and establishing a Final Order due date of July 6, 2015. Both parties filed Proposed Final Orders timely, which were considered in preparation of this Final Order.

For stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to the student. The [REDACTED] 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 evaluations 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. [REDACTED] is currently deemed eligible to receive exceptional student

education (ESE) in the areas of [REDACTED] and [REDACTED].

2. The student has been receiving [REDACTED] as detailed in [REDACTED] most recent Individualized Education Program (IEP), and continued to receive [REDACTED] after the re-evaluation which is at issue here.

Language Evaluation

3. In October 2014, a language re-evaluation of the student was initiated. It was conducted by [REDACTED], who is a licensed speech language pathologist. [REDACTED] has a Bachelor of Science degree in speech pathology and audiology, and a Masters of Science degree in communication disorders. [REDACTED] also holds a clinical certificate of competence in speech pathology.

4. [REDACTED] already knew the student, as [REDACTED] had been working with [REDACTED] according to the dictates of the IEP. The re-evaluation was requested by the student's mother, who relayed concerns about the student's [REDACTED], [REDACTED], and [REDACTED] difficulty with [REDACTED]. These parental concerns were all considered and addressed during the course of the evaluation.

5. [REDACTED] reviewed existing data, which revealed that the student had been diagnosed with [REDACTED], which impacted the student's skills in [REDACTED],



The student scored in the average to high average range [REDACTED].

10. To assess the student's [REDACTED] and [REDACTED], [REDACTED] administered the Oral and Written Language Scales II. The student had weaknesses in [REDACTED], [REDACTED], and [REDACTED].

11. Lastly, [REDACTED] administered a new test, named the Clinical Evaluation of Language Fundamentals-5 Pragmatic Profile (CELF-5), which revealed that the student demonstrated [REDACTED] [REDACTED] and [REDACTED], [REDACTED], [REDACTED], [REDACTED].

12. In summary, [REDACTED] found that the student's receptive, [REDACTED] are improving toward the average range of performance; however, due to [REDACTED] [REDACTED] and [REDACTED], [REDACTED] recommended [REDACTED]. Specifically, the interventions should focus on monitoring [REDACTED], comprehension of information, as well as continuing to work on improving the student's [REDACTED].

13. The School Board has established, by a preponderance of the evidence, that the [REDACTED] re-evaluation conducted was appropriate for this student.

Speech evaluation

14. In April 2015, the student's mother requested a speech evaluation focused on [REDACTED], [REDACTED], and [REDACTED].

15. [REDACTED], who holds a clinical doctorate in speech pathology, conducted the speech evaluation. [REDACTED] did not know the student prior to [REDACTED] evaluation; therefore, [REDACTED] gathered previous evaluations (including the language evaluation at issue in this case and discussed above), reviewed the student's file, and consulted with the student's current speech pathologist.

16. During the course of [REDACTED] evaluation, [REDACTED] received feedback from the student's classroom teacher, and the student's parent. [REDACTED] also, in addition to the actual evaluation, observed the student during classroom time.

17. [REDACTED] administered the Clinical Assessment of Articulation and Phonology-2 (CAAP-2), which assessed [REDACTED] and [REDACTED]. The CAAP-2 revealed that the student had difficulty [REDACTED], but [REDACTED] [REDACTED]. As to [REDACTED] and [REDACTED], [REDACTED] was also [REDACTED].

18. [REDACTED] also administered the Stuttering Severity Instrument-4, which assesses [REDACTED]. The student [REDACTED] [REDACTED].

19. [REDACTED] administered the Children's Attitudes About Talking instrument, which is generally given to students who have





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.

25. 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).

26. 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.

(emphasis added).

27. 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.

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(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.

28. 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.

29. To meet its burden of proof, the School Board must demonstrate that the language re-evaluation and speech evaluation complied with rule 6A-6.0331(5), which set 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.

30. Turning to the language evaluation, the School Board established that [REDACTED] was qualified to conduct the evaluation, and that the evaluation complied with 6A-6.0331(5). The School Board also established that [REDACTED] used assessments that were related to the student's known disability and suspected disability. The evaluation was comprehensive, adequately identifying the student's ESE needs.

31. As to the speech evaluation, the School Board established that [REDACTED] was qualified to conduct the evaluation, and that the evaluation complied with 6A-6.0331(5). The School Board also established that [REDACTED] used

assessments that were related to the student's known disability and suspected disability. The evaluation was comprehensive, adequately identifying the student's ESE needs.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board's evaluations were appropriate, and Respondent is not entitled to Independent Educational Evaluations in the fields of language and speech, at public expense.

DONE AND ORDERED this 2nd day of July, 2015, in Tallahassee, Leon County, Florida.

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JESSICA E. VARN  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
[www.doah.state.fl.us](http://www.doah.state.fl.us)

Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of July, 2015.

COPIES FURNISHED:

Liz Conn  
Bureau of Exceptional Education  
and Student Services  
325 West Gaines Street, Suite 614  
Tallahassee, Florida 32399-0400  
(eServed)

Laura E. Pincus, Esquire  
Palm Beach County School Board  
Post Office Box 19239  
West Palm Beach, Florida 33416-9239  
(eServed)

Respondent  
(Address of Record-eServed)

E. Wayne Gent, Superintendent  
Palm Beach County School Board  
3300 Forest Hill Boulevard, Suite C-316  
West Palm Beach, Florida 33406  
(eServed)

Matthew Mears, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

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).