

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 22-2614E

ORANGE COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held in this matter before Brittany O. Finkbeiner, an Administrative Law Judge of the Division of Administrative Hearings (“DOAH”), on February 2, 2023, via Zoom video conference.

APPEARANCES

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

For Respondent: Sarah Wallerstein Koren, Esquire
 Orange County Public Schools
 445 West Amelia Street
 Orlando, Florida 32801

STATEMENT OF THE ISSUE

The issue in this case is whether Respondent provided occupational therapy (“OT”) or speech services to the student without parental consent.

PRELIMINARY STATEMENT

Petitioner submitted his original complaint on August 29, 2022, alleging that Respondent was providing OT services to the student without consent beginning in September of 2021. Petitioner was later granted permission to

amend the original complaint to include the allegation that the student was also receiving speech services without consent. For purposes of this Final Order, both complaints will be referred to collectively as “Complaint.”

At the due process hearing, Petitioner called [REDACTED], [REDACTED], and [REDACTED]. Petitioner entered the following exhibits into evidence: Exhibits 1, 2, 7, 8, and 11. Respondent called [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. Respondent entered the following exhibits into evidence: Exhibits 3 through 14, 17, 19, and 20.

The due process hearing Transcript was filed with DOAH on February 17, 2023. The parties timely filed proposed orders, which were considered in the preparation of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, the undersigned will use male pronouns in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner’s actual gender.

FINDINGS OF FACT

1. At the time this case arose, Petitioner was a [REDACTED] student at School A.

2. Petitioner is eligible for exceptional student education under the categories of Developmental Delay and Occupational Therapy as a related service.

3. Based on Petitioner’s allegation that the student was provided speech therapy without consent, the Orange County Public Schools Office of Professional Standards conducted an investigation. A report based on the

investigation dated November 4, [REDACTED], stated, in pertinent part, that although language therapy was provided without following the proper procedures, speech therapy was not provided at all. The evidence adduced at hearing was consistent with the report.

4. OT services were provided to the student as a related service authorized by the individualized education program (“IEP”) team at the September 17, [REDACTED], meeting. The signature page from that meeting indicates that both parents were present.

CONCLUSIONS OF LAW

5. DOAH has jurisdiction over the parties to and the subject matter of this proceeding. §§ 1003.57(1)(a) and 1003.5715(5), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u).

6. Petitioner bears the burden of proof with respect to each of the issues raised herein. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

7. Respondent is a local educational agency (“LEA”), as defined under 20 U.S.C. § 1401(19)(A). By virtue of receipt of federal funding, Respondent is required to comply with certain provisions of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1401, *et seq.* As an LEA, under the IDEA, Respondent was required to make available a free appropriate public education (“FAPE”) available to Petitioner. *Sch. Bd. of Lee Cnty. v. E.S.*, 561 F. Supp. 2d 1282, 1291 (M.D. Fla. 2008) (citing *M.M. v. Sch. Bd. of Miami-Dade Cnty.*, 437 F.3d 1085, 1095 (11th Cir. 2006)); *M.H. v. Nassau Cnty. Sch. Bd.*, 918 So. 2d 316, 318 (Fla. 1st DCA 2005).

8. In enacting the IDEA, Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A); *See Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th. Cir. 2012). The statute was

intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990); *See also Endrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 386 (2017).

9. Parents and children with disabilities have substantial procedural safeguards under the IDEA. *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205-06 (1982).

10. Parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint with respect to any matter relating to the identification, evaluation, or educational placement of their child, or the provision of FAPE to their child. 20 U.S.C. § 1415(b)(1), (3), (6).

11. Local school systems must also satisfy the IDEA's substantive requirements by providing all eligible students with FAPE, which is defined as:

Special education and related services that—

(A) have been provided at public expense, under public supervision and direction, and without charge;

(B) meet the standards of the State educational agency;

(C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and

(D) are provided in conformity with the individualized education program required under [20 U.S.C. § 1414(d)].

20 U.S.C. § 1401(9).

12. “Special education,” as that term is used in the IDEA, is defined as:

[S]pecially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including—

(A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings. . . .

20 U.S.C. § 1401(29).

13. The components of FAPE are recorded in an IEP, which, among other things, identifies the child’s present levels of academic achievement and functional performance, establishes measurable annual goals, addresses the services and accommodations to be provided to the child and whether the child will attend mainstream classes, and specifies the measurement tools, and periodic reports, that will be used to evaluate the child’s progress.

20 U.S.C. § 1414(d)(1)(A)(i); 34 C.F.R. § 300.320.

14. “The IEP is the centerpiece of the statute’s education delivery system for disabled children.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 580 U.S. 380, 391 (2017) (quoting *Honig v. Doe*, 484 U.S. 305, 311 (1988)). “The IEP is the means by which special education and related services are ‘tailored to the unique needs’ of a particular child.” *Id.* (quoting *Bd. of Educ. v. Rowley*, 458 U.S. at 181).

15. In *Rowley*, the Supreme Court held that it is necessary to examine whether the school district has complied with the IDEA’s procedural requirements as part of the determination of whether a student was provided with FAPE. The present case turns solely on whether Respondent followed the IDEA’s procedural requirements—specifically whether Respondent provided OT or speech services to the student without parental consent.

16. Consent under the IDEA requires, in part, that the “parent understands and agrees in writing to the carrying out of the activity for which her consent is sought.” 20 U.S.C. § 1414(a)(1)(D).

17. According to Florida Administrative Code Rule 6A-6.03311(1)(v)4.:

In matters alleging a procedural violation, an ALJ may find that a student did not receive FAPE only if the procedural inadequacies impeded the student’s right to FAPE; significantly impeded the parent’s opportunity to participate in the decision- making process regarding the provision of FAPE to the student; or caused a deprivation of educational benefit.

18. By Respondent’s own admission, language services were provided to the student without following the IDEA’s procedural requirements. However, the undersigned is limited to analyzing only those issues raised in Petitioner’s Complaint. In the Complaint, the allegations are limited to the provision of OT and speech services. Language services were not raised prior to the due process hearing. Although the undersigned recognizes that speech and language services may likely be related and that those related terms may have been inadvertently conflated in this case, it cannot be ignored that “speech” and “language” are distinct terms with different meanings. The term “speech” is defined as “the communication or expression of thoughts in spoken words.” *Speech*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/speeh> (last visited March 1, 2023). “Language,” on the other hand, is defined as “a systematic means of communicating ideas or feelings by the use of conventionalized signs, sounds, gestures, or marks having understood meanings.” *Language*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/language> (last visited March 1, 2023).

19. Petitioner did not include language services in the Complaint. Although language services were provided without consent, it does not follow that the same is true of speech services. Given the dearth of evidence in the

record that speech services were provided without consent, the undersigned simply cannot connect the missing dots between speech and language services.

20. There is no evidence in the record to support Petitioner's allegation that OT services were provided to the student without consent; or that the parent's signature was forged on any documents; or that procedural inadequacies on the part of Respondent otherwise impeded the student's right to FAPE or the parent's ability to participate. The evidence in the record shows that OT services were provided to the student as a related service authorized by the IEP team at the September 17, 2021, meeting, which both of Petitioner's parents attended.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that all requests for relief are DENIED.

DONE AND ORDERED this 3rd day of March, 2023, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 3rd day of March, 2023.

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).