

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

vs.

Case No. 23-2703E

FLAGLER COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

A due process hearing was held on September 7, 2023, by Zoom conference before Todd P. Resavage, an Administrative Law Judge (ALJ) with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Petitioner's mother, Qualified Representative
 (Address of Record)

For Respondent: Kristy Janda Gavin, Esquire
 Flagler County School District
 1769 East Moody Boulevard, Building 2
 Bunnell, Florida 32110

STATEMENT OF THE ISSUE

Whether Respondent violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, *et seq.*, in failing to properly evaluate or reevaluate an adult, home schooled student.

PRELIMINARY STATEMENT

Respondent received Petitioner's Request for Exceptional Student Education Due Process (Complaint) on July 10, 2023. Respondent forwarded

the Complaint to DOAH on July 19, 2023, and the matter was assigned to the undersigned.

On July 21, 2023, Respondent's Notice of Insufficiency was filed. By Order dated July 25, 2023, Petitioner's Complaint was found to be sufficient. On July 31, 2023, Respondent moved to strike portions of Petitioner's Complaint. Petitioner filed a response to the motion and, on August 9, 2023, filed a pleading requesting permission for his mother or special education advocate, [REDACTED], to speak on his behalf.

On August 10, 2023, a telephonic motion hearing was noticed to be conducted on August 11, 2023. On the same day, the undersigned issued an Order addressing Petitioner's request that his mother and advocate speak on his behalf. By the Order, Petitioner was advised as follows:

Petitioner's Request for Due Process Hearing represents that Petitioner is a 20-year old student with a disability. In Florida, when a student with a disability reaches the age of 18 (except for a student with a disability who has been determined incompetent under State law or who has had a guardian advocate appointed to make educational decisions as provided by section 393.12, Florida Statutes), all rights afforded to parents (except the right to notice) under Florida Administrative Code Rules 6A-6.03011 through 6A-6.0361 transfer to the student. See Fla. Admin. Code R. 6A-6.03311(8). Any party to a due process hearing has the right to be represented by counsel or a qualified representative. Additionally, any party has the right to be accompanied and advised by individuals with special knowledge or training with respect to the problems of students with disabilities. See Fla. Admin. Code R. 6A-6.0331(9)(v). A review of the docket reveals that Petitioner, who is 20, is not currently represented by counsel or a qualified representative. Accordingly, Petitioner does not presently have an individual to represent [him] in

this proceeding who may “speak on [his] behalf.” Notwithstanding, Petitioner’s mother may speak at the telephonic motion hearing to advise the undersigned as to whether Petitioner has been declared incompetent and an appropriate guardianship has been established or whether Petitioner or another has been appointed to represent the educational interests of Petitioner.

During the motion hearing, it was determined that Petitioner had not been declared incompetent, had a guardianship established, nor had anyone been appointed to represent Petitioner’s educational interests. On August 24, 2023, Petitioner’s mother filed a request to act as a qualified representative for Petitioner. A notice of hearing was issued on August 25, 2023, setting the due process hearing for September 7, 2023.

On September 1, 2023, an Order Accepting Qualified Representative was issued. This Order authorized Petitioner’s mother to appear in the proceeding as his qualified representative. On September 5, 2023, the undersigned issued an Order on Respondent’s previously filed Motion to Strike Portions of Petitioner’s Complaint. By that Order, the undersigned delineated the sole issues presented for the due process hearing as those set forth in Petitioner’s Complaint at paragraphs 4 and 19; and the requested relief for those issues set forth in paragraph 20 of Petitioner’s Complaint.

Both parties filed pre-hearing motions to strike witnesses and exhibits, but the parties resolved the same by stipulations which are in the Transcript. The due process hearing was conducted, as scheduled. Petitioner testified on his own behalf. Petitioner also presented the testimony of [REDACTED]. Petitioner’s Exhibit 1 was admitted into evidence. Respondent did not present any witnesses or seek the admission of any exhibits.

At the end of the hearing, the parties agreed to submit proposed final orders within seven days after the filing of the transcript at DOAH and the issuance of the undersigned's final order within seven days after the parties' proposed final order submissions. The hearing Transcript was filed on September 19, 2023. Petitioner filed a timely proposed final order, which has been considered in preparing this Final Order. Respondent filed an untimely Proposed Final Order, which has not been considered. Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violation.

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. Petitioner is ■ years old, autistic, and suffers from anxiety and depression. It appears undisputed that Petitioner was previously determined eligible to receive exceptional student education services due to his disability, Autism Spectrum Disorder.

2. It is undisputed that at all times relevant to this proceeding, Petitioner was not enrolled as a student in Respondent's school district, but participated in a home education program.¹

3. Petitioner credibly testified that he has trouble speaking in situations where he does not know people or is in a new situation.

¹ A "home education program" means "the sequentially progressive instruction of a student directed by his or her parent to satisfy the attendance requirements of ss. 1002.41, 1003.01(16), and 1003.21(1)." § 1002.01(1), Fla. Stat.

4. Petitioner, assisted by his mother and [REDACTED], drafted a “Referral for Evaluation Under I.D.E.A. 2004” (referral). The referral, at the top of the page, has a typewritten date of June 14, [REDACTED].

5. The referral’s first paragraph provides that, “I am, hereby, referring my [son] to the Flagler CSB and their Staffing Eligibility Committee for a complete evaluation to determine whether or not my [son] continues to meet the criteria for classification under IDEA 2004.” The last page of the referral bears the signature of Petitioner and his mother with the date of execution noted as July 14, [REDACTED].

6. Petitioner testified that, on June 16, [REDACTED], he accompanied his mother to “school”² to turn the referral in, yet he remained in the vehicle as he was feeling unwell. Petitioner testified that the referral was signed prior to his mother entering the school. While Petitioner testified that the referral was signed, he also testified that it was “not completely” turned into Respondent.

7. [REDACTED] testified on behalf of Petitioner. She met Petitioner and his mother at a restaurant to discuss Petitioner’s educational issues and offered to assist. She then helped draft the referral. On the belief that Respondent had refused to accept the referral, [REDACTED] then assisted Petitioner and his mother in drafting Petitioner’s Complaint.

8. On July 10, [REDACTED], Respondent received Petitioner’s Complaint.

9. No competent evidence was received into evidence concerning the sequence of events that took place after Petitioner and his mother presented to the school on June 16, [REDACTED].

CONCLUSIONS OF LAW

10. DOAH has jurisdiction over the subject matter of this proceeding and of the parties pursuant to sections 1003.57(1)(c) and 120.65(5), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

² Due to the evidentiary presentation, it is unclear whether Petitioner and his mother appeared at a particular school or at the District office.

11. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

12. The gravamen of Petitioner’s Complaint is that Respondent breached its so-called “Child Find” duty under the IDEA in failing to properly evaluate or reevaluate Petitioner upon request. Child Find “refers to a school’s obligation, under relevant federal law, to identify students with disabilities who require accommodations or special education services proactively rather than waiting around for a child’s parents to confront them with evidence of this need.” *Culley v. Cumberland Valley Sch. Dist.*, 758 Fed. Appx. 301, 306 (3d Cir. 2018). The IDEA sets forth the Child Find obligation as follows:

All children with disabilities residing in the State, including children with disabilities who are homeless children or are wards of the State and children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412(a)(3); 34 C.F.R. § 300.111(a).

13. In compliance with this mandate, rule 6A-6.0331 sets forth the school districts’ responsibilities for students suspected of having a disability. This rule provides that school districts have the responsibility to ensure that students suspected of having a disability are subject to general education intervention procedures. Additionally, they must ensure that all students with disabilities and who are in need of exceptional student education are identified, located, and evaluated, and a free appropriate public education is made available to them if it is determined that the student meets the eligibility criteria.

14. Rule 6A-6.0331(3)(a) 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. As applicable to this case, that circumstance is as follows:

4. When a parent requests an evaluation and there is documentation or evidence that the kindergarten through grade 12 student or child age three (3) to kindergarten entry age who is enrolled in a school district operated preschool program may be a student with a disability and needs special education and related services.

15. When, as here, the parental rights under the IDEA have been transferred to the adult student, and the student initiates a request for an evaluation to determine whether the student continues to meet the criteria for eligibility as a student with a disability, the school district is mandated, within 30 days, to obtain informed consent from the student for the evaluation (or reevaluation) or provide the student with a written notice of refusal. Fla. Admin. Code R. 6A-6.0331(3)(c) and (7)(c). The consent “must provide the [adult student] written notice that describes any evaluation procedures the school district proposed to conduct.” Fla. Admin. Code R. 6A-6.0331(4)(a). The initial act of requesting an evaluation does not satisfy the obligation of providing informed consent.

16. Once informed consent is obtained, the school district must then ensure that the evaluation or reevaluation is conducted within 60 calendar days. Fla. Admin. Code R. 6A-6.0331(3)(g) and (7)(a). As relevant here, the following days are not counted toward the 60-calendar day requirement: 1) all school holidays, Thanksgiving, and winter and spring breaks as adopted by the district school board; and 2) the summer vacation period beginning the day after the last day of school for students and ending on the first day of school for students, in accordance with the calendar adopted by the district school board. Fla. Admin. Code R. 6A-6.0331(3)(g)1. and 2. Respondent is not, however, prohibited from conducting evaluations during the summer vacation period. *Id.*

17. Petitioner has failed to meet his burden of establishing a procedural or substantive violation of the IDEA. Succinctly, Petitioner's Complaint is premature. Even if Petitioner appropriately submitted an adult student request for evaluation or reevaluation on June 16, [REDACTED], Respondent had 30 days in which to obtain informed consent from Petitioner, in which the consent would set forth with specificity any evaluation procedures Respondent proposed to conduct or provide a written notice of refusal. Rather than allowing that time to expire, on July 10, [REDACTED], Petitioner served Respondent with Petitioner's Complaint. Accordingly, based on the evidentiary presentation, it cannot be concluded that Respondent failed to timely obtain informed consent or present Petitioner with a written notice of refusal for the evaluation or reevaluation. Additionally, and as a practical matter, Respondent's obligation to conduct any evaluation or reevaluation within 60 calendar days would not have commenced until the first day of the [REDACTED] school year.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner failed to satisfy his burden of proof for the claims asserted in Petitioner's Complaint, and therefore Petitioner's Complaint is DENIED in all aspects.

DONE AND ORDERED this 2nd day of October, 2023, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of October, 2023.

COPIES FURNISHED:

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(eServed)

Amanda W. Gay, Esquire
(eServed)

Qualified Representative
(Address of Record)

LaShakia Moore, Interim Superintendent
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Kristy Janda Gavin, Esquire
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Petitioner
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Andrew King, General Counsel
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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).