STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs. Case No. 14-1637E

[redacted]

Respondent.
_____/

FINAL ORDER

Pursuant to notice, a final hearing was conducted in Lauderdale Lakes, Florida, on May 1, 2014, before Administrative Law Judge Edward T. Bauer of the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Barbara J. Myrick, Esquire
Broward County School Board
Eleventh Floor
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301

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

STATEMENT OF THE ISSUE

Whether Respondent is entitled to an independent language evaluation at public expense.

PRELIMINARY STATEMENT

On April 11, 2014, the Broward County School Board ("Petitioner") filed a Request for Due Process Hearing ("Complaint") that sought a determination of the appropriateness of its most recent language evaluation of Respondent. Petitioner's Complaint was necessitated by its decision to deny the request of Respondent's parent to provide an independent language evaluation at public expense.

As noted above, the final hearing was held on May 1, 2014, during which Petitioner presented the testimony of five witnesses ([redacted], [redacted], [redacted], [redacted], [redacted],and [redacted]) and introduced 11 exhibits, numbered 1 through 11. Respondent's [redacted] testified on [redacted] child's behalf, but offered no exhibits into evidence. At the conclusion of the final hearing, the parties stipulated to a deadline of May 27, 2014, for the submission of proposed final orders. It was further agreed that the undersigned's final order would issue on or before June 10, 2014.

The final hearing Transcript was filed on May 16, 2014. Both parties thereafter submitted proposed final orders, which the undersigned has considered.[1/]

For stylistic convenience, the undersigned will use masculine pronouns in this Final Order when referring to Respondent. The masculine pronouns are neither intended, nor

should be interpreted, as a reference to Respondent's actual gender.

Unless otherwise noted, all statutory and rule citations are to the versions in effect at the time the School Board performed the evaluation at issue.

FINDINGS OF FACT

1. Respondent is a [redacted] child who attends a public elementary school in [redacted], Florida. At all times relevant to this proceeding, Respondent was eligible to receive exceptional student education services pursuant to the disability categories of [redacted] and [redacted].

2. On September 12, 2013, Petitioner convened a meeting to discuss, among other issues, Respondent's current level of functioning in the area of language. In attendance were Respondent's [redacted]; two parent advocates; [redacted], Respondent's general education teacher; [redacted], an evaluation specialist; [redacted], a speech and language pathologist; [redacted], a school administrator; and [redacted], Petitioner's LEA representative.

3. As the meeting unfolded, Petitioner's team members indicated that, based on the information at their disposal, Respondent did not present with any language deficiencies. In particular, it was noted that Respondent speaks in sentences,

asks and answers questions, remains on topic, expresses [redacted] ideas clearly, and engages effectively in a range of discussions. The [redacted], by contrast, articulated [redacted] concern that Respondent "needed to be evaluated in language as a whole to look at processing."

4. In response to the [redacted] input, the team offered to perform a complete language evaluation to assess Respondent's present level of performance and educational needs in the areas of expressive language and receptive language.[2/] Petitioner's offer was recorded in a "Consent for Reevaluation/Reevaluation Plan," to which the [redacted] signified [redacted] agreement by signing the document.

5. The following month, a speech and language program specialist, [redacted], completed an evaluation of Respondent, the various components of which are enumerated below. First, though, it is important to acknowledge an unusual aspect of this proceeding——namely, that Petitioner presented no testimony from [redacted][3/] to establish the appropriateness of the language evaluation at issue.

6. In [redacted] stead, Petitioner relies primarily on the testimony of [redacted] and [redacted] [redacted] successor), as well as information contained in [redacted] report and other documentary exhibits. This evidence demonstrates, importantly, that [redacted] possessed the

necessary qualifications to administer a language evaluation; it further establishes that [redacted] relied upon multiple tools and strategies to gather information, such as her performance of a classroom observation, the solicitation of feedback from Respondent's parent and general education teacher, and, as the evaluation's principal component, her administration of the Clinical Evaluation of Language Fundamentals, Fourth Edition ("CELF-4") to Respondent.

7. As explained during the final hearing, the CELF-4 is a technically sound, individually-administered test that assesses a student's language strengths and weaknesses. A variety of core subtests are utilized (e.g., "concepts and following directions," "recalling sentences," "formulated sentences," "word classes-receptive," and "word classes-expressive"), the student's responses to which provide a raw score for each subtest. Next, the evaluator converts the raw scores to scaled scores, which are used to calculate four standard scores: a Core Language Score, a quantification of the student's overall language performance; a Receptive Language Index, which measures listening and auditory comprehension; an Expressive Language Index, which provides an overall measure of expressive language skills; and a Language Memory Index, a measure of the ability to apply working memory to linguistic content. Each of the foregoing standard scores has a mean of 100 and a standard deviation of 15.

8. With respect to Respondent's performance on the CELF-4, [redacted] report indicates a Core Language Score of 97, a Receptive Language Index of 93, an Expressive Language Index of 101, and a Language Memory Index of 94——all of which, if accurate, place Respondent in the average range of functioning. Whether these numbers are correct is anybody's guess, however, for the evidence fails to demonstrate that either [redacted] or [redacted] ever examined Respondent's answers (which are contained in the child's educational file[4/]) to confirm the validity of [redacted] raw scores. It appears, instead, that Petitioner's witnesses presumed the correctness of the raw scores when reviewing [redacted] conversion of those figures to the scaled and standard scores.[5/] In other words, all Petitioner has proven is that the standard and scaled scores were calculated correctly based upon the raw scores recorded in [redacted] report; Petitioner has not, however, established the propriety of the raw scores themselves.

9. For this reason alone, Petitioner has failed to demonstrate the appropriateness of [redacted] administration of the CELF-4, the central component of the language evaluation at issue.[6/] Respondent is therefore entitled to an independent language evaluation at public expense.

CONCLUSIONS OF LAW

A. Jurisdiction

10. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to sections 1003.57(1)(b) and 120.57(1), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(9)(u).

B. General Principles of the IDEA

11. District school boards are required by the Florida K-20 Education Code to provide for an "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)(l) & 1003.57, Fla. Stat.

12. 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); C.F. v. N.Y.C. Dep't of Educ., 746 F.3d 68, 71-72 (2d Cir. 2014)("States that receive funding under the IDEA

must provide all disabled children with a free appropriate public education.").

C. Independent Evaluations at Public Expense

13. Under the IDEA and its implementing regulations, 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. section 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.

14. 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.

* * *

(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.

15. 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 district 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.

16. To meet its burden of proof, Petitioner must demonstrate that [redacted] language evaluation complied with rule 6A-6.0331(5), which delineates the elements of an appropriate assessment. Miami-Dade Cnty. Sch. Bd. v. D.V.-A., Case No. 12-0175E (Fla. DOAH May 29, 2012). Rule 6A-6.0331(5) provides 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.

(emphasis added).

17. Returning to the facts of the present case, it is beyond serious question that [redacted] was qualified to perform a language evaluation and, further, that the CELF-4, the central component of her assessment, is inherently a sound, reliable instrument. Critically, however, Petitioner failed to prove that the raw scores recorded in [redacted] report——from which the standard and scaled scores are derived——reflect Respondent's actual test performance. This could have been accomplished, of course, with persuasive testimony to the effect that Respondent's test answers, as reflected in the written testing protocols, correspond to the raw scores for each of the subtests. In the absence of such evidence, it is impossible to determine if [redacted] calculated the raw scores "in accordance with [the] instructions provided by the producer of the assessment[]." Fla. Admin. Code R. 6A-6.0331(5)(b)4.

18. To be clear: this Final Order does not stand for the proposition that an assessment's propriety can never be established without testimony from the evaluator. Instead, the

undersigned simply concludes that, if a school district seeks to rely on testimony from educational professionals other than the evaluator, such witnesses must demonstrate a thorough familiarity with the assessment under review.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is

ORDERED that Respondent is entitled to an independent language evaluation at public expense.

DONE AND ORDERED this 2nd day of June, 2014, in Tallahassee, Leon County, Florida.

S

EDWARD T. BAUER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 2nd day of June, 2014.

ENDNOTES

[1/] Respondent's Proposed Final Order, submitted shortly after the deadline of May 27, 2014, has been accepted.

[2/] The team also agreed to perform a speech evaluation, which [redacted] later administered. The propriety of the speech evaluation has not been challenged and is therefore not at issue in this proceeding.

[3/] [redacted] retired in or around January 2014.

[4/] The CELF-4 testing protocols that contain Respondent's answers are not part of the instant record.

[5/] On this point, [redacted] acknowledged that she did not examine Respondent's test answers, as recorded in the written protocols contained in the child's educational file. Tr. at 110-11. Although Petitioner's other principal witness, [redacted], made no such concession, her perfunctory testimony concerning [redacted] scoring, see Tr. at 25-26, does not persuade the undersigned that she verified the raw scores against Respondent's answers.

[6/] It is true, as Petitioner notes in its Proposed Final Order, that Respondent's CELF-4 standard scores, which suggest average language functioning, jibe with the input of the general education teacher and [redacted] classroom observation. In the undersigned's judgment, however, such evidence is an inadequate substitute for testimony that the raw scores, from which the standard scores derive, correlate with Respondent's test answers.

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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)(b), Florida Statutes (2011), 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).