

**STATE OF FLORIDA**  
**DIVISION OF ADMINISTRATIVE HEARINGS**

BREVARD COUNTY SCHOOL BOARD,

Petitioner,

Case No. 24-1557E

vs.

\*\*,

Respondent.

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FINAL ORDER

On September 4, 2024, a due process hearing was held by Zoom conference before Nicole D. Saunders, an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Amy D. Envall, 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 School Board's psychoeducational and speech/language reevaluations were appropriate.

PRELIMINARY STATEMENT

Between February 16 and March 19, 2024, the School Board conducted two reevaluations on Respondent—one assessing Respondent's academic

functioning (psychoeducational reevaluation) and another evaluating Respondent's communication needs (speech/language reevaluation). School Psychologist [REDACTED] conducted the psychoeducational reevaluation on March 19, 2024, and issued a report containing his findings the same day. Speech/Language Pathologist (SLP) [REDACTED] conducted the speech/language reevaluation between February 16 and 23, 2024, and issued her report on April 8, 2024.

Following these reevaluations, the School Board convened an individualized education plan (IEP) meeting on April 11, 2024. At that meeting, the school-based members of the IEP team determined that Respondent no longer qualified for exceptional student education (ESE) services. That same day, the School Board issued a prior written notice (PWN) memorializing Respondent's dismissal from ESE services, but agreeing to evaluate Respondent for eligibility under Section 504.<sup>1</sup>

Disagreeing with the dismissal from ESE services, Respondent's parent requested independent psychoeducational and speech/language reevaluations (IEEs) at public expense. On April 24, 2024, the School Board filed a due process hearing request (Complaint), seeking a determination that its psychoeducational and speech/language reevaluations were appropriate and complied with Florida Administrative Code Rule 6A-6.0331(5).

The undersigned issued a Case Management Order on April 25, 2024, outlining the deadlines and procedures governing this case. Then, on May 16, 2024, a Notice of Telephonic Pre-Hearing Conference was issued, setting a pre-hearing conference for May 17, 2024. During that conference, the School Board waived the final order deadline in the case and the parties agreed to

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<sup>1</sup> The Rehabilitation Act of 1973, 29 U.S.C. § 795, *et seq.* (Section 504).

conduct the final hearing on July 16, 2024. Later that day, an Order Memorializing Waiver of Final Order Deadline issued along with a Notice of Hearing by Zoom Conference, setting the final hearing for July 16, 2024.

On July 2, 2024, Respondent filed a Request for Continuation, seeking to continue the hearing because of a death in her family. That same day, the undersigned issued an Order Rescheduling Hearing by Zoom Conference, and reset the final hearing for September 4, 2024.

On August 6, 2024, [REDACTED], the attorney who represented the School Board at the final hearing, filed a Notice of Appearance.

The hearing occurred as scheduled. The School Board presented testimony from [REDACTED], the School Psychologist who conducted Respondent's psychoeducational reevaluation; [REDACTED], the SLP who performed Respondent's speech/language reevaluation; and [REDACTED], the School Board's Assistant Director of Student Services. The undersigned also admitted the School Board's Exhibits 1 through 3 into the record.

Respondent called no witnesses, but, with the School Board's consent, the undersigned entered Respondent's Exhibit C into evidence.

At the close of evidence, the parties agreed to submit proposed final orders within ten days of the filing of the Transcript with DOAH; and the undersigned agreed to issue this Final Order no later than 20 days after the Transcript was filed.

The one-volume Transcript was filed on September 18, 2024. The parties' proposed final orders were due by September 30, 2024; and the deadline for this Final Order was October 8, 2024. The School Board timely submitted a

Proposed Final Order, which was considered in the preparation of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect when the School Board performed the reevaluations at issue.

For stylistic convenience, the undersigned uses female pronouns when referring to Respondent. The female pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

#### FINDINGS OF FACT

1. Respondent is a kind, smart, [REDACTED]-grade student who has been diagnosed with Autism Spectrum Disorder (ASD), Attention-Deficit/Hyperactivity Disorder (ADHD), Auditory Processing Disorder (APD), Asthma, and Anxiety Disorder. At the time of the reevaluations at issue, Respondent received ESE services under the categories of ASD and Language Impaired (LI).

2. Respondent's coursework is a mix of regular and honors classes. She excels in both. In the fall of [REDACTED], the School Board opted to reevaluate Respondent's educational needs to determine her eligibility for continued ESE services. To do so, Respondent underwent a psychoeducational and a speech/language reevaluation.

3. [REDACTED] conducted Respondent's psychoeducational reevaluation on March 19, [REDACTED]. [REDACTED] is a licensed psychologist who has a master's degree in Educational Psychology and a Ph.D. in Clinical Counseling Psychology. [REDACTED] is certified by the Florida Department of Education as a School Psychologist for students in pre-kindergarten through twelfth grade and is board-certified by the American Psychological Association (APA). Having worked as a School Psychologist for 30 years,

██████████ evaluates 150 to 170 students annually. █████ also assists the School Board in placement, services, accommodations, and eligibility determinations under the Individuals with Disabilities Education Act (IDEA), the Americans with Disabilities Act, and Section 504.

4. ██████████ conducted Respondent's reevaluation using the Woodcock-Johnson Test of Achievement IV (Woodcock-Johnson). The Woodcock-Johnson is a highly-accredited, nationally normed testing instrument that "measure[s] . . . academic achievement and provides an indication of performance in various skill areas." It assesses reading, mathematics, and sentence-writing fluency through five skill area tests: reading, broad reading, mathematics, broad mathematics, and math calculations. It also contains several subtests, which evaluate letter-word identification, passage comprehension, sentence reading fluency, applied problems, calculation, math fact fluency, and sentence writing fluency.

5. For each skill area, the Woodcock-Johnson provides a standard score and a grade equivalent. The mean test score is 100, and standard scores range from 90 to 110.

6. To capture Respondent's broad reading and broad math scores, ██████████ combined Respondent's subtest scores. In reading, Respondent scored 103 and achieved a grade equivalent of 11.4; in broad reading, Respondent scored 96, and had a grade equivalent of 8.8. Respondent's math scores were significantly lower. She achieved a mathematics score of 75 with a grade equivalent of 4.5; and a broad mathematics score of 69 with a grade equivalent of 4.2. Finally, in math calculation, Respondent earned 64 points and achieved a grade equivalent of 3.5. In sum, Respondent's reading scores fell within the average range, while her math scores fell far below.

7. At the final hearing, ██████████ credibly testified that, given Respondent's intellectual abilities and classroom grades, her low math scores surprised him. Nevertheless, █████ further explained that █████ administered the test according to the instructions, in Respondent's native language, in the

form most likely to yield accurate information on Respondent's knowledge, academic, developmental, and functional abilities. Moreover, while testing, Respondent showed no visible signs of anxiety. She also remained on task and made good effort. Thus, the greater weight of the evidence shows that [REDACTED] conducted the test appropriately and the test results are valid and reliable.

8. SLP [REDACTED] conducted Respondent's speech-language reevaluation. [REDACTED] holds a master's degree in Speech-Language Pathology, with a focus on communication science and disorders. [REDACTED] is a licensed SLP who has been practicing for 26 years, the last 22 of which have been with the School Board. [REDACTED] responsibilities with the School Board include evaluating and treating students with communication and speech disorders. Each year, [REDACTED] conducts around 15 speech-language evaluations and about 80 reevaluations. [REDACTED] also has extensive personal experience with Respondent, having served as [REDACTED] SLP for the past four years.

9. Respondent's speech-language reevaluation took place between February 16 and 23, [REDACTED]. It assessed Respondent's language and pragmatic skills. The test consisted of three components: a global assessment, a practical assessment, and [REDACTED] observations of Respondent.

10. To conduct the global assessment, [REDACTED] measured Respondent's core, receptive, and expressive language skills. [REDACTED] assessed Respondent's global communication skills through the Clinical Evaluation of Language Fundamentals-5<sup>th</sup> Edition (CELF-5) (Fundamentals Assessment) and tested Respondent's practical skills through the CELF-5 Pragmatics Profile and Activity Checklist (Pragmatics Assessment). Together, these tests evaluated Respondent's communication, social awareness, interactions, transitions/schedules, emotions, and functional/sensory skills.

11. Average scores on the Fundamentals Assessment range from 86 to 114 while average scores on the Pragmatics Assessment fall between 8 and 12.

12. On the Fundamentals Assessment, Respondent scored 84 in core language, 84 in receptive language, and 89 in expressive language. As [REDACTED] testified, each of these scores fall within the average range.

13. Next, [REDACTED] administered the Pragmatics Assessment. That assessment consists of an activity checklist, a pragmatics profile, and social communication worksheets.

14. The pragmatics profile examines the student's ability to use rituals, follow conversational rules, understand humor, participate, give and ask for information, express complex intentions, use prosodic cues, share and respond to interactions, read and use body language, and be socially aware. Furthermore, the social communication worksheets call for the evaluator to rate the student's communication, social awareness, interactions, transitions/schedules, emotions, and functioning/sensory skills as either "Like Peers," "Concern," or "Problem."

15. [REDACTED] completed the activity checklist while Respondent's teachers completed the pragmatics profile and social communication worksheets. Respondent's parent was only asked to complete the social communication worksheet.

16. On the pragmatics profile, Respondent's teachers rated her between six and nine with an average score of 7.25, which fell within the low average range. When completing the social communication worksheets, three of Respondent's teachers rated her as "Like Peers" in all categories assessed. And while one of Respondent's teachers noted concerns about her ability to speak loudly, [REDACTED] observed no issues that interfered with Respondent's education.

17. Conversely, when Respondent's parent completed the social communication worksheet, she identified Respondent's communication as a "Concern" and her social awareness, interactions, transitions/schedules, emotions, and functional/sensory abilities as "Problem."

18. Finally, [REDACTED] concluded [REDACTED] evaluation by observing Respondent in a therapeutic setting on February 23, [REDACTED]. As [REDACTED] credibly testified, during that observation, Respondent communicated effectively, spoke in complete sentences, and used a variety of vocabulary words. She also actively participated in conversations, asking and answering questions. In short, Respondent presented no communication deficits during the observation.

19. [REDACTED] completed [REDACTED] written report on April 8, [REDACTED], finding no areas of concern and recommending that Respondent be considered in the average range for testing. As [REDACTED] credibly testified, [REDACTED] conducted the reevaluation in Respondent's native language, according to the instructions, in the form most likely to yield accurate information on Respondent's knowledge and academic, developmental, and functional skills.

20. On April 11, [REDACTED], Petitioner's IEP team—including Respondent's parent, [REDACTED], [REDACTED], and [REDACTED]—met to plan Respondent's academic programming. At the meeting, the team reviewed Respondent's records, grades, standardized test scores, IEP goals, history, and the reevaluations [REDACTED] and [REDACTED] conducted. It also considered input from Respondent and her parent.

21. The IEP team's review revealed, in pertinent part, that during the [REDACTED]-[REDACTED] school year, Respondent received A's and B's in her Advancement Via Individual Determination (AVID), English Honors, Geometry, US History Honors, Chemistry, 2-D Studio Art, and Spanish classes. She also earned an Achievement Level 4 on the Florida Assessment of Student Thinking (F.A.S.T.) for English Language Arts, and met the concordant score for the Algebra 2 graduation requirements on the Florida's Benchmarks for Excellent Student Thinking (B.E.S.T.) test.

22. Finally, the team analyzed a note, dated March 13, [REDACTED], from Respondent's doctor, which read, in pertinent part:



To Whom It May Concern,

I am confirming that the above named patient has the following diagnoses:

[ASD], ADHD, APD, Asthma, and Anxiety Disorder. These diagnoses cause her to have functional limitations in the following areas: social interactions, coping with stress, and anxiety. In order to assist her with these limitations, it is important and recommended for her to receive social-emotional support (such as, allowing her to advocate for herself, and building coping skills for her anxiety).

Please feel free to contact the office if you have any questions.

23. At the end of that meeting, the school-based members of the IEP team concluded that Respondent no longer required ESE services; and opted to move forward with a Section 504 eligibility evaluation. Respondent's parent disagreed and requested independent psychoeducational and speech/language reevaluations at public expense.

24. Ultimately, the School Board credibly established that its psychoeducational and speech/language reevaluations met the standards of rule 6A-6.0331(5). Thus, Respondent is not entitled to the requested reevaluations at public expense.

#### CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the parties and the subject matter of this proceeding. *See* §§ 1003.57(1)(b) and 1003.5715(5), Fla. Stat. *See also* Fla. Admin. Code R. 6A-6.0331(6) and (9).

26. The Florida K-20 Education Code requires school boards to provide an "appropriate program of special instruction, facilities, and services for [ESE]

students as prescribed by the State Board of Education as acceptable.” §§ 1001.42(4)(l) and 1003.57, Fla. Stat.

27. This mandate in Florida’s Education Code is necessary for the State to receive federal funding under the IDEA, which requires, 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 Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012); *see also J.P. v. Cnty. Sch. Bd of Hanover Cnty., Va.*, 516 F.3d 254, 257 (4th Cir. 2008) (“Under the IDEA, all states receiving federal funds for education must provide disabled school children with a ‘free appropriate public education.’”).

28. The IDEA and its implementing regulations grant a parent of a child with a disability the right to obtain an IEE of the child at the public’s expense under certain circumstances. *See* 34 C.F.R. § 300.502(b); Fla. Admin. Code R. 6A-6.03311(6).

29. Title 34 C.F.R. § 300.502(b) sets out the circumstances where a parent has the right to an IEE at public expense. That section provides the following:

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.

*See also* Fla. Admin. Code R. 6A-6.03311(6) (laying out the procedure pertaining to IEEs under Florida law).

30. Thus, as explained above, a school board is not required to provide a publicly funded IEE simply because a parent requests it. Instead, the school board may initiate a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluation is appropriate. *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the school board meets its burden, it is not required to provide the requested IEE.

31. To meet its burden, the School Board must prove that its psychoeducational and speech/language reevaluations complied with rule 6A-6.0331(7) and (8).

32. Rule 6A-6.0331(7) lays out the following requirements for reevaluations. It states:

(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.

33. Moreover, rule 6A-6.0331(8) establishes the actions the School Board must take as part of conducting an initial evaluation or reevaluation. It states:

(8) Additional requirements for evaluations and reevaluations. 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:

1. Whether the student is a student with a disability or, in case of a reevaluation of the student, whether the student continues to have a disability;

2. The educational needs of the student;

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

4. Whether the student needs special education and related services or, in the case of a reevaluation of the student, whether the student continues to need special education and related services; and,

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. In this case, the School Board proved that [REDACTED] and [REDACTED] are trained, knowledgeable, and qualified to conduct the reevaluations at issue. [REDACTED] holds a Ph.D. in Clinical Psychology, is board-certified by the APA, has 30 years of experience, and evaluates between 150 and 170 students annually. The tool he used to conduct the reevaluation—the Woodcock Johnson—is a highly-accredited, nationally

normed test. [REDACTED] conducted the evaluation in Respondent's native language in the form most likely to produce accurate results. And while Respondent's broad math scores lagged behind her broad reading scores, Respondent produced no evidence that the test was invalid.

35. Similarly, [REDACTED] is a licensed SLP with over 20 years of experience, who has worked with Respondent for the past four years. [REDACTED] reevaluation was comprehensive, consisting of several tests and subtests, all aimed at assessing Respondent's communication skills. The reevaluation captured feedback from Respondent's teachers and parent and included [REDACTED] own observations. Ultimately, both reevaluations provided relevant information related to Respondent's need for ongoing ESE services.

36. Finally, during the April 8, [REDACTED], IEP meeting, the IEP team reviewed Respondent's grades, standardized test scores, IEPs, and evaluations. It also considered information provided by Respondent, her parent, and teachers. At that time, the school-based members of the IEP agreed that Respondent no longer required ESE services and opted to evaluate her for a Section 504 eligibility.

37. Thus, the School Board has met its burden of establishing that the psychoeducational and speech/language reevaluations complied with IDEA and Florida law.

#### ORDER

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

DONE AND ORDERED this 3rd day of October, 2024, in Tallahassee, Leon  
County, Florida.



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NICOLE D. SAUNDERS  
Administrative Law Judge  
DOAH Tallahassee Office

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 3rd day of October, 2024.

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).