

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BREVARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 24-1567E

**,

Respondent.

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FINAL ORDER

A due process hearing was held on September 16, 2024, by Zoom conference. Administrative Law Judge Jessica E. Varn, with the Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

For Petitioner: Molly Lauren Shaddock, Esquire
Sniffen & Spellman, P.A.
605 North Olive Avenue, Second Floor
West Palm Beach, Florida 33401

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

The School Board filed a request for a due process hearing on April 26, 2024. Attorney Shaddock filed a Notice of Appearance on June 7, 2024. A pre-hearing conference was held on June 11, 2024, in which the parties agreed to

schedule the hearing for September 16, 2024. The hearing was held as scheduled.

The School Board presented the testimony of [REDACTED], a school psychologist; [REDACTED], a speech and language pathologist (SLP); and [REDACTED], the School Board's Exceptional Student Education (ESE) Support Specialist. The student's mother testified on behalf of her [REDACTED].

School Board Exhibits 1 through 6, 9 through 12, and 14 were admitted into evidence. Respondent Exhibits A and B were also admitted.

At the end of the hearing, the parties agreed to file proposed final orders 18 days after the Transcript was filed, and the final order would be entered ten days after the proposed orders were filed. The Transcript was filed on October 3, 2024. Accordingly, proposed final orders were due on October 21, 2024; and the final order deadline was October 31, 2024.

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 male pronouns when referring to the student. The male pronouns are neither intended, nor should be interpreted, as a reference to the student's actual gender.

FINDINGS OF FACT

1. The student is an [REDACTED] grader with autism, who is eligible for ESE under the Autism Spectrum Disorder (ASD) category.
2. During an annual review of the student's individualized education plan (IEP), in the Spring of [REDACTED], the School Board reevaluated the student in multiple areas, including psychoeducational, occupational therapy (OT), and

SLP. The student's mother disagreed with those three evaluations, and requested independent educational evaluations (IEEs).¹

3. [REDACTED] conducted the student's psychoeducational reevaluation on February 21, [REDACTED]. [REDACTED] is a licensed psychologist who has a master's degree in Educational Psychology and a Ph.D. in Clinical Counseling Psychology. XX 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. Having worked as a school psychologist for 30 years, [REDACTED] evaluates around 150 students annually.

4. [REDACTED] conducted the student's reevaluation using the Woodcock-Johnson Test of Achievement IV (Woodcock-Johnson). The Woodcock-Johnson is a highly-accredited, nationally normed testing instrument that measures academic achievement and reflects 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. To capture the student's broad reading and broad math scores, [REDACTED] combined [REDACTED] subtest scores. In reading, the student scored 105 and achieved a grade equivalent of 12.5; in broad reading, the student scored 102, and had a grade equivalent of 10.9. [REDACTED] math scores were slightly lower than average. [REDACTED] achieved a mathematics score of 88 with a grade equivalent of 6.4; and a broad mathematics score of 82 with a grade

¹ At the hearing, the student's parent withdrew her request for an IEE in OT.

equivalent of 5.7. Finally, in math calculation, the student earned 74 points and achieved a grade equivalent of 4.6. In sum, ■■■ reading scores fell within the average range, while ■■■ math scores fell slightly below average.

6. During the testing, ■■■■■ observed that the student struggled with math calculation and fluency, a timed test. ■■■ noticed that the student wanted to do a good job, but because of the time limitation, the student had to work quickly. Because the student was really taking his time, ■■■ score was lower than expected.

7. ■■■■■ credibly testified that ■■■ administered the test according to the instructions, in the student's native language, in the form most likely to yield accurate information on the student's knowledge and academic, developmental, and functional abilities. Moreover, while testing, the student seemed comfortable, remained on task, and made good effort. The greater weight of the evidence shows that ■■■■■ conducted the test appropriately and the test results are valid and reliable.

8. SLP ■■■■■ conducted the student's speech-language reevaluation. ■■■■■ holds a master's degree in Speech-Language Pathology, with a focus on communication science and disorders. ■■■ is a licensed SLP who has been practicing for 26 years, the last 23 of which have been with the School Board. ■■■ responsibilities with the School Board include evaluating and treating students with communication and speech disorders. ■■■■■ also has extensive personal experience with the student, having served as his SLP for the past four years.

9. ■■■ evaluated the student on February 22, ■■■. ■■■ evaluation assessed the student's language, speech sound, oral peripheral skills, and pragmatic skills. ■■■■■ assessed the student's overall language skills by administering the Clinical Evaluation of Language Fundamentals-5th Edition (CELF-5) (Fundamentals Assessment). ■■■ assessed the student's speech using the Goldman-Fristoe Test of Articulation Third Edition

(Articulation Assessment). [REDACTED] tested the student's practical skills through the CELF-5 Pragmatics Profile (Pragmatics Assessment).

10. On the Fundamentals Assessment, Respondent scored 89 in core language, 90 in receptive language, and 98 in expressive language. Each score falls within the average range, which is 86 to 114.

11. On the Articulation Assessment, the student scored 87, which is in the average range of 86 to 114.

12. [REDACTED] also administered the Pragmatics Assessment. That assessment consists of a pragmatics profile and social communication worksheets. Both utilize teacher input, which was done by five teachers.

13. 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."

14. On the pragmatics profile, the teachers rated him between six and nine, which fell within the low average range. When completing the social communication worksheets, only one teacher noted concerns about [REDACTED] ability to manage frustration, but this issue did not seem to interfere with [REDACTED] education.

15. Finally, [REDACTED] concluded [REDACTED] evaluation by observing the student in multiple settings. [REDACTED] observed him taking turns in conversations, asking and answering questions, effectively communicating with [REDACTED], following all directions, actively participating in conversations, and communicating in full sentences. In short, he presented no communication deficits during the observation.

16. [REDACTED] completed [REDACTED] written report on March 22, [REDACTED], finding no areas of concern and recommending that the student be considered in the average range for testing. As [REDACTED] credibly testified, [REDACTED] conducted the reevaluation in the student's native language, according to the instructions,

in the form most likely to yield accurate information on the student's knowledge and academic, developmental, and functional skills.

CONCLUSIONS OF LAW

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

18. The Florida K-20 Education Code's imposition of the requirement that exceptional students receive special education and related services is necessary 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); *Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012).

19. Under the IDEA and its implementing regulations, a parent of a child with a disability is entitled, in some cases, to obtain an IEE of the child at public expense. The circumstances under which a parent has a right to an IEE at public expense are set forth in 34 C.F.R. § 300.502(b):

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.

20. Florida law, specifically 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.

21. A school board in Florida is not automatically required to provide a publicly funded IEE 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*. *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the school board is able to meet its burden and establish the appropriateness of its evaluation, it need not provide the requested IEE.

22. To satisfy its burden of proof, the School Board must establish that the assessments at issue complied with rule 6A-6.0331(5), which sets forth the elements of an appropriate evaluation. Rule 6A-6.0331(5) provides:

(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 within a data-based problem solving process, including information about the student's response to evidence-based interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (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 and procedures 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 and procedures 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 suspected disability.

23. Based on the Findings of Fact as stated above, the School Board has proven that its psychoeducational evaluation, and its SLP evaluation, fully complied with rule 6A-6.0331(5) and the IDEA. In particular, they were conducted by trained and knowledgeable professionals who utilized, and properly administered, various valid instruments that yielded reliable and comprehensive information about the student's educational needs.

24. Although the student is not entitled to IEEs at public expense, the parent may present a psychoeducational evaluation and an SLP evaluation, obtained at private expense, to the School Board. The School Board must consider them. *See Fla. Admin. Code R. 6A-6.0331(6)(j) 1.* (providing that if a parent "shares with the school district an evaluation obtained at private expense . . . [t]he school district shall consider the results of such evaluation in any decision regarding the provision of FAPE to the student, if it meets appropriate district criteria").

ORDER

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

DONE AND ORDERED this 29th day of October, 2024, in Tallahassee, Leon County, Florida.



JESSICA E. VARN
Administrative Law Judge
DOAH Tallahassee Office

Division of Administrative Hearings
1230 Apalachee Parkway
Tallahassee, Florida 32301-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 29th day of October, 2024.

COPIES FURNISHED:

Amanda W. Gay, Esquire
(eServed)

Bryce D. Milton, Educational Program Director
(eServed)

Molly Lauren Shaddock, Esquire
(eServed)

William D. Chappell, Acting General Counsel
(eServed)

Respondent
(eServed)

Dr. Mark Rendell, Superintendent
(eServed)

Amy J. Pitsch, Esquire
(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).