

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

BROWARD COUNTY SCHOOL  
BOARD,

Petitioner,

vs.

Case No. 26-0191E

\*\*,

Respondent.

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FINAL ORDER

The due process hearing was held on March 9, 2026, via Zoom conference. Administrative Law Judge Jessica Varn, of the Division of Administrative Hearings (DOAH), presided over the hearing.

APPEARANCES

For Petitioner: Giseli F. LeMay, Esquire  
The School Board of Broward County, Florida  
K.C. Wright Administration Building  
600 Southeast Third Avenue, 11th Floor  
Fort Lauderdale, Florida 33301

For Respondent: (No appearance)

STATEMENT OF THE ISSUE

Whether the School Board's psycho-educational evaluation of the student was appropriate.

PRELIMINARY STATEMENT

On January 12, 2026, the School Board filed a request for a due process hearing (Complaint), seeking to establish that a psycho-educational evaluation of the student, dated June 6, 2024, was appropriate. The student's

parent had requested an independent educational evaluation (IEE); therefore, the School Board denied the request and requested a due process hearing.

On February 11, 2026, the parties participated in a pre-hearing conference and mutually agreed to schedule the due process hearing on March 9 and 10, 2026. The hearing was held as scheduled, but only the School Board appeared. Respondent did not seek a continuance of the due process hearing and did not appear at any point during the hearing.

The School Board opted to present its case and offered the testimony of two witnesses: [REDACTED], a school psychologist; and [REDACTED], an audiologist. School Board Exhibits 1 through 7 were admitted into the record.

At the end of the due process hearing, the School Board agreed to file a proposed final order on April 20, 2026, and agreed to extend the final order deadline to May 4, 2026. The Transcript was filed on April 7, 2026. The School Board filed a Proposed Final Order, which was considered in preparing 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 Respondent. The male pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

## FINDINGS OF FACT

1. When the student was in [REDACTED], a multi-disciplinary team convened to assess the student for suspected disabilities, and initiated evaluations for Part B of the Individuals with Disabilities Education Act (IDEA). The student's parent consented. The student was suspected of being eligible for Deaf or Hard of Hearing, Developmental Delay, and Speech Impairment. The team agreed that an audiologist, a school psychologist, and a speech and language pathologist (SLP) would evaluate the student.

2. [REDACTED], a school psychologist, along with two SLPs, authored a multi-disciplinary report on June 6, [REDACTED].

3. At the time of the evaluation, the student was [REDACTED] years old. The evaluation included gathering comprehensive background information about the student's life up to that point and a review of a private audiological evaluation completed in December [REDACTED].

4. [REDACTED] utilized the Developmental Assessment of Young Children, Second Edition (DA YC-2); parent interview, behavioral observations, informal assessment, and review of records. The overall evaluation also included a Preschool Language Scales, Fifth Edition (PLS-5); Clinical Assessment of Articulation and Phonology, Second Edition (CAAP-2); Audiological Evaluation; and a review of a private audiological report.

5. In terms of [REDACTED] behavioral observations, [REDACTED] reported that the student willingly accompanied his [REDACTED] from the waiting area to the evaluation room. He displayed direct eye contact, joint attention, and a social smile. He primarily communicated through two, to three-word utterances along with some jargon. He presented as active and easily distracted, and was often out of his seat, crawling under the table and opening cabinets to look for toys. At times, he appeared to become frustrated with the task demands, told the examiners "no," and removed his hearing aids when given a non-preferred directive. He required continuous redirection and prompting to follow through with the tasks given. He demonstrated functional and

imaginative play routines, but he could be rough while playing. He mostly played by himself.

6. [REDACTED] also evaluated the student's cognitive abilities, such as attention, memory, purposeful planning, decision-making, and discrimination. Based on the DA YC-2, his skills were estimated to be within the very low range compared to other children his age. He could place rings onto a stand and completed inset puzzles. He could imitate simple structures, such as a three-block bridge. He could match objects to pictures and he could match colors and shapes. He had trouble nesting cups of graduated sizes and matching objects by size. He identified various colors and basic shapes. He counted up to five but did not show an understanding of quantity concepts such as one or one more. He could state his first name but did not accurately respond when asked his age or gender.

7. In terms of social/emotional functioning, [REDACTED] evaluated his self-awareness, personal knowledge, self-worth, pride, coping skills, and social competence. Based on the DA YC-2, the student's skills were estimated in the low average range compared to other children his age. He was loving and affectionate, but had difficulty at times separating from his [REDACTED]. He spontaneously greeted others. He recognized others' emotions, showed pride in his accomplishments, and used "please" and "thank you." He could become easily frustrated. He enjoyed playing with toy dinosaurs, monster trucks, and Elmo toys. He had functional and imaginative play skills, but he could be rough and sometimes threw his toys. He would initiate play interactions with his [REDACTED] and siblings but rarely interacted with unfamiliar children. He had trouble sharing and waiting his turn. According to his [REDACTED], he was active and had a short attention span. Transitions were challenging, and he could get easily upset and be aggressive when he did not get his way.

8. Based on the DA YC-2, Ms. Isreal also evaluated the student's independent functioning skills, which were estimated to be significantly below age expectancy. He became frustrated when using utensils and would

usually finger feed. He drank from a closed cup with a straw. He could remove his shoes. He needed assistance in dressing as well as washing and drying his hands and brushing his teeth. He hesitated to sit on the toilet, and wore pull-ups. He was not, at that time, indicating if the pull-up was wet or soiled. According to his [REDACTED], he lacked appropriate awareness and understanding of danger.

9. The evaluation also addressed the student's motor, communication, and auditory skills. Those evaluations were conducted by SLPs and an audiologist.

10. The evaluation was conducted in the student's native language.

11. [REDACTED] is a licensed school psychologist, and [REDACTED] credibly testified that she administered valid and reliable assessments to avoid being discriminatory on a racial or cultural basis. She is trained and knowledgeable of the assessments, and she followed any instructions provided by the producer of the assessments.

12. The June [REDACTED] evaluation was comprehensive enough to identify all of the student's needs. Thus, the School Board correctly denied the parent's request for an IEE at public expense.

#### CONCLUSIONS OF LAW

13. DOAH has jurisdiction over the subject matter of this proceeding and 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).

14. 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 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).

15. Under the IDEA, and its implementing regulations, certain circumstances entitle a parent of a child with a disability to obtain an IEE of the child at public expense. Title 34 C.F.R. § 300.502(b) outlines the circumstances under which a parent has a right to an IEE at public expense:

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.

16. Florida law, specifically rule 6A-6.03311(6), provides similarly:

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.

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(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.

17. Under the IDEA, and corresponding Florida regulations, a school board is not automatically required to provide a publicly funded IEE upon a parent's request. When a parent makes such a request, the school board may initiate a due process hearing to prove, by a preponderance of the evidence, that its evaluation is appropriate. *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the school board satisfies this burden and proves the appropriateness of its evaluation, it is not required to fund the requested IEE.

18. 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.

19. Based on the above findings of fact, the School Board proved that its psycho-educational evaluation complied with rule 6A-6.0331(5) and the IDEA. A trained, knowledgeable professional conducted the evaluation and gathered reliable, comprehensive information about the student's needs.

### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the School Board's psycho-educational evaluation was appropriate, and the parent is not entitled to an IEE at public expense.

DONE AND ORDERED this 27th day of April, 2026, in Tallahassee, Leon County, Florida.

~~Case No. 26-0191E~~

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JESSICA E. VARN  
Administrative Law Judge  
DOAH Tallahassee Office

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Filed with the Clerk of the  
Division of Administrative Hearings  
this 27th day of April, 2026.

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).