

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 22-3555E

**,

Respondent.

FINAL ORDER

This case came before Administrative Law Judge (“ALJ”) Mary Li Creasy of the Division of Administrative Hearings (“DOAH”) for final hearing by Zoom conference on February 2, 2023.

APPEARANCES

For Petitioner: Susan Jane Hofstetter, Esquire
School Board of Broward County, Florida
K.C. Wright Administration Building
600 Southeast Third Avenue, Eleventh Floor
Fort Lauderdale, Florida 33301

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

STATEMENT OF THE ISSUES

Whether the language evaluation of September 23, 2022, conducted by Petitioner, Broward County School Board, was appropriate, and whether Respondent’s request for an Independent Education Evaluation (“IEE”) at public expense should be denied.

PRELIMINARY STATEMENT

On November 21, 2023, a due process hearing request was filed with DOAH by Petitioner seeking approval of its language evaluation of Respondent, and requesting that Respondent's request for a language IEE at public expense be denied. The final hearing was scheduled for January 27, 2023. At Respondent's request, the hearing was continued until February 2, 2023, and the parties agreed to extend the final order deadline.

The final hearing was conducted as scheduled on February 2, 2023, by Zoom conference. Petitioner presented the testimony of two witnesses: [REDACTED], Exceptional Student Education ("ESE") Specialist; and [REDACTED], Speech Language Pathologist ("SLP"). Petitioner's Exhibits 2 through 6, page 32 of Exhibit 7, 8, and 9 were admitted into evidence. Respondent's mother testified on the student's behalf. Respondent's Exhibits 5 through 8 and 12 were admitted into evidence.

At the conclusion of the hearing, the parties agreed to submit proposed final orders within 14 days of the filing of the transcript with DOAH, with the final order to follow 14 days thereafter.

The Transcript was filed on February 21, 2023. The parties timely filed their proposed final orders, which were taken into consideration in the drafting of this Final Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time Petitioner performed the evaluation at issue. 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. At the beginning of the [REDACTED] school year, Respondent was a [REDACTED]-year-old, [REDACTED]-grade student at School A, a public elementary school within Petitioner's district.

2. On May 18, [REDACTED], in response to parental concerns regarding Respondent's language skills, Petitioner sought a "Consent to Evaluate" Respondent in the areas of suspected eligibility for services for Language Impairment and Other Health Impairment.

3. The Consent to Evaluate was provided by Respondent's mother on May 18, 2022. However, due to the intervening summer break, Respondent did not undergo the evaluation until the beginning of the 2022-2023 school year. Respondent is only contesting the language portion of the evaluation in this due process proceeding.

The Language Evaluation Process

4. Respondent was referred to SLP [REDACTED] for the language evaluation that was initiated on September 7, [REDACTED]. [REDACTED] has over 18 years of experience in the field of Speech Language Pathology and has worked in the field of ESE for [REDACTED] years. [REDACTED] holds a bachelor's degree in Communication Sciences and Disorders and a master's degree in Speech Language Pathology. [REDACTED] possesses certifications from the Florida Department of Education and the American Speech Hearing Association, and a license from the Florida Department of Health. [REDACTED] has conducted more than 300 speech/language evaluations for the purposes of treating speech and language disorders. [REDACTED] is trained and qualified to administer the assessments given to Respondent.

5. The purpose of [REDACTED] evaluation was to determine Respondent's strengths and weaknesses in the area of language and determine if he is language impaired. In the school setting, language impairment manifests as receptive (communication understood by the student) or expressive

(communication the student uses with others) difficulties that impact the student.

6. Language disorders may include disorders of phonology (sound system of language), syntax (grammar), morphology (root words and prefixes and suffixes), semantics (word meaning), and pragmatics (social language – verbal and nonverbal). Receptive language impairments in students may be evinced by problems following directions, problems listening and understanding the teacher then executing directions, and problems with comprehending a reading passage. Expressive impairments in a student would include failure to form complete sentences, conjugating verbs incorrectly, using incorrect vocabulary, or using vocabulary that is younger than same-aged peers.

7. As part of [REDACTED] language evaluation, [REDACTED] made observations of Respondent in his classroom, outside during social time, and had observed him in previous school years. These observations provided information regarding how Respondent was actually functioning in the academic setting.

8. [REDACTED] also reviewed prior evaluations. [REDACTED] reviewed a private Speech Language Evaluation dated September 4, 2020, prepared by [REDACTED]. Since the evaluation was two years old, the information contained within it was outdated but [REDACTED] review indicated that Respondent made a lot of progress since the preparation of the September 4, 2020, evaluation. [REDACTED] also reviewed a speech evaluation [REDACTED] prepared when Respondent was in [REDACTED] grade. This review provided background and helped [REDACTED] choose the standardized assessment to evaluate Respondent.

9. [REDACTED] also collected information from the parent. After collaboration with the parent, the parent's input was incorporated within the language evaluation as follows:

[Respondent] has received language therapy in the past. [REDACTED] reported that [Respondent] sometimes

has trouble following spoken directions. He is capable of following written directions, but doesn't always do so. For example, when an assignment said to indicate $>$, $<$, or $+$, [Respondent] solved the statement. [REDACTED] checked off that [Respondent] has trouble with the following: understanding the meaning of words, answering questions that people ask, formulating questions and expressing his thoughts. He uses a variety of vocabulary words to express his ideas and speaks with correct grammar. However, he does not speak in complete sentences. He will only elaborate when required. He does not have difficulty using language to play or socially interact with peers. He takes turns in conversations, but does not keep a conversation going or initiate social interactions with others. [Respondent] does not ask for help or clarification.

10. [REDACTED] did not observe any of the parent's concerns in [REDACTED] observations of Respondent. Information from Respondent's current [REDACTED]-grade teacher was also obtained using a teacher questionnaire. The teacher did not have any language concerns. No Response to Intervention data was collected since the school-based team determined it was unnecessary to provide Respondent with language interventions.

11. [REDACTED] administered the Clinical Evaluation of Language Fundamentals, 5th Edition ("CELF-5"), to Respondent. It is considered the "gold standard" for language assessment, and it provides very good information that correlates to what is expected in the classroom. This assessment is standardized because the developers used the test on more than 3,000 children in more than 47 states across the United States, and it is broken down by age. It is a norm-referenced assessment because the results can be compared with the results of same-aged and gendered peers.

12. The assessment was administered to Respondent in a room with limited distractions, in a one-on-one setting, and with the proper seating protocol; Respondent had clear visibility of the easels that come with the test and minimal visibility of the recording forms. The test was administered in

English because Respondent is a monolingual English speaker. Rapport was established, and Respondent was engaged throughout the assessment.

██████████ believed Respondent's responses were an accurate representation of his skills based upon █████ observation of his effort and demeanor throughout. The results were then scored as outlined in the CELF-5 manual.

Assessment Results

13. The CELF-5 has eight subtests: Word Classes, Following Directions, Formulating Sentences, Recalling Sentences, Understanding Spoken Paragraphs, Word Definitions, Sentence Assembly, and Semantic Relationships. The subtests are scored on a scale with the mean (average) being 10. Plus or minus two of the mean is considered within the average range, i.e., a scaled score from 8 to 12 is within the average range. A lower number from the average range can indicate an area of weakness. The subtests are designed to measure a student's language strengths and weaknesses.

14. The subtest, Word Classes, i.e., putting words together for meaning, assessed Respondent's receptive and language content abilities. Respondent's scaled score was 16, well above the average range. The subtest, Following Directions, i.e., measuring how well one hears and executes on auditory information, assessed Respondent's receptive abilities and language memory skills. Respondent's scaled score was 11, within the average range. The subtest, Formulated Sentences, i.e., measuring the ability to create semantically and grammatically correct sentences of increasing length and complexity, assessed Respondent's expressive skills. Respondent's scaled score on this subtest was 13, above the average range. The subtest, Recalling Sentences, i.e., requiring Respondent's to repeat back a sentence keeping the meaning of the sentence intact, measured Respondent's expressive and language memory abilities. Respondent's scaled score was 15, above the average range. The subtest, Understanding Spoken Paragraphs, measuring Respondent's ability to comprehend an oral presentation (closely

approximating the classroom setting), assessed his receptive and language content abilities. Respondent's scaled score was 11, within the average range. The subtest, Word Definitions, assesses the ability to define word meanings by describing features of words. It measured Respondent's language content. Respondent's scaled score was 10, within the average range. The subtest, Sentence Assembly, i.e., the ability to arrange visually and orally presented words into sentences while maintaining correct grammar and using appropriate vocabulary, assessed Respondent's expressive skills. Respondent's scaled score was 11, within the average range. The subtest, Semantic Relationships, measuring the ability to interpret sentences that include semantic relationships following an oral stimulus, assessed Respondent's receptive abilities. His scaled score was 12, at the high end of the average range.

15. The eight subtests were combined to determine indices for Receptive Language Index, Expressive Language Index, Language Content, and Language Memory. The scaled subtests were scored using the CELF-5 scoring manual, and the four indices for Respondent were generated. His Receptive Language Index was 117. His Expressive Language Index was 118. His Language Content Index was 114, and his Language Memory Index was 118. These indices were then scored to generate a Core Language Score. Respondent's Core Language Score was 123, which, per the CELF-5 manual, indicates that his language ability is at the 94th percentile of his same-aged peers (meaning he performed as well or better than 94 percent).

16. The CELF-5 is a standardized, norm-referenced test so as to be not discriminatory on a racial or cultural basis. The instruments used in the language evaluation were technically sound. The CELF-5 was administered per the manual's guidelines, the teacher provided information regarding how Respondent was functioning in the classroom, and observations were done in a variety of settings. Additionally, [REDACTED] is an experienced SLP.

17. According to [REDACTED] assessment, linguistically, Respondent is a very capable student. He is able to use vocabulary, grammar, and is able to understand information being provided to him. His abilities are age and developmentally appropriate. He is able to function in the classroom. Respondent does not have any significant difficulties with listening comprehension, oral expression, social interaction, or reading comprehension.

18. The language evaluation of September 23, [REDACTED], identified Respondent's strengths and weaknesses. Respondent is quite capable of bringing information together, as indicated by his subtest score for Word Classes. An area of relative weakness is Word Definitions, wherein Respondent knows the definition, but does not elaborate. Simply having a weakness does not mean there is a language impairment.

19. [REDACTED] provided credible and unrefuted testimony that her language evaluation and the administration of the above-noted assessment complied with Florida Administrative Code Rule 6A-6.0331(5).

Post-Assessment Activity

20. On October 5, [REDACTED], a parent participation form was provided to the mother to schedule a meeting on October 17, [REDACTED], to review the information obtained from the evaluations recently conducted on Respondent. The mother agreed to attend the meeting scheduled for October 17, [REDACTED], and subsequently signed the parent participation form.

21. In addition to Respondent's mother, his Individual Education Plan ("IEP") team was in attendance, along with two advocates for Respondent. At the meeting, the IEP team discussed the Multi-Disciplinary Report. This report captures the requirements for determining eligibility for Language Impairment or Specific Learning Disability. Based upon observations documented in the Multi-Disciplinary Report, it was demonstrated that Respondent was able to follow instructions and respond to questions posed by his teacher. In this way, Respondent was shown to be an active learner.

22. Based upon the Intervention Summary for Reading documented in the Multi-Disciplinary Report, Respondent was receiving Tier 1 support for reading. Tier 1 is the level of support every student receives in the classroom setting. Respondent did not require any further interventions in the area of reading. When compared to students in his class and his grade at School A, Respondent was in the 50th percentile. Similarly, Respondent did not demonstrate any need for interventions in the areas of Written Expression or Math.

23. Parent input captured in the Multi-Disciplinary Report indicated that Respondent's mother had concerns with Respondent's lack of focus, incomplete work, and handwriting. These concerns were helpful for considering eligibility for Other Health Impairment, not Language Impairment.

24. The IEP team concluded that Respondent did not meet eligibility criteria for Language Impairment because Respondent did not need interventions beyond a Tier 1 level, and the language evaluation did not reveal any language deficits. While the IEP team concluded that Respondent did not meet criteria for eligibility for Language Impairment, he did meet criteria for Other Health Impairment.

25. During the meeting on October 17, [REDACTED], an advocate requested an IEE for language at public expense. This request was confirmed by an email from Respondent's mother the following day to ESE Specialist [REDACTED].

26. On November 21, [REDACTED], Petitioner filed for a due process hearing to defend the language evaluation conducted by [REDACTED].

Parental Concerns with the Language Evaluation

27. At the final hearing, Respondent's mother raised a number of concerns regarding the evaluation process. The mother's concerns, *inter alia*, include: the [REDACTED]-grade teacher only had Respondent in [REDACTED] class for approximately six weeks when asked to provide her observations and assessments (as opposed to his [REDACTED]-grade teacher who was more familiar with his language

issues); the [REDACTED]-grade teacher's grades do not accurately reflect Respondent's abilities because he is given multiple opportunities to correct his work prior to it being graded; [REDACTED] observed Respondent in a math class instead of an English class; the CELF-5 assessment was primarily conducted orally and does not address the mother's concern that Respondent cannot adequately respond to questions in writing; comprehension was tested orally rather than requiring Respondent to read and answer questions; the assessment failed to give adequate weight to the private evaluation done by [REDACTED], in light of the fact [REDACTED] provided Respondent with private language coaching from Respondent's [REDACTED] days through [REDACTED] grade; and prior accommodations/interventions provided to assist Respondent with his handwriting were not noted.

Ultimate Findings of Fact

28. The concerns raised by Respondent's mother, while certainly valid, do not invalidate or diminish the adequacy or appropriateness of the language assessment in accordance with rule 6A-6.0331(5). Petitioner is not required to provide an ideal or perfect evaluation but rather one that is "appropriate," as defined by applicable state and federal law.

29. In sum, the credible and persuasive testimony presented by [REDACTED] and the preponderance of the evidence at hearing demonstrate that [REDACTED] language evaluation of Respondent was appropriate.

CONCLUSIONS OF LAW

30. DOAH 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 rule 6A-6.0331(9)(u).

31. 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) and 1003.57, Fla. Stat.

32. 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); *Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012).

33. Under the IDEA and its implementing regulations, a parent of a child with a disability is entitled, under certain circumstances, 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), which provides, as follows:

(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.

34. Florida law, specifically rule 6A-6.03311(6), provides similarly, as follows:

(6) Independent educational evaluations.

(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.

35. A district 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 district school board is able to meet its burden and establish the appropriateness of its evaluation, it is not required to provide the requested IEE.

36. To satisfy its burden of proof, Petitioner must demonstrate 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, 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 within a databased 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.

37. Based on the findings of fact as stated herein, Petitioner has proven that its language evaluation of Respondent fully complied with rule 6A-6.0331(5). In particular, it was conducted by a trained and knowledgeable professional who utilized, and properly administered, a variety of valid instruments that yielded reliable and comprehensive information concerning the student's educational needs.

38. Although Respondent is not entitled to IEEs at public expense, the parent is free to present a language evaluation obtained at private expense, to Petitioner, the results of which Petitioner is required to consider. *See Fla.*

Admin. Code R. 6A-6.03311(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 Petitioner’s language evaluation of Respondent was appropriate and met all criteria set forth in Florida Administrative Code Rule 6A-6.0331(5). The student is not entitled to an IEE, at public expense, in language.

DONE AND ORDERED this 16th day of March, 2023, in Tallahassee, Leon County, Florida.



MARY LI CREASY
Administrative Law Judge
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Filed with the Clerk of the
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this 16th day of March, 2023.

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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).