

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

OSCEOLA COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 23-2200E

**,

Respondent.

FINAL ORDER

A due process hearing was held on September 13, 2023, by Zoom conference before Todd P. Resavage, an Administrative Law Judge with the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Amy J. Pitsch, Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

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

STATEMENT OF THE ISSUES

Whether the psychoeducational reevaluation conducted by Petitioner on Respondent's behalf was appropriate and thus Petitioner's denial of Respondent's request for an independent educational evaluation (IEE), at public expense, was appropriate.

PRELIMINARY STATEMENT

On June 8, 2023, Petitioner filed a Due Process Complaint (Complaint) that sought a determination of the appropriateness of its psychoeducational reevaluation conducted on behalf of Respondent. Petitioner's Complaint followed its decision to deny the request of Respondent's parent to provide an IEE, with respect to the evaluation, at public expense. On June 21, 2023, Petitioner's Notice of Intent to Serve Complaint and Attached Evaluation in Spanish was filed. On June 30, 2023, an Order was issued providing Respondent a 20-day extension of time to respond to Petitioner's Complaint. All other timeliness associated with this proceeding were extended commensurately.

Following a telephonic status conference conducted on August 2, 2023, the due process hearing was scheduled and noticed for September 13, 2023. The due process hearing was conducted, as scheduled. Petitioner presented the testimony of [REDACTED], Respondent's speech language pathologist (SLP); [REDACTED], Pys.S., a school psychologist; [REDACTED], Ed.S., Petitioner's supervisor of psychological services; and [REDACTED], Petitioner's exceptional student education (ESE) supervisor for compliance and dispute resolution. Petitioner's Exhibits A through F were admitted into evidence. Respondent presented the testimony of his mother.

At the end of the hearing, the parties agreed to submit proposed final orders within 14 days after the filing of the transcript at DOAH and the issuance of the undersigned's final order within 14 days after the parties' proposed final order submissions. The hearing Transcript was filed on September 29, 2023. Both parties filed proposed final orders, which have been 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 violation.

For stylistic convenience, male pronouns will be used 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. Respondent is an [REDACTED]-year-old, [REDACTED] grade student attending [REDACTED] High School, a public high school in Petitioner's district.
2. Respondent is a student with a disability receiving ESE and related services under the Individual with Disabilities Education Act (IDEA). He is eligible for ESE and related services under the exceptionality classifications of Autism Spectrum Disorder and Language Impaired.
3. Respondent previously completed all graduation requirements. He has deferred receipt of a standard diploma and is now receiving transition services. Prior to deferral, Respondent received education services on a modified curriculum and participated in the Florida Standards Alternate Assessment.
4. In February [REDACTED], Petitioner's parent signed consent for a psychoeducational reevaluation. The individualized educational program (IEP) team referred Respondent for achievement testing to help the team plan his transition services. Petitioner's parent also requested additional cognitive testing to determine his intelligence quotient (IQ). The proposed evaluation was a three-year reevaluation to assess his academic achievement and ability level.
5. [REDACTED] is employed by Petitioner as a school psychologist. She is certified in school psychology by the Florida Department of Education and is fluent in English and Spanish.
6. In April [REDACTED], [REDACTED] conducted the reevaluation. [REDACTED], Respondent's school-based SLP, and Respondent's mother attended the testing.

7. At the time of the evaluation, [REDACTED] had reviewed and learned about Respondent's prior psychoeducational evaluation conducted in Puerto Rico. She also conducted three observations of Respondent in various school settings to select the appropriate assessments to utilize. She also learned of Respondent from his teacher and [REDACTED].

8. In an attempt to obtain a valid IQ, as requested by Petitioner's mother, [REDACTED] started the administration of the Wechsler Nonverbal Scale of Ability (Wechsler). This assessment measures general cognitive ability using nonverbal subtests for students aged four through 21 years. [REDACTED] did not have confidence [REDACTED] could obtain an IQ with a norm-referenced assessment, based on [REDACTED] review of Respondent's records. [REDACTED] explained that for some students, like Respondent, an IQ cannot be obtained using a standard measure or assessment because of a significant cognitive impairment.

9. [REDACTED] ultimately discontinued the Wechsler because the test was beyond Respondent's comprehension ability. Even with maximum prompting and gestures, he could not make informed decisions or choices; he simply selected items at random.

10. [REDACTED] credibly testified that, to date, no psychologist has been able to obtain a reliable IQ score of Respondent using a standard measure or assessment. In [REDACTED] professional opinion as a certified school psychologist, given Respondent's significant cognitive impairment, it is impossible to do so.

11. When the Wechsler proved incompatible with Respondent's cognitive level, [REDACTED] administered the Developmental Profile 4th edition (DP-4). A psychologist can use this test when an IQ cannot be obtained using a norm-referenced test like the Wechsler.

12. The DP-4 is based on caregiver reporting; the psychologist provides a checklist to the parent. In this case, Respondent's mother filled out the DP-4 in her native language, Spanish. [REDACTED] did not give the checklist to Respondent's teachers because the DP-4 measures skills that teachers would not observe in the classroom.

13. ██████████ conducted ██████ own in-school observations of Respondent and obtained feedback concerning his performance from his teacher and therapist. As for the DP-4, she testified: “The DP-4 is truly a last resort when a standardized score cannot be obtained. And I wanted to get the most comprehensive information possible, which to me, is the information that can be provided by the child’s parent or caregiver.”

14. The DP-4 yields scores in these domains: physical, adaptive behavior, social-emotional, cognitive, and communication (each domain is detailed in ██████████ report). Respondent’s general development score on the DP-4 is less than 47, which places him in the 1/10th of one percent of the population.

15. ██████████ also administered the Bracken Basic Concept Scale 3rd Edition (Bracken) to measure Respondent’s conceptual knowledge. As for her selection of this test, ██████████ stated, “it’s the best assessment to use to assess his skill level based on his functioning because it assesses pre-academic skills. It’s also an inventory measure that helps the IEP team to plan based on the student’s ability and skills at the pre-academic level.”

16. The publisher of the Bracken test permits the Bracken to be administered to a student who is ██████ years old if the student is functioning developmentally at a pre-academic level. While the typical age range for the Bracken is three to seven years old, the test publisher permits out-of-age range administration to students whose developmental level is lower than their chronological age.

17. ██████████ conducted the assessments in both English and Spanish, depending on which language elicited the most or best responses from Respondent. Respondent has limited language proficiency in both languages and requires maximal prompting through gestures to engage in a task.

18. ██████████ prepared ██████ evaluation report in late April ██████. The IEP team reviewed the report at a meeting on May 2, ██████, at which time Respondent’s mother requested ██████████ make minor revisions to the

report. [REDACTED] also reviewed the report one-on-one with Respondent's mother before the May 2, [REDACTED], IEP meeting.

19. [REDACTED] issued the corrected and final copy on May 5, [REDACTED], reflecting the minor revisions requested by the parent. These corrections did not affect the substance of the report.

20. Respondent's mother's dispute with [REDACTED] evaluation centers on the report itself. She wanted [REDACTED] to set forth educational placement recommendations in her report and [REDACTED] declined to do so. The controversy was captured in the Prior Written Notice issued by Petitioner:

The Parent was present during the administration of the formal evaluations that were attempted. Parent did not question the results or scores of the evaluation, but rather does not agree with the evaluator not making personal recommendations for placement settings in the actual report. It was shared in the meeting that after the results of the evaluation, eligibility, and placement decisions would be discussed as a team. Parent requested for the personal recommendation of the psychologist's opinion on student placement to be embedded into the evaluation results.

21. [REDACTED] came to the May 2, [REDACTED], IEP meeting prepared to provide specific recommendations to the IEP team concerning intervention activities for Respondent, based on the DP-4 results. [REDACTED] declined to provide a placement recommendation in her report because this is a decision to be made by the entire IEP team, not by the individual psychologist.

22. [REDACTED] reports to Petitioner's supervisor of psychological services, [REDACTED], who is herself a certified school psychologist. [REDACTED] reviewed [REDACTED] evaluation of Respondent and affirmed [REDACTED] professional discretion in refusing to make a unilateral written placement recommendation in the evaluation report. She credibly testified that, with respect to the psychoeducational evaluation report, it is within the purview of the professional to determine what is included in the summary section of the

report. She also confirmed that district school psychologists are guided to participate as IEP team members with respect to placement decisions.

23. Petitioner's supervisor for compliance and dispute resolution, [REDACTED], attended IEP meetings on May 2 and 23, [REDACTED], for Respondent. [REDACTED] prepared the Prior Written Notice memorializing decisions made at these meetings.

24. During Respondent's IEP meetings, the IEP team reviewed and discussed the results of [REDACTED] psychoeducational reevaluation report. The IEP team used the results of the reevaluation, which explained the student's ability level to create Respondent's transition IEP.

CONCLUSIONS OF LAW

25. DOAH has jurisdiction over the subject matter of this proceeding and of the parties under section 1003.57(1)(b), Florida Statutes, and Florida Administrative Code Rule 6A-6.03312(7).

26. District school boards are required by the Florida K-20 Education Code to provide an "appropriate program of special instruction, facilities, and services for [ESE] as prescribed by the State Board of Education as acceptable." §§ 1001.42(4)(1) and 1003.57, Fla. Stat.

27. 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); *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. 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 the public's expense. *See* 34 C.F.R. § 300.502(b); Fla. Admin. Code R. 6A-6.03311(6).

29. Petitioner here, when confronted with the request for an IEE, denied the request and opted to timely initiate a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluations were appropriate. Fla. Admin. Code R. 6A-6.03311(6)(g)2. If Petitioner is able to meet its burden and establish the appropriateness of its evaluation, it is relieved of any obligation to provide the requested IEE. *Id.*

30. To meet its burden of proof, Petitioner must prove that the psychoeducational reevaluation complied with rule 6A-6.0331(7) and (8).¹ As

¹ These rules provide as follows:

(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.

(d) If the parent refuses to consent to the reevaluation, the school district may, but is not required to, pursue the reevaluation by using the consent override provisions of mediation or due process. The school district does not violate its child find, evaluation or reevaluation obligations if it declines to pursue the evaluation or reevaluation.

(e) The informed parental consent for reevaluation need not be obtained if the school district can demonstrate that it made reasonable efforts to obtain such consent and the student's parent has failed to respond.

(8) Additional requirements for evaluations and reevaluations. As part of an initial evaluation, if appropriate,

noted above, Respondent did not contend that the reevaluation violated the above-noted rule, but that the reevaluation report was deficient in that it did not include [REDACTED] personal recommendation for educational placement. No competent evidence was presented by Respondent to support a finding that the requested recommendation is required.

31. By the above Findings of Fact, Petitioner has shown that [REDACTED] was trained, knowledgeable, and appropriately qualified to conduct her evaluation. Petitioner also showed that the psychoeducational evaluation conducted on behalf of Respondent complied with rule 6A-6.0331(7) and (8) and so has met its burden of proving that the evaluation was appropriate.

and 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.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's psychoeducational reevaluation was appropriate, and Respondent is not entitled to an IEE at public expense.

DONE AND ORDERED this 23rd day of October, 2023, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
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this 23rd day of October, 2023.

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).