

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

\*\* ,

Petitioner,

vs.

Case No. 17-5886E

PINELLAS COUNTY SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

A final hearing was held in this matter before Todd P. Resavage, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [REDACTED] [REDACTED] through [REDACTED], [REDACTED], in Largo, Florida.

APPEARANCES

For Petitioner: [REDACTED] [REDACTED], Esquire  
[REDACTED] [REDACTED], Esquire  
Special Education Law and Advocacy  
2509 First Avenue South  
Saint Petersburg, Florida 33712

For Respondent: [REDACTED] [REDACTED], Esquire  
Pinellas County School Board  
301 Fourth Street Southwest  
Largo, Florida 33779-2942

STATEMENT OF THE ISSUES

Whether Respondent violated the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, et seq., in finding Petitioner ineligible for special education services

under the eligibility category of [REDACTED] [REDACTED] [REDACTED] ([REDACTED]); and, if so, to what remedy is Petitioner entitled.

PRELIMINARY STATEMENT

Respondent received Petitioner's Complaint on [REDACTED] [REDACTED], [REDACTED], and forwarded the same to DOAH on the same date.

The parties participated in mediation on [REDACTED] [REDACTED], [REDACTED], however, as the parties wished to engage in further resolution thereafter, they requested an extension of the resolution period until [REDACTED] [REDACTED], [REDACTED]. This request was granted.

On [REDACTED] [REDACTED], [REDACTED], the undersigned issued an Order Requiring Response, directing the parties to advise as to whether the parties desired to continue the resolution period or set the matter for final hearing. On [REDACTED] [REDACTED], [REDACTED], Respondent filed a Notice of Case Status advising that the parties had been unsuccessful and requested the matter be set for hearing.

On [REDACTED] [REDACTED], [REDACTED], the final hearing was scheduled for [REDACTED] [REDACTED] through [REDACTED], [REDACTED]. After granting a motion for continuance, the final hearing was rescheduled for [REDACTED] [REDACTED] through [REDACTED], [REDACTED]. On [REDACTED] [REDACTED], [REDACTED], Petitioner filed a motion for continuance, which was granted, and the final hearing was rescheduled for [REDACTED] [REDACTED] through [REDACTED], [REDACTED].

On [REDACTED] [REDACTED], [REDACTED], the parties filed a Joint Stipulation of Facts, wherein the parties stipulated to certain facts as admitted and requiring no further proof at hearing. To the

extent relevant, those stipulated facts are incorporated in this Final Order.

The final hearing was conducted as scheduled. The final hearing Transcript was filed on [REDACTED] [REDACTED], [REDACTED]. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript. Upon the conclusion of the final hearing, the parties stipulated that the proposed final orders would be filed no later than [REDACTED] [REDACTED], [REDACTED], and that this Final Order would issue on or before [REDACTED] [REDACTED], [REDACTED]. The parties timely submitted proposed final orders which have been considered in issuing 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 [REDACTED] pronouns in the Final Order when referring to Petitioner. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

#### FINDINGS OF FACT

1. At the time of the final hearing, Petitioner was [REDACTED] years old and an [REDACTED]-grade student enrolled at School A, a public [REDACTED] school in Respondent's school district.

2. Petitioner, in November [REDACTED], was determined to be a [REDACTED] student. A [REDACTED] student is one who has [REDACTED] [REDACTED] and is capable of [REDACTED] [REDACTED].<sup>1/</sup>



parties' Joint Stipulation of Facts, on [REDACTED] [REDACTED], [REDACTED] (during [REDACTED] [REDACTED]-grade year), Petitioner was found eligible, under [REDACTED], with a disability of [REDACTED], and has had a [REDACTED] [REDACTED] since that time. Said plan is not at issue in this proceeding. The parties stipulated that Petitioner is a student identified with a disability.

7. Following the summer of [REDACTED] [REDACTED]-grade year, Petitioner received [REDACTED] [REDACTED] from [REDACTED]-[REDACTED], which continued throughout [REDACTED] grade ([REDACTED]-[REDACTED] school year). Petitioner's [REDACTED] testified that, at the end of [REDACTED] grade ([REDACTED]-[REDACTED] school year), Petitioner started to [REDACTED] a bit more, and the progress previously observed from [REDACTED]-[REDACTED] [REDACTED].

8. On [REDACTED] [REDACTED], [REDACTED], Petitioner's [REDACTED], believing that the existing [REDACTED] [REDACTED] was insufficient to meet Petitioner's needs, requested a [REDACTED] evaluation and consideration of whether Petitioner would be eligible for exceptional student education and related services in the area of [REDACTED]. The record evidence suggests that Petitioner's [REDACTED] signed the appropriate consent for the evaluation on [REDACTED] [REDACTED], [REDACTED].

9. On [REDACTED] [REDACTED], [REDACTED], Petitioner was evaluated and observed by [REDACTED] [REDACTED], a licensed school psychologist and

mental health counselor for Respondent. [REDACTED]. [REDACTED] issued [REDACTED] Report on [REDACTED], [REDACTED].

10. Of relevance to the issues here, [REDACTED]. [REDACTED] administered the [REDACTED] clusters of the [REDACTED]-[REDACTED] [REDACTED] of [REDACTED] ([REDACTED]-[REDACTED] [REDACTED]) on [REDACTED], [REDACTED].<sup>2/</sup> The [REDACTED] testing yielded scores that placed Petitioner in the "[REDACTED]" [REDACTED] in comparison to national norms in the areas of [REDACTED] [REDACTED] [REDACTED] ([REDACTED]=[REDACTED]), [REDACTED] [REDACTED] ([REDACTED]=[REDACTED]), [REDACTED] [REDACTED] ([REDACTED]=[REDACTED]), and [REDACTED] [REDACTED] ([REDACTED]=[REDACTED]) with [REDACTED] [REDACTED] across [REDACTED] [REDACTED].

11. [REDACTED]. [REDACTED] report further documented that analyses had been completed using a variety of [REDACTED] measures to sample Petitioner's [REDACTED] [REDACTED] [REDACTED].<sup>3/</sup> Specifically, on [REDACTED], [REDACTED], a [REDACTED] assessment, utilizing [REDACTED] probes, was conducted regarding Petitioner's [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]. At that time, the assessment documented that Petitioner was performing at the [REDACTED] percentile for [REDACTED] [REDACTED] and the [REDACTED] percentile in [REDACTED] [REDACTED] [REDACTED]. [REDACTED]. [REDACTED] report further documented that by [REDACTED], [REDACTED], [REDACTED] [REDACTED] [REDACTED] had improved to the [REDACTED] percentile and [REDACTED] [REDACTED] [REDACTED] to [REDACTED] [REDACTED] percentile.

12. Additionally, the report documented that [REDACTED] [REDACTED] testing administered in [REDACTED] [REDACTED] [REDACTED] [REDACTED] class on [REDACTED], [REDACTED], revealed an [REDACTED] grade level

performance on [REDACTED] [REDACTED] [REDACTED] ([REDACTED] Lexile Percentile).

13. A review of Petitioner's performance on the [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED] ([REDACTED]) was also conducted by [REDACTED]. [REDACTED]. The [REDACTED] results indicate that Petitioner [REDACTED] [REDACTED] on the [REDACTED] for the past [REDACTED] years. Specifically, for [REDACTED], Petitioner's "[REDACTED]" was a [REDACTED], and [REDACTED] scored a [REDACTED] on both the [REDACTED]/[REDACTED] [REDACTED] and [REDACTED] sections of the [REDACTED]. By comparison, [REDACTED] district scored a [REDACTED]; [REDACTED] school a [REDACTED]; [REDACTED] class a [REDACTED]; and [REDACTED] peer subgroup a [REDACTED].

14. In 2016, Petitioner's Expectation for the [REDACTED] was a [REDACTED], and [REDACTED] scored a [REDACTED] on both the [REDACTED]/[REDACTED] [REDACTED] and [REDACTED] sections. By comparison, [REDACTED] district scored a [REDACTED]; [REDACTED] school a [REDACTED]; [REDACTED] class a [REDACTED]; and [REDACTED] peer subgroup a [REDACTED].

15. Ultimately, [REDACTED]. [REDACTED] report concluded that, "[t]he combined available data indicates that [Petitioner] is making [REDACTED] [REDACTED] [REDACTED] at this time with only the provision of [REDACTED] [REDACTED] [REDACTED] [REDACTED]."

16. Petitioner's [REDACTED] credibly testified that [REDACTED] received training in the [REDACTED]-[REDACTED] [REDACTED] program, as well as the [REDACTED] [REDACTED] and [REDACTED] [REDACTED]. [REDACTED] began using the [REDACTED] program at home with Petitioner in [REDACTED] [REDACTED], and was doing so at the time Petitioner's Complaint was filed.

17. Following [REDACTED]. [REDACTED] evaluation, an eligibility determination meeting was held on [REDACTED] [REDACTED], [REDACTED], to determine whether Petitioner was eligible as a student with a [REDACTED], pursuant to Florida Administrative Code Rule 6A-6.03018. The meeting was properly convened with all relevant members, including Petitioner's parent(s), in attendance.

18. Based upon the available information, the school-based members of the eligibility team determined that Petitioner did not meet the eligibility criteria as a student with a [REDACTED]. Specifically, the team considered, [REDACTED] [REDACTED], Petitioner's current [REDACTED], which included "[REDACTED]" in [REDACTED], [REDACTED], [REDACTED] and [REDACTED] [REDACTED] [REDACTED], and "[REDACTED]" in [REDACTED], [REDACTED] [REDACTED], and [REDACTED] [REDACTED]; the report prepared by [REDACTED]. [REDACTED] and the information contained therein; Petitioner's [REDACTED] on the [REDACTED] ([REDACTED] [REDACTED]); and [REDACTED] [REDACTED] of Petitioner's [REDACTED] in classroom.

19. Respondent's rationale for denying eligibility was formally set forth in its Prior Written Notice (PWN), dated [REDACTED] [REDACTED], [REDACTED], which provides that:

Based on recent [REDACTED] evaluation, [Petitioner's] [REDACTED] [REDACTED] [REDACTED] a [REDACTED] in [REDACTED] to [Petitioner's] same age peers. [REDACTED] is making adequate learning gains at this time with only the provision of core general education supports. Based on team decision, [Petitioner] does not require interventions that differ in intensity and duration from



what can be provided in general education resources alone.

20. Aggrieved by this decision, and the findings of [REDACTED]. [REDACTED], Petitioner's parents requested an Independent Educational Evaluation (IEE). Respondent, without unnecessary delay, agreed to the IEE at public expense.

21. The IEE was completed by [REDACTED] [REDACTED]-[REDACTED], a private clinical psychologist. [REDACTED]. [REDACTED]-[REDACTED] has a doctorate in clinical psychology and has been licensed since [REDACTED]. The purpose of the IEE was to provide further information concerning Petitioner's reading abilities. [REDACTED]. [REDACTED]-[REDACTED] evaluated Petitioner on [REDACTED] [REDACTED], [REDACTED]. As part of [REDACTED] evaluation, [REDACTED]. [REDACTED]-[REDACTED] reviewed Petitioner's background information, educational history, prior educational interventions, previous evaluations, and administered several assessments. Specifically, [REDACTED] administered the [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED] ( [REDACTED]-[REDACTED] ); [REDACTED] [REDACTED] of [REDACTED] [REDACTED], [REDACTED] [REDACTED] ( [REDACTED]-[REDACTED] ); and [REDACTED] [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED] ( [REDACTED]-[REDACTED] ).<sup>4/</sup>

22. The results of the evaluation are contained in [REDACTED]. [REDACTED]-[REDACTED] report authored on [REDACTED] [REDACTED], [REDACTED]. In response to the question of whether Petitioner presents evidence of an academic deficit, [REDACTED]. [REDACTED]-[REDACTED] evaluation noted that:

[Petitioner] demonstrates a [REDACTED] profile in [REDACTED] assessment. [REDACTED] has consistently met

the benchmark standards on annual state mandated assessments ( [REDACTED], previously [REDACTED]), indicating attainment of grade level standards on the overall [REDACTED]/[REDACTED] assessments. However, [REDACTED] has [REDACTED] relative [REDACTED] in some areas such as [REDACTED], [REDACTED] and [REDACTED] skills. [REDACTED] and [REDACTED] reports suggest that despite some [REDACTED] skills [REDACTED] [Petitioner] has [REDACTED] [REDACTED] in order to be [REDACTED] in school.

23. After administering the above-noted assessments, [REDACTED]. [REDACTED]-[REDACTED] concluded that Petitioner's total academic achievement is in the [REDACTED] range with adequately [REDACTED] [REDACTED], [REDACTED], and [REDACTED] skills. [REDACTED] noted that "[s]pecific areas of [REDACTED] [REDACTED] are indicated for basic [REDACTED] [REDACTED] and [REDACTED] [REDACTED]." Petitioner's awareness of the sounds that comprise [REDACTED] were found to be average as compared to others [REDACTED] same [REDACTED], suggesting that [REDACTED] has the necessary basis for reading at an [REDACTED]-[REDACTED] level.

24. Concerning [REDACTED] [REDACTED], [REDACTED]. [REDACTED]-[REDACTED] concluded, based upon [REDACTED] evaluation, that Petitioner's overall [REDACTED] [REDACTED] score placed [REDACTED] current performance within [REDACTED] limits for [REDACTED] age; however, there was a [REDACTED] [REDACTED] for [REDACTED] [REDACTED] [REDACTED] of [REDACTED] words for [REDACTED] [REDACTED] and [REDACTED] [REDACTED]--suggesting that Petitioner is [REDACTED] to [REDACTED] with [REDACTED] and [REDACTED] [REDACTED] at an [REDACTED]-[REDACTED] level.

25. Confronting Petitioner's [REDACTED] and [REDACTED], [REDACTED]. [REDACTED]-[REDACTED] concluded that [REDACTED] should be able to [REDACTED] [REDACTED] at the same level as similar age peers and that [REDACTED] [REDACTED] abilities were [REDACTED] developed. Concerning [REDACTED] [REDACTED] abilities, [REDACTED]. [REDACTED] found that Petitioner's abilities were [REDACTED] developed; however, [REDACTED] demonstrated a [REDACTED] in [REDACTED] [REDACTED] [REDACTED] for [REDACTED].

26. [REDACTED]. [REDACTED]-[REDACTED] report noted that Petitioner "exhibits a [REDACTED] and somewhat [REDACTED] profile" and that "[REDACTED] demonstrates [REDACTED] in [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] both within [REDACTED] [REDACTED] results and [REDACTED] [REDACTED] that are [REDACTED] of a [REDACTED] [REDACTED] [REDACTED] in [REDACTED] ([REDACTED])." Additionally, [REDACTED]. [REDACTED]-[REDACTED] documented that, "[Petitioner] shows [REDACTED] [REDACTED] in [REDACTED], [REDACTED] [REDACTED] [REDACTED], [REDACTED] [REDACTED], [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED]-[REDACTED] areas known to be [REDACTED] with [REDACTED]." [REDACTED] further documented that, "[i]n contrast to these obvious [REDACTED], [Petitioner] performs within the [REDACTED] to [REDACTED] range on annual state testing linked to Florida standards and receives [REDACTED] [REDACTED] [REDACTED] in school."

27. In summary, [REDACTED]. [REDACTED]-[REDACTED] concluded that Petitioner's academic achievement is generally consistent with expectations based on age and ability, with the [REDACTED] [REDACTED]

██████████, which was ██████████ ██████████. ██████████ concluded that Petitioner has ██████████ ██████████ in ██████████ ██████████, ██████████ ██████████, ██████████ ██████████, or ██████████ ██████████.

██████████. ██████████-██████████ opined, however, that based upon ██████████ evaluation and assessments, Petitioner exhibits ██████████-██████████ ██████████ in ██████████ ██████████ and, to some extent, in ██████████ ██████████. ██████████ opined that a ██████████ in ██████████ is ██████████ Petitioner's ██████████ ██████████ and ██████████ that Petitioner receive ██████████ ██████████ in ██████████, particularly with ██████████ ██████████ and ██████████.

28. Following the evaluation by ██████████. ██████████-██████████, an eligibility meeting was again properly convened on ██████████ ██████████, ██████████. Again, the relevant and necessary members of the eligibility team were present. The school-based members of the team credibly testified that the recent results from ██████████. ██████████-██████████ IEE report were considered before and during the meeting. While the level of discussion concerning the IEE may not have been subjectively sufficient to meet Petitioner's parents' expectations, the undersigned finds that the evaluation was given due consideration.

29. Ultimately, the school-based members of the eligibility team determined that Petitioner was not eligible for ██████████. According to the PWN formally declining eligibility for ██████████, the following was considered in making the determination: "██████████

██████████, ██████-██████, ██████ ██████████ on ██████, ██████  
██████████ in ██████ ██████████ [██████] and IEE ██████████." The PWN also  
documented that eligibility was refused because:

Based on current ██████████ evaluation.  
[Petitioner's] ██████████ does not  
indicate a ██████ in ██████████ to ██████  
██████████ peers. ██████████ are  
██████████ at this time. [Petitioner] ██████████  
██████████. Parent is not in  
agreement.

30. In addition to authoring the PWN, on ██████ ██████, ██████,  
Respondent completed a form entitled "████████████████████  
██████████/██████████ ██████████ ██████████ to ██████████ ██████████."  
This form documents that the school-based members of the team  
concluded Petitioner did not meet the eligibility criteria set  
forth in Florida Administrative Code Rule 6A-6.0331(4)(a)1., 2.,  
and 3. The undersigned finds that Respondent satisfied its  
obligation to document its determination of eligibility as set  
forth in rule 6A-6.0331(5).

31. At the final hearing, Petitioner presented the  
testimony of ██████. ██████████-██████████ as an expert witness in psychology  
and psychoeducational assessments. ██████. ██████████-██████████ conceded  
that ██████ was not knowledgeable concerning the eligibility  
criteria, in the educational setting, for a student with a ██████.  
██████████. ██████████-██████████ offered no opinion as to whether Petitioner is,  
in fact, eligible for ██████ in the educational, as opposed to the

clinical setting. [REDACTED] also did not offer any opinion as to Respondent's decisions denying [REDACTED] eligibility for Petitioner.

32. [REDACTED]. [REDACTED]-[REDACTED] did, however, opine that based upon [REDACTED] evaluation, Petitioner did exhibit [REDACTED]-average deficits in basic [REDACTED], and "some" in [REDACTED] [REDACTED]. In response to why additional subtesting is necessary, [REDACTED]. [REDACTED]-[REDACTED] explained that Petitioner's [REDACTED] [REDACTED] deficit is "so specific and pretty mild." Petitioner, according to [REDACTED]. [REDACTED]-[REDACTED], demonstrates a pattern of trading speed for accuracy in [REDACTED] [REDACTED].

33. Petitioner also presented the expert testimony of [REDACTED] [REDACTED], Ph.D. [REDACTED]. [REDACTED] has a doctorate in [REDACTED]-[REDACTED] [REDACTED] from the [REDACTED] of [REDACTED], and is [REDACTED] the [REDACTED] [REDACTED] professor and the undergraduate program director for the [REDACTED] of [REDACTED], [REDACTED] and [REDACTED] [REDACTED] at the [REDACTED] of [REDACTED].

34. [REDACTED]. [REDACTED] was retained to conduct an evaluation to document Petitioner's current level of functioning in reading and writing. The evaluation was conducted on [REDACTED] [REDACTED], [REDACTED], several months after Petitioner's Complaint was filed. Accordingly, Respondent did not have the ability to consider the information contained within [REDACTED]. [REDACTED] report at the time the eligibility determinations at issue were made. While the undersigned found [REDACTED]. [REDACTED] very credible and well-credentialed,

█ did not offer any opinions concerning Respondent's eligibility decisions, and, therefore, █ testimony was of very limited value to the pending issues.

35. █ █ has a doctorate in School Psychology and is presently in private practice. Respondent called this witness to, among other things, explain the variances between the testing results obtained by █. █ and █. █-█. █ noted that █ scores from █. █ evaluation were in the █ range; however, most of the reading scores in █. █-█ evaluation were below average. █ opined that testing scores are a reflection of that particular student's performance on a particular day, thus there is going to be some variance.

36. █. █ opined that Petitioner's evaluation by █. █ and █. █-█ are consistent with a student that has █. █ conceded that there are some significant differences in the basic █ scores; however, █ opined that the scores are not to be viewed in isolation from the balance of available information.

37. █ █, one of Respondent's school psychologists, credibly testified that in making the eligibility determination for █, the team not only reviews █ assessments, but also █-█ assessments, █ results, examinations, grades, █ scores, results from the █, "and other things of that nature." █. █ opined that, █ █, and

██████████ ██████████ by a student in ██████████ ██████████, would be relevant to determining whether a student requires accommodations under a ██████████ ██████████, but would not be relevant to the consideration of ██████████ eligibility and the need for specialized instruction. This specific opinion is not credited.

38. ██████████ ██████████, Petitioner's ██████████-grade ██████████ ██████████ ██████████/ class teacher credibly testified that Petitioner performs well in ██████████ class, performs ██████████ in exams, displays no more difficulties than any other student, and has submitted "beautiful" interactive notebooks for the class. Specifically, ██████████ has received ██████████ ██████████ and one ██████████ on the interactive notebooks.

39. Similarly, ██████████ ██████████, Petitioner's ██████████ ██████████ ██████████ teacher for ██████████ grade, credibly testified that Petitioner has earned "██████████" up through the time of filing the instant Complaint and has made "██████████ ██████████" on ██████████ ██████████.

#### CONCLUSIONS OF LAW

40. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto pursuant to section 1003.57(1)(c), Florida Statutes, and rule 6A-6.03311(9)(u).

41. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. Schaffer v. Weast, 546 U.S. 49, 62 (2005).



42. In enacting the IDEA, Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

43. The IDEA contains "an affirmative obligation of every [local] public school system to identify students who might be disabled and evaluate those students to determine whether they are indeed eligible." L.C. v. Tuscaloosa Cnty. Bd. of Educ., 2016 U.S. Dist. LEXIS 52059 at \*12 (N.D. Ala. 2016)(quoting N.G. v. D.C., 556 F. Supp. 2d 11, 16 (D.D.C. 2008))(citing 20 U.S.C. § 1412(a)(3)(A)). This obligation is referred to as "Child Find," and a local school system's "[f]ailure to locate and

evaluate a potentially disabled child constitutes a denial of FAPE." Id. Thus, each state must put policies and procedures in place to ensure that all children with disabilities residing in the state, regardless of the severity of their disability, and who need special education and related services, are identified, located, and evaluated. 34 C.F.R. § 300.111(a).

44. All determinations regarding eligibility for special education are therefore governed, in the first instance, by the definition of a "child with a disability." Pursuant to 20 U.S.C. § 1401(3)(A), a "child with a disability" is a child:

(i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this title [20 USCS §§ 1400 et seq.] as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and

(ii) who, by reason thereof, needs special education and related services.

45. Thus, eligibility determinations proceed in two steps. The first prong determines the existence of a disorder—here, a ■■■. The second prong identifies whether the child with a qualifying disorder "needs" special education and related services as a result of that disorder. Doe v. Cape Elizabeth Sch. Dist., 832 F.3d 69, 73 (1st Cir. 2016).

46. A [REDACTED] is defined as follows:

(i) General. [REDACTED] [REDACTED] [REDACTED] means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations, including conditions such as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia.

(ii) Disorders not included. [REDACTED] [REDACTED] does not include learning problems that are primarily the result of visual, hearing, or motor disabilities, of an intellectual disability, of emotional disturbance, or of environmental, cultural, or economic disadvantage.

34 C.F.R. § 300.8(c)(10); see Fla. Admin. Code R. 6A-6.03018(1).

47. In Florida, a student meets the eligibility criteria as a student with a [REDACTED] if all of the following criteria are met:

(a) Evidence of [REDACTED] [REDACTED] [REDACTED]. The student's parent(s) or legal guardian(s) and group of qualified personnel may determine that a student has a specific learning disability if there is evidence of each of the following:

1. When provided with learning experiences and instruction appropriate for the student's chronological age or grade level standards pursuant to Rule 6A-1.09401, F.A.C., the student does not achieve adequately for the student's chronological age or does not meet grade-level standards as adopted in Rule 6A-1.09401, F.A.C., in one or more of the following areas based on the review of multiple sources which may include group

and/or individual criterion or norm-referenced measures, including individual diagnostic procedures:

- a. Oral expression;
- b. Listening comprehension;
- c. Written expression;
- d. Basic reading skills;
- e. Reading fluency skills;
- f. Reading comprehension;
- g. Mathematics calculation; or
- h. Mathematics problem solving.

[and]

2. The student does not make adequate progress to meet chronological age or grade-level standards adopted in Rule 6A-1.09401, F.A.C., in one or more of the areas identified in subparagraph (4)(a)1. of this rule when using a process based on the student's response to scientific, research-based intervention, consistent with the comprehensive evaluation procedures in subsection 6A-6.0331(5), F.A.C.

[and]

3. The group determines that its findings under paragraph (a) of this subsection are not primarily the result of the following:

- a. A visual, hearing, or motor disability;
- b. Intellectual disability;
- c. Emotional/behavioral disability;
- d. Cultural factors;

- e. Irregular pattern of attendance and/or high mobility rate;
- f. Classroom behavior;
- g. Environmental or economic factors; or
- h. Limited English proficiency.

Fla. Admin. Code R. 6A-6.03018(4)(a); see also 34 C.F.R.

§ 300.309(a).<sup>6/</sup>

48. Here, it is undisputed that Petitioner has [REDACTED], a qualifying IDEA disorder for [REDACTED]. It is further undisputed that Petitioner has been previously determined eligible to receive services and protection under [REDACTED] [REDACTED] based on [REDACTED] [REDACTED].<sup>7/</sup> Thus, it must be determined whether Petitioner, who has a qualifying IDEA [REDACTED] [REDACTED] ([REDACTED]), satisfies the criteria for [REDACTED] eligibility; and, if so, whether [REDACTED] needs special education and related services.

49. Petitioner contends that, in the categories of basic reading and reading fluency, [REDACTED] does not "[REDACTED] [REDACTED]" and "[REDACTED] [REDACTED] make [REDACTED] [REDACTED]" in those categories when using a process based on Petitioner's response to scientific, research-based intervention. Petitioner's evidence to support this contention primarily rests upon Petitioner's [REDACTED]-average scores on the selected assessments administered by [REDACTED]. [REDACTED]-[REDACTED] on [REDACTED] [REDACTED], [REDACTED].<sup>8/</sup> It is undisputed that these

assessments were administered to Petitioner for the specific purpose of determining [REDACTED] reading deficits.

50. The undersigned finds that the [REDACTED] probes analysis also provides evidence of a [REDACTED] in [REDACTED] as Petitioner's [REDACTED], on [REDACTED] [REDACTED], [REDACTED], was still only at the [REDACTED] percentile.

51. In contrast to the specific assessments administered by [REDACTED]. [REDACTED]-[REDACTED] addressing potential [REDACTED], other evidence supports the contrary position that Petitioner is achieving [REDACTED] and [REDACTED] progress in the areas of [REDACTED] and [REDACTED]. First, Petitioner's results on the [REDACTED] in [REDACTED]/[REDACTED] [REDACTED] demonstrate that [REDACTED] is meeting expectations. Second, Petitioner's [REDACTED] [REDACTED] grades in [REDACTED] [REDACTED] [REDACTED] for the past [REDACTED] years ("[REDACTED]") are a [REDACTED] indicator of [REDACTED] [REDACTED] and [REDACTED] skills. Third, Petitioner's [REDACTED] [REDACTED] success in [REDACTED] other courses, even though not specifically tailored to measure [REDACTED] and [REDACTED], is competent evidence to weigh in considering [REDACTED] eligibility. Fourth, the specific assessments administered by [REDACTED]. [REDACTED] ([REDACTED] months prior to the [REDACTED]-[REDACTED] assessments) placed Petitioner in the [REDACTED] range in the categories at issue. Finally, the observations by Petitioner's teachers in the classroom, who testified at final hearing,

provide competent evidence weighing against a finding of [REDACTED] eligibility.

52. Petitioner's overall [REDACTED] performance is the result of [REDACTED] [REDACTED], [REDACTED] [REDACTED] [REDACTED], and devoted parents, as well as accommodations provided by the school pursuant to [REDACTED] [REDACTED] [REDACTED] [REDACTED]. While Petitioner's [REDACTED] [REDACTED] may have contributed, in part, to [REDACTED] reading academic success to date, the impact is difficult to quantify based on the evidence presented.

53. As discussed in Doe, infra, the weight due to any particular factor depends on the unique circumstances of the child. Doe, 832 F.3d at 81. "[W]e determine that, much as no single assessment or measure could support a finding of a [REDACTED] [REDACTED] deficit, no single assessment or measure may undermine a finding of a [REDACTED] [REDACTED] deficit where other measures could support such a finding." Id.

54. While the undersigned is mindful that where, as here, a student's [REDACTED] [REDACTED], [REDACTED] [REDACTED], [REDACTED] [REDACTED], and [REDACTED] [REDACTED] [REDACTED] could mask [REDACTED] [REDACTED], the undersigned concludes that the greater evidence establishes that Petitioner did not satisfy the eligibility criteria at the time of [REDACTED] eligibility determination meetings. Accordingly, the undersigned concludes that Petitioner failed to establish the first prong of the eligibility analysis.

55. Assuming, arguendo, that Petitioner had established that [REDACTED] [REDACTED] the criteria for [REDACTED], Petitioner is further required to establish that [REDACTED] needs specialized education and related services by reason of [REDACTED] disability.

56. Petitioner contends that [REDACTED] needs special education to remediate [REDACTED] deficiencies in [REDACTED] [REDACTED] and [REDACTED] [REDACTED] skills and suggests, as a proposed conclusion, that [REDACTED] be provided a [REDACTED] [REDACTED] program for [REDACTED] hour per day, [REDACTED] days per week, for [REDACTED] years. Applying a similar analysis to that above in the first prong, the evidence establishes that, at the time of the eligibility determinations at issue in this proceeding, Petitioner was not in need of special education and related services. Although Petitioner's IEE by [REDACTED]. [REDACTED]-[REDACTED] placed [REDACTED] in the [REDACTED]-average range in the categories at issue, this one assessment does not override the balance of evidence pointing to the lack of need for special education and related services. Accordingly, Petitioner failed to present sufficient evidence to satisfy the second prong of the inquiry.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's Complaint is denied in all respects.



DONE AND ORDERED this 2nd day of August, 2018, in  
Tallahassee, Leon County, Florida.

## S

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TODD P. RESAVAGE  
Administrative Law Judge  
Division of Administrative Hearings  
The DeSoto Building  
1230 Apalachee Parkway  
Tallahassee, Florida 32399-3060  
(850) 488-9675  
Fax Filing (850) 921-6847  
www.doah.state.fl.us

Filed with the Clerk of the  
Division of Administrative Hearings  
this 2nd day of August, 2018.

### ENDNOTES

<sup>1/</sup> See Fla. Admin. Code R. 6A-6.03019(1).

<sup>2/</sup> The ■-■ ACH is a comprehensive set of individually administered tests to measure educational achievement in the areas of reading, mathematics, written language, oral language, academic skills fluency, and applications.

<sup>3/</sup> The report documents that ■■■■ is an online program utilized by Respondent to monitor progress at the Tier 3 level. The report further provides that, although Petitioner's parent refused multi-tiered learning supports beyond the original general education learning plan, a goal for improvement in Petitioner's measured oral reading fluency rate was established to better assess her learning gains in response to only core instruction and general education learning supports.

<sup>4/</sup> The ■■■■-■■■ is an individually administered test that evaluates academic achievement in reading, math, and writing, and oral language (expressive and receptive); the ■■■■-■ assesses phonological awareness, phonological memory, and rapid naming in children and adults ages 5 to 24; the ■■■■-■ is a norm-referenced test of oral reading rate, accuracy, fluency, and comprehension.

5/ The [REDACTED] [REDACTED] [REDACTED] class provides three high school science credits.

6/ Florida Administrative Code Rule 6A-1.09401 sets forth the Student Performance Standards, defined as the Next Generation Sunshine State Standards, establishes core content of the curricula to be taught, and specifies the core content knowledge and skills that K-12 public school students are expected to acquire.

7/ Accordingly, it was previously determined that her dyslexia substantially limits one or more major life activities.  
See 29 U.S.C. § 705(20)(B).

8/ The parties do not dispute the validity or reliability of any of the selected assessments administered.

COPIES FURNISHED:

[REDACTED] [REDACTED], Esquire  
Pinellas County School Board  
301 4th Street Southwest  
Post Office Box 2942  
Largo, Florida 33779-2942  
(eServed)

[REDACTED] [REDACTED], Esquire  
Special Education Law and Advocacy  
2509 First Avenue South  
St. Petersburg, Florida 33712  
(eServed)

[REDACTED] [REDACTED], Esquire  
Special Education Law and Advocacy  
2509 First Avenue South  
St. Petersburg, Florida 33712  
(eServed)

[REDACTED] [REDACTED]  
Department of Education  
325 West Gaines Street  
Tallahassee, Florida 32399  
(eServed)

██████████ ██████████, General Counsel  
Department of Education  
Turlington Building, Suite 1244  
325 West Gaines Street  
Tallahassee, Florida 32399-0400  
(eServed)

██████████. ██████████ ██████████. ██████████, Superintendent  
Pinellas County School Board  
301 4th Street Southwest  
Largo, Florida 33770-2942

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).