

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

ST. JOHNS COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 22-0497E

**,

Respondent.

FINAL ORDER

Administrative Law Judge Brittany O. Finkbeiner conducted the due process hearing in this case for the Division of Administrative Hearings on April 13, 2022, by Zoom conference.

APPEARANCES

For Petitioner: Terry Joseph Harmon, Esquire
Sniffen & Spellman, P.A.
123 North Monroe Street
Tallahassee, Florida 32301

For Respondent: No Appearance

STATEMENT OF THE ISSUE

Whether the reevaluations conducted by Petitioner, on Respondent's behalf, were appropriate.

PRELIMINARY STATEMENT

Petitioner completed a Language Evaluation dated October 5, [REDACTED]. Petitioner also completed a Functional Behavior Assessment ("FBA") dated October 27, [REDACTED]. On February 8, [REDACTED], Respondent's parent requested an

Independent Educational Evaluation (“IEE”) from Petitioner in the areas of behavior and language. Petitioner then initiated this case by filing a Due Process Complaint (“Complaint”) to demonstrate that its reevaluation was appropriate and, therefore, Respondent was not entitled to an IEE at public expense. Respondent did not file a response to the Complaint and did not appear at the due process hearing. The due process hearing took place on April 13, [REDACTED], by Zoom conference. Petitioner presented the testimony of Speech Language Pathologist (“SLP”), [REDACTED]; and Exceptional Student Education (“ESE”) Director, [REDACTED]. Petitioner’s Exhibits 1 through 3 were admitted into evidence.

The one-volume Transcript was filed on May 6, 2022. On May 16, 2022, Petitioner requested an extension of the ten-day deadline to file its proposed final order, which the undersigned granted. Petitioner filed a timely Proposed Final Order in accordance with the extended deadline, which has been considered in this Final Order. Respondent did not file a proposed final order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time Petitioner performed the reevaluations at issue. For stylistic convenience, the undersigned will use female pronouns in this Final Order when referring to Respondent. The female pronouns are neither intended, nor should be interpreted, as a reference to Respondent’s actual gender.

FINDINGS OF FACT

1. [REDACTED] is an [REDACTED]-grade student at School A in Petitioner’s school district.
2. [REDACTED] has been identified as a gifted student with an Other Health Impairment.
3. On September 29, [REDACTED], [REDACTED] parent signed a consent for Petitioner to conduct a reevaluation.

4. The reevaluation involved a language evaluation to include comprehensive language pragmatics and an FBA.

Language Evaluation

5. [REDACTED] is a licensed SLP at School A. [REDACTED] has completed more than 1,000 language evaluations in her career. She has provided services with Petitioner since January of [REDACTED]. Prior to working for Petitioner, [REDACTED] worked in Palm Beach County as an SLP for 15 years. The services she provided in Palm Beach County are similar to the services she has provided for Petitioner.

6. [REDACTED] was referred to [REDACTED] for the language evaluation, which [REDACTED] conducted on October 5, [REDACTED]. In addition to evaluating pragmatics (social language), [REDACTED] also completed an overall language evaluation assessing [REDACTED] language comprehension and expression.

7. As part of her evaluation, [REDACTED] reviewed [REDACTED] medical and screening history and [REDACTED] education records, including her background, grades, attendance, multi-tiered system of support data, and her individualized education plan (“IEP”).

8. [REDACTED] administered the Clinical Evaluation of Language Fundamentals – Fifth Edition (“CELF-5”). The CELF-5 is a global language assessment that examines a student’s receptive and expressive language.

9. In addition, [REDACTED] administered the Pragmatic Language Skills Inventory (“PLSI”), the Test of Pragmatic Language - Second Edition (“TOPL-2”), and an Executive Skills Questionnaire.

10. The CELF-5 and TOPL-2 are standardized assessments. [REDACTED] has administered the CELF-5 and TOPL-2 in the past, and she followed the publisher’s guidelines during [REDACTED] assessment. These assessments were administered in English. [REDACTED] understood the discussion related to the administration of the assessments.

11. The CELF-5 is a norm-referenced test that is used to determine deficits in a student's expressive/receptive language abilities, working memory, as well as language structure and content.

12. The TOPL-2 is on norm-referenced test used for the purpose of assessing pragmatic or social language skills.

13. As part of her assessment, [REDACTED] used the PLSI, which was a checklist that teachers and parents provided on her social language skills. The PLSI was used for the purpose of educational planning.

14. [REDACTED] administered the Executive Skills Questionnaire, which is used to address a student's executive functioning. [REDACTED] administered the questionnaire in response to concerns raised by [REDACTED] parent with respect to her ability to keep up with her work and advocate for herself.

15. [REDACTED] also conducted her own observation of [REDACTED]

16. [REDACTED] evaluation was not discriminatory on a racial or cultural basis. Her evaluation met the standards typically applied within the SLP industry; gathered sufficient information to determine whether [REDACTED] may benefit from or need special education or related services pertaining to language; and met the requirements of the Florida Department of Education.

17. [REDACTED] believed that the results of the assessments she administered were valid and reliable and consistent with the input from [REDACTED] teachers and parent.

18. [REDACTED] presented her evaluation to [REDACTED] IEP team. [REDACTED] did not meet eligibility criteria for language services, but she continued to be eligible for an IEP in other areas.

Functional Behavior Assessment

19. [REDACTED] parent requested that an FBA be completed for [REDACTED]

20. The purpose of the FBA was to determine whether [REDACTED] parent's reports of self-injurious behavior and writing about suicidal ideations were occurring sufficiently enough that a behavior intervention plan was necessary.

21. ██████████ completed ████████ FBA on October 27, ██████.

22. ████████ is a Board Certified Behavior Analyst. She has completed other FBAs for Petitioner.

23. The FBA identified ████████ current program placement, current supports, current services, strengths, attendance, academics, discipline, instances of restraint, and other factors that may influence her behavior.

24. The two behaviors targeted by the FBA included self-injury and writing about suicidal ideations. During the observation period of the FBA (September 15, ██████, through October 27, ██████), there were no verified incidents of self-injurious behavior at school, although ████████ mother reported an incident of self-injurious behavior at home. ██████ alleged that she engaged in self-injurious behavior one day in the cafeteria, but video footage did not support her claim. Petitioner found a writing in ████████ backpack that included a suicidal ideation, although it was unclear whether it was written at home or at school.

25. The FBA team was unable to determine the antecedents and consequences of the behaviors, because the targeted behaviors each occurred on only one occasion. Therefore, there was insufficient data to formulate a behavior intervention plan.

26. Although the problematic behaviors reported by ████████ mother only occurred one time each, Petitioner still collected data sheets and made assumptions regarding the functions of ████████ behavior as part of the FBA. The FBA included reinforcement and de-escalation interviews with T.B.

27. ████████ parent participated in a meeting to discuss ████████ FBA with ██████████, an ESE teacher, a school counselor, a gifted itinerant, and the local educational agency.

28. ██████████, Respondent's ESE Director with 37 years of educational experience, credibly and persuasively testified that ██████████ FBA was "very appropriate." ██████████ has been involved in over 200 FBAs in her career.

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of the parties pursuant to section 1003.57(1)(b), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(6) and (9).

30. The burden of proof in a due process hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). In the present case, Petitioner carries the burden of proving that the reevaluation at issue was appropriate under governing federal and Florida law.

31. If a parent requests an IEE, the school district must, without unnecessary delay, either: provide the IEE at public expense; or initiate a due process hearing to show that its evaluation is appropriate. Fla. Admin. Code R. 6A-6.03311(6)(g)1. and 2.

32. If the school district initiates a hearing and the final decision from the hearing is a determination that the district's evaluation is appropriate, then the parent still has a right to an IEE, but not at public expense. Fla. Admin. Code R. 6A-6.03311(6)(g)2.

33. At issue here is not the initial evaluation, but rather, reevaluations to determine whether [REDACTED] requires any additions or modifications to her special education and related services. Reevaluation requirements are set forth in rule 6A-6.0331(7), which provides, in pertinent part, 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.

34. The Department of Education has promulgated additional requirements for reevaluations. Specifically, rule 6A-6.0331(8), entitled “Additional requirements for evaluations and reevaluations,” provides, in pertinent part, as follows:

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:

* * *

2. The educational needs of the student;
3. The present levels of academic achievement and related developmental needs of the student;

* * *

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.

(c) The group conducting this review may do so without a meeting.

(d) The school district shall administer tests and other evaluation measures as may be needed to produce the data that is to be reviewed under this section.

35. Based on the unrefuted record evidence, [REDACTED] and [REDACTED] were trained, knowledgeable, and appropriately qualified to conduct their respective evaluations.

36. As part of her reevaluation, [REDACTED] reviewed [REDACTED] educational records; administered two norm-referenced, standardized assessments typically utilized in the speech-language industry; administered two checklists designed to obtain input from [REDACTED] parent and teachers; and conducted her own observation. [REDACTED] also specifically evaluated [REDACTED] pragmatic language skills at the request of [REDACTED] parent.

37. Under rule 6A-6.03411(1)(9), an FBA is defined as follows:

A FBA is a systematic process for defining a student's specific behavior and determining the reason why (function or purpose) the behavior is occurring. The FBA process includes examination of the contextual variables (antecedents and consequences) of the behavior, environmental components, and other information related to the behavior. The purpose of conducting an FBA is to determine whether a behavioral intervention plan should be developed.

38. Petitioner agreed to conduct an FBA based on [REDACTED] parent's concerns regarding [REDACTED] engaging in self-injurious behavior and writing about suicidal ideations.

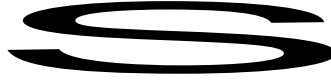
39. After more than a month of observing [REDACTED] behaviors, [REDACTED] was never observed engaging in self-injurious behavior at school. She wrote about a suicidal ideation one time. Because [REDACTED] parent's concerns were only verified to have occurred one time in school and no pattern of behavior developed, Petitioner was unable to move forward with examining the antecedents and consequences of [REDACTED] behavior, environmental components, or other information related to her behavior. However, based on the information gathered as part of the FBA, Petitioner was able to determine that an FBA did not need to be developed.

40. Petitioner demonstrated that both reevaluations conducted on behalf of Respondent complied with rule 6A-6.0331(5), (7) and (8), and, therefore, Petitioner has met its burden of proving that the reevaluations were appropriate.

ORDER

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

DONE AND ORDERED this 8th day of June, 2022, in Tallahassee, Leon County, Florida.



BRITTANY O. FINKBEINER
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 8th day of June, 2022.

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).