

**STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS**

BROWARD COUNTY SCHOOL BOARD,

Petitioner,

vs.

Case No. 23-2191E

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Respondent.

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FINAL ORDER

This case came before Administrative Law Judge Darren A. Schwartz of the Division of Administrative Hearings (“DOAH”) for final hearing on July 26 and 27, and August 1, 2023, by Zoom conference.

APPEARANCES

For Petitioner: Susan Jane Hofstetter, Esquire  
Office of the General Counsel  
The School Board of Broward County, Florida  
600 Southeast Third Avenue, 11th Floor  
Fort Lauderdale, Florida 33301

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

STATEMENT OF THE ISSUE

Whether Petitioner, Broward County School Board’s (“School Board”) May 11, 2022, evaluation of Respondent is appropriate.

PRELIMINARY STATEMENT

On June 7, 2023, the School Board filed a request for a due process hearing, seeking a determination of the appropriateness of its May 11, 2022, evaluation of Respondent. The School Board’s hearing request resulted from

its decision to deny the request of Respondent's parent for an Independent Educational Evaluation ("IEE") for a Specific Learning Disability ("SLD"), Speech Impairment, and Language Impairment at public expense. On June 14, 2023, a telephonic status conference was held with Respondent's parent and counsel for the School Board, during which the parties agreed to extend the undersigned's deadline for issuance of the final order.

On June 14, 2023, the undersigned issued a Notice of Hearing and Order Extending Deadlines, setting the final hearing for July 26, 2023. The hearing commenced on July 26, 2023, but did not conclude on that date. On July 26, 2023, the undersigned issued an Order continuing the hearing for July 27 and August 1, 2023. The hearing was held on July 27, 2023, and concluded on August 1, 2023.

At the hearing, the School Board presented the testimony of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The School Board's Exhibits 3 through 12, 14 through 17, 19, and 21 through 24 were received into evidence. Respondent's parent testified on her own behalf and presented the additional testimony of [REDACTED], Ph.D. Respondent's Exhibits were received into evidence as follows: 6/1/23 Psychoeducational Evaluation; 7/24/2023 Exhibits-Evaluations, PMP, Testing, Timeline, only page 111 of PDF; 7/24/2023 Exhibits-Roggs and SD, only pages 188 and 245 through 248 of PDF; 7/24/2023 Exhibits: 504 and IEP, Assessments, Conferences, only pages 24, 26, 68 through 94, and 116 through 139 of PDF; 7/24/23 Grades-Exhibits, only pages 58 through 66 of PDF; and 7/20/2023 Timeline.<sup>1</sup>

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<sup>1</sup> PDF means Portable Document Format, which is the format of the proposed exhibits filed on DOAH's Exhibit portal. The specific pages of the PDF received into evidence correspond to the pages identified at the top center of the PDF, not any pages in the body of the document.

At the final hearing, the parties agreed that their proposed final orders would be filed within 14 days after the filing of the final hearing transcript, thereby making the undersigned's final order due within 28 days after the filing of the final hearing transcript. The three-volume final hearing Transcript was filed at DOAH on August 18, 2023. On September 1, 2023, Respondent's parent filed a request for an extension of time until September 5, 2023, to file Respondent's proposed final order. On September 1, 2023, the undersigned entered an Order granting the request, thereby making the undersigned's final order due September 19, 2023. The parties timely filed proposed final orders, which were considered in the preparation of this Final Order.

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. Prior to the Fall of [REDACTED], Respondent had a Section 504/ADA Accommodation Plan ("Section 504 Plan") due to a medical diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD"). Respondent's Section 504 Plan, dated October 5, [REDACTED], reflects that Respondent had difficulty with executive functioning skills, organization/planning, time management, and task initiation and that he was easily distracted. The Section 504 Plan was designed to address these concerns and target Respondent's ADHD behaviors.

2. Respondent was [REDACTED] years old and in the [REDACTED] grade during the [REDACTED]-[REDACTED] school year and enrolled in an advanced language arts class.

3. In January [REDACTED], Respondent was given an assessment to chart his reading abilities, which reflected he was performing above grade level halfway through the school year.

4. Toward the end of the [REDACTED]-[REDACTED] school year, Respondent's parent sent private evaluations to [REDACTED], the Exceptional Student Education ("ESE") specialist at Respondent's middle school, which were provided to assist the school team in making recommendations for Respondent in anticipation of his transition from middle school to high school for the [REDACTED]-[REDACTED] school year. One of the evaluations was a Medical Evaluation for Physically Impaired form from Respondent's pediatrician, which included specific diagnoses of ADHD, dysgraphia, and dyslexia.

5. Following [REDACTED] receipt of the private evaluations, an evaluation team planning meeting was held on April 6, [REDACTED], to determine whether Respondent may be a student needing something beyond the Section 504 Plan. [REDACTED], a school psychologist employed by the School Board; [REDACTED], a general education teacher; [REDACTED]; and Respondent's parent attended the meeting.

6. The evaluation team reviewed the available data and private evaluations provided by Respondent's parent and recommended that Respondent be referred to [REDACTED] for an evaluation to determine his eligibility for special education and related services under the Individuals with Disabilities Education Act ("IDEA") for the suspected disability of Other Health Impairment ("OHI").<sup>2</sup>

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<sup>2</sup> OHI is a category of disability pursuant to the IDEA for which a child may be eligible for special education and related services. 20 U.S.C. § 1401(3)(A). OHI means "having limited strength, vitality or alertness, including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that is due to chronic or acute health problems. This includes, but is not limited to, asthma, attention deficit disorder or attention deficit hyperactivity disorder, Tourette syndrome, diabetes, epilepsy, a heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and acquired brain injury." Fla. Admin. Code R. 6A-6.030152(1).

7. Respondent was referred to [REDACTED] for an evaluation because he was displaying academic difficulties which, in turn, impacted his productivity, due to behaviors associated with his ADHD. Specific behaviors included inattention, overactivity, fidgetiness and impulsivity, and difficulty with executive functioning skills such as planning, initiating, organizing, and completing tasks in a timely manner. Respondent also had difficulty organizing his thoughts when he needed to put those thoughts on paper; he would often make careless errors due to rushing through different tasks and sometimes did not hear instruction and required repetition of instruction. Respondent's behaviors are very common among children diagnosed with ADHD. Respondent's parent provided written consent and agreed that Respondent be evaluated for OHI.

8. [REDACTED] has [REDACTED] years of experience as a school psychologist for the School Board, has worked in the field of ESE for [REDACTED] years, and has conducted approximately 2,000 evaluations. [REDACTED] holds a bachelor's degree in psychology and an education specialist degree in school psychology. [REDACTED] has a certification from the Florida Department of Education in school psychology, K-12; and a license from the Florida Department of Health in school psychology.

9. In conducting [REDACTED] evaluation of Respondent, [REDACTED] used a variety of assessment tools to determine Respondent's level of functioning, to identify his strengths and weaknesses, and determine his eligibility for ESE services. [REDACTED] reviewed Respondent's educational records (standardized tests and grades), his current functioning in the classroom, and prior evaluations.

10. One of Respondent's prior evaluations that [REDACTED] reviewed was a School Board Multidisciplinary Team Report SLD/LI, K-12, dated September 15, [REDACTED]. In September [REDACTED], Respondent, who was then in [REDACTED] grade, was referred for an evaluation because of decoding and comprehension difficulties, or weaknesses related to reading, and a suspected intellectual

disability under the IDEA of SLD. A decoding deficit can be a characteristic of dyslexia or a reading disability. It can also reflect an area of weakness due to another disability under the IDEA.<sup>3</sup>

11. The [REDACTED] report reflects that Respondent was observed to work very quickly, that he needed prompting to pay attention, that he read slowly and looked around at peers, and needed reminders to review the text for answers to questions. The report also reflects that a school psychologist administered to Respondent the Kaufman Test of Educational Achievement, Third Edition, a standardized assessment, and that he demonstrated average abilities in Word Reading, Listening Comprehension and Reading Comprehension, and below average in decoding skills when presented with nonsense words. On the second standardized assessment mentioned in the report, the Assessing Reading Multiple Measures, Second Edition, Respondent's performance was average, even though he appeared to have rushed through the reading passages. The team found that Respondent was not eligible as a student with an SLD in [REDACTED], and therefore, he was not determined eligible for ESE services at that time.

12. [REDACTED] also reviewed the medical diagnoses from Respondent's pediatrician who diagnosed him with ADHD, dysgraphia, and dyslexia. At hearing, [REDACTED] testified persuasively that medical doctors are not qualified to diagnose dysgraphia and dyslexia because they are not medical conditions. Rather, a psychological evaluation, including a review of school data, is necessary to diagnose these conditions.

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<sup>3</sup> SLD "is defined as a disorder in one or more of the basic learning processes involved in understanding or in using language, spoken or written, that may manifest in significant difficulties affecting the ability to listen, speak, read, write, spell, or do mathematics. Associated conditions may include dyslexia, dyscalculia, dysgraphia, or developmental aphasia. A specific learning disability does not include learning problems that are primarily the result of a visual, hearing, motor, intellectual, or emotional/behavioral disability limited English proficiency or environmental, cultural, or economic factors." Fla. Admin. Code R. 6A-6.03018(1).

13. [REDACTED] also reviewed prior private psychological evaluations, dated June 12, XXX, from [REDACTED]; and May 25, [REDACTED], from [REDACTED], conducted at the end of Respondent's [REDACTED]- and [REDACTED]-grade school years, respectively.

14. The [REDACTED] evaluation from [REDACTED] reflects concerns regarding Respondent's inattentive, hyperactive, and impulsive behaviors that were interfering with his academic functioning and documented his lack of focus, distractibility, and carelessness during the evaluation itself. At hearing, [REDACTED] persuasively explained that these behaviors demonstrated Respondent's history with challenges related to behaviors associated with ADHD, not characteristics of a student with an SLD. As [REDACTED]

explained at hearing, these ADHD characteristics affect Respondent's ability to read and write because they impact working memory, which impacts long-term memory. According to [REDACTED]:

These difficulties can translate into [r]eading [c]omprehension [problems] in that children may rush through what they're reading, they may not be able to sustain effort and attention while reading, they may not pick up on details that they may need to pick up on, may not go back and reread, may end up looking around instead of continuing to read, so it has to do with that sustaining effort and attention, you know, and it's related to writing as well.

Children with ADHD have difficulty organizing themselves and their thoughts in order to put that information on paper, and they may rush through for example, with spelling, they tend to have difficulty with writing and spelling in that they're rushing. And oftentimes when they're asked to look back and, you know, point out mistakes, they do self correct. So, you know, rushing and making careless errors, that's another, you know, commonality among children diagnosed with ADHD.

Transcript, Vol. 2, at 182-183.

15. The [REDACTED] evaluation from [REDACTED] reflects that Respondent had deficits in executive functioning skills. As explained by [REDACTED] at hearing, poor executive functioning skills affected Respondent's ability to read and write because these deficits made it difficult for him to ignore environmental stimuli, and sustain attention and effort to learn the information. Respondent simply could not pay attention long enough to actually learn. Also, these deficits affected Respondent's organizational skills and ability to begin, execute, and complete a task. The [REDACTED] evaluation, while providing some helpful information, lacked student data and teacher input on Respondent's current levels of functioning in the school setting.

16. As part of [REDACTED] evaluation of Respondent, [REDACTED] administered the Woodcock Johnson Test of Achievement, Fourth Edition ("Woodcock Johnson Test"), which is a widely-used valid and reliable standardized norm-referenced assessment psychologists use to gather information about a student's individual skills and abilities, how the student is performing academically compared to same aged peers nationally, and in determining an educational diagnosis and appropriate interventions. The Woodcock Johnson Test is not discriminatory on a racial or cultural bias and was administered to Respondent in English (Respondent's native language).

17. [REDACTED] administered three subtests of the Woodcock Johnson Test: reading, math, and writing. In the reading subtest, Passage Comprehension, i.e., the ability to comprehend the meaning of written paragraphs, Respondent had to supply a missing word within the passage to demonstrate understanding. Respondent's score was 89, within the upper limits of the low average range (90 to 109 is considered average). Respondent did not have difficulties with decoding or phonics because he was able to read the words correctly. The subtest Applied Problems, which required Respondent to analyze information and determine the correct operation and numerical information before solving a problem, assessed his mathematical reasoning skills. Respondent's score was 104, within the average range. The



subtest Written Samples, i.e., which measures the ability to create semantically and grammatically correct sentences of increasing length and complexity, assessed Respondent's writing skills. Respondent had a few grammatical and punctuation errors, but his sentences had adequate detail and he demonstrated the ability to compose a good main or topic sentence. Respondent's score on this subtest was 105, in the average range.

18. [REDACTED] also observed Respondent one-on-one in a controlled setting, during which he was attentive, put forth his best effort, and completed all tasks required of him. Notably, [REDACTED] testified that Respondent's responses to the Woodcock Johnson Test were an accurate representation of his skills based upon her observation of his effort and demeanor throughout the test. The results of the test were scored as outlined in the test manual for accuracy.

19. Based on [REDACTED] evaluation, [REDACTED] found that Respondent did not have any developmental delays and that he was functioning in an age appropriate manner as related to a number of different functional skills, such as self-help, independent living, adaptive behavior, and being able to move from room to room or one activity to another, with the exception that his limited attention span and overactivity impacted his academic productivity.

20. [REDACTED] evaluation identified Respondent's academic strengths as related to applied math, and that he was performing adequately in the area of writing, although he showed an area of relative weakness as related to reading comprehension, as he was slightly below what is considered on the average range. [REDACTED] found that teacher input indicated that Respondent does put forth effort so he can be successful. However, he has a history of inconsistent grades: sometimes he scores low and other times, 100%. [REDACTED] evaluation identified that Respondent's academic productivity and learning struggles appeared to be impacted by the behaviors associated with ADHD, which is consistent with his medical diagnosis and his history.

21. At hearing, [REDACTED] testified that based on [REDACTED] evaluation, Respondent met the criteria for OHI under the IDEA, and therefore, Respondent was eligible for special education and related services for this disability.

22. Notably, [REDACTED] further testified that, had [REDACTED] identified reading and writing deficits during [REDACTED] evaluation indicating that Respondent has dyslexia or dysgraphia, [REDACTED] would have sought to amend the parent's written consent to evaluation form to include another area of suspected disability and, once consent was provided, include additional assessments related to the new area of suspected disability. However, based on [REDACTED] evaluation, [REDACTED] saw no need to amend the consent form to conduct any additional assessments.

23. On May 13, [REDACTED], a Parent Participation Form was sent to Respondent's parent, inviting [REDACTED] to attend a meeting on May 25, [REDACTED], to discuss the results of [REDACTED] evaluation. Respondent's parent attended the meeting. At the meeting, the team discussed the May 11, [REDACTED], evaluation, which identifies the requirements for determining eligibility for OHI. The team needed to make two determinations: whether Respondent had a disability as defined by the IDEA, and whether because of this disability, he required special education to make progress in his general education program. The team concluded that Respondent met the eligibility criteria for OHI based upon Respondent's ADHD diagnosis, the results of the evaluation, the recommendation made by [REDACTED], and the other members of the team. As a result, an Individualized Education Program was developed for Respondent on May 25, [REDACTED].

24. In sum, the persuasive evidence adduced at hearing demonstrates that [REDACTED] evaluation of Respondent is appropriate. [REDACTED], who is trained and knowledgeable, used a variety of assessment tools and strategies (i.e., clinical observation, record review, prior evaluations,

parent/teacher input, and the Woodcock Johnson Test) to gather relevant functional, developmental, and academic information about Respondent.

25. ██████████ did not use any single measure or assessment as the sole criterion for determining whether Respondent is eligible for ESE services and determining an appropriate educational program for Respondent.

26. The assessments and other evaluation materials utilized by ██████████ were selected and administered so as not to be discriminatory on a racial or cultural bias.

27. The assessments and other evaluation materials utilized by ██████████ to assess Respondent were provided and administered in Respondent's native language, and in the form most likely to yield accurate information on what Respondent knew and could do academically, developmentally, and functionally.

28. The assessments and other evaluation materials utilized by ██████████ to assess Respondent were used for the purposes for which the assessments or measures are valid and reliable.

29. Respondent's parent retained ██████████ to perform a psychological evaluation of Respondent. The undersigned is unpersuaded by ██████████ evaluation of Respondent, because it was conducted in June ██████████, more than one year after ██████████ evaluation and after the completion of Respondent's ██████████-grade year in high school. Moreover, ██████████ did not offer any testimony at hearing that ██████████ May 11, ██████████, evaluation of Respondent was not appropriate.

#### CONCLUSIONS OF LAW

30. DOAH has jurisdiction over the subject matter of this proceeding and of the parties pursuant to section 1003.57(1)(b), Florida Statutes; Florida Administrative Code Rule 6A-6.03311(6)(g)2. and (9)(u); and 34 C.F.R. § 300.502(b)(2)(i).

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

32. The Florida K-20 Education Code’s 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 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).

33. Under the IDEA, a parent of a child with a disability is entitled, under certain circumstances, to obtain an IEE of the child at public expense.

34 C.F.R. § 300.502(b)(2)(i); Fla. Admin. Code R. 6A-6.03311(6)(i). 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 demonstrate, by a preponderance of the evidence, that its evaluation is appropriate. Fla. Admin. Code R. 6A-6.03311(6)(g)2.; *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the school district is able to meet its burden and establish the appropriateness of its evaluation, it is under no obligation to provide the requested IEE.

34. To show that its May 11, 2022, evaluation is appropriate, the School Board must demonstrate that it complied with the evaluation criteria established in rule 6A-6.0331(5). 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 data-based problem solving

process, including information about the student's response to evidence-based interventions as applicable, and information provided by the parent. This evaluation data may assist in determining whether the student is eligible for ESE and the content of the student's individual educational plan (IEP) or educational plan (EP), including information related to enabling the student with a disability to be involved in and progress in the general curriculum (or for a preschool child, to participate in appropriate activities), or for a gifted student's needs beyond the general curriculum;

2. Must not use any single measure or assessment as the sole criterion for determining whether a student is eligible for ESE and for determining an appropriate educational program for the student; and,

3. Must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.

(b) Each school district must ensure that assessments and other evaluation materials and procedures used to assess a student are:

1. Selected and administered so as not to be discriminatory on a racial or cultural basis;

2. Provided and administered in the student's native language or other mode of communication and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally, unless it is clearly not feasible to do so;

3. Used for the purposes for which the assessments or measures are valid and reliable; and,

4. Administered by trained and knowledgeable personnel in accordance with any instructions provided by the producer of the assessments.

(c) Assessments and other evaluation materials and procedures shall include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient.

(d) Assessments shall be selected and administered so as to best ensure that if an assessment is administered to a student with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the student's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the student's sensory, manual, or speaking skills, unless those are the factors the test purports to measure.

(e) The school district shall use assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the student.

(f) A student shall be assessed in all areas related to a suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities.

(g) An evaluation shall be sufficiently comprehensive to identify all of a student's ESE needs, whether or not commonly linked to the suspected disability.

35. As detailed above, the School Board complied with the evaluation criteria of rule 6A-6.0331(5). The School Board proved, by a preponderance of the evidence, that its May 11, 2022, evaluation of Respondent is appropriate.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner, Broward County School Board's May 11, 2022, evaluation of Respondent is appropriate, and that Respondent is not entitled to an independent evaluation at public expense.

DONE AND ORDERED this 14th day of September, 2023, in Tallahassee, Leon County, Florida.



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DARREN A. SCHWARTZ  
Administrative Law Judge  
1230 Apalachee Parkway  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 14th day of September, 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).