

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

BROWARD COUNTY SCHOOL BOARD,)
)
 Petitioner,)
)
vs.) Case No. 11-1267E
)
██████████,)
)
 Respondent.)
_____)

FINAL ORDER

Pursuant to notice, a formal hearing was held in this case on March 29, 2011, by video teleconference, with the parties appearing in Fort Lauderdale, Florida, before Patricia M. Hart, a duly-designated Administrative Law Judge of the Division of Administrative Hearings, who presided in Tallahassee, Florida.

APPEARANCES

For Petitioner: Barbara J. Myrick, Esquire
Broward County School Board
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

For Respondent: ████████, parent, pro se
(Address of record)

STATEMENT OF THE ISSUE

Whether the Petitioner is required to provide the Respondent an Independent Educational Evaluation ("IEE") at public expense; whether the Petitioner's October 28, 2010,

evaluation of the Respondent, memorialized in a report dated December 2, 2010, is appropriate.

PRELIMINARY STATEMENT

On March 11, 2011, the Broward County School Board ("School Board") transmitted to the Division of Administrative Hearings a Request for Exceptional Student Education (ESE) Due Process Hearing, in which it requested a due process hearing to determine whether the evaluation of ██████ conducted on October 28, 2010, is appropriate and whether the Respondent is entitled to an IEE at public expense. A Notice of Hearing was issued on March 15, 2011, scheduling the due process hearing for March 29, 2011; a Pre-Hearing Order was also entered on March 15, 2011.

At the due process hearing, the School Board presented the testimony of Heidi Melius; Julie Ann Petruzzi; Emily Goldstein; and Felicia Starke. Petitioner's Exhibits 3, 5 through 11, and 14 were offered and received into evidence. ██████, the parent of ██████, testified in ██████'s behalf but did not offer any exhibits into evidence.¹

The one-volume transcript of the proceedings was filed with the Division of Administrative Hearings on April 13, 2011, and the parties timely filed their post-hearing proposals. Pursuant to Florida Administrative Code Rule 6A-6.03311(9)(v)6., the final order in this case is due to be entered within 45 days of

the date the School Board filed its due process hearing request, or no later than April 25, 2011.

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the final hearing and on the entire record of this proceeding, the following findings of fact are made:

1. [REDACTED] is [REDACTED] years old, having been born on [REDACTED]. [REDACTED] resides in Broward County, Florida.
2. On August 31, 2010, [REDACTED] was screened by the School Board's Pre-School Team, which referred [REDACTED] for further evaluation in the areas of psycho-educational and language because of suspected developmental delays.
3. A Referral for Psychological Evaluation Services was completed on August 31, 2010. The information transmitted with the referral included a Pre-K Information Form completed by [REDACTED] and a Preschool Screening Form prepared by Florida Diagnostic and Learning Resources System for the School Board which contained recommendations that [REDACTED] be referred for a hearing test, a language evaluation, a developmental evaluation, and a behavioral functioning evaluation.
4. On September 22, 2010, a School Board audiologist completed an Audiological Evaluation of [REDACTED], and the audiologist suggested that [REDACTED] might have a mild hearing loss "based on student responses," because "[o]bjective testing could

not be completed at this time due to activity."² On October 6, 2010, a private pediatric ear, nose, and throat specialist and an audiologist at Pediatric ENT Associates of South Florida evaluated [REDACTED]. [REDACTED]'s hearing was found to be within normal limits, and [REDACTED] provided a copy of this evaluation to the Part B Pre-K Assessment Team that was to evaluate [REDACTED]³

5. On October 28, 2010, the School Board's Part B Pre-K Assessment Team conducted an evaluation of [REDACTED] in the areas of psycho-educational and language. The Part B Pre-K Assessment Team was composed of Julie Petruzzi and Heidi Melius, who have been working together for three years as a multi-disciplinary team for the School Board.

6. Ms. Petruzzi has a Master's degree in Psychology, with a specialty in school psychology, and has an educational certificate in School Psychology K through 12. She worked as a school psychologist for four years in the Miami-Dade County school system and has worked as a school psychologist for the Broward County School Board for three years. During her seven years working as a school psychologist, Ms. Petruzzi has specialized in evaluating evaluated children aged from birth to six years for developmental delays.

7. Dr. Melius is a speech-language pathologist with the School Board. She has a Bachelor's degree in Communication Disorders, a Master's degree in English as a Second

Language/Language Development, and a Doctorate degree in Early and Middle Childhood Development. She is licensed in Florida as a speech/language pathologist and has worked as a speech pathologist with the School Board for 18 years, during which time she has specialized in evaluating the speech and language skills of preschool children.

8. In assessing ██████, Ms. Petruzzi and Dr. Melius reviewed ██████'s records, including the Pre-K Information Form completed by ██████; observed and interacted with ██████; conducted a developmental interview with ██████; administered the Battelle Development Inventory-Second Edition ("BDI-2") to ██████; observed ██████'s language skills; and administered the Preschool Language Scale-4 ("PLS-4") to ██████.

9. ██████ was present during the entire evaluation and was able to assist with the evaluation and to interact with and encourage ██████.

10. The BDI-2 is used to evaluate the developmental status of children aged from birth to eight years. This evaluation instrument is approved by the Florida Department of Education for use in Florida's public school. The instrument is based on the concept that "a child attains critical skills and behaviors sequentially, from simple to complex."⁴ The instrument "helps measure a child's progress along this developmental continuum by

both global domains and discrete skills sets" in five areas, or domains.⁵

11. The Personal-Social Domain in the BDI-2 assesses the child's "abilities and characteristics that allow the child to engage in meaningful social interaction with adults and peers and to develop [his/her] own self concept and sense of social role"; the Motor Domain assesses the child's "ability to control and use the large and small muscles of [his/her] body"; the Cognitive Domain "measures those skills and abilities most commonly thought of as 'mental' or 'intellectual,' with the exception of language and communication skills"; the Communication Domain assesses the child's "overall language ability," including receptive and expressive language; and the Adaptive Domain assesses the child's "ability to use information and skills acquired in the other domains."⁶

12. The BDI-2 is a structured instrument that provides a snapshot of a child's progress along the developmental continuum. It includes specific activities the child is asked to perform; specific situations that are intended to elicit responses from the child; and specific tasks the child is asked to complete using specific materials provided by the evaluators. A manual covering each domain sets forth the requirements of the BDI-2.

13. The results on the BDI-2 are scored based on the evaluators' observations and on information provided by the child's parent(s). A score of two is assigned when a child completes a task or activity, and a score of one is assigned when a child is just learning a skill. A score of zero is assigned when a child cannot, does not because of distractions or other factors, or refuses, at that particular time, to perform an activity or complete a task required by the BDI-2. Even though a child may be able to complete a task or perform an activity, the BDI-2 scoring system requires that a score of zero be assigned when a child will not or refuses to complete a task or activity during the evaluation.

14. Immediately following the evaluation, the evaluators move to another room and assign numerical scores that reflect the child's performance on the various skill sets tested by the BDI-2, and the evaluators then meet with the parent(s). When a score is recorded for a particular task or activity, even if the score is a zero, the child was asked to perform the task or activity.

15. The PLS-4 is an evaluation instrument approved by the Florida Department of Education to assess the language and oral skills of children aged from birth to six years of age.

16. Ms. Petruzzi and Dr. Melius begin evaluating a child when they meet the child and the child's parent(s) in the main

office of the school. Ms. Petruzzi and Dr. Melius then escort the child and parent(s) to the classroom where the assessment will be conducted. This requires the child to go down a set of stairs and a long hallway. Ms. Petruzzi and Dr. Melius begin administering the BDI-2 by observing the child and asking the child to perform specified tasks required to assess the child's gross motor skills. Ms. Petruzzi and Dr. Melius followed this procedure when evaluating [REDACTED].

17. The assessment of [REDACTED] continued in the classroom, where [REDACTED] was first taken to the playroom. Ms. Petruzzi and Dr. Melius administered portions of the BDI-2 while playing with [REDACTED]. [REDACTED] was then taken into the area where the structured elements of the BDI-2 and the PLS-4 are administered. Ms. Petruzzi, Dr. Melius, and [REDACTED] observed that [REDACTED] was very enthusiastic at the beginning of the evaluation, but, a few minutes after they entered the area where the structured elements of the evaluation were conducted, [REDACTED] became restless and refused to complete a number of tasks even though Ms. Petruzzi, Dr. Melius, and [REDACTED] encouraged [REDACTED] to do so. Ms. Petruzzi and Dr. Melius were, however, able to complete a lot during the few minutes that [REDACTED] participated in the evaluation.

18. Ms. Petruzzi and Dr. Melius prepared a Multi-Disciplinary Team Report dated December 2, 2010, in which they reported details of their observations of and interactions with

██████ on October 28, 2010, and the numerical scores they assigned to ██████'s performance on the BDI-2 and the PLS-4.

19. The section on Background Information included information obtained from the Pre-K Information Form completed by ██████. The section on Test Results and Interpretations contained a disclaimer relating to the reliability and validity of assessments of children under the age of six years. Ms. Petruzzi puts the disclaimer in every evaluation report and discusses it with the parent so that the parent understands that the evaluation records a child's performance during the one-and-one-half hours of the evaluation and does not provide a global picture of the child. Ms. Petruzzi also explains to the parent that a child's performance on the evaluation could be affected by environmental or other factors such as poor sleep the night before the evaluation, failure to eat a good breakfast, or just the child's mood at the time the evaluation is administered.

20. The Test Results and Interpretation section contains subsections on Developmental Functioning and Language Assessment. The subsection on Developmental Functioning included both the numerical results and a narrative report of ██████'s performance on the BDI-2 in the Adaptive Domain, the Personal-Social Domain, the Motor Domain, and the Cognitive Domain.

21. The subsection on Language Assessment included the numerical results of [REDACTED]'s performance on the PLS-4 and a narrative report of the results of [REDACTED]'s performance on the Communication Domain of the BDI-2, together with a report on the Language Observation completed by Dr. Melius.

22. Ms. Petruzzi and Dr. Melius included in the Summary and Recommendations section of the report summaries of their findings in the areas of Curriculum and Instruction, Independent Functioning, Behavioral and Social-Emotional, and Communication. For each of these areas, Ms. Petruzzi and Dr. Melius identified priority educational needs of [REDACTED] and made specific recommendations regarding an appropriate academic program for [REDACTED].

23. Dr. Melius was responsible for the sections of the report setting out Behavioral Observations and Impressions; Language Assessment; and the Communication section of the Summary and Recommendations portion of the report.

24. Dr. Melius took notes during the evaluation and used the information from her notes and her memory to complete the section of the report devoted to Behavioral Observations and Impressions. It is Dr. Melius's practice to complete this section immediately after an evaluation while the information is fresh in her mind.

25. Ms. Petruzzi and Dr. Melius concluded their report with recommendations for educational planning for █████, and they referred the matter to the school-based Eligibility and Placement Committee for a determination of an appropriate academic program for █████. Ms. Petruzzi's and Dr. Melius's recommendation that █████'s eligibility for ESE services be considered was based on █████'s scores on the BDI-2, which were in the low-average range for adaptive skills and in the low range for all other areas tested by the Board-2.

26. A meeting was held on December 13, 2010, to determine █████'s eligibility for services as a student with a disability and, based on the results of the evaluations conducted by School Board personnel, █████ was found eligible for services as a student with a disability. █████ was present at the December 13, 2010, meeting.

27. On December 14 and 15, 2010, █████ called and left messages for Ms. Petruzzi and a Mrs. Chevry. █████ wrote a letter dated December 15, 2010, in which █████ described █████'s failure to reach them by telephone on December 14 and 15, 2010, and expressed grave concern at their failure to return the calls. █████ stated in the December 15, 2010, letter that, in the messages, █████ had requested an IEE for █████ because █████'s pediatrician had not diagnosed █████ as having developmental delays. █████ further stated that █████ did not want █████ to

participate in the ESE program "since my request for an IEE is being ignored."⁷

28. [REDACTED] stated in the December 15, 2010, letter that, because of the behavior of the School Board personnel at the December 13, 2010, meeting, [REDACTED] had been made to "feel as if I was not being heard or involved in the plan for [REDACTED]."⁸ [REDACTED] also listed in the letter a number of statements in the Multi-Disciplinary Team Report dated December 2, 2010, which [REDACTED] considered inaccurate:

On one part of this report, it states that [REDACTED] greets familiar adults, but [REDACTED] greets everyone familiar or unfamiliar. The report indicates that [REDACTED]'s language did not develop within expected parameters, this is untrue. The report indicates [REDACTED] has mild hearing loss even after I brought in documentation from [REDACTED]'s ENT MD that disputed the findings of the audiology test done by Erica Rubio. [REDACTED]'s diet is not limited due to [REDACTED]'s allergies but [REDACTED]'s preferences. [REDACTED] was never tested to recognize facial expressions but the report indicates [REDACTED] is not able to do so. [REDACTED] was never asked to bend over & touch the floor with both hands but the report says [REDACTED] was unable to do so. [REDACTED] went down the portable steps with alternating feet and this was observed, on 10/28/20, but the report says [REDACTED] cannot do this. [REDACTED] was never asked to hop forward on one foot without support but the report says [REDACTED] was unable to do so. [REDACTED] was never asked to imitate vertical, horizontal, circular markings or simple facial gestures.^[9]

█ went on in the letter to question whether █ is, in fact, developmentally delayed, and to express disappointment with the results of the December 13, 2010, meeting.

29. █ was contacted by Felicia Starke, one of the two Due Process Coordinators for the School Board, on January 5, 2011. Between that date and March 11, 2011, the School Board and █ tried to reach an agreement as to the wording of amendments to the Multi-Disciplinary Report completed December 2, 2010, to address some of the concerns █ had expressed in the December 15, 2010, letter.

30. A proposed amended Multi-Disciplinary Report was prepared on January 28, 2011, by Emily Goldstein, a school psychologist for the School Board and team leader for the school psychologists in the Central area of the Broward County school district. At █'s request, the proposed amendment included a notation that the amendment was at the request of █'s parent. The amendments were not substantive revisions in that they did not change the overall scoring, conclusions, and recommendations in the report.

31. The proposed amendment was not acceptable to █, and after discussions of alternatives to an IEE, such as having a team from another area of the school district evaluate █, █ stated in an electronic mail message on March 11, 2011, that █ wanted █ re-evaluated through an IEE.

Summary and findings of ultimate facts

32. The evidence presented by the School Board is sufficient to establish that the evaluation of █████ conducted by Ms. Petruzzi and Dr. Melius on October 28, 2010, was appropriate. Ms. Petruzzi and Dr. Melius constituted a multi-disciplinary team, with Ms. Petruzzi specializing in psychology and Dr. Melius specializing in speech and language pathology. They used the BDI-2 and the PLS-4, together with systematic observation and functional skills assessment, in their evaluation of █████. They relied on information obtained from █████ regarding █████'s behavior outside of the school environment. The Multi-Disciplinary Team Report dated December 2, 2010, documented the procedures they used in evaluating █████; the behavior they observed; the results of the evaluation; their recommendations for █████, and their referral of █████ to the school-based Eligibility and Placement Committee for a determination of █████'s eligibility to receive ESE services. Even were █████'s criticisms of portions of the evaluation justified, the portions of the Multi-Disciplinary Team Report to which █████ objected would not have changed the outcome of the evaluation.

CONCLUSIONS OF LAW

33. The Division of Administrative Hearings has jurisdiction over the subject matter of this proceeding and of

the parties thereto pursuant to sections 1003.57(1)(b) and 120.57(1), Florida Statutes (2010), and Florida Administrative Code Rule 6A-6.03311(9)(u).

34. Rule 6A-6.03311(6) provides in pertinent part:

(a) A parent of a student with a disability has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation

* * *

(c) For purposes of this section, independent educational evaluation is defined to mean an evaluation conducted by a qualified evaluation specialist who is not an employee of the school district responsible for the education of the student in question.

(d) Public expense is defined to mean that the school district either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent.

* * *

(g) If a parent requests an independent educational evaluation at public expense, the school district must, without unnecessary delay either:

1. Ensure that an independent educational evaluation is provided at public expense; or
2. Initiate a due process hearing under this rule to show that its evaluation is appropriate or that the evaluation obtained by the parent did not meet the school district's criteria. If the school district initiates a hearing and the final decision from the hearing is that the district's

evaluation is appropriate, then the parent still has a right to an independent educational evaluation, but not at public expense.

(h) If a parent requests an independent educational evaluation, the school district may ask the parent to give a reason why he or she objects to the school district's evaluation. However, the explanation by the parent may not be required and the school district may not unreasonably delay either providing the independent educational evaluation at public expense or initiating a due process hearing to defend the school district's evaluation.

35. In accordance with rule 6A-6.03311(6)(g)2., the School Board has the burden of proving that its evaluation of [REDACTED]. was appropriate because it refused [REDACTED]'s request for an IEE.

36. Because [REDACTED] is [REDACTED] years old, the evaluation procedures used to determine if [REDACTED] is developmentally delayed are defined in rule 6A-6.03027, which governs special programs for developmentally delayed children between the ages of three and five years. See Fla. Admin. Code R. 6A-6.03026(3)(a). Rule 6A-6.02037(4), procedures for evaluation, provides as follows:

(a) Delay is documented by a multidisciplinary team utilizing multiple measures of assessment which include:

1. Standardized instruments, judgement based assessments, criterion referenced instruments, systematic observation, functional skills assessments, or other procedures selected in consultation with the parent(s); or

2. Informed clinical opinion utilizing qualitative and quantitative information to determine the need for early intervention services; and,

3. Parent report which can confirm or modify information obtained and describe behavior in environments that the district may not be able to access.

(b) When a developmental delay cannot be verified by the use of standardized instruments, the delay(s) may be established through observation of atypical functioning in any one (1) or more of the developmental areas. A report shall be written documenting the evaluation procedures used, the results obtained, the reasons for overriding those results from standardized instruments, and the basis for recommending eligibility.

37. Based on the findings of fact herein, the School Board has met its burden of proving that the evaluation of [REDACTED] conducted on October 28, 2010, was appropriate based on the evaluation criteria set forth in rule 6A-6.03027(4). [REDACTED] is, therefore, not entitled to an IEE at public expense.

CONCLUSION

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the March 11, 2011, request that [REDACTED] be provided an Independent Educational Evaluation at public expense is denied.

DONE AND ORDERED this 25th day of April, 2011, in
Tallahassee, Leon County, Florida.

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PATRICIA M. HART
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
230 Apalachee Parkwa
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of April, 2011.

ENDNOTES

^{1/} It is noted that [REDACTED] attached to the post-hearing submittal dated April 18, 2011, copies of electronic mail messages that were exchanged with Ms. Starke subsequent to the due process hearing. These electronic mail messages are not part of the record of this proceeding and may not, therefore, be the basis for a finding of fact.

^{2/} Petitioner's Exhibit 3.

^{3/} On October 31, 2010, School Board personnel completed a Functional Vision Screening Test. The test results were normal, and no action was recommended.

^{4/} Petitioner's Exhibit 7.

^{5/} Id.

^{6/} Petitioner's Exhibit 6.

^{7/} Petitioner's Exhibit 8.

^{8/} Id.
^{9/} Id.

COPIES FURNISHED:

Kim C. Komisar, Section Administrator
Bureau of Exceptional Education
and Student Services
Department of Education
325 West Gaines Street, Suite 614
Tallahassee, Florida 32399-0400

Barbara J. Myrick, Esquire
Broward County School Board
600 Southeast Third Avenue, 11th Floor
Fort Lauderdale, Florida 33301

M. G.
(Address of record)

James F. Notter, Superintendent
Broward County School District
600 Southeast Third Avenue
Fort Lauderdale, Florida 33301-3125

Lois Tepper, Acting General Counsel
Department of Education
Turlington Building, Suite 1244
325 West Gaines Street
Tallahassee, Florida 32399-0400

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)(b), Florida Statutes (2009), 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), and Florida Administrative Code Rule 6A-6.03311(9)(w).