

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

MIAMI-DADE COUNTY SCHOOL
BOARD,

Petitioner,

vs.

Case No. 26-0560E

**,

Respondent.

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FINAL ORDER

This case came before Administrative Law Judge (ALJ) Sara Marken of the Division of Administrative Hearings (DOAH) for final hearing held by Zoom conference on April 14, 2026.

APPEARANCES

For Petitioner: Gabrielle L. Gonzalez, Esquire
Miami-Dade County School Board
Suite 430
1450 Northeast Second Avenue
Miami, Florida 33132

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

STATEMENT OF THE ISSUE

Whether the Miami-Dade County School Board's (School Board) comprehensive psychoeducational evaluation of the student, which included evaluations of behavior, speech, language, and occupational therapy (OT), was appropriate.

PRELIMINARY STATEMENT

On October 25, 2024, Petitioner completed an OT evaluation of Respondent. Subsequently, on May 16, 2025, Petitioner completed a psychoeducational evaluation of Respondent and, on May 12, 2025, Petitioner completed a language evaluation. Afterward, Respondent's parent notified Petitioner that she disagreed with the evaluations and requested publicly funded independent educational evaluations (IEEs). Petitioner then formally notified Respondent that it believed the evaluations were technically sound, valid, and reliable, and denied the parent's request for IEEs.

On January 30, 2025, pursuant to Florida Administrative Code Rule 6A-6.03311(6)(g)2., Petitioner filed a request for a due process hearing seeking a determination of the appropriateness of the psychoeducational, language, and OT evaluations. This case was initially assigned to ALJ Jessica Varn. ALJ Varn issued a Case Management Order that same date. On February 23, 2026, ALJ Varn conducted a pre-hearing conference by agreement of the parties. Respondent did not appear, but the School Board was present. The parties were ordered to file a status report, with several mutually agreeable dates to schedule the due process hearing, by March 6, 2026. On March 5, 2026, the parties provided several mutually agreeable dates for the due process hearing. On March 19, 2026, ALJ Varn issued a Notice of Hearing scheduling this matter for final hearing by Zoom conference on April 14, 2026. On April 9, 2026, this matter was transferred to the undersigned.

The final hearing proceeded as scheduled. Petitioner presented the testimony of the following witnesses: [REDACTED], school psychologist; [REDACTED], District School Psychologist Chairperson; [REDACTED], school social worker; [REDACTED], speech-language pathologist; [REDACTED], District Speech-Language Pathologist Chairperson;

██████████, occupational therapist; and ██████████, Chair of the Department of Occupational and Physical Therapy. Petitioner's Exhibits 1 through 12 were admitted into evidence. Respondent's parent testified on Respondent's behalf. Respondent did not present any exhibits.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders no later than 20 days after the transcript was filed, and the undersigned's final order would be issued 20 days after the proposed final orders were filed. The Transcript of the due process hearing was filed on June 8, 2026. Accordingly, the proposed final orders were due by June 29, 2026, and this Final Order is due by July 20, 2026. Petitioner timely filed a proposed final order, which the undersigned considered when drafting this Final Order.

Unless otherwise indicated, all rule and statutory references are to the versions in effect at the time Petitioner performed the evaluations at issue. 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. At the time of the due process hearing, the student was a ██████ grade student who was eligible for exceptional student education (ESE) services under the categories of Autism Spectrum Disorder (ASD) and Intellectual Disability (InD).

2. The student's disability impacts his ability to communicate. The student is nonverbal. He communicates mostly through spontaneous gestures, such as sign approximations for "give me" and "eat," or by grabbing the desired item.

3. On April 15, [REDACTED], the school convened a Reevaluation Team meeting to review the student's current educational progress. The team determined that further testing was needed to assess the student's current performance levels. The team recommended the following assessments, and the student's parent provided written consent.

RT Recommendations (To be completed during RT conference)		
Required Assessment Areas	Person Responsible	Date Report Due
Leiter & Bracken (Developmental levels) and rating scales measuring social-emotional areas and executive functioning	School Psychologist	7/15 [REDACTED]
Functional Communication Profile	Speech-Language Pathologist	7/15 [REDACTED]
Updated Social History & Vineland with Maladaptive	Social Worker	7/15 [REDACTED]
Observations	Special Education Teacher	5/6 [REDACTED]

Psychoeducational evaluation

4. [REDACTED] conducted the psychoeducational reevaluation. [REDACTED] is a licensed school psychologist with over [REDACTED] years of experience. [REDACTED] administered the Leiter International Performance Scale (Leiter), the Bracken School Readiness Assessment, Fourth Edition (Bracken-4), the Beery-Buktenica Development Test of Visual-Motor Integration, Sixth Edition (Beery VMI), the Vineland Adaptive Behavior Scales (Vineland), and the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF2).

5. The Leiter is a nonverbal assessment of intellectual functioning.

This instrument is used to provide a culture free, nonverbal means of assessing general intelligence, based primarily on abstract concepts. The battery includes measures of reasoning and visualization. In addition, non-verbal abilities are tested with pictures, figural illustrations, and coded symbols. All instructions are given by gestures and pantomime, alternate verbal directions can be used, which was the case with [**].

[REDACTED] chose the nonverbal instrument due to the student's significant communication delays.

6. During testing, [REDACTED] established a good rapport with the student. [REDACTED] assessed the student in a room next to the student's classroom with the student's paraprofessional and registered behavior technician (RBT) present for support. During the assessment, the student was responsive; however, his attention span was short, and he required constant repetition, redirection, and prompting to attempt the tasks.

7. On the Leiter, the student obtained a Nonverbal IQ composite score of 43, which fell within the moderate delay range, placed him below the first percentile, and reflected significant impairments in nonverbal reasoning and problem-solving skills.

8. The Bracken-4 is a receptive measure of a child's comprehension of foundational academic and social-emotional concepts. [REDACTED] attempted to administer the assessment, but the student was unable to comply with the test's demands.

9. The Beery VMI measures a student's ability to integrate visual perception with coordinated hand movements for tasks such as copying and writing. The student obtained a standard score of below 45, placing him in the very low range.

10. The Vineland is a standardized measure of a student's adaptive behavior. It measures how the student functions in daily life compared with other students of the same age. [REDACTED], the school social worker, interviewed the student's parent to complete the Vineland. The student's overall adaptive functioning level fell below the first percentile.

11. The student's teacher completed the BRIEF2. The results identified deficits in executive functioning, particularly in the student's ability to initiate tasks, engage in problem-solving, and maintain working memory. [REDACTED] sent the Behavior Assessment System for Children, Third Edition (BASC-3), to the student's parent. [REDACTED] attempted to obtain the parent rating scales several times, but the student's parent never returned them.

12. [REDACTED] credibly testified that [REDACTED] evaluated the student according to the assessment instructions and in the manner most likely to yield accurate information on the student's knowledge and academic, developmental, and functional skills, given his significant communication difficulties. The greater weight of the evidence shows that [REDACTED] conducted the test appropriately, and the test results are valid and reliable.

Language evaluation

13. [REDACTED], the speech-language pathologist, conducted the language evaluation. [REDACTED] holds a master's degree in communication disorders, has [REDACTED] years of experience in the field, and served as the student's speech-language therapist before conducting the evaluation.

14. [REDACTED] used the Functional Communication Profile-Revised (FCP-R) to determine the student's current communication skills. The FCP-R evaluates all forms of communication, including receptive, expressive, and pragmatic communication. The assessment is not norm-referenced; rather, it is completed based on the therapist's observations and provides an inventory of the student's communication abilities.

15. [REDACTED] based the assessment on [REDACTED] direct observations of the student during therapy and in the classroom. The evaluation reflected that the student was nonverbal and exhibited profound communication deficits, relying primarily on gestures to communicate his wants and needs and requiring extensive support to communicate and participate in school activities.

16. [REDACTED] credibly testified that the FCP-R was an appropriate evaluation tool for a nonverbal student. [REDACTED] assessed all areas of need, and the results were consistent with [REDACTED] prior knowledge of the student. The greater weight of the evidence demonstrates that [REDACTED] properly administered the assessment and the results are valid and reliable.

Occupational Therapy evaluation

17. During the Reevaluation Team meeting on April 15, [REDACTED], the team did not identify OT as an area requiring assessment. [REDACTED], the occupational therapist, previously evaluated the student on October 25, [REDACTED].

18. [REDACTED] has [REDACTED] years of experience in the field and served as the student's occupational therapist before conducting the evaluation. The OT evaluation was initiated due to concerns about the student's handwriting, letter formation, particularly his ability to trace and write his name, as well as his motivation to engage in academic tasks.

19. [REDACTED] evaluated the student by gathering information from multiple sources, including the student's cumulative file, classroom observations, consultations with the student's teacher and other classroom staff, and observations of the student's participation in educational activities to assess his functional performance in the educational setting.

20. [REDACTED] found that the student had difficulty maintaining attention to nonpreferred activities, demonstrated fleeting eye contact, frequently whistled, tapped objects, and placed inedible items in his mouth. [REDACTED] also observed that his limited attention and motivation interfered with his ability to participate independently in educational activities.

21. [REDACTED] also evaluated the student's motor and functional skills. [REDACTED] observed that the student demonstrated bilateral coordination, eye-hand coordination, the ability to grasp and manipulate a ball, and a fine pincer grasp when handling small pegs during preferred activities. Although the student could grasp a pencil, deficits in attention, motivation, and task initiation limited his written communication, and he required hand-over-hand assistance to complete most tasks. Based on these observations, [REDACTED] concluded that the student required significant support to participate in both educational and daily living activities.

22. [REDACTED], the School Board's Chair of the Department of Occupational and Physical Therapy, reviewed [REDACTED] OT evaluation. [REDACTED] holds bachelor's, master's, and doctoral degrees in OT and has more than [REDACTED] years of experience as a school-based occupational therapist. [REDACTED] testified that school-based OT evaluations assess a student's functional performance in the educational setting through multiple sources of information, including records, observations, interviews, and direct assessment, and that evaluators need not administer standardized assessments unless additional information is necessary. After reviewing [REDACTED] evaluation, [REDACTED] opined that the evaluation thoroughly assessed the student's OT needs, relied on appropriate assessment methods, and provided sufficient information to support [REDACTED] recommendations.

23. [REDACTED] credibly testified that [REDACTED] assessments and observations provided sufficient information to determine the student's needs. [REDACTED] possesses the proper training and knowledge to administer the evaluation. The results are a valid measure of the student's abilities.

24. The student's parent did not specifically challenge the validity or methodology of the psychoeducational, language, or OT evaluations. Instead, [REDACTED] maintained that the resulting recommendations failed to adequately address the student's extensive needs, including the need for constant supervision, significant maladaptive behaviors, communication deficits, seizures, and the inability to perform daily living skills independently.

25. In sum, the greater weight of the evidence demonstrated that the psychoeducational evaluation, language evaluation, and OT evaluation were appropriate.

CONCLUSIONS OF LAW

26. DOAH has jurisdiction over the parties and the subject matter of this proceeding pursuant to sections 1003.57(1)(b) and 1003.5715(5), Florida Statutes, and Florida Administrative Code Rule 6A-6.03311(6) and (9).

27. The Florida K-20 Education Code requires district school boards to provide for “appropriate program of special instruction, facilities, and services for exceptional students [ESE] as prescribed by the State Board of Education as acceptable.” §§ 1001.42(4)(1) & 1003.57, Fla. Stat.

28. The Florida K-20 Education Code’s imposition of the requirement that exceptional students receive special education and related services is necessary for the State of Florida to be eligible to receive federal funding under the Individuals with Disabilities Education Act (IDEA), which mandates, among other things, that participating states ensure, with limited exceptions, that a “free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21.” 20 U.S.C. § 1412(a)(1)(A); *Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012); *see also J.P. ex rel. Peterson v. Cnty. Sch. Bd. of Hanover Cnty., Va.*, 516 F.3d 254, 257 (4th Cir. 2008) (“Under the IDEA, all states receiving federal funds for education must provide disabled schoolchildren with a ‘free appropriate public education.’”).

29. Under the IDEA and its implementing regulations, a parent of a child with a disability is entitled, under certain circumstances, to obtain an IEE of the child at public expense. The circumstances under which a parent has a right to an IEE at public expense are set forth in 34 C.F.R. § 300.502(b):

Parent right to evaluation at public expense.

(1) A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§ 300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

30. Similarly, rule 6A-6.0311(6) provides:

(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 obtained by the school district.

* * *

(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.

31. A district school board in Florida is not automatically required to provide a publicly funded IEE whenever a parent asks for one. A school board has the option, when presented with such a parental request, to initiate a due process hearing to demonstrate, by a preponderance of the evidence, that its own evaluation is appropriate. *T.P. v. Bryan Cnty. Sch. Dist.*, 792 F.3d 1284, 1287 n.5 (11th Cir. 2015). If the district school board can meet its burden and establish the appropriateness of its evaluation, it need not provide the requested IEE.

32. To satisfy its burden of proof, the School Board must establish that the assessments at issue complied with rule 6A-6.0331(5), which sets forth the elements of an appropriate evaluation. Rule 6A-6.0331(5) provides:

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.

33. Based on the above findings of fact, the School Board proved that its evaluations complied with rule 6A-6.0331(5) and the IDEA. Trained and knowledgeable professionals conducted the evaluations, selected, administered, and interpreted valid assessment instruments in accordance with standardized procedures, and obtained reliable and comprehensive information about the student's educational needs.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner's psychoeducational evaluation, language evaluation, and occupational evaluation were appropriate, and the student is not entitled to IEEs at public expense.

DONE AND ORDERED this 20th day of July, 2026, in Miami, Dade County, Florida.


Case No. 26-0560E

SARA M. MARKEN
Administrative Law Judge
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Filed with the Clerk of the
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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).