

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

FLAGLER COUNTY SCHOOL
BOARD,

Petitioner,

vs.

Case No. 26-2731E

**,

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 live in Bunnell, Florida, on August 5, 2026.

APPEARANCES

For Petitioner: Sven L. Smith, Esquire
 Flagler County School District
 1769 East Moody Boulevard, Building 2
 Bunnell, Florida 32110

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

STATEMENT OF THE ISSUE

Whether Flagler County School Board's (School Board) psychological evaluation of the student was appropriate.

PRELIMINARY STATEMENT

On August 26, 2025, Petitioner completed a psychological evaluation of Respondent. On May 18, 2026, Respondent requested a publicly funded

independent educational evaluation (IEE). Petitioner notified Respondent that it believed the evaluation was appropriate and denied Respondent's request for an IEE.

On May 26, 2026, pursuant to Florida Administrative Code Rule 6A-6.03311(6)(g)2., Petitioner filed a request for a due process hearing seeking a determination that its psychological evaluation was appropriate. The undersigned issued a Case Management Order on May 29, 2026. On June 15, 2026, Respondent filed a Motion for Recognition of Authorized Representative (Motion), requesting that Respondent's [REDACTED] serve as an authorized representative. That same day, the undersigned held a pre-hearing conference. At the conference, the parties agreed to schedule the final hearing on August 5, 2026. On June 17, 2026, the undersigned issued an Order finding that the Respondent's Motion did not meet the requirements for recognition as a qualified representative, but that Respondent's [REDACTED] could accompany Respondent and advise [REDACTED] during the proceeding.

The final hearing proceeded as scheduled. Petitioner presented the testimony of the following witnesses: [REDACTED], school psychologist; and [REDACTED], staffing specialist. Petitioner's Exhibits 1 through 4, 6 through 8, 14 through 19, 21 through 22, and 24 through 27 were admitted into evidence. Respondent's [REDACTED] testified on Respondent's behalf, and Respondent's Exhibits 5 and 17 through 19 were admitted into evidence.

At the conclusion of the due process hearing, the parties agreed to file proposed final orders no later than ten days after the transcript was filed, and that the undersigned's final order would be issued ten days after the proposed final orders were filed. The Transcript of the due process hearing was filed on August 13, 2026. Accordingly, the proposed final orders were due

on August 24, 2026, and this Final Order is due September 3, 2026. The parties timely filed proposed final orders, 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 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. Before the due process hearing, the parties stipulated to these facts:

Stipulated Facts

2. At all times material to this proceeding, the student attended a [REDACTED].
3. In [REDACTED], the School Board conducted a psychological evaluation of the student. It determined that she did not qualify for exceptional student education (ESE) services under the Individuals with Disabilities Education Act (IDEA). The School Board subsequently implemented an accommodations plan pursuant to Section 504 of the Rehabilitation Act of 1973 (Section 504 Plan).
4. The School Board continued to provide the student with accommodations through a Section 504 Plan during the [REDACTED] school year and into the [REDACTED] school year.
5. The student completed all required coursework and earned all credits necessary for a standard Florida high school diploma. She has not, however, satisfied the [REDACTED]-grade English Language Arts statewide assessment requirement, either by passing the required assessment or earning an approved concordant score. The student attempted the required statewide

assessment and multiple concordant assessments on numerous occasions throughout high school, including after the School Board's September 3, [REDACTED], eligibility determination, but did not earn a qualifying score.

6. On or about April 10, [REDACTED], the School Board obtained consent to conduct a new psychological evaluation.

7. [REDACTED] conducted the School Board's psychological evaluation and created a written report dated August 26, [REDACTED].

8. The School Board's psychological evaluation included standardized cognitive and academic testing and a review of the student's educational records.

9. Following completion of the psychological evaluation, the School Board convened an IDEA eligibility meeting on September 3, [REDACTED], to review the evaluation results and make an eligibility determination.

10. Before making its September 3, [REDACTED], eligibility determination, the eligibility team reviewed the School Board's psychological evaluation and other educational information.

11. The School Board determined that the student did not qualify for ESE services under the IDEA and continued to provide her with accommodations through her Section 504 Plan.

12. Thereafter, the student and her [REDACTED] made multiple requests that the School Board conduct a comprehensive evaluation in all areas of suspected disability, reconsider the student's IDEA eligibility, and evaluate her under additional suspected disability categories.

13. The School Board responded through multiple Prior Written Notices (PWN) and other communications, declining Respondent's requests to reconsider her IDEA eligibility, evaluate her under additional suspected disability categories, and conduct a comprehensive evaluation in all areas of suspected disability.

14. The School Board documented its responses in PWNs dated April 10, 16, and 28, [REDACTED].

15. The student requested an IEE at public expense. The School Board determined that [REDACTED] August [REDACTED] psychological evaluation remained appropriate and sufficiently comprehensive to determine IDEA eligibility.

16. The School Board was required by law to initiate this due process proceeding pursuant to the IDEA to defend the appropriateness of its evaluation.

Findings of Fact based on the record

17. The student has medical diagnoses of generalized anxiety disorder, bipolar disorder, and Attention-Deficit/Hyperactivity Disorder (ADHD). She has had a Section 504 Plan since September [REDACTED].

18. The School Board convened a multi-tiered system of supports (MTSS) meeting in April [REDACTED] to discuss the student's progress and the need to evaluate her for possible eligibility under the IDEA. At the meeting, the team determined that the student should be evaluated for possible eligibility in the areas of Other Health Impaired (OHI) and Specific Learning Disabled (SLD). The team agreed on the following evaluation procedures, and the student's [REDACTED] provided consent:

The evaluation will include the following procedures:

Achievement: basic reading, reading comprehension, reading fluency

Health/Medical Examination or Physician Statement

Hearing

Intellectual/Cognitive Functioning

Observation(s)

RtI [Response to Intervention] data: basic reading, reading comprehension, reading fluency, math calculation, math problem solving

Social/developmental history

Social development or emotional/behavioral functioning

Vision

19. ██████ conducted the student's psychological evaluation. ██████ is a licensed school psychologist with approximately █ years of experience and has served as a school psychologist for the School Board for the past █ years. ██████ administered the Kaufman Assessment Battery for Children, Second Edition, NU (Kaufman), the Wechsler Individual Achievement Test-Fourth Edition (WIAT-IV), and the Behavior Assessment Scale for Children, Third Edition (BASC-III).

20. The Kaufman is a standardized cognitive assessment tool used to measure a student's intellectual functioning. The assessment has twenty subtests, which produce scores in five categories—sequential processing, simultaneous processing, planning, learning, and knowledge. The scores in the five categories yield the student's full-scale intellectual quotient (IQ) score. The student fell in the below-average range in sequential processing and planning; however, she fell in the average range in simultaneous processing, learning, and knowledge. Her full-scale IQ was 82, falling just below the average range of 85 to 115.

21. The student's IQ was also assessed in the ██████ evaluation completed by another school psychologist. That psychologist administered a different assessment, which yielded an IQ score of 81, supporting the reliability of ██████ findings.

22. The WIAT-IV measures a student's academic functioning in reading. The results are categorized in four parts: reading, basic reading, decoding,

and reading fluency. The student's scores fell within the average range in all areas except for fluency, where she scored slightly below average.

23. The BASC-III assesses a student's social-emotional and behavioral functioning through rating scales completed by different individuals who observe the student in different settings. Here, the student's [REDACTED] and a teacher completed rating scales. Scores between 60 and 69 fall within the at-risk range, while scores of 70 or above fall within the clinically significant range, reflecting a greater degree of concern.

24. The [REDACTED] rating scale yielded clinically significant behaviors in the areas of anxiety, depression, internalizing problems, and atypicality. The teacher's rating scale yielded clinically significant behaviors in the areas of anxiety, depression, somatization, and internalizing problems.

25. While administering the assessments, the student was alert, attentive, and worked hard to complete the tasks. The student was easily engaged and appeared to complete each subtest to the best of her ability. [REDACTED] credibly testified that the evaluation meaningfully and reliably depicted the student's overall abilities.

26. The evaluation noted that there were no hearing or vision concerns. The student's Advanced Practice Registered Nurse completed the medical examination, noting the student's medical diagnosis of bipolar disorder.

27. As part of the evaluation, [REDACTED] considered classroom observations completed by two of the student's teachers. The observations identified some behavioral challenges but also reflected that the student frequently demonstrated an interest in learning, followed oral directions, completed assignments, and participated in classroom discussions. One observation reflected both strengths and weaknesses, while the other reflected more favorable classroom functioning.

28. The evaluation also included a social-developmental history. [REDACTED] considered the [REDACTED] social-developmental history completed by the student's [REDACTED], as well as information provided by the student's

██████████, with whom the student currently resides. Both reported similar concerns regarding the student's social-emotional functioning, including concerns related to her mood, depression, and anxiety.

29. Following the evaluation, the eligibility team met to review the evaluation results, along with additional academic and other relevant data regarding the student's functioning. Although the data identified areas of weakness, the team determined that those weaknesses did not demonstrate a need for specially designed instruction and found the student ineligible for services under the IDEA.

30. ██████████ credibly testified that ████ evaluated the student according to the assessment instructions and in the manner most likely to yield accurate information about the student's knowledge and academic and functional skills. The greater weight of the evidence shows that ██████████ administered the assessments appropriately, and the test results are valid and reliable.

31. The student does not challenge ██████████ evaluation, including the assessments ████ administered or the manner in which ████ conducted them. Rather, she maintains that the evaluation, as a whole, did not adequately account for her social-emotional and behavioral needs. More significantly, the student contends that the School Board should have reevaluated her before graduation after she experienced worsening mental-health concerns and changes in her functioning.

32. In sum, the greater weight of the evidence demonstrated that the psychological evaluation was appropriate.

CONCLUSIONS OF LAW

33. 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).

34. 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.

35. 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 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.’”).

36. 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.

37. 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.

38. A 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 school board meets its burden and establishes the appropriateness of its evaluation, it need not provide the requested IEE.

39. 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.

40. Based on the above findings of fact, the School Board proved that its evaluation complied with rule 6A-6.0331(5) and the IDEA. A trained and knowledgeable professional conducted the evaluation, 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 psychological evaluation was appropriate, and the student is not entitled to IEEs at public expense.

DONE AND ORDERED this 1st day of September, 2026, in Miami, Dade County, Florida.


Case No. 26-2731E

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).