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ADMINISTRATIVE LAW JUDGE DECISION

1

1 Edkey brought this due process action claiming its evaluation was appropriate and
2 that Edkey was not required to publicly fund Respondents' request for an Independent
3 Educational Evaluation (IEE).

4 The law governing these proceedings is the Individuals With Disabilities Education
5 Act (IDEA) found at 20 United States Code (U.S.C.) §§ 1400-1482 (as re-authorized and
6 amended in 2004),³ and 34 Code of Federal Regulations (C.F.R.) § 300.508(b), as well
7 as the Arizona Special Education statutes, and Arizona Revised Statutes
8 (A.R.S.) § 15-766.

9 **PROCEDURAL HISTORY**

10 On April 23, 2021, Edkey filed a due process complaint (Complaint). A hearing
11 was held on July 1, 2021. The parties presented testimony, exhibits, and argument at the
12 formal evidentiary hearing. The parties provided pre-marked proposed exhibits. Edkey
13 had pre-marked Exhibits 1 through 23. Respondents had pre-marked Exhibits A through
14 O.

15 **ISSUE FOR HEARING**

16 Based on the June 21, 2021 pre-hearing conference, the following issue was heard
17 at due process hearing:

18 Whether Edkey's evaluation of Student was appropriate such that it properly
19 denied Respondents' request for an IEE.

20 **REQUESTED REMEDY**

21 As a remedy, Edkey requested that the Administrative Law Judge issue an Order
22 affirming Edkey's evaluation as appropriate and affirming that Edkey was not obligated to
23 publicly fund the requested IEE.

24 **FINDINGS OF FACT**

25 1. On December 11, 2020, Student transferred from a public charter school
26 and enrolled in Edkey as a first-grade student. Upon his transfer, Student had an initial
27 Individualized Education Program (IEP) dated October 12, 2020. The IEP was developed
28 as part of a settlement agreement between the parents and Student's former school

29 ³ By Public Law 108-446, known as the "Individuals with Disabilities Education Improvement Act of 2004,"
30 IDEA 2004 became effective on July 1, 2005.

1 district in [REDACTED].⁴ Student's transfer records included numerous current evaluation
2 reports that were conducted from March 2019 to May 2020 by school providers,
3 contracted providers, and independent providers, including the following:

- 4 • April 19, 2019, Psychoeducational Assessment,
5 conducted by [REDACTED] [REDACTED]
- 6 • April 10, 2019, Language and Speech Assessment
7 Report, conducted by [REDACTED] (North)⁶
- 8 • April 22, 2019, Assistive Technology Evaluation Report,
9 conducted by [REDACTED] [REDACTED]
- 10 • April 24, 2019, IEP Health Report, completed by Total
11 Education Solutions⁸
- 12 • March 19, 2019, Vision Therapy Evaluation Report,
13 conducted by Douglas W. Stephey, O.D., M.S.⁹
- 14 • March 26, 2019, Occupational Therapy Evaluation,
15 conducted by Anchor Counseling & Education Solutions,
16 LLC¹⁰
- 17 • May 7, 2019, Audiology Evaluation, conducted by
18 Audiology Solutions LA¹¹
- 19 • August 26, 2019, Independent Occupational Therapy
20 Evaluation, conducted by the Launch Pad Therapy for
21 Kids¹²
- 22 • September 10, 2019, Independent Psychological
23 Evaluation, conducted by Robin L. Morris, Psy.D,
24 L.M.F.T.¹³

25 ⁴ See Exhibit 9, October 12, 2020 IEP.

26 ⁵ See Exhibit 1, pgs. 1-22.

27 ⁶ See *id.*, pgs. 23-30.

28 ⁷ See *id.*, pgs. 31-34.

29 ⁸ See *id.*, pg. 35.

30 ⁹ See *id.*, pgs. 36-41.

¹⁰ See *id.*, pgs. 42-49.

¹¹ See Exhibit 3.

¹² See Exhibit 5.

¹³ See Exhibit 6.

- February 8, 2020, Independent Speech and Language Evaluation, conducted by Abby M. Rozenberg, M.S. CCC-SLP¹⁴

2. Student's multi-disciplinary education team (MET) in [REDACTED] did not find that Student was eligible for special education under the IDEA.¹⁵ Edkey reviewed Student's transfer records including all of the evaluations listed above. Edkey determined that additional data would be needed to determine Student's eligibility for special education and related services in Arizona.¹⁶

3. On February 11, 2021, Parent provided her informed written consent for Edkey to gather additional data in the areas of general intelligence, academics, communication, social/emotional functioning, and motor/sensory concerns.¹⁷

4. Edkey's evaluation included the following assessments:¹⁸

- Wechsler Intelligence Scale for Children, Fifth Edition (WISC-V) (General Intelligence)
- Woodcock-Johnson Tests of Achievement, Fourth Edition (WJ-IV) (Academics)
- Test of Language Development Primary, Fourth Edition (TOLD-4) (Communication)
- Test of Auditory Processing Skills, Third Edition (TAPS-3) (Communication) • Behavior Assessment System for Children, Third Edition, Parent Rating Scales (BASC-3) (Social/emotional)
- Conners, Third Edition, Parent Rating Scales (CONNERS 3) (social/emotional) • Bruininks-Oseretsky of Motor Proficiency, Second Edition (BOT-2) (motor/sensory)
- The Print Tool (motor/sensory)

¹⁴ See Exhibit 7.

¹⁵ See Exhibit 4, pg. 2; see also Exhibit 8, pg. 142 (May 11, 2020 meeting notes indicating that, even after reviewing the independent evaluations, student is not eligible for special education).

¹⁶ See Exhibit 11, February 17, 2021 Prior Written Notice. (Student's previous MET team in [REDACTED] had determined that Student was not eligible for services under the IDEA, and so Edkey proposes to collect additional data to look at "current strengths and needs and [their] educational impact in order to make eligibility decisions for [Student]").

¹⁷ See Exhibit 10.

¹⁸ See Exhibit 12, April 7, 2021, Edkey's Evaluation Report.

- Sensory Processing Measure, Home and Classroom Form (motor/sensory)

5. Parent also provided additional information and reports for Edkey's consideration, which including the following:

- March 16, 2021, Eye Exam Report, conducted by Rummel Eye Care, P.C.¹⁹
- March 22, 2021, Visual Efficiency Evaluation, Visual Information Processing Evaluation, Strabismus/amblyopia, and/or Dyslexia Screener, conducted by Midwestern University Eye Institute.²⁰
- March 22, 2021, Visual Information Processing Evaluation, conducted by Midwestern University²¹

6. On April 7, 2021, the MET team determined that Student qualified for special education and related services. The MET team also determined that Student was eligible under the primary eligibility category of [REDACTED]

[REDACTED]
[REDACTED].²²

7. On April 7, 2021, Parent requested an IEE verbally at the MET meeting and via email.

8. On April 14, 2021, Edkey issued a Prior Written Notice to Parent refusing to provide Parent with and IEE and indicating its intent to file a Due Process Complaint.²³

9. A due process hearing was held on July 1, 2021.

10. Edkey presented the testimony of [REDACTED] [REDACTED] is a certified speech language pathologist in the State of Arizona.²⁴ [REDACTED] has a Masters of Science in the area of Communication Disorders and a license with both the National American Speaking Hearing Association and the Arizona Speech and Hearing

¹⁹ See Exhibit 16.

²⁰ See Exhibit 17.

²¹ See Exhibit 18.

²² See Exhibit 14.

²³ See Exhibit 15.

²⁴ See Exhibit 20 and Transcript at pg. 18.

1 Association.²⁵ [REDACTED] has been a speech language pathologist for over twenty years
2 and is qualified to assess students in the areas of expressive and receptive language,
3 pragmatic language, articulation, fluency, auditory processing and in how communication
4 impacts a child in the educational setting.²⁶ As a part of her evaluation, [REDACTED]
5 reviewed Student's previous evaluations and assessments including those provided by
6 Parent.²⁷ [REDACTED] administered the Test of Language Development Primary, Fourth
7 Edition (TOLD-4) and the Test of Auditory Processing Skills, Third Edition (TAPS-3).²⁸
8 [REDACTED] was qualified to administer these assessments and she followed the
9 instructions for the administration of these assessments.²⁹ Both assessments were
10 administered in the student's native language. The assessments were not discriminatory
11 on a racial or cultural basis, and both assessments were reliable instruments for what
12 they purported to measure.³⁰

13 11. [REDACTED] explained that the TOLD-4 yielded an accurate measure of
14 Student's expressive and receptive language skills and that Student's skills were within
15 the normal limits.³¹ [REDACTED] stated that the TAPS-3 yielded an accurate measure of
16 Student's auditory processing skills and that Student's skills were within the normal
17 limits.³² [REDACTED] opined that sufficient information was gathered for the team to make
18 a determination of eligibility under the IDEA and that all areas of suspected disability were
19 assessed.³³ [REDACTED] asserted that Edkey's April 7, 2021 evaluation was appropriate
20 and that because Edkey had a "good picture" of Student's communication skills and his
21

22 ²⁵ See *id.*

23 ²⁶ See Transcript, pgs. 18 and 19.

24 ²⁷ See Transcript pg. 21. [REDACTED] provided specific testimony concerning the findings of the following
25 evaluations: the April 10, 2019, Language and Speech Assessment Report, conducted by [REDACTED]
26 [REDACTED]; the March 19, 2019, Vision Therapy Evaluation Report, conducted by [REDACTED] Stephey, O.D.,
27 M.S.; the May 7, 2019, Audiology Evaluation, conducted by Audiology Solutions LA; the May 17, 2019
28 Independent Educational Evaluation (including the assessments related to communication skills); the
29 March 2021 Midwestern University Eye Institute" report; and the February 8, 2020, Independent Speech
30 Evaluation. See Transcript pgs. 21 through 26.

²⁸ See Transcript, pgs. 27 and 29.

²⁹ *Id.*

³⁰ *Id.*

³¹ See Transcript, pgs. 27 and 28.

³² See Transcript, pgs. 28 and 29.

³³ See Transcript, pg. 30.

expressive and receptive language skills, there was no need for an independent speech evaluation or an independent auditory processing evaluation.³⁴

12. Edkey presented the testimony of [REDACTED] a contractor who provided evaluation services to Edkey.³⁵ [REDACTED] holds a Bachelor of Science, Dual Major, in the areas of Psychology and Health Education.³⁶ [REDACTED] holds a Master of Education in Counseling and an Educational Specialist degree in the area of School Psychology. [REDACTED] is a certified school psychologist through the State of Arizona. [REDACTED] has a certification through the National Association of School Psychologists. [REDACTED] belongs to the Arizona and National Association of School Psychologists. [REDACTED] has been a school psychologist for over three years and is qualified to assess students in a number of areas, including academic, cognitive, social, and emotional, and to assess students to determine eligibility for learning disabilities, autism, emotional disabilities, and the like.³⁷ [REDACTED] trains other psychologists and educators to administer the WJ-IV and how to conduct cross battery assessments for specific learning disabilities.³⁸

13. [REDACTED] considered input and information provided by Student's parents.³⁹ [REDACTED] reviewed Student's previous evaluations and assessments.⁴⁰ [REDACTED] administered the WISC-V; the WJ-IV; the BASC-3; and the Conners, Third Edition.⁴¹ [REDACTED] was qualified to administer these assessments. In his evaluation, [REDACTED] followed the instructions for the administration of these assessments.⁴² [REDACTED] administered all of the assessments in the student's native language. The assessments administered by [REDACTED] [REDACTED] were not

³⁴ See Transcript, pgs.30 and 31.

³⁵ See Transcript, pg. 33.

³⁶ [REDACTED] educational background and experience were described in greater detail in Exhibit 21.

³⁷ See *id.*

³⁸ See Transcript, pg. 36.

³⁹ See Transcript, pg. 38.

⁴⁰ See Transcript pgs. 37 and 38.

⁴¹ See Transcript, pg. 39.

⁴² See Transcript, pgs. 39 through 56.

discriminatory on a racial or cultural basis, and the assessments were reliable instruments for what they purported to measure.⁴³

14. ██████████ explained that the WISC-V yielded an accurate measure of Student's cognitive abilities and that Student's full-scale IQ was ██████████ which was in the average range.⁴⁴ ██████████ explained his administration of several subtests which relied heavily on student being visually presented with information and having to complete several tasks.⁴⁵ Student scored in the average range on all these subtests.⁴⁶

██████████ opined that, in light of the information that existed about Student, Student performed much better than ██████████ had expected and that visual processing tasks appeared to be an area of strength for Student.⁴⁷ ██████████ testified to the fact that he did not notice any educational impact arising from Student's visual or auditory diagnosis. ██████████ did not see any areas where it was necessary to modify any of his testing to account for these diagnosis.⁴⁸ ██████████ asserted that all of Student's scores on the subtests were within the average to high average range.⁴⁹

15. ██████████ explained that the only subtest that was low average was for the digit span, which just suggested that Student's memory with respect to verbal information was slightly lower than visually presented information.⁵⁰ ██████████ also administered the WJ-IV.⁵¹ ██████████ felt that he was able to obtain an accurate representation of student's academic skills.⁵² Student performed in the average range with respect to his Math and writing skills.⁵³ Student performed in the average range with respect to his reading comprehension and letter-word identification, and below average with respect to his decoding skills.⁵⁴ ██████████ also administered a BASC and

⁴³ *Id.*

⁴⁴ See Transcript, pg. 40.

⁴⁵ See Transcript, pgs. 40-45.

⁴⁶ *Id.* Notably, Student scored in the high average range with respect to the visual spatial index (pg. 40).

⁴⁷ See Transcript, pg. 46.

⁴⁸ See Transcript, pg. 45-47.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ See Transcript, pg. 47.

⁵² See Transcript, pgs. 51 and 52.

⁵³ See Transcript, pgs. 49-51.

⁵⁴ *Id.*

1 Connors 3, which identified some needs in the areas of attention, attentional control,
2 inattention, hyperactivity/impulsivity, and executive functioning skills.⁵⁵

3 16. ██████████ explained that sufficient information was gathered for the
4 team to determine eligibility under the IDEA and that all areas of suspected disability were
5 assessed.⁵⁶ ██████████ asserted that Edkey's April 7, 2021 evaluation was
6 appropriate, and that there was sufficient information to determine Student's educational
7 needs, and that "what [the team] looked at gave [the team] the information we needed to
8 make some decisions about what his needs are, particularly in combination with all the
9 previous evaluation information and the review of all that existing data."⁵⁷

10 17. ██████████ testified to the effect that an IEE was not necessary in light
11 of all the information that had been gathered over the last two years and that he "[didn't]
12 see any need to test him anymore to get more information."⁵⁸ ██████████ testified as
13 to the reasons, relating to COVID, for why the test was conducted in the park, and that
14 despite the setting, ██████████ was able to obtain valid results.⁵⁹ ██████████ also
15 testified that Student scored better than expected and that he performed better than he
16 had on his previous tests from ██████████.⁶⁰ ██████████ also explained that it was not
17 necessary to administer certain subtest he had planned to give with the WJ-IV because
18 Student had begun to get restless and ██████████ had already gathered sufficient
19 data to determine his academic skills.⁶¹

20 18. Edkey presented the testimony of ██████████ ██████████ holds an
21 occupational therapy license from the State of Arizona.⁶² ██████████ holds a Bachelor of
22 Science with distinction from the University of Kansas, and because she obtained her
23 degree in 1990, she has been grandfathered into the master's level.⁶³ ██████████ has been
24 an occupational therapist for over thirty years, with seventeen of those years working in

25 ⁵⁵ See Transcript, pgs. 53-58.

26 ⁵⁶ See Transcript, pgs. 58-59.

27 ⁵⁷ See Transcript, pg. 59.

28 ⁵⁸ See Transcript, pg. 60.

29 ⁵⁹ See Transcript, pgs. 64 and 65.

30 ⁶⁰ See Transcript, pg. 46.

⁶¹ See Transcript, pg. 57.

⁶² ██████████ educational background and experience were described in greater detail in Exhibit 22.

⁶³ See Transcript, pgs. 67 and 68.

1 a school based setting and fourteen years in private practice.⁶⁴ [REDACTED] belongs to the
2 American and Arizona Occupational Therapy Association and teachings a number of
3 courses, including courses focusing on sensory processing disorders, motor coordination,
4 visual skills, hand writing, and occupation performance.⁶⁵ [REDACTED] is qualified to assess
5 students in the areas of fine motor skills, visual motor skills, visual perceptual skills, gross
6 motor skills, sensory processing skills, functional skills, daily living skills, and she is
7 qualified to conduct clinical observations.⁶⁶

8 19. [REDACTED] explained that she considered input and information provided by
9 Student's parents, including any diagnosis from providers, and that she reviewed
10 Student's previous evaluations and assessments as a part of her evaluation, including
11 those provided by the Parent.⁶⁷ [REDACTED] administered the Bruininks-Oseretsky of Motor
12 Proficiency, Second Edition (BOT-2), the Print Tool Clinical Observations, and the
13 Sensory Processing Measure. [REDACTED] conducted some informal assessments of
14 additional motor skills.⁶⁸ [REDACTED] is qualified to administer these assessments and
15 followed the instructions for the administration of these assessments.⁶⁹ [REDACTED]
16 explained that all assessments were administered in the student's native language, that
17 the assessments were not discriminatory on a racial or cultural basis, and that all
18 assessments were reliable instruments for what they purported to measure.⁷⁰

19 20. [REDACTED] explained that Student scored in the average range on the BOT-
20 2 and that his visual motor skills and fine motor skills were within the average range.⁷¹
21 [REDACTED] explained that she obtained an accurate and valid measure of Student's visual
22 motor and fine motor skills and that Student did not appear to have any deficits that
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26 ⁶⁴ See Transcript, pg. 67.

27 ⁶⁵ See Transcript, pgs. 69 and 70.

28 ⁶⁶ See Transcripts, pg. 69.

29 ⁶⁷ See Transcript, pg. 70.

30 ⁶⁸ See Transcript, pg. 78.

⁶⁹ See Transcript, pgs. 78-88.

⁷⁰ *Id.*

⁷¹ See Transcript, pg. 80.

1 impacted his ability to perform at his best.⁷² ██████ explained that Student had some
2 hypermobility in his joints, which could impact how Student grasps a pencil.⁷³

3 21. ██████ did not observe any concerns with respect to postural strength,
4 upper extremity strength, finger-thumb touching, primitive reflexes, in-hand manipulation
5 skills, directionality, or bilateral coordination.⁷⁴ ██████ noted that Student demonstrated
6 left eye dominance and he was able to smoothly track in all directions vertically,
7 horizontally, and in a circle as well as far to near for convergence.⁷⁵ ██████ noted
8 Student had a slight disassociation with his head from his eyes (which meant that his
9 head had a slight movement when his eye moved at times).⁷⁶

10 22. ██████ explained that visual perception was not formally evaluated
11 because Student had scored within the average range from previous testing data.⁷⁷ ██████
12 noticed some difficulties with respect to Student's hand writing legibility that she
13 attributed to impairments in motor planning, and not a visual impairment. ██████
14 explained that with respect to her findings pertaining to the Sensory Processing Measure
15 and Student's areas of need. ██████ asserted that, in light of all of the information that
16 previously existed, the evaluation she completed, and the overall evaluation done by
17 Edkey, that sufficient information was reviewed and gathered to determine Student's
18 visual needs within the educational environment. ██████ explained that all areas of
19 suspected disability were assessed and that she was able to gather relevant functional,
20 developmental, and academic information about the Student to assist the MET team in
21 determining eligibility.⁷⁸

22 23. ██████ ██████ explained that Edkey's evaluation was appropriate and
23 sufficiently comprehensive to identify all of Student's special education and related
24 needs.⁷⁹ ██████ did not believe an independent occupational therapy evaluation was

25 ⁷² See Transcript, pg. 81.

26 ⁷³ *Id.*

27 ⁷⁴ See Transcript, pgs. 81 -83, and 86.

28 ⁷⁵ See Transcript, pgs. 84-90.

29 ⁷⁶ See Transcript, pg. 72.

30 ⁷⁷ See Transcript, pgs. 84-90.

⁷⁸ See *id.*

⁷⁹ See Transcript, pg. 93.

1 necessary because her evaluation was comprehensive and addressed all the areas of
2 needs in an educational environment in the areas of occupational therapy. [REDACTED]
3 further opined that neither an independent visual processing assessment, nor an
4 independent functional vision evaluation, were necessary because Student's parents had
5 already had these assessments independently completed, and those items had been
6 considered by the Edkey team.⁸⁰

7 24. [REDACTED] explained under cross examination that she was not qualified to
8 "diagnose" a visual impairment;⁸¹ however, she further explained that diagnoses do not
9 determine eligibility and that she was qualified to look at the educational impact of a
10 student's visual diagnosis.⁸²

11 25. Parent contended that Edkey's educational evaluation of Student was
12 improper. Parent argued that Student should be eligible for special education services
13 under the category of Visual Impairment. Parent explained that Student was diagnosed
14 with a visual impairment by [REDACTED] Stephey, O.D., M.S. Dr. Stephey opined in his
15 evaluation that Student's visual deficits were "not a normal outcome and prevent[ed] [REDACTED]
16 from having equal access to the curriculum."⁸³

17 26. Parent submitted into evidence a March 29, 2021 evaluation report drafted
18 by [REDACTED] Meehan, OD at Midwestern University.⁸⁴ Dr. Meehan's March 29, 2021
19 evaluation included the following impressions:⁸⁵

20 Binocular Vision: Convergence Insufficiency (Eye Teaming)
21 Ocular motor dysfunction: eye tracking.

22 Dr. Meehan recommended that Student participate in an at home vision therapy
23 program.⁸⁶ Dr. Meehan authored a Visual Information Processing Evaluation which
24 contained the following impressions:⁸⁷

25 Convergence Insufficiency

26 ⁸⁰ See Transcript, pgs. 93 and 94.

27 ⁸¹ See Transcript, pg. 95.

28 ⁸² See Transcript, pgs. 95 and 96.

29 ⁸³ See Exhibit A.

30 ⁸⁴ See Exhibit B.

⁸⁵ See id.

⁸⁶ See Exhibit B.

⁸⁷ See Exhibit C.

Oculomotor dysfunction
Visual spatial awareness
Visual Motor Integration (fine motor skills)
Auditory Processing

Dr. Meehan recommended an at home vision therapy program.⁸⁸ The evaluation also provided, in relevant part, as follows:⁸⁹

Due to shown deficits in reversals, motor coordination, writing fluency and auditory processing, accommodations may be necessary to work at grade level curriculum.

27. Dr. [REDACTED] Bergam diagnosed Student with "H52.223 Regular astigmatism, bilateral OU."⁹⁰ Dr. Bergam's notes further provided, "Exam reveals Astigmatism, Regular. Visual issues are due to a visual process disorder."⁹¹

28. [REDACTED] Fox, AuD concluded that Student met the criteria for auditory processing disorder.⁹² [REDACTED] Rozenberg, Speech Language Pathologist concluded that Student had overall significant deficits in Language Skills.⁹³ Ms. Rozenberg opined that Student should be eligible for special education services in the primary eligibility of SLI with significant deficits in expressive and receptive language skills.⁹⁴

29. Launch Pad Therapy for Kids conducted an IEE of Student that was considered by Edkey.⁹⁵ The IEE conducted by Launch Pad Therapy provided, in relevant part, as follows:

Overall, [REDACTED] demonstrates challenges integrating and modulating sensory input, and presents with retained primitive reflexes, impacting his ability to act on his environment and access his academic curriculum successfully

Recommendations: Occupational therapy is recommended. Twelve months of therapy once a week for one hour sessions in a specialized therapy setting by a therapist trained in

⁸⁸ See *id.*

⁸⁹ See Exhibit C.

⁹⁰ See Exhibit 16.

⁹¹ See Exhibit 16.

⁹² See Exhibit D.

⁹³ See Exhibit E.

⁹⁴ See *id.*

⁹⁵ See Exhibit G.

1 sensory integration will be beneficial at which time
2 reassessment will be made to determine future
3 recommendations. Focus will be on providing opportunities for
4 improved sensory discrimination, reduced sensitivity to
5 sensation and improved praxis, fine motor skills and ability to
6 self-regulate in order to remain on schedule at school and in
7 self-care routines. Regular consultations in the classroom are,
8 also, recommended in order to assist the teacher in
9 accommodating his needs and facilitating his ability to attend
10 to tasks in the classroom. Other Recommendations: • Central
11 Auditory Processing Assessment

12 30. Parent contended that Edkey's educational evaluation of Student was faulty
13 because Edkey should have obtained an evaluation from an optometrist and an
14 audiologist. Parent further contended that [REDACTED] evaluation of Student was
15 improper because it was conducted outdoors. Parent argued that Edkey was required to
16 publicly fund an IEE for student because its evaluation was improper.

17 **CONCLUSIONS OF LAW**

18 1. Parents who disagree with a public agency's educational evaluation of their
19 child, have the right to request an IEE at public expense;⁹⁶ however, a school will not be
20 required to fund an IEE if it obtains an order from a hearing officer that its evaluation was
21 appropriate.⁹⁷ "The appropriateness of the agency's evaluation is generally measured by
22 its compliance with federal regulations, specifically 34 C.F.R. §§ 300.304 and 300.305.⁹⁸
23 If the agency proves by a preponderance of the evidence that its evaluation was
24 appropriate, the parent is not entitled to an IEE at public expense."⁹⁹

25 ⁹⁶ See 34 C.F.R. § 300.502(b)(1)

26 ⁹⁷ See 34 C.F.R. § 300.502(b)(2)(i)

27 ⁹⁸ 34 C.F.R. § 300.305, "Additional requirements for evaluations and reevaluations," details the
28 requirements for a review of existing data, the requirements of which have not been contested in this
29 proceeding.

30 ⁹⁹ See B.G. by J.A.G. v. Bd. of Educ. of City of Chicago, 901 F.3d 903, 909 (7th Cir. 2018); See also
Parent on Behalf of Student v. Garvey Sch. Dist., No. CV 18-2312-JFW(JEMX), 2019 WL 6729763, at pg.
9 (C.D. Cal. Aug. 27, 2019)(Citing to B.G. by J.A.G. v. Bd. of Educ. of City of Chicago)

1 2. The standard of proof is “preponderance of the evidence,” meaning evidence
2 showing that a particular fact is “more probable than not.”¹⁰⁰ Therefore, Edkey bears the
3 burden of proving its claims and complaints by a preponderance of evidence.

4 3. “A parent's disagreement with an evaluator's findings or his belief that the
5 evaluator could have done more will not generally open the door for the parent to receive
6 a publicly funded IEE under the IDEA.”¹⁰¹

7 4. The implementing regulations of the Individuals with Disabilities Education
8 Improvement Act of 2004 (IDEA), at 34 C.F.R. § 300.304(b), Evaluation procedures,
9 mandates the following with respect to evaluations and re-evaluations, in pertinent part:

10 (b) Conduct of evaluation. In conducting the evaluation, the
11 public agency must –

12 (1) Use a variety of assessment tools and strategies to
13 gather relevant functional, developmental, and
14 academic information about the child, including
15 information provided by the parent, that may assist in
16 determining –

17 (i) Whether the child is a child with a disability
18 under § 300.8; and

19 (ii) The content of the child's IEP, including
20 information related to enabling the child to be
21 involved in and progress in the general
22 education curriculum (or for a preschool child, to
23 participate in appropriate activities);

24 (2) Not use any single measure or assessment as the
25 sole criterion for determining whether a child is a child
26 with a disability and for determining an appropriate
27 educational program for the child; and

28 (3) Use technically sound instruments that may assess
29 the relative contribution of cognitive and behavioral
30 factors, in addition to physical or developmental
factors.

100 *Concrete Pipe & Prods. v. Constr. Laborers Pension Trust*, 508 U.S. 602, 622, 113 S. Ct. 2264, 2279 (1993) quoting *In re Winship*, 397 U.S. 358, 371-372 (1970); see also *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

101 See, e.g., *Fulton County Sch. Dist.*, 115 LRP 51672 (SEA GA 2015).

1 (c) Other evaluation procedures. Each public agency must
2 ensure that

3 (1) Assessments and other evaluation materials used
4 to assess a child under this part –

5 (i) Are selected and administered so as not to
6 be discriminatory on a racial or cultural basis;

7 (ii) Are provided and administered in the child's
8 native language or other mode of
9 communication and in the form most likely to
10 yield accurate information on what the child
11 knows and can do academically,
12 developmentally, and functionally, unless it is
13 clearly not feasible to so provide or administer;

14 (iii) Are used for the purposes for which the
15 assessments or measures are valid and
16 reliable;

17 (iv) Are administered by trained and
18 knowledgeable personnel; and

19 (v) Are administered in accordance with any
20 instructions provided by the producer of the
21 assessments. * * *

22 5. While Parent questioned the appropriateness of Edkey's evaluation in light
23 of the recommendations of independent evaluators, Parent provided no expert testimony
24 to explain why the evaluations conducted by Edkey were insufficient to properly determine
25 Student's eligibility for special education. Nothing in Parent's presentation contradicted
26 the testimony of Edkey's witnesses or demonstrated that Edkey's evaluation did not
27 comply with 34 C.F.R. § 300.304(b) and (c). The evidence presented at hearing showed
28 that Edkey considered all of Student's diagnoses and determined that Student's
29 diagnoses did not adversely impact Student's educational performance.

30 6. The preponderance of the evidence established that Edkey conducted an
appropriate evaluation in compliance with 34 C.F.R. § 300.304(b) and (c).

Conclusion

7. Edkey established by a preponderance of the evidence that its evaluation was appropriate and that it properly denied Respondents' request for a publicly funded IEE.

ORDER

Based on the findings and conclusions above, IT IS HEREBY ORDERED that that the relief requested in the Complaint is **granted** as set forth above and Edkey's Complaint is sustained.

RIGHT TO SEEK JUDICIAL REVIEW

Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision and Order is the final decision at the administrative level. Furthermore, any party aggrieved by the findings and decisions made herein has the right to bring a civil action, with respect to the complaint presented, in any State court of competent jurisdiction or in a court of the United States. Pursuant to Arizona Administrative Code § R7-2-405(H)(8), any party may appeal the decision to a court of competent jurisdiction within thirty-five (35) days of receipt of the decision.

Done this day, September 15, 2021.

/s/ Velva Moses-Thompson
Administrative Law Judge

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Mark Plitzuweit, President
Edkey, Inc./ACAA Elementary Charter School

Government	Percentage
Current government	75%
Previous government	25%

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