

**DOCKET NO. 262-SE-0419**

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| <b>NORTHWEST INDEPENDENT<br/>SCHOOL DISTRICT,<br/>Petitioner</b> | §<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§<br>§ | <b>BEFORE A SPECIAL EDUCATION<br/><br/><br/><br/><br/><br/><br/><br/><br/><br/>HEARING OFFICER FOR<br/><br/><br/><br/><br/><br/><br/><br/><br/><br/>THE STATE OF TEXAS</b> |
| <b>v.</b>  |  |  |
| <b>STUDENT, B/N/F PARENT &amp; PARENT,<br/>Respondent</b>        |  |  |

**DECISION OF THE HEARING OFFICER**

**I. STATEMENT OF THE CASE**

Petitioner, Northwest Independent School District (school district or Petitioner) brings this action against Student b/n/f Parent and Parent (Student or collectively, Respondent) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. (514) (b)(1) (A) (i) (I) (2) (i) (0) with its Individual Evaluation (FIE) was appropriate within the meaning of the IDEA and therefore whether Student’s parents are entitled to an Independent Educational Evaluation (IEE) at school district expense. The hearing officer concludes the school district’s FIE met the requirements of the IDEA and Student’s parents are therefore not entitled to an IEE at public expense.

**II. PROCEDURAL HISTORY**

**A. Continuances and Extension of Decision Due Date**

There was a single continuance in this case and extension of the decision due date at Respondent’s unopposed request to allow Respondent time to secure an IEE and to provide the parties with more time to prepare for the due process hearing. At the end of the due process hearing the parties requested a few extra days to submit written closing arguments with access to the hearing transcript and an extension of the decision deadline. The parties requested a closing

argument deadline of October 15, 2019, with an extension of the decision deadline to October 29, 2019. An order granting that request was issued on September 16, 2019.

**B. Legal Representatives**



concerned Student would have a lot of difficulty separating from her on the first day of school.<sup>6</sup> The educational diagnostician (diagnostician) explained an evaluation would be required before services could be provided.<sup>7</sup> The school counselor also conferred with Student's mother before school began. Student's mother also shared her concerns with the counselor that Student would be very anxious about coming to school.<sup>8</sup>

3. The February 2018 outside evaluation diagnosed Student with separation anxiety disorder, generalized anxiety disorder, and other specified neurodevelopmental disorder based on symptoms associated with Autism Spectrum Disorder. The February 2018 outside evaluation did not diagnose Student as a child with autism.<sup>9</sup> The sources of data for the February 2018 outside evaluation were primarily parent information and clinical testing. The 2018 February outside evaluation did not include information related to Student's abilities in a school environment.<sup>10</sup>
4. The diagnostician

purpose of the FIE was in response to a parental request to determine whether Student was

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Checklist, and a School Checklist for OT.<sup>36</sup>

16. The \*\*\* teacher completed the School Age Checklist for OT and saw no academic difficulties although she noted Student was sensitive to the sounds of \*\*\*. The \*\*\* teacher also completed the \*\*\* School Checklist. She noted Student was independent with regard to classroom activities,

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(ADOS-2) used in the February 2018 outside evaluation.<sup>51</sup> The components of the LSSP's assessment also included: the Behavior Assessment System for Children – Third Edition (BASC-3), the CARS II, the Social Responsiveness Scale, a parent questionnaire, teacher information, and at least seven formal observations in the school setting.<sup>52</sup>

26. The LSSP chose these instruments because they give a good picture of a broad range of behaviors as well as the narrow band of behaviors associated with autism. She did not administer the ADOS-2 again because the instruction manual advises against using the ADOS-2 within one year of a prior administration. The LSSP wanted to ensure she was collecting new information. Each test was administered in accordance with the instruction manual.<sup>53</sup> There were other tests the LSSP could have chosen for her assessment.<sup>54</sup>
27. The BASC-

associated with autism on a scale from normal to severely unusual. The LSSP reviewed observation information, teacher report, the February 2018 outside evaluation report, and school evaluator reports on the CARS-2. Student's total raw score fell within the "Minimal-to-No Symptoms of Autism Spectrum Disorder" range when behavioral observations in the school environment were included.<sup>59</sup>

31. The LSSP conducted observations in Student's \*\*\* classroom, \*\*\*, the cafeteria, \*\*\*, and in the hallway. Student was very social and was not shy going into the classroom or out \*\*\* with other children. Student was empathetic and very engaged at school. Student \*\*\* with Student's classmates, transitioned easily from place to place within the classroom, and demonstrated social and emotional reciprocity.<sup>60</sup>
32. The LSSP also used the BASC-3 rating scales as well as observations by six other professionals to evaluate Student's emotional and behavioral performance in the school setting. Teacher rating scales placed Student in the average range across all areas. Student was viewed by Student's \*\*\* classroom teacher as very well acclimated to the general education classroom and structure. Student had friends and communicated effectively in class. The teacher had no behavior concerns and Student could transition without anxiety. Student was on grade level academically. Student had access to \*\*\* for fire drills and assemblies, but did not use them consistently. The teacher needed to check in with Student to keep Student on task but Student was receptive to redirection.<sup>61</sup>
33. The behavioral and social/emotional component of the FIE concluded Student did not display significant deficits in the areas of social-communication and restricted/repetitive behaviors and interests in the school environment. While emotional reciprocity was an area of concern at home, Student demonstrated typical skills appropriate to Student's developmental level compared to others in the \*\*\* classroom.<sup>62</sup>
- 34.

35. The KTEA-3 is an individually administered measure of academic achievement for students in \*\*\* through twelfth grade, or ages 4-25. The KTEA-3 measures the following eight areas associated with a learning disability: oral expression, listening comprehension, basic reading skills, reading comprehension, written expression, math problem solving, math comp

conclusions of each FIE component. The FIE concluded Student did not meet IDEA criteria as a student with autism, a speech impairment, or a specific learning disability. The ARD agreed with the FIE conclusion that Student was not eligible for special education or related services under the IDEA.<sup>71</sup>

40. In December 2018 the school district agreed to monitor Student under § 504.<sup>72</sup> In April 2019, the school district agreed to implement a set of accommodations under § 504 to address continuing parental concerns.<sup>73</sup>
41. This current school year (2019-20) Student is in \*\*\*. Student continues to present as a very happy, polite, sociable student. Student greets the principal every morning. Student is described as easy going and very happy and excited to go to class. Student has no difficulties transitioning to get to school. \*\*\*, Student participates in class activities with peers appropriately and interacts and communicates with peers in the cafeteria. The principal, who is familiar with students with separation anxiety, has not observed any difficulty for Student separating from Student's parents or witnessed any signs of anxiety. She has no behavioral concerns.<sup>74</sup>

## VI. DISCUSSION

### A. Evaluation Criteria

The IDEA establishes a very detailed, comprehensive set of evaluation procedures for conducting an FIE in order to determine a student's eligibility and need for special education and related services. 34 C.F.R. § 300.301(a). An initial evaluation to determine a student's eligibility and educational needs must be conducted within 60 days of receipt of a parental request for the evaluation or whatever the State requires if the State establishes another timeframe for completing an initial evaluation. 34 C.F.R. § 300.301 (a) (b) (c) (1) (i) (ii). In Texas, a FIE must be completed no later than the 45<sup>th</sup> school day following the date the school district receives written consent from the parent. Student absences from school during this period extend the deadline accordingly. 19 Tex. Admin. Code § 89.1011 (a)(b)(c).

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<sup>71</sup> P.2:1-16.

<sup>72</sup> R.4; Tr. I: 235-36.

<sup>73</sup> R.5; Tr. I: 236-37.

<sup>74</sup> Tr. I: 250-51.

In conducting the evaluation the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information from parents. The information collected is to assist the school district in determining: first, whether the student is a student “with a disability” as defined by the IDEA, and second, the content of the student’s Individualized Education Plan (IEP), including information related to enabling the student to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304 (b)(1)(i)(ii). In order to qualify as a “child with a disability” the student must meet the criteria for one or more of the disability classifications established by the IDEA. 34 C.F.R. §§ 300.8, 300.301.

Furthermore, the IDEA prohibits the use of any single measure or assessment as the sole criterion for determining whether the student meets the definition of a “child with a disability” or in designing an appropriate educational program for the student. 34 C.F.R. § 300.304 (b) (2). In addition, the school district must use technically sound instruments that assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. 34 C.F.R. § 300.304 (b) (3).

The school district must also ensure the assessments and other evaluation materials used for the FIE are: (i) selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are 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); (iii) are used for the purposes for which the assessments and measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with the instructions provided by the producer of the assessments. 34 C.F.R. § 300.304 (c) (1) (i)-(v).

The IDEA also requires that for students with impaired sensory, manual, or speaking skills, the assessments are selected and administered to best ensure that the assessment results accurately

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**DECISION**

expense by filing a request for a due process hearing to show its evaluation is appropriate.  
34 C.F.R. § 300.502 (b) (2) (ii). If the school district meets its burden on that issue,

cognitive assessment by the diagnostician included assessment of Student's processing and cognitive abilities with administration of the KABC-II. Student's academic achievement was assessed in eight academic skill areas by use of the KTEA-3. Student's adaptive behavior was also included in the FIE assessing Student's ability to engage \*\*\* activities independently and in all areas of self-care at school by both the OT and behavioral assessments. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (b) (1).

### **3. Technically Sound Instruments**

The record supports the conclusion each member of the multi-disciplinary team used technically sound instruments in conducting the various components of the FIE. Each member of the multi-disciplinary team was able to explain the rationale for choosing the various instruments and the sources of data used in the FIE. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (b) (3).

### **4. Not Discriminatory on the Basis of Race or Cultural Factors**

The FIE report noted there were no cultural, linguistic, or experiential factors that influenced Student's learning and behavior patterns. There was no controverting evidence that any of the measures used by the school district were discriminatory on the basis of race or cultural factors. It is reasonable to infer from the credible evidence Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (c) (1)(i).

### **5. Native Language**

The FIE noted Student's native language and academic language were both English. Although not specifically stated elsewhere in the FIE report, or testified to by members of the multi-disciplinary team, it is reasonable to infer from the record the FIE was conducted in Student's native language. There was no controverting evidence presented by Respondent otherwise. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (c) (1) (ii)



6.

academic performance, communicative status, and motor abilities. The purpose of the FIE was to determine Student's eligibility for special education and related services as a student with autism, a speech/language impairment, as well as identify any sensory processing deficits at parental

capable and independent in the school environment and none of the deficits identified interfered with Student's ability to learn. The OT component of the FIE included a number of activities that could be implemented within the regular \*\*\* classroom without the need for OT services to address Student's motor and sensory needs.

Third, Respondent's argument that the school district should have selected from a list of other possible autism instruments, including re-administration of the ADOS-2, is simply a disagreement between professionals. The LSSP admitted she did not re-administer the ADOS-2 because that same test was administered within one year of the FIE – i.e., in the February 2018 outside evaluation. However, she also explained the test manual specifically states the ADOS-2 should not be re-administered any earlier than one year from a previous administration. Respondent argues the school district should have chosen other similar measures such as the PEP-3 or MIGDAS-2 in lieu of the ADOS.

The fact that other instruments were available to the LSSP to choose from does not mean the instruments and other tools and strategies she did use were insufficient under IDEA evaluation criteria. Reasonable minds may differ in the choice of instruments used to evaluate for autism. However, a mere difference of opinion between qualified, knowledgeable professionals as to the choice of instruments used to assess a student for autism does not prove the choices the school district made, in this case, were inappropriate.

## **10. Emotional Disturbance**

Petitioner contends the school district should have conducted an evaluation to determine if Student is a student with an emotional disturbance based on parental input, the February 2018 outside evaluation, and the independent evaluation conducted after the Complaint in this case was filed. An emotional disturbance under the IDEA means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

- x An inability to learn that cannot be explained by intellectual, sensory or health factors;
- x An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- x Inappropriate types of behavior or feelings under normal circumstances;
- x A general pervasive mood of unhappiness or depression;
- x

In sum, the school district had no reason to suspect Student was a student with an emotional disturbance and thus no duty under the IDEA to conduct an evaluation to determine Student's eligibility for services under that classification. 34 C.F.R. § 300.8 (c)(4.).

## VII. CONCLUSIONS OF LAW

1. Petitioner conducted an appropriate Full Individual Evaluation (FIE) that met all requirements under the IDEA. 34 C.F.R. §§ 300.301, 300.304.
2. Although Respondent's parents continue to be entitled to an Independent Educational Evaluation (IEE), they are not entitled to an IEE at Petitioner's expense. 34 C.F.R. § 300.502 (b) (3).

## VIII. ORDERS

Based on the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are hereby **GRANTED**. All other relief not specifically stated herein is **DENIED**.

**SIGNED October 28, 2019.**

  
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Ann Vevier Le  
ckwood

## IX. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this case is a final and appealable order. Any party aggrieved by the findings and decision made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code § 89.1185(p); Tex. Gov't Code § 2001.144(a) (b).