

**DOCKET NO. 289-SE-0519**

<b>DALLAS INDEPENDENT SCHOOL DISTRICT,     Petitioner</b>	§ § § § § § § § §	<b>BEFORE A SPECIAL EDUCATION          HEARING OFFICER FOR          THE STATE OF TEXAS</b>
<b>v.</b>		
<b>STUDENT, B/N/F PARENT AND PARENT,     Respondent</b>		

**DECISION OF THE HEARING OFFICER**

**I. PROCEDURAL HISTORY**

The Dallas Independent School District (Petitioner or District) brought this action against Student by next friends Parent and Parent (collectively, Respondent or Student) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and its implementing state and federal regulations. The District requested a due process hearing on May 13, 2019, with notice issued by the Texas Education Agency the next day.

The issue in this case is whether the District may proceed with its proposed full and individual evaluation (FIE) of Student in all areas of suspected disability, to include autism, without parental consent

parties an opportunity to submit written closing arguments (Order No. 8). The hearing officer's



- lives with Student's parents, \*\*\*. Student enjoys playing with \*\*\* other children and likes \*\*\*.<sup>7</sup> Student may be shy depending on the situation, and may be reserved if Student does not know someone.<sup>8</sup>
4. \*\*\*. \*\*\*.<sup>9</sup> Student's mother has a history of dyslexia.<sup>10</sup>
  5. Student's \*\*\* teacher has worked in the District for twenty-nine years and has been a \*\*\* instructor for nineteen years.<sup>11</sup> In a September \*\*\*, 2018 communication with Student's mother, she told her Student could not keep up with the other students in spelling.<sup>12</sup> Student's teacher reported concerns with Student's reading, math, and handwriting skills. She had also observed certain behaviors, including putting Student's head down, not doing work, making noises, and falling out of Student's chair.<sup>13</sup> Student also had good days behaviorally.<sup>14</sup> \*\*\*.<sup>15</sup>
  6. Student's mother requested a meeting with Student's teacher in early October 2018 and expressed concern with Student's sadness Student could not keep up with peers.<sup>16</sup> She also had concerns with Student's handwriting, processing speed, short-term working memory, and long-term retrieval abilities, and reported Student was unmotivated and sad about school because Student perceived \*\*\*self as less smart than the other students. Student's mother requested an FIE, to include an Occupational Therapy (OT) evaluation, Speech Impairment evaluation, and Dyslexia evaluation on October \*\*\*, 2018.<sup>17</sup>
  7. Since becoming aware of Student's academic struggles, Student's parents got Student eyeglasses, began a home tutoring program, and provided private tutoring at parental expense \*\*\*.<sup>18</sup>
  8. Student's special education referral packet shows Student had difficulty with reading and handwriting, \*\*\*, routinely forming letters, and hearing letter sounds in words. Student also had short-term memory deficits, slow processing speed, and difficulty in math when

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<sup>7</sup> J. Ex. 1 at 1; P. Ex. 9 at 4.

<sup>8</sup> Tr. at 445, 815.

<sup>9</sup> Tr. at 441-442, 772-773.

<sup>10</sup> P. Ex. 9 at 1.

<sup>11</sup> Tr. at 356, 359-361.

<sup>12</sup> P. Ex. 33.

<sup>13</sup> Tr. at 156.

<sup>14</sup> Tr. at 371.

<sup>15</sup> Tr. at 361.

<sup>16</sup> P. Ex. 34 at 2.

<sup>17</sup> P. Ex. 3 at 2.

<sup>18</sup> P. Ex. 3 at 2; Tr. at 407-408, 778.



the Dyslexia program in the fall of 2019.<sup>27</sup> Student's mother consented to the Section 504 plan offered by the District.<sup>28</sup>

13. A school district may not know the full scope of an evaluation a student requires until after parental consent is obtained and an evaluation is underway because additional needs may arise during testing. The District does not seek further parental consent for additional testing after it begins an FIE because the parent has already consented to a full evaluation.<sup>29</sup> The District uses a team approach to evaluate students who may have a disability and a variety of disciplines may evaluate a student to develop a full picture of his or her needs.<sup>30</sup>
14. An OT evaluation looks at a student's functional ability to participate in instruction. An experienced occupational therapist evaluated Student, conducting classroom observations and teacher interview, reviewing records, and briefly consulting with Student's other evaluators. The OT evaluation is incomplete because the evaluator has not conferred with the other evaluators and has not observed Student in other settings.<sup>31</sup> However, based on the information gathered, Student would benefit from OT.<sup>32</sup> The draft OT report recommended \*\*\* minutes of direct instruction every \*\*\* weeks.<sup>33</sup>
15. Student was evaluated by an experienced Speech Language Pathologist (SLP) for the FIE. She conducted an oral-motor examination, articulation assessment, and administered the Oral and Written Language Scale, which looks at receptive and expressive language. The SLP conducted observations and observed language samples, noting Student answered the questions appropriately, tended to engage in appropriate conversation, and had trouble sitting still and focusing.<sup>34</sup> Though pragmatics testing is incomplete, the evaluation identified an articulation impairment.<sup>35</sup> The SLP, however, wants to conduct additional pragmatics testing of Student.<sup>36</sup>
16. Student was evaluated by an experienced Licensed Specialist in School Psychology (LSSP) for the FIE.<sup>37</sup> The LSSP observed Student in different settings, reviewed Student's referral

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<sup>27</sup> J. Ex. 9 at 10, 13.

<sup>28</sup> J. Ex. 10.

<sup>29</sup> Tr. at 279.

<sup>30</sup> Tr. at 32.

<sup>31</sup> Tr. at 38-40, 85, 114, 141, 144.

<sup>32</sup> Tr. at 86.

<sup>33</sup> J. Ex. 11 at 13; Tr. at 115.

<sup>34</sup> Tr. at 236-237, 238-240.

<sup>35</sup> J. Ex. 11 at 6.

<sup>36</sup> P. Ex. 49; Tr. at 245.

<sup>37</sup> Tr. at 256.

file, and consulted with the other evaluators.<sup>38</sup> An LSSP may determine through an evaluation whether a student has Autism.<sup>39</sup>

17.

with Student's identified disability of ADHD, rather than Autism.<sup>50</sup> Student's parents are also concerned District evaluators did not take into account Student's \*\*\* culture and lifestyle, \*\*\*, into account during testing.<sup>51</sup>

21. Because of Student's ADHD diagnosis, Student may be eligible as a student with an Other Health Impairment. The District asked Student's parent to have a physician complete an Other Health Impairment form on February \*\*\*, 2019.<sup>52</sup>
22. Because certain portions of Student's FIE could not be completed because Student did not have glasses for a period of time, Student's mother signed an Agreement to Extend Timelines to Complete an Initial Evaluation form on February \*\*\*, 2019. The form does not indicate when the FIE will be complete.<sup>53</sup>
23. Student's mother initially asked the District to hold off on the proposed evaluation until



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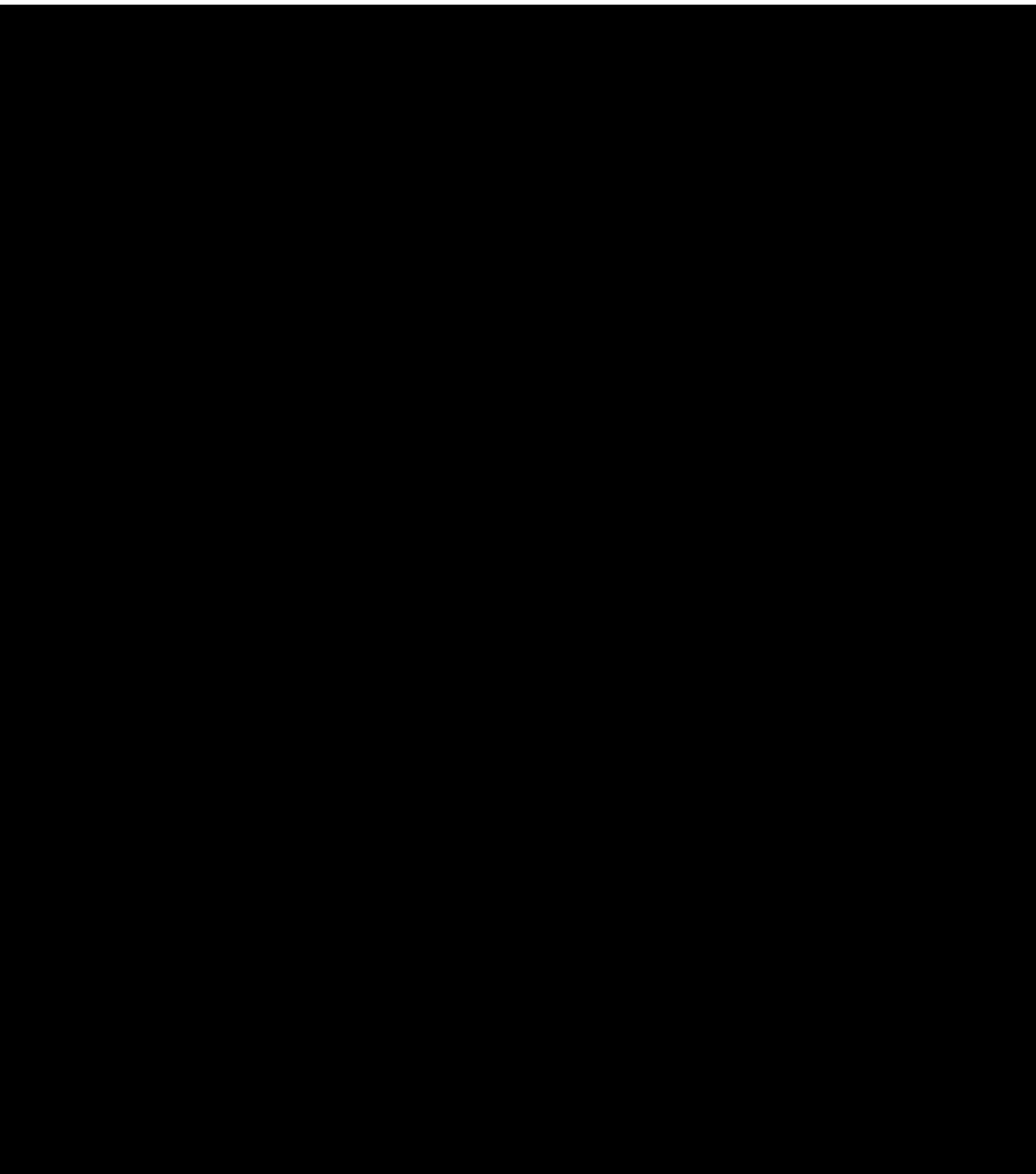
**E. Informed Parental Consent to Evaluate**

Informed parental consent is required before a school district may conduct an initial evaluation of a student suspected of having a disability and need for special education. 20 U.S.C.

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these facts, reasonable grounds do not exist to override parental consent for only one component of the FIE.

The District argues Student's parents revoked parental consent to *any* evaluation of Student by refusing to consent to the Autism evaluation as an aspect of the proposed FIE. However, this argument is untenable in that Student's mother requested the District continue cognitive and achievement testing even after declining Autism testing and significant portions of the evaluation, including OT and speech evaluations, were all but complete.



education services while  
nt to determine what those  
6, 178-70 (5th Cir. 1995),  
l not deny the District an

## VII. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner's request for relief is **DENIED**.

The District is **ORDERED** to complete Student's FIE and convene an Admission, Review, and Dismissal Committee meeting to consider it.

**SIGNED November 1, 2019.**

## VIII. NOTICE TO PARTIES

The decision of the hearing officer in this cause is a final and appealable order. A party disputing the findings and decisions made by the hearing officer may bring a civil action with