

SOAH Docket No. 70124-05787.IDEA  
TEA Docket No. 096- SE-1123

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State Before the  
of Administrative Hearings

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STUDENT , by next friends PARENT and PARENT ,  
Petitioners

v.

Aledo Independent School District,  
Respondent

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DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

\*\*\* (Student), by next friends \*\*\* and \*\*\* (Parents and, collectively, Petitioners), bring this action against Aledo Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C §§ 1400-1482, and its implementing federal and state regulations. The main issue in this case is whether Parents must sign consent for an evaluation they contend includes inappropriate testing in order to receive a full and individual initial evaluation (FIIE) of Student and obtain special education and related services from the District.



Respondent called a speech and language pathologist (SLP); an educational diagnostician from the District's \*\*\*; the Director of Special Programs; and Dr. \*\*\*, a licensed specialist in school psychology (LSSP) Dr. \*\*\* – ‡ • – as an expert in special education assessments and school psychology.

III. ISSUES RAISED

A. PETITIONER 'S ISSUES

The relevant timeframe in this case is from September 2023 forward. Petitioner raised the following legal issue for decision:

Whether Parents must sign a consent for an evaluation that includes inappropriate testing in order for Student to be evaluated and to obtain special education and related services from the District.

B. RESPONDENT 'S LEGAL POSITION AND COUNTERCLAIM

Respondent generally denied Petitioner's allegations and raised a counterclaim for an order overriding lack of parental consent for the FIE.

IV. REQUESTED RELIEF

A. PETITIONER 'S REQUESTED RELIEF

Petitioner seeks an order compelling the District to perform an FIE that does not include a standardized measure of a full-scale IQ score. Petitioner also requested

compensatory services for the delay caused by Respondent's failure to timely evaluate Student in accordance with Parents' consent.

B. RESPONDENT'S REQUESTED RELIEF

Respondent, on the other hand, seeks an order compelling Parents to authorize, and make Student available for, an IIE that includes all areas of suspected disability. Because the Hearing does not interpret her authority under the IDEA to include compelling Parents to sign a document or make Student available for testing if they choose not to, she considers the District's position in a manner that is consistent with the regulations and relevant caselaw. See 34 C.F.R. § 300.300(a)(3)(i); *Shelby S. ex rel. Kathleen v. Conro Indep. Sch. Dist.*, 454 F.3d 450

(5th Cir. 2017). *See also* *Shelby S. ex rel. Kathleen v. Conro Indep. Sch. Dist.*, 2017 WL 1240000 (5th Cir. 2017).

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6. Ms. \*\*\* emailed Parentson September\*\*, 2023, andtalked to Student'sParent on September\*\*, 2023, regarding Student's\*\*\* services.Student's ai0, Stu2.(w46 (ai

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student. If a child has language limitations, a highly language-loaded assessment would not be appropriate.<sup>24</sup>

- 25. None of the assessments common for children Student's age  $\langle \ddagger \ddagger \bullet - \langle \alpha \ddagger \bullet \rangle$  the Revised Notice are inappropriate for a \*\*\*-year-old. Assessments normed for \*\*\*-year-olds include a larger standard error of measurement to account for possible testing issues related this particular age group—for example, students this age may have  $\ddagger \langle \yen \dots$  with attention or with language or simply may not be having a good day. These factors are built into the standard error of measurement.<sup>25</sup>
- 26. The \*\*\* does not render standardized formal cognitive and achievement measures, such as the WPPSI-IV and the ECAD-IV, inappropriate for Student.<sup>26</sup>
- 27.  $-\ddagger \bullet - \ddagger \bullet \ddot{z} \langle f \rangle, \langle \ddot{z} \langle \ddagger \yen \dots \langle \ddagger \ddagger \leftarrow \dots \int^M \ddot{z} \ddagger - \ddot{z} f \ddagger \rangle - \langle \dots \langle 'ff' \rangle \ddagger - \ddot{z} \langle \bullet \ddagger \ddot{z} \rightarrow f \langle \bullet$   
the same or similar scores in consecutive administrations of the test. The higher the  $\dots \langle \ddagger \yen \dots$  the more reliable the test. In Dr. \*\*\*'s experience, a  $\dots \langle \ddagger \yen \dots \int \ddagger \bullet - \ddagger \bullet$  is considered "really good." The reliability  $\dots \langle \ddagger \yen \dots \langle \ddagger \bullet - \bullet$  the subtests included in the WPPSI-IV for children between the ages of \*\*\* and \*\*\* range from .83 to .93. The ECAD-IV test and cluster scores indicate that it is similarly reliable for measuring a child's cognitive ability and early academic skills.<sup>27</sup>
- 28. To be eligible for special education under the \*\*\*...  $\ddot{z} f \bullet \bullet \langle \alpha \dots$  student  $\bullet \acute{a} f$  must meet the criteria for \*\*\*. Assessments for \*\*\* must evaluate a student's cognitive ability, achievement, and adaptive behavior. A student with overall cognitive functioning two standard deviations below the mean and at least two areas of  $\ddagger \ddagger \alpha \dots \text{in} - \bullet$

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<sup>24</sup> Tr. at 135.  
<sup>25</sup> Tr. at 135-36.  
<sup>26</sup> Tr. at 141.  
<sup>27</sup> RE6 at 62; RE7 at 95; Tr. at 157.

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VI. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in this proceeding is consistent with the broadly held principle that the burden falls on the party seeking relief. See *Ex parte*, *Ex parte* v. *Weast*, 546 U.S. 49, 567 (2005) (citing, inter alia, 2 J. Strong, McCormick on Evidence § 342, p. 433 (5th ed. 1999); C. Mueller & L. Kirkpatrick, Evidence § 3.1, p. 104 (3d ed. 2003)); see also *Richardson Indep. Sch. Dist. v. Michael*, 580 F.3d 286, 292 n.4 (5th Cir. 2009) (no distinction between the burden of proof in an administrative hearing and a judicial proceeding). Petitioner thus bears the burden of proving that the District's proposed evaluation includes inappropriate measures for assessing Student. Respondent, on the other hand, bears the burden of showing reasonable grounds exist to override Parents' lack of consent to the evaluation.

B. EVALUATIONS UNDER THE IDEA

The IDEA provides federal funding for the education of students with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412(a)(1)(A). It conditions the states' receipt of funding on the maintenance of policies and procedures to ensure a FAPE is available to all eligible students within that age range. *Id.* A FAPE includes special education and related services designed to meet the unique needs of each student with a disability. 20 U.S.C. § 1400(d)(1)(A).

An individualized education program (IEP) is the means by which an eligible student receives a FAPE, and it is developed by a committee of educators and parents in compliance with the IDEA's detailed procedures. 20 U.S.C. § 1414(d). In order to

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2. Comprehensive Evaluation 608 -/C2\_/TT0 1 3j 0.052 0 T<008B>(2)0<0086>





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D. OVERRIDING LACK OF PARENTAL CONSENT

If the parent of a student with a disability refuses to consent to an evaluation, the school district may seek an order from a hearing

and challenges. Moreover, while evaluators will not know whether they need to conduct either the WPPSI-IV or ECADIV until they work with Student, the record "is not such that these assessments are valid and reliable. Petitioner failed to show by a preponderance of the evidence that the evaluation proposed by the District includes testing that is inappropriate for Student.

Petitioner's attempt to limit the evaluation by refusing to consent to the WPPSI-IV and the ECADIV (or any other measure that would provide a full-scale IQ score) amounts to a lack of parental consent, and reasonable grounds exist to override Parents' lack of consent.

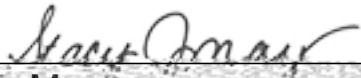
## VII. CONCLUSIONS OF LAW

- 1.

It is further ORDERED that Respondent's request for an order overriding lack of parental consent is GRANTED. The District may conduct an FIE in accordance with the Revised Notice provided to Parent's on October 17, 2023, without parental consent.

All other relief not stated herein is DENIED.

Signed March 19, 2024.

  
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Stacy May  
Administrative Law Judge

#### IX. NOTICE TO THE PARTIES

The Decision of the Court in this case is a final and appealable order.  
Any party