

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

FINAL DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, *** (Student), b/n/f Parent, ***, filed a complaint requesting a special education due process hearing (due process complaint) pursuant to the Individuals with Disabilities Education Improvement Act (IDEA).¹ The Respondent is the Robstown Independent School District (District).

The sole issue in this case is whether Student is eligible for special education services under IDEA and the implementing state and federal regulations because Student has a specific learning disability (SLD) in the form of dyslexia. As requested relief, Student seeks a finding that Student is eligible for special education and related services and compensatory educational services.

II. PROCEDURAL HISTORY

Student filed Student’s due process complaint with the Texas Education Agency (TEA), which received the complaint on September 29, 2014. The complaint was assigned to this hearing officer on August 29, 2014. Attorneys Christopher Lee Jonas and James Neil Harris² represent the Student, and attorney Cynthia S. Buechler represent the District.

The parties participated in a resolution session on October 14, 2014, but the issues were not resolved. The hearing officer convened a telephonic prehearing conference on October 16, 2014. The due process hearing was continued for good cause and ultimately held in Corpus Christi, Texas, on June 3-4, 2015. After the conclusion

¹ 20 U.S.C. § 1401 *et seq.*, as amended.

of the due process hearing, the parties agreed to the following deadlines: June 24, 2015, for the transcript; July 24, 2015, for the parties' closing arguments; and August 10, 2015, for the hearing officer's decision.

III. FINDINGS OF FACT

1. Parent is the biological mother and next friend of Student.³
2. Student is a *** student who at the time of the due process hearing had just completed the *** grade at ***, which is within the District.⁴
3. Student resides within the boundaries of the District.
4. Student has dyslexia and receives instruction and accommodations under Section 504 of the Rehabilitation Act of 1973.⁵ Student meets the eligibility requirements for a disability under Section 504.
5. Student has been attending school within the District for the past *** years and will be attending school within the District

11. Student's teachers describe Student as a good student and a typical *** grader. When compared to the other students in the class, Student is an average student.¹²
12. On September 29, 2014, TEA received Student's due process complaint. Student alleged that the District failed to evaluate Student for special education and related services.

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30. Under Dr. ***'s evaluation, Student's overall standard score for written expression was ***, which is within the average limits and would not be considered impairment in written expression.²⁷
31. Under Dr. ***'s evaluation, Student did not have cognitive deficits, Student's overall global abilities are within the average range, and all of the cognitive areas tested were within normal limits.²⁸
32. On ***, 2015, the ARD committee, including Parent, agreed to have an independent evaluation completed by ***, Ph.D.²⁹
33. Dr. *** completed his evaluation on ***, 2015. Dr. ***'s evaluation showed that Student's global ability scores did not show a pattern of strengths and weaknesses, and, therefore, Student did not have a learning disability under IDEA.³⁰
34. In conducting his *** 2015 evaluation, Dr. *** interviewed Student, obtained information from the school and Parent, reviewed records, and interpreted test results.³¹
35. During his *** 2015 evaluation, Dr. *** administered the following tests: the Wechsler Intelligence Scale for Children; the Kaufman Assessment Battery for Children; the Comprehensive Test of Phonological Processing; and the WIAT-III.
36. Using the Cattell-Horn-Carroll (CHC) Theory of Cognitive Abilities and the Cross-Battery Assessment approach, Dr. *** concluded that Student's global intelligence scores did not reveal a significant pattern of strengths and weaknesses.³²
37. Student's global scores do not meet the eligibility criteria for an SLD. Although Student evidenced weaknesses in some academics, the eligibility criteria for an SLD was not met.³³
38. Dr. ***'s evaluation of Student relied on an inappropriate method to determine Student had an SLD. Dr. *** used the DSM-V clinical classification approach, applicable to a clinical practice, to determine that the Student had an SLD. Dr. *** should have used the educational classification system to determine whether Student had an SLD.³⁴

Dr. ***'s testing showed that Student did not have a pattern of strengths and weaknesses and, therefore, did not meet the eligibility criteria as a student with a learning disability.³⁶

41. Dr. ***'s evaluation of Student was insufficient to show that Student met the criteria for an SLD because it used the DSM-V caTJETBT1 0] TJOETBT1 0 0 1 106.94 w0f

2. Background

Student is a student who attends *** within the District. Student has dyslexia and is currently receiving instruction and accommodations under Section 504 of the Rehabilitation Act of 1973.⁵⁰ ***, a dyslexia specialist, and another teacher, provide Student with dyslexia services for 45 minutes, five times a week.⁵¹

“significant discrepancy” between Student

Dr. ***'s opinion regarding the use of the severe discrepancy model is corroborated by case law. In the 2011 case of *Michael P. v. Department of Education*, the court recognized that for many years, federal regulations required the use of the severe discrepancy model to identify the need for special education under the SLD classification.⁶⁴ The court noted:

Over the last decade, scientific research has established that the “severe discrepancy model” is not necessarily a good indicator of whether a child has a learning disability. . . . The “severe discrepancy model”

from Student's math teacher and *** teacher.⁶⁹ Dr. *** computed the test results through the Cross-Battery Assessment data system, which provides a statistical analysis of the test scores.⁷⁰ Student's norm-based global ability scores, based on the CHC Theory of Cognitive Abilities and the Cross-Battery Assessment approach, did not show a pattern of strengths and weaknesses indicative of an SLD,⁷¹ and Student's scores were all within the normal limits, according to Dr. ***.⁷²

In addition to his evaluation, Dr. *** took Dr. ***'s test results and "ran them through" the same data system used by Dr. *** in an effort to compare "apples to apples."⁷³ Dr. *** testified that when he applied the CHC model to Dr. ***'s test results, Student did not show a pattern of strengths and weaknesses, and thereby, Student does not meet the IDEA eligibility criteria for an SLD.⁷⁴ The hearing officer finds Dr. ***'s testimony credible and his approach appropriate.

Another flaw with Dr. ***'s report is that although he concluded that Student had a learning disability under the DSM-V, Dr. *** did not recommend special education or related services for Student but simply recommended a "fresh approach" to Student's remediation.⁷⁵ He stated that he had "read literature showing excellent results using the RTI or response to intervention system, specifically Tier III interventions," and stated that "the forms for the RTI are no doubt part of the educational armamentarium of *** and if not are available from the ***."⁷⁶ He also recommended weekly practice for the standardized tests to help Student become familiar with the format and performance requirements.⁷⁷ However, Student's current intensive daily ready program through Section 504 meets Dr. ***'s recommended Tier III RTI intervention, according to Dr. ***.⁷⁸

⁶⁹ Tr. at 125. In Student's closing arguments, Student asserts that Dr. ***'s evaluation was deficient because the District's "evaluators looked only at Student's pattern of cognitive test scores to determine Student's potential [S]LD eligibility." Pet. Closing at 20. However, the evidence shows that Dr. ***'s evaluation did not rest solely on Student's cognitive test scores. Dr. *** considered educational background based on information from Student's teachers. Dist. Ex. 15 at 1-2. He also interviewed Student and Parent and considered Dr. ***'s evaluation. Dist. Ex. 15 at 2, 10. He also reviewed the 2009 and 2012 assessments. Dist. Ex. 15 at 3-6. Therefore, the hearing examiner disagrees with Student's contention that Dr. *** based his recommendation solely on cognitive test scores.

⁷⁰ Tr. at 125.

⁷¹ Dist. Ex. 15 at 14.

⁷² Tr. at 126.

⁷³ Tr. at 128.

⁷⁴ Tr. at 128.

⁷⁵ Pet. Ex. 2 at 13.

⁷⁶ Pet. Ex. 2 at 13.

⁷⁷ Pet. Ex. 2 at 13.

⁷⁸ Tr. at 139.

In addition, Dr. ***'s evaluation did not rely on any information obtained from the school, and he did not interview any of Student's teachers.⁷⁹ In Student's closing argument, Student states, without citation to the record, that "Dr. *** sent questions to RISD teachers that were never return[ed] to his office."⁸⁰ However, the hearing officer did not find evidence in the record to support this statement. Therefore, the hearing officer cannot consider that assertion in support of Student's burden of proof.

Dr. *** also relied on Student's lack of success on the STAAR exams as one basis for his conclusion that Student is a child with an SLD.⁸¹ Although Student has not passed the statewide assessment, the hearing officer cannot conclude that Student's lack of success is indicative of an SLD. As Dr. *** testified, a student would not meet the eligibility criteria for IDEA by not passing the STAAR exams.⁸²

Furthermore, the evidence suggests that other factors may be the cause of, or heavily contribute to, Student's lack of success on the STAAR exams. ***.⁸³ ***. ***. ***.⁸⁴

As several witnesses testified, *** has a high percentage of students who did not pass the STAAR exam. Ms. *** testified that ***-grade students this past school year failed the STAAR exam in reading.⁸⁵ The last time the STAAR exam in math was scored, approximately ***-grade students did not pass that exam.⁸⁶ This tends to indicate that Student's failure to pass the STAAR exam may be attributable to issues at the school.

In addition, Student's teachers and principal have observed Student *** during the STAAR exams and in class. Ms. *** has worked with Student for the last two years⁸⁷ and has personally administered the STAAR exams to Student during that time. She testified that Student *** during the testing, and she has to "constantly"

⁷⁹ Tr. at 67-68.

⁸⁰ Pet. Closing at 19-20.

⁸¹ Tr. at 49.

⁸² Tr. at 138.

⁸³

In addition, the evidence shows that Student is passing Student's subjects. Ms. *** testified that she would not recommend Student for special education because Student is performing well on grade-level assignments in Student's core subjects, indicating that Student is able to master the curriculum.⁹⁷ Ms. ***

Student filed Student's due process complaint on September 29, 2014, and alleged that the District had failed to evaluate Student for services under IDEA. The District subsequently evaluated Student in *** 2014, and convened three ARD meetings regarding Student's eligibility on ***,¹⁰³ ***,¹⁰⁴ and ***, 2015.¹⁰⁵

Student did not amend Student's due process complaint to address the sufficiency of the ***, 2015 ARD meeting. Nor did Student present any evidence regarding the alleged inadequacy of that meeting during the June 3-4, 2015 due process hearing. The first time Student asserted that the ARD committee failed to meet the necessary requirements was in Student's

V. CONCLUSIONS OF LAW

1. The District was Student's resident district under IDEA during the 2014/2015 school year.
2. Student bears the burden of proof on Student's eligibility under IDEA. *Schaffer v. Weast*, 546 U.S. 49 (2005).
3. Student did not meet Student's

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