

DOCKET NO. 265-SE-0515

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| FLOUR BLUFF INDEPENDENT | § | BEFORE A SPECIAL EDUCATION |
| SCHOOL DISTRICT, | § | |
| Petitioner | § | |
| | § | |
| v. | § | HEARING OFFICER FOR |
| | § | |
| STUDENT, b/n/f PARENT AND PARENT, | § | |
| Respondent | § | THE STATE OF TEXAS |

DECISION OF HEARING OFFICER

The Flour Bluff Independent School District (Petitioner or District) requested an impartial

II. ISSUE AND BURDEN OF PROOF

A. Issue

The issue before the hearing officer, as set out in Order No. 2, is whether the District's FIE of Student was appropriate and, therefore, whether Mother's request for an IEE for all evaluations that were part of the FIE should be provided at public expense.²

B. Burden of Proof

The District bears the burden to prove that the FIE of Student was appropriate.³ To prevail, the District must, therefore, prove that the FIE meets all standards under the IDEA.⁴

III. HEARING

The hearing was held September 16, 2015, before Sharon Cloninger, hearing officer, at the District's Central Administration Board Room, 2505 Waldron Road, Corpus Christi, Texas. Cynthia Buechler, attorney, appeared in person and represented the District. Respondent was represented by Mother, who appeared via telephone.

At the close of the hearing, the parties requested that the transcript be available by
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DECISION OF THE HEARING OFFICER

35. The FBA prepared by Ms. *** appropriately addresses all of Student's behavioral needs and addresses the need for related services regarding Student's behavior.³⁹

Diagnostic Evaluation

36. Ms. ***, certified educational diagnostician,

44. Ms. ***'s use of the TONI-3 was appropriate, because the TONI-3 is not verbally loaded and, therefore, more accu-
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53. With respect to sensory needs, the evaluation showed that Student seeks *** during various tasks throughout the day, so Ms. *** recommended developing *** sensory strategies for Student; she did not recommend direct sensory input such as massage therapy.⁵⁷
54. Ms. *** did not observe any type of rheumatoid or joint swelling in Student's hands that would prevent Student from using a squishy ball as a sensory strategy. Despite Ms. ***'s request, Mother did not authorize her to contact Student's physician for clarification about any restrictions for using a squishy ball.⁵⁸
55. Ms. *** recommended that an occupational therapist be available on a consultative basis, noting that the related service of direct occupational therapy is not necessary for Student.⁵⁹

Adapted Physical Education Evaluation

56. Ms. *** has 17 years' experience as a special education teacher and physical education teacher, holds a bachelor of science in recreation administration, and holds a master's degree in educational administration.⁶⁰
57. Ms. *** conducted the adapted physical education evaluation, which is a gross motor skills assessment to determine if a child needs specialized instruction for physical education.⁶¹
58. As part of her evaluation, Ms. *** obtained teacher information and reviewed Student's records.⁶² She also contacted Student's coach at Student's prior school and was told that Student had participated in activities with a one-on-one ratio rather than in inclusion physical education.⁶³
59. Ms. *** observed Student several times prior to the evaluation to establish rapport with Student.⁶⁴
60. Ms. *** administered the Adapted Physical Education Assessment Scale II and the Competency Testing for Adapted Physical Education (CTAPE) to assess Student's physical and motor fitness, and fundamental motor skills and patterns, as well as Student's skills in individual and group games and sports. These nationally-recognized tests, used to

⁵⁷ Tr. at 106, 129, 132, 134; Petitioner Ex. 4 at P4-2.

⁵⁸ Tr. at 112-113, 115-117, 120-121.

⁵⁹ Tr. at 107.

⁶⁰ Tr. at 136.

⁶¹ Tr. at 137; Petitioner Ex. 5.

⁶² Tr. at 138.

⁶³ Tr. at 143-144.

⁶⁴ Tr. at 139-140; Petitioner Ex. 5 at P5-2.

assess the need for adapted physical education, were administered in accordance with their instruction manuals.⁶⁵

61. Based upon the evaluation results, Ms. *** recommended that Student receive physical education services in the adapted physical education class to ensure safety and success, and to promote maximum participation.⁶⁶
62. Student currently *** physical education class in the District because the class *** and Student ***, pursuant to Student's ***.⁶⁷
63. Ms. *** did not recommend that Student be excluded from physical education.⁶⁸

Speech Evaluation

64. Ms. ***, a licensed speech language pathologist with 14 years' experience, conducted Student's speech evaluation. She holds a master's degree in communication science and disorders, and a certificate of clinical competence from the American Speech-Language Hearing Association, which is a national certification.⁶⁹
65. Ms. *** has completed hundreds of speech evaluations.⁷⁰
66. As part of her

69. Student's standard score on the PPVT-4 was ***, which is an age equivalent of *** years.⁷⁴
70. The speech evaluation showed that, secondary to Student's diagnosis of autism, Student demonstrated severe to profound disorders in receptive language, expressive language, and social language skills, typical of a student ***.⁷⁵
71. The speech language evaluation confirmed that Student continues to be eligible for special education due to speech impairment; Ms. *** recommended speech therapy for Student but did not specify the number of sessions, because the provision of related services is determined by the ARD committee.⁷⁶
72. Ms. *** also conducted an assistive technology evaluation as part of the REED.⁷⁷
73. As a result of the assistive technology evaluation, Ms. *** recommended that Student continue to have access to the *** and *** for communication; and be provided with assistive technology in areas including, but not limited to, ***.⁷⁸

Appropriateness of FIE

74. The District has established by a preponderance of the evidence that the members of the multi-disciplinary team who conducted Student's FIE are well-credentialed, trained, and experienced.
75. The District has established by a preponderance of the evidence that Student was evaluated using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information provided by Mother and teachers, which enabled the multidisciplinary team to determine Student's continued eligibility as a child with autism and a speech impairment.
76. The District has established by a preponderance of the evidence that the FIE provides the necessary information to develop Student's educational program.
77. The District has established by a preponderance of the evidence that the multiple assessments are well-recognized tests specifically chosen by Student's evaluators to provide an accurate assessment of Student's strengths and weaknesses in all areas to develop an appropriate educational program for Student.

78. The District has proved by a preponderance of the evidence that Student was assessed in all areas of suspected disability and the FIE was sufficiently comprehensive to identify all of Student's educational and related services needs.
79. The District has established, by a preponderance of the evidence, that Student's FIE is appropriate in that it meets all IDEA requirements and, therefore, Respondent is not entitled to an IEE at public expense.

V. APPLICABLE LAW

A. The IDEA and its Implementing Regulations

The IDEA, the Texas Education Code, and the rules promulgated by the Texas Commissioner of Education and the State Board of Education require the District to guarantee certain procedural and educational rights to parents of children with disabilities. Under the IDEA, and its implementing regulations, school districts in Texas must afford children with disabilities a free appropriate public education (FAPE), which is defined as “special education and related services that: [a]re provided at public expense, under public supervision and direction, and without charge; [m]eet the standards of the [State educational agency] . . . ; [i]nclude an appropriate preschool, elementary school, or secondary school education in the State involved; and [a]re provided in conformity with the individualized education program (IEP) that meets the requirements of [34 C.F.R.] §§ 300.320 through 300.324.”⁷⁹

B. FIE Requirements

Each public agency must conduct an FIE, in accordance with 34 C.F.R. §§ 300.304 through 300.306, before the initial provision of special education and related services to a child with a disability under the IDEA provisions.⁸⁰ A public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with 34 C.F.R. §§ 300.304 through 300.311, if

⁷⁹ 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

⁸⁰ 20 U.S.C. § 1414(a); 34 C.F.R. § 300.301.

the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation.⁸¹

As applicable to Student's FIE, the District was required to:

- x Use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about Student, including information provided by Parents, in determining the content of Student's IEP;⁸²
 - x Not use any single measure or assessment as the sole criterion for determining an appropriate educational program for Student;⁸³
 - x Provide or administer assessments and other evaluation materials in a mode of communication and in the form most likely to yield accurate information on what Student knows and can do academically, developmentally, and functionally;⁸⁴
 - x Provide or administer assessments and other evaluation materials by trained and knowledgeable personnel;⁸⁵
 - x Provide or administer assessments and other evaluation materials in accordance with any instructions provided by the producer of the assessments;⁸⁶
 - x Select and administer assessments so as best to ensure that if an assessment is administered to a child with impaired sensory, manual, or speaking skills, the assessment results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure, rather than reflecting the child's impaired sensory, manual, or speaking skills (unless those skills are the factors that the test purports to measure);⁸⁷
 - x Assess Student in all areas related to the suspected disability, including, if
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- x Coordinate Student's assessments with Student's prior school, in that Student transferred from *** to the District's school ***,⁸⁹
- x Conduct an evaluation that is sufficiently comprehensive to identify all of Student's special education and related service needs, whether or not commonly linked to the disability category in which Student has been classified;⁹⁰
- x Use assessment tools and strategies that provide relevant information that directly assists persons in determining that the educational needs of Student are provided;⁹¹
- x Review existing evaluation data, including evaluations and information provided by parents; current classroom-based, local, or State assessments, and classroom observations; and observations by teachers and providers of related services;⁹² and
- x Ensure that Student is observed in Student's learning environment (including the regular classroom setting) to document Student's academic performance and behavior in the areas of difficulty by at least one qualified professional.⁹³

VI. DISCUSSION

A. Overview of the Evidence

The District offered 5 exhibits, which were admitted,⁹⁷ and the testimony of six witnesses. Respondent offered no exhibits or witnesses. The following witnesses testified:

- x ***, Ph.D., LSSP, Psychologist
- x ***, M.Ed., BCBA
- x ***, Occupational Therapist
- x ***, Teacher
- x ***, Diagnostician
- x ***, Speech/Language Pathologist

B. Background

Student, who resides with Student's parents within the District's geographical boundaries-.44 Tm 7 t d*

- x **Intelligence Evaluation.** Respondent notes that the variances in scores of *** (mild intellectually disabled) and *** (above the intellectually disabled range) in the current assessment, particularly when compared to the 2011 assessment score of *** (extremely low range of intellectual functioning), indicate that instruments and strategies used to assess Student were not adequate or in accordance with 34 C.F.R. § 300.304(b).¹⁰¹

- x **Psychological Evaluation.** Respondent argues that because Dr. *** did not question the accuracy of the Intelligence Evaluation scores and obvious need for additional assessment, Student's evaluation does not comply with 34 C.F.R. §

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| Respondent | § | THE STATE OF TEXAS |

SYNOPSIS

Issue: Whether the District’s Full and Individual Evaluation (FIE) of Student was appropriate and, therefore, whether Mother’s request for an Independent Educational Evaluation (IEE) for all evaluations that were part of the FIE should be provided at public expense.

HELD: For the District. The District established that the FIE was appropriate under the IDEA.

Citation: 34 C.F.R. §§ 300.502