

**DOCKET NO. 304-SE-0814**

**STUDENT,  
b/n/f PARENT,  
Petitioner**

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**BEFORE A SPECIAL EDUCATION**

**v.**

**HEARING OFFICER FOR**

**LEWISVILLE INDEPENDENT  
SCHOOL DISTRICT,  
Respondent**

**THE STATE OF TEXAS**

**DECISION OF HEARING OFFICER**

Petitioner STUDENT (Student), by next friend PARENT, (collectively, Petitioner) requested an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.* The respondent to the complaint is the Lewisville Independent School District (the District). Petitioner alleges the District failed of the IDEA, failed to adopt an appropriate Individual Education Program (IEP), and failed to provide the student with a Free Appropriate Public Education (FAPE). The District's diagnosis of the student is consistent with the student's diagnosis of autism spectrum disorder (ASD).





15. Student fell within the mild ID range in intellectual and adaptive behavior score.
16. Dr. \*\*\* evaluated Student a second time on \*\*\*.
17. Student has exhibited delayed and unusual development since birth.
18. \*\*\*ome indicated significance for autism.
19. Student has long-standing and encompassing problems with social and emotional relatedness, communication style, and restricted range of behaviors.
20. Student falls in the center of the autistic spectrum, indicating Student is higher functioning than others with autism.
21. \*\*\*ptive behaviors indicate mild intellectual disability.
22. Student has \*\*\*, engages intrusively in rote fashion and lacks reciprocal conversing.
23. Student makes statements over and over and out of context.
24. Student demonstrated a hyper-startle response for very mild auditory or visual stimuli.
25. During all phases of the evaluation, Student presented with atypical social, communication, and behavioral functioning that goes beyond ID.<sup>11</sup>
26. Dr. \*\*\* again diagnosed Student with autism in \*\*\*.

**\*\*\* FIE**

27. Student is remarkable for sometimes isolating \*\*\*self from peers, and \*\*\*. Student appears bothered by \*\*\*, and had difficulty standing in line. Student prefers to \*\*\*.<sup>12</sup>
28. Noise, sound, or other people in the room easily distract Student.<sup>13</sup>
29. Student is overly sensitive to sound and does not always answer to \*\*\* name.<sup>14</sup>
30. Observations for the \*\*\* FIE confirmed that in social and emotional areas, Student is easily frustrated and displays an emotional outburst when Student experiences difficulty performing tasks, has difficulty tolerating changes in routines, has difficulty perceiving body language or facial expressions, and frequently seems anxious.

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<sup>11</sup> Ex. P-20 at 13.

<sup>12</sup> Ex. R-2 at 22.

<sup>13</sup> Ex. R-2 at 23.

<sup>14</sup> Ex. R-2 at 22.



- 42. Student would ask Ms. \*\*\* the same questions every day.<sup>26</sup>
- 43. Student would ask \_\_\_\_\_ teachers and peers the same questions every day.
- 44. Student would repeat the same question up to five times, Student was indifferent whether or not questions were answered and Student would move on to another question before returning to the same question.<sup>27</sup>
- 45. Outside of school, Student would ask friends the same questions.
- 46. Student is skilled at \*\*\*.<sup>28</sup>
- 47. While Ms. \*\*\* \_\_\_\_\_ \*\*\* student was also noted to repeatedly want to go over \*\*\*.<sup>29</sup>

**\*\*\*, PsyD; \*\*\* IEE**

- 48. An IEE was performed by \*\*\*, PsyD, Licensed Psychologist and Clinical Neuropsychologist.<sup>30</sup>
- 49. \_\_\_\_\_, thus they are better explained with a diagnosis of autism. These include sensory dysregulation, repetitive behaviors, repetitive speech, and inflexible adherence to routine with resistance to change that results in outbursts of yelling, hitting, and \*\*\* (although less often).<sup>31</sup>
- 50. \_\_\_\_\_ f autism because of \_\_\_\_\_ :

  - A. Impairment in social interaction (impaired use of multiple nonverbal behaviors and lack of social and emotional reciprocity);
  - B. Impairment in communication (delay in speech \*\*\* and repetitive use of language); and

53. At the time of the IEE, Student was \*\*\* years old. Student continued to enjoy \*\*\* and had moderate to severe speech articulation difficulty.
54. Student has a history of behavior outbursts in response to change that include yelling, \*\*\*, and grabbing the other person involved.<sup>34</sup>
55. Student oftentimes repeats the same questions several times, even if Student is given an answer.
56. Student has poor eye contact but, with hard work, improvement with certain people and in certain situations has been achieved.
57. Upon \*\*\*, Student had significant difficulties, including screaming, \*\*\*, hitting \*\*\*self, and jumping up and down.<sup>35</sup>
58. The information provided by Ms. \*\*\* and reported on the IEE is the functioning at school.
59. The evidence establishes that Student:
- A. Performs best with structure;
  - B. Has exceptional skill for recalling facts related to personal detail;
  - C. Has exceptional skill \*\*\*;
  - D. Can carry on a conversation, albeit rehearsed, redundant, and not typically reciprocal;
  - E. Experiences behavior outburst with change;
  - F. Repeats questions several times, even if Student has been given an answer;
  - G. Has variable to poor eye contact, depending on the situation; and
  - H. Improved under Ms. \*\*\* tutelage.<sup>36</sup>
60. At the beginning of \*\*\*, Student had a difficult time and an emergency ARD was called to address
61. Ms. \*\*\* was consulted and she provided techniques to assist in behavior management that were ultimately successful.<sup>37</sup>
62. During the IEE interview, Student asked an abundance of questions (related and unrelated), would repeat the same question up to cy ARD wa 539iK 12 Tf1 0 0 1 the

64. Student was impaired in most areas when reasoning abilities were tested for the IEE.
65. behaviors including constant talking, talking too loudly, withdrawing from activities, exhibiting tantrums with change, \*\*\*, yelling, hitting, and interrupting.
66. Student scored an above-average degree of probability of autism on the Gilliam Autism Rating Scale.<sup>39</sup>
67. Dr. \*\*\* noted and the evidence indicates that Student has not lost cognitive ability compared to previous diagnosis of mild ID; rather, Student has fallen behind in cognitive development when compared to the rate of peers. So while Student is now moderate ID, Student was mild ID when younger.<sup>40</sup>
68. Student has improved in some areas (partially remitted symptoms) due to successful interventions, but Student continues to demonstrate diagnostic criteria consistent with autism.
69. A review of the medical and social history definitively confirms the presence of autism, as early as \*\*\* years of age.<sup>41</sup>
70. Some autistic behaviors allowed Student to have strengths in exceptional recall of certain facts (\*\*\*)\*\*\*; these skills are not typical of persons with moderate ID.
71. manifest if Student only had ID. primary autistic behaviors include repetitive questions, inflexible adherence to routine, and resistance to change resulting in outbursts (yelling, hitting, and \*\*\*.)

**\*\*\*, PhD**

72. \*\*\*, PhD, performed a psychological evaluation on Student, with a report issued on \*\*\*. Dr. \*\*\* diagnosed Student with autism spectrum disorder and moderate ID.
73. Dr. \*\*\* is well qualified and her opinion is given significant weight. She earned a PhD in School/Child Clinical Psychology and has decades of experience working in the areas of autism in children, developmental-behavioral pediatrics, and other general psychological treatments. She was a clinical assistant professor of psychiatry at \*\*\* for two decades and worked as a Clinical Child Psychologist at \*\*\*. Dr. \*\*\* and she completed a





92. At age \*\*\*, the District incorrectly diagnosed Student with a learning disability.<sup>50</sup>

93. \*\*\*.

94. It is common for a person with autism to also have ID.

**\*\*\*, PhD**

95. \*\*\*, PhD is well-qualified and earned her doctorate in Psychology with a concentration in school psychology. She is a licensed psychologist and a licensed specialist in school psychology (LSSP).<sup>51</sup> Dr. \*\*\* has performed approximately 150 in-depth, multi-disciplinary autism team evaluations over the last seven years. She has a broad-based training and background in psychology, the field of cognitive abilities, and research regarding interpretation of cognitive functioning.<sup>52</sup> She evaluated Student for the FIE and developed the outcome after discussions with the multi-disciplinary team.<sup>53</sup>

96. Dr. \*\*\* did not know Student by name before observing Student for the FIE.<sup>54</sup>

97. Dr. \*\*\* tudent were that Student asked a variety of questions that related to thoughts, experiences, and feelings.<sup>55</sup> Dr. \*\*\* opined that students with autism ask fact-finding questions, not those related to feelings. Dr. \*\*\* observed Student to have social exchanges and conversation, unlike that of a student with autism.<sup>56</sup>

98. Dr. \*\*\* \*\*\*.<sup>57</sup>

99. Dr. \*\*\* opined that she did not observe any repetitive behaviors, particularly those that interfered with  
<sup>58</sup>

100. Dr. \*\*\* said referred

102. Dr. \*\*\* ot supported by the great weight of evidence and were contradicted by evidence including:

- A. Dr. \*\*\* ;
- B. Dr. \*\*\* ;
- C. Dr. \*\*\* ;
- D. Mother ;
- E. Stepfather testimony;
- F. Parts of Ms. \*\*\* interview (teacher for \*\*\* years);
- G. Social responsiveness scales used by the FIE evaluators;
- H. The CARS;
- I. Autism Spectrum Rating Scales (ASRS)<sup>60</sup>
- J. The ADOS;
- K. \*\*\* repetitive conversations;
- L. \*\*\* and its multi- to the symptoms of autism.<sup>61</sup>

103. Discrepancies existed between the observations of Student as noted by Dr. \*\*\* and the other employees of the District, including speech pathologist \*\*\* (who confirmed that Student repeated sentences and issues across settings and across interactions between different individuals) and others who confirmed Dr. \*\*\* , including \*\*\* special education teacher), \*\*\* occupational therapist), and \*\*\* speech therapist).<sup>62</sup>

104. The District discounted the IEE for

109. The testing of Student consistently demonstrates an autism diagnosis; three psychologist diagnosed autism, Parents





1. The IDEA regulations require the school district use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student -- including information from the parent. This information is to be used to confirm the student's eligibility within the meaning of the IDEA. The information is also to be used to determine the content of

educational needs.<sup>96</sup>

**Decision: As discussed below, t  
areas required by IDEA.**

**D. Establishing/Defining Autism**

A diagnosis by a physician or psychologist does not, by itself, establish eligibility because the IDEA is educationally not diagnostically oriented.<sup>97</sup> Instead, the IDEA sets out the criteria for a finding that a child has an enumerated disability of autism and intellectual disability. Autism is defined as:

social interaction significantly affecting verbal and nonverbal communication and



## E. Individual Education Plan

In order to provide a FAPE to a student with a disability, special education is required to be tailored to the unique needs of the child by means of an individualized education plan (IEP).<sup>100</sup> The IEP is prepared at a meeting of the IEP team, which consists of (1) the child's parents, (2) at least one regular education teacher of the child, (3) at least one special education teacher of the child, (4) a representative of the public agency with appropriate authority, (5) an individual who can interpret the instructional implications of evaluation results, (6) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, and (7) where appropriate, the child himself.<sup>101</sup> In Texas, the IEP team is known as the Admissions, Review, and Dismissal (ARD) Committee.<sup>102</sup>

The FAPE, however, "need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him to benefit from the instruction."<sup>103</sup> Stated another way, the IDEA guarantees only a "basic floor of opportunity ..." for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit ...."<sup>104</sup> Still, "the educational benefit to which the IDEA refers and to which an IEP must be geared cannot be a mere modicum or *de minimis*; rather, an IEP must be likely to produce progress, not regression or trivial educational advancement."<sup>105</sup>

**Decision: As discussed below, the Hearing Officer finds the District provided FAPE and addressed all of [redacted] as a diagnosis.**

## V. DISCUSSION AND ANALYSIS

**A. The District violated the Child Find provisions of the IDEA by taking inadequate measures to identify [redacted] the District failed to identify Student as an individual eligible for services related to autism. Found for the Petitioner.**

<sup>100</sup> *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 128 (5th Cir. 1993).

<sup>101</sup> 34 C.F.R. § 300.321(a).

<sup>102</sup> *R.P. ex rel. R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 805 n.1 (5th Cir. 2012).

<sup>103</sup> *R.P. ex rel. R.P.*, 703 F.3d at 809.

<sup>104</sup> *Board of Educ. of Hendrick, Hudson Central Sch. Dist., Westchester Cnty. v. Rowley*, 458 U.S. 176, 201 (1982).

<sup>105</sup> *R.P. ex rel. R.P.*, 703 F.3d at 809.

Petitioner met the burden to overcome, by a preponderance of the evidence, the presumption that the ARD C is correct when it failed to diagnose student with autism disorder.

Distinguishing between autism and ID is difficult, and as found in this case, highly educated, well-trained, and astute experts may disagree. In fact, comorbidity with ID and autism is common, and it is the diagnosis for Student supported by the great weight of evidence offered during this hearing. This applies to the medical and the IDEA definitions for autism, although the Hearing Officer will primarily address the IDEA definitions, as they legally govern this case.

The difference in the definitions is that the medical definition, as documented in the DSM V, has a rule out exception to clarify when comorbid diagnosis should occur and when only a diagnosis of ID is appropriate. The relevant language is that autism should be included in the diagnosis only

Dr. \*\*\* and the District admittedly relied upon the rule out provision, even though it is not included in the IDEA definition of autism.<sup>106</sup> In so doing, the ARD committee found all of explained with ID. In reaching this conclusion, the evidence demonstrates that the ARD committee, and Dr. \*\*\* in particular, failed to appropriately consider the observations of other experts, a past teacher, and Mother. Dr. \*\*\* applied too much emphasis on her limited observation of D

admitting to any traits that suggested autism.<sup>108</sup> Her demeanor was defensive and she appeared to have a level of professionalism or personal reputation wrapped up in the outcome of this case. Finally, when asked if the student did not have ID, would Student be diagnosed with autism (effectively removing the rule out provision), Dr. \*\*\* could not answer. This opinion stands in sharp contrast to the testing and expert opinions of her equally educated and qualified colleagues.

A few examples of where Dr. \*\*\* perseverate beyond what is expected due to her observation of Student that it interfered with ability to i

include that Dr. \*\*\* opined Student did not ID.<sup>109</sup> It appeared that Dr. \*\*\* based this determination on repetitive behaviors were not to the degree





asked questions that were answered by the District ARD members, and made requests that were honored by the ARD committee. For example, because Petitioner disagreed with the eligibility classification of ID rather than autism, the District paid for an IEE. Parents simply disagreed with the outcome of the ARD meetings, because the District failed to find Student eligible as a child with autism. The right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such.<sup>118</sup>

Petitioner brought forth no probative evidence to support the allegation that parents were denied meaningful participation in the process. As such, Petitioner failed to meet its burden of proof on this issue.

**D. The IEP**  
*District*

*Found for the*

The educational program offered by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program bears the burden of proof in showing why the IEP is not appropriate.<sup>119</sup> This includes the burden of proof with regard to harm or a deprivation of educational benefit. The law does not require a student's educational potential be optimal or "maximized." Rather, the program must enable the student to receive some educational benefit from student's program.

The United States Supreme Court established a two-prong test for determining whether a school district has provided a FAPE. The first inquiry is whether the district has met its procedural requirements. The second inquiry is whether the district's IEP is reasonably calculated to confer an educational benefit.<sup>120</sup> An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement.<sup>121</sup> In evaluating whether an educational program is reasonably calculated to confer an educational benefit, the Fifth Circuit Court of Appeals identified four factors to consider:<sup>122</sup>

1. Is the program individualized on the basis of the student's assessment and performance?
2. Is the program administered in the least restrictive environment?
3. Are the services provided in a coordinated and collaborative manner by the key stakeholders?
4. Are positive academic and nonacademic benefits demonstrated?

<sup>118</sup> *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

<sup>119</sup> *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

<sup>120</sup> *Board of Education of Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982).

<sup>121</sup> *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

<sup>122</sup> *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); cert. denied, 522 U.S. 1047 (1998).









**VI. CONCLUSIONS OF LAW**

1. The Lewisville Independent School District (the District) is a local educational agency responsible for complying with the Individuals with Disabilities Education Improvement Act (IDEA) as a condition of funding, and the District is required to provide each

U.S.C. § 1400 *et seq.*

2. \*\*\*

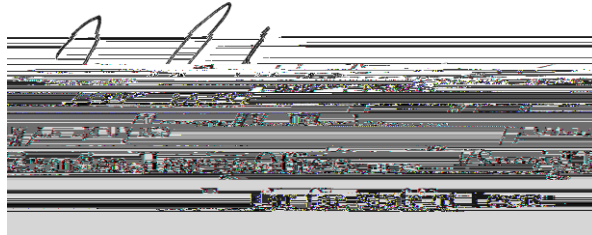
**ORDER**

After due consideration of the record, and the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer hereby **ORDERS** an ARD committee be convened and an appropriate IEP be developed with autism added as a disability addressed. All other relief requested is denied.

**NOTICE TO PARTIES**

This Decision of Hearing Officer 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(n).

**SIGNED on June 22, 2015.**

A handwritten signature consisting of the letters 'A A I' is written in black ink over a horizontal line. Below the line, there is a large, dense, and somewhat illegible block of text, likely a stamp or a large signature, which is mostly obscured by the signature line and the 'A A I' text.

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