

TEA DOCKET NO. 027-SE-1007

AMARILLO	§	
INDEPENDENT SCHOOL DISTRICT	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
STUDENT	§	FOR THE
b/n/f Parent	§	STATE OF TEXAS
Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

Appearances for Petitioner:

Andrea Slater Gulley, Esq.
Don M. Dean, Esq.
Underwood, Wilson, Berry, Stein & Johnson, P.C.
Amarillo, TX

Appearances for Respondent:

Parent (failed to appear)

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Statement of the Case

The Petitioner (district) brings this action against the Respondent¹ (child), under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. §§ 1400 et seq.). The Petitioner was permitted to prosecute the following contested claims at the Due Process Hearing:

1. Is the district's evaluation of the child appropriate and in compliance with the IDEA and state law?
2. Is the district's placement of the child in special education, based upon diagnoses of autism and speech impairment, appropriate and in compliance with the IDEA and state law?²

The Petitioner seeks declaratory relief in the form of declarations that (1) the district's evaluation is appropriate and in compliance with the IDEA and state law; and (2) the child's placement in special education is appropriate and in compliance with the IDEA and state law.³

Procedural History

The Texas Education Agency (TEA) received the Petitioner's Due Process Complaint on October 15, 2007. On October 29, 2007, this Hearing Officer conducted a prehearing teleconference with the parties. During the prehearing teleconference, among

¹ To protect the privacy of the Respondent, the Respondent is referred to as "child" in this Decision.

² The Petitioner's Due Process Complaint raises three issues for the Due Process Hearing. Claim No. 1 in the Petitioner's Due Process Complaint is "Must the District provide an Independent Education Evaluation for the Student, as requested by the Student's [next friend]?" Claim No. 1 was dismissed as moot in the Order Confirming Issues to be Adjudicated at Due Process Hearing of December 24, 2007. At the Due Process Hearing, the Petitioner confirmed its wish to pursue Claims No. 2 and 3 in its Due Process Complaint. Claims No. 2 and 3 are contested by the Respondent. See Pet'r Due Process Complaint at 3 (filed Oct. 15, 2007); Order Confirming Issues to be Adjudicated at Due Process Hearing at 2 (Dec. 24, 2007); Hr'g Tr. at 6 – 9 (Jan. 7, 2008).

³ See Pet'r Due Process Complaint at 3 (filed Oct. 15, 2007).

other things, the parties selected a mutually agreeable date for the Due Process Hearing to accommodate the scheduling needs of the child's next friend (parent).⁴

The Due Process Hearing was conducted as scheduled in Amarillo, TX on January 7, 2008. Although the Respondent's next friend had agreed to the date and had timely notice of the Due Process Hearing, the Respondent's next friend failed to appear.⁵ This Hearing Officer determined that the Petitioner has a legally cognizable interest in obtaining a ruling on its contested claims and was thus entitled to offer and solicit evidence and testimony to satisfy the Petitioner's burden of persuasion as assigned under *Schaffer v. Weast*, 546 U.S. 49, 57 – 58 (2005).⁶ At the conclusion of the Due Process Hearing, this Hearing Officer announced that the parties might submit written closing arguments after receiving the transcript of the Due Process Hearing; the parties were also provided a written notice of the opportunity to submit post-hearing statements.⁷

The Petitioner submitted its summation on January 31, 2008. The Respondent's next friend filed a status report and a notice on January 30, 2008 and February 4, 2008, respectively. The Respondent's status report and notice state that the Respondent has registered an order of a Los Angeles, California Superior Court in the Petitioner's county court system. The Respondent suggests that the Petitioner has now been enjoined from maintaining the child in special education.⁸ The Respondent, however, did not file the California order with this Hearing Officer. Without the benefit of reviewing the California order itself, this Hearing Officer cannot make any determination as to how, if at all, the order affects this case. This Hearing Officer finds that a final decision based upon the Due Process Hearing in this action should be issued in spite of the legal developments the Respondent reports.

⁴ Prehearing Conference Tr. at 14 – 19 (Oct. 29, 2007).

⁵ Due Process Hr'g Tr. at 5 – 6, 13 – 14, 157 – 58 (Jan. 7, 2008).

⁶ Due Process Hr'g Tr. at 7 – 8, 212 – 14 (Jan. 7, 2008). See also Order Confirming Issues to be Adjudicated at Due Process Hearing at 2 – 3 (Dec. 24, 2007).

⁷ Due Process Hr'g Tr. at 211 – 13 (Jan. 7, 2008); First Post-Hearing Order at 1 (Jan. 8, 2008).

⁸ The Respondent's next friend states, in part: "The order to remove [the child] immediately from special education is now a valid Texas Court Order. . . . I will expect the AISD to immediately suspend all special education services, including speech therapy." Resp't notice at 1 (filed Feb. 4, 2008).

Findings of Fact

Based upon the testimony and evidence taken on the record at the Due Process Hearing, this Hearing Officer makes the following findings of fact:

1. The child is a child with a disability under the IDEA. The child qualifies under the autism and speech impairment eligibility categories. The child needs special education services. (Hr'g Tr. at 74, 137, 143, 153, 206 – 08 (Jan. 7, 2008); Resp't Ex. 3, pp. 37 – 39, 55 – 62)
2. During the 2006-07 school year the child attended a ** program for children with disabilities (**) at an ** school in the district. (Hr'g Tr. at 111 – 12, 166 – 67, 169 – 70, 205, 208 (Jan. 7, 2008); Resp't Ex. 3, p. 55)
3. On December 15, 2006, the district held an admission, review and dismissal (ARD) committee meeting for the child. Among other things, the committee reviewed an independent educational evaluation (IEE) of the child supplied by the child's next friend (parent). The ARD committee identified additional data needed to determine and confirm the child's eligibility for special education. A full and individual reevaluation of the child was scheduled to focus on the suspected areas of disability: autism, language disorder, and attention deficit hyperactivity disorder (ADHD). The child's parents consented to the reevaluation and received notice of and information on the reevaluation. (Hr'g Tr. at 34 – 35, 64, 66 – 69, 138 – 39 (Jan. 7, 2008); Resp't Ex. 6, pp. 76 – 83)
4. In January, 2007, the district reevaluated the child using a multidisciplinary team. The reevaluation was conducted by a licensed specialist in school psychology (LSSP) and a licensed speech-language pathologist. The district's autism evaluation team consulted with the multidisciplinary team. A physician was not part of the team nor provided an "other health impairment" report as the team determined a referral was not warranted. (Hr'g Tr. at 51 – 53, 81, 146 – 47, 150, 160 – 61, 170 – 71 (Jan. 7, 2008); Resp't Ex. 1, p. 1)
5. The district's LSSP who was on the child's multidisciplinary team has education, experience and training in evaluating for autism and ADHD. The LSSP's education and training includes a master degree in school psychology and a certificate in post-graduate training in school neuropsychology. The LSSP's credentials include being a diplomate of the American Board of School Neuropsychology. (Hr'g Tr. at 73 – 74, 76 – 77, 84 – 88, 96, 146, 159 – 60 (Jan. 7, 2008); Resp't Ex. 14, pp. 105 – 06)
6. The district's speech-language pathologist who was on the child's multidisciplinary team is licensed and has education, experience and training in evaluating for speech impairments. The speech-language pathologist's

credentials include a certificate of clinical competence. (Hr'g Tr. at 73 – 74, 164 – 66, 168, 178 – 79 (Jan. 7, 2008); Resp't Ex. 15, pp. 107 – 08)

7. The Respondent completed the reevaluation report on the child on January 31, 2007. The reevaluation was properly conducted in English. The reevaluation was full and individualized as it assessed the child in the following areas: “sensorimotor,” attention/concentration, functioning, learning and memory, language, visual-spatial, intellectual/cognitive, academic, social/emotional, and assistive technology. Both of the child’s parents provided input on behavior ratings. A variety of technically sound assessment instruments were utilized to reevaluate the child; no single measure or assessment was used to determine eligibility. Assurances were made that the reevaluation complied with all required procedures and protocols. The report indicates that the child presents with characteristics consistent with high-functioning autism along with a language disorder. (Hr'g Tr. at 54 – 55, 57 – 59, 68 – 69, 73 – 75, 92, 99 – 101, 103 – 06, 111, 143 – 44, 148 – 49, 155, 171 – 80 (Jan. 7, 2008); Resp't Ex. 1, pp. 1 – 33)
8. On February 16, 2007, the Respondent conducted an ARD committee meeting. Both of the child’s parents participated in the meeting, the child’s next friend by telephone. A group of qualified professionals were also on the committee. Among other things, the ARD committee carefully considered the results of the reevaluation. The committee also carefully considered the IEE supplied by the child’s next friend (parent). The committee determined that the child qualified for special education as a child with disabilities. Specifically, the committee relied upon the findings of the reevaluation that the child has significant communication and social interaction deficits that adversely affect educational performance. The committee also relied upon the findings of the reevaluation that the child has a communication disorder that adversely affects educational performance. The committee ruled out the child having ADHD. The committee developed an individualized education program (IEP) for the child. The Respondent’s next friend (parent) disagreed with the committee’s eligibility determinations. (Hr'g Tr. at 50, 61 – 64, 150 – 53, 159 – 60, 177 – 78 (Jan. 7, 2008); Resp't Ex. 1, pp. 28 – 33; Resp't Ex. 3, pp. 37 – 66)
9. During the 2007-08 school year, the child is attending ** at an ** school in the district. The ** class is a regular class with an aide present to assist the child. The child is among children without disabilities in the ** classroom. (Hr'g Tr. at 182, 188 – 91, 197, 202 – 03, 205 – 06 (Jan. 7, 2008))
10. During the fall, 2007 semester, the child made progress on the child’s IEP goals. (Hr'g Tr. at 185 – 92 (Jan. 7, 2008); Resp't Ex. 4, pp. 67 – 69)
11. On or about September 17, 2007, the Respondent’s next friend (parent) requested an IEE at public expense.

12. On December 21, 2007, the Respondent's next friend (parent) withdrew the request for an IEE at public expense.

Discussion

Full and Individual Reevaluation

The Petitioner's first issue⁹ is whether the district appropriately evaluated the child. Under the IDEA, the first step in a reevaluation is an ARD committee review of existing evaluation data.¹⁰ During this review, the ARD committee decides what if any additional data must be collected. Under the IDEA, prescribed evaluation procedures must be followed, such as ensuring that a child is evaluated in all areas of suspected disability.¹¹ The evaluation must be conducted by a multidisciplinary team comprised of qualified personnel.¹²

Here, the district did conduct the data review and identified new data to collect on the child. These new data were collected in assessments administered in January, 2007.

The district utilized appropriate personnel to conduct the January, 2007 assessment of the child. Under the TEA regulations, an LSSP suffices if she has experience and training in the area of suspected disabilities – here, autism and ADHD.¹³ The district's LSSP who was on the child's multidisciplinary team has experience and training in assessing for autism and ADHD. Under the TEA regulations, a licensed speech-language pathologist suffices if one of the suspected disabilities is a speech or language disorder, as is this circumstance.¹⁴ The child's multidisciplinary team included a licensed speech-language pathologist.

The scope of the January, 2007 assessment included the impairments in question with respect to this child, especially autism and ADHD. A variety of instruments were employed and no single test was used to determine eligibility. The district followed all of the standard protocols for a reevaluation under the IDEA.

In conclusion, this Hearing Officer finds that the Petitioner prevails on this issue.

Placement in Special Education

The Petitioner's second issue¹⁵ is whether the district appropriately placed the child in special education. Under the IDEA, a child is a child with a disability if the child has a physical

⁹ Claim No. 2 in the Petitioner's Due Process Complaint is the first contested issue at the Due Process Hearing because Claim No. 1 in the Petitioner's Due Process Complaint was dismissed. See footnote 2 above.

¹⁰ 34 C.F.R. § 300.305(a).

¹¹ 34 C.F.R. § 300.304(c)(4).

¹² 34 C.F.R. § 300.304(c)(1)(iv); 19 Tex. Admin. Code § 89.1040(b).

¹³ 19 Tex. Admin. Code §§ 89.1040(b)(1), 89.1040(c)(1).

¹⁴ 19 Tex. Admin. Code § 89.1040(c)(10).

¹⁵ Claim No. 3 in the Petitioner's Due Process Complaint is the second contested issue at the Due Process Hearing because Claim No. 1 in the Petitioner's Due Process Complaint was dismissed. See footnote 2 above.

or mental impairment and, because of that impairment, is in need of special education.¹⁶ For a child to qualify under the autism eligibility category, the child must have a developmental disability that significantly affects communication and social interaction and adversely affects educational performance.¹⁷ For a child to qualify under the speech or language impairment eligibility category, the child must have a communication disorder that adversely affects educational performance.¹⁸

Here, the district established through the testimony of the witnesses called and exhibits offered that this child is a child with a disability under the IDEA as of the February, 2007 ARD committee meeting. Specifically, this child qualifies as a child with autism and speech/language impairment. The child's current teacher confirmed the child needs special education.

In conclusion, this Hearing Officer finds that the Petitioner prevails on this issue.

¹⁶ 34 C.F.R. § 300.8(a)(1) – (2); Tex. Educ. Code § 29.003(b)(2); 19 Tex. Admin. Code § 89.1040(a).

¹⁷ 34 C.F.R. § 300.8(c)(1)(i); 19 Tex. Admin. Code § 89.1040(c)(1).

¹⁸ 34 C.F.R. § 300.8(c)(11); 19 Tex. Admin. Code § 89.1040(c)(10).

Conclusions of Law

After due consideration of the foregoing findings of fact, this Hearing Officer makes the following conclusions of law:

1. The Petitioner, Amarillo Independent School District, conducted an appropriate reevaluation of the Respondent, STUDENT in accordance with 34 C.F.R. §§ 300.300, 300.303 – 300.305 and 19 Tex. Admin. Code § 89.1040.
2. The Petitioner, Amarillo Independent School District, appropriately determined that the Respondent, STUDENT is a child with a disability under the IDEA and appropriately placed the Respondent in special education under 34 C.F.R. §§ 300.8, 300.306, 19 Tex. Admin. Code § 89.1040, and *Alvin Indep. Sch. Dist. v. A. D.*, 503 F.3d 378 (5th Cir. 2007).

Order

Based upon the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED THAT:

1. The Petitioner shall be and is **GRANTED** a declaratory judgment that the Petitioner complied with the IDEA and TEA regulations with respect to the December, 2006 to January, 2007 reevaluation of the Respondent.
2. The Petitioner shall be and is **GRANTED** a declaratory judgment that the Petitioner complied with the IDEA and TEA regulations with respect to the February, 2007 identification and placement of the Respondent in special education.

SIGNED this 11th day of February, 2008.

/s/ Steven R Aleman _____
Steven R. Aleman
Special Education Hearing Officer

Notice

Any party aggrieved by the findings and decision of this Hearing Officer has the right to bring a civil action seeking review in a state or federal court of competent jurisdiction. The party bringing the civil action shall have no more than 90 days from the date of this Decision to file the civil action. 20 U.S.C. § 1415(i)(2), as amended; 34 C.F.R. § 300.516(a) – (b).

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SYNOPSIS

ISSUE 1: Whether the Petitioner appropriately evaluated the Respondent.

CITE: 34 C.F.R. §§ 300.300, 300.303 – 300.305; 19 Tex. Admin. Code § 89.1040

HELD: For the Petitioner. The Petitioner conducted an appropriate reevaluation of the Respondent.

ISSUE 2: Whether the Petitioner appropriately placed the Respondent in special education.

CITE: 34 C.F.R. § 300.306; 19 Tex. Admin. Code § 89.1040

HELD: For the Petitioner. The Petitioner appropriately determined that the Respondent is a child with a disability and appropriately placed the Respondent in special education.