

DOCKET NO. 265-SE-0515

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 due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.* STUDENT (Student), by next friends PARENT (Father) and PARENT (Mother) (collectively, Respondent) is the respondent. After the District conducted a Full and Individual Evaluation (FIE) of Student, Respondent requested an Independent Educational Evaluation (IEE) at public expense. The District brings this action to establish that the FIE is appropriate, and, that while Respondent may obtain an IEE at personal expense, the IEE may not be obtained at public expense. The hearing officer finds the District met its burden to prove that the FIE is appropriate.¹ Therefore, the District’s requested relief is granted.

I. DUE PROCESS HEARING REQUEST

The District filed a Request for a Due Process Hearing (Complaint) on May 8, 2015. In the Complaint, the District stated that an FIE of Student was completed in *** 2015. An Admission, Review, and Dismissal (ARD) committee meeting was held on ***, 2015, to discuss the FIE. At the end of the meeting, Mother would not check “agree” or “disagree” on the ARD signature form. On ***, 2015, Mother notified the District that she did not agree with the ARD committee decision and that she wanted an IEE for all the evaluations that were part of the FIE. The District requests that the hearing officer affirm the appropriateness of the FIE.

¹ 34 C.F.R. §§ 300.502(b)(2)-(3), .300.301, 300.303 through 300.311.

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 September 30, 2015; that their written closing arguments be submitted by October 14, 2015; and that the decision due date be extended to November 4, 2015.⁵ The request was granted, for good cause, on the record. Subsequently, the deadline for submitting written closing arguments was

² An IEE is an evaluation conducted by a qualified examiner who is not employed by the district responsible for the child's education. 34 C.F.R. § 300.502.

³ 34 C.F.R. § 300.502(b)(2)-(3).

⁴ 34 C.F.R. §§ 300.301, 300.303 through 300.311.

⁵ See Order No. 5, issued September 17, 2015, adopting the parties' requested dates.

extended to October 20, 2015, at Petitioner's request.⁶ This decision was timely rendered and forwarded to the parties on November 4, 2015.

IV. FINDINGS OF FACT

Based upon the evidence and argument of the parties, the hearing officer makes the following findings of fact:

1. Student resides with Parents within the boundaries of the District.⁷
2. The District is a recipient of federal funds and must comply with the IDEA, including conducting an FIE in compliance with IDEA requirements.
3. Student is eligible for special education services due to Student's diagnoses of autism and speech impairment.⁸
4. Student enrolled as a *** at the District's *** on ***, 2015, *** pursuant to Student's ***.⁹
5. A temporary ARD committee meeting was held on ***, 2015, in anticipation of Student's enrollment, to review Student's existing data.¹⁰
6. The temporary ARD committee determined that a reevaluation (REED) of Student needed to be completed by a multi-disciplinary team.¹¹
7. The multi-disciplinary team members are ***, Ph.D., psychologist; ***, M.Ed., Board Certified Behavior Analyst (BCBA); ***, occupational therapist; ***, speech language pathologist; ***, diagnostician; and ***, adapted physical education evaluator.
8. In *** 2015, the multi-disciplinary team completed Student's FIE.¹²

⁶ See Order No. 6, issued on October 13, 2015.

⁷ Petitioner Ex. 3 at P3-3.

⁸ Petitioner Ex. 1 at P1-2; Petitioner Ex. 3 at P3-1.

⁹ Petitioner Ex. 1 at P1-8, P1-9, P1-20; Petitioner Ex. 3 at P3-1.

¹⁰ Petitioner Ex. 1.

¹¹ Petitioner Ex. 1.at P1-1.

¹² Petitioner Exs. 1-5.

9. Multi-disciplinary team members made recommendations for related services for the ARD committee to consider when it met to review the FIE.¹³

Psychological Evaluation

10. Over the past 40 years, Dr. ***, who is a licensed specialist in school psychology (LSSP), has conducted thousands of psychological evaluations to determine eligibility and programming for special education services under IDEA, including about 800 evaluations of children with autism.¹⁴
11. Dr. ***, with his associate ***, M.A., LSSP, completed Student's psychological evaluation as part of the REED.¹⁵
12. Dr. *** obtained information from both Mother and Student's teacher for the psychological evaluation.¹⁶
13. As part of the psychological evaluation, Dr. *** reviewed 22 of Student's previous records, including other psychological evaluations, behavioral reports, and physician reports.¹⁷
14. Student was observed in the classroom on ***, 2015, by Mr. ***, and on ***, 2015, by Dr. ***.¹⁸
15. The psychological evaluation took approximately 9.5 hours to complete.¹⁹
16. As part of the psychological evaluation, Mother and ***, who is Student's teacher, completed the Adaptive Behavior Assessment System-Second Edition (ABAS-2); Social Responsiveness Scale-Second Edition (SRS-2); Gillian Autism Rating Scale-Second Edition (GARS-II); and the Childhood Autism Rating Scale-Second Edition (Standard Version)(CARS-2). Additionally, Ms. *** completed the Behavior Dimensions Scale-Second Edition (School Version) (BDS-2).²⁰

¹³ Tr. at 43 (testimony of Dr. ***); Petitioner Ex. 1 at P1-6, P1-22 (speech therapy); Petitioner Ex. 2 at P2-15, P2-16 (BCBA consultant, in-home and parent training); Petitioner Ex. 3 at P3-26 (speech therapy, in-home training); Petitioner Ex. 4 at P4-2 (occupational therapist consultant).

¹⁴ Tr. at 12-13.

¹⁵ Tr. at 20-21; Petitioner Ex. 3.

¹⁶ Tr. at 21; Petitioner Ex. 3 at P3-2, P3-3, P3-20.

¹⁷ Petitioner Ex. 3 at P3-4 through P3-18, P3-20.

¹⁸ Petitioner Ex. 3 at P3-1, P3-20 through P3-22.

¹⁹ Tr. at 23.

²⁰ Tr. at 21-22; Petitioner Ex. 3 at P3-19, P3-20, P3-22 through P3-25.

17. The tests used for Student's psychological evaluation, except for the BDS-2, were designed and normed on children and young adults on the autism spectrum and the results provided Dr. *** with normative, objective data.²¹
18. The tests used in Student's psychological evaluation were administered in accordance with their respective instruction manuals.²²
19. The psychological evaluation showed that Student continues to qualify for special education services as a child with autism due to qualitative impairments in social interaction, communication, *** and *** patterns of behavior, interests, and activities.²³
20. The psychological evaluation results are consistent with all previous testing conducted by other schools and outside evaluators.²⁴

Functional Behavioral Assessment (FBA)

21. Ms. ***, who owns the *** which offers Applied Behavior Analysis (ABA) therapy, has nearly 30 years' experience working with students on the autism spectrum who exhibit challenging behaviors. She holds a bachelor's degree in the study of exceptional students and a master's degree in behavioral interventions.²⁵
22. Over the past 20 years, Ms. *** has conducted at least 1,000 evaluations of students with autism, mainly in the field of FBAs and behavior intervention plans (BIPs).²⁶
23. Ms. *** first met Student in 2003 or 2004, when the family hired her privately to conduct an FBA, BIP, language treatment plan, and to advise them regarding therapy for Student. She worked with Student intermittently until about 2008.²⁷
24. As part of the District's multi-disciplinary team, Ms. *** conducted an FBA for Student in *** 2015.²⁸
25. In conducting her evaluation, Ms. *** obtained information from Mother and Student's teacher, and reviewed Student's records.²⁹

²¹ Tr. at 22-23.

²² Tr. at 23; Petitioner Ex. 1 at P1-14.

²³ Tr. at 24; Petitioner Ex. 3 at P3-28.

²⁴ Tr. at 24.

²⁵ Tr. at 54-55.

²⁶ Tr. at 56.

²⁷ Tr. at 56-57. Mother stated that Ms. *** first worked with Student in 2001. Tr. at 77.

²⁸ Tr. at 57; Petitioner Ex. 2.

²⁹ Tr. at 58-59; Petitioner Ex. 2 at P2-5, P2-6, P2-7.

26. Ms. *** conducted indirect observations of Student, including interviews with Mother and Student's teacher, and a review of other people's data regarding Student, and, on ***, 2015, directly observed Student for about 3 hours.³⁰
27. Ms. *** took approximately 20 hours to complete the FBA, which she conducted in accordance with the practices and procedures of her expertise.³¹
28. The FBA assessed Student across the four functions of behavior, and revealed that Student's target behaviors continue to be maintained by socially mediated negative reinforcement (escape), socially mediated positive reinforcement (tangible), and automatic positive and/or negative reinforcement.³²
29. Based upon the FBA results, Ms. *** recommended function-based interventions from the current research in ABA and recommended a medical evaluation to determine the possible effects of automatic negative reinforcement.³³
30. Ms. ***'s recommendations as contained in the BIP address ways to intervene before and when Student engages in self-injurious behavior and aggression.³⁴
31. Dr. *** deferred to the FBA and ABA, as prepared by Ms. ***, as well as making recommendations of his own, to address Student's self-injurious behavior.³⁵
32. Ms. *** has provided training to Student's teacher Ms. *** for 3 years and, in her opinion, Ms. *** is capable of working with Student behaviorally.³⁶
33. Ms. *** recommended that BCBA consultative services be available for Student's teacher, but did not determine that Student needed direct BCBA services.³⁷
34. The FBA conducted by Ms. *** is consistent with those previously prepared by other BCBA's at Student's other schools.³⁸

³⁰ Tr. at 60; Petitioner Ex. 2 at P2-1, P2-2, P2-3, P2-4, P2-5.

³¹ Tr. at 60, 65.

³² Tr. at 61-64.

³³ Tr. at 65.

³⁴ Tr. at 66-67, 94-95; Petitioner Ex. 2 at P2-8 through P2-15.

³⁵ Tr. at 29-32, 36 (testimony of Dr. ***).

³⁶ Tr. at 74-75, 87-88, 92-93; Petitioner Ex. 2 at P2-15.

³⁷ Tr. at 90, 93.

³⁸ Tr. at 74-75.

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, holds a master's degree in education, has 23 years' experience in special education, and has conducted assessments for students on the autism spectrum.⁴⁰
37. Ms. *** conducted the cognitive and achievement testing of Student for the FIE.⁴¹
38. As part of her evaluation, Ms. *** collected information from Mother and Student's teacher; reviewed Student's previous cognitive achievement assessments and FIEs; and observed Student working with Student's classroom teacher and the classroom aide.⁴²
39. Mother told Ms. *** that Student has great interest in ***.⁴³
40. Due to Student's interest in ***, and limited communication skills, Ms. *** administered the Test of Non-Verbal Intelligence, Third Revision (TONI-3), in accordance with the instruction manual.⁴⁴
41. The TONI-3 is an assessment tool nationally normed on non-verbal skills that worked with Student's strengths and keeps Student's frustration to a minimum; is not timed, which gave Student the opportunity during the assessment to continue with scheduled breaks and activities that Student was accustomed to in the school day; allowed for a more valid cognitive score because it did not penalize Student for Student's speech impairment; and kept to a minimum Student's anxiety related to change within Student's daily routine.⁴⁵
42. Student scored a *** on the TONI-3, which places Student's non-verbal cognitive ability within the low range for Student's same age peers, but is above the intellectually disabled range.⁴⁶
43. Prior to the current FIE, Student had a low score of *** on the Wechsler Intelligence Scale, of which a large portion is verbal in nature.⁴⁷

³⁹ Tr. at 76; Tr. at 45-46, 49 (testimony of Dr. ***); Tr. at 97; Petitioner Ex. 2 at 2-15, 2-16.

⁴⁰ Tr. at 148-149.

⁴¹ Tr. at 149.

⁴² Tr. at 149-151.

⁴³ Tr. at 152, 157-158.

⁴⁴ Tr. at 151, 156, 161; Petitioner Ex. 1 at P1-13, P1-14.

⁴⁵ Tr. at 151; Tr. at 25 (testimony of Dr. ***).

⁴⁶ Tr. at 152; Petitioner Ex. 1 at P1-14; Petitioner Ex. 3 at P3-18.

⁴⁷ Tr. at 152-153; Tr. at 25 (testimony of Dr. ***).

44. Ms. ***'s use of the TONI-3 was appropriate, because the TONI-3 is not verbally loaded and, therefore, more accurately measured Student's cognitive ability than the Wechsler Intelligence Scale would have.⁴⁸
45. To measure Student's achievement, Ms. *** administered the Wide Range Achievement Test, fourth edition (WRAT-4). The WRAT-4 includes four subtests: word reading, sentence comprehension, spelling, and math computation.⁴⁹
46. On the WRAT-4, Student scored in the very low range in all areas with a standard score of *** in word reading; a *** in sentence comprehension; a *** in spelling; and a *** in math computation.⁵⁰

Occupational Therapy Evaluation

47. Ms. *** is a licensed occupational therapist with board certification in occupational therapy and sensory integration, and 23 years' experience in conducting occupational therapy evaluations and providing occupational therapy services.⁵¹
48. Ms. *** completed an occupational therapy evaluation to determine Student's fine motor skills and sensory needs that might impair Student's ability to be educated.⁵²
49. As part of the evaluation, Ms. *** obtained information about Student from Mother and Student's teacher.⁵³
50. Ms. ***'s evaluation included a formal observation of Student in the classroom while Student was being instructed.⁵⁴
51. Student's assessment did not fit within standardized testing criteria, so the assessment was done via observation of Student.⁵⁵
52. The evaluation results support a recommendation that Student's main source of written task production should be *** and *** should be used for any written tasks.⁵⁶

⁴⁸ Tr. at 25-26 (testimony of Dr. ***).

⁴⁹ Tr. at 150-151; Petitioner Ex. 1 at P1-17.

⁵⁰ Petitioner Ex. 1 at P1-17, P1-18.

⁵¹ Tr. at 103-104.

⁵² Tr. at 103-104; Petitioner Ex. 4.

⁵³ Tr. at 104-105; Petitioner Ex. 4 at P4-1.

⁵⁴ Tr. at 105; Petitioner Ex. 4 at P4-2.

⁵⁵ Tr. at 106.

⁵⁶ Tr. at 106-107, 109-110; Petitioner Ex. 4 at P4-2.

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 assessment, Ms. *** obtained information from Mother, and reviewed Student's previous evaluations, including speech evaluations.⁷¹
67. As part of her assessment, Ms. *** observed Student on four different occasions for a total of about 3 hours.⁷²
68. Ms. *** administered the Peabody Picture Vocabulary Test-4 (PPVT-4), the Goldman-Fristoe Test of Articulation 2, the Functional Communication Profile-Revised, and the Pragmatic Communication Skills Protocol to evaluate Student's vocabulary skills. The tests were administered over about a month in several sessions and in accordance with the respective instruction manuals.⁷³

⁶⁵ Tr. at 139-140; Petitioner Ex. 5.

⁶⁶ Petitioner Ex. 5.

⁶⁷ Tr. at 144-147; Petitioner Ex. 1 at P1-8.

⁶⁸ Tr. at 144-147; Petitioner Ex. 1 at P1-8.

⁶⁹ Tr. at 163; *see* Summary of Speech/Language Evaluation Data at Petitioner Ex. 1 at P1-22.

⁷⁰ Tr. at 163-164.

⁷¹ Tr. at 164; Petitioner Ex. 1.

⁷² Tr. at 165.

⁷³ Tr. at 165, 167-168; Petitioner Ex. 1 at P1-5; Petitioner Ex. 3 at P3-18.

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.

⁷⁴ Petitioner Ex. 1 at P1-5; Petitioner Ex. 3 at P3-18.

⁷⁵ Tr. at 169, 185; Petitioner Ex. 1 at P1-6.

⁷⁶ Tr. at 169-170, 181, 185, 190-191, 194-195; Petitioner Ex. 1 at P1-6, P1-7.

⁷⁷ Tr. at 170; Petitioner Ex. 1 at P1-6, P1-19, P1-20, P1-21.

⁷⁸ Tr. at 170-171; Petitioner Ex. 1 at P1-6; Petitioner Ex. 2 at P2-8, P2-17.

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:

- 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
- Not use any single measure or assessment as the sole criterion for determining an appropriate educational program for Student;⁸³
- 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
- Provide or administer assessments and other evaluation materials by trained and knowledgeable personnel;⁸⁵
- Provide or administer assessments and other evaluation materials in accordance with any instructions provided by the producer of the assessments;⁸⁶
- 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
- Assess Student in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;⁸⁸

⁸¹ 20 U.S.C. § 1414(a)(2); 34 C.F.R. § 300.303.

⁸² 20 U.S.C. § 1414(b)(2)(A); 34 C.F.R. § 300.304(b)(1).

⁸³ 20 U.S.C. § 1414(b)(2)(B); 34 C.F.R. § 300.304(b)(2).

⁸⁴ 20 U.S.C. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(1)(ii).

⁸⁵ 20 U.S.C. § 1414(b)(3)(A)(iv); 34 C.F.R. § 300.304(c)(1)(iv).

⁸⁶ 20 U.S.C. § 1414(b)(3)(A)(v); 34 C.F.R. § 300.304(c)(1)(v).

⁸⁷ 20 U.S.C. § 1414(b)(3)(A)(ii); 34 C.F.R. § 300.304(c)(3).

⁸⁸ 20 U.S.C. § 1414(b)(3)(B); 34 C.F.R. § 300.304(c)(4).

- Coordinate Student's assessments with Student's prior school, in that Student transferred from *** to the District's school ***,⁸⁹
- 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
- Use assessment tools and strategies that provide relevant information that directly assists persons in determining that the educational needs of Student are provided;⁹¹
- 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
- 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

C. Parents' Opportunity for IEE

Parents of Student have the right to obtain, at public expense, an IEE conducted by a qualified examiner who is not employed by the District if Parents disagree with the District's FIE.⁹⁴ "Public expense" means that the District either pays for the full cost of the IEE or otherwise ensures that the IEE is provided at no cost to Parents.⁹⁵ If the District, as in this case, files a due process hearing request to show that its FIE is appropriate, and the hearing officer decides in the District's favor, Parents still have the right to an IEE, but not at public expense.⁹⁶

⁸⁹ 20 U.S.C. § 1414(b)(3)(D); 34 C.F.R. § 300.304(c)(5).

⁹⁰ 34 C.F.R. § 300.304(c)(6).

⁹¹ 20 U.S.C. § 1414(b)(3)(C); 34 C.F.R. § 300.304(c)(7).

⁹² 20 U.S.C. § 1414(c)(1)(A); 34 C.F.R. § 300.305(a)(1).

⁹³ 34 C.F.R. § 300.310.

⁹⁴ 34 C.F.R. § 300.502(a)-(b).

⁹⁵ 34 C.F.R. § 300.502(a)(3)(ii).

⁹⁶ 34 C.F.R. § 300.502(b)(2)-(3).

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:

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

B. Background

Student, who resides with Student's parents within the District's geographical boundaries, enrolled as a *** in the District on ***, 2015. On ***, 2015, the District held a temporary ARD committee meeting to review existing data on Student. The ARD committee determined that a new FIE needed to be completed. Mother provided written consent for the FIE, which was completed on ***, 2015. An ARD committee meeting was held on ***, 2015, and reconvened on ***, 2015, to review the FIE and consider changes to Student's IEP based upon the FIE. At the conclusion of the meeting, Mother signed the signature form but did not check whether she agreed or disagreed with the ARD committee's recommendations. She requested 5 days to review the recommendations before deciding if she agreed or disagreed with them. On ***, 2015, Mother notified the District that she did not agree with the recommendations, and further, that she wanted an IEE for all of the evaluations that were part of the FIE. The District, believing that the FIE is

⁹⁷ Petitioner initially offered eight exhibits, which were admitted over no objection because Respondent was not present and it appeared Respondent would not participate in the due process hearing. However, after Respondent appeared by telephone, and objected to Petitioner exhibits 6, 7, and 8, those exhibits were withdrawn. Tr. at 101.

appropriate, denied Mother's request and filed a request for a due process hearing to defend the FIE.⁹⁸

VII. CLOSING ARGUMENTS, ANALYSIS, AND CONCLUSION

A. Parties' Closing Arguments

1. The District

The District contends that the FIE complies with all IDEA requirements. Specifically, Student was evaluated using a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information, including information from Parents, which enabled the multidisciplinary team to determine Student's continued eligibility as a child with autism and speech impairment. The District further argues that the FIE provided the information necessary to develop Student's educational program, assessed Student in all areas of suspected disability, and was sufficiently comprehensive to identify all of Student's educational and related services needs.⁹⁹

2. Respondent

Respondent contends that the FIE did not meet standards and failed to identify all of Student's special education and related services needs. Respondent argues that the evaluators' failures led to the lack of various necessary direct related services and confined Student to the most restrictive environment.¹⁰⁰

Respondent specifically disagrees with the following aspects of the FIE:

⁹⁸ Complaint at 3.

⁹⁹ Petitioner's Closing Argument and Memorandum of Law at 9-10.

¹⁰⁰ Respondent's Closing Statement at 1.

- **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
- **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. § 304(b). In addition, Respondent asserts that Dr. *** failed to identify Student's related services needs, as required by 34 C.F.R. § 300.304(c)(6).¹⁰²
- **FBA and BIP.** Respondent states that Ms. *** failed to adequately identify Student's needs, as required by 34 C.F.R. § 300(c)(6), which should have included the related service of behavioral therapy.¹⁰³
- **Occupational Therapy.** Respondent states that Ms. *** failed to gather all relevant information for a comprehensive evaluation of Student, as described in 34 C.F.R. § 300.304(b), resulting in failure to identify Student's related service need, as required by 34 C.F.R. § 300.304(c)(6), in this case, for occupational therapy.¹⁰⁴
- **Adapted Physical Education Evaluation.** Respondent argues that the evaluation does not refer to Ms. ***'s review of Student's educational history or observations by District staff of Student at Student's former school. Therefore, Ms. *** did not gather relevant information, as required by 34 C.F.R. § 300.304(b). By failing to conduct a comprehensive assessment, Ms. *** did not identify all of Student's needs, as required by 34 C.F.R. § 300.304(c)(6), and incorrectly recommended that Student be placed in a more restrictive environment for physical education with only disabled peers.¹⁰⁵
- **Speech Evaluation.** Respondent states that Ms. *** did not review sufficient records to gather relevant information, as required by 34 C.F.R. § 300.304(b), and

¹⁰¹ Respondent's Closing Statement at 1. The regulation requires the District to use a variety of assessment tools and to gather relevant information from various sources, including from parents, in determining the content of a student's IEP.

¹⁰² Respondent's Closing Statement at 1-2. Respondent presented additional argument that Dr. *** did not comply with 34 C.F.R. § 300.321(a)(5)-(6). However, that issue is not before the hearing officer.

¹⁰³ Respondent's Closing Statement at 2.

¹⁰⁴ Respondent's Closing Statement at 3.

¹⁰⁵ Respondent's Closing Statement at 3.

did not identify Student's educational and related services needs, in compliance with 34 C.F.R. § 300.304(c)(6).¹⁰⁶

- **Review of Current Evaluation Data—Sociological.** Respondent points out that dates related to Student's *** are incomplete and inaccurate. However, Respondent presented no evidence at the due process hearing related to the completeness or accuracy of the Current Evaluation Data. The hearing officer cannot consider contentions that are not in evidence.

Respondent argues that the inadequate evaluations led to the absence of services and recommendations, which in turn will have negative consequences for Student. Respondent notes that Student is in an extremely restrictive educational setting, and unable to ***. Respondent states that Student's self-inflicted injuries continue to impact school attendance. A restrictive educational environment, Student's injuries, and Student's absences not only severely reduce the opportunity to make progress and benefit from special education, but also have a life-long impact on Student's quality of life, Respondent concludes.¹⁰⁷

B. Hearing Officer's Analysis

The District proved that the FIE is appropriate. Each evaluator testified at the due process hearing, establishing that the IDEA requirements for conducting evaluations were met. That is, the FIE was conducted in compliance with 34 C.F.R. §§ 300.502(b)(2)-(3), .300.301, and 300.303 through 300.311.

Specifically, as set out in the Findings of Fact, the multi-disciplinary team members are trained and knowledgeable. The FIE was based on a variety of assessment tools, including interviews with Mother and Student's teacher; observations of Student in Student's learning environment; and a review of Student's educational records and all previous evaluations by Student's prior schools and private evaluators. Further, tests were administered to Student in accordance with their respective instruction manuals and in a mode most likely to yield accurate information about Student.

¹⁰⁶ Respondent's Closing Statement at 3.

¹⁰⁷ Respondent's Closing Statement at 5.

In addition, at the due process hearing, Respondent presented no evidence to indicate the evaluations were inappropriate or that further testing is required. Respondent's closing argument did not point to anything in the record to support the position that the FIE was incomplete or insufficient, or that it did not comply with IDEA requirements. The hearing officer finds that Mother's disagreement with the FIE does not render the FIE inappropriate. So long as the District complied with the IDEA in conducting the FIE, the District is not required to fund an IEE. The District complied with IDEA in conducting the FIE.

C. Conclusion

The District met the required FIE procedures set forth at 34 C.F.R. §§ 300.301, 300.303 through 300.311. Therefore, the District met its burden to establish that the FIE is appropriate. Respondent is not entitled to an IEE at public expense.

VIII. CONCLUSIONS OF LAW

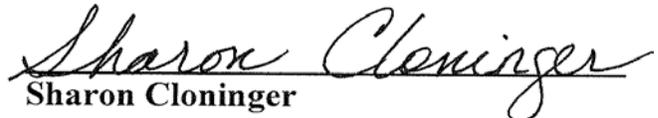
1. The District is a local educational agency responsible for complying with IDEA as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to IDEA, 20 U.S.C. § 1400 *et seq.*
2. A parent of a child with a disability is entitled, under certain circumstances, to obtain an IEE of the child at public expense, as set forth in 34 C.F.R. § 300.502(b).
3. The District bears the burden of proof on all issues raised in the proceeding. 34 C.F.R. § 300.502(b)(1),(b) (2)(i), (b)(3).
4. The District's FIE was conducted in accordance with IDEA requirements and is appropriate. 34 C.F.R. §§ 300.301, 300.303 through 300.311.
5. Because the District's FIE is appropriate, Respondent is not entitled to an IEE at public expense. 34 C.F.R. § 300.502(b)(3).

ORDER

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

The hearing officer grants the District's requested relief.

SIGNED November 4, 2015.


Sharon Cloninger
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE 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.¹⁰⁸

¹⁰⁸ 20 U.S.C. § 1451(i)(2); 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).

DOCKET NO. 265-SE-0515

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

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(b)(2)-(3), .300.301, 300.303 through 300.311.