

SOAH DOCKET NO. 701-23-13640.IDEA
TEA DOCKET NO. 196-SE-0323

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

DECISION OF THE HEARING OFFICER

*** (Student), by next friend *** (Parent, and, collectively, Petitioner)¹ brings this action against the Axtell Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The issue in this case is whether the District failed to conduct a timely full and individual evaluation (FIE) of Student. The Hearing Officer concludes that the District timely evaluated Student.

I. DUE PROCESS HEARING

The due process hearing was conducted on June 1, 2023 through the Zoom videoconferencing platform. Student was represented throughout this litigation by Student’s family.

¹ Student is *** however Student ***, contained within the case record, ***.

Parent, Student's mother ***, ***, and Student were all present for the hearing. The District was represented throughout this litigation by its legal counsel, Stephen Dubner. In addition, ***, Special Education Director, and ***, diagnostician, attended the hearing as party representatives.

The parties offered separately disclosed exhibits, some of which were admitted. Petitioner offered testimony of ***, ***, and Parent. Respondent offered testimony of ***. The hearing was recorded and transcribed by a certified court reporter. A translator was offered for the due process hearing, and all prehearing conferences, however, Parent declined the offer and all proceedings were conducted in English.² The decision in this case is due on July 13, 2023.

II. ISSUES

A. Petitioner's Issues

Petitioner alleged the following IDEA issue for decision in this case: whether the District failed to conduct a timely FIE of Student.

B. Petitioner's Requested Relief

² During a prehearing conference in a prior case between these parties, Parent explained to the undersigned Hearing Officer that Student was *** but has lived in Texas since childhood. Therefore, Student's ***.

Petitioner requested the following items of relief:

- Order the District to conduct an FIE of Student.
- Order the District to provide admission, review, and dismissal (ARD) committee, documents, consent forms, and procedural safeguards in *** and English.
- Order the District to explain the consent forms to Parent.
- Order the District to reimburse Parent for *** homeschooling program.

C. Respondent's Legal Position

Respondent generally and specifically denied Petitioner's factual allegations and legal claims. Respondent asserted the two-year statute of limitations. Respondent asserted pleas to the jurisdiction for Petitioner's non-IDEA claims, which were granted in Order No. 3. Respondent asserted additional defenses of failure to exhaust administrative remedies, failure to state a claim, and previous settlement. Respondent also requested a ruling that Petitioner's filing is frivolous, unreasonable, and without foundation.

III. FINDINGS OF FACT

1. Student is *** years old. Student has not attended school in the District since Student was withdrawn in January 2019, during Student's *** grade year, to be homeschooled. At that time, Student was eligible for special education and related services based on other health impairment, ***, and ***.³
2. The District completed an FIE on Student in the 2016-2017 school year, when Student was in *** grade.⁴

³ Respondent Exhibit (RE) 2 at 1; RE 4; RE 42 at 1.

⁴ RE 1.

3. Consent for a reevaluation was discussed at an ARD Committee meeting held on December ***, 2018, shortly before Student was withdrawn from the District. Parent did not sign consent.⁵
4. In October 2019, near the deadline for a three-year re-evaluation, the District sent Parent a letter indicating willingness to conduct an evaluation if Parent consents. The District did not receive a response.⁶
5. In June 2021, an advocate acting on behalf of Petitioner contacted the District and requested an updated FIE for Student, and a *** translator for Parent. Parent had never previously requested *** translation. The District had back and forth correspondence with Petitioner's advocate about the consent process.⁷
6. However, in September 2021, Parent ultimately returned the consent paperwork indicating that he did not consent to the FIE. Consent paperwork had been provided in English and ***.⁸
7. On September ***, 2021, the District sent follow-up correspondence in English and *** indicating the District's willingness to conduct an FIE with Parent's consent.⁹
8. In March 2022, the District received a complaint filed by Parent through the TEA complaint resolution process. Thereafter, the District again sent correspondence in English and *** indicating a willingness to conduct an FIE and hold a meeting with Parent to discuss Parent's questions about the evaluation with the assistance of a *** translator. Parent did not agree to the meeting offer, or subsequent meeting offers, or provide consent.¹⁰

⁵ RE 2 at 38; Petitioner Exhibit (PE) 85; PE 86.

⁶ RE 6.

⁷ RE 8; Transcript (Tr). 69, 78-79, 85-88.

⁸ RE 15; RE 16.

⁹ RE 19.

¹⁰ RE 20; RE 21; RE 22; RE 23; RE 25; RE 29; RE 30; Tr. 94-96.

9. On June ***, 2022 and July ***, 2022, Parent sent emails to District staff requesting paperwork for an FIE, but also indicating that he would only consent to academic assessment, not assessment in all other areas.¹¹
10. On August ***, 2022, the District sent a letter in English explaining that an FIE requires assessment in all areas, not just academic, and that the District remains willing to conduct an FIE with Parent consent.¹²
11. On September ***, 2022, Parent returned signed consent paperwork to District staff, however Parent had checked “no” on various boxes on the forms and made notations indicating that he was not giving full, voluntary consent.¹³
12. On September ***, 2022, the District sent correspondence in English and *** explaining that the forms Parent returned did not provide consent, that the District remains ready, willing, and able to conduct an evaluation, and to meet with Parent to discuss his questions about evaluations.¹⁴
13. On October ***, 2022, Parent sent another email requesting an only academic evaluation.¹⁵
14. Subsequent to the filing of the present Complaint, in March 2023, Parent provided consent for an FIE.¹⁶
15. An FIE of Student was completed, report dated April ***, 2023, concluding that Student still meets eligibility criteria as a student with *** and ***.¹⁷

¹¹ RE 34; RE 35.

¹² RE 36.

¹³ RE 37; Tr. 64-65, 106-08.

¹⁴ RE 38.

¹⁵ RE 39.

¹⁶ RE 40.

¹⁷ RE 42 at 15.

IV. DISCUSSION

Petitioner alleges that the District failed to conduct a timely FIE of Student. The timeframe for Petitioner's claims begins on March 2, 2021. Petitioner's Complaint was filed on March 2, 2023. Respondent asserted the two-year statute of limitations. Petitioner did not plead any exceptions to the two-year statute of limitations. Therefore, Petitioner was required to bring claims within two years of when Petitioner knew or should have known (KOSHK) about the actions that form the basis of the complaint. The evidence has not established that the KOSHK accrual date is any later than two years backward from the date of filing. Therefore, the timeframe for the claims at issue here begins on March 2, 2021. *See, e.g., Hooker v. Dallas Indep. Sch. Dist.*, 2010 WL 4025776, *10-
*11 (N.D. Tex. 2010).

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the District's actions. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show that the District failed to timely reevaluate Student. *Tatro v. State of Tex.*, 703 F.2d 823, 830 (5th Cir. 1983), *aff'd in part, rev'd in part sub nom. Irving Indep. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984), and *vacated in part*, 741 F.2d 82 (5th Cir. 1984).

B. Evaluations

Petitioner alleges that the District failed to timely conduct an FIE. Generally, a school district must re-evaluate a student with a disability when the school district determines it is warranted or when a parent or teacher requests it. 34 C.F.R. § 300.303(a). A school district must re-evaluate a student

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with a disability at least every three years unless the school district and parent agree that an evaluation is unnecessary. 34 C.F.R. § 300.303(b)(2). Evaluations must be sufficiently comprehensive to identify all of a student's special education and related services needs. 34 C.F.R. § 300.304(c)(6). Any initial or reevaluation requires a school district to obtain informed consent from parents. 34 C.F.R. § 300.300. Informed consent means that:

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or through another mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

34 C.F.R. § 300.9. If a parent refuses to consent to a reevaluation, a school district may, but is not required to, pursue consent override procedures. 34 C.F.R. § 300.300(c)(1)(ii).

During the relevant timeframe, the District made many overtures in Parent's native language, as well as English, attempting to obtain informed consent for a reevaluation of Student, which Petitioner repeatedly rebuffed. The District was not able to meet with Parent and obtain informed consent until after this case was filed. Petitioner's arguments in this case have primarily focused on why Parent does not trust the District and did not want to provide consent or attend the District's proposed meetings to discuss the consent. Petitioner has not met Petitioner's burden to show that the District failed in its obligations to reevaluate Student. The District was not able to evaluate until consent was provided, and once consent was provided, the District conducted a timely evaluation.

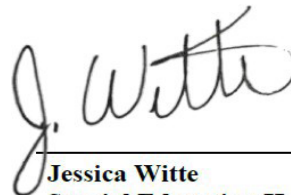
V. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the District's actions. *Schaffer*, 546 U.S. at 62.
2. The District timely reevaluated Student in all areas of suspected disability. 34 C.F.R. §§ 300.303, 300.304.

VI. ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.

SIGNED June 23, 2023.



Jessica Witte
Special Education Hearing Officer
For the State of Texas

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VII. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions 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. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516(a); 19 Tex. Admin. Code § 89.1185(n).