

SOAH Docket No. 701-23-21356.IDEA
TEA Docket No. 316-SE-0623

**Before the
State Office of Administrative
Hearings**

—
**Hardin-Jefferson Independent School District,
Petitioner**

v.

**STUDENT, by next friends PARENT and PARENT,
Respondent**

DECISION OF THE HEARING OFFICER

Hardin-Jefferson Independent School District (Petitioner or the District) brings this action against *** (Student), by next friends *** and ***, (Parents or, collectively, Respondent), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing state and federal regulations. The issue presented in this case is whether the District's evaluation of Student was appropriate.

The Hearing Officer concludes the District's April 28, 2023 reevaluation is appropriate and Respondent is not entitled to a publicly funded independent educational evaluation (IEE).

I. DUE PROCESS HEARING

The due process hearing was conducted on November 8, 2023, via the Zoom videoconferencing platform. Petitioner was represented throughout this litigation by its legal counsel, Geneva Jones with Geneva Jones & Associates. In addition, ***, Director of Special Programs; Dr. ***, Assistant Superintendent; and ***, ***, principal; attended the hearing as the party representatives. Respondent was represented throughout this litigation by its legal counsel, Michael O'Dell of the Law Office of Michael O'Dell.

The parties offered separately disclosed exhibits. Petitioner's eleven exhibits were admitted without objection. Petitioner offered testimony of Student's ***, principal; the District's contracted licensed specialist in school psychology (LSSP); Student's ***, grade general education classroom teacher; and a District dyslexia specialist.

Respondent offered five exhibits; two were admitted without objection, two were admitted over objection, and one was not admitted after objection. Respondent offered testimony of ***, (Parent). Both parties timely filed written closing briefs. The Decision of the Hearing Officer is due on February 20, 2024.

II. ISSUES

The relevant time period is the 2022-23 school year. Petitioner raised the following issue for decision in this case:

Whether the District's reevaluation (dated April ***, 2023) of Student is appropriate.

III. REQUESTED RELIEF

A. Petitioner's Requested Relief

An Order establishing the District's reevaluation was appropriate and any IEE privately obtained by Respondent is at Respondent's expense.

B. Respondent's Requested Relief

The District fund an IEE for Student.

IV. FINDINGS OF FACT

Student's Educational History

1. Student enrolled in the District in the 2015-2016 school year in ***. Student attended *** Independent School District (ISD) in the 2016-2017 school year and until September ***, 2018. In 2017, *** ISD

found Student was eligible for special education services as a student with autism and a speech impairment.¹

2. After withdrawing from *** ISD, Student attended a full day Applied Behavior Analysis (ABA) therapy program. Student returned to *** ISD for the 2020-2021 school year. *** ISD conducted a reevaluation on August ***, 2021. The reevaluation determined Student did not meet criteria as a student with an intellectual disability. In an addendum to the reevaluation dated October ***, 2021, they also determined Student did not meet criteria as a student with a specific learning disability and did meet the criteria for ***. Student never received special education services for ***.²
3. Student attended *** Independent School District for the 2021-2022 school year as a *** grader in their virtual program. Student reenrolled in the District on March ***, 2022. Prior to reenrolling in the District, Student had attended school virtually for almost four years. The District continued the prior school district's eligibility determinations of autism and speech impairment. Student has a history of low performance in the areas of expressive, receptive, and pragmatic language. Student's full-scale IQ is ***.³
4. The District delivered reading instruction to Student using the reading program *** for special education students. As part of a prior settlement agreement, the District also provided Student with one-on-one instruction from the dyslexia specialist from December 2022 to May 2023, four days a week for thirty minutes each session using the *** program.⁴
5. Student struggles with reading comprehension, especially for stories with unfamiliar subjects. Student is a bright child, can call words fluently, and can

¹ Respondent's Exhibit (RE) 2 at 9; RE 3 at 1, 2; Tr. at 50.

² Petitioner's Exhibit (PE) 9 at 2; RE 3 at 1-2, 15, 40-41 **these pages are not numbered, but the number cited is based on continuation of the page numbers in the exhibit.

³ PE 9 at 1-2; RE 2 at 9; Transcript (Tr.) at 13-14.

⁴ PE 7 at 1; Tr. at 17, 128, 136.

spell, while oral language, listening comprehension, and the ability to verbalize are weaknesses.⁵

2022-23 School Year

6. During the 2022-2023 school year, Student's *** grade year, Student read at a *** grade level. Student did not meet State of Texas Assessment of Academic Achievement and Readiness (STAAR) grade level scores in *** for spring 2022 and spring 2023 testing.⁶
7. On February ***, 2023, Parents requested a dyslexia evaluation. The District sent Parents a notice of proposal to evaluate Student for motor abilities and academic performance on February ***, 2023. Parent signed consent for evaluations the same day, but hand wrote the consent was specific to only dyslexia and ***.⁷
8. The District contracted LSSP conducted a dyslexia reevaluation dated April ***, 2023. The dyslexia evaluation is labeled a reevaluation because Student already received a full and initial evaluation, and this was a subsequent evaluation. The evaluator has extensive background and training in conducting dyslexia evaluations. The reevaluation directly addressed the condition of dyslexia, which can be considered a specific learning disability under the IDEA.⁸
9. The sources of data for the reevaluation included: a review of Student's educational records; a review of a prior district's evaluation data and a private evaluation; teacher input; dyslexia specialist input; classroom observations; and formal testing. The formal testing instruments used were the Comprehensive Test of Phonological Processing-Second Edition (CTOPP-2); the Gray Oral Reading Test, Fifth Edition (GORT-5); and the

⁵ PE 7 at 1; Tr. at 132.

⁶ RE 6; RE 7; Tr. at 113.

⁷ PE 7 at 1; PE 8 at 1; PE 9 at 1; Tr. at 48.

⁸ PE 9 at 1-2; Tr. at 42, 76-77.

Kaufman Test of Educational Achievement, Third Edition (KTEA-3). The reevaluation also included progress information from the District dyslexia specialist who worked directly with Student.⁹

10. The testing was conducted in English, Student's native language. The standardized tests used were not discriminatory and were administered in accordance with the manufacturer's instructions.¹⁰
11. In the Texas Education Agency (TEA) dyslexia handbook, three questions must be answered to make an eligibility determination regarding dyslexia. The first is whether the data shows the following characteristics of dyslexia: difficulty with accurate and/or fluent word reading, poor spelling skills, and poor decoding ability. As part of the reevaluation, Student successfully decoded phonetically regular words and nonsense words at an average rate for a student Student's age; Student's reading rate fell in the poor range; with very poor reading fluency; and below average for spelling. Because of the weaknesses Student displayed, the evaluator determined Student exhibited the characteristics of dyslexia.¹¹
12. The second question is whether the difficulties from question one result from a deficit in the phonological component of language. Student's scores indicated Student has an understanding of letters and sounds along with the ability to manipulate those sounds. Student appeared to have a foundational knowledge in the phonological component of language needed to decode and spell.¹²
13. The third question is whether the difficulties are unexpected for the student's age in relation to the student's other abilities and provision of effective classroom instruction. The evaluator determined Student's

⁹ PE 9 at 1-2, 9.

¹⁰ PE 11 at 41.

¹¹ PE 9 at 5; PE 11 at 41; Tr. at 69.

¹² PE 9 at 5; PE 11 at 41.

difficulties were not unexpected due to Student's autism, difficulties with language development, and overall comprehension difficulties.¹³

14. Student's language skills were extremely low and significantly delayed in previous and current evaluations. Listening comprehension scores obtained in the reevaluation were consistent with previous evaluations and are important in dyslexia testing because it tests whether the deficit exists in the absence of print. Student's reading comprehension scores are low and have historically been low. Student's difficulty is not primarily the result of phonological awareness, basic reading, or reading fluency; it is comprehension that is difficult for Student. Student's comprehension is impacted by Student's cognitive skills, not because Student does not read words accurately or fluently.¹⁴
15. The evaluator concluded Student did not meet the criteria as a student with dyslexia, ***, or any disorders related to dyslexia. Even though the evaluator did not specifically test for ***, she came to this conclusion because the testing was comprehensive and based her determination on Student's difficulties with comprehension, language deficits, and Student's autism.¹⁵
16. The evaluator recommended the following strategies to assist Student with reading comprehension: access and build background knowledge; create mental images using visualization strategies; make connections; engage in consistent discussions and questioning strategies; and summarize understanding.¹⁶
17. On May ***, 2023, Parent sent the District Parent's request for an IEE. Parent disagreed with the District's determination Student did not have dyslexia, ***, or other disorders related to dyslexia. Parent claimed the LSSP's dyslexia reevaluation conclusions lacked support and conflict with findings of

¹³ PE 9 at 5-6; PE 11 at 41.

¹⁴ PE 9 at 6; Tr. at 70-71, 97.

¹⁵ PE 9 at 5-6.

¹⁶ PE 9 at 6-7.

recent reports from various sources. Parent complained the LSSP did not display knowledge of the dyslexia handbook, failed to make appropriate recommendations, and was not concerned with the “ramifications” her report would have on Student’s educational programming. Parent was not contacted by the District contracted LSSP to provide input and the LSSP did not seek input from Student’s private dyslexia therapist for the District’s reevaluation.¹⁷

18. The District filed this suit on June 12, 2023, seeking a determination its evaluation was appropriate.¹⁸

V. DISCUSSION

A. Burden of Proof

When a parent disagrees with a district’s evaluation, they have a right to request an IEE at public expense. 34 C.F.R. § 300.502(b)(1). Once a parent requests the IEE, a district must, without unnecessary delay, either file a due process complaint to request a hearing to show that its evaluation is appropriate; or ensure that an IEE is provided at public expense. *Id.* at (b)(2). In this case, the District filed, without unnecessary delay, this suit seeking a determination from the hearing officer that its April ***, 2023 reevaluation was appropriate. Therefore, the burden of proof is on the District.

¹⁷ PE 10 at 1-3; Tr. at 159.

¹⁸ Petitioner’s Complaint p. 2.

B. Evaluation under the IDEA

In conducting an evaluation under the IDEA, a school district must (1) use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's IEP; (2) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability and for determining an appropriate educational program for the child; and (3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C.F.R. § 300.304(b).

Additionally, the evaluation materials used must be: (1) selected and administered so as not to be discriminatory on racial or cultural bias; (2) provided and administered in the child's native language; (3) used for the purposes for which the assessments or measures are valid and reliable; (4) administered by trained and knowledgeable personnel; and (5) administered in accordance with instructions. 34 C. F.R. § 300.304(c)(1).

Here, the question is whether the District conducted an appropriate dyslexia evaluation of Student. According to the TEA Dyslexia Handbook, a formal evaluation should include both formal and informal data, examine classroom reading performance, educational history, and early language experiences. The Dyslexia Handbook: Procedures Concerning Dyslexia and Related Disorders, 2021

Update, at 27 (Texas Education Agency, Sep. 2021). Additionally, information collected from parents may provide valuable insight into a student's language development. *Id.* The Handbook also recommends the multi-disciplinary evaluation team include members with specific knowledge regarding: the reading process, dyslexia and related disorders, and dyslexia instruction. *Id.*

Dyslexia means a disorder of constitutional origin manifested by a difficulty in learning to read, write, or spell, despite conventional instruction, adequate intelligence, and sociocultural opportunity. Tex. Educ. Code §§ 38.003(d)(1)-(2). The primary reading/spelling characteristics of dyslexia are difficulty reading words in isolation, difficulty accurately decoding unfamiliar words, difficulty with oral reading (slow, inaccurate, or labored without prosody), and difficulty spelling. The Dyslexia Handbook at 1 (Texas Education Agency, Sep. 2021). The consequences of dyslexia may include variable difficulty with aspects of reading comprehension, variable difficulty with aspects of written language, and limited vocabulary growth due to reduced reading experiences. *Id.* at 2.

The evidence showed the District's dyslexia reevaluation met the requirements of the IDEA and the Dyslexia Handbook. The District contracted LSSP who conducted Student's dyslexia reevaluation has specific knowledge of the reading process, dyslexia, and dyslexia related disorders. The tests used were valid and reliable, tailored to assess specific areas of need, administered in a matter that was not racially or culturally discriminatory, included multiple measures of Student's reading abilities, were administered in accordance with the instructions in the evaluation materials, and were provided in Student's native language,

English. Additionally, the LSSP observed Student in the classroom and reviewed Student's progress with the District dyslexia specialist who worked directly with Student. The evaluation found that Student has characteristics of dyslexia. However, the evaluator concluded that Student does not have dyslexia because Student's reading difficulties are not unexpected due to Student's autism, which results in difficulties with language development and overall comprehension.

While the evaluator did not use current parent input, she reviewed parent input from Student's educational records. No evidence exists to suggest the lack of current parental input changes the validity of the evaluation. The LSSP reviewed Student's past evaluations from a prior school district and a prior private evaluation. Like the prior evaluators, the District LSSP determined Student does not have dyslexia and never received special education services as a student with dyslexia or a specific learning disability.

Respondent argues in its closing brief that the dyslexia reevaluation should have been an evaluation for a specific learning disability and is therefore invalid. However, the credible evidence and testimony indicates that the reevaluation fully assessed whether Student has dyslexia. In fact, Parent specifically requested a dyslexia evaluation on the consent for evaluation Parent signed. Despite concluding that Student does not have dyslexia, the evaluator nonetheless provided recommendations to assist Student with Student's reading comprehension deficits. Respondent also did not present any evidence or witness that challenges the validity of any portions of the District's reevaluation or other evidence indicating that it was not comprehensive.

The weight of the credible evidence showed that, while Student displays some characteristics of dyslexia, Student has average phonological awareness, and Student's reading deficits are due to Student's difficulties with language development, overall comprehension, and Student's autism. The hearing officer therefore concludes the District's April ***, 2023, reevaluation from was appropriate.

VI. CONCLUSIONS OF LAW

1. The evaluation provided by the District complied with all requirements under the IDEA and the dyslexia handbook. 34 C.F.R. § 300.304 and Dyslexia Handbook (2021 update).
2. Respondent is not entitled to an IEE at public expense. 34 C.F.R. § 300.502(b)(1)-(2).

VII. ORDER

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

SIGNED February 12, 2024.

ALJ Signature:



Kasey White

Presiding Administrative Law Judge

VIII. 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; 19 Tex. Admin. Code § 89.1185(n).