

DOCKET NO. 262-SE-0419

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

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, Northwest Independent School District (school district or Petitioner) brings this action against Student b/n/f Parent and Parent (Student or collectively, Respondent) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et. seq, and its implementing state and federal regulations. The sole issue in this case is whether the school district’s Full Individual Evaluation (FIE) was appropriate within the meaning of the IDEA and therefore whether Student’s parents are entitled to an Independent Educational Evaluation (IEE) at school district expense. The hearing officer concludes the school district’s FIE met the requirements of the IDEA and Student’s parents are therefore not entitled to an IEE at public expense.

II. PROCEDURAL HISTORY

A. Continuances and Extension of Decision Due Date

There was a single continuance in this case and extension of the decision due date at Respondent’s unopposed request to allow Respondent time to secure an IEE and to provide the parties with more time to prepare for the due process hearing. At the end of the due process hearing the parties requested a few extra days to submit written closing arguments with access to the hearing transcript and an extension of the decision deadline. The parties requested a closing

argument deadline of October 15, 2019, with an extension of the decision deadline to October 29, 2019. An order granting that request was issued on September 16, 2019.

B. Legal Representatives

Petitioner was represented throughout this proceeding by its legal counsel Cynthia Buechler with the law firm of Buechler & Associates. Respondents were initially self-represented by Student's parents *** and ***, until August 9, 2019 when Devin Fletcher with the Cuddy Law Firm entered an appearance for Respondents.

C. Resolution Session and Mediation

The parties met in a resolution session on May 9, 2019 but it was not successful. The parties declined mediation.

III. DUE PROCESS HEARING

The due process hearing was conducted on September 12, 2019. Petitioner continued to be represented by its legal counsel, Cynthia Buechler. ***, Executive Director of Special Education, was also present as the Petitioner's party representative. Respondents were represented by their legal counsel Devin Fletcher. Student's parents, *** and ***, also attended the due process hearing. The hearing was recorded and transcribed by a certified court reporter. Both parties filed written closing arguments in a timely manner. The Decision in this case is due October 29, 2019.

IV. ISSUES

A. Petitioner's Issue:

The single legal issue in this case is whether the school district's FIE is appropriate within the meaning of the IDEA and, if so, whether Student's parents are entitled to an IEE at school district expense.

B. Petitioner's Requested Relief

Petitioner requests findings of fact and conclusions of law in the school district's favor; i.e., that the school district's recent FIE is appropriate under the IDEA and that Student's parents are not entitled to an IEE at school district expense.

C. Respondent's Legal Position

Respondent contends the school district failed to evaluate Student in all areas of suspected disability, specifically for an emotional disturbance. Respondent further contends the school district's FIE reached an erroneous conclusion that Student did not meet any IDEA criteria as a student with a disability or exhibit a need for special education.

V. FINDINGS OF FACT

1. Student enrolled in the school district in the 2018-19 school year at ***. Student was placed in a regular education ***.¹ Student (age *** at the time of Student's enrollment) lived with Student's parents, ***.² Student's father travels frequently, which impacts Student's behavior at home.³ Student did not attend any kind of *** program before enrolling in the school district.⁴
2. Before school began, Student's mother communicated with one of the campus educational diagnosticians to request services for Student in the general education classroom. Student's mother referred to an outside evaluation conducted in February 2018 that assessed Student for autism, sensory disorders and separation anxiety.⁵ Student's mother was especially

¹ Petitioner's Exhibit 1, pages 1, 4 (referred to hereafter as P.__: __).

² P.1:1,9.

³ P.1:4.

⁴ Transcript, Volume I, page 266 (referred to hereafter as Tr. I: __.)

⁵ Tr. I: 27-28.

- concerned Student would have a lot of difficulty separating from her on the first day of school.⁶ The educational diagnostician (diagnostician) explained an evaluation would be required before services could be provided.⁷ The school counselor also conferred with Student's mother before school began. Student's mother also shared her concerns with the counselor that Student would be very anxious about coming to school.⁸
3. The February 2018 outside evaluation diagnosed Student with separation anxiety disorder, generalized anxiety disorder, and other specified neurodevelopmental disorder based on symptoms associated with Autism Spectrum Disorder. The February 2018 outside evaluation did not diagnose Student as a child with autism.⁹ The sources of data for the February 2018 outside evaluation were primarily parent information and clinical testing. The 2018 February outside evaluation did not include information related to Student's abilities in a school environment.¹⁰
 4. The diagnostician waited to greet Student and Student's parents on the first day of school based on her conversation with Student's mother and parental concerns about possible separation anxiety. The diagnostician missed Student's arrival so she went to Student's assigned *** classroom and saw Student already situated and putting Student's supplies away. The school counselor was also in the *** wing and walked Student's parents to the library for a *** parent meeting. Student exhibited no signs of anxiety or any concerns with Student's parents leaving and appeared happy.¹¹ At lunch that day Student sat at Student's table, asked for help opening something, talked with other students, and did not express a need for use of *** sent from home.¹²
 5. The diagnostician also checked on Student at the weekly *** assembly known as "****." *** can be loud ***. Student did not request Student's *** when they were offered. Student was like any other *** student at Student's first ***, ***.¹³
 6. Over the first two weeks of school the diagnostician monitored Student to make sure Student was adjusting to school. Student intermingled with Student's peers and ***. The diagnostician did not observe any behavioral or emotional concerns.¹⁴
 7. The school district conducted a FIE and issued a report on November ***, 2018. The

⁶ Tr. I: 29.

⁷ Tr. I: 28.

⁸ Tr. I: 264.

⁹ Respondent's Exhibit 1, pages 14-15 (referred to hereafter as R. __: __).

¹⁰ R.1:1; Tr. I: 124, 126.

¹¹ Tr. I: 30-31, 265.

¹² Tr. I: 31.

¹³ Tr. I: 31-32.

¹⁴ Tr. I: 32.

purpose of the FIE was in response to a parental request to determine whether Student was eligible for special education and related services as a student with autism, a speech impairment, and sensory disorders.¹⁵

8. The FIE was conducted by a seven member multi-disciplinary team including two educational diagnosticians, a licensed specialist in school psychology (LSSP), an occupational therapist, a speech/language pathologist, the school nurse, and the *** classroom teacher.¹⁶ Each member of the multi-disciplinary team had extensive expertise in evaluating students in their area of discipline.¹⁷ Student's *** teacher, who provided a significant amount of information to the team, is a qualified, certified teacher with six years of teaching experience.¹⁸
9. Following a routine vision screening conducted by the school nurse, Student was prescribed glasses by Student's eye doctor on September ***, 2018.¹⁹ Student began wearing the glasses to school shortly thereafter. The FIE included information about Student's vision and hearing abilities. Student's vision was within normal limits with correction. Student's hearing was within normal limits unaided.²⁰ Student needs to wear Student's glasses for school.²¹
10. Student's native language is English and Student's academic language is also English.²² There were no cultural, linguistic, or experiential factors that influenced Student's learning or behavior patterns.²³
11. A speech/language evaluation was a component of the FIE conducted by a licensed, certified speech/language pathologist.²⁴ The speech/language pathologist has nine years of experience evaluating children for autism. Autism is a communication-based diagnosis, a deficit in non-verbal, behavioral communication. Children with autism exhibit significant deficits in behaviors and/or verbal communication. The role of the speech/language pathologist in an autism evaluation is to assess any communication deficits including expressive, receptive and pragmatic (i.e. social) language skills.²⁵

¹⁵ P.1:1, 4; Tr. I: 32- 33.

¹⁶ P.1:1-2; Tr. I: 32-33.

¹⁷ Tr. I: 28, 69, 121-22, 180-81.

¹⁸ Tr.I:84.

¹⁹ P.1: 5, 6; P.13:7.

²⁰ P.1:4.

²¹ P.1:44.

²² P.1:2.

²³ P.1:9.

²⁴ P.1:3; Tr. 1:69.

²⁵ Tr. I: 69-70.

12. The speech/language evaluation included the *** Scales (5th Edition) (***-5), classroom observations, and a speech/language sample.²⁶ Student was compliant and followed all directions. The ***-5 was chosen because it assesses expressive, receptive and pragmatic language in the natural environment. Student's expressive, receptive and pragmatic language skills were developmentally appropriate. The test was administered in accordance with the instruction manual. Student demonstrated appropriate eye contact throughout the testing.²⁷
13. The speech language pathologist also conducted two formal observations and many other informal observations of Student in a variety of settings at school.²⁸ The speech/language pathologist has experience working with students who have generalized anxiety and separation anxiety. She did not observe any characteristics of either with Student. Student was a typical *** student.²⁹ The observations showed Student was polite, followed directions in the classroom with some prompting and redirection, and communicated in sentences with peers and adults.³⁰
14. The speech/language evaluation concluded Student did not meet criteria as a student with a speech impairment or demonstrate the need for speech/language therapy as a related service.³¹ However, the FIE also included a set of recommendations to assist Student in further development of communication skills that could be implemented in the *** classroom.³²
15. An evaluation by an Occupational Therapist to determine whether Student has sensory processing deficits was recommended by the February 2018 outside evaluation.³³ An occupational therapy (OT) assessment was a component of the FIE conducted by a licensed, certified occupational therapist.³⁴ The occupational therapist has conducted thousands of OT evaluations over her 20 years of experience. The purpose of the OT evaluation was to determine if Student exhibited any sensory components of autism that may interfere with Student's education.³⁵ The OT evaluation included: a teacher interview by questionnaire, a parent interview by questionnaire, formal observations, and administration of three instruments: a Sensory Profile 2 School Companion, *** School

²⁶ P. 1:2-3.

²⁷ Tr. I: 71-73; P.1:3.

²⁸ Tr. I: 72-73

²⁹ Tr. I: 73-74.

³⁰ P.1:3.

³¹ P.1:3.

³² P.1:46.

³³ R. 1:16.

³⁴ P.1:2; Tr. I: 180-81, 182.

³⁵ Tr. I: 181.

Checklist, and a School Checklist for OT.³⁶

16. The *** teacher completed the School Age Checklist for OT and saw no academic difficulties although she noted Student was sensitive to the sounds of ***. The *** teacher also completed the *** School Checklist. She noted Student was independent with regard to classroom activities, in the cafeteria, and during ***. Student was also able to ***, but *** at times to address Student's sensitivity to the *** sound. Student played on the playground equipment although Student's locomotor abilities were described as bulky and somewhat uncoordinated. Student was able to organize materials, use bilateral materials, and exhibited an appropriate attention span for instruction.³⁷
17. On the Parent Questionnaire Student's mother reported Student suffered from ***, ***, Autism, hyperactivity, separation anxiety, generalized anxiety, and a hearing sensory disorder. Parental concerns were Student's handwriting and Student's aggressive behavior towards Student's ***,³⁸ She reported Student hit people and threw objects at family members when angry.³⁹
18. Student's mother also described Student as extremely loving, very protective of Student's ***, and extremely inquisitive with an active imagination. Her goals for Student were to (i) learn how to express Student's feelings; (ii) learn to be comfortable in new situations and routines; and (iii) learn to be "OK" with new sounds.⁴⁰
19. The OT assessment also included five formal observations throughout the school day, on different school days and across different settings on the campus: the general education classroom, the *** classrooms (i.e., ***), lunch, ***, in the hallway and in the library.⁴¹ She too observed Student at *** but did not see Student *** or exhibit any behavioral overreactions.⁴²
20. The OT evaluation included the Beery-Buktenica Developmental Test of Visual Motor Integration (VMI-R). This test was chosen because it is known as the "gold standard" for assessing sensory issues. It was administered in accordance with the instruction manual. Student wore Student's glasses during this assessment. Student's overall performance on the VMI-R was in the average range and Student's ocular motor abilities were intact.⁴³

³⁶ P. I: 2, 4.

³⁷ P. 1: 4.

³⁸ P. 1:4.

³⁹ P. 1:5.

⁴⁰ P. 1: 4.

⁴¹ Tr. I: 183-84.

⁴² P. 1:5.

⁴³ P.1: 5, 6; Tr. I: 183.

21. The OT assessment included a sensory integration observation. The Occupational Therapist observed Student exhibiting a number of sensory motor skills. Student showed an interest in and the ability to *** with peers and adults. The OT assessment also included the Sensory Profile School Companion, a standardized assessment tool used to measure a student's sensory abilities and their effect on the student's functional performance in the community. Student exhibited two sensory needs: requiring more input to maintain learning readiness (fidgeting) and a need to touch objects, surfaces, or textures.⁴⁴
22. Student did not demonstrate aversion behaviors and responded appropriately to examiners. Student demonstrated the ability to learn new tasks and listen to requests. Student was able to tolerate various textures, noises, and being in close proximity to Student's peers. Student did have difficulty with auditory discrimination on one measure.⁴⁵ Overall Student did not demonstrate any sensory processing difficulties that would impede Student's learning. Instead, any sensory needs identified could be supported with developmentally appropriate input within the environment and Student's neurodevelopment of sensory pathways was expected to continue.⁴⁶
23. The OT assessment concluded Student was independently functional at school for *** sensory processing. The OT assessment recommended a number of teaching strategies the teacher could employ to address the few sensory challenges noted.⁴⁷ The Occupational Therapist has experience working with children with anxiety. The OT did not observe any signs of anxiety in Student during the FIE OT observations. She also never observed any behavior problems or emotional issues at school.⁴⁸
24. The OT assessment concluded Student did not demonstrate a need for OT services because Student's level of achievement was consistent with other areas of development and the deficits that were identified did not interfere with Student's ability to function adequately in the school environment. Student's lack of coordination and endurance were typical of a *** student. The FIE included a set of recommendations that could be implemented in the *** classroom to address Student's fine and gross motor needs.⁴⁹
25. The LSSP conducted a behavioral assessment as a component of the FIE.⁵⁰ The LSSP reviewed the report and results of the February 2018 outside evaluation as part of her assessment. She considered the results of the Childhood Autism Rating Scale – Second Edition (CARS) and the Autism Diagnostic Observation Schedule – Second Edition

⁴⁴ P. 1:6-8; Tr. I: 183-186.

⁴⁵ P. 1:8.

⁴⁶ P.1:8, 45.

⁴⁷ P. 1:8, 45.

⁴⁸ Tr. I: 185.

⁴⁹ P.1:45; Tr. I: 194-95, 197.

⁵⁰ P.1:1-2, 9-40.

- (ADOS-2) used in the February 2018 outside evaluation.⁵¹ The components of the LSSP's assessment also included: the Behavior Assessment System for Children – Third Edition (BASC-3), the CARS II, the Social Responsiveness Scale, a parent questionnaire, teacher information, and at least seven formal observations in the school setting.⁵²
26. The LSSP chose these instruments because they give a good picture of a broad range of behaviors as well as the narrow band of behaviors associated with autism. She did not administer the ADOS-2 again because the instruction manual advises against using the ADOS-2 within one year of a prior administration. The LSSP wanted to ensure she was collecting new information. Each test was administered in accordance with the instruction manual.⁵³ There were other tests the LSSP could have chosen for her assessment.⁵⁴
27. The BASC-3 is a comprehensive measure of both adaptive and problem behaviors in the school, community, and home settings. Student's mother and Student's *** teacher both completed BASC-3 rating scales. All validity indexes for the teacher were within the acceptable range and she did not endorse an overly negative view of Student's behavior at school. However, on one validity index, Student's mother responses fell in the "extreme caution" range which meant the parent's report was to be interpreted with caution and classroom observations should be used to corroborate parental areas of concern.⁵⁵
28. The LSSP did not administer the self-report of the BASC-3 with Student because ***. ***. She also did not administer any projective measures because, while those instruments are helpful in building rapport, they are not useful for reliability and validity purposes and therefore do not provide much information.⁵⁶
29. The LSSP also used the Social Responsiveness Scale - Second Edition (SRS-2), a 65 item rating scale that measures the severity of autism spectrum symptoms as they occur in natural social settings. Student's mother completed the home environment portion of the SRS-2. Parent responses resulted in a total score that fell in the severe range.⁵⁷ Her responses were significantly different from those of school district staff and thus she was identified as an outlier when compared to other sources of information. The majority of Student's behaviors noted in the rating scales were very typical ***.⁵⁸
30. The CARS-2 is a 15 item observation scale used to rate a set of behaviors commonly

⁵¹ P.1:10-11.

⁵² P.1:1-2, 11-12, 20-40, P.14.

⁵³ Tr. I: 48, 127.

⁵⁴ Tr. I: 299-300, 301-02, 305-308.

⁵⁵ P.1:14.

⁵⁶ Tr. I: 150.

⁵⁷ P.1:18

⁵⁸ Tr. I: 170-71.

associated with autism on a scale from normal to severely unusual. The LSSP reviewed observation information, teacher report, the February 2018 outside evaluation report, and school evaluator reports on the CARS-2. Student's total raw score fell within the "Minimal-to-No Symptoms of Autism Spectrum Disorder" range when behavioral observations in the school environment were included.⁵⁹

31. The LSSP conducted observations in Student's *** classroom, ***, the cafeteria, ***, and in the hallway. Student was very social and was not shy going into the classroom or out *** with other children. Student was empathetic and very engaged at school. Student *** with Student's classmates, transitioned easily from place to place within the classroom, and demonstrated social and emotional reciprocity.⁶⁰
32. The LSSP also used the BASC-3 rating scales as well as observations by six other professionals to evaluate Student's emotional and behavioral performance in the school setting. Teacher rating scales placed Student in the average range across all areas. Student was viewed by Student's *** classroom teacher as very well acclimated to the general education classroom and structure. Student had friends and communicated effectively in class. The teacher had no behavior concerns and Student could transition without anxiety. Student was on grade level academically. Student had access to *** for fire drills and assemblies, but did not use them consistently. The teacher needed to check in with Student to keep Student on task but Student was receptive to redirection.⁶¹
33. The behavioral and social/emotional component of the FIE concluded Student did not display significant deficits in the areas of social-communication and restricted/repetitive behaviors and interests in the school environment. While emotional reciprocity was an area of concern at home, Student demonstrated typical skills appropriate to Student's developmental level compared to others in the *** classroom.⁶²
34. The FIE also included assessments of Student's cognitive abilities and adaptive behavior. A second licensed and certified diagnostician conducted this component of the FIE. She administered the Kaufman Test of Educational Achievement – Third Edition (KTEA-3) and the Kaufman Assessment Battery for Children – Second Edition (KABC-II). Student's subtest scores on the KABC-II were unitary and did not vary significantly from one another. Therefore, all cluster scores were valid and interpretable.⁶³ These two standardized tests were selected because they work well for young children, they are co-normed and provide the best results and interpretative data when the two tests are used together. Both tests were administered in accordance with the instruction manual.⁶⁴

⁵⁹ P.1:20-35.

⁶⁰ Tr. I: 123, 129-30.

⁶¹ P. 1:12-13.

⁶² P.1:40.

⁶³ P.1:41-42.

⁶⁴ Tr. I: 34.

35. The KTEA-3 is an individually administered measure of academic achievement for students in *** through twelfth grade, or ages 4-25. The KTEA-3 measures the following eight areas associated with a learning disability: oral expression, listening comprehension, basic reading skills, reading comprehension, written expression, math problem solving, math computation, and reading fluency. Student's scores on the subtests used to assess these skills varied. Student was in the average range for letter and word recognition, math concepts and applications, and math computation when compared to same grade peers in the norm population. Student was below average in phonological processing, reading comprehension, and written expression when compared to same grade peers in the norm population.⁶⁵
36. Student's adaptive behavior was assessed using informal measures. Adaptive behavior is the degree to which a student is personally and socially self-sufficient. The level of independence is based on age expectations, performance, and ability. Student was observed in the school setting as self-sufficient in *** and taking care of Student's needs.⁶⁶
37. At school, Student was a very happy, "go-lucky" student, with an engaging personality. Student was curious, kind, and considerate. Student tried very hard. Student asked questions if Student did not understand something.⁶⁷ Socially Student was well liked at school – Student was observed by school district staff often talking with a friend or otherwise engaging with other students. Student ***. Student talked to other children during lunch.⁶⁸ Student was eager to please and interacted appropriately with peers.⁶⁹
38. Student had friends in *** class. Student participated appropriately during academics and unstructured time, such as lunch ***. Student made good eye contact and displayed strong communication skills. Student was able to raise Student's hand and advocate for ***self when necessary. Student enjoyed communicating with Student's classmates and the *** teacher. Student worked well in small group settings and participated appropriately in whole group instruction. Student was able to transition easily from one activity to another. Student was on grade level with Student's peers and met all benchmark expectations. In sum, Student performed as a typical *** student -- academically, behaviorally, and emotionally.⁷⁰
39. An Admission, Review & Dismissal Committee (ARD) convened on November ***, 2018. The purpose of the ARD was to review the results and recommendations of the FIE. Each member of the multi-disciplinary team attended the ARD and explained the findings and

⁶⁵ P.1:43-44.

⁶⁶ P. 1:8, 42.

⁶⁷ Tr. I: 182.

⁶⁸ Tr. I: 184.

⁶⁹ Tr. I: 74.

⁷⁰ Tr. I: 84-87.

conclusions of each FIE component. The FIE concluded Student did not meet IDEA criteria as a student with autism, a speech impairment, or a specific learning disability. The ARD agreed with the FIE conclusion that Student was not eligible for special education or related services under the IDEA.⁷¹

40. In December 2018 the school district agreed to monitor Student under § 504.⁷² In April 2019, the school district agreed to implement a set of accommodations under § 504 to address continuing parental concerns.⁷³
41. This current school year (2019-20) Student is in ***. Student continues to present as a very happy, polite, sociable student. Student greets the principal every morning. Student is described as easy going and very happy and excited to go to class. Student has no difficulties transitioning to get to school. ***, Student participates in class activities with peers appropriately and interacts and communicates with peers in the cafeteria. The principal, who is familiar with students with separation anxiety, has not observed any difficulty for Student separating from Student's parents or witnessed any signs of anxiety. She has no behavioral concerns.⁷⁴

VI. DISCUSSION

A. Evaluation Criteria

The IDEA establishes a very detailed, comprehensive set of evaluation procedures for conducting an FIE in order to determine a student's eligibility and need for special education and related services. 34 C.F.R. § 300.301(a). An initial evaluation to determine a student's eligibility and educational needs must be conducted within 60 days of receipt of a parental request for the evaluation or whatever the State requires if the State establishes another timeframe for completing an initial evaluation. 34 C.F.R. § 300.301 (a) (b) (c) (1) (i) (ii). In Texas, a FIE must be completed no later than the 45th school day following the date the school district receives written consent from the parent. Student absences from school during this period extend the deadline accordingly. 19 Tex. Admin. Code § 89.1011 (a)(b)(c).

⁷¹ P.2:1-16.

⁷² R.4; Tr. I: 235-36.

⁷³ R.5; Tr. I: 236-37.

⁷⁴ Tr. I: 250-51.

In conducting the evaluation the school district must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information from parents. The information collected is to assist the school district in determining: first, whether the student is a student “with a disability” as defined by the IDEA, and second, the content of the student’s Individualized Education Plan (IEP), including information related to enabling the student to be involved in and progress in the general education curriculum. 34 C.F.R. § 300.304 (b)(1)(i)(ii). In order to qualify as a “child with a disability” the student must meet the criteria for one or more of the disability classifications established by the IDEA. 34 C.F.R. §§ 300.8, 300.301.

Furthermore, the IDEA prohibits the use of any single measure or assessment as the sole criterion for determining whether the student meets the definition of a “child with a disability” or in designing an appropriate educational program for the student. 34 C.F.R. § 300.304 (b) (2). In addition, the school district must use technically sound instruments that assess the relative contribution of cognitive and behavioral factors, as well as physical or developmental factors. 34 C.F.R. § 300.304 (b) (3).

The school district must also ensure the assessments and other evaluation materials used for the FIE are: (i) selected and administered so as not to be discriminatory on a racial or cultural basis; (ii) are provided and administered in the student’s native language or other mode of communication, and in the form most likely to yield accurate information on what the student knows and can do academically, developmentally, and functionally (unless it is clearly not feasible to do so); (iii) are used for the purposes for which the assessments and measures are valid and reliable; (iv) are administered by trained and knowledgeable personnel; and (v) are administered in accordance with the instructions provided by the producer of the assessments. 34 C.F.R. § 300.304 (c) (1) (i)-(v).

The IDEA also requires that for students with impaired sensory, manual, or speaking skills, the assessments are selected and administered to best ensure that the assessment results accurately

reflect the student's aptitude or achievement level (or whatever other factors the assessments are meant to measure) rather than reflecting the student's impairments. 34 C.F.R. § 300.304 (c) (3).

The student must be assessed 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. 34 C.F.R. § 300.304 (c) (4). Furthermore, the evaluation must be sufficiently comprehensive to identify all of the student's special education and related service needs, whether or not commonly linked to the disability category in which the student has been classified. 34 C.F.R. § 300.304 (c) (6). Finally, the school district must ensure that the assessment tools and strategies provide relevant information that directly assist in determining the educational needs of the student. 34 C.F.R. § 300.304 (c) (7).

The IDEA further requires the ARD Committee must also review existing evaluation data on the student including any evaluations and information provided by the student's parents. The review of existing data may also include current classroom-based, local, or State assessments, classroom-based observations, and observations by teachers and related service providers. The ARD must then determine, based on the review of the existing data and parental input, what additional data, if any, is needed to determine whether the student meets the definition of a "child with disability" and the student's educational needs. 34 C.F.R. § 300.305 (a) (1) (2) (i) (A).

For initial evaluations, the ARD must also determine the student's present levels of academic achievement and related developmental needs. 34 C.F.R. § 300.305 (a) (1) (B) (ii) (iii). Once the evaluation process is completed, the ARD must convene and determine the student's eligibility and need for special education and related services. 34 C.F.R. § 300.306; 19 Tex Admin. Code § 89.1011.19 (d).

B. Parental Right to IEE

A parent of a student with a disability has the right to obtain an IEE at school district expense if the parent disagrees with the school district's evaluation. 34 C.F.R. § 300.502 (a) (b) (1). However, a school district may challenge the parental right to the IEE at school district

expense by filing a request for a due process hearing to show its evaluation is appropriate. 34 C.F.R. § 300.502 (b) (2) (ii). If the school district meets its burden on that issue, although parents are still entitled to secure an IEE, they do so at their own expense. 34 C.F.R. § 300.502 (b) (3).

In this case, the school district conducted an FIE following a special education referral initiated at parental request. An ARD met to review the evaluation and concluded Student did not qualify for special education or related services. There is no dispute over the timeliness of either the FIE or the subsequent ARD that met in November 2018 to review and discuss its results. It was not until April 2019 that Student's parents disagreed with the FIE conclusions and requested an IEE at school district expense. It was at that point the school district brought this action to challenge the parental right to an IEE at its expense. 34 C.F.R. § 300.502 (b)(ii).

C. Relevant Criteria Applied to The FIE

1. Variety of Tools and Strategies/No Single Measure

The evidence shows the school district's FIE used a variety of tools and strategies and no single measure was used in reaching the conclusions in the FIE. Both formal and informal measures were used in the speech/language evaluation, the OT evaluation, the behavioral and emotional evaluation, and the academic and cognitive evaluation. Observations of Student in the school environment were also components of the FIE as well significant input from Student's mother, Student's *** classroom teacher, and a review of the prior February 2018 outside evaluation. The observations were conducted across a variety of school environment settings and over a period of time. Petitioner met its burden on these IDEA criteria. 34 C.F.R. § 300.304 (b) (1) (2).

2. Relevant Functional, Developmental, and Academic Information

The evidence showed the school district's FIE included review of information and assessments of Student's functional, developmental and academic skills. The academic and

cognitive assessment by the diagnostician included assessment of Student's processing and cognitive abilities with administration of the KABC-II. Student's academic achievement was assessed in eight academic skill areas by use of the KTEA-3. Student's adaptive behavior was also included in the FIE assessing Student's ability to engage *** activities independently and in all areas of self-care at school by both the OT and behavioral assessments. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (b) (1).

3. Technically Sound Instruments

The record supports the conclusion each member of the multi-disciplinary team used technically sound instruments in conducting the various components of the FIE. Each member of the multi-disciplinary team was able to explain the rationale for choosing the various instruments and the sources of data used in the FIE. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (b) (3).

4. Not Discriminatory on the Basis of Race or Cultural Factors

The FIE report noted there were no cultural, linguistic, or experiential factors that influenced Student's learning and behavior patterns. There was no controverting evidence that any of the measures used by the school district were discriminatory on the basis of race or cultural factors. It is reasonable to infer from the credible evidence Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (c) (1)(i).

5. Native Language

The FIE noted Student's native language and academic language were both English. Although not specifically stated elsewhere in the FIE report, or testified to by members of the multi-disciplinary team, it is reasonable to infer from the record the FIE was conducted in Student's native language. There was no controverting evidence presented by Respondent otherwise. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (c) (1) (ii)

6. Valid and Reliable

The record also supports the conclusion the instruments selected by each member of the multi-disciplinary team were used for the purposes for which they were valid and reliable. Indeed, some members of the multi-disciplinary team explained why other instruments were not used due to concerns over lack of validity and/or reliability because: (i) Student was *** to be administered a test; (ii) the test did not provide reliable or valid data, or (iii) the test had already been administered within one year of the per the test's instruction manual. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (c) (1) (ii).

7. Administered by Trained, Knowledgeable Personnel

The evidence shows each member of the multi-disciplinary team was trained and knowledgeable in her area of expertise. Each was licensed and credentialed in their area of expertise, experienced in evaluating students in their designated area, and were also familiar with students who experienced separation anxiety at school. There was no controverting evidence presented by Respondent to challenge the training or knowledge of each member of the multi-disciplinary team. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (c) (1) (iv).

8. Administered in Accordance with Directions

The credible evidence also shows all assessments and evaluation materials were administered according to the instructions provided by the producer of the assessments. There was no controverting evidence otherwise. Petitioner met its burden on this IDEA criteria. 34 C.F.R. § 300.304 (c) (1) (v).

9. Assessed in All Areas of Suspected Disability

The record supports the conclusion Student was assessed in all areas of suspected disability, including health, vision, hearing, social and emotional status, general intelligence,

academic performance, communicative status, and motor abilities. The purpose of the FIE was to determine Student's eligibility for special education and related services as a student with autism, a speech/language impairment, as well as identify any sensory processing deficits at parental request.

A routine vision screening by the school nurse that resulted in a doctor's prescription for glasses was noted in the FIE. Therefore, with the use of Student's glasses, the school district ensured the FIE accurately measured Student's aptitude and achievement level and was not a reflection of Student's vision deficits. 34 C.F.R. § 300.304 (c)(3). Student's social and emotional status was assessed by the LSSP to address parental concerns that Student experienced separation and generalized anxiety, as well as behavioral data relevant to eligibility criteria as a student with autism. The academic achievement and cognitive ability testing by the diagnostician assessed Student's academic performance and intelligence. The speech/language evaluation assessed Student's expressive and receptive language skills relative to the autism criteria. The OT evaluation assessed Student's fine and gross motor skills with a focus on Student's ability to engage in school-based learning activities and function independently in the school environment.

Respondent argues the school district should have conducted another evaluation to determine whether Student was eligible for special education and related services as a student with an emotional disturbance. Respondent also argues the OT evaluation was not appropriate because it failed to take into account numerous deficiencies. Respondent also contends the school district could and should have chosen other assessment instruments to determine autism eligibility. Overall, Respondent argues the conclusions reached by the FIE, and accepted by the November 2018 ARD, were inappropriate. These arguments are not persuasive.

First, the OT evaluation and the testimony of the Occupational Therapist was quite clear in explaining why Student did not demonstrate a need for OT services at school. Although some motor skills were identified ***, many of those were also typical for a *** student or did not interfere with Student's ability to learn. Second, Respondent makes much of the recommendation that Student's parents might consider outside clinical support to address Student's low endurance and timing for gross motor activities. However, the OT evaluation also found Student was quite

capable and independent in the school environment and none of the deficits identified interfered with Student's ability to learn. The OT component of the FIE included a number of activities that could be implemented within the regular *** classroom without the need for OT services to address Student's motor and sensory needs.

Third, Respondent's argument that the school district should have selected from a list of other possible autism instruments, including re-administration of the ADOS-2, is simply a disagreement between professionals. The LSSP admitted she did not re-administer the ADOS-2 because that same test was administered within one year of the FIE – i.e., in the February 2018 outside evaluation. However, she also explained the test manual specifically states the ADOS-2 should not be re-administered any earlier than one year from a previous administration. Respondent argues the school district should have chosen other similar measures such as the PEP-3 or MIGDAS-2 in lieu of the ADOS.

The fact that other instruments were available to the LSSP to choose from does not mean the instruments and other tools and strategies she did use were insufficient under IDEA evaluation criteria. Reasonable minds may differ in the choice of instruments used to evaluate for autism. However, a mere difference of opinion between qualified, knowledgeable professionals as to the choice of instruments used to assess a student for autism does not prove the choices the school district made, in this case, were inappropriate.

10. Emotional Disturbance

Petitioner contends the school district should have conducted an evaluation to determine if Student is a student with an emotional disturbance based on parental input, the February 2018 outside evaluation, and the independent evaluation conducted after the Complaint in this case was filed. An emotional disturbance under the IDEA means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance:

- An inability to learn that cannot be explained by intellectual, sensory or health factors;
- An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- Inappropriate types of behavior or feelings under normal circumstances;
- A general pervasive mood of unhappiness or depression;
- A tendency to develop physical symptoms or fears associated with personal or school problems. 34 C.F.R. § 300.8 (c) (4) (i) (A)-(E).

The credible evidence demonstrates the school district, at the time the FIE was conducted, had very little reason to suspect Student might be a student with an emotional disturbance. Despite parental reports and concerns over Student's "separation anxiety," the credible evidence showed Student's behavior at school during Student's *** year gave school district staff little reason to suspect Student was anything other than a typical *** student. The evidence showed that even on the first day *** there were virtually no signs of "separation anxiety." Student required no special intervention or support from campus staff to exit Student's *** car, enter the building, make Student's way without incident to Student's *** classroom, and begin to settle in.

Furthermore, there was also no reason to suspect a reason to evaluate Student for an emotional disturbance because even if Student had an emotional issue, the credible evidence showed there was no adverse impact on Student's educational performance – by all accounts Student progressed through the *** curriculum as expected, meeting all benchmarks, and performing as an average *** student would be expected to perform.

While it is certainly reasonable to infer from the evidence there were some behavioral challenges at home, the credible evidence also showed that at school, Student was happy, sociable, followed directions, participated in learning activities, and interfaced appropriately with both peers and adult staff. None of the campus staff, including Student's *** teacher or the other professionals assigned to the campus, ever had any behavioral concerns about Student that suggested an emotional disturbance.

In sum, the school district had no reason to suspect Student was a student with an emotional disturbance and thus no duty under the IDEA to conduct an evaluation to determine Student's eligibility for services under that classification. 34 C.F.R. § 300.8 (c)(4.).


VII. CONCLUSIONS OF LAW

1. Petitioner conducted an appropriate Full Individual Evaluation (FIE) that met all requirements under the IDEA. 34 C.F.R. §§ 300.301, 300.304.
2. Although Respondent's parents continue to be entitled to an Independent Educational Evaluation (IEE), they are not entitled to an IEE at Petitioner's expense. 34 C.F.R. § 300.502 (b) (3).

VIII. ORDERS

Based on the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are hereby **GRANTED**. All other relief not specifically stated herein is **DENIED**.

SIGNED October 28, 2019.



Ann Vevier Lockwood
Special Education Hearing Officer
For the State of Texas

IX. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this case 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(p); Tex. Gov't Code § 2001.144(a) (b).