

TEA DOCKET NO. 319-SE-0603

Student,	§	
b/n/f Parent	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
CARROLLTON-FARMERS BRANCH	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

Appearances for Petitioner:

Parent (failed to appear)

Appearances for Respondent:

Nona C. Matthews, Esq.
Jill Nikirk, Esq.
Walsh, Anderson, Brown, Schulze
& Aldridge, P.C.
Irving, TX

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FINAL DECISION OF THE HEARING OFFICER

Statement of the Case

The Petitioner, Student, by his next friend, Parent, brings this action against the Respondent, Carrollton-Farmers Branch Independent School District (CFBISD), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq. Each party raises issues to be heard at the Due Process Hearing:

The Petitioner's claims are:

- Whether Student should be dismissed from special education?
- Whether Student is entitled to an independent educational evaluation (IEE)?

The Respondent's counter-claim is:

- Whether CFBISD conducted an appropriate full and individual reevaluation of Student?

As relief, the Petitioner requests (1) the provision of an IEE at public expense; and (2) dismissal of Student from special education. As relief, the Respondent requests (1) a determination that its last reevaluation of Student was appropriate.

Procedural History

On June 5, 2003, the Texas Education Agency (TEA) received the Petitioner's request for a Due Process Hearing. The Hearing Officer conducted the first of several prehearing conferences on July 12, 2003. Subsequently, the Hearing Officer issued a series of Orders over the course of various developments in the case. Among these developments were the entry and exit of an advocate on behalf of the Petitioner, settlement efforts, reevaluation of the student and resolution of an independent evaluation dispute. Ultimately, the contested issues were ripe for adjudication and the case was set for hearing.

The Hearing Officer, after providing notice, conducted the due process hearing in Carrollton, TX on May 5, 2004. The Petitioner failed to appear. The school district was represented by counsel. The record encompasses the testimony and exhibits from the hearing.

Findings of Fact

This Hearing Officer makes the following findings of fact:

1. Student is a *** year-old child currently enrolled in the *** grade at *** school in Carrollton-Farmers Branch ISD.
2. Student qualifies as a child with a disability under the two-part eligibility standard of the IDEA. Tr., p. 41, ll. 4-21; Tr., p. 48, ll. 12-21; Tr., p. 69, l. 20 – p. 70, l. 3; Tr., p. 92, l. 5 – p. 94, l. 5; Resp't Ex. 13.
3. Carrollton-Farmers Branch ISD conducted an appropriate full and individual reevaluation of Student in October, 2003. Tr., p. 25, l. 20 – p. 26, l. 8; Tr., p. 41, l. 22 – p. 45, l. 4; Tr., p. 70, l. 24 – p. 72, l. 4; Resp't Ex. 13.

Discussion

Eligibility and Dismissal from Special Education

The basic question presented by the Petitioner is whether Student should be dismissed and exited from special education. In other words, should Student's IDEA eligibility be terminated because he is no longer a child with a disability? Children with disabilities eligible under the IDEA are those that have an impairment and, because of the impairment, require special education and related services.¹ 20 U.S.C. §1401(3)(A); 34 C.F.R. §300.7(a)(1). Before any child is determined to no longer be a child with a disability, the school district must evaluate him or her. 20 U.S.C. §1414(c)(5); 34 C.F.R. §300.534(c)(1).

The U.S. Department of Education (ED) commentary accompanying the final regulations implementing the 1997 IDEA Amendments clarifies the procedure under §300.534(c)(1) that districts must follow. ED states: "A public agency must evaluate a child with a disability before determining that the child is no longer a child with a disability, but such a reevaluation is, like other reevaluations, subject to the requirements of §300.533."² Section 300.533 requires that as

¹ Among other things, eligibility is further based on the child being within the age range of children entitled to a free appropriate public education (FAPE) and having not graduated from high school with a regular diploma. 34 C.F.R. §§300.121, 300.122 and 300.300. These additional eligibility factors are not an issue in this case.

² 64 Fed. Reg. 12636 (1999).

part of any reevaluation, the child's admission, review and dismissal (ARD) committee review existing evaluation data and identify what additional data, if any, are necessary in order to determine, among other things, whether the student remains eligible under IDEA. 20 U.S.C. §1414(c)(1); 34 C.F.R. §300.533(a). The district must administer any test or evaluation to produce the data identified by the ARD committee. 20 U.S.C. §1414(c)(2); 34 C.F.R. §300.533(c).

Thus, whenever there is a request that a student with a disability be considered for dismissal from special education – whether at the request of the school or family – certain procedures must be followed for the protection of the child. In accordance with those procedures, CFBISD conducted an appropriate reevaluation of Student. Based upon the data and results obtained, I find that Student continues to qualify as a child with a disability. Therefore, Student should not be dismissed from special education.

Independent Evaluation

A second issue presented by the Petitioner is whether Student can be independently tested at public expense. When there is a disagreement over evaluation results, the IDEA procedures for a publicly funded independent evaluation are straight forward. Upon a request by a parent, the school district must either grant and pay for the independent evaluation or defend the evaluation results in question through a due process hearing. 20 U.S.C. §1415(b)(1); 34 C.F.R. §300.502.

Here, the district has opted to defend its October, 2003 reevaluation of Student. After weighing the testimony and evidence on the reevaluation and how it was conducted, I am satisfied that is appropriate and accurately reports on Student's disabilities and his special education needs. Therefore, Student is not entitled to an IEE at public expense.

Conclusions of Law

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

1. The Petitioner, Student, is a child with a disability as defined under the IDEA. 34 C.F.R. §300.7.
2. The Respondent, CFBISD, conducted an appropriate full and individual reevaluation of the Petitioner, Student 34 C.F.R. §§300.532-300.543.

3. The Petitioner, Student., is not entitled to an IEE at public expense. 34 C.F.R. §300.502.

Order

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

IT IS HEREBY ORDERED THAT:

1. All relief sought by the Petitioner shall be **DENIED**.

SIGNED this 27th day of May, 2004.

/s/ Steven R Aleman

Steven R. Aleman

Special Education Hearing Officer

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SYNOPSIS

ISSUE 1: Whether Student should be dismissed from special education?

CITE: 34 C.F.R. §300.7

HELD: For the Respondent. The Petitioner continues to qualify as a child with a disability.

ISSUE 2: Whether Student is entitled to an IEE?

CITE: 34 C.F.R. §300.502

HELD: For the Respondent. The Respondent demonstrated that its reevaluation of the Petitioner was appropriate.

ISSUE 3: Whether Carrollton-Farmers Branch ISD conducted an appropriate full and individual reevaluation of Student?

CITE: 34 C.F.R. §300.502

HELD: For the Respondent. The Respondent demonstrated that its reevaluation of the Petitioner was appropriate.