

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT, bnf
PARENTS
Petitioner,**

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v.

**DOCKET NOS. 234-SE-0305
and 235-SE-0305; (Consolidated Cases)**

**NORTHSIDE INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner Student, bnf Parents (“Petitioner” or “Student”) brings this action against the Respondent Northside Independent School District (“Respondent” or the “school district” or “NISD”) under the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et. seq, (“IDEA”) and its implementing state and federal regulations. See, 34 C.F.R. Sec. 300.1 et. seq and 19 Tex. Admin. Code Sec. 89.001 et. seq.

Petitioner was initially represented in these consolidated cases by Karen Dalglish Seal, Attorney at Law, San Antonio, Texas. On June 3, 2005 Matthew Finch, Attorney at Law, San Antonio, Texas substituted in as Petitioner’s counsel. Petitioner’s parents, Parents have participated in all phases of this litigation. The Respondent has at all times in this litigation been represented by its legal counsel, Craig Wood of Langley & Banack, San Antonio, Texas. Dr. ***, Director of Special Education for *** Schools, has been the school district’s party representative in this case.

Procedural History

The due process hearing in this case began on August 4, 2005 and was completed on September 7, 2005. Both parties were represented by legal counsel. Student’s parents, were present throughout the hearing as was Dr. **. On August 4, 2005, Mr. Finch was assisted by Debra Liva, parent advocate and ***, Petitioner’s consulting expert. On September 7, 2005 he was assisted only by Ms. Liva. By agreement, both parties submitted post-hearing briefs and agreed that the due date for the Hearing Officer’s decision would be extended until September 30, 2005.

Issues

The issues for decision in this case are as follows:

1. Whether the school district should have identified STUDENT as a Student with autism; specifically, Pervasive Developmental Disorder (PDD) for purposes of special education under the Individuals with Disabilities Education Act (“IDEA”) beginning in the 2003-2004 school year;
2. Whether the school district should have conducted an evaluation of STUDENT for purposes of autism/PDD as an area of suspected disability beginning in the 2003-2004 school year;
3. Whether STUDENT’s current educational program provides him with a free, appropriate public education within the meaning of IDEA; specifically, whether the school district has provided STUDENT with appropriate speech services, whether his program addresses his communication needs, and whether his program has been implemented by properly trained staff;
4. Whether Petitioner’s issues in these consolidated cases are barred by the doctrine of res judicata; and,
5. Whether the parties must comply with the presentment and resolution provisions of the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400 et. seq. as amended.

Issue Number 4 was resolved by order of the Hearing Officer on July 18, 2005. The Hearing Officer denied Respondent’s Motion to Dismiss Petitioner’s claims on the basis of res judicata. Issue Number 5 is dismissed because Petitioner’s consolidated requests for hearing were filed on March 17, 2005 prior to the July 1, 2005 effective date of the Individuals with Disabilities Education Improvement Act (IDEIA). Therefore, the presentment and resolution provisions stated in the IDEIA do not apply to Petitioner’s claims in this case.

Requested Relief

As relief, Petitioner requests the following of the school district:

1. An Admission, Review & Dismissal Committee (ARD) convene for the purpose of identifying STUDENT as a Student with autism/PDD for purposes of special education services;
2. The ARD design an Individual Educational Plan (IEP) and a Behavior Intervention Plan (BIP) for Student that takes into account Dr. ***’s recommendations;

3. Provide STUDENT with an Extended Services Year that focuses on the development of language skills;
4. Provide STUDENT with compensatory educational services for a period of 18 months to address the full spectrum of STUDENT's disabilities with an emphasis on speech and his needs as a Student with autism, including intensive speech services to improve verbal communication and overall language skills;
5. Select a mutually agreed upon liaison to facilitate any and all communications between STUDENT's parents and the school district;
6. Provide STUDENT with Extended Year Services which address his needs as a Student with PDD/autism, and, in particular, on speech development;
7. Provide STUDENT's parents with parent training with a focus on training for parents of Students with autism;
8. Provide training for all staff who will have direct or indirect contact with STUDENT in the area of autism;
9. Pay for an Independent Educational Evaluation by Dr. ***; and,
10. Conduct Assistive Technology and Occupational Therapy assessments.

Petitioner also requests reimbursement for attorney's fees. Special education hearing officers in Texas do not award attorney's fees in the context of a due process hearing. A court of competent jurisdiction may make such an award under IDEA.

Findings of Fact

1. STUDENT is a Student with a disability eligible for special education services from the Northside ISD. This year STUDENT is a *** in *** school. He is *** years old and is eligible for special education as a Student with Mental Retardation (MR), Other Health Impairment (OHI) and Speech Impairment (SI).
2. According to his mother, STUDENT was initially a non-verbal, quiet child. He struggles with his schoolwork and reads at a *** to *** grade level. He has difficulty with balance, falls down at times, and cannot ride a bicycle. STUDENT's overall communication skills are poor. He has difficulty following a multi-part question and may forget, midstream, the original question. His social interaction skills are not age appropriate. He spits on himself at times, holds his fork wrong, and exhibits poor hygiene. Although he has some acquaintances at school he does not socialize with peers outside of school. STUDENT also

has difficulty retaining previously learned material and exhibits regression of previously mastered skills without continued practice and repetition.

3. STUDENT has been extensively evaluated over the years by both the school district and outside evaluators. STUDENT has been diagnosed with the following: speech delay, motor delay, attention-deficit disorder, dyslexia, dysgraphia, dyscalculia, mental retardation, congenital encephalopathy, obsessive-compulsive disorder, mixed receptive language disorder, cognitive disorder, pervasive developmental disorder, and, oppositional defiant disorder.
4. The complex and variable nature of STUDENT's deficits and skills have challenged evaluators in attempting to accurately describe and define the nature of his disabilities. STUDENT does not seem to "fit" neatly into specific disability categories. There are two trends noted in all the evaluation data: first, his language skills are not as well developed as his non-verbal problem solving skills; and, ***, earlier IQ scores were ***er than more recent IQ scores with greater variability among subtests and skills.
5. Dr. *** evaluated STUDENT in three separate sessions conducted in June and August 2003, meeting with STUDENT's parents in the fall to discuss his findings, and issuing a formal, written report late in the fall 2003 semester. Dr. *** was the first evaluator to raise the possibility that STUDENT may have pervasive developmental disorder (PDD) and oppositional defiant disorder (ODD). Dr. *** also confirmed prior findings of mental retardation, cognitive disorder, and mixed receptive-expressive language disorder. Dr. *** utilized the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV) in making his diagnoses. Dr. *** did not confer with school district personnel about STUDENT nor observe him at school but he did review educational records as part of his evaluation.
6. PDD is an autism spectrum disorder primarily characterized by deficits in communication and socialization. The basic descriptive criteria for PDD includes: reciprocal social interaction deficits, problems adapting to change, appreciable delays in language functioning, stereotypical movements, stimulus hypersensitivity, and tactile sensitivity. Dr. *** found that all five of the PDD criteria have been observed and noted in STUDENT's history.
7. Dr. *** found that STUDENT displayed substantial variability on measures of ***er level reasoning and executive functioning. Dr. *** also found deficits in STUDENT's verbal memory, nonverbal memory, vocabulary knowledge, expressive vocabulary, and visual-spatial/visual-motor abilities. Dr. *** confirmed prior evaluations that STUDENT has poor overall basic reading skills, substantial difficulties with basic math operations and poor survival math concepts in the areas of time, money and measurement. For example, while STUDENT could identify basic coins he could not make change or readily add coins together.

8. Dr. ***'s report included an extensive set of recommendations for the classroom including a behavioral program. For example, Dr. *** recommended the use of a point system to reinforce specific behaviors such as compliance, initiative, effort, assignment completion, etc. He also included recommendations for the family, for psychotherapy, and, for a medical evaluation.
9. Dr. *** recommended vocational planning for STUDENT with an IEP targeting skills for independent living. He also recommended that vocational goals such as managing personal finances, learning "survival techniques" for employment, career exploration, and, enhancing competency with manual tasks be included in STUDENT's IEP.
10. A set of recommended instructional strategies were also included in Dr. ***'s report such as: the use of modeling, multisensory materials and methods, the use of manipulatives, real life examples, math instruction focused on helping STUDENT master basic math "survival" skills, the use of a calculator, functional daily living skills, and, adaptive and self-care skills. Dr. *** emphasized STUDENT's need to develop real-world and survival based skills with community based instruction reinforced by classroom instruction.
11. Dr. ***'s report was first addressed by an ARD on January 26, 2004 as a component of STUDENT's triennial review while STUDENT was in the *** grade in *** school. Both the speech therapist and the licensed school psychologist (LSSP) referred to Dr. ***'s findings and recommendations as the ARD discussed STUDENT's educational needs. The LSSP also specifically discussed Dr. ***'s diagnoses of mental retardation, PDD, and ODD.
12. The January 2004 ARD was continued on February 25, 2004. In the February 2004 ARD the LSSP continued to reference a number of Dr. ***'s findings and recommendations. The LSSP and the speech therapist frequently referenced Dr. ***'s report as they continued to discuss STUDENT's educational needs and formulate a new IEP for STUDENT's transition to *** school with the other members of the ARD.
13. The January and February 2004 ARD members agreed with the LSSP that Dr. ***'s identification of STUDENT's strengths and weaknesses were consistent with prior assessment data. However, the ARD committee did not add autism as an eligibility classification for STUDENT While a diagnosis from the DSM-IV provides information to the ARD Committee, such a diagnosis does not, by itself, determine IDEA eligibility or the design of IEP goals. In NISD the provision of special education services are not contingent upon a DSM-IV diagnosis nor are certain services reserved or provided to a certain specified set of eligibility classifications. In STUDENT's case there were no specific services either denied or provided simply on the basis of Dr. ***'s diagnosis of PDD. Instead, the ARD Committee relied on the existing assessment data for educational planning purposes since STUDENT was already qualified for special education services under three

other disability classifications.

14. During his *** year STUDENT was educated in a mixture of special education and regular classes. His special education instruction was provided in a specialized classroom called the Applied Learning Environment (ALE). An ALE classroom provides functional instruction in five domains: vocational, functional academics, recreation/leisure, community, and, personal management. The ALE classroom also follows a functional academic curriculum aligned with the state mandated educational curriculum. STUDENT also received regularly scheduled speech therapy and transportation as related services.
15. STUDENT's IEP incorporated a number of Dr. ****'s recommendations. Many of Dr. ****'s recommendations were already built into the functional academic *** school curriculum and the ALE classroom. For example, the ALE classes use a behavioral point system, manipulatives, a multisensory instructional approach, positive reinforcers, and "real life/real world" lessons. The IEP goals and objectives addressed STUDENT's needs to develop and retain functional skills for independence. Community based instruction coupled with classroom instruction for practicing "survival" math skills, independent daily living skills, and, vocational skills were also components of STUDENT's IEP. Some of STUDENT's IEP goals were refined following an ARD conducted on August 27, 2004. The August ARD addressed parental concerns over transportation and behavior issues and teacher concerns about whether some IEP goals were appropriate after *** school teaching staff got to know him better.
16. STUDENT was also assessed by *** at the Center for Health Sciences (CHS). Mr. *** issued a written report in September 2004. The CHS report also raised the possibility of PDD and unequivocally confirmed the diagnosis of mental retardation. The purpose of the CHS assessment was to secure community services from the CHS for STUDENT. The CHS report concluded that STUDENT met CHS criteria and Mr. *** recommended STUDENT be placed on the CHS waiting list for services.
17. Another ARD was conducted on December 14, 2004 to follow up on the transportation and behavior issues raised at the beginning of the semester. The December ARD recessed and reconvened in January 2005. The CHS report was also discussed at the ARD meetings along with other educational issues. The LSSP had an opportunity to review the CHS prior to the December/January meetings. While the CHS report also included a diagnosis of PDD, the LSSP concluded the diagnosis must have been based on Dr. ****'s report since the CHS report did not include specific evaluation measures for PDD.
18. The December /January ARD meetings also reviewed and revised STUDENT's IEP. The new IEP focused on basic and functional reading, math, expressive language, communication skills, and, vocational skills. The use of a multi-sensory approach, real-life/real world activities, modeling, manipulatives, a calculator, and community based instruction reinforced by classroom instruction were all components of STUDENT's IEP.

Speech therapy continued as a related service as well. A speech re-evaluation is scheduled to be conducted after the first six weeks of the current school year in order to update STUDENT's progress in communication skills and, in particular, to determine whether his communication skills have regressed from last year.

19. Although STUDENT exhibits expressive and receptive language deficits, he can communicate and function well within the school environment. He has the language skills to get information and to respond. STUDENT has made progress in his speech therapy. The speech therapy continued to work on the development of questioning skills – important for STUDENT in order to function independently. Initially, STUDENT was quiet and observant during speech therapy classes. However, as the year progressed, he became more interactive, began to tell jokes, share things that he'd done, and, expressed a preference for therapy with peers. STUDENT's speech/language needs were also addressed in other ways; language skills were practiced and reinforced in all of his classes and the speech therapist routinely conferred with teaching personnel to discuss STUDENT's language progress.
20. An Extended Service Year (ESY) program was also a component of STUDENT's educational program because evaluation data showed inconsistent retention of previously learned material and regression of skill level. The ESY IEP also focused on basic and functional reading, basic and survival math, expressive language, and communication skills through the use of modeling, positive reinforcement, manipulatives, a calculator, repetition, drill, and practice.
21. A Functional Behavior Assessment (FBA) was also discussed in the December/January ARD meetings. Although school staff felt STUDENT's overall behavior was appropriate and he was cooperative in school, he did show some difficulty understanding when he didn't get his way. Therefore, the ARD committees designed a Behavior Intervention Plan (BIP) to address that issue. The use of an established classroom routine, verbal warning, verbal redirection, and, positive and social reinforcers were all features of the BIP.
22. Although STUDENT's parents consented to the release of NISD information about STUDENT to Dr. ***, they also advised the school district that they would be the conduit for information from Dr. ***. The school district interpreted this to mean that it did not have parental consent to confer with Dr. *** directly to discuss his findings and conclusions. By limiting the scope of their consent, STUDENT's parents simply intended to be kept in the communication loop and to be privy to communications between Dr. *** and the school district about their son. The school district's Lead Autism Specialist has never reviewed Dr. ***'s report, has never been asked to consult with other Northside ISD personnel regarding STUDENT, has never met STUDENT and has never spoken with STUDENT's parents.

DISCUSSION

Identification and Evaluation as Student with PDD

Under IDEA, the school district has a responsibility to locate, identify, and evaluate all children with disabilities residing within its jurisdiction who are in need of special education. *20 U.S.C. §1412 (a)(3)(A)(B); 34 C.F.R. §300.125 (a)(1)(i)*. IDEA regulations establish specific assessment requirements in order to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. *34 C.F.R. § 300.500 (b)(2)*. Where a child has already undergone a full individual evaluation (FIE), has been identified as eligible for special education, and has been receiving services, the school district must then ensure that the child's IEP is reviewed at least annually and that a reevaluation is conducted at least every three years (or before then if conditions warrant) or when requested by the child's parents or teacher. *34 C.F.R. § 300.536*. Reevaluations must meet the same assessment criteria as those for initial evaluations. For example, the child must be assessed in all areas related to the suspected disability and no single procedure is used as the sole criterion for determining a child's disability or in designing an appropriate educational program. *34 C.F.R. § 300.532 (f)(g)*.

It was not until late in the fall 2003 semester (when Dr. ***'s report was presented by STUDENT's parents) that the school district had reason to suspect that STUDENT may have PDD (a form of autism) as a disability. Although extensively evaluated, Dr. *** was the first evaluator to conclude that STUDENT met the DSM-IV criteria for PDD. STUDENT was in *** school at the time Dr. *** made his diagnosis. Significantly, the identification of a child with autism, for IDEA purposes, does not rely on a DSM-IV diagnosis alone even though the regulatory definition does track much of the DSM-IV criteria.

Under IDEA, autism is defined as a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, which adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. A child who manifests the characteristics of autism after age 3 may be diagnosed as having autism if the criteria noted in the regulatory definition is satisfied. *34 C.F.R. § 300.7 (c)(1)(i)(ii)*.

In Texas, Students with pervasive developmental disorder (PDD) are included in the autism category so long as the determination is made by a multidisciplinary team that collects or reviews evaluation data. The team must produce a written evaluation report that includes specific recommendations for behavioral interventions and strategies. *19 Tex. Admin. Code § 89.1040 (b)(c)*. The multidisciplinary team must include a licensed specialist in school psychology, an educational diagnostician, or a licensed or certified professional for a specific eligibility category, or, appropriately certified or licensed professional with experience and training in the area of the suspected disability. *Id.*

2003-2004 School Year

No multi-disciplinary team conducted an inquiry as to whether STUDENT met IDEA eligibility criteria for autism during the 2003-2004 school year. The school district could not rely solely on Dr. ***'s report for IDEA identification purposes. *34 C.F.R. § 300.532 (f)*. However, once received, Dr. ***'s report raised the issue of whether autism was an appropriate eligibility classification for STUDENT either in addition to, or instead of, his other disability classifications of MR, SI, and OHI. IDEA assessment provisions require that school districts review existing evaluation data including evaluations and information provided by the parent, current classroom-based assessments and observations, and, observations by teachers and related service personnel. *34 C.F.R. §300.533 (a)*. On the basis of that review, and input from the child's parents, the school district must then identify what additional data, if any, are needed to determine (in the case of a reevaluation):

- whether the child continues to have such a disability,
- the child's present levels of performance and educational needs,
- whether the child continues to need special education and/or related services, and ,
- whether any additions or modifications to the child's educational program are needed to enable the child to meet the measurable annual goals set out in the child's IEP and to participate, as appropriate, in the general curriculum.

34 C.F.R. § § 300.532, 300.533, and, 300.536.

A series of ARD meetings in January and February 2004 addressed STUDENT's educational needs as a component of the required triennial review. The ARD committees also planned for his transition to *** school. Although both the LSSP and the speech therapist referenced Dr. ***'s findings and recommendations in various ways, the ARD committees did not decide that STUDENT should be evaluated by a multi-disciplinary team for autism. Instead, the ARD focused on a discussion of STUDENT's educational needs as identified by *all* the available data, including Dr. ***'s findings. I do not question or conclude that such a focus was wrong; indeed, reaching consensus of STUDENT's educational needs and then designing an IEP from them is one of the most important, critical tasks for the ARD committee. That focus was entirely appropriate and lawful under IDEA. *34 C.F.R. § 300.343.*

However, the ARD should have at least considered whether an evaluation for autism was called for. It did not. Perhaps if the school district had not been hampered by the limited scope of parental consent for Dr. ***'s evaluation, the relevant experts could have established a dialogue and either come to consensus on the PDD designation, or at least, a better understanding of their respective professional opinions. This issue was a factor in the failure to conduct an evaluation for autism during the 2003-2004 school year.

2004-2005 School Year

Certainly when the possibility of PDD was again raised in the CHS report in December 2004, the ARD committee should have squarely considered whether the need for additional data was now

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appropriate to firmly resolve the issue. They did not. Instead, the evidence showed that the LSSP concluded the PDD diagnosis stated in the CHS report was merely a reference to Dr. ***'s previous findings. He came to this conclusion due to the absence of specific measures for autism in the CHS report. The December 2004 ARD recessed and was completed in two subsequent meetings in January 2005. The ARD committees again focused on the data on hand, STUDENT's educational needs as described by the data, and then the design of an appropriate IEP. Parental concerns about whether STUDENT was making adequate progress were a consistent theme in all ARD meetings at the *** school.

I do not fault the ARD committee or the school district for the focus it gave to those issues that were of paramount importance. However, where at least two outside, independent evaluators raised the possibility that STUDENT met criteria for autism, the school district had a responsibility to conduct the requisite assessment to resolve that issue. The evidence showed that STUDENT's test scores did not fit the traditional pattern for mental retardation. The evidence showed that he does appear to meet at least some of the criteria for autism. A multi-disciplinary assessment team should have had the opportunity to at least consider and review the data and make a determination as to whether classifying STUDENT as a Student with PDD/autism was a more accurate descriptor of his disability. At the very least, the school district's lead autism specialist could have been consulted to review the issue and give the LSSP and/or the ARD committees her view.

Multiple Disabilities

IDEA also recognizes that for some Students, the application of a single classification category is not a full and accurate description of their situation. IDEA recognizes that some children must cope with the intersection of a variety or multiplicity of deficits and therefore includes "multiple disabilities" as an IDEA eligibility classification. *34 C.F.R. § 300.7 (c)(7)*. A child is eligible for special education under IDEA as a Student with multiple disabilities if there are "... concomitant impairments ... the combination of which causes such severe educational needs that they cannot be accommodated in special education programs solely for one of the impairments." Although the regulation appears to contemplate severely impaired children with its reference to mental-retardation-blindness and mental retardation-orthopedic impairment, it does not limit eligibility to those concomitant impairments on its face. *Id.* A somewhat broader definition is offered by the state regulation: a Student with multiple disabilities is one who has a combination of disabilities and who meets all of the following conditions:

- (i) the Student's disability is expected to continue indefinitely; and
- (ii) the disabilities severely impair performance in two or more of the following areas:
 - psychomotor skills;
 - self-care skills;
 - communication;
 - social and emotional development; or

- cognition.

19 Tex. Admin. Code §89.1040 (c)(6). In STUDENT's case there is evidence that he does have severe impaired performance in at least two, possibly three, of the regulatory areas: communication, social development, and, cognition. There seems to be no dispute that his disability is expected to continue indefinitely. Although school personnel and STUDENT's family differ as to the severity of his deficits, the use of "multiple disabilities" as an eligibility classification may be a way to avoid future disputes over identification.

Does STUDENT's current educational program provide him with FAPE?

Speech Services and Communication Needs

A free, appropriate public education (FAPE) is one where the school district has complied with the procedural requirements of IDEA and then designed and implemented an individualized educational program based on the Student's unique needs. *20 U.S.C. § § 1401,1415; 34 C.F.R. §§ 300.300, 300.346*. The program need only provide the Student with a "basic floor of opportunity" and be reasonably calculated to enable the child to receive an educational benefit. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 206-207 (1982)*. The educational benefit must be more than "de minimis" but need not be the best possible program or "maximize" the child's potential. *See, Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 247-248 (5th Cir. 1997)*.

The evidence showed that STUDENT's communication and speech needs were properly evaluated and considered by the school district. STUDENT's parents were provided with an opportunity to participate in the consideration of his speech and communication needs and they did so, clearly and consistently. All the procedural requirements of IDEA in that regard were therefore met.

STUDENT was provided with individualized speech therapy as a related service. He received 20 thirty minute speech therapy sessions for a one year period. The services were renewed at the next annual ARD. STUDENT's IEP's included specific goals and objectives to improve his communication skills to address expressive language, verbal reasoning, and pragmatic/social language needs. He made progress in speech therapy. The therapy focused on the development of functional communication skills aimed at increasing independence. There was insufficient evidence to show that the speech services provided by NISD did not provide STUDENT with the requisite educational benefit. In the Fifth Circuit, the party challenging the appropriateness of an IEP has the burden of proof. *Michael F., 118 F. 3d at 252; Adam J. v. Keller Ind. Sch. Dist., 328 F. 3d 804, 810 (5th Cir. 2003)*. Petitioner did not meet his burden of proof on these issues.

Implemented by Properly Trained Staff

Petitioner presented virtually no evidence on this point. There was no evidence that the teachers, therapists, or assessment personnel who worked with and evaluated STUDENT were not properly

trained. While IDEA and its implementing state and federal regulations do establish certain criteria for properly trained personnel, Petitioner did not meet his burden of proving that the school district's personnel were not qualified under the law. *Id.*

Did the Failure to Evaluate Result in Substantive Harm?

The evidence showed that although the school district did not ensure that a multi-disciplinary team evaluate STUDENT for the presence of autism/PDD, it also showed that there was no substantive harm that flowed from this error. Instead, the evidence clearly demonstrated that the school district and all members of the various ARD committees, including STUDENT's parents, were focused on the critical and seminal task of identifying STUDENT's needs and then addressing them with educational goals, objectives, instructional and behavioral strategies and related services that met his unique needs. Although the experts may disagree on whether STUDENT is mentally retarded or has PDD, they do agree that he exhibits deficits in language, social function and functional, basic academic skills.

The ARD committees thoroughly discussed how the school district could meet STUDENT's needs through the local curriculum, the ALE classroom, the vocational preparation classes, speech therapy services, and through specific instructional and behavioral strategies recommended not only by Dr. *** but also derived from other available assessment data. That is precisely the duty and responsibility of the ARD committee and in that regard those obligations were met. Therefore, even though the school district failed to conduct an assessment for autism, no substantive harm occurred as a result of that violation. Procedural flaws alone do not automatically require a finding of a denial of FAPE. Only those that result in the loss of educational benefit or seriously infringe on parental opportunity to participate in the IEP formulation constitute a denial of FAPE. *See, W.G. v. Bd. of Trustees of Target Range Sch. Dist., 960 F. 2d 1479, 1485 (9th Cir. 1992).* The evidence showed that STUDENT received an educational benefit from his program and that his parents were active participants in the formulation of his IEP.

CONCLUSIONS OF LAW

1. The school district was under no obligation to identify Petitioner as a Student with autism beginning in the 2003-2004 school year. No single procedure can be used as the sole criterion for determining Petitioner's eligibility for special education services under IDEA. Only a multidisciplinary team can determine Petitioner's eligibility as a Student with autism. *34 C.F. R. §§ 300.532 (f); 300.533, 300.534, 300.535.*

2. The school district had reason to suspect autism as an IDEA eligibility classification by the end of the fall semester 2004 and therefore a multidisciplinary team should have conducted an evaluation for autism beginning in February 2005 up through the present. *34 C.F. R. §300.536; 19 Tex. Admin. Code § 89.1040.*

3. No substantive harm occurred as a result of the school district's failure to ensure an evaluation for autism since the ARD Committees considered Petitioner's needs from all the available assessment data and designed an appropriate educational program for him based on those needs. *Adam J. v. Keller Ind. Sch. Dist.*, 328 F. 3d 804 (5th Cir. 2003).

4. The school district's program and speech therapy services provided Petitioner with the requisite educational benefit under the IDEA. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); 34 C.F.R. § 300.347.

5. Petitioner failed to meet his burden of proof that his educational program was not implemented by properly qualified personnel. 34 C.F.R. § 300.23; 19 Tex. Admin. Code § 89.1131.

ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Petitioner's claims for relief are hereby **DENIED**. All other relief not specifically stated herein is **DENIED**.

SIGNED the 30th day of September 2005

Ann Vevier Lockwood
Special Education Hearing Officer

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. 19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code Sec. 2001.144 (a)(b).

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**NORTHSIDE INDEPENDENT
SCHOOL DISTRICT,
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SYNOPSIS

Issue:

Whether the school district should have identified teenager as a Student with autism; specifically Pervasive Developmental Disorder (PDD) for purposes of special education under the Individuals with Disabilities Education Act (IDEA) beginning in the 2003-2004 school year.

Held:

For the school district.

Student had been extensively evaluated over the years, had been diagnosed with a wide variety of deficits and disabilities, and had been receiving special education and related services since *** school and *** school as a Student with mental retardation, other health impairment, and speech impairment. Single outside evaluator raised the possibility of the presence of PDD and although ARD Committee was required to consider the evaluation only a multidisciplinary team, following IDEA assessment requirements, can make a determination of eligibility as a Student with autism. A diagnosis based upon the DSM-IV is important information for the ARD Committee to consider but not sufficient in itself for purposes of IDEA eligibility.

34 C.F. R. §§ 300.532(f), 300.533, 300.534, 300.535.

Issue:

Whether school district should have conducted an evaluation for purposes of autism/PDD as an area of suspected disability beginning in the 2003-2004 school year.

Held:

For the Student.

The school district had reason to suspect autism as an IDEA eligibility classification by the end of the fall semester 2004 when a *** outside evaluation supported an earlier evaluation that recognized a diagnosis of PDD. A multidisciplinary team should have conducted an evaluation for autism after the completion of ARD meetings that focused on the triennial review that included references to the *** evaluation and its findings of both mental retardation and PDD.

34 C.F.R. § 300.536; 19 Tex. Admin. Code § 89.1040.34

Issue:

Whether the failure to conduct the evaluation for autism resulted in a substantive harm to the Student.

Held:

For the school district.

No substantive harm occurred as a result of the school district's failure to ensure an evaluation for autism because the ARD Committee considered Petitioner's needs as identified by all the available assessment data; the experts agreed on what those needs were despite differences in professional opinion about proper diagnoses. The ARD designed an appropriate program for Student that met those needs and included recommendations from outside evaluator who raised the possibility of PDD as a disability.

34 C.F.R. § § 300.343, 300.346

Issue:

Whether school district's program and speech therapy services provided Petitioner with the requisite educational benefit.

Held:

For the school district.

Student made progress in the program; Student's program included appropriate goals that addressed needs identified by assessment data; Student's program was implemented using recommended instructional strategies and materials.

34 C.F.R. § 300.347.

Issue:

Whether Student's program was implemented by properly trained staff.

Held:

For the school district.

Petitioner failed to present almost any evidence on this issue and therefore did not meet his burden of proof.

34 C.F.R. § 300.23; 19 Tex. Admin. § 89.1131.