

DOCKET NO. 255-SE-0706

KELLER INDEPENDENT SCHOOL DISTRICT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER
	§	
STUDENT, B/N/F PARENT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Keller Independent School District (hereinafter “Petitioner” or “the district”) brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. §1400, et seq., complaining of the student and student’s parent.

Petitioner was represented by Susan Graham, an attorney in the Austin office of Walsh, Anderson, Brown, Schulze & Aldridge. The parent appeared pro se.

Petitioner's request for hearing was filed on July 14, 2006, and came on for hearing in the offices of the district in Keller, Texas, on September 13, 2006. The parties were afforded an opportunity to file written closing arguments and the decision is to be issued on or before September 27, 2006.

Petitioner alleged that the parent requested an independent educational evaluation at an annual admission, review, and dismissal (“ARD”) committee meeting, that the parent requested the removal of the mentally retarded eligibility criterion for special education for the student, that the district’s current evaluation is appropriate, and that the Respondent is not entitled to an independent educational evaluation (“IEE”) at district’s expense.

Based upon the evidence and argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. The student is a student born in *** who resides with his parent and attends school in the Keller Independent School District. [Respondent's Exhibit 6]

2. The student has been receiving special education services from the district based upon eligibility criteria of mental retardation ("MR") and other health impaired ("OHI"). [Respondent's Exhibits 6, 7 and 8]

3. The student was born with ***, a brain abnormality, and has received special education services since he began school. [Petitioner's Exhibits 3 and 7]

4. Comprehensive individual assessments for the student were completed in *** and ****. The assessments indicated eligibility for special education as MR and OHI. [Respondent's Exhibits 1 and 2]

5. The student's comprehensive assessment in 2001 showed a verbal IQ scale score of ***, a performance IQ scale score of ***, and a full scale IQ score of *** on the Wechsler Intelligence Scale for Children Third Edition ("WISC-III"). [Petitioner's Exhibit 2]

6. The Vineland adaptive behavior scale ("VABS") in the 2001 assessment showed an adaptive behavior composite of ***. The Vineland score demonstrates deficits in functioning required for personal and social sufficiency along with concurrent deficits in intellectual functioning. [Petitioner's Exhibit 2]

7. A full individual evaluation ("FIE") for the student was completed in April 2004. The evaluation included a review of the previous assessment, new information from the student's teachers, and a review of evaluations for music therapy and occupational therapy completed in 2002. [Petitioner's Exhibits 3 and 4]

8. At an ARD committee meeting in May 2004, the parent questioned the propriety of the mental retardation eligibility criterion for the student. But after some discussion and consideration of assessment data, the committee retained both OHI and MR as eligibility criteria for the student and developed an individual education program (“IEP”) for the student. All members of the committee including the parent concurred. [Petitioner’s Exhibit 4]

9. An ARD committee met for the student in May 2006 for the student’s annual ARD review and to develop an IEP for the 2006-2007 school year. The committee reviewed the FIE for the student from 2004 and disability reports for MR and OHI. The parent asked the committee whether or not the committee could place the student residentially and questioned again whether the MR eligibility criterion is appropriate for the student. The committee agreed to secure new assessment data prior to the determination of eligibility criterion for the student and to reconsider criteria after the completion of a new FIE. [Petitioner’s Exhibit 6]

10. An FIE for the student was completed which included the administration of the WISC-IV (Wechsler Intelligence Scale for Children Fourth Edition) and the VABS-II. The WISC-IV showed a full scale IQ for the student of *** (within the mentally deficient range) and the Vineland-II showed an adaptive behavior composite of *** as a standard score - indicating that the student is performing in the *** percentile. [Petitioner’s Exhibit 7].

11. The instruments used for assessment of the student are widely used standardized instruments normed on all populations. They are considered to be valid and reliable, and they were administered by trained personnel consistent with the manufacturers’ written instructions.

12. The parent asked for copies of the written protocols developed in the administration of the Vineland for the student. The district did not retain the entire protocol but instead retained only the summaries and composite scores. The district was unable to furnish to the parent the entire protocol.

13. When the ARD committee for the student reconvened, the committee could not reach a consensus. The parent disagreed with the district's refusal to move the MR eligibility criterion for the student and refusal to make a residential placement. [Petitioner's Exhibit 6]

14. On June 14, 2006, the district provided a written notice of refusal to place the student in a residential facility and to remove his eligibility as MR. [Petitioner's Exhibit 9]

Discussion

The student is a student eligible for special education and related services. His parent, though, disagrees with the district's determination of his eligibility criteria for special education and wants the MR eligibility criterion removed. The parent believes that the district's evaluation for the student is not appropriate and that she is entitled to an independent educational evaluation at public expense. The district brought this action requesting a ruling that its evaluation is appropriate.

Conclusions of Law

1. The student is a student who is eligible for special education and related services under the provisions of IDEIA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. The Keller Independent School District is responsible for the delivery of the special education and related services for the student.

3. The district's current evaluation for the student is appropriate. Respondent is not entitled to an independent evaluation at the district's expense, and the district satisfied the requirements of 20 U.S.C. §1415(b)(d) and 34 CFR 300.502(b).

ORDER

Based upon the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is GRANTED.

Petitioner's current evaluation is appropriate.

SIGNED this 25th day of September, 2006.

/s/ Lucius D. Bunton
Lucius D. Bunton
Special Education Hearing Officer

DOCKET NO. 255-SE-0706

KELLER INDEPENDENT
SCHOOL DISTRICT

VS.

STUDENT,
B/N/F PARENT

§ BEFORE A SPECIAL EDUCATION
§
§
§ HEARING OFFICER
§
§
§ FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the district's current evaluation of the student is appropriate so that the parent is not entitled to a independent educational evaluation at the district's expense.

CFR CITATIONS: 34 CFR 300.502

HELD: For Petitioner.