
DOCKET NO. 083-SE-1106

LEWISVILLE INDEPENDENT
SCHOOL DISTRICT
PETITIONER

vs.

BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

B/N/F***&***

RESPONDENT

REVISED DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner brings this appeal, pursuant to the Individuals with Disabilities Education Improvement Act 20 U.S.C. § 1400 et seq., (hereinafter referred to as "IDEIA"), against Respondent (hereinafter referred to as "Respondent" or "Student"). Petitioner (hereinafter referred to as "Petitioner" or "School District") filed a written request for a due process hearing which was received by the Texas Education Agency on November 14, 2006. Petitioner was represented by Attorney Nona Matthews of Walsh, Anderson, Brown, Schulze & Aldridge, P.C. in Irving, Texas. Respondent was represented by Attorney Yvonnilda Muniz of the Law Office of Yvonnilda Muniz in Austin, Texas. A telephone prehearing conference was held on Monday, December 4, 2006, at which time both parties waived their right to a final decision within forty-five (45) days of the date the written request for due process hearing was filed. [34 C.F.R. §300.511(c)] A second prehearing conference was held on Monday, December 11, 2006 to

reschedule the date of the due process hearing. Petitioner stated at that time that the School District would be closed for winter break, and a hearing place could not be provided. A continuance of the case was granted. A due process hearing was held on Friday, January 5, 2007, in Lewisville, Texas. The parties agreed to file post-hearing briefs on or before January 29, 2007.

Petitioner alleges that the Student is a *** year-old in the *** grade who receives special education placement, programs and services on the basis of meeting eligibility criteria as a student who is Other Health Impaired (“OHI”), specifically with Attention Deficit/ Hyperactivity Disorder - combined type (“ADHD”).

Petitioner asserts that Student’s most recent evaluation on October 31, 2006 resulted in disagreement with the the parents. Because the Student’s parents requested an Independent Education Evaluation (“IEE”), Petitioner filed this request for a due process hearing so that it can demonstrate the appropriateness of its evaluation.

Respondent contends that the Petitioner’s October 31, 2006 evaluation should not be sustained due to issues regarding the evaluation and reporting that affected the outcome of the evaluation. Respondent also asserts that the October 31, 2006 evaluation contains contradictions within the evaluation; unusual procedures used to perform the evaluation; unsound reporting; and unethical advised representation.

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

Findings of Fact

1. The Student is a *** year-old who resides within the School District.
2. The School District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing the Student a free appropriate public education in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. § 1400, et seq., and the rules and regulations promulgated pursuant to IDEIA.
3. The Student is eligible for special education placement, programs and services as a student whose eligibility criteria is Other Health Impaired (“OHI”) based on his Attention Deficit Hyperactivity Disorder (“ADHD”).

4. Prior to the District's initial Full and Individual Evaluation (FIE) the parents consulted a psychologist and received a private psychological evaluation of the Student.
5. Dr. *** is a licensed psychologist hired in October 2004 by the parents to evaluate the Student's behavioral development. Her evaluations occurred on the following dates: October 22, 2004, November 2, 2004, November 10, 2004 and November 18, 2004. Dr. *** was the sole evaluator for her evaluation. She observed the Student in her office only; and did not observe the Student in a social or school setting.
6. Dr. *** utilized the following sources of data for her evaluation: Diagnostic Interview, Review of Previous Behavioral Records, Play Assessment and Developmental Profile II.
7. Dr. *** asked the parents to complete Developmental Profile II, when the Student was *** months, in an effort to locate perceived areas of difficulty. The ratings show the Student to be significantly underdeveloped in several areas.

Developmental Profile II	Age in Months
Physical Age	***
Self- Help Age	***
Social Age	***
Communication Age	***
Academic Age	***

8. Based on the Asperger's Syndrome Diagnostic Scale, Dr. *** assessed that Student was in the *** percentile for likeliness to have the Disorder.
9. Dr. *** reported a score of *** on the Gilliam Asperger's Disorder Scale, indicating a "probable range" for the presence of Asperger's.
10. The Student's overall development status was assessed by Dr. *** primarily through clinical observation and parent's report of skills. In her final evaluation, Dr. *** concluded "Student falls in the upper end of spectrum of the autism spectrum, which is Asperger's Disorder."
11. Dr. *** recommended that the parents place the Student on Adderall, consult a developmental pediatrician for further information regarding the Asperger's and appeal to the District for placement of the Student in the Preschool Program for Children with Disabilities (PPCD).
12. The Student's initial FIE with the Petitioner was conducted in December 2004, amended January 20, 2005, as requested by the Student's parents and in conjunction with the Admissions, Review and Dismissal Committee Meeting ("ARD").
13. ***, PhD, a licensed psychologist specializing in school psychology, supervised much of the testing and evaluating for the December, 2004 FIE.
14. The Petitioner's December, 2004 evaluation of the Student was comprised of : reviewing previous behavioral records and developmental history, observing the Student in various settings, conducting interviews with the parents, collecting reports from the Student's teachers, administering Developmental Test of Visual-Motor Integration- 4th Edition (DTVMI-4), the Vineland Adaptive Behavior

- Scales (VABS), the Gilliam Asperger's Disorder Scale, the Developmental Profile II and The Kaufman Survey of Early Academic and Language Skills,
15. Included in the December, 2004 evaluation are two separate observations of the Student by ***, an education diagnostician.
 16. Ms. *** noted the frequency at which the Student called attention to various performances stating "Look at me, I'm really good at this." Also noted was the difficulty the Student had in following directions, "Student was often distracted, impulsive and non-compliant".
 17. For the December 2004 FIE, the second observation of the Student occurred at a McDonald's play ground. The following was recorded: "when children were not present, the Student initiated conversation and spontaneously spoke to the adults around him... once other children entered into an unstructured setting, the Student's activity level and noncompliance escalated."
 18. A Clinical Evaluation of Language Fundamentals (CELF), intended to test individuals abilities to comprehend linguistic concepts and recall sentences in context, was administered to the Student by ***, a speech pathologist, on October 27, 2005. A score of 7 and below indicates a language deficiency is present.

Scoring Summary Subtests	Raw Score	Standard Score
Linguistic Concepts	***	***
Recalling Sentences	***	***

19. Based on the CELF, it was determined in the December, 2004 FIE that the Student did not possess a receptive or expressive language deficiency.
20. The Developmental Test of Visual-Motor Integration (DTVMI-4) was administered by *** on October 27, 2005, in order to identify various learning and behavioral handicaps.
21. As part of the DTVMI-4 the Student was asked to copy, by pencil, a sequence of 24 geometrical shapes. The Student achieved a score of *** yielding a ranking of ***.
22. On December 9, 2004 the Student completed a series of tests referred to as the Comprehensive Learner Adapted Scope and Sequence program (CLASS), intended to evaluate an individuals motor skills. It was concluded that the Student was able to "complete all fine motor activities in the *** month range" and therefore a need for supplemental Occupational Therapy services was not warranted.
23. A Caregiver- Teacher Report Form was completed by the Student's mother to assess the Student's behavior at home.
24. Based on the mother's Report Form, the Student displays symptoms associated with behavioral and emotional problems, anxiety and aggression (scoring in the *** percentile in all four categories).
25. Mother described the Student as "wanting a lot of attention," often hugging friends hello and goodbye. When the same affection was not reciprocated the Student would throw tantrums.
26. The Caregiver- Teacher Report Form was also completed by a former teacher employed at a day-care that the Student once attended. The answers provided,

- place the Student in the *** percentile for likeliness to have a disorder yielding behavioral problems. In her professional opinion, the Student possessed characteristics common in those with Opposition Defiant Disorder.
27. The Gilliam Asperger's Disorder Scale, administered on December 7, 2004 produced a score of ***, classifying the Student as having borderline Asperger's Syndrome. This figure contradicts the results from the Gilliams Asperger's Disorder Scale conducted by Dr. *** which placed the Student in "probable range" for Asperger's based on a score of ***.
 28. In the initial FIE, the Student's scores on an ADD test were classified as insignificant.
 29. The Vineland Adaptative Behavior Scale (VABS) was administered, by ***, PhD, on November 29, 2004 and December 7, 2004, with the Student's parents via telephone.
 30. The VABS is a survey, given to parents, designed to assess the social competence of children by focusing on four domains. Communication (testing both oral and written), Daily Living (testing subject's ability to demonstrate appropriate behavior in the community), Socialization (testing subject's ability to interact with others) and Motor Skills Domain (testing subject's fine and gross motor coordination).
 31. According to the answers provided by the Student's parents, the Student functioned at *** competence in all four areas.
 32. The Kaufman Survey of Early Academic and Language Skills (K-SEALS), administered by *** on November 29, 2005, is intended to test an individuals articulation, receptive and expressive skills, knowledge of numbers, concepts and words.
 33. Results from the K- SEALS indicate that the Student as *** when compared to children of similar age.
 34. It was concluded by Dr. *** and her team that the Student did not demonstrate types of behavior consistent with Autism or Other Pervasive Developmental Disorder. However the Student met the criteria for an Emotional Disturbance and was therefore eligible for Noncategorical Early Childhood Disability- Emotional Disturbance (NECD-ED)
 35. Based on results, Dr. *** made the following recommendations: Develop a Behavioral Intervention Plan (BIP), encourage the Student's participation in social skills training, and increase monitoring of the Student's classroom behavior.
 36. On January 20, 2005, the initial FIE was re-evaluated and amended. The updated version included the addition of specific goals for the IEP, the modification of dates for the BIP to reflect the 05/06 school year and the recommendation that the Student be placed in a *** for Children with Disabilities (PPCD) program for the remainder of the 04/05 school year and then transferred to the Transitional Unit in 2005-06.
 37. An Admission, Review and Dismissal Committee (ARD) meeting was convened on January 24, 2005 to discuss the results of the FIE. It was agreed that the Student did not meet the requirements for autism but was eligible for NECD-ED.

38. On February 8, 2005 the District sent a letter to parents stating their unwillingness to accept the diagnosis of Asperger's Syndrome. Placement of the Student in a Preschool Program for Children with Disabilities (PPCD) half day program was offered but refused by parents.
39. Parents disagreed with District's conclusion and requested an Independent educational evaluation (IEE).
40. Parent's request for an IEE was granted in March 2005 when Dr. ***, a licensed psychologist specializing in school psychology, evaluated the Student.
41. Dr. *** based her evaluations and subsequent conclusion on reviews of previous testing, clinical interviews with parents, Developmental Test of Visual-Motor Integration (VMI) , Wechsler Preschool & Primary Scale of Intelligence (WPPSI-III), school observations, play interviews with the Student, parent & teacher forms and Childhood Autism Rating Scale.
42. On the WPPSI-III, designed to test intellectual functioning, the Student's results were *** when compared to children of similar age.
43. On the VMI, designed to test motor coordination and visual perception, results were recorded as ***.
44. Dr. *** completed the Child Behavior Checklist (Achenbach) and Conner's Rating Scale with Respondent's parents. The Child Behavior Checklist and Conner's Rating Scale are both standardized instruments. Both parents reported significant problems seen in Pervasive Developmental Disorders, mood and anxiety problems, oppositionality, perfectionism, emotional reactivity, and aggressive behavior. On the Student's, Respondent's parents rated the Student significantly above the *** range for ADHD. Respondent's previous preschool teacher completed the Child Behavior Checklist (Achenbach) and reported significant problems with oppositionality, and mild problems related to a Pervasive Developmental Disorder. The preschool teacher also rated Respondent as mildly elevated above the normal range for ADHD on the Connor's Rating Scale.
45. Dr. *** completed the Childhood Autism Rating Scale, a standardized instrument, based on observation and parent report. Dr. *** reported that Respondent's score on this assessment fell within the non-autistic range. Dr. *** determined Respondent did not have a Pervasive Developmental Disorder and reported she suspected he was possibly bi-polar. Dr. *** reported that Respondent's mother was very concerned about an eligibility of Emotional Disturbance because she believed people tend to blame Respondent for the Student's actions rather than to try and understand the reasons for the Student's behavior.
46. The Student was observed, by Dr. ***, for a total of one hour on March 11, 2005. During this evaluation abnormal behavior was noted when the Student began interacting with other children at ***. At one point the Student crashed a tricycle into another boy's bike, grew upset, and slapped the boy. A few minutes later, the Student resumed riding and ran the tricycle off the course. The Student began yelling at a boy and maneuvered the tricycle so the boy could not avoid it and as a result, crashed into the Student's tricycle.
47. Based on these observations and a parent report, the Childhood Autism Rating Scale (CARS) was developed. According to scores "Student earned autistic-range

- ratings in the area of emotional response, body use, adaptation to change, listening response, taste, smell and touch response, fear or nervousness, and activity level.” However, according to Dr. ***, the ratings were not significant enough to indicate the presence of Asperger’s.
48. To evaluate the Student’s speech and language abilities, the Receptive One-Word Picture Vocabulary Test (ROWPVT), the Expressive One- Word Picture Vocabulary Test (EOWPVT) and the *** Language Scale-4 (PLS-4) were administered.
 49. Based on the results from the ROWPVT and the EOWPVT, designed to evaluate an individual’s ability to comprehend the meaning of specific words, the Student’s verbal expression was rated as ***. The Student’s sentences “contained numerous semantic and syntactic errors.”
 50. Results from the tests, allowed Dr. *** to conclude that the Student does not possess symptoms typical of Autism. Her report stated “ the best hypothesis appears to be that we are dealing with a serious mood disturbance, possibly Bipolar Disorder.”
 51. Dr. ***’s recommendations for the school included: placing the Student in speech and language therapy and monitoring the Student for frustration and rewarding the Student when goals were achieved.
 52. As an update to the FIE of December 2004, a Functional Behavior Assessment (FBA) was conducted by a consulting teacher to the District, *** on November 29, 2005. Her observation of the Student was conducted in a classroom environment. In her report it was noted that the Student was frequently non-compliant and consistently invaded other’s space.
 53. The following suggestions were made: allow the Student to work independently, praise the Student for accomplishments, supervise the Student in unstructured activities and punish the Student for misbehavior by enforcing “time out”.
 54. On May 16, 2005 an ARD committee convened to review and assess the IEE completed by Dr.***. It was agreed by the ARD Committee and the parents that Student met eligibility for NECD-ED and was subsequently placed in *** Program for Children with Disabilities (PPCD) for the 2004-05 school year. Placement in the Transition Unit was agreed on for the 2005-06 school year.
 55. The Parents’ requested an immediate ARD meeting to discuss their concerns with the Transition Unit as well as the Student’s regressive state.
 56. A month later, in November 2005, the ARD convened and agreed on the creation of a new BIP, a new FBA and a re-evaluation of the Student’s progress.
 57. In February 2006, the re-evaluation was conducted by Dr. ***, PhD. Dr. *** is an LSSP and a District employee. Dr. *** administered the Revised Children’s Manifest Anxiety Scale, the Children’s Self-Report and Projective Inventory, and a clinical interview to conduct an emotional assessment as part of the psychological evaluation. The revised Children’s Manifest Anxiety Scale is a standardized assessment with validity and reliability data. Dr. *** provided Respondent’s parents with the Behavior Assessment System for Children- 2nd Edition, the Child Symptom Inventory-4, the Brown Attention deficit Disorder Scales, and the Behavior Rating Inventory of Executive Function. However, the

parent checklists were incomplete and could not be scored. Four of Respondent's teachers completed the Behavior Assessment System for Children- 2nd Edition, which is a standardized assessment and reliability and validity data. The teachers also completed the Child Symptom Inventory- 4, the Brown Attention Deficit Disorder Scales, the Behavior Rating Inventory of Executive, and the Social Skills Rating System. The Behavior Rating Inventory of Executive Function and the Social Skills Rating System are both standardized assessments with validity and reliability data. Sources of data for the psychological evaluation included a review of the psychological evaluation conducted by Dr. ***, a review of the psychological evaluation conducted by Dr. ***, a review of the Occupational Therapy Eligibility Report completed by ***, teacher information, classroom observations, and a structured interview with Respondent. Respondent was observed on seven different occasions in different settings including his transition classroom, the kindergarten classroom, lunch, recess and the examiner's office. Dr. *** determined further evaluation in the area of autism was not warranted due to Respondent's ability to engage in reciprocal social responses and because Respondent lacked stereotypical behaviors associated with diagnosis of Asperger's Disorder. Dr. *** completed an addendum to the FIE Emotional Disturbance Eligibility Report. She concluded Respondent met eligibility requirements as a student with an OHI due to ADHD- Combined type. Dr. *** reported in the psychological evaluation that Respondent had recently participated in outside medical evaluations, and the results of the evaluations suggested Respondent had a signal processing disorder and Asperger's Disorder. Dr. *** reported that school based observations, results of the IEE, a recent District psychological evaluation, and an autism evaluation did not indicate these were areas of concern.

58. The Student was observed on seven separate occasions. On most of these occasions, the Student was described as acting "restless". While in class, the Student was observed rocking in a chair. When the chair fell a classmate started laughing. Angry at the boy's reaction, the Student walked towards him and raised a fist in an attempt to strike the boy. When redirected by the teacher, the Student complied and sat down.
59. Scores on both the RCMAS and the CSPRI were labeled as insignificant, signifying that the Student does not suffer from an anxiety disorder.
60. Throughout the evaluation and subsequent interviews, the Student maintained eye contact, responded to praise and adequately responded to questions from the examiner. Based on these observations it was concluded that "due to lack of observed stereotypical behaviors associated with a diagnosis of Asperger's Disorder, further evaluation is not warranted."
61. On February 6, 2006, four of the Student's teachers completed the BASC- 2, designed to measure a variety of child behavioral problems. Results from this test varied drastically. While one teacher described the Student as displaying significant signs of a behavioral problem, another described the behavioral problems as insignificant ability to meet the criteria for ADHD, was completed by some of the Student's teachers and returned to examiners on February 6, 2006.

62. In this form, teachers described the Student as “needing encouragement to continue working on a task for more than a few minutes” and “is also viewed as getting bored easily and becoming distracted easily.”
63. The Social Skills Rating System (SSRS) was also given to the Student’s teachers in an attempt to assess social skills.
64. The Student’s social skills were rated as *** when compared to children of similar age. One teacher stated that the Student’s behavior had “improved since the beginning of the school year due to his increased peer interactions.
65. In a FIE: Addendum dated February 24, 2006 it was concluded by Dr. *** that the Student “meets the eligibility requirements as a student with Other Health Impairment due to having symptoms of Attention Deficit/Hyperactivity Disorder.”
66. Unhappy with the results, Parent’s consulted with Dr.***, a certified otolaryngologist and Dr. *** MD, a certified neurologist.
67. Dr. *** is a Neurologist board certified in electroencephalography, or the study of brain waves. He was hired by the Student’s parents, in February 2006, to record and analyze the Student’s brain waves using an EEG.
68. Dr. *** observed Respondent in his office and obtained information from Respondent’s mother. Based on parent information and observation of Respondent in his office, Dr. *** diagnosed Respondent with Asperger’s Syndrome and mild ADD. Dr. *** also ordered an EEG to “confirm his clinical impression of Asperger’s Syndrome” and stated in his report that EEG biofeedback would be beneficial to Respondent due to the Asperger’s Syndrome and ADD. Dr. *** diagnosed Respondent with Asperger’s Syndrome based solely on information provided by Respondent’s mother, observation of Respondent’s behavior in Dr. ***’s office, and an EEG. Dr. *** was the sole evaluator in his evaluation of Respondent, and he did not administer any standardized instruments as part of the evaluation. Dr. *** acknowledged that there is disagreement in the reported research on whether the QEEG is useful in the diagnosis of autism.
69. Dr. *** testified that, based on the EEG results, the Student “had multiple areas of brain dysfunction or slowing which fit well with difficulties he was having in school and in life.” In his official report, Dr. *** concludes the Student had Asperger syndrome as well as a mild form of ADD. When examining the Student’s right posterior region, Dr. *** noticed slow activity which, he stated, indicates difficulty expressing emotions, a common symptom of Asperger syndrome. (T 26: 5-15)
70. *** acknowledged that he had not observed the Student’s self- help skills or seen him in a social environment. For information regarding his social behavior, Dr. *** relied on the Student’s parents’ reports, only.
71. ***, an Occupational Therapist (OT) was asked by the District to complete an evaluation of Student in January 2006 as part of a Disability Evaluation Report. The Student was referred to her because of difficulties with processing sensory information found in a Sensory test conducted in December 2005.
72. The following sources were utilized for this evaluation: Sources of data utilized for this evaluation include: Functional Schools Skills Checklist, observation of the Student’s handwriting skills, Sensory Motor History Questionnaire, Sensory

- Profile, Motor Free Test of Visual Perception 3rd Edition, Developmental Test of Visual Motor Integration, observation of Student's hand skills and a parent consultation.
73. While conducting the observation, it was noted by Ms. *** that the Student appeared "very distracted and consistently took things out of the desk to play with, ignoring requests to put them away."
 74. The Motor Free Visual Perception Test, designed to assess visual ability in persons over the age of 4 years old, was administered on January 12, 2006. Results ranked the Student in the *** percentile indicating that the Student's visual perception was *** when compared to children of similar age.
 75. The Developmental Test of Visual- Motor Integration (VMI) was administered on January 12, 2006 in order to identify possible motor coordination or visual perception defects. The results placed the Student in the *** percentile, an *** ranking.
 76. Results from The Sensory Motor History Questionnaire and The Sensory Profile, administered on December 9, 2005 showed Student to have sensory processing difficulties in the areas of vestibular(movement), tactile (touch), auditory and oral. These difficulties "appear to be impacting his ability to be successful in the classroom."
 77. Based on the evaluations, it was determined by Ms. *** that Occupational Services would be beneficial to the Student.
 78. In March 2006, an ARD committee meeting was held to review past psychological, occupational therapy and medical evaluations. It was determined that the Student no longer met the requirements for an Emotional Disturbance but did meet the criteria for Other Health Impairments (OHI) due to the diagnosis of ADHD. In addition, the District offered to re-evaluate the Student with the assistance of an Autism team.
 79. On April 20, 2006 the ARD committee convened again to discuss implementing a new FBA and BIP for the Student. It was noted in a telephone conversation between ***, a District staff person, and the parents that parents " had no concerns and were very pleased with the results they witnessed at the school."

Full and Individual Evaluation of October 31, 2006

80. On October 31, 2006 the Multidisciplinary Autism Team, headed by Dr. ***, PhD, evaluated the Student to determine if criteria for Autism Spectrum Disorder was present.
81. Dr.***, an employee of the District, is a licensed psychologist and a licensed specialist in school psychology. Prior to completion of her graduate degree in school psychology, Dr. *** worked with children suffering from behavioral and other conduct problems.
82. ***, a licensed occupational therapist, was included in the Autism team that evaluated the Student. She is certified in neurodevelopment therapy and has significant experience working with autistic children. In addition to working with autistic children for the past five years, she has also trained teachers in the District on the proper ways to treat autistic children.

83. ***, a licensed speech/ language pathologist, was also employed to participate in the Autism team headed by Dr.***. Ms. *** received a masters degree in speech-language pathology from the University of Texas at Austin. She has previously worked as an ABA therapist in an ABA home program. In addition, after school she works for a psychologist that specializes in treating children with Asperger's Disorder.
84. The Autism team listed the following sources of data for the October 31, 2006 FIE:

Psychology Evaluation by ***, Psy. D. 10/22/04
Multidisciplinary Team Evaluation by LISD 1/5/2005
Psychology Evaluation by ***, PhD 3/11-4/9/2005
Psychology Evaluation by LISD 2/6/2006
Report from ***, M.D., Otolaryngologist 2/7/2006
Report from***, M.D. Neurologist 2/9/2006
Occupational Therapy Evaluation by ***, OTR 2/2/2006
Team and Individual Observation 9/19,9/26,10/02, 10/03, 10/24/2006
Parent Clinical Interview 10/12, 10/24/2006
Interview of ***, M.D 10/18/2006
Teacher Interview 10/12/2006
Teacher Input Form 9/29/2006
Consult with current Occupational Therapist, *** 9/13, 10/26/2006

Behavior Assessment Scaled for Children, Second Edition

Parent Rating Scales 10/01, 10/02/2006

Teacher Rating Scales 9/29/2006

Child Symptom Inventory-4

Parent Checklist 10/01/2006

Teacher Checklist 9/29/2006

Behavior Rating Inventory of Executive Function (BRIEF)

Parent Form 10/01/2006

Teacher Form 9/29/2006

Social Communication Questionnaire: Current 10/01, 10/02/2006

Asperger Syndrome Diagnostic Scale (ASDS)

Parent 10/12, 10/24/2006

Teacher 10/12/2006

Multidisciplinary Team 10/03/2006

Autism Diagnostic Observation Schedule- Module 3 10/03/2006

Children's Auditory Performance Scale 9/26, 10/01/2006

10/25/2006

Comprehensive Test of Phonological Processing 10/25/2006

Woodcock-Johnson III Test of Cognitive Abilities 10/25/2006

Cognitive Processing Inventory (CPI)

Parent 9/26/2006

Teacher 9/26/2006

Sensory Motor History Questionnaire 10/24/2006

Checklist of Fundamental School Skills 10/24/2006

SHORE Handwriting Screening 10/24/2006

Comprehensive Assessment of Spoken Languages 10/06/2006

Review of Scripted Video Tapes Provided by Ms. *** 10/27/2006

85. On October 18, 2006 Dr. *** contacted Dr. *** to discuss Dr. ***'s Asperger's Syndrome diagnosis of Respondent. Dr. *** was unaware that the District had conducted several psychological evaluations for Respondent, or that the District was currently conducting an autism evaluation for Respondent. Dr. *** also stated that the QEEG was not the only method of evaluation that should be used for an Asperger's diagnosis. Dr. *** informed Dr. *** that Respondent would receive appropriate services regardless of the area of eligibility.
86. The Comprehensive Assessment of Spoken language is a standardized instrument that measures pragmatic language, receptive language, and expressive language. Respondent scored within the *** range on this assessment. Respondent does not meet eligibility criteria as a Student with a speech impairment in the areas of expressive or receptive language. Based on observations and language assessments, the SLP reported that Respondent did not demonstrate any characteristics of autism or Asperger's Disorder. The results of the speech and language evaluations were consistent with the prior speech and language evaluations, including an independent evaluation.
87. The Student's teachers and parents were given a survey to document the progress of the Student. In a survey given to a teacher, it was noted that the Student "exhibits much affection... but does not respond well to demands or closed

- directives.” According to a check list provided, the teacher rated the Student as “at-risk” in the areas of Social Skills, Leadership, Study Skills and Adaptability.
88. The Student’s parents received the same check list. Much like the teacher, they believe the Student to be “at- risk” in the areas of Social Skills, Leadership, Activities of Daily Living and Functional Communication, Emotional Self-Control and Executive Functioning.
 89. In a different questionnaire, pertaining to developmental functioning, the Parents completed a check list specific to symptoms of Asperger Syndrome. Their results indicate that the presence of Asperger Syndrome was “likely”. However, their opinions greatly differ from the teacher who indicated that the presence of Asperger Syndrome was very unlikely.
 90. As the Autism team observed the Student, it was noted that the Student “appeared to enjoy being the center of attention.”
 91. Based on the tests conducted, it was concluded by the Autism team that “the current evaluation does not support a diagnosis of an autism spectrum disorder.” However, the Student met the diagnostic criteria for ADHD. The Autism team concluded that many of the social difficulties and immaturity that the Student suffers from can be attributed to ADHD. Described in the summary are various reasons that a diagnosis of Asperger’s Disorder does not fit this particular case.
 92. Children with Asperger’s usually have little to no social connection with others. However, in this case the Student was often described as seeking affection and praise of others. The Autism team described the Student as one who often “seeks new input and is highly motivated by extrinsic rewards.”
 93. The following were recommended to the District: continued occupational therapy, continued help in improving the Student’s social skills and updating the Student’s BIP.
 94. In an ARD committee meeting on November 29, 2006 the District recommended that the Student continue to be eligible for special education OHI due to ADHD. It was agreed that a Board Certified Behavior Analyst (BCBA) would collect data to determine if a need for Applied Behavioral Analyst (ABA) existed.
 95. On December 11, 2006 ***, a BCBA, was hired to observe the Student and determine if there was need for an ABA. Through four observations of the Student, it was determined that the Student was making progress on his IEP and therefore did not need an ABA.
 96. On December 13, 2006 an ARD committee convened to review all data collected by Ms. *** However, the original conclusion, reached on November 2006, held: the Student was eligible for OHI due to ADHD. An agreement between the ARD committee and the parents was not reached. Parent’s subsequently requested an IEE and the District refused.

Discussion

The issue in this case, despite the breadth of facts developed in the hearing record, is quite limited - whether the Petitioner's October 31, 2006 FIE conducted on the Student was appropriate. In a circumstance where a student's educational disability is not evident, as is the case with this Student, the tendency may be to immediately make a judgement on the appropriateness of the *result* or conclusion of the evaluation. Where conflicting conclusions are presented by the parties, it would appear that the expected outcome of this hearing is a choice of which party's conclusion is *correct*. In this case, the apparent question is whether the Student does or does not have Asperger's Syndrome.

This focus is misplaced, however. There is no specific issue in this case whether the Respondent's proffered conclusions are appropriate or derived from appropriate methodology. If Respondent did or did not appropriately evaluate the Student, determination of same is irrelevant to *Petitioner's* October 31, 2006 evaluation. The Student's overall educational experience with the School District is not in question. Neither are alleged failures by the School District to properly educate the Student, generally interact with the Student's parents, or even appropriately conduct ARD meetings regarding the Student's educational program. In fact, while there was a great deal of evidence introduced into this record about the past alleged failures of previously conducted evaluations of the Student, only the October 31, 2006 FIE was the primary subject of this hearing. Finally, though the conclusions reached by an educational assessment is a necessary subject to consider in an evaluation of the appropriateness of the evaluation, it would be wrong for any special education hearing officer to simply substitute his judgement for that of a qualified multi-disciplinary team (or qualified expert) simply because he disagrees with conclusions. The most salient issue in this hearing has to be whether the October 31, 2006 FIE on this Student was conducted in accordance with applicable law and procedures, resulting in a reasonably supported conclusion.

The enabling statute sets forth guidelines for the primary issue in the case. IDEIA provides at 20 U.S.C. § 1414(b)(2):

“Conduct of Evaluation. In conducting the [initial] evaluation, the local educational agency shall,

(A) use a variety of assessment tools and strategies to gather relevant functional, developmental and academic information, including information provided by the parent, that may assist in determining -

(i) whether the child is a child with a disability; and

(ii) the content of the child’s individual educational program...

(B) not use any single measure or assessment as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and

(C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors.”

Additionally, IDEIA requires the local educational agency to use assessments or measures that are valid and reliable; use trained and knowledgeable diagnosticians; assess all areas of suspected disability; and consider all relevant information to determine the child’s educational needs. Regulation implementing IDEIA provide, in pertinent part:

(A) Review of existing evaluation data.

As part of an initial evaluation (if appropriate) and as part of any reevaluation under this part, the IEP Team and other qualified professionals, as appropriate, must-

(1) Review existing evaluation data on the child including-

(ii) Evaluations and information provided by the parents of child;

(ii) Current classroom-based, local, or State assessments, and classroom- based observations; and

(iii) Observations by teachers and related service providers; and

(2) On the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-

(i) (A) Whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child;

34 CFR § 300.305 (a)

Clearly the District used a variety of assessment tools and strategies in conducting the October 31, 2006 FIE. The fact findings set out herein lists the multiple standardized diagnostic instruments utilized by certified and experienced diagnosticians to determine the Student's intellectual, cognitive, emotional and behavioral functioning. Petitioner used information from multiple settings; including the classroom, playground and casual social settings. Information was gathered from the Student's teachers, family and previous evaluators. This last issue was hotly contested in this hearing. However, I conclude that the weight of the record supports the conclusion that the School District appropriately considered the past evaluations and conclusions of outside evaluators such as

Dr. *** and Dr. *** in conducting the October 31, 2006 FIE. The intense scrutiny placed on the issue of whether the Student has Asperger's that began in December of 2004 guaranteed that the relevant opinions had to be addressed. There was open, on-going, and obvious disagreement between the District personnel and experts and the Student's parents and experts (Dr. *** and Dr. ***) that the Student had Asperger's. Disagreement with Dr. ***'s heavy reliance on the QEEG as a diagnostic tool for Asperger's was particularly controversial. Even Dr. *** seems to take a dim view of the viability of the EEG for this purpose. The conflicting conclusions between *** and ***'s reports and the problematic District FIE of December 2005, was the very reason for the October 31, 2006 FIE. (The chronological age of the Student supported another FIE, as well.) It would have been very puzzling if the multi-disciplinary team had ignored the previous Asperger's findings or failed to use every reliable instrument or data source to rule out what had become a highly- charged dispute. I conclude that there was no such failure by the District's multi-disciplinary team. Further, I conclude the Petitioner sought to, specifically, consult with Dr. ***, through Dr.***'s telephone contact, to reconcile his approach and his conclusions with those of the Team's. Respondent has urged specific IDEIA violations in the District's development of the October 31, 2006 FIE. For the most part, much of Respondent's argument is based on the logical assertion that the October 31, 2006 FIE should have been undertaken because of appropriate functioning of the Student's ARD Committee prior to the FIE, itself. This is why Respondent presented so much information that assailed the Student's ARD Committee and the District's actions prior to the October 31, 2006 FIE. However, Respondent's reasonable assertion becomes an inappropriate attempt to expand the scope of this hearing through an extended and detailed list of alleged procedural/ substantive District transgressions dating back to the December 2004 FIE. The connection between what occurred prior to the October 31, 2006 evaluation and the appropriateness of the evaluation is not only limited, but some allegations may be prohibited by the applicable statute of limitations. Nevertheless, the primary nexus of

Respondent's argument seems to be that the October 31, 2006 FIE is flawed because the District's evaluators did not give due consideration to Dr. *** and Dr.***'s conclusions. The argument is not persuasive. The record shows that the multidisciplinary team disagreed with the previous conclusions. IDEIA does not mandate that the local education agency follow all relevant information that it considers.

As an aside, it can be noted that Respondent's reliance on Dr.***'s and Dr. ***'s reports is somewhat misplaced, as far as IDEIA is concerned. Clearly, neither of Respondent's evaluators conducted evaluations that would have satisfied the statutory requirements discussed herein. Both Dr. *** and Dr. *** examined the Student alone, except for his parents, with little or no input for any other evaluator, much less a multidisciplinary team. Dr.***'s evaluation was primarily based on the QEEG and he made little attempt to translate his conclusions to the Student's educational setting. Dr. ***'s approach was more conventional, but her evaluation was equally clinical, rather than educationally centered. If this case had been a referendum of which approach was more correct, the Petitioner's or the Respondent's, the result would have been clear.

In summary, I conclude that Petitioner demonstrated, through the use of credible, probative evidence, that its October 31, 2006 FIE of the Student was appropriate. Therefore, I further conclude that Respondent is not entitled to an Independent Educational Evaluation at the public's expense.

Conclusions of Law

1. Respondent is a student in the School District who is eligible for special education services based on his classification as a student who is Other Health Impaired based on Attention Deficit/ Hyperactivity Disorder. 20 U.S.C.A. § 1401(3); 34 C.F.R. § 300.7; 19 T.A.C. § 89.1040.
2. Petitioner has a responsibility to provide Student with a free appropriate public education. 20 U.S.C.A. § 1412; 34 C.F.R. §300.300; 19 T.A.C. § 89.1001.
3. Petitioner's October 31, 2006 Full and Individual Educational Evaluation was appropriately conducted by a multi- disciplinary team, as mandated by the enabling statutory authority [20 U.S.C § 1414(B)(2)]; 34 CFR § 300.305 (a).
4. Respondent is not entitled to an Independent Educational evaluation at the public's expense. 34 CFR § 300.502

Order

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is GRANTED.

SIGNED this 9th day of February, 2007.

Stephen P. Webb

Special Education Hearing Officer

NOTICE TO THE PARTIES

Under State Board of Education rules, it is not necessary for a party to perfect an appeal to state district court by filing a Motion for Rehearing. However, either party may request, within ten (10) days after the date of this decision, specified additional or amended findings of fact or conclusions of law. 19 T.A.C. § 89.1185(n) (o).

DOCKET NO. 083-SE-1106

B/N/F***&***

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER

LEWISVILLE INDEPENDENT SCHOOL DISTRICT FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

SYNOPSIS OF DECISION

The Student is a *** year old in the ***grade who receives special education services on the basis of meeting eligibility criteria as a student who is Other Health Impaired (OHI), specifically with Attention Deficit/ Hyperactivity Disorder-Combined Type (ADHD).

ISSUE: Was the FIE conducted by the District on October 31, 2006 done so thoroughly, professionally and in accordance with the law?

CITATION: 20 U.S.C.A. § 1414(B)(2); 34 CFR § 300.305 (a) and 19 T.A.C. § 89.1040; 19 T.A.C. § 89.1001.

HELD: For the Petitioner. The FIE was conducted appropriately and in accordance with applicable law.

ISSUE: Whether the Student's parents' are entitled to an additional Individual Educational Evaluation (IEE) on the Student at public expense.

CITATION: 34 CFR § 300.502 (b)(3)

HELD: For the Petitioner. The Student's parents are not entitled to an IEE at the public's expense.