
DOCKET NO. 187-SE-0307

KLEIN INDEPENDENT
SCHOOL DISTRICT
PETITIONER

vs.

BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

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

RESPONDENT

DECISION OF THE HEARING OFFICER

Klein ISD (Petitioner) requested a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 et. seq. The Respondent is Student bnf Parent.

Prior to hearing the parent requested an Independent Educational Evaluation at public expense. Following disagreements over the scope of the evaluation, the District filed this Request for Hearing, seeking a declaratory judgment that its three-year reevaluation of the student is appropriate. The parent withdrew her request for an IEE, but the district elected to pursue this Request for Hearing. There is a lengthy complaint history between the parties in this case. During the pendency of this hearing, the Texas Education Agency completed its investigation but referred the parties to mediation and/or a due process hearing to resolve the issue of compensatory services proposed by the District arising out of the complaint investigation. The District amended its Petition, seeking declaratory judgment with regard to the appropriateness of compensatory services offered and whether it had a duty to provide transportation to summer

services. During the hearing, the parties announced that they had reached a settlement on these two issues and the District non-suited those claims. Therefore, the District's claims with regard to compensatory services and transportation are DISMISSED. The only remaining issue, the appropriateness of the District's three-year reevaluation, proceeded to hearing. Held, for Petitioner.

PROCEDURAL HISTORY

Petitioner's request for hearing was received by the Texas Education Agency on March 20, 2007, and assigned to Special Education Hearing Officer Sharon M. Ramage. Petitioner was represented by Amy Tucker, of Feldman & Rogers. The parent appeared Pro Se, and was assisted by an advocate, **. Following a continuance for good cause, the hearing was held on June 25 and July 26, 2007. Both parties requested an extension of the decision due date in order to have an opportunity to submit proposed findings of fact and/or written arguments. I found good cause to extend the decision due date based on the parties' requests and other reasons stated in post-hearing Orders. This final decision was timely rendered and forwarded to the parties.

Based upon the testimony of the witnesses, an assessment of their credibility, and a review of the exhibits, I make the following findings of fact and conclusions of law and find that Petitioner is entitled to the relief requested in its Request for Due Process Hearing.

FINDINGS OF FACT

1. The student resides within the geographical boundaries of the Klein ISD and is a student 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 student has a diagnosis of ** and an ** disorder, and receives special education services as a student with Other Health Impairment and Speech Impairment.
3. The District's three-year reevaluation was due in December 2005. In December 2005, the District conducted a review of existing evaluation data. The ARD Committee convened on multiple dates in December 2005 and January 2006, and

- determined that no additional data were needed to establish the student's eligibility for special education. However, in response to the parent's request, the District conducted additional achievement testing, which was considered by the ARD Committee in developing the student's IEP and determining his placement. The District also, in response to the parent's request, conducted oral motor articulation and physical therapy evaluations and granted the parent's request for an IEE in the area of assistive technology. All of these evaluations were considered by the ARD Committee in developing the student's IEP.
4. The ARD Committee's review of existing evaluation data was appropriate and made all determinations required under IDEIA and 34 C.F.R. § 300.305. The parent did not request a full individual evaluation at the time of the triennial review.
 5. The review of existing evaluation data was conducted by qualified professionals and included a review of all prior evaluations of the child, including prior information received from the child's physician that formed the basis of the OHI eligibility determination due to his **. The team also considered information provided by the parent, current classroom-based, local and State assessments, classroom-based observations, and observations by teachers and related service providers. In the three years preceding the reevaluation, there were nine evaluations of the student, including multiple Independent Educational Evaluations at the parent's request.
 6. The professionals conducting the review of existing evaluation data responded to the parent's input and as a result, the District administered achievement testing, additional speech and physical therapy evaluations, and granted the parent's request for an IEE in the area of assistive technology.
 7. On February 28, 2007, approximately one year following the administration of the achievement testing, the parent requested an IEE in the area of academic achievement testing in reading, math and writing. However, the parties had a disagreement regarding the scope of the IEE and the District requested this hearing.
 8. As a part of its three year reevaluation, the District administered the Woodcock-Johnson Psycho-Educational Battery, Tests of Achievement III (hereinafter Woodcock-Johnson III), which renders valid and reliable measures of achievement. The test administered is not discriminatory on the basis of the student's race or culture.
 9. The professional who administered the test was qualified to do so and administered the test in accordance with the instructions. The evaluation yielded results which were valid for the student.
 10. Subsequent to the three-year reevaluation, the District, in response to the parent's requests, conducted a Functional Behavioral Assessment, Occupational Therapy Assessment, a criterion referenced test in the area of math, and a physical therapy evaluation. All professionals who conducted the evaluations were qualified to do so and the evaluations yielded results which were valid for the student.
 11. The District's three-year reevaluation was appropriate. Respondent failed to present any evidence that the evaluations were not appropriate. The District has met its burden of proof.

12. The parent is not entitled to an Independent Educational Evaluation at public expense.

DISCUSSION

The IDEIA's implementing regulations require that school districts conduct reevaluations of children with disabilities at least once every three years and that the reevaluations be conducted in accordance with the evaluation procedures found at 34 C.F.R. §300.304-300.311. See 34 C.F.R. §300.303. The evaluation procedures include provisions requiring school districts to assess such children in all areas related to their suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status and motor abilities. See 34 C.F.R. §300.304. In performing the reevaluation, the ARD Committee members and other qualified professionals, must review existing evaluation data on the child including evaluations and information provided by the parents of the child; current classroom-based assessments and observations; and observations by teachers and related service providers; and then determine, based on their review and input from the parent, what additional data, if any, is needed to determine:

1. Whether the child continues to have a particular category of disability;
2. The present levels of performance and the developmental and educational needs of the child; and
3. Whether the child continues to need special education and related services, or whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum.

34 C.F.R. §300.305(a).

In this case, the ARD Committee determined, appropriately, that no additional data was needed to determine whether the child continued to meet the eligibility criteria for OHI or Speech Impairment, and the student's eligibility classification is not in issue. In fact, the parent did not question the student's identified disability

or need for services. Rather, she questioned student's academic achievement and functioning due to disagreements over student's progress. The additional data allowed the ARD Committee to address the student's present levels of performance and developmental and educational needs, as well as student's need for special education and related services and needed modifications to enable student to meet student's annual IEP goals and participate in the general curriculum.

I find, based on the totality of the circumstances that the parent's overriding concern (and the request for the IEE that led to this hearing) pertained to the student's present levels of performance in reading, writing and math. To address the concerns raised by the parent, the ARD Committee recommended, and the District administered, academic achievement testing to determine those present levels of performance. The evaluator selected the Woodcock-Johnson III to measure the student's levels of performance in these areas. The test is a norm-referenced test, and renders a valid and reliable measure of achievement. The test is non discriminatory on the basis of race or culture. The testimony conclusively established that the evaluator properly administered the test and that it produced valid results for the student. The testimony conclusively established that the test was appropriately selected to gather information regarding the child's performance in reading, writing and math.

The District has an obligation to seek complete information to determine educational need based on current data, and it fulfilled that obligation in this case when it administered the Woodcock-Johnson III as well as other evaluations in conjunction with the student's triennial review. The parent and the District determined that further inquiry was needed to assess the student's academic performance and this assessment tool was properly administered and yielded valid results for the student. Additionally, the District acceded to the parent's numerous requests for further testing in the areas of speech, physical therapy and assistive technology. Those tests were properly administered by qualified professionals and yielded valid results for the student.

The totality of the evidence established that the District relied on a variety of assessment tools to determine the student's current educational needs as contemplated by IDEIA and its implementing regulations. In fact, it would appear to this Hearing Officer that the District agreed to an excessive number of evaluations at the request of the parent. The uncontroverted testimony establishes the appropriateness of the District's three-year reevaluation, including its academic achievement testing. The parent is not entitled to an Independent Educational Evaluation at public expense.

CONCLUSIONS OF LAW

1. The student is eligible for special education and related services under the provision of IDEIA, 20 U.S.C. § 1400, et. seq, and related statutes and regulations
2. The Klein Independent School District is the local education agency responsible for the provision of the student's free appropriate public education.
3. The three-year reevaluation of the student by the district was appropriate and met the requirements of 34 CFR § 300.303-300.311.
4. The parent is not entitled to an Independent Educational Evaluation at public expense.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is GRANTED. The District's current evaluation is appropriate.

Signed this 10th day of September, 2007.

Sharon M. Ramage

Special Education Hearing Officer

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RESPONDENT

SYNOPSIS OF DECISION

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

CITATION: 34 CFR § 300.303; 34 CFR §300.305

HELD: For Petitioner