

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

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by next friends and parents \*\*\* and \*\*\* (hereinafter “Petitioner” or “the student”), brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of Lewisville Independent School District (hereinafter “Respondent” or “the district”).

Petitioner’s request for hearing was filed on December 11, 2014, and was assigned to a special education hearing officer for hearing but reassigned to the undersigned hearing officer on February 10, 2015.

The hearing was set by agreement of the parties and order of the Hearing Officer for two consecutive days in March 2015. A winter storm intervened and the hearing was conducted on March 6 and April 17, 2015, in the offices of the Lewisville Independent School District in Lewisville, Texas.

Petitioner was represented by Mark Whitburn with the law firm of Whitburn and Pevsner, PLLC, in Arlington, Texas. Respondent was represented by Nona Matthews, an attorney in the Irving office of Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

At the close of the hearing, the parties jointly moved for an extension of the decision deadline to provide an opportunity to file written closing arguments. Counsel for the parties filed written closing arguments and agreed that the decision is due June 5, 2015.

Petitioner alleged that the district failed to provide the student a free, appropriate, public education (“FAPE”) because:

- the student’s individual education plan (“IEP”) did not provide an opportunity for meaningful educational benefit;
- the student’s IEP was not individualized based on appropriate assessment and performance;
- the student’s IEP was not provided in the least restrictive environment;
- the student’s educational services were not coordinated collaboratively with key stakeholders;
- the student did not receive positive academic and non-academic benefit;
- the district failed to provide the student an appropriate independent educational evaluation (“IEE”); and
- the district did not provide an appropriate program for an extended school year (“ESY”).

As relief, Petitioner sought the development and provision of an appropriate IEP for the student in the least restrictive environment, compensatory educational services, an IEE in all areas of the student’s suspected disabilities, and reimbursement for independent evaluations and other costs incurred by the student’s parents.

The parties agreed that the one-year statute of limitations applies to Petitioner’s claims.

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 resides with the student’s parents in the Lewisville Independent School District. [Petitioner’s Exhibit 5; and Transcript Page 261]
2. The student and student’s family moved to the district \*\*\*. The student was \*\*\*

years old and in \*\*\* grade. [Petitioner's Exhibit 5; Respondent's Exhibit 4; and Transcript Pages 261-262]

3. \*\*\*, the district completed a full individual evaluation ("FIE") which showed educational disabilities of autism ("AU") and speech impairment ("SI") consistent with previous evaluations completed \*\*. [Petitioner's Exhibits 7, 10 & 18; Respondent's Exhibits 4, 6, & 7; and Transcript Pages 309-310 & 365]

4. The student's evaluations show problems with pragmatic language and the use of inappropriate language (including profanity). [Petitioner's Exhibits 7 & 10; and Transcript Pages 268 & 285-286]

5. An admission, review and dismissal ("ARD") committee for the student convened in \*\*\* and developed an IEP for the student. The committee considered a functional behavior assessment ("FBA") of the student. The committee developed an IEP which included behavioral and social skills goals, goals addressing autism, and speech goals addressing pragmatics and expressive language. [Respondent's Exhibit 6 & 7; and Transcript Pages 310-311 & 374]

6. At the \*\*\* ARD meeting, the student's parents did not express disagreement with the district's evaluation and did not request additional evaluation. [Respondent's Exhibit 7; and Transcript Pages 309-311, 365 & 374]

7. Another ARD committee for the student convened in January 2014 to consider the student's performance in the previous fall semester. Off-task behavior and a few instances of misbehavior (\*\*\*) were considered by the committee and social skills issues and behavioral strategies were discussed. [Respondent's Exhibit 9; and Transcript Pages 421-424, 528-529 & 540]

8. In May 2014, the student's parents requested an IEE at district expense. The district approved an IEE for a full psychological evaluation – including autism – as well as cognitive, achievement, adaptive behavior, speech and language, occupational therapy, and FBA

and an evaluation for assistive technology. The district provided the parents the district's policies concerning IEEs and a list of possible evaluators. The student's parents were interested in an independent speech evaluation and in an independent autism evaluation which would include the nature of the student's behaviors. [Petitioner's Exhibits 7, 14 & 36; Respondent's Exhibits 15 & 16; and Transcript Pages 280-281]

9. The student's parents wanted \*\*\*, \*\*\* that does assessments in the area of autism, to conduct the IEE. \*\*\* agreed to conduct the IEE (including a speech evaluation) for \$7,200.00 plus the cost of an FBA. The FBA would be done on an hourly rate of \$125.00 and could involve an expense up to \$9,700.00. The district replied that they would be willing to pay – based upon the operating guidelines which had been furnished to the parents – \$3,241.00. [Respondent's Exhibits 7, 18-20, 24 & 26; and Transcript Page 181]

10. The student's parent wanted an independent speech language pathologist (separate from \*\*\*) to conduct the speech language evaluation. The pathologist's fee for the evaluation was \$1,500.00 which is approximately four times higher than the district's maximum for a speech evaluation. [Respondent's Exhibits 20, 22 & 23; and Transcript Pages 181-188]

11. The district has adopted operating guidelines for independent educational evaluations and their costs. The guidelines are based upon research in typical costs for evaluations within the geographic area, consideration of the evaluator's credentials and the unique needs of the student, and approximations of costs up to 35% higher than Medicaid rates for the service. Data to establish the guidelines is gathered from two regional education service center regions and includes objective data from school districts, various professionals and private providers. [Respondent's Exhibit 20; and Transcript Pages 143-158]

12. The district did not agree to pay for the independent speech evaluation requested by the parents, and the evaluation was completed at the parents' expense. The evaluator testified that many other school districts pay for her evaluations at her quoted cost. The evaluator found

significant concerns in pragmatic language skills and social issues related to problems with these skills. [Petitioner's Exhibit 14; and Transcript Pages 43-51, 53-57 & 76-78]

13. The independent speech evaluator recommended increases in speech services for the student, attention to off-task behavior, and development of strategies to deal with social interaction. [Petitioner's Exhibits 14 & 15; and Transcript Pages 52-57]

14. \*\*\* completed an evaluation of the student by an autism evaluation team. The student's parents paid \$3,500.00 for the evaluation. The team observed the student in a variety of settings and concluded that the student was not receiving the intensive services they believe are required for success in high-functioning students with autism. \*\*\* recommended more socialization services for the student, training for district personnel, a focus in frequency and intensity in instruction, and awareness of issues in the problems with pragmatic speech. [Petitioner's Exhibit 18; and Transcript Pages 117-125]

15. \*\*\*'s evaluation was completed in November 2014 and was largely consistent with the diagnostic impressions, eligibility recommendations, and recommended strategies for the student in the district's own FIE in 2013. The student's parents believe that the district has not implemented recommendations for the student in both the district's own evaluation and the independent evaluation. Other recommendations from \*\*\*, however, are not credible to district personnel because the gathering of information was problematic, inconsistent, and based on mistakes in standardized assessment of the student. [Petitioner's Exhibits 29, 35 & 37; and Transcript Pages 314-317 & 359]

16. An ARD committee for the student reviewed the current evaluation in April 2014. The committee considered recommendations from the district's FIE, \*\*\* evaluation, and the independent speech evaluation. The committee adopted additional goals and objectives for the student and increased the amount of speech services. One of the parents of the student attended the ARD and did not request any changes or additions in the proposed IEP. [Respondent's

Exhibits 34 & 35; and Transcript Pages 322-327 & 433-435]

17. During the student's \*\*\* grade year (2014-2015), the student made measurable and meaningful educational progress in academic and non-academic areas. The student's behavior included minor issues of non-compliance but did not interfere with the student's progress. [Respondent's Exhibits 30-13; and Transcript Pages 487-488, 542 & 595-598]

18. The student's parents have expressed concerns about a proposed ESY program for the student in 2014 and believed that the district's ESY program did not include services with typically developing peers. The parents also believed that the proposed speech services were inadequate. [Petitioner's Exhibit 10; and Transcript Pages 53 & 269]

19. At an ARD meeting in June 2014, the district's proposal for ESY addressed regression in speech and behavior and included speech therapy, behavior strategies, and occupational therapy consultations. Because the student's parents did not like the proposed program, the district asked for suggestions for a private program for the student and offered to pay for an appropriate program. The student's parents did not make any proposals to the district; the student did not attend ESY; and the student did not receive any benefit from the speech and other services the district wished to provide. [Respondent's Exhibit 12; and Transcript Pages 175-176 & 414-420]

20. All ARD committees for the student utilized appropriate assessment of the student's performance and achievement. The assessment was timely conducted by the district. The ARD committees also considered the private evaluations provided by the student's parents and adjusted the student's educational programming based on recommendations from those evaluations. The IEPs for the student were individualized and based on the student's specific needs. [Petitioner's Exhibits 8-10 & 15; Respondent's 12, 27-28 & 35-36; and Transcript Pages 117, 320-323 & 433]

21. The student's parents regularly attended ARD committee meetings for the

student. At least one of the student's parents was present for every ARD. The district included input from district personnel with experience and expertise with the student, information from private providers, and input from representatives or advocates of the student's parents. Delivery of the student's educational program was designed and implemented in a coordinated and collaborative manner by key stakeholders. [Petitioner's Exhibits 8-10 & 15; Respondent's Exhibits 12, 27-28 & 35-36; and Transcript Pages 228, 428 & 445-447]

22. The ARD committee for the student developed programs to be administered in the least restrictive environment for the student. The student's parents had no complaints about the issue of least restrictive environment except for the proposed ESY for 2014. The student's parents did not present a program to be provided privately for the student. The district could not identify an appropriate program at school for the student which included students without disabilities. The student did not attend ESY and the parents refused the program the district offered. [Petitioner's Exhibits 8-10 & 15; Respondent's Exhibit 12; and Transcript Pages 175-176, 381, 425-426 & 562]

23. The student's performance in the district showed positive progress in academic and non-academic areas for the student. The student's behavior has been appropriate and the student responded favorably to behavior strategies if any problems arose. The student's social skills improved. The student's grades were largely all As and Bs. Related services for the student were successful. The student made progress in goals and objectives in speech therapy and occupational therapy. [Respondent's Exhibits 11, 14, 30 & 33; and Transcript Pages 112, 320, 395, 452 & 488-495]

### Discussion

The student in this matter has had considerable support at home and at school in making educational progress and in managing educational disabilities. In their efforts to secure the best evaluation the parents believed should be available, they retained qualified experts as

independent evaluators whose costs exceeded those which the district would pay. The parents provided the district with the private evaluations. The district used their own assessment and the private information to design and implement educational programming for the student. The student has been successful.

Petitioners failed to meet the burden of proof to show that the student has been denied FAPE or that the district's position on outside evaluations at public expense violates the provisions of IDEA. The district's experts' testimony was consistently credible, and the parents' experts were not. The district's evidence on appropriate costs of IEEs was based on substantial objective data relevant to the issues presented by the parties. Petitioner's evidence about costs for IEEs was largely anecdotal.

#### Conclusions of Law

1. The Lewisville Independent School District is responsible for providing special education and related services for the student under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. The student is eligible for special education and related services based on the eligibilities of autism and impairment.

3. Petitioner failed to meet the burden of proof to demonstrate a violation of IDEA under the standard of Schaffer v. Weast, 126 S.Ct. 528 (2005).

4. The IEP for the student is reasonably calculated to provide a meaningful educational benefit because: (i) the program is individualized on the basis of the student's assessments and performance; (ii) the program is administered in the least restrictive environment; (iii) the services are provided in a coordinated collaborative manner by the key stakeholders in the student's education; and (iv) positive academic and non-academic benefits are demonstrated. Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055.

5. The district properly complied with the provisions of 34 CFR 300.502(b)(2) in responding to the parents request for an IEE. The district properly developed criteria to ensure that the cost of a publically funded IEE is reasonable, and the district complied with the criteria in granting and refusing IEEs under the standard of M.V. v. Shenendehowa Central Sch. Dist., 60 IDELR 213 (N.D.N.Y. 2013) and Letter to Parker, 41 IDELR 155 (OSERS 2004).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED and all claims are DISMISSED with prejudice.

SIGNED this 5<sup>th</sup> day of June, 2015.

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

DOCKET NO. 107-SE-1214

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SYNOPSIS

**ISSUE 1:** Whether the district provided the student with a free appropriate public education.

**ISSUE 2:** Whether the LEA is responsible for providing at public expense independent educational evaluations which are unreasonably expensive.

**CFR CITATIONS:** 34 CFR 300.300 and 34 CFR 300.502(b)(2)

**TEXAS CITATION:** 19 T.A.C. §89.1055

**HELD:** For Respondent.