

SOAH Docket No. 701-24-05787.IDEA  
TEA Docket No. 096-SE-1123

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**Before the  
State Office of Administrative Hearings**

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**STUDENT, by next friends PARENT and PARENT,  
Petitioners**

**v.**

**Aledo Independent School District,  
Respondent**

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**DECISION OF THE HEARING OFFICER**

**I. STATEMENT OF THE CASE**

\*\*\* (Student), by next friends \*\*\* and \*\*\* (Parents and, collectively, Petitioners), bring this action against Aledo Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400-1482, and its implementing federal and state regulations. The main issue in this case is whether Parents must sign consent for an evaluation they contend includes inappropriate testing in order to receive a full and individual initial evaluation (FIE) of Student and obtain special education and related services from the District.

The Hearing Officer concludes Petitioner failed to meet Petitioner's burden of showing the evaluation proposed by the District includes assessments that are invalid, unreliable, or otherwise inappropriate for Student. The Hearing Officer further finds the District met its burden of showing that reasonable grounds exist to override Parents' lack of consent to the FIIE proposed by the District on October \*\*\*, 2023.

## **II. DUE PROCESS HEARING**

The due process hearing was held on February 8, 2024, through the Zoom videoconferencing platform. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by Roy Atwood with Atwood Gameros, LLP, and Parents were present.

Respondent was represented by Kelly Janes and Lindy French with Walsh, Gallegos, Treviño, Kyle & Robinson, P.C. The District's Director of Special Programs, Dr. \*\*\*, attended the hearing as the party representative. Both parties timely filed written closing briefs. The Decision in this case is due March 22, 2024.

The parties submitted six joint exhibits which were admitted into evidence without objection. Petitioner submitted nine separate exhibits, six of which were admitted. Respondent submitted 13 exhibits. Twelve were admitted. Petitioner called Parents and Dr. \*\*\* to testify. Student's Parent provided testimony related to her pregnancy, Student's development, and facts related to Petitioner's claim against Respondent. Student's Parent also testified as to the facts surrounding the parties' dispute. Dr. \*\*\* testified as an expert in the area of special education assessments and diagnostic practices.

Respondent called a speech and language pathologist (SLP); an educational diagnostician from the District's \*\*\*; the Director of Special Programs; and Dr. \*\*\*, a licensed specialist in school psychology (LSSP). Dr. \*\*\* testified as an expert in special education assessments and school psychology.

### **III. ISSUES RAISED**

#### **A. PETITIONER'S ISSUES**

The relevant timeframe in this case is from September 2023 forward. Petitioner raised the following legal issue for decision:

Whether Parents must sign a consent for an evaluation that includes inappropriate testing in order for Student to be evaluated and to obtain special education and related services from the District.

#### **B. RESPONDENT'S LEGAL POSITION AND COUNTERCLAIM**

Respondent generally denied Petitioner's allegations and raised a counterclaim for an order overriding lack of parental consent for the FIIE.

### **IV. REQUESTED RELIEF**

#### **A. PETITIONER'S REQUESTED RELIEF**

Petitioner seeks an order compelling the District to perform an FIIE that does not include a standardized measure of a full-scale IQ score. Petitioner also requested

compensatory services for the delay caused by Respondent's failure to timely evaluate Student in accordance with Parents' consent.

**B. RESPONDENT'S REQUESTED RELIEF**

Respondent, on the other hand, seeks an order compelling Parents to authorize, and make Student available for, an FIIE that includes all areas of suspected disability. Because the Hearing Officer does not interpret her authority under the IDEA to include compelling Parents to sign a document or make Student available for testing if they choose not to, she considers the District's position in a manner that is consistent with the regulations and relevant caselaw. *See* 34 C.F.R. § 300.300(a)(3)(i); *Shelby S. ex rel. Kathleen T. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450 (5th Cir. 2006) (affirming hearing officer's order overriding lack of parental consent and finding that the student was free to decline special education services under the IDEA rather than submit to the school district's evaluation); *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9th Cir. 1987) (stating that "if parents want [the student] to receive special education . . . , they are obliged to permit testing. If the parents wish to maintain [the student] in his current private program, however, the district cannot require [assessment]").

**V. FINDINGS OF FACT**

1. Student was born on \*\*\*, is \*\*\* years old, and lives with Parents \*\*\*. Student was diagnosed \*\*\*. The profile of \*\*\* often includes some degree of developmental and/or cognitive delay or deficit. Student is happy, social, affectionate, and incredibly

resilient—\*\*\*.<sup>1</sup>

2. Student received \*\*\* services from the time Student was \*\*\* until the end of May 2023. Student's \*\*\* plan included child and family goals to help address social and developmental needs. The single social goal was aimed at helping Parents \*\*\*. Meanwhile, the plan's developmental goals focused on Student's functional, gross motor, and communication skills. Student received physical, occupational, and speech therapy through \*\*\*.<sup>2</sup>
3. Families often \*\*\*. Families may also \*\*\* when they have a child with a disability who requires significant support.<sup>3</sup>
4. Student currently attends \*\*\*, \*\*\* program that provides learning opportunities for \*\*\* and prepares them for \*\*\* in a general education classroom. This program is offered through \*\*\*. Student is doing well at \*\*\* and rarely misses school.<sup>4</sup>
5. Parents contacted \*\*\*, a diagnostician from the District's \*\*\*, by email on September \*\*\*, 2023, and requested a special education evaluation. Parents were primarily interested in receiving speech therapy services for Student when they requested the evaluation.<sup>5</sup>

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<sup>1</sup> Joint Exhibit ( JE) 1 at 21-22; Joint Stipulated Facts ( JSF) ¶¶1-2; Transcript (Tr.) at 18, 24-25, 31-32, 76, 105.

<sup>2</sup> JE 1 at 1, 4-30; Tr. at 174-75.

<sup>3</sup> Tr. at 193-94.

<sup>4</sup> Tr. at 30, 31.

<sup>5</sup> JE 1 at 1-2; JSF ¶5; Tr. at 18, 35, 38.

6. Ms. \*\*\* emailed Parents on September \*\*\*, 2023, and talked to Student's Parent on September \*\*\*, 2023, regarding Student's \*\*\* services. Student's Parent sent Ms. \*\*\* Student's \*\*\* documents on September \*\*\*, 2023.<sup>6</sup>
7. On September \*\*\*, Student's Parent discussed the special education referral and evaluation process with the diagnostician over the phone. Parents recorded a portion of the call without telling the diagnostician, and Student's Parent listened in on the conversation.<sup>7</sup>
8. During the phone call, Ms. \*\*\* explained that she would begin the evaluation by using play-based assessments to evaluate Student. The District uses the \*\*\* which includes a checklist for children ages \*\*\* years. The checklist is used to obtain an estimated age of a child's abilities across the areas assessed. This information is then used to determine the percentage of delay a child is exhibiting. Play-based assessments tend to work better with \*\*\* students and when language skills are an issue. They can generate a cognitive score if the evaluator is able to collect sufficient data during the evaluation.<sup>8</sup>
9. Ms. \*\*\* indicated during the September \*\*\* phone call with Parents that the District suspected Student may be eligible under the umbrella of \*\*\*. Student's Parent expressed concern. Parents did not want Student "pigeon-holed," "labeled," or categorized with \*\*\*. Student's Parent believed the more appropriate areas of eligibility for Student would be other health impairment (OHI) and/or speech impairment.<sup>9</sup>
10. On October \*\*\*, 2023, the District sent Parents an Evaluation Letter; Notice of Evaluation (Notice); Notice of Procedural Safeguards; Parent's Guide to the Admission, Review, and Dismissal (ARD) Process; and Overview of Special

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<sup>6</sup> JE 1 at 1-2, 4-30; Respondent's Exhibit (RE) 1; Tr. at 39-40.

<sup>7</sup> Petitioner's Exhibit (PE) 6; RE 1; Tr. at 40, 175.

<sup>8</sup> PE 6; Tr. at 180, 186.

<sup>9</sup> PE 6; Tr. at 61, 206.

Education for Parents. The Notice proposed assessing Student in the following areas:

- language;
  - physical;
  - sociological;
  - emotional and behavioral;
  - cognitive, intellectual, and adaptive behavior;
  - educational and developmental performance; and
  - assistive technology.<sup>10</sup>
11. The Notice provided the following examples of tests that might be included in assessing a student's needs in the cognitive, intellectual, and adaptive behavior domain: the Wechsler Intelligence Scales (WIS), Woodcock-Johnson (WJ), and the Vineland Adaptive Behavior Scales. The following measures were included as examples of assessments to evaluate Student's educational and developmental performance: Woodcock-Johnson Tests of Achievement for reading, math, and language (WJTA) and the Wechsler Individual Achievement Test (WIAT).<sup>11</sup>
12. Parents were concerned that the Notice was inconsistent with the conversation Student's Parent had with the diagnostician and reached out to her once again. Ms. \*\*\* attempted to address Parents' concerns during a phone call with Student's Parent on October \*\*\*, 2023. Parents recorded the call without telling the diagnostician.<sup>12</sup>
13. Ms. \*\*\* explained during the call that the Notice is a form generated by Success Ed, the software program the District uses to develop and maintain special education-related documents, and that the form prepopulates with examples of assessments which may be used in different areas of testing. The diagnostician further explained that, of the examples included on the form, the only measure she would use in this case was the Vineland Adaptive Behavior Scales (which Parents would complete). She informed Parents that the specific

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<sup>10</sup> JE 2 at 1, 55-56; JSF ¶6; RE 1; Tr. at 43, 178-79.

<sup>11</sup> JE 2 at 56.

<sup>12</sup> PE 7; Tr. at 44-45.

tests a diagnostician needs to use with a particular student cannot be determined until the diagnostician meets the student and begins collecting data. Parents did not object to play-based assessments or the Vineland Scales.<sup>13</sup>

14. On October \*\*\* and \*\*\*, 2023, the District sent Parents a revised Notice and Consent for Evaluation (Revised Notice). The Revised Notice corrected Student's date of birth and—in addition to the examples discussed above—identified common assessments for children Student's age. These assessments included:
  - Observations;
  - Parent and teacher interviews and rating scales;
  - \*\*\*;
  - Developmental Assessment of Young Children, 2nd Edition (DAYC-2);
  - Developmental Profile 4 (DP-4);
  - ECAD-IV; and
  - WPPSI-IV.<sup>14</sup>
15. Parents crossed out the WJ, WIS, WJTA, WIAT, ECAD-IV, and WPPSI-IV assessments in the Revised Notice and refused to sign consent for an evaluation that included a formal assessment of Student's achievement and/or cognitive ability aimed at obtaining a full-scale IQ score.<sup>15</sup>
16. Dr. \*\*\* offered expert testimony on behalf of Petitioner. She earned a Masters of Education in 1991 and a Doctorate of Philosophy in Education in 1994. She has lifetime certifications in several areas as an educator and as an educational diagnostician. She has been the \*\*\*. She has completed approximately 1,500 evaluations, about five of which were initial evaluations for \*\*\*-year-

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<sup>13</sup> PE 7; Tr. at 47, 133, 179.

<sup>14</sup> JE 3; JSF ¶7; RE 1; Tr. at 47.

<sup>15</sup> JE 5 at 6.

old children. Dr. \*\*\* has never conducted an initial evaluation of a \*\*\*-year- old with \*\*\*.<sup>16</sup>

17. Dr. \*\*\* testified that the list of assessments provided by the District in the Revised Notice was a “great list” with tools that would be appropriate for Student. She acknowledged that the ECAD-IV and WPPSI-IV are chronologically normed for children beginning at the age of \*\*\* and further observed that Student was \*\*\* in October 2023. In her opinion, however, this was “pushing the limits of the age,” and she noted that item density narrows as a student approaches the outer limits of the normed age range of an assessment. Dr. \*\*\* pointed out that both the DAYC-2 and DP-4, on the other hand, are normed for children ages \*\*\*. Based on this, Dr. \*\*\* believes that the DAYC-2 and DP-4 are more likely to provide a greater item pool to evaluate in the \*\*\* age range and are thus likely to provide more valid and reliable results as to specific areas of delay and possible enrichment for Student. Dr. \*\*\* also confirmed that diagnosticians can administer standardized, norm-referenced assessments in addition to play-based assessments as part of an initial evaluation.<sup>17</sup>
18. Dr. \*\*\* recognized that a formal cognitive assessment is necessary when determining eligibility for a disability category that relates to cognitive ability, such as \*\*\*, but also offered her opinion that \*\*\* determination is not necessary at this time. She believes Student could be found eligible with speech impairment or under \*\*\* due to OHI and still receive services.<sup>18</sup>
19. Dr. \*\*\* agreed that evaluators must be able to exercise their professional judgment in selecting appropriate assessments for students, but opined that evaluators should do so in partnership with parents.<sup>19</sup>
20. Dr. \*\*\*, an LSSP with the District and 32 years of experience in school psychology, also provided expert testimony. Dr. \*\*\* has focused on and

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<sup>16</sup> PE 9; Tr. at 68, 94-95.

<sup>17</sup> Tr. at 72-76, 102.

<sup>18</sup> Tr. at 79, 97-99.

<sup>19</sup> Tr. at 95, 103-04, 119-21.

conducted \*\*\* evaluations in the District and other districts over the course of her career and has conducted over 3,000 evaluations. She has a great deal of experience working with \*\*\* populations.<sup>20</sup>

21. Dr. \*\*\* testified that the District includes examples of tests that may be performed in a particular area of suspected disability on the Notice of Evaluation but indicated it would be impossible to provide parents with an exhaustive list of each test that might be performed. Every child is different, and evaluators do not know which measure will best represent a child's abilities until they begin working with the child and see what they can or cannot do. There are many different tests for students at different age levels—evaluators must be flexible and include assessments in an evaluation that provide a solid measure of a student's abilities.<sup>21</sup>
22. Limiting an evaluation to only those measures identified on an evaluation notice deprives the evaluator of the ability to pull in additional measures that might be necessary in order to accurately identify a student's strengths and needs.<sup>22</sup>
23. Imposing such limitations on the evaluator also raises concerns with test-retest reliability which precludes evaluators from giving the same measure to the same student within a certain period of time. In other words, an evaluator cannot conduct a particular test one day, be unable to collect sufficient data on that day, and then try to assess the same student using the same test the next day without calling into question the reliability of the test results.<sup>23</sup>
24. Assessment measures that fall outside a child's age range or that do not measure the skills an evaluator is assessing would be inappropriate for the

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<sup>20</sup> RE 11; Tr. at 135, 138.

<sup>21</sup> Tr. at 140. *See also* Tr. at 164-66, 181, 184, 186-87.

<sup>22</sup> Tr. at 110, 137, 140, 166-67.

<sup>23</sup> Tr. at 139.

student. If a child has language limitations, a highly language-loaded assessment would not be appropriate.<sup>24</sup>

25. None of the assessments common for children Student's age identified on the Revised Notice are inappropriate for a \*\*\*-year-old. Assessments normed for \*\*\*-year-olds include a larger standard error of measurement to account for possible testing issues related this particular age group—for example, students this age may have difficulty with attention or with language or simply may not be having a good day. These factors are built into the standard error of measurement.<sup>25</sup>
26. The \*\*\* does not render standardized formal cognitive and achievement measures, such as the WPPSI-IV and the ECAD- IV, inappropriate for Student.<sup>26</sup>
27. A test's reliability coefficient indicates whether participants are likely to obtain the same or similar scores in consecutive administrations of the test. The higher the coefficient, the more reliable the test. In Dr. \*\*\*'s experience, a coefficient above .8 is considered "really good." The reliability coefficients for the subtests included in the WPPSI-IV for children between the ages of \*\*\* and \*\*\* range from .83 to .93. The ECAD-IV test and cluster scores indicate that it is similarly reliable for measuring a child's cognitive ability and early academic skills.<sup>27</sup>
28. To be eligible for special education under the \*\*\* classification, a student must meet the criteria for \*\*\*. Assessments for \*\*\* must evaluate a student's cognitive ability, achievement, and adaptive behavior. A student with overall cognitive functioning two standard deviations below the mean and at least two areas of deficits in

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<sup>24</sup> Tr. at 135.

<sup>25</sup> Tr. at 135-36.

<sup>26</sup> Tr. at 141.

<sup>27</sup> RE 6 at 62; RE 7 at 95; Tr. at 157.

adaptive behavior is eligible for special education as a student with \*\*\*.<sup>28</sup>

29. An evaluator may be able to obtain a standardized cognitive score from the DAYC-2. This assessment does not provide a full-scale IQ score, and the District's goal is not to obtain one. If the delay demonstrated by Student on the play-based assessments is not concerning and the evaluator observes skills that do not support suspicion of \*\*\*, the evaluator would not give additional assessments (such as the WPPSI-IV or ECAD-IV) in this area.<sup>29</sup>
30. Cognitive ability can vary over time, and students who are found eligible under the \*\*\* classification are reevaluated when they turn \*\*\*.<sup>30</sup>
31. An evaluator's ability to make recommendations for the development of an appropriate educational program to meet a student's needs in all areas of suspected disability is impaired when \*\*\* is suspected and the evaluator does not have sufficient data from formal cognitive and achievement assessments.<sup>31</sup>
32. On November \*\*\*, 2023, the District provided Parents with prior written notice of their inability to conduct an FIIE in light of Parents' failure to sign consent for the proposed evaluation.<sup>32</sup>

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<sup>28</sup> Tr. at 113, 142, 185

<sup>29</sup> Tr. at 201-02, 204-05.

<sup>30</sup> PE 6; Tr. at 78

<sup>31</sup> Tr. at 165, 195-96.

<sup>32</sup> Tr. at 188; JE 6.

## **VI. DISCUSSION**

### **A. BURDEN OF PROOF**

The burden of proof in this proceeding is consistent with the broadly held principle that the burden falls on the party seeking relief. *See Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005) (citing, *inter alia*, 2 J. Strong, McCormick on Evidence § 342, p. 433 (5th ed. 1999); C. Mueller & L. Kirkpatrick, Evidence § 3.1, p. 104 (3d ed. 2003)); *see also Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009) (finding no distinction between the burden of proof in an administrative hearing and a judicial proceeding). Petitioner thus bears the burden of proving that the District's proposed evaluation includes inappropriate measures for assessing Student. Respondent, on the other hand, bears the burden of showing reasonable grounds exist to override Parents' lack of consent to the evaluation.

### **B. EVALUATIONS UNDER THE IDEA**

The IDEA provides federal funding for the education of students with disabilities between the ages of three and twenty-one. 20 U.S.C. § 1412(a)(1)(A). It conditions the states' receipt of funding on the maintenance of policies and procedures to ensure a FAPE is available to all eligible students within that age range. *Id.* A FAPE includes special education and related services designed to meet the unique needs of each student with a disability. 20 U.S.C. § 1400(d)(1)(A).

An individualized education program (IEP) is the means by which an eligible student receives a FAPE, and it is developed by a committee of educators and parents in compliance with the IDEA's detailed procedures. 20 U.S.C. § 1414(d). In order to

develop an appropriate IEP, school districts must first identify eligible students and evaluate them in all areas of suspected disability, including (among other possible areas of concern) general intelligence and academic performance. 20 U.S.C. § 1412(a)(3)(A); 34 C.F.R. § 300.304(c)(4).

The evaluation must include “a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information,” and it must be sufficiently comprehensive to identify all of a student’s special education and related service needs. 34 C.F.R. §§ 300.304(b), (c)(6). *See also* 34 C.F.R. § 300.306(c). The assessments and evaluation materials used must be valid and reliable. 34 C.F.R. § 300.304(c)(1)(iii). When a school district fails to satisfy these requirements, it deprives the student’s ARD committee of information critical to the committee’s consideration and recommendation of appropriate services. *See Timothy O. v. Paso Robles Sch. Dist.*, 822 F.3d 1105, 1110 (9th Cir. 2016).

### **1. Areas of Suspected Disability**

The initial inquiry in this case is whether the District has reason to suspect that Student may be eligible for special education and related services. The record shows that Student has been diagnosed \*\*\*; Student began receiving \*\*\* services shortly after \*\*\*; Student received speech, occupational, and physical therapy services through \*\*\*; and the family planned to \*\*\*. The evidence also shows that the profile of \*\*\* typically includes some degree of cognitive deficit and/or developmental delay. Thus, based on the evidence presented, the District has reason to suspect Student has a disability in the areas identified on the Revised Notice.

## **2. Comprehensive Evaluation**

Having identified the areas of suspected disability, the District is tasked with conducting a comprehensive evaluation that identifies all of Student's needs in each area. Parents do not object to an evaluation of Student's language, physical ability, sociological, emotional and behavioral, and assistive technology needs. Nor do they object to eligibility for special education under the categories of OHI or speech impairment. Parents are concerned, however, with an eligibility classification that includes suspicion of \*\*\* and refused to consent to certain cognitive and achievement assessments that would provide a full-scale IQ score, including the WPPSI-IV and ECAD-IV.

While Parents' actions appear to be motivated by a strong sense of advocacy on Student's behalf, the weight of the evidence establishes that the District's trained evaluators must be allowed to exercise their professional judgment in determining which assessments are appropriate. Eliminating assessments in the manner attempted here would deprive evaluators of the ability to pull in additional measures that might be necessary in order to accurately identify Student's strengths and needs. This, in turn, would deprive Student's ARD committee of the ability to develop an appropriate and individualized program for Student. Moreover, the evidence shows that the WPPSI-IV and ECAD-IV are valid and reliable assessments for children Student's age and that \*\*\* does not render them inappropriate for Student.

Notably, Petitioner's expert, Dr. \*\*\*, agreed that evaluators must be able to exercise their professional judgment in determining which assessment tools to use with a student. And she did not refute the validity or reliability of the assessment measures

proposed by the District for children Student's age. Instead, her testimony focused on the importance of parent participation and suggested that Student could be found eligible for special education services under \*\*\*-OHI or speech impairment.

As a threshold matter, the \*\*\* category of disability for \*\*\*-year-olds is only available for students suspected of having \*\*\*, an emotional disturbance, autism, or a specific learning disability. OHI does not apply to eligibility under \*\*\*. Moreover, Dr. \*\*\*'s testimony ignores the regulatory mandate that the District conduct a comprehensive evaluation in all areas of suspected disability. By ignoring the possibility of \*\*\*, the District would imperil the ARD committee's ability to develop an appropriate program for Student and run afoul of its statutory obligations.

With respect to parent participation, Petitioner contends that the District should limit its evaluation to the scope of consent provided by Parents in the interest of ensuring parent participation in the evaluation process.<sup>33</sup> But, as the District points out in its closing brief, this argument conflates a parent's right to informed consent for an initial evaluation under § 300.300(a) with the parent's right to meaningful participation in the provision of a FAPE. *See, e.g., Cypress-Fairbanks Indep. Sch. Dist. v. Michael F. by Barry F.*, 118 F. 3d 245, 253 (5th Cir. 1997); 34 C.F.R. § 300.513(a)(2)(ii).<sup>34</sup> Student has not yet been evaluated or found eligible for special education and related services, and therefore the provision of FAPE is not at issue. Accordingly, Petitioner's position is properly analyzed under regulatory provisions related to notice and consent.

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<sup>33</sup> See Petitioner (Pet.) Closing Brief at 5-7.

<sup>34</sup> Respondent (Resp.) Closing Brief at 15. Respondent's Closing Brief was not paginated. Citation to the page number of the brief is therefore based on a manual count of the document's page numbers beginning with the caption page as page 1.

### **C. NOTICE OF EVALUATION AND INFORMED CONSENT**

School districts must provide parents with written notice prior to initiating an evaluation. 34 C.F.R. § 300.503(a). The notice must include a description of the proposed evaluation; an explanation of why the district proposed the evaluation; and a description of each evaluation procedure, assessment, record, or report used as a basis for the proposed evaluation. 34 C.F.R. § 300.503(b)(1)-(3). After providing notice under § 300.503, a school district must obtain informed consent consistent with § 300.9 before conducting an evaluation. 34 C.F.R. § 300.300(a). Consent under § 300.9(a) means that the parent has been fully informed of information relevant to the activity for which consent is sought.

The Revised Notice in this case provided a description of the District's proposed evaluation by identifying the specific areas to be tested and providing examples of assessments typically given in those areas. It also listed common assessments for children Student's age. The Revised Notice explained that the District had reviewed Student's records and was proposing to conduct the evaluation because Parent requested an FIIE, Student had received services through \*\*\*, and additional evaluation was necessary to determine whether Student meets disability criteria in the educational setting.<sup>35</sup> Finally, the Revised Notice informed Parents that Student must be evaluated in all areas of suspected disability; additional assessments might be needed in order to complete a comprehensive evaluation; trained assessment personnel would request additional assessments if necessary based on needs identified during the evaluation process; and Parents would be notified if

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<sup>35</sup> JE 5 at 5-6.

additional testing was needed. The District's Revised Notice thus included the information necessary to enable Parents to provide informed consent for the FIIE. *See* 34 C.F.R. §§ 300.300(a), 300.9(a).

Petitioner argues, however, that (1) the District failed to fully inform Parents of all information relevant to the evaluation by not identifying every measure that might be used and (2) Parents were exercising informed consent when they crossed specific assessments off the Revised Notice.<sup>36</sup> Petitioner's position is not supported by the record or legal authority. First, both Respondent's and Petitioner's experts testified that a Notice of Evaluation is not intended to provide an exhaustive list of every test that will be conducted to confirm an area of suspected disability.<sup>37</sup> In fact, the testimony shows that it would be difficult (if not impossible) to do this because evaluators often do not definitively know which assessments will be needed until they begin working with a student.

Second, Petitioner's argument demonstrates a flawed understanding of the parties' respective rights and obligations as they relate to evaluations under the IDEA. If Parents want Student to receive special education under the IDEA, they must permit the District to conduct the proposed FIIE. *See, e.g., Shelby S. ex rel. Kathleen T. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450, 454-55 (5th Cir. 2006); *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9th Cir. 1987); *DuBois v. Connecticut State Bd. of Educ.*, 727 F.2d 44, 48 (2d Cir. 1983). The IDEA does not authorize parents to provide partial or incomplete consent to an initial evaluation, and when parents attempt to narrow an evaluation by refusing certain testing, partial consent

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<sup>36</sup> Pet. Closing Brief at 6-7.

<sup>37</sup> Tr. at 101, 133-34.

operates as a refusal. *G.J. v. Muscogee Cnty. Sch. Dist.*, 704 F. Supp. 2d 1299, 1309 (M.D. Ga. 2010), *aff'd*, 668 F.3d 1258, 1284 (11th Cir. 2012).

Petitioner relies on *Dallas Independent School District (ISD) v. Student* to support Petitioner's position that the District must complete the FIIE in accordance with the scope of consent provided by Parents.<sup>38</sup> *Dallas ISD*, however, is easily distinguished from the case at hand. In *Dallas ISD*, the parents consented to an initial evaluation of their child in the areas of speech and occupational therapy and for dyslexia. Over the course of the next few months, the child was evaluated by an occupational therapist, a speech language pathologist, and an LSSP. Three months after consent was signed and after evaluations and draft reports had been completed, the district went back to the parents seeking consent for additional testing—this time, in the area of autism. The parents refused consent and filed a complaint with the Texas Education Agency (TEA) challenging the school district's failure to comply with the 45-day timeline for completion of an initial evaluation. TEA substantiated the parent's complaint. The district then filed a due process hearing request seeking an order overriding lack of parental consent. In finding that Dallas ISD should have completed its evaluation in areas where consent had been obtained, the hearing officer recognized that the district failed to complete its evaluation within the timelines established under the IDEA. Unlike the *Dallas ISD* case, Parents here have not consented to the FIIE proposed by the District, evaluations have not been conducted, and written reports have not been drafted.

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<sup>38</sup> 289-SE-0519 (TX SEA 2019); 119 LRP45646. *See* Pet. Closing Brief at 9.

**D. OVERRIDING LACK OF PARENTAL CONSENT**

If the parent of a student with a disability refuses to consent to an evaluation, the school district may seek an order from a hearing officer overriding the parent's refusal. 34 C.F.R. § 300.300(c)(1)(ii). To meet its burden on this issue, the school district must document its attempts to obtain consent and articulate reasonable grounds for the evaluation sought. 34 C.F.R. § 300.300(d)(5); *Shelby S. ex rel. Kathleen T. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450, 454 (5th Cir. 2006).

Parents have requested an FIIE and are seeking special education and related services from the District. In addition to other areas of possible need that Parents do not dispute, the District has reason to suspect Student may have \*\*\*. In order to determine Student's needs in this area, the District must be able to complete cognitive, achievement, and adaptive behavior assessments as set forth in the Revised Notice provided to Parents on October \*\*\*, 2023. An accurate picture of Student's needs and abilities in all areas of suspected disability is essential to the provision of an appropriate special education program. Meanwhile, the record reflects that the District has attempted to obtain Parents' consent and has been unable to do so. The Hearing Officer thus finds that reasonable grounds exist to override Parents' lack of consent to the FIIE proposed by the District.

**E. CONCLUSION**

The evidence shows that the District has reason to suspect \*\*\* and that, in order to meet its statutory obligations, the District's evaluators must be permitted to exercise their professional judgment in determining which assessments are appropriate for obtaining a complete picture of Student's strengths

and challenges. Moreover, while evaluators will not know whether they need to conduct either the WPPSI-IV or ECAD-IV until they work with Student, the record reflects that these assessments are valid and reliable. Petitioner failed to show by a preponderance of the evidence that the evaluation proposed by the District includes testing that is inappropriate for Student.

Petitioner's attempt to limit the evaluation by refusing to consent to the WPPSI-IV and the ECAD-IV (or any other measure that would provide a full-scale IQ score) amounts to a lack of parental consent, and reasonable grounds exist to override Parents' lack of consent.

## **VII. CONCLUSIONS OF LAW**

1. The burden of proof in a due process hearing is on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-57 (2005).
2. Petitioner did not meet Petitioner's burden of proving the District's proposed evaluation included invalid, unreliable, and/or otherwise inappropriate assessments for evaluating Student. *Id.*; 34 C.F.R. §§ 300.304, 300.306.
3. Respondent met its burden of showing reasonable grounds exist to override Parents' lack of consent to the FIIE proposed by the District in the Revised Notice dated October \*\*\*, 2023. *Schaffer*, 546 U.S. at 56-57; *G.J. v. Muscogee Cnty. Sch. Dist.*, 704 F. Supp. 2d 1299, 1309 (M.D. Ga. 2010), *aff'd*, 668 F.3d 1258, 1284 (11th Cir. 2012); *Shelby S. ex rel. Kathleen T. v. Conroe Indep. Sch. Dist.*, 454 F.3d 450 (5th Cir. 2006); *Gregory K. v. Longview Sch. Dist.*, 811 F.2d 1307, 1315 (9th Cir. 1987).

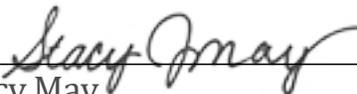
## **VIII. ORDERS**

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Petitioner's requests for relief are **DENIED**.

It is further **ORDERED** that Respondent's request for an order overriding lack of parental consent is **GRANTED**. The District may conduct an FIIE in accordance with the Revised Notice provided to Parent's on October \*\*\*, 2023, without parental consent.

All other relief not specifically stated herein is **DENIED**.

**Signed March 19, 2024.**

  
\_\_\_\_\_  
Stacy May  
Administrative Law Judge

## **IX. NOTICE TO THE PARTIES**

The Decision of the Hearing Officer in this case 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. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).