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# Astounding Autism Assessments

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**Child Find—**
*D.O. v. Escondido Union School District*, 82 IDELR 125 (9th Cir. 2023)

The 9th Circuit held that a report from an independent evaluator that the student was on the autism spectrum triggered a duty for the district to evaluate for autism. However, the district's four-month delay before proposing the evaluation was reasonable.

The district cited a couple of reasons why it did not act sooner. **First**, the district wanted to see Dr. Dyson's report. The mother promised to provide it as soon as she got it, but then she failed to do that. **Second**, the district had sound reasons to be skeptical of Dr. Dyson's report. The district had served the student for more than four years and had provided a myriad of mental health services. Qualified educators in the district reported that the student's aggressive behavior was not consistent with an autism diagnosis. **Then** there was the fact that the parent held off on consent for the district's evaluation for four months. The district proposed the evaluation in April and got consent in August.

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**Child Find—**
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Courts often assess the comparative reasonableness of the parties' behavior since the entire system of special education law relies on good faith collaboration by parties who all want the student to get a good education.

The problem with over-reliance on 'reasonableness' is that it's so subjective: in this case the lower court ruled in favor of the parent, finding the district's delay unreasonable. The Circuit Court looks at the same facts and comes to the opposite conclusion.

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## Evaluation & the REED

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 **Review existing evaluation data…**

34 CFR § 300.305

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## The federal regulations concerning the REED, specify that

On the basis of the REED, and input from the child's parents, the team must identify what additional data, if any, are needed to determine:

- Whether the child is a child with a disability, and the educational needs of the child; or in case of a reevaluation of a child, whether the child continues to have such a disability, and the educational needs of the child;
- The present levels of academic achievement and related developmental needs of the child;

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## The federal regulations concerning the REED, specify that

- 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 education curriculum.

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**Consent—**
*Anaheim Elementary Sch. Dist. v. Student,*
121 LRP 334 (Cal. HO Dec. 2020)

Parents asserted student required home instruction and provided letters from multiple physicians that student experienced health concerns that made it unsafe for student to attend school. However, parent refused to consent to any health assessment of student, consenting only to autism evaluation.

The District requested a due process hearing to override the parents' refusal to provide consent for evaluation in all areas of suspected disability.

Hearing Officer agrees with District and orders parents to consent to evaluation if they want special education services.

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**Choice of Instruments—**
*Heather H. v. Northwest ISD,*
81 IDELR 32 (5th Cir. 2022)

Before enrolling their child in kindergarten the parents gave the district a psychological evaluation they had obtained that diagnosed the student with Autism Spectrum Disorder, General Anxiety Disorder and separation anxiety. They asked the district to determine if the child needed special education services. The district then conducted its own FIIE (Full Initial Individual Evaluation). All of this information was then reviewed and considered at an ARD meeting in November. The ARD determined that the student was not eligible for special education services.

The parents did not challenge that decision immediately. But later in the school year, in April, the district determined that the student qualified for a Section 504 plan due to anxiety. At the 504 meeting the parents expressed their disagreement with the FIIE the district had completed in the fall. They asked the district to pay for an independent evaluation. The district said no and requested a due process hearing to prove the appropriateness of the FIIE.

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**Choice of Instruments—**
*Heather H. v. Northwest ISD,*
81 IDELR 32 (5th Cir. 2022)

The parents argued that the district focused exclusively on autism and ignored the possibility that the student could qualify as emotionally disturbed due to the anxiety. The court held that the FIIE had adequately taken the child's anxiety into account, particularly since it appeared to fall short of what would be necessary for an ED label. The student did not show anxiety in the school setting, and teachers reported that the student's emotional behavior was pretty typical of kindergarteners.

*Choice of instruments.* As the court noted, the choice of instruments is a professional decision to be made by the district's evaluation professionals. The district used CARS-2 and SRS-2, the parents preferred ADOS-II. The court noted "Plaintiffs' preference for one testing tool over another does not show the FIE was noncompliant."

*Proper administration of instruments.* Formal testing needs to be done as per the instructions in the testing manual. In this case the court held that the parents failed to produce evidence of any problems in this area. But it's a good reminder of the importance of reviewing the manual and following the required protocols.

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**Role of Evaluation in IEP Development—**
*E.C. v. USD 385 Andover,*
76 IDELR 212 (D.C. Kan. 2020)

The hearing officer heard multiple witnesses testify as to how the IEP addressed the special needs of the student appropriately and concluded that the label attached to the IEP was not important:

E.C.'s IEP contained extensive provisions, including a detailed BIP, and the record shows that the behaviors it sought to address and improve were the same, or substantially the same, as those that witnesses testified are associated with autism.

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**Role of Evaluation in IEP Development—**
Glass v. District of Columbia,
77 IDELR 246 (D.C.D.C. 2020)

The court affirmed the hearing officer's decision that the district was correct in classifying the student as having an emotional disturbance rather than autism.

Here, the services seemed to be directly tied to the student's eligibility category. It's noteworthy how much analysis the court did in coming to the conclusion that the district got it right.

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**Be Thorough, Be Thoughtful—**
*O.P. v. Weslaco ISD,*
81 IDELR 187 (S.D. Tex. 2022)

When the student was in 3rd grade the district did an FIIE and determined that the student was not eligible. That decision was not challenged.

Then, after the student failed STAAR reading in 6th grade, the parent sought a private evaluation. The parent shared the private evaluation that diagnosed the student with autism, ADHD, anxiety and communication disorders. The district responded to this with a 504 evaluation and a determination that the student was eligible under 504. Mother agreed.

But a year later, the parent filed a due process hearing on **March 14, 2020,** alleging a child find violation…

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**Be Thorough, Be Thoughtful—**
*O.P. v. Weslaco ISD,*
81 IDELR 187 (S.D. Tex. 2022)

District recognized the need for Autism evaluation during COVID, and included:

- Student, teacher and parent interviews/ questionnaires;
- Review of prior FIIE, private evaluation, OHI form and other student records;
- Testing via a virtual platform over the course of four separate interactions;
- Student was virtually observed in the virtual classroom on five separate occasions;
- Due to Covid-19 pandemic, some instruments that were used to assess Student for autism were identified as being appropriate for virtual testing, including Clinical Assessments of Pragmatics (CAPs) and Brief Observations of Symptoms of Autism (BOSA), an alternative to Autism Diagnostic Observation Schedule (ADOS).

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**Be Thorough, Be Thoughtful—**
*O.P. v. Weslaco ISD,*
81 IDELR 187 (S.D. Tex. 2022)

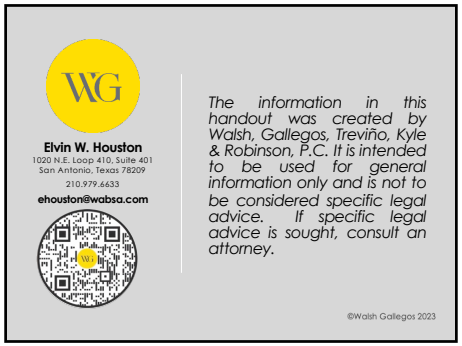
- Pragmatic language evaluation
- Behavior Assessment System for Children, 3rd Edition, given to Student and Student's parent and teachers;
- Social Responsiveness Scale, given to Student's parent and teachers to assess interpersonal behavior, communication, and repetitive/stereotypical behavior that are characteristic of Autism Spectrum Disorders;
- Children's Depression Inventory, 2nd Edition, given to Student's parent; and
- Revised Children's Manifest Anxiety Scale,

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What do Astounding Autism Evaluations Have in Common?

- Clarity as to when 'Child Find' is triggered
- Outside Evaluations are considered
- We seek complete consent
- Instruments are thoughtfully selected
- Administration is consistent with test manufacturer expectations
- Includes meaningful observations

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