

STATE DEPARTMENT OF EDUCATION
DUE PROCESS PROCEEDING
STATE OF OKLAHOMA

DUE PROCESS HEARING DECISION
CASE NO. 2116

PETITIONER:

REPRESENTATIVE:

RESPONDENT:

REPRESENTATIVE:

HEARING DATE: May 19 and 22, 2017

HEARING DECISION: July 28, 2017

HEARING OFFICER: Hugh V. Rineer

I. Background

Student was born on [date]. He attends [name]Schools. The Student has been identified as a student with a disability, and his category of eligibility is Emotional Disturbance.

II. Procedural Safeguards

The School District has complied with all aspects of the required procedural safeguards set forth in 20 U.S.C. §1415. In particular, the parties met the full disclosure requirement by exchanging lists of witnesses and documentary evidence at least five days prior to the hearing. By agreement of all parties, the deadline for the Hearing Officer to enter his findings, conclusions and decisions was extended beyond the 45-day time limit to 14 days following receipt of the proposed findings of fact and conclusions of law, that is, the parties' closing arguments. The Hearing Officer was not able to complete his Decision within the 14 days, and it is being submitted on this date.

III. Issues and Purpose of the Hearing

Was Student entitled to extended school year services for the [1st year] and [2nd year] school years? Was Student entitled to an Independent Educational Evaluation for Assistive Technology? If so, what limitations, if any, can the District impose?

IV. Findings of Fact

1. At the end of the [2nd school year], Student was attending [name] Elementary School in [name]and was in the 6th grade.
2. Student meets the requirements for Special Education under the requirement of the IDEA in the category of Emotional Disturbance and is eligible for special education and related services.
3. Student has been on an Individualized Education Plan since the [1st school year].
4. Parent consented to an Assistive Technology Evaluation and a Sensory Profile Evaluation on [date]. (Joint Exhibit 1).
5. The initial IEP was [date]. (Respondent's Exhibit 25).

6. The initial IEP indicated that Assistive Technology was not necessary in order to implement the IEP. (Respondent's Exhibit 25).

7. At the September [date] IEP meeting, it was determined that Student was not eligible for extended school year. (Respondent's Exhibit 25).

8. The Parent signed her agreement with the September [date] IEP. (Respondent's Exhibit 25).

9. The September [date] Extended School Year Determination documentation indicated the following:

- Mild degree of disability
- Mild degree of regression suffered (actual or predicted)
- Recovery time/recoupment from this regression (actual or predicted) was weeks
- Parent was able to provide educational support at home
- Student lagged behind his peers socially but performed near grade level academically
- Student experienced stress and anxiety in the general education classroom
- Student's physical health did not impede his learning
- Student had access to resources in the community and at school
- Student is in special education for 45 minutes per day. He interacts with his general education peers on a daily basis.
- Student receives support in social/emotional behavior.
- Student will pass his classes and via the BIP learn to be independent, advocate for himself, and utilize coping skills when he becomes stressed or feeling anxiety.
- A BIP and direct instruction are in place to help Student be successful in his academics.

All resulting in the determination that ESY was not necessary. (Respondent's Exhibit 25). Mother's evidence was insufficient to prove that ESY services were necessary.

10. In November [date], the School District's AT team conducted an AT evaluation of Student. (Respondent's Exhibit 28; Transcript, Page 129, Line 1-Page 130, Line 8).

11. As of November [date], the AT team had interviewed staff at the elementary school, Parent, and had observed Student in both of his classrooms. (Respondent's Exhibit 28; Transcript, Page 129, Line 1-Page 130, Line 8).

12. November [date] was 49 calendar days after the request for an AT evaluation.

13. On November [date], a Student, Environment, Tasks, and Tools (SETT) meeting was held to discuss recommendations for AT to be tried and possibly utilized by Student. Parent was present at the meeting. (Joint Exhibit 9).

14. The SETT process is a collaborative information gathering tool which looks at the student's needs, the student's environment, the tasks the student has difficulty with, and tools that may help the student. (Transcript, Page 127, Line 3-Page 128, Line 8; Joint Exhibit 7).

15. An Assistive Technology Assessment Report that detailed the information gathered and provided possible accommodations and AT equipment to be tried with the Student was prepared. (Joint Exhibit 9).

16. District's AT evaluation of Student was appropriate and was prepared by qualified professionals.

17. On December [date], Parent delivered a written request for an Assistive Technology Independent Education Evaluation (AT IEE) from [1st parent provider] to the Principal at [name]. (Joint Exhibit 11).

18. Prior to receipt of Parent's December [date] letter, [1st parent provider], on December [date], notified School that [1st parent provider] was going to conduct an Assistive Technology IEE on January [date]. (Respondent's Exhibit 37).

19. School, through the School Psychologist Administrator, advised [1st parent provider] that Parent had not yet submitted a request for an Independent Educational Evaluation. (Respondent's Exhibit 37).

20. On December [date], Parent e-mailed the Principal and, as part of the e-mail, requested an "Independent Assistant [sic] Technology Evaluation" for his own iPad or tablet. That e-mail was forwarded by the Principal to teachers and staff on December [date]. (Respondent's Exhibit 34).

21. On December [date], the Special Education teacher e-mailed the AT evaluator regarding the slow movement regarding the iPad. On the same day, the AT evaluator e-mailed the Special Education

teacher and others indicating she was putting the final touches on the AT report. (Respondent's Exhibit 35).

22. On January [date], the School Psychologist Director and members of the District AT team interviewed [name] with [1st parent provider] regarding his qualifications. (Respondent's Exhibit 44; Transcript, Page 136, Line 2-Page 138, Line 18 and Page 205, line 21-Page 206, Line 23).

23. The School District had never had a request for an AT IEE. They, therefore, developed criteria for an AT evaluation. (Respondent's Exhibit 44).

24. In addition to their standard IEE criteria, District obtained from two sources costs for an AT evaluation. One was \$500.00, the other \$1,500.00 to \$2,500.00 plus travel. (Respondent's Exhibits 46 and 47).

25. [1st parent provider] submitted a quote dated January [date] for an AT assessment/evaluation in the amount of \$3,649.65, which included the evaluation fee, 14 hours on site, 2 hours travel time, and mileage. (Respondent's Exhibit 43).

26. Assistive Technology Professional (ATP) certification is not a requirement to conduct an Assistive Technology Evaluation. (Transcript, Page 144, Lines 14-16).

27. On January [date], the Administrator of Special Services e-mailed [name] at [1st parent provider] asking him to delay so that the School could implement the recommendations made by the Assistive Technology team. She also requested [Name's] qualifications. (Respondent's Exhibit 48).

28. Parent e-mailed the Director of Special Services on January [date], acknowledging receipt of the request for an extension of time to conduct the independent assessment. She pointed out that she requested the AT evaluation in April of [date]. She points out that in May of [date], she should have been provided with a copy of the District's criteria for obtaining an IEE. She further indicated that her intent was to continue the process of the independent evaluation previously scheduled with [1st parent provider]. (Respondent's Exhibit 49).

29. On January [date], the School Psychologist e-mailed a letter to Parent notifying her of the qualifications required of an evaluator and listing cost criteria by stating, "The cost of an IEE shall reflect reasonable and customary rates for such services in [name] County." She also attached to that letter a letter

regarding Assistive Technology evaluators which stated that qualifications for an AT provider included "a degree in rehabilitation science and/or a teaching certificate and ongoing training in Assistive Technology procedures on an annual or more frequent basis." (Respondent's Exhibit 50).

30. "Reasonable and customary rates" were not defined.

31. It also provided a list of "some qualified evaluators in the [name] area". Those listed were [1st name]; [2nd name]; and [3rd name], which was not an evaluator. (Respondent's Exhibit 50).

32. [2nd name] was no longer in business. (Transcript, Page 217, Lines 9-17). [1st name] was not acceptable to Parent because they were associated with a public school. (Transcript, Page 288, Line 20 and Page 290, Line 17).

33. On February [date], the IEP Team met to discuss AT equipment trials. A comment form was prepared by the Special Education teacher detailing the discussion and decisions. Mother was present. (Respondent's Exhibit 58).

34. The January [date] IEP, which was agreed to by Mother, states that Assistive Technology is necessary in order to implement the Student's IEP. The IEP states, "Assistive Technology equipment trials using the following equipment: keyboard skill training, highlighter tape, portable word processor and/or tablet, polymer erasers, provide copies of [board work], graph paper, portable schedule, relaxation techniques, student planner with assignments and/or picture of the board with written assignments sent to parent, goal setting by Student. [date] Student is currently using an iPad which includes a relaxation app, calendar, writing app, and calendar, which he requested. Use of device is being documented." (Respondent's Exhibit 53).

35. Also on January [date], the Director of Special Services e-mailed [1st parent provider] about qualifications. (Respondent's Exhibit 55). [1st parent provider] responded January [date]. (Respondent's Exhibit 55).

36. Parent did not make any further requests for an IEE for AT at that time. In May [date], (not [date] as indicated in Transcript), Parent orally discussed revocation of consent for Special Education. No meeting was ever held to further discuss revocation. (Transcript, Page 86, Line 20-Page 87, Line 9).

37. On February [date], the Special Education teacher e-mailed, stating, "The meeting went well on this end. I wanted you to see

what was discussed. There were concerns, but they were addressed with exception of the outside agency AT evaluation." (Respondent's Exhibit 59).

38. The IEP of September [date] indicates that Parent is requesting an independent AT evaluation. (Respondent's Exhibit 66).

39. The September [date] ESY determination documentation was substantially the same as the [1st year] IEP. The team determined that ESY was not required. Mother signed her agreement to the IEP. (Respondent's Exhibit 66). Mother's evidence was insufficient to prove that ESY services were necessary.

40. On September [date], Parent sent the School Psychologist an e-mail stating, "A few months ago I requested an Independent Evaluation for my son, [Student], for Assistive Technology. The District did not provide for the evaluation." Parent stated that she has located a corporation that she intends to use to conduct the independent evaluation for Assistive Technology. She states her objection to [1st name] because, in her opinion, they cannot be independent because they have an employee who worked for [name] Schools. She states that there is no one in the State who meets the definition of independent except the company she is choosing. She advises that she has chosen [2nd parent provider]. (Respondent's Exhibit 68).

41. When the District received the September [date] e-mail from Parent regarding [2nd parent provider], the School Psychologist contacted the owner of [2nd parent provider] to discuss the steps involved in providing the AT evaluation. (Respondent's Exhibit 68).

42. On October [date], the School Psychologist sent a follow-up e-mail to [2nd parent provider] requesting the vendor application form and a quote for an IEE in the area of Assistive Technology. (Respondent's Exhibit 69).

43. On November [date], [2nd parent provider] submitted a quote for an AT evaluation in the amount of \$4,195.00. (Respondent's Exhibit 71).

44. The evaluation was described as "AT evaluation-multi-level: Student". Followed up by "Additional assessments for Student will include the following areas:" and a second page stating the description as follows:

- 1: Physical: Health, motor abilities, seating, positioning
- 2: Sensory: Hearing, sensitivity to/of touch, smell/taste, etc.
- 3: Academic Performance: Basic and content reading; reading comprehension; mathematics calculation, reasoning and application; written expression; oral expression; listening comprehension; learning preference; learning style, effect of the disability on acquisition, development, mastery and applications of academic skills.
- 4: Environmental Control: Ability to control events within the environment; ability to interact with others to influence actions of others; ability to stay safe.
- 5: Recreation/Leisure: Free time, maintenance of physical fitness, degree of social involvement.
- 6: Fine Motor Skills: Physical, manipulating handheld devices (such as eating utensils), keyboarding, handwriting.
- 7: Social Competence: Adaptive behaviors and social skills, which enable a child or youth to meet environmental demands and to assume responsibility for his own and others' welfare.

(Respondent's Exhibit 71).

45. On November [date], the Director of Special Services e-mailed [2nd parent provider] advising him that the quote exceeds the rates of other qualified evaluators and advised that the District would pay \$2,500.00 for the evaluation. (Respondent's Exhibit 72).

46. On November [date], the School Psychology Administrator also advised Parent that the District would only pay \$2,500.00. (Respondent's Exhibit 74).

47. Director of Special Services followed up with an e-mail to Parent on November [date] (Respondent's Exhibit 74) and December [date] (Respondent's Exhibit 75).

48. The first time that Parent knew there was a \$2,500.00 cap for an AT IEE was November [date]. (Respondent's Exhibit 73).

49. On November [date], Parent sent to Director of Special Services an e-mail asking for the other providers that the District

contacted regarding cost. The District response on December [date] was that the Director of Special Services had not heard back from the Parent regarding which provider she would like to use. (Respondent's Exhibit 75).

50. The Oklahoma State Department of Education Special Education Handbook sets forth information about IEE's. The Handbook states that School Districts may establish a schedule of reasonable fees for IEE's that are not simply an average of fees customarily charged in the area, only eliminate excessive fees, and allow Parents the opportunity to demonstrate unique circumstances that justify an IEE that exceeds the maximum fee. The Handbook further provides that, if the School District has established a cost ceiling and the IEE exceeds the ceiling, the School District must pay up to the ceiling amount. (Respondent's Exhibit 87, Page 196).

51. The District did not establish their cost ceiling until November [date]. (Respondent's Exhibit 72).

52. [2nd parent provider] employs contractors to conduct their AT evaluations. There was no testimony to indicate what qualifications the contractors had to conduct such evaluations. (Transcript, Page 317, Line 7-Page 322, Line 20 and Page 356, Line 11-Page 357, Line 21; Respondents Exhibits 89 and 95).

53. The [2nd parent provider] evaluation included academic performance, recreation leisure, social competence, among other areas not related to AT. (Respondent's Exhibit 71; Transcript, Page 327, Line 12-Page 334, Line 8; Page 346, Line 11-Page 347, Line 12; and Page 354, Line 5-Page 356, Line 5).

54. The School Psychology Director stated to the Director of Special Services, "I know we will pay for this AT eval eventually, that's not at issue, neither is the quality of the eval in this case where the parent has done her own research and is adamant. But I'm not sure what liability we have for insuring any IEE provider meets minimum criteria for the job for which they are hired (or anyone with whom the BOE of [name] contracts with for services). I guess with our District's move towards SPED teachers doing more of the AT evals, we are effectively stating, SPED teachers with training can do AT evals, thus [2nd parent provider]'s SPED teachers are similarly qualified." (Respondent's Exhibit 68).

55. [2nd parent provider]'s assessment proposal went far beyond an AT evaluation. (Respondent's Exhibit 71; Transcript, Page 329, Line 20-Page 330, Line 23).

56. The District attempted to negotiate the price for evaluation for the \$2,500.00 maximum established by the District. The District requested [2nd parent provider] eliminate academic performance, recreation and social competence. [2nd parent provider] declined to negotiate. (Transcript, Page 204, Line 10-Page 205, Line 4; Page 335, Line 16-Page 336, Line 3; Page 338, Lines 2-13; Page 359, Line 18-Page 361, Line 10).

57. Parent did not identify any unique circumstances that would justify exceeding District's cost containment criteria. (Transcript, Page 293, Line 10-Page 295, Line 1).

V. The Law

A. Under the IDEA, the District is required to provide a "free appropriate public education" ("FAPE"), which

means special education and related services that -

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State education agency;
- (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program ["IEP"] required under section 1414(d) of this title.

20 U.S.C. § 1401(8) (2003). 34 C.F.R. §300.17

B. The IDEA defines the term "special education" as

specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including

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- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and
- (B) instruction in physical education.

20 U.S.C. § 1401(25) (2003). 34 C.F.R. §300.39

C. Section 300.106: The IDEA states with regard to extended school year the following:

- (a) General

(1) Each public agency must ensure that extended school year services are available as necessary to provide FAPE, consistent with paragraph (a)(2) of this section.

(2) Extended school year services must be provided only if a child's IEP Team determines, on an individual basis, in accordance with §§300.320 through 300.324, that the services are necessary for the provision of FAPE to the child.

(3) In implementing the requirements of this section, a public agency may not—

- (i) Limit extended school year services to particular categories of disability; or
- (ii) Unilaterally limit the type, amount, or duration of those services.

(b) Definition. As used in this section, the term extended school year services mean special education and related services that—

- (1) Are provided to a child with a disability—
 - (i) Beyond the normal school year of the public agency;
 - (ii) In accordance with the child's IEP; and
 - (iii) At no cost to the parents of the child; and

(2) Meet the standards of the SEA.

20 U.S.C. 1412(a)(1)

D. Section 300.502 Independent education evaluation.

(a) General

(1) The parents of a child with a disability have the right under this part to obtain an independent education evaluation of the child, subject to paragraphs (b) through (e) of this section.

(2) Each public agency must provide to parents, upon request for an independent educational evaluation, information about where an independent

educational evaluation may be obtained, and the agency criteria applicable for independent educational evaluations as set forth in paragraph (e) of this section.

(3) For the purposes of this subpart—

(i) Independent educational evaluation means an evaluation conducted by a qualified examiner who is not employed by the public agency responsible for the education of the child in question; and

(ii) Public expense means that the public agency either pays for the full cost of the evaluation or ensures that the evaluation is otherwise provided at no cost to the parent, consistent with §300.103.

(b) Parent right to evaluation at public expense.

(1) A parent has the right to an independent education evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency, subject to the conditions in paragraphs (b)(2) through (4) of this section.

(2) If a parent requests an independent educational evaluation at public expense, the public agency must, without unnecessary delay, either—

(i) File a due process complaint to request a hearing to show that its evaluation is appropriate; or

(ii) Ensure that an independent educational evaluation is provided at public expense, unless the agency demonstrates in a hearing pursuant to §§300.507 through 300.513 that the evaluation obtained by the parent did not meet agency criteria.

(3) If the public agency files a due process complaint notice to request a hearing and the final decision is that the agency's evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at public expense.

(4) If a parent requests an independent educational evaluation, the public agency may ask for the parent's reason why he or she objects to the public evaluation. However, the public agency may not require the parent to provide an explanation and may not unreasonably delay either providing the independent educational evaluation at public expense or filing a due process complaint to request a due process hearing to defend the public evaluation.

(5) A parent is entitled to only one independent educational evaluation at public expense each time the public agency conducts an evaluation with which the parent disagrees.

(e) Agency criteria.

(1) If an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria that the public agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent's right to an independent educational evaluation.

(2) Except for the criteria described in paragraph (e)(1) of this section, a public agency may not impose conditions or timelines related to obtaining an independent educational evaluation at public expense.

20 U.S.C. 1415(b)(1) and (d)(2)(A)

E. If a District maintains a list of qualified evaluators and specified criteria for an IEE, parents must always be given an opportunity to demonstrate that there is no appropriate evaluator for the child's needs within the criteria stated by the District. Therefore, their unique circumstances justify a waiver of the criteria. Letter to Anonymous, 56 IDELR 175 (OSEP 2010); Letter to Parker, 41 IDELR 155 (OSEP 2004); Letter to Anonymous, 20 IDELR 1219 (OSEP 1993).

F. District's cost criteria that it would pay for an evaluation up to rates comparable to those charged by evaluators

in the County was appropriate. Irvington Community Schools, 113 LRP 29944 (SEA IN 2013).

G. The District allowed for a maximum \$1,000.00 for an IEE even though the prevailing rate in the area was only \$500.00. The District denied the parents' request for an IEE at the rate of \$4,800.00. The District's refusal was upheld because the District had established a reasonable cost limitation and the parent had failed to provide any evidence of a unique circumstance justifying a waiver. Tolar Independent School District, 22 IDELR 174 (SEA TX 1994).

H. When a District does not adopt cost criteria, parents are free to obtain the services of any qualified evaluator. Letter to Thorn, 16 IDELR 606 (OSEP 1990).

I. The School District did not limit the parents' selection to the list provided but did properly require the parents' selection meet its criteria. Furthermore, the parent failed to establish any unique circumstances other than her skepticism of professionals with public school experience. Such skepticism without more did not justify her selection. Humble School District, 55 IDELR 150 (SEA TX 2010).

J. A District may provide parents with a list qualified evaluators pursuant to its right to require an evaluation that matches its own criteria so long as the list is responsive to the child's needs and the list is exhaustive. Letter to Anonymous, 56 IDELR 175 (OSEP 2010).

K. If the District wishes to limit parents to using examiners from a list, the list must be exhaustive, that is, all qualified examiners in a geographic location must be included. Humble Independent School District, 55 IDELR 150 (SEA TX 2010); Letter to Young, 39 IDELR 98 (OSEP 2002).

L. If a District fails to list all qualified evaluators within a given geographic area, the parents may choose qualified evaluators who are not listed. Letter to Young, 39 IDELR 98 (OSEP 2002)

The regulations require that on request for an IEE, a public agency must provide the parent information about where an IEE may be obtained and the agency criteria applicable for IEE's. The public agency must set criteria under which an IEE can be obtained at public expense, including the location of the evaluation and the qualifications of the examiner, which must be the same as the criteria the public agency uses when it initiates an evaluation to

the extent those criteria are consistent with the parent's rights to an IEE. Other than establishing these criteria, a public agency may not impose conditions or timelines related to a parent obtaining an IEE at public expense. It is not inconsistent with IDEA for a district to publish a list of the names and addresses of evaluators that meet agency criteria, including reasonable cost criteria. This can be an effective way for agencies to inform parents of how and where they may obtain an IEE. In order to ensure the parents' right to an independent evaluation, it is the parent, not the district, who has the right to choose which evaluator on the list will conduct the IEE. We recognize that it is difficult, particularly in a big district, to establish a list that includes every qualified evaluator who meets the agency's criteria. Therefore, when enforcing IEE criteria, the District must allow parents the opportunity to select an evaluator who is not on the list but who meets the criteria set by the public agency. In addition, when enforcing IEE criteria, the District must allow parents the opportunity to demonstrate that unique circumstances justify the selection of an evaluator that does not meet agency criteria. Letter to Parker, 41 IDELR 155 (OSEP 2004).

M. Seth B. v. Orleans Parish School Board, 15-30164 (5th Cir. 2016). In the case, the parents sought reimbursement for an IEE that was denied by the School Board.

The first question addressed by the 5th Circuit was did the Orleans Parish School Board (OPSB) waive its right to refuse to reimburse for the Independent Education Evaluation? The 5th Circuit held that it did not waive its right to refuse.

The Court pointed out that IEE reimbursement is governed by 34 C.F.R. 300.502. After the parents requested an IEE at public expense, OPSB neither requested a hearing to show that its own evaluation was appropriate nor did it request a hearing to show that the parents' evaluation failed to meet relevant criteria. Instead, the parents requested a hearing on the subject of reimbursement claiming that OPSB waived its right to refuse reimbursement because it did not request a hearing. The Court found that the plain text of the regulation contradicted the parents' reading of 300.502(b)(2)(ii). The regulation excuses an agency from paying for an IEE if the agency simply "demonstrates *in a hearing*. . . that the evaluation obtained by the parent did not meet agency criteria." That provision does not require the agency to initiate or request the hearing, which contrasts with (b)(2)(i) where the agency must file a complaint and request a hearing if it wishes to decline reimbursement on the ground that its own evaluation was appropriate. That distinction strongly favors reading 300.502(b)(2)(ii) not to require the agency to

initiate a hearing. The Court found that the guidance provided in Letter to Petska, 35 IDELR 191 (OSEP 2001), was of questionable value and instead opted to follow the clear text of the regulation itself.

The District cannot wait indefinitely to request a hearing if the parent does not request a hearing. In other words, the District cannot force the parents to either demand a hearing or forsake reimbursement.

VI. Discussion and Rationale:

There are two issues presented for Decision:

1. Was the Student denied Extended School Year (ESY)?
2. Was the Student denied an Independent Education Evaluation for Assistive Technology?

The evidence is clear that in the Student's [1st IEP], the Team discussed the need for ESY and determined that Student did not qualify. The evidence is clear that in the [2nd IEP], the Team discussed ESY and determined that the Student did not qualify. The parent participated in both of those IEP meetings and noted her agreement to the IEP's by her signature thereon. Petitioner did not present sufficient evidence that the Student met the criteria for ESY.

The Assistive Technology Independent Education Evaluation is a more complicated issue.

- At the first IEP meeting on September [date], the parent consented to an Assistive Technology evaluation.
- In November of [date], the District's Assistive Technology Team conducted the Assistive Technology evaluation.
- On November [date], the Team had their SETT meeting. Parent was present at that meeting.
- On December [date], the District was putting the finishing touches on their Assistive Technology report.
- On December [date], Parent submitted a written request for an Assistive Technology Independent Education Evaluation. (On December [date], [1st provider] contacted the School regarding conducting the parent's requested Assistive Technology Independent Education Evaluation.)
- School recessed for Winter Break shortly after receiving the written request from mother.

- When school reconvened after Winter Break, [1st provider] submitted a quote for their IEE.
- On January [date], the School requested [1st parent provider] to delay the implementation of their evaluation to give the School time to implement the District's recommendations. District also asked [1st parent provider] to provide their qualifications.
- On January [1st parent provider], Parent renewed her request to use [1st parent provider] to conduct the Independent Education Evaluation.
- On January [1st parent provider], the District advised Parent what qualifications were needed by an AT evaluator and attached to that an information page regarding Assistive Technology evaluations with a minimal list of qualified evaluators and the statement that the IEE must be a reasonable and customary cost for the District to pay it.
- On January [date], an IEP meeting was conducted with specific discussions about Assistive Technology.
- Parent advised the Special Education teacher in May [date] that she was going to withdraw her son from special education.
- Written notice was provided to mother requesting a meeting to discuss withdrawal from special education.
- On September [date], at the IEP meeting, Parent again requested an AT IEE. At that time, Parent states that she wants to use [2nd parent provider]. The School contacted [2nd parent provider].
- October [date], the District e-mailed [2nd parent provider] regarding the requirements of a vendor application and the need for a quote.
- November [date], [2nd parent provider] submitted its quote.
- November [date], the District stated the quote was too high and that there was a \$2,500.00 maximum.
- November [date], District sent a follow-up e-mail to [2nd parent provider].
- December [date], another follow-up e-mail was sent to [2nd parent provider].
- Nothing further occurred until the Due Process was filed. February [date].

The list of potential AT evaluators was only one group, [1st name], who Parent objected to because the principal of [1st name] was an employee of a nearby school district. The District did not initially define what reasonable and customary cost was.

The first parent request for the Assistive Technology evaluation was made in September [date]. The District, in a reasonable time, conducted the Assistive Technology evaluation. The SETT meeting was held in a reasonable time. The AT recommendations were made in a reasonable time.

Prior to the implementation of the recommendations, Parent determined that she wanted an Independent Educational Evaluation for Assistive Technology and contacted [1st parent provider]. Parent had every right to request the IEE and that it be paid for by the District. The Parent was under no obligation to state why she rejected the District's evaluation or why she wanted an independent evaluation.

The District did not have any experience with an Assistive Technology Independent Educational Evaluation but spoke with [1st parent provider] and determined that [1st parent provider] was not qualified to conduct the evaluation. The District is well within their rights to set criteria under which an IEE can be obtained at public expense. Said criteria can include qualifications of the examiner, which must be the same as the criteria the District uses when conducting their evaluation.

The evidence was clear that [1st parent provider] did not have the qualifications to conduct an independent AT evaluation.

Because the District was implementing its AT recommendations and no further discussions were had regarding an independent evaluation, the District was not required to file a Due Process to prove that their evaluation and recommendations were sufficient.

District complied with the requirement of providing to Parent a list of qualified AT evaluators, although in reality, the list consisted of only one evaluator, which evaluator Parent rejected. Parent did not provide any unique circumstances for her rejection of [1st name] (see Humble School District, supra).

The evidence indicated that no further discussions were had between the Parent and the School after the IEP meeting of January [date] regarding an Assistive Technology Independent Educational Evaluation until in May of [date] the Parent advised the Special Education teacher that Student may withdraw from Special Education.

The following school year, in September [date], Parent again requested an AT IEE and indicated she wanted to use [2nd parent provider] to conduct the evaluation. Again, Parent was well within her rights to again request the Assistive Technology Independent

Educational Evaluation to be paid for by the District. The District could not impose any timelines relating to the Parent obtaining an IEE at District's expense.

Parent is entitled to choose their own evaluator, provided that evaluator meets District criteria, including reasonable cost criteria. The Parent is not required to choose an evaluator from the District's list. If, however, the Parent chooses someone other than someone on the District's list, the Parent must be given an opportunity to demonstrate unique circumstances that justify the selection of the evaluator that does not meet agency criteria and agency cost.

At the September [date] IEP meeting, Parent stated that she wanted to use [2nd parent provider] to conduct the AT IEE. The District immediately contacted [2nd parent provider] to discuss requirements of a vendor application and the need for a quote for services. Five weeks later, [2nd parent provider] submitted its quote in the amount of \$4,195.00. Two days later, District advised [2nd parent provider] and the Parent that the quote was too high and that there was a \$2,500.00 maximum.

Up to this point, District had never advised anyone what the maximum cost that they would pay would be. An attempt to negotiate a reduced fee with [2nd parent provider] was unsuccessful. Due Process was filed by the Parent on February [date].

Because District did not deny Parent the right or ability to obtain an AT IEE, there was no need and no requirement for the District to file a Due Process. District, in its communication with Parent and [2nd provider], advised Parent that if [2nd provider] was to conduct the evaluation that Parent would have to demonstrate the unique circumstances to justify the selection of the evaluator that did not meet the District's criteria, including cost criteria.

District's cost criteria was a cost ceiling of \$2,500.00 based on information they obtained from the only firm doing evaluations in the metropolitan area and the firm who had previously done evaluations in the metropolitan area. The cost ceiling of \$2,500.00 was reasonable. The burden was then on the Parent to demonstrate that District should pay more than the cost ceiling for the evaluation that she wanted.

It was not clear from the testimony or the exhibits that [2nd parent provider] had qualified evaluators, but District conceded that they did have the contract personnel to conduct an AT evaluation.

The testimony and exhibits demonstrated clearly that what [2nd parent provider] provided went far beyond an AT evaluation. Again, Parent has every right to retain the evaluator that she chooses, and she can have that evaluator conduct more than an AT evaluation. If she chooses that course, the District is obligated to provide the AT part of the evaluation at no cost to the Parent. The balance of those costs, however, are the Parent's responsibility.

VII. Decision

1. The Hearing Officer finds that the Student was not entitled to Extended School Year services for the [1st year] and [2nd year] school years.

2. The Hearing Officer finds that the Student is entitled to an Independent Educational Evaluation for Assistive Technology at a cost to the District not to exceed \$2,500.00.

3. Parent may choose any qualified evaluator, provided that evaluator meets the minimum standards that the school requires of their own evaluators. The Parent may choose as her independent evaluator [2nd parent provider]; however, the District will be obligated to pay \$2,500.00 for the AT portion of the evaluation. Any additional evaluation cost will be the responsibility of the Parent.

VIII. Appeal Statement

Unless appealed, this decision is binding upon all parties. Either party may appeal this decision by filing a written notice with Special Education Section, State Department of Education, 2500 N. Lincoln Blvd., Oklahoma City, OK 73105. The appeal must be made within 30 days of the receipt of this decision.

IT IS SO ORDERED this 28th day of July, 2017.

/s _____
HEARING OFFICER
Hugh V. Rineer
1921 South Boston Ave.
Tulsa, Oklahoma 74119-5221
(918) 583-8700
(918) 582-3838 - facsimile

Att. Appendix I - Witness List
Appendix II - Admitted Exhibit List

CERTIFICATE OF MAILING

This is to certify that on this ____ day of July, 2017, a true and correct copy of the above and foregoing was mailed, postage prepaid, and e-mailed to the following:

Parent attorney

School Attorney

Oklahoma Special Education
Resolution Center
9726 East 42nd Street
Suite 203
Tulsa, OK 74146
jo.pool@okstate.edu

/s _____
Hugh V. Rineer