AUTISM (AU)

NELI DISABILITY CONDITION SERIES 2024

GAIL CHERAMIE, PH.D. & CYNTHIA BUECHLER, JD

TOPICS

Statistics

Definition/Criteria for AU

Assessment/Evaluation of AU

Common challenges in identification and evaluation

Case examples

Litigation issues and implications

PEIMS DATA – AU & NCES data

2017-18	2018-19	2019-20	2020-21	2021-22	2022-23	2023-24
13.0% 64,783	13.5% 71,951	13.7% 80,557	13.95% 84,431	14.63% 92,912	15.43% 108,464	16.16% 125,189

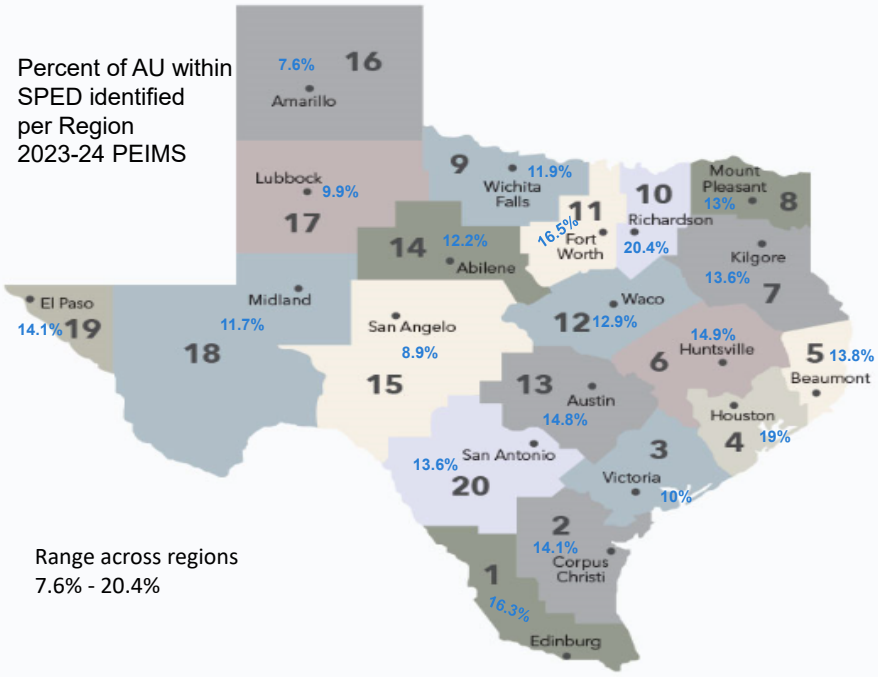
2022-23 percentage of AU in Texas = 15.43%

National percentage of AU based on National Center for Education Statistics (22-23) = 13%

In past 2 years, we have added about 32,000 students identified as AU

3

Percent of AU within SPED identified per Region 2023-24 PEIMS



Range across regions
7.6% - 20.4%

Historical Information - IDEA

Prior to 1990, Autism was not a separate disability category under the IDEA.

AU was a diagnostic condition under the category of Emotional Disturbance (ED).

Thus, the exclusion clause in IDEA 300.8(C)(1):

- *(ii)Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section*

Historical Information - DSM

1952: DSM – the word autism appeared once, in connection with schizophrenic reactions in young children (in 1911 the term autism first coined by Bleuler who also introduced the term schizophrenia)

1968: DSM-II autistic behaviors were still associated with childhood schizophrenia

1980: DSM-III Infantile Autism separate diagnosis from schizophrenia

1987: DSM-IIIR Autistic Disorder

1994: DSM-IV There were subcategories listed under Pervasive Developmental Disorders: Autistic Disorder, Asperger's Disorder, Rett's Disorder, Childhood Disintegrative Disorder, PDD-NOS;
2000: DSM-IVTR made changes, but kept same subcategories

2013: DSM-5 Autism Spectrum Disorder

2022: DSM-5TR Autism Spectrum Disorder (added the word **all** for first list of criteria and changed the word disorder in specifiers to **problems**)

DSM-5 – Autism Spectrum Disorder

A. Persistent deficits in social communication and social interaction across multiple contexts, as manifested by **all** the following ….

1. Deficits in social-emotional reciprocity …

2. Deficits in nonverbal communicative behaviors used for social interaction …

3. Deficits in developing, maintaining, and understanding relationships …

B. Restrictive, repetitive patterns of behavior, interests, or activities, as manifested by at least two of the following …

1. Stereotyped or repetitive motor movements, use of objects or speech …

2. Insistence on sameness, inflexible adherence to routines, or ritualized patterns of verbal or nonverbal behavior …

3. Highly restricted, fixated interests that are abnormal in intensity or focus …

4. Hyper- or hyporeactivity to sensory input or unusual interest in sensory aspects of the environment …

Definitions – IDEA & TAC

Autism	
34 CFR §300.8 Child with a disability	19 TAC §89.1040. Eligibility Criteria
IDEA, 2004	Texas
Autism means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age three, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. Autism does not apply if a child's educational performance is adversely affected primarily because the child has an emotional disturbance, as defined in paragraph (c)(4) of this section. A child who manifests the characteristics of autism after age three could be identified as having autism if the criteria in paragraph (c)(1)(i) of this section are satisfied.	*Autism*. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation must include specific recommendations for behavioral interventions and strategies.

Reference: Kristin McGuire, Presentation July 2024

Aligned! 2024: From Child Find to IEP Implementation Conference – State of the State

19 TAC §89.1040. Eligibility Criteria

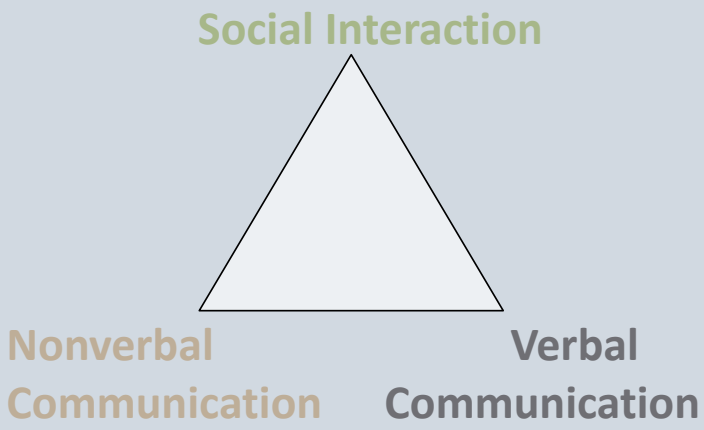
Autism:

- Determination of autism cannot require that the student meet the requirements for a medical/psychological diagnosis; the absence of the "other" characteristics often associated with autism listed in 34 CFR §300.8(c)(1) does not exclude a student from meeting eligibility; deletion of pervasive developmental disorder mention.

Updated TAC

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.8(c)(1). A determination of whether a student meets the criteria for autism as stated in 34 CFR, §300.8(c)(1), cannot require that the student meets the requirements for a medical/psychological diagnosis of autism. The absence of other characteristics often associated with autism listed in 34 CFR, 300.8(c)(1), does not exclude a student from meeting eligibility as a student with autism. The team's written report of evaluation must include specific recommendations for communication, social interaction, and positive behavioral interventions and strategies.

The 3 criteria for AU (IDEA & TAC)



Common comorbid diagnoses

AU w/

- ADHD [Prior to DSM-5 (2013), could not diagnose AU and ADHD.]
- ID
- Seizures
- Gastrointestinal disorders
- OCD/Anxiety disorders

AU Comorbidity

Autism Speaks notes the following rates in AU samples

- **ADHD** 30 - 61%
- **Anxiety** 11- 40%
- **Depression** 7%
- **ID** 31%

SLD can also co-occur, but ranges of rates not indicated; some estimates as high as 50%

American Academy of Pediatrics

Ideally, the definitive diagnosis of an Autism Spectrum Disorder (ASD) should be made by a team of child specialists with expertise in ASDs.

Johnson & Myers, 11/07, Identification and Evaluation of Children with Autism Spectrum Disorders, *Pediatrics*, Vol. 20, 5, pp.1182-1213

Hyman, S.L., Levy, SE., & Myers, S.M. (2020, Jan.). Identification, Evaluation, and Management of Children With Autism Spectrum Disorder. *Pediatrics*, 145(1):e20193447. doi: 10.1542/peds.2019-3447.

School-based Team

Typical evaluation team conducting the FIE for students suspected of AU includes:

- SLP
- DIAG
- LSSP
- OT
- Behavior Specialist
- Teacher

14

Some key issues

The assessment and classification of AU is both complex (has many components) and complicated (high level of difficulty).

There is no universally accepted method or test to make this classification/diagnosis. Thus, evaluations can range from limited to thorough.

Given the co-occurrence of many conditions with AU, we need very comprehensive evaluations.

Multiple sources of data, data analysis and clinical judgment are needed in decision-making for the determination of AU, differentiation of AU from other conditions and determination of dual or co-occurring classifications.

Some key issues

Co-Occurrence/Comorbidity: Two or more conditions are present; the student meets the criteria for each condition

- *Example: ID and AU*

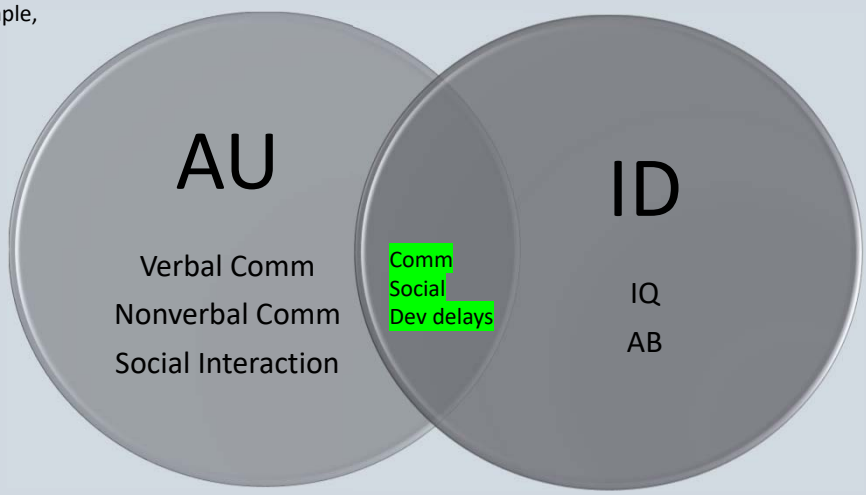
Differential classification/diagnosis: distinguishing one condition from others that present with similar features

- *Example: AU not ID*

Overlapping Symptoms: symptoms occur in two or more diagnoses

Shared vs. Specificity

For example,



For comorbid diagnoses, social communication should be below that expected for developmental level.

QUALITATIVE IMPAIRMENT

Distinctly deviant relative to the individual's developmental level or mental age

Quantitative = "less of" of a particular skill or behavior

Example: student has a limited vocabulary, which is consistent with her developmental level, but uses the vocabulary she does have for communicative purposes

"atypical form" relative to a normative comparison

Example: student has adequate language, but does not use language to effectively and reciprocally communicate with others (e.g., repeats phrases out of context, speaks of one topic)

FIE – Issues related to Scope

High levels of co-occurrence with other conditions: FIE must be crafted to not only assess for AU, but also to assess for other commonly co-occurring conditions

Needs in multiple areas not just those defining the condition: FIE must have data that will assist in the development of the IEP

Autism Supplement: Must have data that will assist in the completion of the AU Supplement – The AU Supplement is a Texas requirement.

20

Methods of assessment

All evaluators typically do the following:

- ✓R=**Review of Records**; I=**Interviews**; O=**Observations**; T=**Tests**

All evaluators typically use both formal and informal procedures.

- ✓**Formal**: use of norm-referenced or criterion-referenced measures; compare performance to predetermined standards
- ✓**Informal**: use of interviews, observations, review of records; these do not have a predetermined comparison standard

All evaluators typically use both direct and indirect approaches.

- ✓**Direct**: involves direct interaction with the student or direct observation
- ✓**Indirect**: does not involve direct interaction with the student; data gathered through informants or records

History and Record Review

For all evaluations involving AU, a thorough history is needed addressing: developmental, medical, sensory, language, social, behavioral, emotional, and learning domains.

This is usually done through a comprehensive general interview such as the BASC-3: SDH and review of records.

AU interviews such as the ADI-R and MIGDAS usually supplement the general interview if needed.

Two Approaches in Assessment

Nomothetic	Idiographic
Norm Group	Compare to self
Level	Process
What we share with others	What makes us unique
Need to integrate the two approaches: How the student solves the problem, approaches the task, and the types of errors made are critical for interpretation.	

23

Some considerations

Although the typical evaluation uses specific tests, evaluations for AU need more informal techniques to describe atypical characteristics

Evaluators usually do this through techniques such as:

- communication samples (descriptive, sequencing, story retell, conversational)
- observations in specific types of activities and interactions
- "testing of limits"
- descriptions of performance as opposed to just noting scores and levels of performance

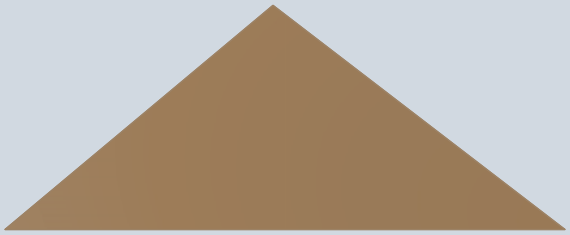
Rating scales are important to have in our evaluations, but:

- They reflect someone's view or perspective of the student's behavior
- There is the potential for under- or over-reporting the presence of and severity of symptoms
- Must have ecological data and direct assessment to confirm/contradict rating scale data
- Items do not explain why the behavior occurs nor how it is demonstrated. For example, an item such as: has trouble making friends – always to never – could be applicable to students with or without AU

24

Triangulate: DORI

Direct Assessment (administered to student, e.g., tests, interview)



Rating Scales & Interviews (these are informant-based methods)

Observations (naturalistic, controlled/ structured, event or time-sampling)

Assessment Process

Developmental screening and AU-specific screener

- American Academy of Pediatrics recommends screening for AU during regular well-child visits at 18 and 24 months
- M-CHAT-R/F, 20 questions with follow-up
- Questions involve joint attention, pretend play, social interest, imitation, eye contact, …
- Website: www.mchatscreen.com

Assessment Process

Assessment in Core Domains –
- Communication, Social, Behavioral

Intellectual/Cognitive

Adaptive Behavior

Speech-Language

OT

Psychiatric comorbidities

Medical

Neuropsychology - EF

FBA

27

Speech, Language & Communication

Common Measures
- GFTA-3, KLPA-3
- PPVT, EVT
- ROWPVT, EOWPVT
- CELF-5, CASL-2
- TOLD

Additional Measures used in AU evals

CELF-5: Metalinguistics

SLDT NU (Elem & Adol)

CAPs (Clinical Assmt of Pragmatics - video)

TOPL-2, TOPS-3 and 2

FCP-R

28

Physical-Medical

Remember, students with AU have high comorbidity of medical issues – need a through interview with parents and review of medical records (if applicable)

Ask parent if the child was screened for AU during a well-child visit

Sensory – this is typically addressed by the OT with measures such as:

- Sensory Profile-2
- Sensory Processing Measure-2

Beery VMI

29

IQ

Use of traditional IQ tests such as WISC-V, WJ-IV, DAS-II, KABC-II and SB-5

Test manuals have profiles for clinical samples

Research has been done on IQ tests with AU samples

Some examples with WISC-V:

- WISC-V Q-Interactive Technical Report 11 (Raiford, et. al.)
- Stephenson KG, Beck JS, South M, Norris M, Butter E. Validity of the WISC-V in Youth with Autism Spectrum Disorder: Factor Structure and Measurement Invariance. *Journal of Clinical Child & Adolescent Psychology*. 2021 Jan 15:1-13. doi: 10.1080/15374416.2020.1846543.
- Dale, B., Finch, W., & Shellabarger, K. (2022). Performance of children with ASD on the WISC-V ancillary index scale, Psychology in the Schools 60(1). DOI:10.1002/pits.22688

30

Other measures

Developmental Tests
- Battelle Dev. Inv.
- DAY-C
- Bayley
- DP-4
- Ages & Stages Quest
- PEP-3

EF, Memory and Attention
- D-KEFS
- NEPSY-II
- TOMAL
- WRAML
- WCST

31

AB: VABS-3 & ABAS-3

Tamm, L., Day, H., & Duncan, A. (2021) Comparison of Adaptive Functioning Measures in Adolescents with Autism Spectrum Disorder without Intellectual Disability. *Published in final edited form as:* J Autism Dev Disord. 2022 Mar; 52(3): 1247–1256. Published online 2021 Apr 26. doi: 10.1007/s10803-021-05013-9

Vineland data on profiles of students with AU: AU sample with IQ >70 Means for each domain ages 3-8; 9-20:
- Communication=76;71
- Daily Living Skills=78; 76
- Socialization=69; 66
- Composite=73; 70.5

ID sample with IQ 50-70 Means for each domain: Commun=58 DailyLiv=68 Social=71 Composite=65.8

AU sample with IQ ≤70 Means for each domain ages 3-8; 9-20: Communication=49;38.9 Daily Living Skills=60; 53 Socialization=52; 44.9 Composite=54.5; 46.9

Subdomains most associated with AU:
- Receptive & Expressive in Communication Domain
- Interpersonal Relationships & Play and Leisure in Socialization Domain
- Maladaptive Critical Items address restricted, repetitive patterns of behavior, interests, or activities

32

Achievement

Use of traditional achievement tests such as the KTEA-3, WIAT-4, and WJ-IV

TEMA, TERA, TEWL

Curriculum-based measures

Universal Screeners, Benchmarks, STAAR

Measures such as ABLLS, VB-MAP, UNIQUE, Brigance

When assessing achievement, purpose is to establish academic functioning levels, but also do not forget SLD (high co-occurrence with AU)

33

Emotional- Behavioral-Social

Most common broad-band
- BASC-3
- Conners CBRS

Most common syndrome-specific rating scales
- SRS-2, ASRS
- GARS-3, CARS-2

Other AU measures
- ADI-R
- ADOS-2
- MIGDAS-2
- PEP-3
- SCQ
- Can also use NEPSY-II Social Perception tests
- ASIEP-3

34

Emotional-Behavioral-Social

Remember, high levels of psychiatric co-morbidity (BASC-3 and CCBRS)

ADHD co-occurrence (e.g., Conners 4)

Self-report measures
- Anxiety: RCMAS, MASC
- Depression: CDI, RCDS/RADS

FBA (common measures)
- FAST
- MAS
- QABF

Social Skills
- SSIS-SEL
- Autism Social Skills Profile-2

Executive Function (e.g., BRIEF, CEFI, D-REF)

35

AU Supplement Items

1. Extended Educational Programming
2. Daily Schedule reflecting minimal unstructured time
3. In-home and community-based training
4. Positive Behavior support strategies
5. Futures Planning
6. Staff-to-Student Ratio
7. Parent training & support
8. Communication Interventions
9. Social Skills supports and strategies
10. Professional educator/staff support
11. Teaching strategies based on research

36

AU Supplement

FIE must be comprehensive and address all needs and related services

Do not forget to obtain data for items directly related to supplement

For re-evals, data will include analysis of IEP objectives and progress

Some supplement items directly address assessment

Examples:

- Strategies 1 and 9 directly mention social skills assessment
- Strategy 7 mentions adaptive behavior; Strategy 1 mentions assessment of self-help skills
- Strategy 4 mentions FBA
- Strategy 1 also mentions assessment of behavior, communication, academics

37

Potential MDET issues

Given that several evaluators are involved, there is a high probability of **Duplication** (Redundancy).

There is also a high probability of **contradictions** in the data set.

Each school-based evaluator is likely addressing a **specific component** of the FIE.

Each evaluator may be operating on **different criteria** for a condition (e.g., SI versus SLD) or different rules for **interpretation**.

The evaluators may **disagree** on the conclusions regarding a specific disability condition.

Several evaluators provide data that contribute to **multiple conditions**.

Several evaluators can provide data for differential classifications.

To address issues

Plan the assessment as a team

Some procedures can be done as a team (e.g., interview) or team members can observe direct assessments being conducted by another evaluator

Once data are collected, meet to discuss results, convergence and lack of convergence across data sets – CARS-2 is a good way to do this in a systematic way

If there is convergence and agreement and all data are present to address classification and needs, FIE is done and go to next step - report writing; if not, determine next steps for additional data collection

39

Social Deficits

The Social Deficit in students with AU is very complex.

Factors are interrelated: **communication, cognition**, and **social responsiveness** interact to elicit behaviors in social interchanges.

The typical give-and-take inherent in social situations is not present or significantly impaired in students with AU.

Social interest may be present, but initiation and reciprocity in interactional exchanges are impaired.

Interaction – how you relate to others; **Cognition** – how you think about others

40

Some key constructs for assessment

Social Communication

Social Cognition

Theory of Mind

Social Referencing

Joint Attention

Reciprocity

ASHA: Social communication

Social Communication involves three major skills:

Using language for different reasons (e.g., greeting, requesting, informing)

Changing language for the listener or situation (e.g., skipping or adding details when someone knows or does not know a topic, talking differently to someone of a different age)

Following rules of conversation or telling a story (e.g., taking turns, remaining on topic, using gestures, demonstrating facial expressions and eye contact)

Remember: cultural and other factors influence social communication

Reference: https://www.asha.org/public/speech/development/social-communication/

Social cognition

Understanding of others' intentions, emotions and behaviors; how we process and interpret cues impact how we respond; wide range of abilities involving recognizing and processing emotions and tones of voice, attributing mental states to others, understanding social cues and contexts, …

Commonly referenced domains of Social Cognition: Theory of Mind – Cognitive (infer thoughts, intentions and beliefs of others), Affective (inferences about what others' feel); Social Perception; Social Knowledge; Emotion Processing; Attribution

Process of Social Cognition:

- **Attention to cue(s)**
- **Interpretation of the cue(s)**
- **Retrieving possible responses from memory**
- **Making a decision regarding response options**
- **Action – Behavior**

ToM – social-cognitive skill

The ability to attribute mental states (e.g., beliefs, intents, desires, emotions, knowledge) to oneself and to others. ToM is a sense of what others are thinking. ToM is necessary to understanding that others have beliefs, desires, intentions, and perspectives that are different from one's own. Helps us to form our responses.

Tasks: Perception of emotions from facial expressions and from body postures; First order belief: what children think about real events (Michael thinks that Mary is angry); Second-order belief: what children think about other people's thoughts (Michael thinks that Mary thinks that he is angry with her)

Joint Attention

JA= coordinating visual attention with a social partner; unfolds between 6 and 18 months; social orienting ; preverbal social communicative skill that involves sharing with another person the experience of a third object or event; TRIADIC EXCHANGE

Pattern of JA: in kids with AU who are preverbal, communication is almost entirely requestive

Protoimperative (use of gaze and/or gestures to gain another person's aid in obtaining a particular object or outcome) is greater than

Protodeclarative (combinations of eye contact and gesturing but with the aim of calling another person's attention to the object or experience without any instrumental purpose)

Social Referencing

Ability to read emotional cues in others to help determine how to act in a particular situation

Includes the ability to

- Recognize emotional expressions
- Understand emotional expressions
- Respond to emotional expression
- Alter behavior in response to emotional expression

Reciprocity

The capacity to share attention (joint attention) and emotion (social referencing) with others

Reciprocity includes

- Ability to change (conversation or behavior) based on needs of or in response to interaction with partner
- A mutual, shared experience

In individuals with AU, reciprocity is specifically and universally impaired

47

Multiple sources, disparities

The problem with rating scales –

- based on the perception of the informant
- do not explain why the behavior occurs nor how it is demonstrated. For example, an item such as: has trouble making friends – always to never
- There may be disparities between the ratings of informants. For example, parent scales may be significant and teacher scales may not, or teacher scales may be significant and parent scales may not

What happens when there are disparities between ratings of informants and between types of data – observations versus interviews (e.g., behavior reported in interviews are not observed) versus tests (performance of student on direct measures is not consistent with reported behaviors)?

Convergence

Cross-Validation – divide data into segments and using one to prove another; done for accuracy and prediction

When performing cross-validation, multiple types of data are used. For example, observation may be used to validate rating scale results. Performance on an instrument may be used to validate a naturalistic observation.

If the data set is too disparate, conclusions will be difficult to form.

Need convergence across data and examiners. Identify what is consistent across the evaluation process.

Example table for TEA criteria

Domain	Definition/Characteristics	Data
Verbal Communication	This domain includes: Speech Acts (e.g. requests, responses, comments, direction, demands) that serve a communicative function. Prosody and Style Discourse (e.g., conversational exchange, topic maintenance, responsiveness).	The team discusses and identifies specific behaviors to indicate the presence of this characteristic or to contraindicate the presence of this characteristic
Nonverbal Communication	This domain includes: Body language Eye Contact Gestures Facial Expressions Gaze (shifts)	The team discusses and identifies specific behaviors to indicate the presence of this characteristic or to contraindicate the presence of this characteristic
Social Interaction	This domain includes: Rules for linguistic politeness Social reasoning and social cognition Social tasks (accessing peer groups, cooperative play) Reciprocity (e.g., initiating and responding to bids for interaction, taking turns)	The team discusses and identifies specific behaviors to indicate the presence of this characteristic or to contraindicate the presence of this characteristic

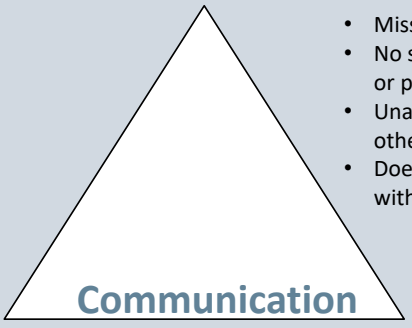
EXAMPLE – NO DEFICIT IN VERBAL COMMUNICATION

Domain	Definition/Characteristics	Data
Verbal Communication	This domain includes: Speech Acts (e.g. requests, responses, comments, direction, demands) that serve a communicative function. Prosody and Style Discourse (e.g., conversational exchange, topic maintenance, responsiveness).	Asked examiner where they were going and if they would play any games (SLP & DIAG) At times would say "this is kinda boring," "I was hoping you had games," "do you have something else for me to do" (SLP, DIAG, LSSP) Asked questions ("How do you open this?" "Do you know the answer to this problem?") Made comments and added to conversation ("I don't really like math, but I really like my teacher. She is cool.") (LSSP interview) Reported a school activity (making a volcano in science) and a favorite activity at home (playing with his dog) No verbal oddities or perseverative topics Responsive to questions. Engaged in conversational exchange on various topics across all examiners. …

Example

Behavior:
- Difficulty with transitions
- Restricted Interests (Movie credits, computer videos)
- Sensory sensitivity (smells, eating, etc.)
- Poor focus/attention

Social Interaction
- Misses social cues
- No sustained interactive play or pretend play
- Unable to take perspective of others – poor joint attention
- Does not seek relationships with peers



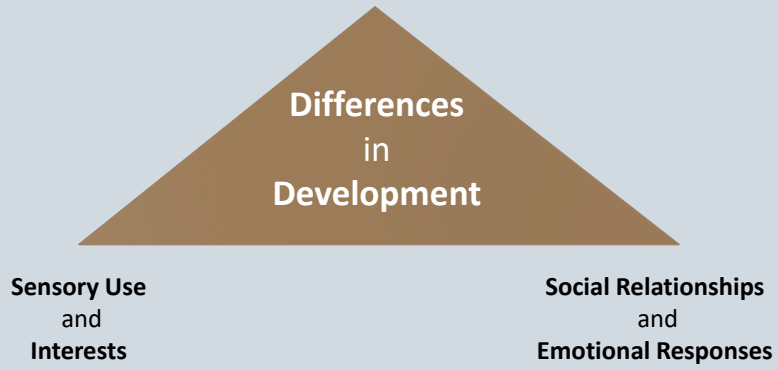
Nonverbal
- Intrusive with body space – too close
- Limited use of gestures
- Facial expressions limited – grimacing
- Lack of eye gaze in interaction

Communication

Verbal
- Does not carry on reciprocal conversations with others
- Loud voice volume, issues with prosody
- Verbal repetitions/perseverations

Visual Framework for Understanding Autism Spectrum Disorders: *The Descriptive Triangle*

Monteiro, M. (2010) Evaluating Children on the Autism Spectrum through Authentic Conversations. WPS.



Conclusions

Once the report has been integrated and all data considered, there should be agreement among team members for

- Presence of the condition
- Presence or absence of other conditions
- Recommendations

Remember, FIEs answer questions, they do not end with questions.

DUE PROCESS AND LITIGATION ISSUES

Z.W. V. SCHERTZ-CIBOLO-UNIVERSAL CITY ISD, CASE NO. SA-21-CV-0636-JKP

(Western District, January 2024)

Factual Background

The student had received services from the district under the eligibilities of Autism, Speech and OHI. He exhibited behaviors and his physician provided that he should receive homebound services when he could not tolerate school. He made significant academic and behavioral progress in his 4th grade year. Because they liked the teacher, the parents asked for him to be held back so that he could have the teacher for another year. The student continued to make progress both academically and behaviorally. In the spring semester, the parents withdrew him from school and lived in England for that semester. Upon returning the next school year, the physician again recommended homebound when the student could not tolerate school.

Factual Background Continued

After a few months, the parents placed the student in a private school for autism and asked the school to pay for the program. An ARD meeting was held that determined the student could attend a full day and that they had an appropriate program. After the parents threatened to file for hearing, the school paid a lump sum for the student to receive educational services for the remainder of that school year and the subsequent school year.

Factual Background Continued

When the services ended under the agreement, the parents sought for the school to continue paying for the private school, including the summer. The school district had an ARD meeting and asked to evaluate the student and observe the student in the private setting and to receive records of the student's performance from the private school. Several ARD meeting were held to develop a program. A one-page document was provided by the private school as to the student's current performance. Based upon their observations and the information provided, the school determined that it could provide the ESY services. The parent disagreed and continued to ask for payment for the private school. The student did not attend the district's ESY. For the first two weeks, the student and his family vacationed in Europe.

Factual Background Continued

The ARD committee also developed an IEP for the following school year pending the results of the evaluation. The parents never brought the student to school. Instead, they continued the private school program and then placed the student residentially out of state. The parents filed for hearing asking for the private school placement and when the student was residentially placed, they requested the school pay for the residential placement.

Factual Background Continued

After the evaluation was completed, the ARD committee met to review the evaluation. The evaluation found that the student also qualified as Intellectually Disabled. The IEP was revised based upon the evaluation. The parent disagreed with adding the ID label and with the IEP and continued to request residential placement.

Factual Background Continued

Staff visited the residential placement and were only allowed to observe for one hour rather than two days. They were not shown an academic activity. Staff reported to them that the focus was not academics and that it was medical in nature, even though it did provide some educational program. The staff conceded that the student had regressed academically.

Factual Background Continued

An ARD meeting was held, and it was determined that the school could provide an appropriate program. Some revisions were made based upon the visit. When the annual ARD meeting was due, the school notified the parents. The parents chose not to attend and wanted the ARD meeting to occur after the hearing. The school informed the parents that they would need to go forward with the ARD meeting. The parents chose not to attend.

Court's Findings

The Court found that the school had an appropriate educational program available for the student. The Court also found that medical, rather than educational, purposes drove the residential placement decision. The facility's focus was not on educating the student. The facility provided a highly restrictive environment that utilized seclusion and other forms of restraint, including medical restraint. Accordingly, the court found that the residential facility was a hospital facility that was not for educational purposes. While it had an educational component, that was clearly not the reason for the student's admissions.

Lessons Learned

- To determine whether an IEP provides a meaningful "educational benefit", courts must look beyond mere "weaknesses caused by the student's disability." They must instead focus on the student's overall educational benefit, not solely disability remediation.
- Progress on "IEP goals and objectives, as well as recorded test scores and percentile rankings, can aid this process, but no one factor can overwhelm it.
- To determine LRE, the courts must first ask whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. If it cannot and the school intends to provide special education or to remove the child from regular education, courts must ask, secondly, whether the school has mainstreamed the child to the maximum extent appropriate.

Lessons Learned Continued

- IDEA left "primary responsibility" for formulating the educational program "and for choosing the educational method most suitable to the child's needs to the state and local educational agencies in cooperation with the parent or guardian of the child.
- Schools determine educational methodology, not ARD/IEP committees.
- If the district offers a proper and timely FAPE, there is not an obligation to reimburse for private school expenses.
- IDEA authorizes reimbursement for the cost of private special education services when a school district fails to provide a FAPE and the private school placement is appropriate, regardless of whether the child previously received special education or related serviced through public school.

Lessons Learned Continued

- Even when the first two factors have been met, Courts still retain discretion to reduce the amount of a reimbursement award if the equities so warrant.
- A court's review is limited to whether the IEP is reasonable, not ideal.
- School's only need to offer IEPs that are"reasonably calculated to enable" the student to make progress in light of his or her unique circumstances.

Lessons Learned Continued

• The four factors for determining whether the school district has developed an appropriate IEP are the following:

1. Whether the program is individualized on the basis of the student's assessment and performance;

2. Whether the program is administered in the least restrictive environment;

3. Whether the services are provided in a coordinated, collaborative manner by the key stakeholders; and

4. Whether positive academic and non-academic benefits are demonstrated.

Lessons Learned Continued

- To comply with IDEA, an IEP sufficient under the IDEA need not be perfect nor must it insulate a child from experiencing hardships while being subject to the IEP.
- The fact that a parent's position regarding their child's education was not adopted by the ARD/IEP committee does not mean that the parents were denied the ability to be a participant in their child's education.
- "Freedom from restraint" is a benchmark of LRE along with the freedom to associate with able-bodied peers to the maximum extent possible.
- The fact that the student's behavioral issues affected his ability to receive educational benefit does not transform the issues from a medical/safety issue to one primarily for educational purposes. A need for hospitalization is a medical/safety issue that transcends any educational issue a child might have. IDEA is not intended to provide for hospitalization admissions or to pay for them if parents unilaterally choose that route.

Lessons Learned Continued

- For a residential placement to be approximate under IDEA, it must be essential in order for the student to receive a meaningful educational benefit.
- IEPs concern the educational needs of students, but they are not required to provide perfect educational opportunities nor are they required to address every desire of a parent or every medical need.
- A student's hospitalization does not mandate a finding that a school district has failed to provide the student with FAPE.
- The nature of IEPs and BIPS demand some flexibility for modification should needed changes become apparent. Such flexibility does not mean that a developed IEP is insufficient to provide a FAPE. It simply recognizes the reality that changes may be needed as more data is available.

Lessons Learned Continued

- Procedural errors do not constitute a violation of the right to FAPE absent a showing of substantive harm.
- Without a reasonable request to delay or reschedule , there is no substantive harm from a school district proceeding with a needed ARD/IEP meeting that parents had declined to attend. Absent a showing that the request for delay was reasonable, a school district's failure to accommodate a request to delay or reschedule does not seriously infringe on a parent's opportunity to participate in the IEP formulation.
- A soon-to-be teacher satisfies the IDEA requirements for ARD/IEP required members for a student who is not currently attending the school district.

STUDENT V. LITTLE ELM ISD, SOAH DOCKET NO. 701-23-05447.IDEA, TEA DOCKET NO. 088-SE-1122

(June 2023)

Factual Background

The student entered the school district with an IEP for Speech in February 2019. An evaluation was conducted in November 2019 and it was determined that the student no longer qualified for special education and that his needs in the areas of sensory, self-regulation and attention issues could be effectively addressed in the classroom. The parents agreed to the dismissal.

During the 2020-2021 school year the teacher indicated that the student had some issues with task refusal and sensory difficulties, but Student still received passing grades.

Factual Background

At the beginning of the student's 2021-2022 school year, the student's teacher noted the student's refusal to complete work. The teacher and father emailed to discuss strategies to help Student in class and the father mentioned obtaining a private ADHD evaluation.

In November 2021, Student's teacher initiated the SST due to the student's lack of participation in activities. The teacher testified he was trained to initiate response to intervention services before requesting a special education evaluation. SST services started in November 2021. The SST provided accommodations to the student; however, the student's lack of participation and group work refusal did not improve, and student's teacher noted in March 2022, that even with the accommodations, the student refused to complete 80 percent of his work.

Factual Background

The parent requested an evaluation in April of 2022. The school began the evaluation process in May and completed it in October of 2022.

The evaluation did not include an FBA or an OT or counseling assessment. The evaluation found that the student has deficiencies in social communication that lead to substantial interference with everyday social interactions, which are typically associated with a diagnosis of autism. The evaluation showed many characteristics of a child on the autism spectrum, but the evaluator concluded that the characteristics were due to ADHD. The evaluation found that the student qualified as OHI for ADHD.

Factual Background

An ARD meeting was held to place the student in special education. The parent returned the IEP indicating that they agreed that the student qualified for special education services but disagreed that the student did not qualify as autistic, nor did they agree with the IEP. The school treated this as a disagreement to place the student in special education and did not provide special education services.

The parents filed for hearing and obtained a private evaluation from an LSSP and BCBA that found that the student qualified as a student with autism and ADHD.

Court's Findings

The Hearing Officer found that the District had reason to suspect the student may need special education and related services as a result of a disability by the beginning of spring semester of 2022. SST interventions began in November 2021 after the student's work refusal continued from the beginning of the school year. In the spring of 2022, the interventions aimed at increasing participation proved unsuccessful, and the student continued to not participate.

Court's Findings Continued

The District finally initiated an evaluation only after Dad requested one in April 2022, and the evaluation was completed in October 2022. The hearing officer found that the four month delay between January 2022 and May 2022 to initiate the evaluation was unreasonable and violated the district's Child Find obligation.

The hearing officer further found that the district failed to identify the student as autistic even though the data contained in the evaluation conclusively found the student met the eligibility. As such, the hearing officer found the IEP to be inappropriate because it did not have clear goals for social skills nor did it address the Autism Supplement.

Lessons Learned

- A delay in evaluating can be reasonable if the District takes proactive steps between notice and referral. The District's SST interventions were proactive steps, but once it was clear those interventions are not working, a District needs to evaluate a student.
- A student does not need to first receive interventions through RTI before being referred for a special education evaluation.
- When a parent puts qualifiers on their consent for services, an ARD meeting needs to occur to address the qualifier.

Lessons Learned Continued

- While the label does not drive the programming for the student, the student's strengths and weaknesses do. If a student exhibits the characteristics that are consistent with autism, even if the ARD/IEP committee do not choose to add the label, the ARD committee needs to address all of the elements of the Autism Supplement to ensure that all of the student's needs are met.
- When conducting an evaluation for autism, an OT should be part of the multidisciplinary team.
- When developing a program for a student, services need to be different than what has been already tried and found unsuccessful.

STUDENT V. CONROE ISD, SOAH DOCKET NO. 701-21-3042.IDEA TEA DOCKET NO. 230-SE-0721

(February 2022)

Factual Background

A student had two outside evaluations that diagnosed the student with autism. The parents requested a special education evaluation at the beginning of the 2019-20 school year. While the evaluation was pending, Student received Section 504 services.

Using information obtained from observations, interactions with Student, parent and teacher information, and testing data, the Licensed Specialist in School Psychology (LSSP), educational diagnostician, and speech therapist completed the Child Autism Rating Scale, Second Edition (CARS2-HF), a behavior rating scale to determine whether a high functioning individual has sufficient symptoms to be considered for a diagnosis of autism spectrum disorder.

Factual Background Continued

Student achieved a total raw score below the standard clinic cutoff. However, the CARS2 assessment was completed before the occupational therapist completed her evaluation which showed numerous areas of sensory processing dysfunction. The 2019 FIE did not include further assessments specific to autism. The LSSP relied on Student's previous diagnoses, ability to interact socially with students and make eye contact, and lack of sensory seeking indictors in not conducting the Autism Diagnostic Observation Schedule (ADOS) or other measures.

Factual Background Continued

The BASC-3 was also administered. Children who present with elevated scores on the BASC-3 Autism Probability Index likely exhibit a variety of unusual behaviors and problems with developing and maintaining social relationships. All three teachers gave ratings in the clinically significant range, with the parent ratings in the at-risk range. Across settings, Student demonstrated impaired emotional/social reciprocation and rigidly adhered to routines/rituals.

Factual Background Continued

On the BASC-3 Emotional Behavioral Disturbance Probability Index, all ratings fell in the clinically significant range. Across settings, Student had verbally or physically aggressive temper outbursts and an irritable or angry mood between outbursts.

However, the evaluation did not find the student eligible as autistic, but rather emotionally disturbed.

Court's Findings

Because the student had been eligible for special education services since 2018, the hearing officer found that the District satisfied its Child Find obligation at that time and determined that the claim was appropriately construed as a challenge the District's failure to properly evaluate and identify Student's eligibility under the IDEA, rather than a Child Find claim. Because Student's eligibility under the IDEA has been established, the relevant inquiry is whether the District provided Student a FAPE.

Court's Findings Continued

The hearing officer found that the District's 2019 FIE was not sufficiently comprehensive in the area of autism and its conclusion that the student did not meet eligibility criteria was not supported by its own data. Despite two recent private evaluations conducted in 2019 diagnosing Student with an autism spectrum disorder, the 2019 FIE included a single measure specific to autism, the CARS-2 HF.

Court's Findings Continued

Further, in determining Student's eligibility in 2019, the LSSP attributed Student's significant social deficits to "cognitive distortions," but did not assess cognitive distortion and this conclusion was reached without data to support it. In contrast, in addition to the comprehensive assessment of Student's characteristics of autism, the outside evaluator thoroughly and credibly explained her conclusion as to why autism, rather than an emotional disturbance, combined with ADHD, are Student's "core" diagnoses.

Court's Findings Continued

In determining Student did not meet criteria as a student with autism in September 2021, the Hearing Officer found that the District inappropriately discounted the ADOS-2 administered by the outside evaluator due to a concern over scoring validity related to the use of a plexiglass shield during testing. However, the outside evaluator credibly confirmed during her testimony describing her evaluation room that she did not conduct the evaluation with a plexiglass shield between herself and Student. Further, the District misinterpreted the IEE as to the ASRS findings.

Because Autism was not identified, the Hearing Officer found the student did not receive behavioral support services or the services contained in the autism supplement and therefore did not receive FAPE.

Lessons Learned

- A school district that has determined a student is eligible for special education and provided the student with an IEP has satisfied its Child Find obligations even if the parties disagree over the correct eligibility condition.
- A specific classification or label is not required as part of the Child Find obligations or as part of the IDEA itself; rather, the relevant inquiry is whether the student received a FAPE.
- An evaluation must also be sufficiently comprehensive to identify all of the child's special education and related service needs, whether or not commonly linked to the disability category in which the child has been classified.

Lessons Learned Continued

- The school district should also consider a student's academic, behavioral, and social progress in determining whether the student needs special education for purposes of IDEA eligibility.
- Eligibility for services under the IDEA is a two-pronged inquiry:

(1) whether the student has a qualifying disability, and

(2) whether, by reason of that disability, the student needs IDEA services.

Lessons Learned Continued

- In making an eligibility determination, the ARD committee must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child's physical condition, social or cultural background, and adaptive behavior.

KRAWIETZ V. GALVESTON INDEPENDENT SCHOOL DISTRICT, NO. 17-40461

(5th Circuit, 2018)

Factual Background

The student was born in 1996 and had behavioral issues and various disorders since she was very young. In 2004, the student was evaluated and determined eligible for special education services and an IEP was developed to address learning and behavioral challenges. In 2008, the student was withdrawn and homeschooling after an incident where she tried to harm another student.

Factual Background Continued

In 2013, she returned to school as a freshman. At that time, the parent reminded the school staff that her daughter had been eligible for special education services. The school staff could not locate the previous documentation and assumed she had been dismissed from special education. In September of that school year, the student was suspended and placed in the DAEP following an incident where she had sexual relations with two other students in the restroom. In November, the school referred her to Section 504. She was failing most of her classes. The 504 committee determined that she qualified for Section 504 due to PTSD, ADHD and OCD and put accommodations in place. No FBA was conducted and no BIP was put in place. With the accommodations in place, she successfully completed her freshman year.

Factual Background Continued

The next school year, 2014-2015, however, she continued to struggle. She completed less than half of her credits for the fall semester. She was hospitalized for two months when she stole $1500 from her mother. The parent filed for a due process hearing on February 9, 2015 asserting that the school untimely evaluated the student and did not provide FAPE. The parent asked for private school placement. On the date the due process hearing was filed, the school sent notice of a 504 meeting. At the resolution session, the district offered to conduct an FIE to which the parent agreed. The evaluation was completed on April 15, 2015 and found that the student qualified for special education services.

Court's Findings

The due process hearing was held, and the hearing officer ruled in favor of the parent, finding that the district did not meet its Child Find obligations and that they failed to provide FAPE, however, the hearing officer did not order residential placement.

The parent filed for attorneys' fees in district court and the district challenged the hearing officer's findings. The district court upheld the hearing officer's decision and awarded attorney's fees. In so doing the judge found the following

Court's Findings Continued

Ashley's academic decline, hospitalization, and incidents of theft during the [fall 2014] semester—taken together—were sufficient to cause GISD to suspect that her several disabilities created a need for special education services. The Court finds that, conservatively, GISD should have suspected the need for an IEP by October 2014. GISD did not attempt to conduct an evaluation until April 2015. The evaluation occurred at least six months after GISD should have suspected that one was required, and three months after Ashley requested a Due Process Hearing. The Court further finds that this six-month delay was unreasonable. . This is especially true given the extensive notice to GISD and the dire circumstances involved.

Court's Findings Continued

The district appealed the decision to the Court of Appeals. The school contended that the student's hospitalization in the fall of 2014 was insufficient to put it on notice of her need for special education services. The Court of Appeals rejected the argument pointing to the fact that the district court did not rely on the hospitalization alone; it relied on a combination of factors, including the student's deteriorating academic performance. The school suggested that the student's academic decline did not become manifest until the fall semester officially ended on January 21, 2015. However, the Court of Appeals found that there was sufficient evidence of her declining performance earlier in the semester as well.

Court's Findings Continued

The school also argues that the district court miscalculated the period of delay by using an incorrect end date. According to school, the proper end date for determining the timeliness of its compliance with its Child Find obligation was not the date on which it completed the evaluation (April 21, 2015), but rather the date on which it requested consent from the student's mother to conduct the evaluation. (February 16, 2015). The Court found that even if the two months it took to conduct the evaluation was removed, there still was a four month delay from October 2014 until February 16, 2015 which was unreasonable, and that was a sufficient basis for the Court of Appeals to affirm the district court's decision.

Court's Findings Continued

During those four months, the Court found that the school to take any appreciable steps toward complying with its Child Find obligation and, it was only after Ashley's family requested a due process hearing that the school sought consent to conduct the evaluation.

The school also argued that the student's family failed to "act with any urgency" until late January 2015. The Court emphasized that the IDEA imposes the Child Find obligation upon school districts, not the parents of disabled students.

Lessons Learned

- If a student was previously identified, the school should at least monitor the student under MTSS.
- If the school receives outside diagnoses of PTSD and OCD, the school needs to consider a referral for special education under the eligibility of Emotional Disturbance.
- When a student is having behavioral problems, an FBA needs to be conducted and a BIP developed whether the student is served under IDEA or Section 504.

Lessons Learned Continued

- When a student is hospitalized, the district needs to request a release to obtain the any evaluations and discharge papers on the student to determine if there is reason to suspect a disability.
- If a student is failing, the school does not need to wait until the end of the semester to refer a student for special education services if there is reason to suspect that the student is in need of specialized instruction.

Disclaimer

The legal information provided during this webinar is for general purposes only. It is not intended as a substitute for individual legal advice or the provision of legal services. Accessing this information does not create an attorney/client relationship. Individual legal situations vary greatly, and attendees should consult directly with an attorney.