

<sup>1</sup> The

2. Convene an Admission, Review, and Dismissal committee (ARDC) meeting upon completion of the FBA, to consider revision of Student's

District's request, the decision due date was extended from January 29, 2017, to February 3, 2017, for good cause shown. This decision is timely issued.

### III. DENYING DISTRICT'S MOTION TO DISMISS

On January 23, 2017, along with its closing argument, the District submitted a Motion to Dismiss (Motion), stating Petitioner's requested relief had been provided, rendering the case moot. Petitioner timely responded in opposition to the Motion. The evidence presented at the due process hearing established that the District is in the process of conducting an FBA of Student and intends to hold an ARDC meeting to review the FBA and consider implementing a BIP. However, the evidence does not show that the FBA has been completed or that an ARDC meeting has been convened to consider the results of the FBA.<sup>6</sup> Accordingly, the case is not moot and the Motion is DENIED.

### IV. EVIDENCE

Petitioner offered no documentary evidence. Mother and Father testified on Petitioner's behalf. The District offered two exhibits, which were admitted, and called Ms. \*\*\* as a witness.

### V. FINDINGS OF FACT

1. Student, \*\*\*, resides with Parents within the boundaries of the District.<sup>7</sup>
2. Student is eligible for special education and related services as a Student with an \*\*\*.<sup>8</sup>
3. Student attends \*\*\* at \*\*\*.<sup>9</sup>
4. Student's annual ARDC meeting was held on October \*\*\*, 2016. Mother could not attend but agreed the ARDC could meet without her.<sup>10</sup>

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<sup>6</sup> *El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp.2d. 701 (WD. Tex. 2008), rev'd on o.g., 591 F.3d 417 (5th Cir. 2009)(controversy is moot where as a result of intervening circumstances there are no longer adverse parties with

5. Following the annual ARDC, the District emailed Mother a copy of Student's Individualized Educational Program (IEP) but did not email either Mother or Father a Notice of Procedural Safeguards.<sup>11</sup>
6. The District incorrectly noted in the ARDC documents that Mother had been provided a Notice of Procedural Safeguards at the October \*\*\*, 2016 ARDC meeting.<sup>12</sup>
7. On November \*\*\*, 2016, Student engaged in \*\*\* at \*\*\*.<sup>13</sup>
8. Mother met with the assistant principal on November \*\*\*, 2016, to discuss the disciplinary action. She was provided with a disciplinary action sheet but not with a Notice of Procedural Safeguards.<sup>14</sup>
9. After the November \*\*\*, 2016 meeting with the assistant principal, Mother found a Notice of Procedural Safeguards on the District's website and printed it. She also met with special education personnel in another school district, \*\*\*, to find out what she could do to ensure Student's safety at the DAEP.<sup>15</sup>
10. Information from the District's website and information obtained from \*\*\* led Mother to file the Complaint on November 15, 2016.<sup>16</sup>
11. At no time prior to the filing of the Complaint did the District provide Mother or Father with a Notice of Procedural Safeguards, except perhaps when Student was \*\*\*.

16. Parents agreed with the ARDC's manifestation determination but disagreed with the location of the disciplinary placement, because they feared for Student's safety there.<sup>22</sup>
17. The LSSP attended the November \*\*\*, 2016 ARDC meeting. She was responsible for providing Mother with the Notice of Procedural Safeguards. She does not remember if she provided the required notice or if Mother otherwise received a copy.<sup>23</sup>
18. At the conclusion of the November \*\*\*, 2016 ARDC meeting, Mother did not receive a Notice of Procedural Safeguards.<sup>24</sup>
19. The District was responsible for providing Parents with a Notice of Procedural Safeguards without Parents requesting a copy.<sup>25</sup>
20. At the November \*\*\*, 2016 ARDC meeting, Mother signed consent for the District to conduct an FBA.<sup>26</sup>
21. The FBA was expected to be completed on January \*\*\*, 2017.<sup>27</sup>
22. Following completion of the FBA, the ARDC will meet to review the FBA and determine if a BIP should be developed for Student.<sup>28</sup>

## VI. DISCUSSION

### A. The IDEA and Its Implementing Regulations

Under the IDEA and its implementing regulations, school districts in Texas must afford children with disabilities a FAPE. The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet state standards (including IDEA requirements); (c) include an appropriate preschool, elementary school, or secondary school education; and (d) are provided in

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<sup>21</sup> District Ex. 2 at 7-8.

<sup>22</sup> Tr. at 10, 14 (Mother); Tr. at 20 (Father); District Ex. 2 at 2, 7.

<sup>23</sup> Tr. at 32, 34 (\*\*\*)

<sup>24</sup> Tr. at 12-13 (Mother).

<sup>25</sup> Tr. at 33 (\*\*\*)

<sup>26</sup> Tr. at 14-15 (Mother); Tr. at 29-30 (\*\*\*)

<sup>27</sup> Tr. at 16 (Mother); Tr. at 30 (\*\*\*) The expected completion date was after the due process hearing but before the decision due date.

<sup>28</sup> Tr. at 15 (Mother); Tr. at 30 (\*\*\*)

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Nevertheless, the District's violation did not deny Student a FAPE. Mother participated in the November \*\*\*, 2016 ARDC meeting and Parents agreed with the MDR decision. Further, there is no evidence that Student suffered a deprivation of educational benefit due to the District's violation. Furthermore, the evidence showed the District is in the process of completing Student's FBA and, upon its completion, intends to convene an ARDC meeting to consider whether a BIP should be developed and implemented.<sup>33</sup>

## VII. CONCLUSIONS OF LAW

1. The District is a local educational agency responsible for complying with the IDEA as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. Petitioner bears the burden of proof on the issue raised in the proceeding. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The District did not provide either Mother or Father with a Notice of Procedural Safeguards as required by law. 34 C.F.R §§ 300.504, 300.530.
4. The District did not deny Student a FAPE because the failure to provide Parents with the requisite Notice of Procedural Safeguards did not significantly impede Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. 34 C.F.R. §§

**SIGNED January 31, 2017.**

### **NOTICE TO THE PARTIES**

This Decision of the hearing officer is a final and appealable order. Any party aggrieved by the findings and decision made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States.<sup>34</sup>

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<sup>34</sup> 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).