

DOCKET NO. 101-SE-0117

STUDENT B/N/F PARENT AND PARENT, Petitioner	§ § § § § § § § § §	BEFORE A SPECIAL EDUCATION HEARING OFFICER FOR THE STATE OF TEXAS
v.		
COPPERAS COVE INDEPENDENT SCHOOL DISTRICT, Respondent		

DECISION OF HEARING OFFICER

*** (Student) by next friends *** and *** (Parents) (collectively, Petitioner) requested an impartial due process hearing (Complaint) pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.* The Copperas Cove Independent School District (Respondent or the District) is the respondent to the Complaint. Petitioner alleges the District denied Student a free appropriate public education (FAPE) by violating its Child Find duty; failing to comply with the IDEA’s procedural requirements; conducting an inappropriate Full Individual Evaluation (FIE) of Student; and developing an Individualized Education Program (IEP) for Student that does not meet Student’s unique educational needs. The District denies Petitioner’s claims.

In a counterclaim, the District seeks to establish that the FIE is appropriate and, that while Petitioner may obtain an Independent Educational Evaluation (IEE) at personal expense, the District need not provide Petitioner’s requested IEEs at public expense.

The hearing officer finds Petitioner did not prove the District violated the IDEA as alleged. The hearing officer further finds the District’s FIE is appropriate. Therefore, Petitioner’s requested relief is denied.

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B. Petitioner's Requested Relief

By way of relief, Petitioner requests the hearing officer to:

1. Find that Student remains eligible for special education services as a student with a Specific Learning Disability (SLD);
2. Order the District to provide reimbursement to Parents for the privately-funded January ***, 2017 IEE;
3. Order the District to pay for IEEs in *** and *** (***)
4. Order the District to provide an IEP to include appropriate placement and services;
5. Order the District to provide compensatory services in an amount equal to the deprivation suffered by Student, including but not limited to *** services by a *** (***) and any *** services Student is entitled to; and
6. Order all other relief that may be appropriate.

C. Respondent's Counterclaim and Requested Relief

Respondent seeks to prove the District's November 2016 FIE of Student is appropriate. Respondent requests a finding that the FIE is appropriate and that Petitioner is not entitled to the requested IEEs at District expense.

D. Burden of Proof

The IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.³ A party attacking the appropriateness of an IEP established by a school district bears the burden of proof, by a preponderance of the evidence, to show why the IEP and resulting placement

³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d. 373, 377 (5th Cir. 2003); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).

were inappropriate under the IDEA.⁴ To prevail, Petitioner must, therefore, establish that the District violated the IDEA regarding Petitioner's delineated issues.

Regarding the counterclaim, the District bears the burden to prove that Student's FIE was appropriate.⁵ To prevail, the District must prove the FIE meets all standards under the IDEA.⁶

III. WITNESSES

A. Petitioner's Experts

1. Licensed Psychological Associate, Ph.D., *** (***)⁷
2. *** (***)⁸
3. *** (***), ***⁹

B. Respondent's Experts

1. ***, ***, *** (***)¹⁰
2. Educational Diagnostician (EDDIAG)¹¹

C. Lay Witnesses

⁴ *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997), as cited in *Houston Indep. Sch. Dist. v. Bobby R.*-

1. Director of Education, ***¹²
2. District's Director of Special Education¹³
3. Principal, Ed.D., Student's *** school¹⁴
4. Student's ***¹⁵
5. Student's ***-grade *** teacher¹⁶

IV. FINDINGS OF FACT

A. Background

1. Student resides with Parents within the boundaries of the District, where Student entered school as a *** grader in August 2015(***)-1023-0.006w 28.13 1(d.D)2(.,)3-0.053n9(T)]TJ 0 Tc 0 Tw

5. Student began receiving intensive individualized Response to Intervention (RtI) services for *** in May 2016.²³
6. ***. Symptoms can include ***. Student has ***. Student *** below grade level.²⁴
7. On September ***, 2015, the District sent Parents notice of an ARDC meeting to consider Student's transfer IEP and conduct an annual review. The ARDC meeting was rescheduled twice by the District and once at Parents' request, finally being held on October ***, 2015.²⁵
8. Mother attended the October ***, 2015 ARDC meeting, participated, and was given an Explanation of Procedural Safeguards and Prior Written Notice.²⁶
 - a. The ARDC accepted the prior school's November ***, 2014 FIE and determined Student met criteria for *** and needed special education and related services.²⁷
 - b. The ARDC determined Student qualified for *** in the area of ***.²⁸
 - c. The ARDC developed an IEP for Student with a *** goal and two objectives to be completed by October ***, 2016. The goal required Student, while in a small group, and given a verbal/visual stimulus, to maintain Student's *** with 90% accuracy. The objectives required Student to

f. The ARDC decided Student did not need a behavior intervention plan or ***.⁴⁷

toward expectation in ***. Student was at ***** grade level in ***. Student was passing all classes.⁵⁴

17. On April ***, 2016, the District timely sent Parents a Notice of Action that Student would not be tested for an SLD. On May ***, 2016, the District provided Mother with a Notice of Procedural Safeguards. Mother signed the Notice of Action on May ***, 2016.⁵⁵

18. On April ***, 2016, the District sent Mother a Notice of Action informing her that Student would not be tested for an SLD. On May ***, 2016, the District provided Mother with a Notice of Procedural Safeguards. Mother signed the Notice of Action on May ***, 2016.⁵⁶

23. On May ***, 2016, Student's physician determined it was not likely that Student has Attention Deficit-Hyperactivity Disorder (ADHD). The doctor recommended that Student be assessed for an SLD, specifically ***.⁶²
24. On May ***, 2016, the District's Deputy Superintendent for Curriculum and Instruction suggested to Mother that her requested special education evaluations should not be considered until after Student's *** testing results were obtained.⁶³
25. The District's May ***, 2016 *** assessment of Student showed Student exhibits the tendencies of a student with ***.⁶⁴
 - a. Student scored below average in all areas excluding ***. Student had a difficult time ***. Coexisting complications included attention, while ***, behavior, and emotions were rated as average, and *** was rated as an asset.⁶⁵
 - b. Student's *** and *** were above grade level, and Student's *** was not up to grade level.⁶⁶
 - c. Student has deficits in *** and ***, and difficulty with ***. ***. ***. ***.⁶⁷
26. On May ***, 2016, in response to the District's Notice of Proposal to Evaluate, Mother signed consent for an FIE and received a Notice of Procedural Safeguards.⁶⁸
27. The *** (***) was administered to Student on May ***, 2016. The test was discontinued due to Student's inattention, lack of focus, and inability to follow directions.⁶⁹
28. On May ***, 2016, the District sent Parents notice of a May ***, 2016 ARDC meeting. One of the purposes of the meeting was to discuss the results of Student's *** assessment.⁷⁰
29. The ARDC met on May ***, 2016, to conduct a Revision to Annual ARD dated April ***, 2016, and to

- a. Mother participated in the deliberations and was provided with adequate Prior Written Notice and a Notice of Procedural Safeguards.⁷²
 - b. All ARDC members agreed that Student would receive *** services *** in the general education setting from May ***, 2016, through May ***, 2017. No amount of time was specified for the *** services.⁷³
 - c. The ARDC agreed that, in core subjects, Student would be given extra time to complete assignments; have an opportunity to ***, ***, receive reminders to stay on task; ***, ***.⁷⁴
 - d. Student was ***, up 97% from *** when Student began *** grade.⁷⁵
 - e. ESY services were discussed and not recommended either by Parent or the District.⁷⁶
 - f. Mother opted to take 5 days to review the ARDC documentation. Although she agreed with the *** evaluation and ARDC's proposed services, she stated she disagreed with the FIE and requested an IEE, without specifying in what area.⁷⁷
30. On June ***, 2016, Student finished *** grade, meeting State standards in all subjects except for *** and ***, in which Student was making progress towards *** grade standards.⁷⁸
- a. The District's *** level expectations for *** graders was *** at the beginning of the year; *** in the middle of the year; and *** at the end of the year.⁷⁹
 - b. Student began *** grade at *** and moved to *** in September 2016 and to *** on January ***, 2016, *** with 99% accuracy at ***. Student continued to *** into April. By May ***, 2016, Student could read at *** with 95% accuracy and *** and at *** with 80% accuracy and ***.⁸⁰

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that a reevaluation in the area of *** was necessary.⁹¹ Further, Student's achievement skills and abilities were to be evaluated by using formal measures.⁹² The ARDC also decided Student's intellectual functioning would be evaluated using formal measures that indicate cognitive processing abilities while informal measures such as Parent information would be used to evaluate adaptive behavior.⁹³ The evaluations were to be completed by November ***, 2016.⁹⁴

a. The ARDC reviewed information from teachers and Parents, progress monitoring data and benchmark testing results; the *** assessment and related services' assessments; formal evaluations completed in previous years; school health screening; and school records, including grades, discipline reports, attendance, and State assessment tests.

b. Student demonstrated average *** and adequate *** for Student's age and grade level.

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- c. In ***, Student began at the *** level and ended at the *** level.¹¹¹

- 41. The *** sent IEP progress reports home with Student's report card every *** weeks during the 2016-2017 school year.¹¹² The *** goal required Student, while in a small group, and given verbal/visual stimulus, to improve

42. The District completed Student's FIE on November ***, 2016.¹²¹ The multi-

- g. The multiple assessments are well-recognized tests specifically chosen by Student's evaluators to provide an accurate assessment of Student's strengths and weaknesses in all areas.¹⁴⁷
- h. The tests and other evaluation materials were administered by trained personnel in conformance with the instructions provided by their producers.¹⁴⁸

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- February ***, 2017, the District sent Parents an ARDC meeting invitation for a meeting to be held on March ***, 2017, or March ***, 2017. Parents declined the ARDC meeting invitation on February ***, 2017.¹⁵⁴
47. On January ***, 2017, the District provided Parents with an invitation to a resolution meeting, a legal presentation resource letter, and a Notice of Procedural Safeguards.¹⁵⁵ The parties participated in a resolution session on January 31, 2017, but did not resolve their issues.¹⁵⁶
48. Respondent's February ***, 2017 counterclaim served as a denial of Mother's December ***, 2016 IEE request.¹⁵⁷
49. On February ***, 2017, the District invited Parents to an ARDC meeting to be held on either February ***, 2017, or February ***, 2017.¹⁵⁸
50. The ARDC met on February ***, 2017, to review Student's November ***, 2016 FIE. They determined Student no longer met criteria as a child with *** and did not meet eligibility as a child with an SLD.¹⁵⁹
- a. Mother attended, participated, and was given Prior Written Notice and an Explanation of Procedural Safeguards.¹⁶⁰
 - b. Student had passing grades for ***, ranging from 82 to 94, and the ***, ranging from 80 to 95. In ***, Student was showing work, which was an improvement from ***.¹⁶¹ Student's *** grades for the ***—ranged from 81 to 83.¹⁶²
 - c. Student received appropriate accommodations throughout the school year.¹⁶³

53. On March ***, 2017, the Director of Special Education provided Mother with the District's IEE guidelines and procedures, including an independent contractor list.¹⁸²
54. On March ***, 2017, Student scored 55% in *** on the TEKS test, failing to meet the 70% required for passing.¹⁸³
55. The March ***, 2017 *** IEE conducted by Petitioner's expert *** showed that Student continued to meet IDEA eligibility criteria as a student with *** in the area of *** and continued to demonstrate an educational need for ***. According to the IEE, Student exhibited a ***, diagnosed as ***. The *** has potential educational impact academically and socially. It could impact Student's *** and ***. Student's errors were noticeable in ***, which could draw negative attention from peers.¹⁸⁴
- a. Parents requested the IEE to determine if Student was ready to be dismissed from *** services. Mother continued to ***.¹⁸⁵
 - b. The *** is used for the identification, diagnosis, and follow-up evaluation of *** in children. Student exhibited average skills in the areas of ***. Student's *** and ability to *** were above-average when compared to same-age peers, and are a strength for Student.¹⁸⁶ In the context of ***, Student's short-term memory was average or above average.¹⁸⁷ The *** results were comparable to the 2014 *** results obtained by Student's *** school.¹⁸⁸
 - c. The *** is a standardized test that assesses ***. Overall, the evaluator observed Student to demonstrate difficulties ***." Results of the *** indicated that Student is ***, but has not yet mastered ***. Student had *** errors at the ***, resulting in a standard score of 78, and *** errors at the ***, with a standard score of 82. Student's errors were ***.¹⁸⁹ Mother is a *** who told the evaluator the *** were still present.¹⁹⁰

¹⁸² Tr. at 68-72, 74, 81-82 (District's Special Ed. Director); Pet. Ex. 96.; Resp. Ex. 58.

¹⁸³ Resp. Ex. 76 at 2.

¹⁸⁴ Tr. at 385 (Petitioner's expert ***); Pet. Ex. 48 at 1, 10, 12.

¹⁸⁵ Pet. Ex. 48 at 3.

¹⁸⁶ Tr. at 382, 384, 392, 394-398, 405 (Petitioner's expert ***); Pet. Ex. 48 at 3, 6.

¹⁸⁷ Tr. at 398 (Petitioner's expert ***).

¹⁸⁸ Tr. at 405-406 (Petitioner's expert ***).

¹⁸⁹ Tr. at 382, 384, 392, 398-400 (Petitioner's expert ***); Pet. Ex. 48 at 3, 7-8, 9.

¹⁹⁰ Tr. at 388 (Petitioner's expert ***).

- d. The *** evaluates the presence of ***. The overall severity of Student's *** falls in the very mild range. The evaluator did not recommend that the District provide *** ***.¹⁹¹

- e.

each and were provided during Student's *** time after Student completed Student's ***.¹⁹⁹

60. From August ***, 2016, through April ***, 2017, Student received *** RtI in the general education classroom.²⁰⁰ The RtI was provided to Student either 1:1 or in a small group.²⁰¹
 - a. On September ***, 2016, Student was *** with 94% accuracy, a ***,” and ***.
 - b. By November *** [sic], 2016, Student was *** with 90% accuracy, ***, and ***.”²⁰² Student's *** was in the “excellent” range.²⁰³ *** correlates to about a *** level.²⁰⁴
 - c. By March 2017, Student was *** with 95% accuracy.²⁰⁵
 - d. Between November 2016 and March ***, 2017, Student's accuracy in *** increased.²⁰⁶
61. Student's April ***, 2017 *** Progress Report shows Student was making expected progress but still requires *** support.²⁰⁷
62. The April ***, 2017 *** report by Petitioner's expert *** notes that although Student had made a little progress in *** in Student's current ***

from grade to grade.²²⁴ A request for an initial FIE may be m

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was not filed until February 14, 2017—well after Mother’s December ***, 2016 request—the delay was not unnecessary; in the interim, the District was attempting to reschedule an ARDC meeting to review the FIE.

Petitioner did not meet Petitioner’s burden of proof to show the District violated its Child Find duty by failing to timely identify or evaluate Student as a child with an eligible disability in need of special education and related services.

4. The Dis

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Fifth Circuit has set forth four factors that serve as an indication of whether an IEP is reasonably calculated to provide a ‘meaningful’ educational benefit under the IDEA. These factors are whether (1) the program is individualized on the basis of the student’s assessment and performance; (2) the program is administered in the LRE; (3) the services are provided in a coordinated and collaborative manner by the key “stakeholders;” and (4) positive academic and nonacademic benefits are demonstrated.²⁵² The factors need not be accorded any particular weight or be applied in any particular way. Instead, they are indicators of an appropriate IEP.²⁵³

The ARDC complied with the IDEA’s regulatory requirements, Texas law, and relevant case law in developing an IEP reasonably calculated to provide a meaningful educational benefit to Student and was appropriate in light of Student’s circumstances.²⁵⁴

1. Student’s IEP was individualized, based on Student’s assessments and performance

The evidence shows that, when developing Student’s IEP, the ARDC considered Student’s strengths, Parents’ concerns, the results of Student’s most recent evaluations, and Student’s academic, developmental, and functional needs.²⁵⁵ The ARDC also considered Student’s need for related services.²⁵⁶ When Student initially was enrolled in the District as *** grader in August 2015, the District accepted Student’s transfer IEP and provided Student with the designated related service of ***. In October 2016, the ARDC timely conducted Student’s annual review and developed a *** goal based on Student’s November 2014 FIE. Student’s IEP *** goal and objectives were revised at an April ***, 2016 ARDC meeting, based on updated information

Petitioner complains that the District failed to provide Student with ESY services. ESY services are special education and related services that are provided to a child with a disability beyond the normal school year of the public agency in accordance with the child's IEP at no cost to child's parents.²⁵⁷ ESY services must be provided only if the ARDC determines, on an individual basis, that the services are necessary for provision of a FAPE to the child.²⁵⁸ If the benefits accrued to the child during the regular school year will be significantly jeopardized if Student is not provided a summer educational program, then ESY services are required.²⁵⁹

Because the accrual date for this proceeding is January 17, 2016, and the due process hearing was held May 30-31, 2017, the period at issue for ESY services is the summer of 2016. The evidence shows Student received instruction from *** and attended *** ***, but did not receive ESY services. The evidence also shows that at the October 2015, April 2016, and May 2016 ARDC meetings, ESY services were discussed and not recommended either by Parents or the District because Student exhibited no documented regression in academic progress.

The hearing officer finds the ARDC correctly determined Student was not eligible for ESY services in the summer of 2016.

2. The IEP was administered in the LRE

The IDEA's LRE provision requires that students with disabilities receive their education in the regular classroom environment to the maximum extent appropriate or, to the extent such placement is not appropriate, in an environment with the least possible amount of segregation from the student's nondisabled peers and community.²⁶⁰ In making a placement decision, "first consideration" should be given to placement in a regular classroom before considering more

²⁵⁷ 34 C.F.R. § 300.106(b).

²⁵⁸ 34 C.F.R. § 300.106(a)(2).

²⁵⁹ *Alamo Heights School District v. State Board of Education*, 790 F.2d. 1153 (5th Cir. 1986).

²⁶⁰ 34 C.F.R. § 300.114(a).

restrictive placement options on the continuum of alternative placements, which includes special classes, special schools, home instruction, and instruction in hospitals and institutions.²⁶¹

The ARDC met all legal requirements in determining the LRE for Student.²⁶² Except for
***_**

After the IEP was developed, Student's ***, teachers, and *** were timely provided copies of Student's IEP goal and objectives, schedule of services, accommodations and modifications,

updated *** show Student mastered Student's *** goal before the April 2017 ARDC annual review date. As of May 2017, Student was maintaining a level of mastery with *** and Student's ***. Outside the *** room, Student is highly ***. Student can reasonably function in a school setting due to the services Student received through ***. The hearing officer finds Student's IEP was reasonably calculated to provide Student with academic and non-academic benefits.

E. Conclusion

After considering the evidence and parties' closing arguments, the hearing officer finds Petitioner did not meet

6. The one-year statute of limitations applies to this proceeding, resulting in an accrual date of January 17, 2016. 19 Tex. Admin. Code § 89.1151(c).
7. Student is not eligible for special education and related services as a child with a Specific Learning Disability or ***. 34 C.F.R. §§ 300.8***, .307-.311; 19 Tex. Admin. Code § 89.1040***.
8. The District fulfilled its Child Find obligation as to Student. 34 C.F.R. § 300.111; 19 Tex. Admin. Code § 89.1011.
9. The District's Full Individual Evaluation of Student, including the evaluation for a Specific Learning Disability, was conducted in accordance with IDEA requirements and is appropriate. 34 C.F.R. §§ 300.8(c)(10), .301, .303 - .311; 19 Tex. Admin. Code § 89.1040(b)(9).
10. The District provided Student with a FAPE during the time period relevant to this proceeding. 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; *Andrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988, 1001 (2017); *Board of Edu. of the Hendrick Hudson Cent. Sch. Dist., Westchester County v. Rowley*, 458 U.S. 176, 181 (1982); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 347-

ORDER

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

Petitioner's requested relief is denied.

SIGNED June 30, 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.²⁶⁸