

DOCKET NO. 208-SE-0517

DOCKET NO. 208-SE-

D

DOCKET NO. 208-SE-0517

10. Student responds to the adult directive of stop, shows interest in other ***. Student needs to ***.¹⁵
11. Student is able to follow familiar one step dir

16. For the 2017-18 school year, the School District proposed placing the Student in the *** program, a specialized *** program for children on the autism spectrum, *** minute session of occupational therapy per week and ***

DOCKET NO. 208-SE-0517

999 F. 2d 127, 131 (5th Cir. 1993) Therefore the burden of proof is on Student to prove the IEP at issue were not reasonably calculated to enable Student to make educational progress given Student's unique, individual circumstances.

2. FAPE Overview

A FAPE is special education, related services, and specially designed personalized instruction with sufficient support services to meet the unique needs of the child in order to receive an educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. 20 U.S.C. § 1401(9)(B). Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 189, 200201, 203204 (1982). While the IDEA guarantees only a "basic floor of opportunity," the IEP must nevertheless be specifically designed to

to provide the services, and, the duration and frequency of the services and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323 (a).

To meet its substantive obligation under the IDEA, a school district must offer an IEP

private school's program is appropriate. *Sch. Comm. of Burlington v. Dept. of Educ. of Mass*, 471 U.S. 359, 370 (1973). In this case the first issue is whether the School District's program was appropriate. If not, the second issue is whether Student's unilateral *** private placement is appropriate. *Burlington*, 471 U.S. at 370. The private placement need not meet all State requirements for reimbursement purposes so long as the private placement meets Student's individualized needs and is therefore appropriate. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 13, 15 (1993). If both prongs of the *Burlington* test are met the hearing officer may also consider whether reimbursement should nevertheless be reduced or denied. 34 C.F.R. § 300.148 (d).

1. FAPE

To determine whether the School District's program was appropriate for Student, the hearing officer must determine whether the School District offered and provided a FAPE to Student. In Texas the Fifth Circuit has articulated a four factor test to determine whether a school district's program meets IDEA FAPE requirements. Those factors are:

- x The program is individualized on the basis of the student's assessment and performance;
- x The program is administered in the least restrictive environment;
- x The services are provided in a coordinated, collaborative manner by the "key" stakeholders; and,
- x Positive academic and non-academic benefits are demonstrated.

CypressFairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program for reimbursement purposes. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (r. 2009).

DOCKET NO. 208-

Petitioner proposed a program of *** services for Student. This program significantly reduces Student's interaction with, and exposure to, other students with, and without, disabilities. As such, this program is more restrictive than the program delivered by the School District.

c. The services are provided in a coordinated, collaborative manner by the key stakeholders

The School District worked closely with Student's parents to develop Student's IEP and program. The School District addressed parents' concerns related to generalization for the Student by providing in-home and parent training. To address parental concerns over Student's ESY services, the School District convened additional ARD committee meetings and added services to Student's summer program. Moreover, School District staff continued to attempt to work collaboratively with Student's parents even after Student's parents ***.

d. Positive academic and non-academic benefits are demonstrated

While receiving services from the School District, Student made progress. Student showed improvements in communication skills, reading, writing, social skills, adaptive behavior and task refusal. Petitioner made much of Student's inability to consistently demonstrate Student's progress in the home setting. Petitioner claimed this led to the conclusion that Student was not benefitting from Student's program. However, the evidence showed that Student, at this point in Student's development, requires a highly structured, particularized environment in order to be most successful in performing academic and functional tasks. The *** classroom is such a structured and particularized environment and *** is not. To assist with transferring, or generalizing, Student's progress to the home environment, the School District offered and provided in-home and parental training. During Student's in-home sessions, Student displayed the same academic and functional skills that were present at school.

2. Appropriateness of Private Program

The second prong of the reimbursement analysis asks whether the educational program provided by the private school was appropriate. *Burlington*, 471 U.S. at 370. The private school program need not necessarily meet every specific requirement of the IDEA but only that it be “otherwise proper” under IDEA. *Florence Cnty. Sch. Dist. Four v. Carter*, 510 U.S. 7, 13, 15 (1993). See also, *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, th2014 (2009). Having concluded that the School District provided FAPE to Student, it is not necessary to analyze the appropriateness of Student’s *** private placement.

D. Extended School Year Services

In Texas the need for ESY is based on documentation that shows, in one or more critical areas addressed in the student’s IEP, that the student exhibits or may reasonably be expected to exhibit severe or substantial regression that cannot be recouped or that the student has been or will be unable to maintain one or more acquired critical skills in the absence of ESY services. 19 Tex. Admin. Code § 89.1065 (emphasis added).

Student’s ARD committee determined that Student required ESY services to prevent a regression in behavioral skills. To address Student’s ESY need, the School District offered a combination of classroom services, speech therapy services and in-home and parent training. This program is sufficient to maintain Student’s adaptive behavior skills and avoid a significant regression in these skills. Petitioner did not meet its burden of proof to show that Student either experienced significant regression in other academic or functional areas or that the offered ESY program was inadequate to meet the demonstrated need. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999F. 2d 127, 131 (5th Cir. 1993).
2. Petitioner did not meet Petitioner’s burden of proving Respondent failed to provide Student with FAPE during the 2016 ESY, the 2016-17 school year and the 2017 ESY. *Schaffer v. Weast*, *supra*; *Andrew F. v. Douglas Cty. Sch. Dist.*, *supra*; *Cypress Fairbanks Ind. Sch. Dist. v. Michael F.*, *supra*; 34 C.F.R. §§ 300.1, 300.17.

3. Petitioner did not meet Petitioner's burden of proving entitlement to reimbursement for the unilateral private placement. *Schaffer v. Weast, supra*; *Burlington, Supra*; *Andrew F. v. Douglas Cty. Sch. Dist. RE supra*; *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., supra*; 34 C.F.R. §§ 300.1, 300.17.

VIII. ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**. All other requests for relief not specifically stated in these Orders is hereby **DENIED**.

SIGNED December 6, 2017.

