

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

DECISION OF THE HEARING OFFICER

Student, STUDENT, b/n/f PARENT (***) (collectively, Petitioner), filed a request for an impartial expedited due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA). The request (the complaint) was received by the Texas Education Agency (Agency) on May 18, 2017, and assigned to this hearing officer on the same date. The respondent to the complaint is the El Paso Independent School District (District). Petitioner alleges the District deprived Student of a Free Appropriate Public Education (FAPE)

After review of the evidence, the Hearing Officer determined that Petitioner did not meet their burden of proof on any of the contested hearing issues and denied the requested relief.

I. PROCEDURAL HISTORY

A. Legal Representatives

Petitioner was self-represented throughout this litigation by Petitioner's, *** Respondent was represented throughout this litigation by its legal counsel Evelyn Howard with the law firm of Walsh, Gallego Trevino, Russo & Kyle

B. Resolution Session and Mediation

On May 30, 2017, the Parties agreed to bypass the Resolution Session in writing in favor of mediation. 34 C.F.R. § 300.510(a)(3)(ii). The Parties participated in an unsuccessful mediation session on June 19, 2017.

C. Continuances

This case was continued and the decision deadline extended once at the joint request of the parties upon a finding of good cause in Order No. 4 issued on June 16, 2017. 19 Tex. Admin. Code § 89.1170(b).

D. Disclosure

On August 27, 2017, the Hearing Officer reminded the Parties via email that disclosures were due the following day. On August 29, 2017, ***notified the Hearing Officer *** had no disclosures due to ***. The Hearing Officer explained the process for requesting a continuance and the consequences of proceeding to hearing without satisfying the disclosure requirement. *** replied *** understood Petitioner's case chief would be limited to ***sworn testimony;*** did not want a continuance and wished to proceed to hearing as scheduled.

E. Presentation of the Evidence

Order No. 6 was issued on August 29, 2017 reversing the presentation of evidence during the hearing. Because Petitioner demonstrated difficulties understanding and complying with procedural requirements, the presentation of evidence was reversed to model hearing etiquette, document handling, and witness questioning. Respondent objected to Order No. 6. The objection was overruled in Order No. 7.

F. Due Process Hearing

The hearing convened on September 25, 2017. Petitioner continued to be self-represented by Petitioner's ***. The District continued to be represented by its legal counsel Evelyn Howard Hand of Walsh, Gallegos, Treviño, Russo and Kyle, P.C. The hearing was completed the same day.

II. ISSUES, PROPOSED RELIEF, AND BURDEN OF PROOF

A. Issues

Petitioner alleges the District denied Student a FAPE and raised the specific following issues:

1. Did the District fail to implement the Individualized Educational Program (IEP) and the Behavior Intervention Plan (BIP) approved for Student by the Admission, Review, and Dismissal Committee (ARDC);
2. Did the District impede meaningful parental participation during the ***; 2016, ARDC meeting by not permitting Parent to raise classroom concerns during the meeting;
3. Did the District fail to identify and implement appropriate *** and *** for Student based on Student's unique needs;
4. Did the District permit and/or fail to investigate pervasive bullying of Student by other students and staff adversely effecting Student's educational program and causing educational harm; and
5. Did Student regress due to the District's alleged failure to implement student's approved IEP and BIP?

B. Proposed Remedies

Petitioner requested that the Hearing Officer order the following relief:

1. A finding that Student was denied a FAPE;
2. An order directing that video cameras be installed in Student's classrooms to monitor the behavior and interactions of students and staff.
3. An order directing a cessation to the alleged bullying and/or harassment.
4. An order directing the full implementation of the approved IEP and BIP based upon Student's unique needs and circumstances.
5. That

7. Student's cognitive ability is below a standard score of ***, placing Student the bottom *** of cognitive ability.⁷

8.

17. Student missed *** days of school between *****, 2016 and *** **, 2016.
18. Student missed *** days of school during the 20-2017 school year and was late school *** days.
19. Many of Student's unexcused absences and unexcused late arrivals were due to ***'s

IV. DISCUSSION

A. 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.¹⁸ Petitioner must, therefore, establish that the alleged violations resulted in a denial of FAPE or other substantive violation of the IDEA.

B. Duty to Provide FAPE

The primary purpose of the IDEA is to ensure that children with disabilities receive a FAPE.²⁰ In this jurisdiction FAPE "need not be the best possible one, nor one that will maximize the child's educational potential."²¹ Instead, the IDEA only guarantees a child with a disability an educational plan

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