

DOCKET NO. 00E0918

STUDENT/N/PARENT,

Petitioner,

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BEFORE A SPECIAL EDUCATION

- (5) Respondent failed to assess Student properly to determine the nature and extent of Student's needs, particularly in the area of behavior, by failing to provide an appropriate Function Behavior Assessment (FBA);
- (6) Respondent failed to provide Student with appropriate Extended School Year ("ESY") services;
- (7) Respondent failed to provide Student with, and placement in, an appropriate educational placement.

Petitioner generally requests that Respondent provide Student with FAPE, which requires the granting of the following relief:

- (1) An order directing Respondent to place Student in a private educational setting and to pay all related services, including transportation;
- (2) An order directing Respondent to pay Petitioner's attorneys' fees and costs;
- (3) Alternatively, an order directing Respondent to take specific actions required by IDEA;
- (4) An order directing Respondent to provide Petitioner with an appropriate behavior plan, which is (a) based on data collected over a period of time and (b) periodically, and (c) measurable. Basic to this behavior plan is the use of a positive behavior system;
- (5) An order requiring Respondent to adopt the recommendations of Respondent's evaluations;
- (6) An order requiring Respondent to develop an educational plan that will reduce or eliminate Student's undesirable behaviors;
- (7) An order requiring Respondent to reimburse Student's parents for all expenses, including those related to Student's private summer school placement;
- (8) An order requiring Respondent to teach Student effective behavioral and functional skills;
- (9) An order requiring Respondent to provide Student with one

On Thursday, December 6, 2018, Petitioner filed a third Motion for Continuance, stating that counsel for Petitioner had failed to confirm the availability of Student's therapist who was unavailable to attend the December 17, 2018, Due Process Hearing. Petitioner requested that the hearing be rescheduled to January 17, 18, or 19, 2019. Respondent opposed this third continuance request, asserting that Petitioner had other options available to gather the therapist's testimony. Respondent contended that further continuance would necessitate redundant work and expense as well as the Student's continued placement in a setting Respondent believed harmful. Finding that Petitioner's third Motion for Continuance failed to present a cause basis for continuing the matter, on January 17, 2019, the undersigned denied this motion and reiterated previously agreed Hearing dates: December 10, 2018, Disclosure Deadline; December 17, 2018, Due Process Hearing; and January 18, 2019, Decision Deadline.

The parties presented their Disclosures on time. The Due Process Hearing convened on December 17, 2018, and concluded on December 20, 2018. The hearing convened at San Antonio, Texas. Both parties introduced documentary evidence; Petitioner called several witnesses who were examined by Respondent; Respondent called several witnesses who were cross-examined by Petitioner. Petitioner was represented by Student's attorney, Ms. Karen Seals. Also in attendance were Petitioner's father and Mother Rafael Anguiano Arzola, Ms. Seal's Respondent was represented by counsel, Ms. Stacy Ferguson. Also in attendance was Ms. Senior Executive Director of Special Education for the District.

During the Hearing Petitioner attempted to include an additional issue, failure to provide appropriate speech to address Student's speech impairment (SI). Respondent objected that nowhere in Petitioner's Complaint was any speech issue raised in the list of issues or requested. Respondent pointed out that during the PHC, the undersigned specifically asked Petitioner's counsel whether speech was an issue, to which Petitioner's counsel failed to respond by stating she did not know what speech services were being offered this school year, 2018-

Petitioner's counsel responded that the Complaint included a catch-all issue, which one could infer includes issues with speech.

STUDENT/n/f

when talking to Student; and (3) try not to interrupt Student when speaking [R# 1842]. Student's October ***, 2015, ARDC noted that Student's emotional/behavioral/social skills were in the following areas (1) adapting to new situations without getting upset and (2) and keeping friends at school (3) working cooperatively with others, and (4) doing activities independently [R#254; T2, p.3245- p.3262].

6. ***ISD never developed a BIP for Student

School Year 2016- (**Grade):

7. Student's family returned to San Antonio in school year 2016-2017 and attended in San Antonio. Student's Mother attempted to enroll Student in the District but the District could not guarantee Student's placement for 2016-

establishment of rapport; of individualized skills training to address social and behavioral deficits; and use of

50. The evidence did not prove that Respondent failed to develop and provide Student with appropriate IEP and BIP containing measurable goals and objectives containing appropriate related counseling service.
51. The evidence did not prove that Respondent failed to provide teachers and staff, who were working with Student, sufficient behavioral supports and training.
52. The evidence did not prove that Respondent continually failed to implement Student's IEP and between September 4, 2017, and September 4, 2018. During the first month of starting school, District had no reason to suspect that Student needed special education services. At the point where the District had reason to suspect a need for special education services, the District contacted the ISD for all of Student's special education paperwork on an October **, 2017, meeting to enroll Student in special education, and by November, the District had an IEP in place, and by December, the District had a BIP in place.
53. The evidence did not prove that Respondent interfered in the Parent's ability to be a meaningful participant in Student's ADR in determining the outcome of Student's IEP.
54. The evidence did not prove that Respondent failed to assess Student properly to determine the nature and extent of Student's needs, apart from the area of behavior. The evidence did not prove that Respondent failed to assess Student properly to determine the nature and extent of Student's needs, apart from the area of behavior. The evidence did not prove that Respondent failed to assess Student properly to determine the nature and extent of Student's needs, apart from the area of behavior.

have made little progress in controlling Student's behaviors. By May 2018, the ARDC was recommending that Student be placed in ***that is ***, to focus on remediating Student's behaviors so that Student and Student's future *** classmates can receive an appropriate education.

Petitioner raised seven (7) issues, all related to, and intertwined with, Petitioner's basic complaint about Student's 2018-19 special education program and placement, including alleged denial of FAPE.

IDEA defines FAPE as special education and related services that are provided at public (1are (2

Student's behaviors so affect Student's classmates' ability to acquire an appropriate education, that the District determined that for an unspecified time, Student should be moved to a structured setting where the focus can be on Student's acquisition of skills to correct behaviors that are robbing Student of Student's academic potential.

V.
CONCLUSIONS OF LAW

1. Student is eligible for a free appropriate public education under the provisions of IDEA, 20 U.S.C. §1400, et seq., 34 FR. §300.301 and TEX ADMIN CODE §89.1011.
2. Respondents responsible for properly identifying, evaluating, and serving Student under the provisions of IDEA, 20 U.S.C. §§1412 and 1414, 34 FR. §300.301, and TEX ADMIN CODE §89.1011.
3. Respondents did not deny Student a FAPE of Hendrick Hudson Int. Sch. Dist. v. Rowley, U.S. 176 (1982).
4. Petitioners failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. Schaffer. Weast 126 S.Ct. 528 (2005); Tatro v. State of Texas 709 F.2d 832 (5th Cir. 1983), aff'd 468 U.S. 88 (1984).

V.
ORDER

Based on the foregoing findings of fact and findings Tr

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