



**II.**  
**PROCEDURAL HISTORY**

Student filed Student's Complaint against the District on September 20, 2019. On that same day, TEA assigned this matter

issues set out in the original Complaint <sup>4</sup> and revived Student's disciplinary placement claims, which would require an expedited time frame for addressing these issues. 34 C.F.R. §300.508-§300.515.

On November 5, 2019, SEHO Lockwood issued **Order No. 3: Bifurcating Hearings**. By this Order, Petitioner's issues were split under two (2) docket numbers: Docket No. 021-SE-0919-A, which contained the expedited disciplinary placement issues; and Docket No. 021-SE-0919-B, which contained the non-expedited issues clarified in the October 10, 2019, Order No. 2: Rescheduling Order.

**A. Docket No. 021-SE-0919-A (Expedited Hearing)**

On November 5, 2019, SEHO issued **Order No. 1: Expedited Due Process Hearing Scheduling Order** in Docket No. 021-SE-0919-A. SEHO Lockwood's order set out the shortened time line for this expedited proceeding: (1) November <sup>\*\*\*</sup>, 2019: PHC; (2) December 2, 2019: Disclosure Deadline; (3) December 10, 2019: Due Process Hearing; and (4) January 7, 2020: Decision Deadline.

**B. Docket No. 021-SE-0919-B (Regular Track Hearing)**

Because Petitioner filed its Amended Complaint which contained some additional non-expedited issues, SEHO Lockwood issued a new scheduling order. On November 5, 2019, SEHO Lockwood issued **Order No. 4: Second Revised Scheduling Order F**













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17. Academically Student appeared to be able to do the work but often refused, and attempts to get Student to work could result in aggressive acting out. Classroom observations revealed that Student appeared easily distracted and frequently got up out of Student's chair and moved around the room. Testing revealed social and communic

aggression; and (6) \*\*\* (P11.3). The FBA offered a BIP that included (1) Anteced

to read or become frustrated \*\*\*. Student became easily agitated when having to learn strategies, concepts, \*\*\* Student determined to be too difficult. Student refused to submit to any reading assessment \*\*\* and would walk away or attempt to destroy the reading material (JX13.363).

33. The Committee noted concern with Student's impulsivity, Student's becoming visibly upset, and getting excited when presented with an academic task or behavioral demand that Student viewed as too difficult or requiring too much time to complete. Student would leave Student's area, \*\*\*, or just stop working (JX13.363).
34. The Committee noted concerns about Student's avoidance behaviors. Student would assess the circumstances surrounding an academic or behavioral task. If Student determined that the task was something Student did not want to attempt or complete, Student would initiate various levels of \*\*\* aggression. \*\*\* (JX13.364).
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3. Physical/Verbal Aggression: This refers to a student's physical/verbal behaviors that are not appropriate for the classroom environment and can pose a threat to the safety of the student, other students, and to staff members. Student acted out at a moment's notice; Student could go from working successfully to having a non-compliant behavior; \*\*\*. These episodes could last for a moment or much longer. Immediate redirection would be needed to de-escalate (JX37.553-57).
48. The ARDC added two (2) \*\*\* and math goals. Student's IEP included four (4) behavior goals, two (2) of which addressed self-regulating skills to avoid engaging in an unexpected behavior, refraining from engaging in \*\*\* aggressive (JX37.544-45).
49. The November \*\*\*, 2018, ARD reached consensus.
50. Student's December 2018 Progress Report indicated that Student was making some progress on Student's goals but the progress was minimal. Student's behavior continued to impede Student's education because staff was having a difficult time keeping Student focused (JX45:638-40).
51. On January \*\*\*, 2019, Student refused to work on Student's \*\*\* test; Student proceeded \*\*\* (T1.375:24-376:3; 377:1-2). When Student's teacher ignored Student, Student started escalating \*\*\* (T1.378:1-5). \*\*\* (T1.378:1-15). Once Student was released \*\*\*, Student \*\*\* (JX55.797). \*\*\*.
52. On January \*\*\*, 2019, KISD held a Campus-Level Conference ("Conference") to determine if Student's January \*\*\*, 2019, behavior incident met the Student Code of Conduct criteria for consideration of placement at KISD's DAEP. The Conference recommended that the behavior met the criteria for DAEP placement. Student's Parents disagreed with the finding (JSR26) (JX50.705; 51; JX52).
53. Following the conference, the District convened the MDR meeting. The meeting lasted approximately three (3) hours. During the meeting, the ARDC, including the Parents, presented and considered (JX571 0 Td (d











This analysis concerns the IEPs and BIPs developed in school year 2018-19. In conducting the *Michael F.* analysis, it is clear that the IEP and BIP developed by Student's ARDC, along with amendments, were reasonably calculated to provide Student a meaningful educational benefit under the IDEA.

**Factors I: Was the Program Individualized Based on Student's Assessments and Performance?**

Student's ARDC met and developed at least two (2) IEPs during school year 2018-19. The record is replete with evidence that the ARDC thoroughly reviewed Student's evaluations and gathered additional data to identify Student's individualized needs. Indeed, Student was evaluated multiple times as Student's behaviors morphed or academic performance changed. The IEPs included a detailed statement of Student's PLAAFP in accordance with 34 C.F.R. §300.320. The ARDC considered Student's strengths, parental concerns, the result of recent evaluations, and Student's academic, developmental, and functional needs. The Committee considered the use of positive behavioral interventions to address behavior as well as Student's \*\*\* needs as a student with \*\*\*.

In reviewing Student's PLAAFP, the Committee noted several on-going and incw [(T)-5(40 Tude)10(nt10(ons)4-p



academic and social success that should be Student's to claim. Student is a work in progress. The District and family have learned so much with each semester's changes and implementation of differing techniques. Despite the current status, Student's educational program can provide Student with educational benefit if Student is given the opportunity to participate.

#### D.

#### Tuition Reimbursement for Private School Placement

To garner tuition reimbursement, Student's Parents must prove (1) that the District did not provide FAPE to Student, and (2) that Student's private placement at \*\*\* was appropriate. 20 U.S.C. §1412(a)(10)(C)(i); 34 C.F.R. §300.148(c).

The foregoing Findings of Fact and Discussion manifest that the District did not fail to provide Student FAPE. Accordingly, Student is not entitled to reimbursement for the unilateral placement at \*\*\*.

#### VII.

#### 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 C.F.R. §300.301 and 19 TEX. ADMIN. CODE §89.1011.
2. KISD is responsible for properly identifying, evaluating, and serving Student under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.
3. Student failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984).
4. Tuition reimbursement for Student's unilateral placement in \*\*\* is not appropriate because KISD did not deny Student a FAPE. 20 U.S.C. §1412(a)(10)(C)(i); 34 C.F.R. §300.148(c).
5. Student's January \*\*\*, 2019, MDR finding was not appropriate. Student's January \*\*\*, 2019, behavior incident was caused by, or had a substantial relationship to, Student's disabilities.

#### VIII.

#### ORDER

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested is GRANTED IN PART and DENIED IN PART. It is

ORDERED that in the event Student's Parents re-enroll Student in KISD, Student's ARDC shall meet within ten (10) days and it must either (1) modify any existing BIP, or (2) conduct an FBA and develop a BIP in compliance with 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530(f). It is further

ORDERED that in the event Student's Parents re-enroll Student in KISD, Student's ARDC shall return Student to the placement from which Student was removed, unless the Parents and District agree to a change of placement as part of the modification of the BIP. It is further

ORDERED that all relief not specifically granted herein is DENIED.

SIGNED this the 19<sup>th</sup> day of December 2019.

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*Deborah Heaton McElvaney*  
Special Education Hearing Officer

### **NOTICE TO THE PARTIES**

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

#### **COPIES SENT TO:**

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