

DOCKET NO. 099-SE-1218

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

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Student, ***, b/n/f/ *** (Parent) (collectively “Petitioner” or “Student”) brings this action against the Conroe Independent School District (“Respondent,” or “the District”) under the Individuals with Disabilities Education Act, as amended, 20 U.S.C. § 1400 et seq. (IDEA) and its implementing state and federal regulations.

A. Legal Representatives

B. Resolution Session and Mediation

The resolution session in this case was set to occur on December 21, 2018. The Parties agreed in writing to waive the resolution session on December 11, 2018. Pursuant to 34 C.F.R. § 300.510(c)(1), the 30-day resolution period ended on December 12, 2018, accelerating the 45-day statutory decision due date. Pursuant to 19 Tex. Admin. Code § 89.1186(a), Respondent moved for an unopposed continuance and extension of the decision due date to keep the original

settings established in Order No.1, the initial scheduling order, and having found good cause the unopposed motion was granted on December 14, 2018. Mediation was not attempted.

C. Continuances

Two unopposed continuances were granted in this case. The first was at Respondent's request to keep the original settings after the Parties waived the resolution session. The second was also at Respondent's request seeking a continuance and extension of the decision due date to permit the Parties additional time to prepare their final briefs with the benefit of the hearing transcript.

II. DUE PROCESS HEARING

The due process hearing was conducted on January 17, 2019. Petitioner continued to be self-represented by Student's Parent. Respondent continued to be represented by its legal counsel Amy C. Tucker. In addition, ***, District Director of Special Education attended the hearing as a party representative. The hearing was recorded and transcribed by a certified court reporter.

V. FINDINGS OF FACT

1. Student is a ***-year-

additional time for taking quizzes or tests. Implementation of the accommodation resulted in Student being tested on course content Student had not completed.¹¹

9. Despite failing to achieve a grade of 70 in *** classes during the second *** grading period, Student still maintains an overall *** grade point average in the current 2018-2019

VI. DISCUSSION

A. Jurisdiction

In Texas, the authority of a Hearing Officer to preside over special education contested administrative due process hearing is strictly limited to “any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child” arising under the IDEA. 20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. § 300.507(a); 19 Tex. Admin. Code § 89.1151(a).

Therefore, in this case, the Hearing Officer’s authority is limited to determining whether the District’s general policy of making up or redoing assignments must be extended, as a necessary IEP accommodation, to permit Student an opportunity to re-do every homework or in-class assignment, along with tests and quizzes, in order to provide Student a FAPE. The evidence presented demonstrated the opposite; Student’s current accommodation (permitting Student to turn in assignments five days after the assigned due date) is not academically beneficial because Student tends to fall behind in course content mastery. This is the result of assignments not being turned in or being turned in late for only partial credit. Furthermore, teacher testimony established the accommodation of permitting Student to turn in assignments five days after the original due date does not include additional time for taking quizzes or tests. Implementation of the accommodation resulted in Student being tested on course content Student had not completed.

The District’s general education policy of allowing students to re-do or make up assignments and tests is not an issue involving the identification, evaluation, or educational placement of the child, or the provision of a FAPE. The policy appears to have a statutory basis.

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Student's current IEP provides a FAPE. *Schaffer v. Weast*, 546 U.S. 49, 57–58, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005)

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

collaboration due to the District's predetermination of the student's educational program and failure to consider alternative programs and services); *E. and C.E. v. Chappaqua Cent. Sch. Dist.*, 2016 WL 1181712 (S.D.N.Y. 2016).

Fourth, the record contains insufficient evidence to conclude that Student's IEP did not provide Student an educational benefit. *Schaffer v. Weast*, 546 U.S. at 57-58; *Rowley*, 458 U.S. at 188-89. Despite failing to achieve a grade of 70 in three classes during the second *** grading period, Student still maintains an overall *** grade point average in the current 2018-2019 school year.²³ The evidence demonstrates that Student is making meaningful academic progress. The recommendation to modify/amend Student's current accommodations to reduce the number of days Student may take to turn in an assignment past the original due date is supported by Student's evaluation and classroom performance. The testimony of Student's guidance counselor succinctly summarized the perception of District staff concerning Student's academic performance and progress:

"Just watching [Student] as [Student] has been with us this -- so far this semester up through now, I feel like, and I think that most of the teachers would agree, [Student] really has come a long way and we're super proud of [Student] and where [Student] is."²⁴

For these reasons this Hearing Officer concludes the District's program was reasonably calculated to provide Student with the requisite opportunity to make educational progress given Student's unique circumstances

Petitioner did not request any additional relief.

VII. CONCLUSION OF LAW

1. During the relevant time period, Respondent provided Petitioner with a free, appropriate public education. *Endrew F. v. Douglas Cnty. Sch. Dist.*, 137 S. Ct. 988 (2017); *Napoleon Community Schools v. Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 188-189, 200-201, 203-204; *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245; 34 C.F.R. §§ 300.22, 300.323(a); 19 Tex. Admin. Code § 89.1055(e).
2. Petitioner did not meet Petitioner's burden of proving the District's general Grading Guidelines must be extended as an IEP accommodation necessary for Student to receive a FAPE. *Schaffer ex. rel. v. Weast*, 546 U.S. 51.
3. The Hearing Officer does not have authority to issue a general Grading Guideline policy. 20 U.S.C. § 1415(b)(6)(A); 34 C.F.R. 300.507(a).

VIII. ORDERS

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IX. NOTICE TO PARTIES

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