

DOCKET NO. 222-SE-0319

STUDENT, B/N/F PARENT,	§	
Petitioner	§	
	§	
v.	§	
	§	
	§	
HIGHLAND PARK INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, ***, by Student’s Next Friend, *** against the Highland Park Independent School District (“Respondent,” or “District”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1400 et seq. (IDEA) and its implementing state and federal regulations.

There are five major issues in this case. First, whether the District failed to timely re-evaluate Student’s special education eligibility as a student with *** (***). Second, whether the District changed the basis for Student’s special education eligibility for Other Health Impairment (OHI) from *** to *** in a timely manner? Third, did the identification of *** as the basis for Student’s OHI identification deny Student a free and appropriate public education (FAPE) because *** required different accommodations? Fourth, whether the District failed to place Student in the least restrictive environment (LRE) by failing to consider a homebound placement. Fifth, did the District procedurally violate the IDEA by insisting Student receive a Functional Behavior Assessment (FBA)?

Having reviewed the evidence and the arguments of counsel, the Hearing Officer concludes Petitioner did not meet Petitioner’s burden of proving a delay in changing Student’s OHI identification adversely impacted Student’s educational programming or denied Student an educational benefit. Furthermore, Petitioner did not prove Student needed additional, or different,

accommodations in order to receive a FAPE, and the District's proposed placement was Student's LRE. However, Petitioner did prove the District failed to timely re-evaluate Student for special education as a student with ***.

II. PROCEDURAL HISTORY

A. Legal Representatives

Student has been represented throughout this litigation by Student's legal counsel, Stephanie Holan of Holan Law. The school district has been represented throughout this litigation by its legal counsel Nona Matthews, assisted by her co-counsel Jennifer Carroll, of Walsh, Gallegos, Trevino, Russo, & Kyle.

B. Resolution Session and Mediation

The parties conducted a timely, but unsuccessful resolution session on April 10, 2019.

III. DUE PROCESS HEARING

The due process hearing was conducted on May 16-17, 2019. Petitioner continued to be represented by Petitioner's legal counsel Stephanie Holan. In addition, Student's Mother also attended the hearing. Respondent continued to be represented by its legal counsel Nona Matthews, and assisted by her co-counsel Jennifer Carrol. In addition, ***, Director of Special Education, Highland Park Independent School District attended the hearing as the District's party representative. The hearing was recorded and transcribed by a certified court reporter.

At the conclusion of the hearing the parties requested the record remain open in order to allow submission of written closing arguments on the seminal issues in this case. Those pleadings were submitted by both parties in a timely manner. The parties agreed to extend the deadline for the Hearing Officer's decision to allow the Hearing Officer time to complete a review of the extensive record on file in this case, conduct legal research, and to consider the written closing

- b. The District failed to consider the recommendations of private doctors; and,
- c. The District inappropriately insisted on implementing a Behavior Intervention Plan (BIP).

PLACEMENT

Failed

- (2) Add an accommodation to Student's IEP that Student receive

classroom observations, and administered a battery of assessments that used a variety of clinically valid assessment tools including: ***. Based on the information collected,

including Petitioner's parent, reached consensus.¹⁰

11. Various accommodations were discussed and negotiated during the September ***, 2018 ARD Committee meeting. The District proposed a partial day schedule from 12:00 until 3:15. The goal and expectation was to require Student to stay at school until the end of the day. To implement this accommodation the District further proposed a gradual or phased schedule implementation. The gradual implementation would have Student begin by attending Student's *** (***) and periodically increase the amount of time Student was required to be in school by adding ***:

x *** (***) for one-week (September 24-28, 2018-2yw [()b(i)-2(odi)-6(r)3o.59-8(eJ 0.002 Tc 0.008

16. On September ***, 2018,¹⁵ Petitioner's ARD Committee convened to review and revise Petitioner's IEP based on Petitioner's progress, requested revisions from Petitioner's parent, and information from Student's *** doctor. During the discussion about Petitioner's progress, District staff reported *** a.m. as Petitioner's average arrival time, and that during the first 17 days of school for the 2018-2019 school year, Petitioner was absent *** days and left early *** days.¹⁶

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replied that relationship building is difficult when a student is not at school. The ARD Committee agreed to utilize *** time for relationship building with teachers, including incorporating strategies recommended by Student’s private therapist.²⁸

- 27. During the October ***, 2018, ARD Committee meeting the District proposed removing the accommodation regarding sending an e-mail to Petitioner’s parent with a daily summary of class because teacher notes in Google calendar have the same information, and emailing the information di2(oT)16(ochlr)3(m)-2(ng)10(og)10(t)-2(hpa2(obe)4(-2(ude)4(ntt)-2(c

day waiting period prior to implementation so typical homebound services could begin the week of November ***, 2018.³³

31. On November ***, 2018, the District proposed, via an IEP amendment, to decrease the number of days Petitioner would need to be absent before triggering homebound services from four consecutive days to two consecutive days. Petitioner's parent never signed the proposed IEP amendment.³⁴
32. On February ***, 2019, Student's ARD Committee convened for Student's annual ARD Committee meeting, but recessed because Petitioner's parent asked the District to reschedule the meeting.³⁵
33. On March ***, 2019, Student's ARD Committee convened for Student's annual ARD Committee meeting. After reviewing progress on IEP goals and present levels, the District proposed new IEP goals, revised accommodations and plans for statewide testing. In addition to revising many of the existing accommodations, the District proposed adding the following accommodations: allowing the use of a word processor, opportunity for Petitioner to dictate answers, oral administration of tests, use of a four-function calculator, and preview/discuss upcoming assignments/tests. Petitioner's parent did not request any revisions to goals, accommodations, or statewide testing. The ARD Committee reviewed and revised the LRE section of the IEP based on feedback from the ARD Committee, including Student's parent. After discussing options for supports and services, the ARD Committee agreed to recess the meeting to gather additional information from Petitioner's private provider, and from Petitioner, and agreed to continue the annual ARD Committee meeting on April ***, 2019.³⁶
34. While this litigation was pending, on April ***, 2019 the ARD Committee re-convened to complete Student's annual ARD Committee meeting. Student's parent refused to participate at the mutually agreed upon date and time and refused to propose an alternative date and time; therefore, the District proceeded without Petitioner's parent. The District did not have any additional information from Petitioner or outside providers to consider. Petitioner's parent asked the homebound teacher to stop seeking input from Petitioner in the development of the IEP and instructed outside providers to discontinue sharing information with the District. However, the ARD Committee did consider the relief requested in Petitioner's Complaint related to the identification, evaluation, placement, or the provision of a FAPE to Petitioner. Rather than remove *** eligibility without evaluation data to support such a decision, the District proposed conducting a re-evaluation within thirty school days of consent from Petitioner's parent.³⁷

day; and (3) Allow two-weeks for completion of assignments and/or exams at the end of the grading period because Student is over a week behind in Student's coursework.⁴¹

39. Student's grades reflect educational progress.⁴²

VII. DISCUSSION

A. Identification

The threshold issue in this case is whether the District has a reason to suspect *** was the basis of Student's OHI prior to Oc /P <</004 Tc 0.024A w O1</MCID 28 >>B3(t)5[(r(o)-49.023)-8(I)2()Tj

including late arrival, scheduled ***, ***, and extra time for testing. ***, ***

Student failed to meet Student's burden of proving additional/different accommodations were required. The undisputed evidence demonstrated Student's IEP was revised on April ***, 2018 to include a *** Plan that states "allows ***." The *** Plan does not specify when, where, or for how long Student was to "****."

During the two day ARD Committee meeting that convened on September ***, 2018, Petitioner requested the *** be deleted as accommodations because they were not working. Specifically, Student was ***.

The District proposed a partial day schedule from 12:00 until 3:15 during the September ***, 2018 ARD Committee meeting. This proposed schedule was designed to accommodate Student's *** and the ARD Committee set the week of October ***, 2018 to reconvene to review the effectiveness of the proposed schedule. The September ***, 2018, ARD Committee added additional *** disorder accommodations to Student's IEP:

- x Opportunity to leave class for individualized assistance;
- x Access to drinks and snacks to help with alertness;
- x Access to the *** classroom;
- x Allowed to stand instead of sitting at seat during the class;
- x *** (***); and,
- x Use of a *** during class.

An IEP must offer instruction "specially designed" to meet a child's "unique needs" and be constructed after careful consideration of the child's present levels of achievement, disability, and potential for growth. *Endrew F. v. Douglas County Sch. Dist.*, 137 S. Ct. 988 (2017). (2017) (citing 20 U.S.C. § 1414(d)(1)(A)(i)(I) through 20 U.S.C. § 1414 (d)(1)(A)(i)(IV)).

The District knew Student's diagnosis changed when it received the *** diagnosis of *** on May ***, 2018. *** sent a second letter on August ***, 2018 reiterating the new diagnosis. On August ***, 2018 Student's annual ARD Committee convened and Student's parent made a lengthy and detailed substantive presentation to the Committee on ***. Parent was provided OHI

all of the accommodations requested by Student were in place or under consideration during the month it took to complete the addendum.

The circumstances of this case led the Hearing Officer to conclude the delay in changing the basis of Student's OHI eligibility was not unreasonable, did not impede Student's right to a FAPE, in no way impeded parental participation in the decision making process, and did not cause a loss of an educational benefit.

Whether Student's OHI was identified as *** or *** appears to be a distinction without a difference. Regardless of the OHI label, Student unquestionably suffers from a *** disorder. The District has timely responded to Petitioner's concerns and provided robust accommodations intended to mitigate Student's *** disorder while simultaneously trying to keep Student school.

3. Accommodations

Student claims Student was denied a FAPE because the failure to timely change Student's OHI eligibility resulted in a defective IEP that was "vastly inadequate" because *** requires different accommodations for educational progress. Petitioner demanded 13 specific accommodations (two of which were recommended by ***). The District quickly implemented 7 ***

Based upon Student's PLAAF's the BIP identified 3 targeted behaviors: non-compliance and refusal, unexpected verbal comments and aggression, and escape from undesired tasks when anxious or tired. The BIP developed appropriate IEP goals to address the targeted behaviors.

The Hearing Officer is unpersuaded by Petitioner's argument that Student's behavioral

particular way. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F. 3d 286, 294 (5th Cir. 2009). Application of the four factors to the evidence in this case supports the conclusion that the school district's program was appropriate and provided Student a FAPE.

First, the school district's program is individualized on the basis of the student's assessment and performance. The District's efforts to accommodate Student's *** disorder were undoubtedly individualized. The accommodations were based upon input from Student's private providers and information conveyed by Student's parent. The partial-day schedule and the eventual schedule for homebound services were tailored to Student's unique needs and were designed to keep Student placed in general education to the maximum extent appropriate. *Andrew F.*, 137 S. Ct. at 1000.

Second, the school district's program was delivered in the LRE. The evidence demonstrates the District continually attempted to maintain a placement that would keep Student mainstreamed while accommodating Student's ***. *Daniel R.R.*, 874 F.2d at 104445.

Third, the services were provided in a coordinated, collaborative manner. The credible

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determination that the student continues to need special education and related services, and

In addition to Petitioner's written request to re-evaluate for ***, the District had reason to suspect the *** identification might not be appropriate after Student's parent gave the ARD Committee information about *** at the August ***, 2018 meeting. At that ARD Committee meeting the District learned *** can suffer from ***. ***.

The Hearing Officer concludes that no later than September ***, 2019, the District was on notice Petitioner requested a re-evaluation for ***. Moreover, all of the ARD Committee documents admitted into evidence reflect Student's ongoing "****" issues. The notice and consent for the FIE OHI Addendum did not satisfy the District's duty to perform *** re-evaluation within 45 school days. Based upon the District's 2018-2019 calendar, and not counting Student's frequent absences, the District should have complete the *** re-evaluation on or about November ***, 2018. That deaevn0.00JTJ00(c 5 Cy)00JTJ00(42)4(e)4((nt2y)0018. T e)60-1.712.18. T 5T(n

The failure to conduct an adequate FBA is a serious procedural violation because it may prevent the [school district] from obtaining necessary information about the student's behaviors, leading to their being addressed in the IEP inadequately or not at all. As described above, such a failure seriously impairs substantive review of the IEP because courts cannot determine exactly what information an FBA would have yielded and whether that information would be consistent with the student's IEP. The entire purpose of an FBA is to ensure that the IEP's drafters have sufficient information about the student's behaviors to craft a plan that will appropriately address those behaviors. *R.E. v. New York City Dep't of Edu* 694 F.3d 167, 190 (2nd Cir. 2012).

While an FBA may help the ARD Committee address behavioral issues, the IDEA does not require the District to conduct an FBA in order to meet this requirement if behavior is adequately addressed in the BIP and/or IEP. R

is inappropriate because the District continued to attempt to maintain Student's general education placement, continued to provide Student with *** (***) , and failed to timely consider homebound services for Student.

The IDEA's implementing regulations require, to the maximum extent possible, that children with disabilities are educated with their non-

provided to the student in this instructional arrangement/setting in

4. The District timely updated Student's OHI eligibility from the *** disorder of *** to the *** disorder of ***

consent, the District will re-evaluate Student's ***. The re-evaluation shall be completed within the timeframe specified in 19 Tex. Admin. Code § 89.1011(c)(1).

2. All other requests for relief not specifically state in these Orders is hereby **DENIED**.

SIGNED June 28, 2019.

X. NOTICE TO PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer 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. 20. U.S.C. § 1415 (i)(2); 19 Tex. Admin. Code Sec. 89.1185 (n).