

DOCKET NO. 247-SE-0419

**STUDENT, B/N/F PARENT,
Petitioner**

v.

**LANCASTER INDEPENDENT
SCHOOL DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, Student, b/n/f Parent (“Petitioner” or “Student”) brings this action against the

of also submitting a written closing argument. The parties requested a closing argument deadline of June 28, 2019, with an extension of the decision deadline to July 26, 2019, to provide the hearing officer sufficient time to consider the closing arguments in preparing the decision.

B. Legal Representatives

Petitioner was represented throughout this proceeding by Petitioner's non-attorney representative, Carolyn Morris with Parent-to-Parent Connection Advocacy. The school district was represented by its attorney, Jennifer Carroll of Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

C. Resolution Session and Mediation

The parties agreed to attempt mediation instead of meeting in a resolution session. Mediation was conducted on May 7, 2019, but the parties were unable to reach an agreement.

D. Preliminary Motions

Several preliminary motions were addressed prior to the hearing. Respondent's sufficiency challenge to the Complaint was denied in Order No. 3 on April 30, 2019. Competing discovery motions were both denied in Order No. 5 on May 29, 2019.

III. DUE PROCESS HEARING

The due process hearing was conducted on June 5, 2019. Petitioner continued to be represented by Petitioner's non-attorney representative, Carolyn Morris. In addition, ***, Student's mother, attended the due process hearing. *** also attended the hearing as parent support.

Respondent continued to be represented by its legal counsel, Jennifer Carroll. ***, the Chief of Special Education for the school district, attended the hearing as the party representative.

The hearing was recorded and transcribed by a certified court reporter. Both parties filed written closing arguments in a timely manner. The Decision in this case is due July 26, 2019.

IV. ISSUES

A. Petitioner's Issues

6. Whether the school district failed to provide Student's mother with IEP progress reports in a timely manner;
7. Whether the school district's actions in prohibiting Student's mother from visiting the campus violate the IDEA; and,
8. Whether the school district failed to convene an Admission, Review & Dismissal (ARD) Committee upon parental request on December ***, 2018.

B. Respondent's Legal Position

The school district generally and specifically denies the allegations in the Complaint, contends it conducted all evaluations in a timely manner, and asserts Student was assessed in all areas of suspected disability. The school district argues Student was provided with FAPE in the LRE. The school district also contends it offered to conduct an updated re-evaluation of Student, proposed adding new behavioral goals to Student's IEP, and proposed a change in placement to a self-contained, special education behavior classroom to better meet Student's academic and behavioral needs. The school district reports Student's mother has not consented to the proposed set of evaluations.

The school district raises the following additional legal issues:

1. Whether the hearing officer has jurisdiction to resolve Petitioner's claim related to *** Student's mother and, as a result, whether that claim should be dismissed; and,
2. Whether Petitioner's request to move Student to another campus within the school district is within the scope of the hearing officer's authority to grant relief and, as a result, whether that request should be dismissed.

Respondent withdrew the affirmative defense of the statute of limitations issue stated in its Response given Petitioner's confirmation that all claims at issue arose during the 2018-19 school year.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requests the following items of relief:

1. An updated Full and Individual Evaluation (FIE) including all components of the initial FIE, a psychological, an autism evaluation, a Functional Behavior Analysis (FBA), a speech assessment, and a determination as to whether Student needs a change in placement from a self-contained behavior class to a general education classroom;
2. Placement Student in a general education instructional setting with sufficient special education support (including specifically the assignment of a $\mathbb{P}j1$ ()Tj -0.004 T7 /P <</M-2(i)-2

4. Student was in the *** grade when Student enrolled in the Lancaster Independent School District (school district) for the 2017-18 school year.⁵ The school district convened an ARD meeting on September ***, 2017, to determine Student's permanent placement. Student's mother attended and actively participated in the ARD meeting. The ARD Committee identified Student's areas of need, based on Student's PLAAFPs, as behavior, self-regulation, and articulation. The school district designed an IEP that included three annual behavioral goals, direct speech services, a speech IEP, behavior inclusion support in general education, and a set of classroom accommodations.⁶
5. The behavioral goals addressed Student's need to refrain from verbal and physical aggression towards peers and adults 75% of the time, reduce outbursts 75% of the time, and comply with adult verbal directives and redirection 75% of the time.⁷
6. The school district's Director of Family Engagement and Behavior Support implements a Strengthening Families Initiative through the special education department offering parents with special needs children resources and parent trainings five times a year. The Director of Family Engagement and Behavior Support also provides direct support to teachers to address specific behaviors by providing classroom assistance, sharing strategies, and giving guidance to ensure the strategies are implemented.⁸
7. The Director

9. In March 2018, Student had difficulty, at times, following adult directives or requests. When those behaviors occurred, Student needed a change in Student's environment, removal from an audience, and time to reflect on Student's behavior.¹² Student periodically exhibited behavioral outbursts. On occasion, Student ***.¹³
10. As a result, the March 2018 ARD Committee designed a single annual behavioral IEP goal

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24. There were *** behavioral incident reports involving Student during the 2018-19 school year.⁴⁰ Student averaged *** behavioral incident per week between August 2018 and late February 2019. These included: not following directions, being out Student's assigned seat, and yelling out. There were also *** behavioral incidents during that timeframe that involved Student ***. *** behavioral incidents during this timeframe resulted in office referrals.⁴¹ For each incident reported, Student needed 30 minutes to one hour to regain control in the "cool down room" and receive direct instruction on pro-social behaviors.⁴²
25. The campus used a software program to document behavioral incidents. Not all behavioral incidents resulted in office referrals. The campus principal or other staff cont-4(u)ng St pri pri p

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- pro-social behaviors.⁷⁵ The behaviors during this time period were more serious and more intense and included acts of physical aggression ***.⁷⁶
39. Staff also received reports from parents Student was ***.⁷⁷ Student's behavior was not only disruptive in Student's general education classroom, but also on campus.⁷⁸ Student posed a safety concern to other students. During this time period Student ***.⁷⁹ ***.⁸⁰ By the end of the 2018-19 school year, Student did not cooperate with Student's teacher and other students in class for the majority of a school day. Student's "good" days were few and far between and Student struggled to maintain self-discipline in class.⁸¹
40. At the April 2019 ARD meeting the school district proposed a re-evaluation of Student that would include: a psychological (to include evaluations to determine whether Student was eligible for special education services as a student with an emotional disturbance), a FBA, a counseling evaluation, in-home and parent training assessments, a speech/language evaluation, and updated medical information (including information related to a parental concern Student might have a hearing loss as well as information related to Student's ADHD). The school district also proposed evaluations for autism, occupational therapy (OT), and sensory needs in response to the Complaint.⁸²
41. The school district provided Student's mother with a Notice of Proposal to Evaluate and Consent to Evaluate form at the April ARD meeting. Student's mother did not sign the consent form.⁸³ The school district continues to offer the proposed evaluations and will complete the proposed FIE when it receives signed parental consent.⁸⁴
42. The April ***, 2019 ARD Committee added a new behavioral goal to address Student's verbal and physical aggression and also required training for staff who would work directly with Student.⁸⁵ The ARD Committee considered providing Student with 1:1 paraprofessional support in the general education setting but school district staff rejected

⁷⁵ J.6:18-19.

⁷⁶ J. 6:19; J.10:29-53.

⁷⁷ R. 2:3-7.

⁷⁸ J.6:13; Tr. Vol. I: 145, 187, 210.

⁷⁹ Tr. Vol. I: 145, 175.

⁸⁰ Tr. Vol. I: 145, 175, 210, 247.

⁸¹ Tr. Vol. I: 129-30.

⁸² J.6:8; Tr. Vol. I: 209.

⁸³ J.6: 18, 26-31; Tr. Vol. I: 208-209.

⁸⁴ Tr. Vol. I: 220.

⁸⁵ J.6: 13, 19; J. 9:3.

this option because, in part, Student had not responded well to inclusion support in the general education classroom.⁸⁶

43. School staff instead proposed changing Student's placement from the general education classroom to the ***, a more restrictive, self-contained, special education classroom for all academics because the cool down strategy was no longer effective.⁸⁷ Student needed a smaller instructional setting with more intense behavioral support, a student to staff ratio of 4:1, and social skills instruction. Student would continue to have the opportunity to participate with students without disabilities in all nonacademic, extracurricular, and other activities.⁸⁸
44. The school district proposed implementing the change in placement while the proposed FIE was pending due to concerns that leaving Student in the general education classroom would be harmful and the proposed placement in the behavior support classroom could address Student's SStudent1 nes

47. Student was *** during the spring semester of the 2018-19 school year. ***. ***. ***. The teacher filed a written report ***.
48. Student was ***. ***. ***. The teacher removed Student from the classroom and Student was then able to calm down.⁹⁶
49. The *** teacher reported *** to Student's mother and the campus principal the same day. He then completed a written report *** and e-mailed it to the parent the next school day.⁹⁷ By this time the *** teacher felt Student was a threat to ***self and others because Student was violent at times, uncontrollable, did not listen to authority figures, and was often oppositional and defiant.⁹⁸
50. All special education teachers on the campus were trained to enter IEP progress reports by a specific deadline, print the reports, and send them home. Progress reports were issued every *** weeks for the 2017-18 and 2018-19 school years concurrent with report cards. The codes used in the progress reports were explained at the end of each report.⁹⁹ The school district maintained copies of Student's IEP progress reports through the *** week grading period of the 2018-19 school year, with the exception of the *** weeks behavior IEP progress report.¹⁰⁰
51. If Student's teacher failed to prepare the progress report, Student's name would have appeared on the "Progress report non-completion report" issued for the *** weeks. Because Student's name did not appear on that report, the school district concluded the teacher forgot to archive or save the behavioral IEP progress report in the system or put a printed report in Student's record.¹⁰¹
52. Student's mother was provided progress reports for Student's behavior goals at the April ***, 2019 ARD meeting covering the beginning of the 2018-19 school year through December 2018 and through Febru(t)-2(94TJ -0.3(e)4Tj 0.0()-3(D)ody <</MCID 65 >>BDC 0 7

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Furthermore, a child should generally not be identified as a student with autism if

B. FREE, APPROPRIATE PUBLIC EDUCATION**1. Duty to Provide a FAPE**

The purpose of the IDEA is to ensure all children with disabilities have available to them a free, appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). A school district has a duty to provide FAPE to all enrolled children with disabilities ages 3-21. 34 C.F.R. § 300.101(a); Tex. Educ. Code § 12.012(a)(3).

To meet its substantive obligation under the IDEA the school district must offer the student an IEP reasonably calculated to enable the student to make progress appropriate in light of the child's circumstances. The adequacy of a given IEP turns on the unique circumstances of the student for whom it was created. *EndevF. v Douglas Cnty Sch* 827, 137 S. Ct 988,999, (2017). The program must provide the student with a meaningful educational benefit and one that is more than merely de minimus. *EndevF., 137 S. Ct at 1000- 01.*

2. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.¹⁰⁴ *Sch* 999 F.2d 127, 131 (5th Cir 1993). For the reasons set out below, Student did not meet Student's burden of proving the IEPs at issue or proposed placement in the behavior support classroom failed to provide Student with FAPE in the LRE.

¹⁰⁴ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Rich* (Cir 2009).

- x The services are provided in a coordinated, collaborative manner by the “key” stakeholders; and
- x Positive academic and non-academic benefits are demonstrated. *Cps -Fai banksInd. Sch Cir1997).*

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 guide the fact-intensive inquiry required in evaluating the school district’s educational program.

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a. Individualized on the Basis of Assessment and Performance

The IEP designed at Student’s March 2018 ARD meeting and implemented during the fall semester through February ***, 2019 of the 2018-19 school year was individualized on the basis of assessment and performance. The March 2018 ARD Committee reasonably relied, in part, on the *** ISD FIE conducted the previous school year. The March 2018 ARD Committee also relied on the school district’s own behavioral and academic data. During the fall semester of the 2018-19 school year Student met local assessment standards, made good grades, and although Student was not at the top of the class, he was a good student.

education classroom after regaining self-control. Furthermore, Student made very good grades throughout the fall semester, mastered grade level materials,

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D. PROCEDURAL ISSUES

1. Notice of ***

The credible evidence showed Student was *** during the 2018-19 school year. **. The evidence showed ** as required by state law. Although it is unclear whether Student’s mother was verbally notified on the day of **, the evidence showed she was properly notified as to **. **.

Under these facts, and because state law and not the IDEA governs **, Petitioner did not prove an IDEA procedural violation. Even if the school district failed to properly notify Student’s mother of the **, Petitioner did not prove by a preponderance of the evidence that this was a evrot o pr3.9u faF omeponde(t)40(t)-12t bpon Tw (***) 0 7d ()Tj 0.01 Tw1727.50 Td [(pr)3(4(a)4a)4(1)-2(1)-

The evidence showed the *** weeks progress reports were not yet archived in the school district's record-keeping system, but arrangements were made to provide Student's mother with a hard copy along with the documents for the April ***, 2019 ARD meeting. The evidence showed the IEP progress reports were sent home with report cards. Student's mother claimed she never received them but that assertion is controverted by the school district's evidence documenting the dates the progress reports were issued. There is some evidence the behavioral IEP progress report for the *** weeks grading period could not be located. This alone does not prove Student's mother did not receive the progress reports. Even if she did not receive that single progress report, the preponderance of the evidence shows she was provided with all others. Petitioner therefore did not meet Petitioner's burden of proving a procedural violation on this issue.

Parents are not entitled to unlimited communications related to their child. *See, In Re Stentish* (school district could place limitations on staff answering excessive parent emails and phone calls during instruction). Here, the evidence showed Student's mother was able to advocate for her *** ***. ***. The evidence showed ***.

She was also warned about the consequences of ***, but nevertheless continued to do so in violation of school district policy. Furthermore, the *** she was accommodated to ensure her continued participation in Student's ARD meetings. ***.

4. Timeliness for

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3. Respondent properly and timely proposed a comprehensive re-evaluation when Student's unique circumstances changed, and the school district determined Student's educational needs warranted an early re-evaluation. 34 C.F.R. § 300.303.
4. Petitioner did not meet Petitioner's burden of proving Respondent failed to provide Student with a free, appropriate public education. Specifically, Petitioner did not meet Petitioner's burden of proving Respondent failed to adequately address Student's behavioral needs or failed to properly implement services including accommodations or speech services.
Sch U.S. 49, 62 (2005); EndevF. vDouglasCnySch
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