

STUDENT, B/N/F PARENT,
Petitioner

v.

FRISCO 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 Frisco Independent School District (“Respondent,” or “the School District”) under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400-1482 (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the School District failed to provide Student with a free, appropriate public education (FAPE).

The hearing officer concludes Student was not denied FAPE by the School District during the relevant time period and Petitioner is not entitled to any of the requested relief.

II. PROCEDURAL HISTORY

A. Legal Representatives

Student was represented throughout this litigation by Student's attorney advocate Carolyn Morris with Parent-to-Parent Connection. The School District was represented throughout this litigation by Nona Matthews with the law firm of Walsh, Gallegos, Trevino, Russo & Kyle.

III. DUE PROCESS HEARING

The due process hearing was conducted on July 30, 2019. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Student's non attorney advocate Carolyn MorriParent PARENT attended the hearing each day.

Respondent continued to be represented by its legal counsel, Matthew N. Matthews. In addition, ***, the Executive Director of Special Education for the School District, ***, the Director of Special Education, attended the hearing as the party representative. Both parties filed written closing arguments in a timely manner. The Decision in this case is due August 30, 2019.

IV. ISSUES

A. Petitioner's Issues

Petitioner confirmed the following IDEA issues for decision in this case:

1. FREE, APPROPRIATE PUBLIC EDUCATION (FAPE): Whether the School District failed to provide Student with FAPE during the 2018-19 school year, specifically with regard to the following:
 - a. Individualized Education Plan (IEP): Whether the School District failed to develop and implement an appropriate IEP.
 - b. LRE: Whether the School District failed to educate Student in Student's Least Restrictive Environment.
 - c. Progress: Whether the School District failed to properly address Student's failing grades.
2. EVALUATION: Whether the School District failed to timely and appropriately evaluate Student in all areas of suspected disability and need.

B. Respondent's Legal Position and Additional Issues

Respondent generally denies the factual allegations stated in Student's Complaint. The

School District

Petitioner limited the relevant time period for the Complaint to the 2018-2019 school year. The Complaint was filed in April of 2019. Therefore, the time period falls within the one year statute of limitations period as applied in Texas.

VII. CLAIMS OUTSIDE HEARING OFFICER'S JURISDICTION

Petitioner did not raise any claims arising under state law other than the IDEA.

VIII. FINDINGS OF FACT

1. Student is *** years old and eligible for special education services from the School District as a student with *** and Speech Impairment. Student participated in the School District's ***. Student enrolled in the School District for the 2009-2010 school year and has attended the School District since that time. Student attended for the 2018-2019 school year.³
2. A private neuropsychological evaluation was completed on Student in June ***. Student was referred for the evaluation by Student's pediatrician due to developmental delays in speech, articulation, receptive language, and expressive language. Student's full scale IQ was ***, which is well below average. The private evaluator recommended Student would benefit from a smaller classroom size setting with appropriate peers, where Student could receive more individual attention and less environmental distractions. Student noted a smaller classroom size would allow Student additional opportunities to receive positive reinforcement as Student develops the language skills that are vital to Student's academic success and self-confidence.⁶
3. Student was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) in 2012 by a private neurologist.⁷
4. A second private neuropsychological was completed on Student on December ****. The evaluation was completed because Student's mother wanted a current profile of

¹ Joint Exhibit 1 p. 1. (referred to hereafter as JE ___ or JE ___ at ___).

² JE 10 at 1.

³ JE 6 at 1.

⁴ JE 10 at 1.

⁵ JE 10 at 6.

⁶ JE 10 at 17.

⁷ Respondent's Exhibit 8 p. 4. (referred to hereafter as RE ___ or RE ___ at ___).

Student's cognitive and academic strengths and weaknesses to assist with educational placement. The evaluator noted Student relies on language to help Student's sense of Student's environment, but Student's language skills are "deficient at worst and unreliable at best." Student demonstrated some mild cognitive improvement in processing speed and *** compare

classroom with inclusion support¹⁹ Student participated in *** (***) *** general education.²⁰ The IEP indicated Student receive modified Texas Essential Knowledge and Skills (TEKS), and would take *** **²¹

8. During the May 2018 ARD meeting~~h~~ School District notified parents Student's achievement²². The²³ *** is for students functioning below grade level²⁴ It measures a student's prerequisite skills that are deemed necessary to be successful. It is not based on grade level TEKS, but prerequisite skills²⁴ Student functioned at *** grade level for prerequisite~~ills~~ skills. Student accessed grade level TEKS through prerequisite²⁵ skills.
9. In September 2018 and January 2019, the School District and parent agreed to remove supervision during transitions from Student's IEP accommodations. A daily communication sheet was ~~ced~~ to allow staff to communicate with parents²⁶. In January 2019, the School District and parent agreed to ~~addit~~ additional accommodations to Student's IEP.²⁷
10. The ARD committee met on April ²⁸***, 2019 for Student's annual ARD. Parents were present with two advocates. Parents requested an FIE in the areas of cognitive achievement, transition, psychological~~eval~~uation with an FBA, assistive technology, speech, autism spectrum disorder, and OHI for AD~~HD~~. Parents requested Student be more challenged and placed in the general education classroom. The ARD committee agreed for a trial period of Student in ~~ge~~neral education classes with modifications, accommodations, and inclusion support without changing the setting in Student's²⁹ IEP. The ARD recessed to be reconvened²⁸
11. The trial period began on April ³⁰***, 2019 and lasted through May ³⁰***, 2019. This period was 7 school days³⁰

was placed in general education math and with inclusion supports.³¹ The trial period ended because ~~step~~ ³² was put in place due to the filing of this due process complaint.

12. The ARD committee reconvened on May ³³, 2019. The parents were not present. Parents were given notice of the reconvene ARD for May ³⁴, 2019; however, they were not ready to move forward at that time. Parents were given notice of the May ³⁵, 2019 reconvene ARD with options of other dates if May ³⁶ did not work with their schedule. Parents advised the ARD time was not convenient and would not attend.³⁸ Parents did not attend because the due process hearing was pending and they were attempting to resolve the matter via mediation.³⁴
13. The ARD committee recommended placement for the ~~2020~~ ³⁵ school year in the ³⁶ (***) classroom so Student can focus on prerequisite skills needed for academic success. Math, ³⁷, ³⁸, and ³⁹ will be in the ⁴⁰ where TEKS are modified. Student's ⁴¹ would be in the general education setting with modified TEKS. Student requires more support in Student's classes than general education with inclusion support provide.³⁶ The curriculum in the general education setting is continuing to move forward ~~the~~ ⁴² Student understands the concepts or not.³⁷
14. ⁴³ classroom has a small teacher to student ratio. ~~The~~ ⁴⁴ classroom has one teacher and ⁴⁵ paraprofessionals with typically ⁴⁶ students.³⁸ Students work on ⁴⁷ and prerequisite skills needed to build on in order to progress. The work is at a slower pace than general education and ⁴⁸ classrooms. The class provides many opportunities ~~for~~ ⁴⁹ one-on-

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20. *** and Student's final grade was a ***.***; however, Student passed the year with an ***. ⁵⁶ Student received *** in Math and Reading in March 2019. ⁵⁷ Student's grades on Student's report card are not indicative of Student's understanding of the material. The grades are reflective of the teaching, retesting, and accommodations Student had in place. ⁵⁸ Specifically in ***, Student's grades were passing at times due to the participation or completion component of the grade. ⁵⁹
21. Student was graded in Student's general education classes based on Student's abilities. Student's grades in *** are not true reflections of Student's understanding of the concepts. ⁶⁰
22. In the School District student's grades are put into a computer grade book that can be accessed by parents. Student's test grades were put into the system so Student's test grades were in the system until the retest grade was put in the system. ⁶¹ Teachers did not

had difficulty maintaining being on task, Student struggled with starting Student work, and needed a considerable amount of support.⁶⁸

25. Student's success was based upon the inclusion teacher being present so when Student made a mistake, it was corrected immediately. Student would not learn the information incorrectly. Student's tests were modified and Student retakes tests if Student failed. At times, Student took multiple tests. Each test was modified and each retest was modified further.⁷⁰ Student's inclusion teacher spent approximately 70% of her time directly working with Student in class. She would also check on Student during the other 30% of her time in the class while she was working with other students.⁷¹
26. Student become more advanced with each grade level.⁷² Student relies heavily on the inclusion teacher and Student struggled to understand the material in large part due to Student's deficits.⁷³ Student did not make much progress or gain much knowledge in class. Student was able to repeat information immediately after being told a definition; however, Student did not retain the information when asked later in a class period or a following class period.⁷⁵ Student had difficulty learning abstract concepts and applying knowledge. For example, Student could memorize information on a graph during class, but if given a graph later and asked to find the same information Student would have a hard time doing so without help.⁷⁶

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B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁸⁶ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Page Ind. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). In this case the school district was obligated to provide Student with FAPE during the 2018-2019 school year and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit for the upcoming 2019 school year. The burden of proof in this case is on Petitioner to show the school district did not do so.

C. FAPE

1. The Four Factors Test

The Fifth Circuit has articulated a four factor test to determine whether a Texas district's program meets IDEA requirements. Those factors are: [burden of proof]

from multiple assessments as well as observation, teacher input, and parental input. The goals and objectives were measurable and based on Student's current level of ability. Student's TEKS were modified as well as Student's testing. The FIE indicated Student has hearing and speech impairment. Student's IEP included accommodations and goals and objectives across all settings and subjects. It also included speech goals and objectives for direct speech instruction.

3. Least Restrictive Environment

The evidence showed Student was educated in the least restrictive environment. The IDEA requires that a student with a disability shall be educated with disabled peers to the maximum

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supported by the ARD committee documents, emails between the parents and teachers and administrator, teacher and administrator testimony, and parent testimony.

Student's general education teacher, Student's teacher, Student's teacher, and the principal were all in communication with each other regarding how to most effectively educate Student. The teacher and the parent were in almost daily contact with each other regarding Student's progress in **. A daily communication folder went home with Student so parent was informed of Student's daily progress. When the parents had any concerns about Student, emails were exchanged with teachers and administrators. The School District did a trial with Student in (l w)4(ith)2

problem behaviors that interfered with Student's ability to access Student's education. Student was a polite, compliant, hardworking Student. The School District evaluated Student in all areas of suspected disability and need.

X. CONCLUSIONS OF LAW

1. Student was provided FAPE during the relevant time period and Student's IEP was reasonably calculated to address Student's needs in light of Student's unique circumstances. Rowley, 458 U.S. 176 (1982); Endrew F., 137 S. Ct. 988 (2017); E. R., 909 F.3d at 768 (2018)
2. Respondent timely and appropriately evaluated Student in all areas of suspected disability. 34 C.F.R. § 300.304.
3. Respondent educated Student in the LRE during the 2019-school year. The proposed placement for the 2019-2020 school year was the LRE for Student. Daniel R., 74 F. 2d 1036.

XI. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are DENIED.
2. Petitioner's request for an evaluation for an FBA and psychological evaluation

XII. NOTICE TO THE 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. 19 Tex. Admin. Code §89.1185(p); Tex. Gov't Code, Sec. 2001.144(a) (b).