

DOCKET NO. 307-SE-0519

STUDENT, B/N/F PARENT,
Petitioner

v.

ROUND ROCK 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

Student was represented by Student's Father, PARENT, as a self-represented litigant. The District was represented by its counsel, Stacy C. Ferguson, Escamilla & Pineda.

B. Resolution Session and Mediation

The parties conducted a timely, but unsuccessful resolution session on May 30, 2019.

III. DUE PROCESS HEARING

The due process hearing was conducted on July 25, 2019. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Student's Father. Respondent cont bEs cont-1(pondefw [(.)-4(1s)-5-2(c9)-1(pond 0 Td [(R)2(ePB0I83)]TJ 0

- b. failed to update the goals in Student's Individualized Education Plan (IEP);
 - c. failed to consider input from Student's parents and therapist in making educational decisions about Student;
 - d. failed to adequately prepare Student for; and,
3. PLACEMENT: Whether Student's placement in the "General Education classroom" is appropriate for Student and the least restrictive environment for the upcoming 2019-2020 school year

B. Respondent's Legal Position and Additional Issues

Respondent generally denied the factual allegations stated in the Complaint. The District specifically denied it failed to consider Student's progress last school year in updating Student's and proposing an appropriate placement for Student. The District contends the parties differ as to the progress Student made during the 2018-19 school year. The District alleges Student only attended the District's program*** and attended private therapies the rest of the week. The District argues Student has not been able to establish a consistent routine at school due to Student's limited participation in the District's program. The District concedes Student made some progress, particularly with regard to the acquisition of speech skills***. However, the District disagrees with Student's Father that Student made progress in skills the District has not observed.

V. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner confirmed the following items of requested relief:

- 1. The District place

B. Respondent's Requested Relief

Respondent requests the Hearing Officer deny the relief requested by Petitioner.

6. During the FIE, Student scored in the ⁹ percentile, “very elevated,” in all classification areas on the Teacher Administered ASRS and was deemed “very elevated” by the ASRS Parent Ratings. Student was also scored in the ⁹ percentile (“very elevated”) on the DSM-V clinical criteria for diagnosing autism.
7. On August ²⁰¹⁸, Student’s parent enrolled Student in ^{***} (^{***}) private therapy center which emphasizes ^{***} interventions focusing on communication, behavior, and social skills.¹⁰
8. ^{***} ISD also conducted a Functional Behavior Assessment (FBA). The FBA is dated February ^{***}, 2018.¹¹
9. The FBA concluded Student had significant behavioral challenges that impede Student’s learning or the learning of others. The most significant behavior issue was physical aggression (e.g., ^{***}).¹²
10. ^{***} administered private FBAs on July ^{***}, 2018, and August ^{***}, 2018, and identified additional problem behaviors: ^{***}.¹³
11. Student’s instructional setting during the 2017-2018 school year in ^{***} ISD was ^{***} for ^{***} hours per week. This instructional setting was considered a mainstream placement.¹⁴
12. In April 2018, Student transferred into the District.¹⁵
13. At the Transfer ARD Committee meeting held in the District on April ^{***}, 2018, Student was placed by Student’s ARD Committee in a ^{***} general education classroom at ^{***}.¹⁶
14. On April ^{***}, 2018, Student’s ARD Committee timely met for Student’s annual ARD meeting.¹⁷
15. The April ^{***}, 2018 ARD Committee determined the September 2017 FIE was still valid. Student was not reevaluated by the District during the 2018-2019 school year. TJ 0.0022 EMC /Span <<

16. On April ***, 2018, Student's ARD Committee recommended a more structured

24. The April ***, 2018 ARD Committee proposed an IEP for the 2018-2019 school year (April 2018 IEP). The IEP contained four measurable goals with benchmarks: (1) Expressive Language; (2) Receptive Language; (3) Functional Routines; and (4) Behavior. The IEP provided 20 accommodations, **minutes per month of direct Speech Therapy, ***minutes of access to assistive technology (AT) per week, *** minutes per month of parent Speech consulting services.

25. The April 2018 IEP did not incorporate-9ad notTf ()Tj 2018/Subject Head /H.nnnnnnnnnr

38. The ARD meeting on April ***, 2019, ended in disagreement. Student's parents requesting placement in *** general education only.⁴⁵
39. On May ***, 2019, the District scheduled a collaboration meeting with the staff to collaborate on Student's goals. Student's parent withdrew consent for ** to share information with the District prior to the meeting.⁴⁶
40. Student's *** teacher drafted Student IEP goals. The teacher attempted to reconcile information provided by *** and Student's father with the District's data and classroom observations. The teacher consulted with Student's father before, during, and after ARD Committee meetings to craft mutually agreeable, objective, and meaningful goals. Several parental requests for changes to IEP goals were honored.⁴⁷
41. The ARD Committee reconvened on May **, 2019, and again on May **, 2019. The District presented new proposed goals for ** at the meeting on May **, 2019, but the District's proposed placement remained the ** again the meeting ended in disagreement.⁴⁸
42. In June 2019, Student's parent prohibited ** from consulting with the District because *** was going to charge the parent for the consultation time.⁴⁹
43. In June 2019, Student continued to struggle.⁵⁰

VII. DISCUSSION

A. FAPE

1. Duty to Provide FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique

⁴⁵ JE-13 at 2.

⁴⁶ RE-34 at 56.

⁴⁷ Tr. at 102, 108-9.

⁴⁸ JE-13 at 2.

⁴⁹ Tr. at 65.

⁵⁰ RE-7 at 1; RE-25 at 10; Tr. at 76.

These four factors need not be accorded any particular weight ~~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. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F.3d 286, 294 (5th Cir. 2009).

a. Denial of FAPE (20182019)

Petitioner asserts the District failed to provide Student a FAPE during the ~~2009~~ school year because:

it failed to consider Student's progress in skill acquisition at home and in private therapies in making educational decisions about Student;

failed to update the goals in Student's IEP;

failed to consider input from Student's parents and therapist in making educational decisions about Student; and

failed to adequately prepare Student.***

Petitioner was unable to meet the burden of proof concerning the alleged denial of a FAPE.

While the IDEA guarantees only a "basic floor of opportunity," the IEP must nevertheless be specifically designed to meet Student's unique needs, supported by services that permit Student to benefit from the instruction. *Rowley*, 458 U.S. at 188-89.

While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a meaningful educational benefit – one that is likely to produce progress not regression or trivial advancement. *Hurst Ind. Sch. Dist. v. VP*, 582 F. 3d 576, 583 (5th Cir. 2009). *Id.* denied, 559 U.S. 1007 (2010). The basic inquiry in this case is whether the IEP implemented by the district was reasonably calculated to provide the requisite educational benefit given the child's unique circumstances. *Rowle*

considered the parties' arguments, the Hearing Officer concludes the District provided Student a FAPE at all times relevant to this case.

b. **Factor 1** Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, the District must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of ~~goals and~~ objectives and how they will be measured. ~~Instead,~~ the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program ~~and~~ ~~services.~~

Student's*** teacher drafted StudentIEP goals. The evidence showed the teacher attempted to reconcile information provided by *and Student's father with the District's data andclassroom observations. The teacher consulted with Student's father before, during, and after ARD Committee meetings to craft mutually agreeable, objective, and meaningful Goals parental requests for changes to IEP goals were honored. StudentIEP goals were timely updated in May 2018.

c. **Factor 2** Least Restrictive Environment

There isa two-part test for determining whether an educational placement is the Least Restrictive Environment (LRE).First, the hearing officer determines whether education in the regular classroom, with the use of supplemental aids and services can be achieved satisfactorily for the student.If it cannot and the school intends to provide special education or to remove the child from regular education, the hearing officer ask second, whether the school has mainstreamed the child to the maximum extent appropriate. At the outset of step one, the hearing officer examineswhether the school district has taken steps to accommodate the special needs child in regular education. If the school district has made no effort to take such accommodating steps, the inquiry ends, for the school district is in violation ofIDEA's express mandate to supplement and modify regular educationif the school district is providing supplementary aids and services and is modifying its regular education program, hearing officers examine whether its efforts are sufficient. Daniel R.R. v. State Bd. of Educ., 874 F.2d 1036, 1048 (5th Cir. 1989).

The accommodation amandate is not limitless. A school district is not required to establish a "class within a class" or to modifythe general education curriculum beyond recognition to accommodate a handicapped student. The child's needs and the impact of those needs on other children must also be considered. If a regular education instructor must devote all of his time to one handicapped child, the instructor will be acting as a special education teacher in a regular education classroom. Moreover, a general education placement is pointless if teachers are forced to modify the regular education curriculum to the extent that the disabled is not required to learn any of the skills normally taught in regular education. Daniel R.R., 874 F.2d at 1048-49.

However, a child with a disability may not be removed from a general education classroom solely because of needed modifications to the general education curriculum. 34 C.F.R. § 300.116(e) If the hearing officer determines that education in the regular classroom cannot be achieved satisfactorily, not b7. O ISIO9j j™À ÀéÄäp \$ Ã– Đ Fá •ÜI9a n •Ó0 L t ÖA n E•ÑC M—9 íL

It is not surprising Student's parent and ~~have~~ observed different levels of progress. First, Student is only in school ~~and~~ and has far fewer opportunities to demonstrate ~~that~~ Student has progressed on a particular skill. Second, the data collection programs used ~~by~~ the District and ~~***~~ are different and serve different purposes. The District uses the ~~***~~ program and ~~***~~ uses the ~~***~~ to track and measure progress. The ~~***~~ program was designed by a BCBA and incorporates Applied Behavior Analysis principles. The ~~***~~ program was designed for use in schools and is more structured. ~~***~~ program is used in a therapeutic/clinical setting, has far less structure, and is naturally ~~not~~ of therapy involving a lot of ~~***~~ therapy. While there are areas of overlap between the programs, the programs serve different purposes and measure skills differently.

It is evident the District did, within the limits of using its own data, consider Student's progress outside of the school setting. Petitioner failed to meet the burden of proof on this issue. The evidence established Student's needs are more developmental. Student requires more structure to make progress on Student's communication and behavior needs. Thus, Student's hybrid placement provides the necessary additional structure needed for academic developmental progress ~~in~~ while providing exposure and access to academics and Student's non-disabled peers in the general education ~~***~~.

Finally, the parental decision for Student to attend school ~~has~~ impeded data collection, assessing the generalization of skills across settings, and reinforcement of those ~~skills~~. Regardless, the evidence established Student's IEP and placement ~~was~~ designed to foster both academic and non-academic progress.

B. Other Designated Issues

1. Evaluation

Student alleges the District failed to conduct appropriate evaluations of Student during the 2018-2019 school year. Student transferred into the District from ~~***~~ ISD in April 2018 with an existing FIE and IEP. Upon Student's enrollment, the District had 30 calendar days to either implement the existing ~~***~~ ISD IEP or create and implement a new IEP. 34 C.F.R. § 300.323(e); 19

DOCKET NO. 307-SE-0519

X. NOTICE TO PARTIES

The Decision of the Hearing Officer in this case is a final and appealable order. Any party aggrieved by the findings and decision 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 § 2001.144(a)(b).