

DOCKET NO.

On February 3, 2021, the parties entered into an agreed motion for continuance and extension of the decision due date. The motion was granted and the hearing was rescheduled a second time and the decision due date was extended.

The parties filed a joint motion for continuance and extension of the decision due date on March 31, 2021. Mediation was scheduled for one of the dates previously scheduled for the hearing. The due process hearing was continued a third time and rescheduled for April 26 and 27. The decision due date was extended to June 8.

The parties participated in a mediation session in lieu of holding a resolution session. The mediation was unsuccessful.

Claims of Petitioner

Student is a ***-year-old child who resides within the geographical boundaries of the District. Student receives special education services from the District under IDEA as a child with an Other Health Impairment (“OHI”), specifically Attention Deficit Hyperactivity Disorder (“ADHD”).

Petitioner did not allege any exception to the one-year statute of limitations. The one-year statute of limitations applies and no claims of violations of the IDEA that occurred prior to November 5, 2019 are considered.

Petitioner complained of failures that occurred in conjunction with a February ***, 2020 admission, review and dismissal (“ARD”) committee meeting, specifically as follows:

1. Respondent failed to correctly identify suspected disabilities and needs, specifically failed to update Student’s OHI eligibility to include ***, failed to identify Student as a child with emotional disturbance based on stress and anxiety, a result of ***, failed to recognize that all of Student’s classroom behaviors are common with ***, and failed to adequately communicate with private doctors;
2. Respondent failed to develop an appropriate Individualized Education Program (“IEP”), specifically failed to appropriately accommodate Student for the specific disorder of ***, failed to consider recommendations of private doctors, insisted on implementing a Behavior Intervention Plan (“BIP”), failed to call an Admission Review and Dismissal (“ARD”) committee meeting to address Student’s difficulties, failed to focus on *** practices and make relevant notations in Student’s February 2020 IEP; and

3. Respondent failed to provide appropriate placement for Student, specifically its continued

11. Following admission into special education, Student's behaviors improved. Student's goals included conflict resolution skills, coping skills, and understanding Student's and others' perspectives. T-pgs. 172-174, 209-212, 326
12. The ARD committee met again on October ***, 2019, when Petitioner was in the *** grade, to conduct Petitioner's annual ARD committee meeting. The ARD committee dismissed Petitioner from the related service of counseling and social skills instruction since Student had mastered Student's counseling and social skills goals. Petitioner's new IEP included behavior goals; accommodations to support organization and behavior; a BIP to address inappropriate gestures and comments to peers and teachers; special education inclusion support in Petitioner's general education *** classes; and indirect AT support. Petitioner's parents participated in the ARD

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Standard of Review

Public school districts must comply with the IDEA procedures for identifying children with disabilities who need special education, and delivering appropriate services as necessary to provide a free and appropriate public education (FAPE). The educational program must be meaningful, and reasonably calculated to produce progress as opposed to

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Prior to Student's receipt of special education services, Student received support through a §504 Accommodation Plan. Due to Student's behavioral difficulties during *** grade, Parent requested and received a transfer to *** where Student attended in *** grades.

Parent testified that *** between Student's *** grade years. Parent testified that after ***, Student experienced anxiety, and mistrust, ***. Parent indicated generally that when Student was in the *** classroom, Student's behaviors were ***, but provided no related instances. Student's ***. *** testified that *** knew building trust was important ***. To facilitate that trust, the *** spent time talking with Student in what *** called "non-contingent" conversation, ie., *** talked without wanting anything from Student and without telling Student about something Student needed to do differently. *** made the conversations short, calling them "incognito," because *** didn't want Student to feel singled out. *** testimony reflected no issues with the relationship between ***self and Student.

Behavioral difficulties, social deficits, inattention, impulsivity, social cue perception were a few of the reasons for the referral for a special education FIE. District conducted its FIE in the fall 2018. District used a variety of assessment tools, reviewed existing data, collected parent and teacher information, three private evaluations, health and physical data, and conducted OT and AT evaluations.² The *** occurred between Student's *** grade years.

Student's *** testified that District addresses all the needs of a student whether they're related to the disability or not. *** said, "We don't write IEPs based off a diagnosis." *** testified that District looks at a child's current need, and develops the plan based on those needs. In spite of not having *** included in the OHI eligibility, District addressed Student's unique needs in the IEP including accommodations and development of a BIP.³ District's Licensed Specialist in School Psychology ("LSSP") stated that "In Frisco ISD disabilities don't drive services, student needs do."

Although *** is not specifically included in Petitioner's issues, the LSSP testified that some of Student's IEP accommodations can support *** as well as ADHD. For example, accommodations such as "providing immediate feedback," "small group administration of tests", and "flexible seating," support both disabilities. Also, "offering choices" helps a child feel more in control and support fgof te fgoont,

IEPs in October 2019 and 2020, each of which included a BIP. Parent disagreed with the February 2020 ARD decisions, but failed to provide evidence that the BIP was unnecessary.

On ***, 2020, the first incident occurred and Student was found to have ***. On ***, Student ***. On ***, Student ***. After learning of the incident, the Assistant Principal initiated an investigation. Notice of an ARD committee meeting was sent to Parent February ***.

The ARD committee, including Parent, reviewed Student's current behavior and the BIP, previous evaluations, progress on the IEP goals, and least restrictive environment. Instructional services were determined to be in the general education setting. Student's inclusion support was increased, the social skills instruction was reinstated, and indirect psychological services were added to Petitioner's IEP.⁶ The committee discussed Student's struggles with hyperactivity, impulsivity, and inattention across settings. The committee noted that some of Student's behavior difficulties may appear to be related to ***. District committee members determined that Student's *** incidents were not a manifestation of Student's ADHD. Parent disagreed. After learning of the ***, the ARD committee reviewed Student's IEP and determined that it could be implemented at the school to which Student was to be transferred in response to the *** determination. Petitioner failed to carry the burden of proving Issue no. 2.

Issue No. 3: Respondent failed to provide appropriate placement for Student, specifically, its continued attempt to keep Student out of the mainstream classroom without appropriate accommodations; failure to communicate with Parent about the location of the bulk of Student's instruction; and failure to timely consider other services for Student that addressed Student's additional OHI impairment.

Petitioner failed to carry the burden of proving Issue No. 3. The IDEA requires that special education children are educated "to the maximum extent appropriate... with children who are nondisabled...[and] removal of children with disabilities from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and service cannot be achieved satisfactorily."⁷ It is clear that Student was consistently in the general education classroom with accommodations in place. There was no evidence that District attempted to keep Student out of the general education setting. When the ARD committee was to meet following the *** incidents, the Assistant Principal informed Parent that there was no change in placement sought. Even the *** did not keep Student out of the general education setting. Student's IEP, including all accommodations, was to be implemented at ***.

⁶ 34 C. F. R. §300.324(b)

⁷ 3 C. F. R. 300.114(a)(2)
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After the ***

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).