

DOCKET NO. 084-SE-0121

STUDENT
b/n/f PARENT and PARENT

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BEFORE A SPECIAL EDUCATION

v.

HEARING OFFICER FOR

ALLEN INDEPENDENT
SCHOOL DISTRICT

THE STATE OF TEXAS

DECISION OF HEARING OFFICER

Introduction

time to receive the hearing transcript and file closing arguments. Respondent had no objection. The decision was extended to July 9, 2021.

Issues for Hearing

Student is ***-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 Autism (“AU”) and Speech Impairment (“SI”).

Petitioner alleges the following:

1. District failed to timely evaluate (i)-4.676 (ua)D 4 BDC 1.63 4 .2 -1.717 TDC 0 Tr 11.0s3 (m)]Ty Stud -1.

4. Provide for participation of all IEE providers;
5. Provide Student with a mentor;
6. Establish a sensory diet for Student;
7. Build a sensory lab into Student's schedule;
8. Find that Parent was not made an equal partner;
9. Find a denial of FAPE; and
10. Any and all other remedies to which Petitioner may be entitled.

Joint Stipulated Facts

The parties stipulated to the following facts:

1. In August 2017, Petitioner enrolled in Allen ISD as *** and has been enrolled in Allen ISD for the 2017-2018, 2018-2019, 2019-2020, and 2020-2021 school years.
2. For the 2020-2021 school year, Petitioner was ***-year-old ***grade student.
3. On January ***, 2020, during a Student Intervention Team ("SIT") meeting, the District
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goals. Rather than discontinue mastered goals as proposed by the District, Parent requested, and the ARD committee agreed to increase the mastery criteria of the already mastered IEP goals. Parent requested a Behavior Intervention Plan (“BIP”). Based on Petitioner’s FBA and information from District staff, the District rejected this request and proposed conducting another FBA. Parent declined and stated intent to obtain an independent FBA. The ARD committee did not reach consensus on whether Petitioner demonstrates a need for a BIP and OT as a related service.

Findings of Fact

Based on the parties’ documentary evidence and testimony of witnesses before this hearing officer and in addition to the above-stipulated facts, the following are the findings of fact in the instant action. Citations to the Petitioner’s Exhibits, Joint Exhibits, and Respondent’s Exhibits are designated with a notation of “P,” “J,” or “R,” respectively, followed by exhibit and page numbers as appropriate. Citations to the transcript are designated with a notation of “T” followed by the page numbers.

1. Student’s father and mother have joint custody of Student. They share equally all rights and duties regarding Student, including educational rights. They talk with each other about decisions for all of their children. T-pg. 36
2. In *** grade, Student’s teacher reported Student’s struggles with completion of work, difficulty focusing, and processing information. Student required numerous redirections during the school day. P-6; T-pgs. 37-39
3. When there is concern regarding a Student, a Concerned Person Report is completed. Then, a Student Intervention Team (“SIT”) meeting is held to determine the next logical step for the student. In the interim, the general education teacher continues to determine what can best help the child in the classroom. T-pg. 271
4. District convened a Student Intervention Team (“SIT”) meeting in February 2019. District recommended an evaluation. Parents declined and wanted to wait until they had more detailed information from the doctors. The group agreed to meet after Parent got more detailed medication information from the doctors. Following the meeting, District sent Parent prior written notice and procedural safeguards. P-6; T-142-144
5. Student was privately evaluated in December 2018 and January 2019. Student’s neuropsychological profile reflected the presence of AU and Attention-Deficit/Hyperactivity Disorder-Combined Type (“ADHD”). Student’s level of intellectual functioning fell within the very superior range. Academic achievement was at expected levels although somewhat lower than expected. The report was not provided at the February 2019 SIT meeting. P-1; T-142-144

6. At a second SIT meeting held January ***, 2020, Student was noted to require redirection, would sometimes become overwhelmed and would shut down, and *** and sometimes with friends. Student's biggest weakness was writing which was Student's least favorite subject. Student had no behavior issues. Student's *** told the team that she would provide reports from Student's doctors. The committee recommended a special education evaluation and Parent agreed. In the interim, the team put in place accommodations such as ***, frequent reminders to stay on task, one on one directions, checking for understanding before and during independent work, and opportunities for Student to move around the room, among other accommodations. J-1
7. District's FIIE included a private Speech-Language Pathology Initial Evaluation conducted by ***, dated October ***, 2019. District's Speech Language Pathologist ("SLP") agreed that the private evaluation contained sufficient data and covered the same areas that would be included in a school evaluation. P-2; T- pgs. 357-358
8. Student's IEP dated May ***, 2020 included speech for pragmatics needs in the amount of ***. It also included *** in the amount of ***. The committee included sensory breaks for Student. The schedule of services in the IEP reflected services and supports that would apply once campus-based learning resumed. During the time of at-home learning, District offered virtual learning opportunities to meet Student's needs with support from Special Education staff. The manner in which Speech Therapy would be addressed during at home learning was explained to Parents. Parents agreed with eligibility, goals and schedule of services. Parents did not waive the five-day waiting period for implementation of the IEP. Thus, the IEP began May ***, 2020. J-5; T-pgs. 53-54, 79
9. Student's *** goals were directed toward learning to independently initiate a conversation with peers related to school or extra curricular activities, learning to take turns by attending to peer's conversation, and waiting for Student's turn to respond. District staff collected progress data for the goals. P-10, 13, 17, 25; J-5, pgs. 5-6
10. Accommodations for Student included access to sensory tools, preferential seating, extra time to complete assignments, individual visual schedule, movement breaks, visual, verbal or tactile reminders to stay on task, among others. J-5, pg. 6
11. In March 2020, Texas mandated school closures because of the COVID-19 pandemic. District remained closed through the end of the school year. Due to the closure, District's OT assessment was delayed. The May 2020 ARD committee agreed that it would be completed no later than 30 school days after on-campus learning resumed. J-5, pg.19; T-pgs. 237-239
12. District's OT was completed September ***, 2020. Student exhibited an overall generalized weakness and low tone, but was able to move around the school building and participate in

academic activities without difficulty. Due to the overall generalized weakness, the OT evaluator indicated a likelihood of fatigue when Student was required to do long writing assignments. She recommended that Student be allowed to type certain assignments. The evaluator determined that Student demonstrated all physical motor abilities that enable function and participation in the school day. J-8

13. *** conducted a private OT evaluation of Student. The October 2019 assessment concluded that Student had deficits in attention, sensory processing regulation, activities of daily living, bilateral coordination, and strength/endurance. The evaluation indicated that Student would benefit from OT services and recommended skilled OT intervention once a week and a skilled home exercise program. P-3; T- pg. 101

14. At the May ***, 2020 ARD meeting, Parents orally requested an independent FBA. The request was noted in the ARD deliberations. J-5, pg. 19; T-138

15. On May ()T Tw -3lMC /i.t -1.717d4ndep15. inmeOn M deec de one***, 1.6 (e3n /)10.9 (l)6.3de eek a***, 1.6 (D.2

received services in a virtual classroom setting. The TVSP indicated that District's SLP reviewed the plan with Parent August *** and Parent agreed. P-4; J-6, pg. 25; J-7; T-pgs. 89-90,

20. A TVSP is put in place when students are doing at-home learning. T- pg. 140-141

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appropriate.¹⁰ The party attacking the plan bears the burden of proof, by a preponderance of the evidence, of demonstrating why it does not comply with the IDEA.¹¹

When a Parent challenges the appropriateness of an IEP, two questions must be asked: whether the state has complied with the procedural requirements of the IDEA, and then, whether the IEP developed through such procedures was “reasonably calculated to enable the child to receive educational benefits.”¹² An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement.¹³

Implementation of IEP

Petitioner also argues that Respondent unilaterally changed Student's speech services. Student's initial IEP states, "The schedule of services in this IEP document reflects services and supports that will apply once campus-based learning resumes. During the time of at-home learning, the school district is offering virtual "at home" learning opportunities to meet [Student's] needs with support from Special Education staff." Parent agreed with the schedule of services.

Speech services began virtually prior to the beginning of campus-based learning in the fall 2020. After Student's mother emailed the SLP regarding technological difficulties, the SLP suggested changing direct services to consult services and Student's mother agreed. Thus, for a single week before in-person learning resumed, Student received speech services on a consult basis.

The discussion surrounding the change from direct speech to consult was between the SLP and Student's mother. ***, Petitioner failed to present evidence of the date when ***, ***. There was no convincing testimony to support that Student's father did not know about the TVSP after Student's mother agreed to the change.

Witness testimony likened a TVSP to an IEP amendment. Changes to an IEP may be made when a parent of a child with a disability and the school district agree not to hold an ARD meeting for the purposes of making those changes, and instead develop a written document to amend or modify the child's current IEP rather than by redrafting the entire IEP. Upon request, a parent must be provided with

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program individualized on the basis of the child's assessm (s)8.5 z 35966 (d')6.9 (s)-2.3 (a)-1[()-373sd pe3 (z)-7 (m)6f71

Respondent's OT evaluation was completed within the timeframe prescribed by the May ARD committee.

Petitioner's private OT evaluation reflected that Student's fine and gross motor skills were in the average range. Despite that finding, the private evaluator believed Student would benefit from skilled OT to address both fine motor and gross motor concerns. The clinical-based report noted other deficits including strength/endurance, sensory processing/regulation, and attention. For all the deficits that the evaluation reported, the evaluator indicated that Student would benefit from OT.

Respondent's education-based OT evaluation found that Student exhibited good general fine motor and in-hand skills. Student was able to do all the fine motor activities that were asked of Student during the evaluation. Student's writing was legible and correctly sized. Student had good writing skills that are supported by documentary evidence. Student demonstrated all motor abilities that enable function and participation in the school day. Noting that Student exhibited an overall generalized weakness and low tone, the evaluator indicated that strengthening exercises could be used to address weakness. However, the evaluator determined that Student was able to move around the school building and participate in academic activities without difficulty.

The evaluation recommended sensory breaks to address Student's difficulty with maintaining attention and alertness for certain non-preferred activities. The OT testified that a sensory diet is scheduled in a child's day and Student was successful with the use sensory breaks when needed; thus, Student does not need a sensory diet.

Student tends to have a low energy level that tends to be dependent on Student's level of interest in the assignment. Student is accommodated with a keyboard and has been successful when writing lengthy assignments. To assist Student with Student's reluctance to participate in class activities, the evaluation report recommended allowing Student to choose the activity. Despite the private OT evaluation's position that Student would benefit from OT, the evidence shows that Student is functional in the school setting; thus, Student does not require OT as a related service to assist Student in the educational environment.

While Respondent did not complete the OT evaluation within 45 school days, there is no finding that the postponement impeded the child's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the Parent's child, or caused a deprivation of educational benefit. Parent was present and participated in the ARD meeting when the committee planned and agreed to postpone the OT evaluation until it could be conducted in person.

Speech Therapy

Petitioner argues that since Respondent incorporated the private speech therapy report, it should have included that recommended amount of speech therapy at two times per week, rather than the one time per week that the ARD committee agreed to provide. Petitioner fu34a9 (c)-1.7 (om)6.e53oa7 Td[(hav (m)6.e(om)6.6

children who are nondisabled.²² Except for speech services and *** instruction, Student is educated in the general education setting. Petitioner failed to argue or prove that Student's program is not administered in the least restrictive environment.

Are Services provided in a coordinated and collaborative manner by the key stakeholders?

Parent participated in all ARD committee meetings with the exception of the reconvene ARD meeting of January ***, 2021 despite attempts by District staff to contact them by phone at the onset of the meeting. At the December 2020 ARD meeting, Student had mastered Student's Speech goals. The SLP proposed new speech goals. In response to Parent request, Student's prior speech goals were continued with an increased mastery level of 95% accuracy. The SLP sent home resources to assist in the generalization of speech skills from school to home. Parent requested and received Student's use of *** as a classroom accommodation. Petitioner's advocate discussed her opinion that Student needed a BIP. After consideration, District offered to conduct another FBA.

Student's mother and District staff communicated numerous times with questions regarding the use of the Zoom app, Student absences, Student's daily demeanor, among other matters. District staff promptly responded to her emails. Throughout Student's time receiving special education services, either one or both Parents have been

conversation. Student's classroom teacher testified that Student is.6 opd04 72 717 Td ()Tj 6 oy2 Tw 9.46Tj 6 oy2 Tw
