

DOCKET NO. 157-SE-0120

B. Preliminary Motions

In its response t

- x in a coordinated, collaborative manner;
 - x commensurate with Student's unique and individualized needs;
 - x reasonably calculated to provide educational services in the least restrictive environment;
 - x reasonably calculated to provide educational services in the least restrictive manner; and
 - x reasonably calculated to provide educational services in the most inclusive manner.
2. Whether the District denied Student a FAPE by failing to implement an IEP that provided:
- x academic benefit;
 - x non-academic benefit; and
 - x a safe, non-hostile educational environment.
3. Whether the District denied Student a FAPE by failing to ensure staff were well-trained, competent, and properly supervised.

NON-IDEA CLAIMS

4. Whether the District violated Student's rights under Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act, and the United States Constitution.

B. Respondent's Legal Position and Additional Issues

Respondent generally denied the allegations stated in the amended complaint. Respondent also contended that provided Student with a FAPE during the relevant time period, can continue to do so, and Petitioner is not entitled to any of the requested relief.

The District raised the following additional issues:

1. JURISDICTIONAL: Whether the Hearing Officer has jurisdiction to resolve claims arising under any laws another than the IDEA, and whether such claims should be dismissed.
2. JURISDICTIONAL: Whether the Hearing Officer has jurisdiction to grant certain

3. STATUTE OF LIMITATIONS: Whether any of Student's IDEA claims that accrued prior to January 21, 2019, should be dismissed as outside the one-year statute of limitations rule as applied in Texas.
 4. COUNTERCLAIM: Whether Petitioner is entitled to an Independent Educational
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13. An order directing the District to convene a Community Resource Coordination Group;
14. Parent meeting;
15. Family respite services for two years;
16. Extended School Year services for three years;
17. An order directing the District to train campus Student Resource Officers;
18. Reimbursement of out-of-pocket parental expenses incurred due to loss of educational opportunities stemming from the allegations; and
19. Any other appropriate relief.

B. Respondent's Requested Relief

1. Dismiss all claims arising under statutes other than the IDEA.
2. A determination by the Hearing Officer that Petitioner's request for an IEE is premature because a current evaluation has not yet been conducted by the District or in the alternative, a determination that the District's evaluation/IEP is appropriate and Petitioner is therefore not entitled to an IEE at public expense.

VI. FINDINGS OF FACT

Background Information

1. Student
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school in the District. Student is doing "very, very well" in Student's new school district and Student's parents are happy with the services Student is receiving.

- Academic Readiness*** (STAAR***) tests in the *** subject areas tested at the end of the 2018-19 school year.¹⁴
8. The District held an annual Admission, Review, and Dismissal (ARD) Committee meeting on October ***, 2018, while Student was attending. Student's mother was present for the meeting. Student's schedule of services called Student to receive most of Student's classes in the ***, a ** classroom with *** children.¹⁵
 9. Student's teachers found Student to be a "joy to have in class." It was noted at that time that, when Student is worried Student is not getting attention from teachers, Student can become aggressive toward peers. In order to control that behavior, the District utilized a number of accommodations, including: clearly defined limits, frequent reminders of rules, positive reinforcement, frequent eye contact and proximity control, frequent breaks, and several other behavior management techniques. These accommodations were identical to those recommended in the 2017 IEP and were effective in addressing Student's behavior.¹⁶
 10. The ARD Committee set a number of IEP goals for Student. The ARD Committee set three *** goals for Student, including ***. It also set three speech goals for Student. It also set goals for Student in ***.¹⁷
 11. Student began the 2019-20 school year, Student's *** grade year. To prepare ***, Student visited the new campus and met with the teacher in whose class Student would spend the majority of Student's time. That teacher also communicated with Student's *** teacher to understand Student's needs for preparation for working with Student.¹⁸ The *** teacher gave information on some behavioral strategies they had been using, including a chart with different rewards Student could earn. Teacher at *** also spoke with Student's mother about ways to manage Student's behavior. Student's mother suggested *** during the day as a calming mechanism. Student's new teacher implemented the strategies recommended by both Student's *** teacher and Student's mother.¹⁹
 12. At the time of Student's annual ARD Committee meeting seven weeks into the 20-20 school year at ***, Student's parents had no concerns about Student's education and were in close communication with District staff. The District was responsive to any concerns

¹⁴ JE 7, at 5.

¹⁵ Tr. 133.

¹⁶ JE 5, at 14.

¹⁷ JE 6, at 612.

¹⁸ Tr. 160, 226.

¹⁹ Tr. 232-33.

²⁰ JE 7, at 37.

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18. Students in the ***room do not receive grades. Instead, their progress is measured solely by the progress they make toward their IEP goals.³¹ In the time between the October 2018 ARD Committee meeting and the October 2019 ARD Committee meeting, Student mastered two out of three speech language goals and made progress on the other goal. Student also made progress on Student's occupational therapy goals and Student's other IEP goals.³² Student mastered each of Student's *** goals and Student's *** goal. Student made progress on Student's *** goal, going from ***% accuracy in December 2018 to ***% accuracy in September 2019.³³
19. In consultation with Student's mother, the District chose to discontinue Student's *** goals as they were too advanced for Student.³⁴ The ARD Committee developed new goals in all areas during the October 2019 ARD Committee meeting. Student made progress on those goals from October until December.³⁵
20. Student participated in an activity called *** where Student *** and had an opportunity to interact with peers without disabilities. Student also had lunch in the cafeteria with peers without disabilities almost every day. Student had friends in Student's *** class and in other classes.³⁶
21. Student's schedule of services called for Student to attend all classes in the *** with the exception of *** in the general education environment every day.³⁷ However, after the October ***, 2019 ARD Committee meeting, Student's parents requested an additional ARD Committee meeting, because they had concerns about Student's lack of exposure to peers without disabilities.³⁸
22. The ARD Committee reconvened at Student's parents' request on October 20, 2019, in order to discuss Student's exposure to peers without disabilities. In response to the concern, the ARD Committee added a general education for Student to attend each day to Student's schedule of services. A paraprofessional would accompany Student to support Student during the general education.³⁹ The ARD Committee also added a new IEP goal to address Student's participation in the general education.³⁹ Student successfully participated in the general education without needing to be taken out of the class to return to the *** room.³⁹

³¹ Tr. 405.

³² JE 7.

³³ JE 7, at 612.

³⁴ Id.

³⁵ JE 17.

³⁶ Tr. 252.

³⁷ JE 7, at 34; Tr. 252.

³⁸ JE 8, at 1.

³⁹ JE 8, Tr. 346-47.

23. Student had a behavioral incident on November ***, 2019, but District staff were able to calm Student down as they always had in the past. Following that, Student's mother requested an opportunity to meet with staff from the District who were working with Student. District staff met with Student's mother the following week and decided, in consultation with Student's mother, to move Student to a room with a different teacher with whom Student had a good rapport. The new room had the same setup as the previous one, with one teacher and ***. ⁴⁰
24. Staff members who worked with Student were trained in Crisis Prevention Institute (CPI) training, which included training on conducting proper restraints. New teachers in the District attend a weeklong training before school begins. There are also ongoing trainings offered by the District and paraprofessionals who work with students receive several training classes as well. ⁴¹

***, 2019 Incident

25. On ***, 2019, Student was involved in a significant incident that resulted in Student's withdrawal from the District. Student was in Student's *** classroom with a teacher and ***. Student's teacher asked Student to do Student's work, but Student refused and then ***. As the teacher attempted to calm Student down and redirect Student using the behavioral strategies from Student's IEP, Student ***. ⁴²
26. Staff called the School Resource Officer (SRO) *The SRO is not a District employee. Staff had asked the SRO to *** on prior occasions and, prior to ***, 2019, it was always effective. Prior to this incident, staff had always successfully calmed Student down and redirected Student quickly when Student ***. ⁴³
27. On ***, 2019, however, Student ***. The SRO, with help from a paraprofessional, ***. ⁴⁴
28. When they reached ***, an assistant principal instructed the SRO and paraprofessional to ***. The assistant principal followed them to ensure Student ***. During that entire time, the paraprofessional and SRO continued to ***. ⁴⁵

⁴⁰ JE 28, JE 29, Tr. 111.

⁴¹ Tr. 362-63.

⁴² P1, at 22.

⁴³ P2, at 23.

⁴⁴ P3, at 20.

⁴⁵ JE 35.

⁴⁶ Tr. 183-84.

⁴⁷ JE 34; JE 39; Tr. 379-80.

29. The District's assistant superintendent conducted a prompt investigation of the incident concluding that the SRO and paraprofessional improperly restrained student ***. The assistant superintendent concluded the assistant principal, who was trained in proper procedures for responding to an emergency, for re. 15bl </ii (g) (5) 22.71 B.C. 70.00
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District staff members remained in close contact with Student's mother by email and text message at all times. Petitioner did not provide examples of services the District refused to provide Student that Student's parents requested. The District, therefore, provided education in a coordinated and collaborative manner.

4. Academic and Non-Academic Benefit

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a RAPE. Ex rel. R.P. v. Alamo Heights Indep. Sch. Dist., 703 F.3d 801, 812-13 (5th Cir. 2012). In this case, Student received both academic and non-academic benefit. Student made progress on each of Student's academic goals and passed Student's state tests. (016)71(16)51(2)0.1033Twd17(16)2036 Tw [465)31(C)3d(1)6((n))

IX. ORDERS

1. Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are DENIED.
2. Petitioner's claims arising under any law other than the Individuals with Disabilities Education Act are DISMISSED as outside the jurisdiction of the hearing officer.
3. Petitioner's request for attorneys' fees and litigation costs are DISMISSED as outside the jurisdiction of the hearing officer.

All other relief not specifically stated herein is DENIED.