

SOAH DOCKET NO. 701-21-3251.IDEA
TEA DOCKET NO. 243-SE-0821

STUDENT, B/N/F PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
FRIENDSWOOD INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Student, ***, by next friend Parent (Student or, collectively, Petitioner) brings this action against the Friendswood Independent School District (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations.

The main issue in this case is whether the District denied Student a free, appropriate public education (FAPE) during the relevant period. The Hearing Officer concludes the District provided







5. Student has difficulty with Student's behavior in school. Student struggles with reading social situations, peers, and changes in routine/schedule. Student has ***, limited coping skills and strategies to handle difficult social and academic challenges. This will often lead Student to ***, demand excessive attention, and refuse to work. Student's behaviors are often triggered by less-preferred activities such as ***.⁵
 6. Student has been receiving support from the *** (***) program since the *** grade. The *** Program is for students who struggle with social/emotional behaviors. They are in the general education setting but receive *** behavioral support throughout the day when needed from *** staff. Student received direct *** instruction, redirection, behavioral monitoring, and crisis intervention through the *** program. If Student is not able to stay in the general education setting without disrupting the learning of ***self or others, Student is allowed to go to the *** classroom for a reset through coping and *** strategies in the ***. The *** is located within the *** classroom where Student can engage in *** strategies in order to reset before returning to the general education setting.⁶
 7. On December ***, 2019, a revision ARD meeting was convened to review Student's behavioral and academic progress. Schedule of services were reviewed, the ARD Committee increased Student's *** time for reading and writing from 15 minutes per day to 30 minutes per day. Student's teacher reported seeing a major improvement in Student's aggressive behaviors. Student's mother reported a little increase in Student's ***.⁷
 8. Following the December ***, 2019 ARD Committee meeting, the intensity and duration of Student behaviors greatly increased to the point that Student needed *** reori meetStdn's mhCID 10
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Pursuant to FERPA – 20 U.S.C § 1232g;
34 CFR Part a0RT2 Tc 0 cEMC /Artifact #BBo71

physical aggression ***. The physical aggression included: ***. Student would be sent to the *** room to reset, which would often take over an hour in September but was eventually reduced to fifteen minutes on average towards the end of the school year before Student returned to the general education class.¹⁵

16. An FIE, including an FBA, was due for completion on March ***, 2020. Due to interruptions from the Covid-19 global pandemic, the FIE was not completed until February ***, 2021.¹⁶
17. The District's FIE of Student featured oral language testing, occupational therapy (OT) testing, *** processing measurement, a motivation assessment scale, and social, emotional, and behavioral information gathered from Student's parents, teachers, and observations of Student in various settings over several days by a District Licensed Specialist in School Psychology (LSSP) as part of the evaluation process.¹⁷
18. As part of the FIE, the District conducted the Comprehensive Assessment of Spoken Language, Second Edition, which assesses Student's ability to judge the appropriateness



for cognitive ability but scored in the very low range in auditory processing and in the low average range for short-term memory.²⁵

26. On the Kaufman Test of Educational Achievement, Third Edition (KTEA-III), which measures a broad range of academic skills, Student received scores in the average range in basic reading skills, reading fluency, and reading comprehension. These results indicate Student has the ability to read sentences and paragraphs and answer questions about what was read using a whole word approach. However, Student

services. Additionally, an autism supplement was included as part of Student's IEP that included strategies to assist in implementation of the IEP.³⁴

35. The ARD Committee proposed that Student receive instruction in a smaller,

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procedures, schedules, and other positive behavior supports; and regular contact with parents to keep them involved in Student's education. The ARD meeting ended without a mutual agreement on Student's placement, however, the ARD members agreed to reconvene to get further input from doctors.⁴⁵

46. The ARD Committee reconvened on August ***, 2021, the District proposed adding the following supports based upon parental concern and input, as well as feedback provided by Student's parent from the private school tours: psychological services bi-weekly for fifteen minutes for support; BCBA consultation with staff for thirty minutes per month; consultation with Student's parents two times per month for twenty minutes for feedback, progress updates, etc.; adding instructional goals for *** based on instruction in the special education setting; and consideration of a zoom session with Student's private psychologist

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that includes special education and related services designed to meet their individual needs. 20 U.S.C. § 1412(a)(1)(A); 34 CFR § 300.101(b).

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual 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 modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a). 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. *Houston Ind. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009). The basic inquiry in this case is whether the IEP implemented by the school district “was reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017).

The District’s obligation when developing Student’s IEP and BIP is to consider Student’s strengths, Student’s parent’s concerns for enhancing Student’s education, results of the most recent evaluation data, and Student’s academic, developmental, and functional needs. 34 C.F.R. § 300.320(a)(1)(i). For Student, whose behavior impedes Student’s learning and that of others, the District must also consider positive behavioral interventions and supports and other behavioral strategies when developing Student’s IEP and BIP. 34 C.F.R. § 300.324(a)(2)(i); *R.P. v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 813 (5th Cir.2012).

The District

Student's IEP included two writing goals, two math goals, and three behavioral goals that are part of Student's BIP. The IEP incorporated suggestions of the FIE and provided the recommended accommodations and services to meet Student's individual needs, including visual and calculation aids, shortened or chunked assignments, oral instruction, no penalty for spelling errors, cool down time, frequent breaks, and following the BIP. The April 2021 ARD Committee removed reading fluency as a learning disability because Student was reading on-grade level and exceeded fluency expectations.

To address Student's increased physical aggression during the 2019-2020 school year, the District conducted an FBA in December 2020 to determine the nature, frequency, and impact of Student's behavior. The ARD Committee utilized the FBA to develop a BIP targeting self-regulation, work refusal, and arguing with a teacher or authority. The BIP contained goals for improving targeted behaviors, and positive strategies for staff to utilize, including reward systems, *** training, and a consequence/response plan. The ARD Committee recognized that Student's behaviors were interfering with Student's academic progress, specifically in writing and math, so a more restrictive placement for Student was recommended for the 2021-2022 school year. A transition plan to the new campus was included in the IEP so Student could start working directly with the *** teacher prior to school starting.

The ARD Committee appropriately considered the information provided by Student's outside providers, as well as additional information obtained after the various tours of private schools by Student's parent and the District's Special Education Director. On August ***, 2021, the ARD Committee proposed adding psychological services bi-weekly for fifteen minutes for support; BCBA consultation with staff for thirty minutes per month; consultation with Student's



- the educational benefit a student is receiving while placed in the general education setting; and
- the impact the presence of the student with a disability has on the general education setting and the education of the other students in the setting.

Daniel R.R., 874 F. 2d at 1048.

Student is unable to be educated solely in general education classes, because of Student's behavioral challenges, need for fewer transitions, and need for a smaller student to teacher ratio where more frequent reinforcement can take place. Student is frequently off-task, noncompliant, physically aggressive, and prone to leave Student's assigned area without permission. Student requires a setting with structured activities, clear expectations, specific & direct verbal feedback, and being provided with choices when possible.

The *** is an in-District placement that is on a campus with peers without disabilities, in which Student is given the opportunity to earn time away from the *** setting with consistent behaviors. The opportunity to earn time away from the *** setting will provide access to the general education setting. Additionally, the setting has a smaller student to teacher ratio, fewer transitions, a greater flexibility in instruction, and a more proactive approach to behaviors than in the general education setting. The District's program addressed Student's identified need for high levels of structure, individualized attention in a smaller setting, and with staff trained to work with

Dist., 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student’s parents have the right to dictate an outcome, because parents do not possess “veto power” over a school district’s decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student’s parents or refusal to listen to them, a school district must be deemed to have met the IDEA’s requirements regarding collaborating with a student’s parents. *Id.*

The evidence showed Student’s services were provided in a coordinated, collaborative manner by key stakeholders. Student’s parent attended all ARD





VIII. CONCLUSIONS OF LAW

1. Student was provided a

X. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party