

DOCKET NO 80-SE0719

STUDENT





F. Due Process Hearing

## B. Petitioner's Requested Relief

The Petitioner's primary requested relief is that of reimbursement from the District for the parents' prior unilateral placement at \*\*\*\*\*, and then subsequent unilateral residential placement at \*\*\*\*\*. It appears that Petitioner also requests the placement of Student at \*\*\*\*\* in \*\*\*, Texas at District or public expense, along with the reimbursement of prior and future expenses, such as travel expenses associated with such placements.

## C. Respondent's Issues and Legal Position

Respondent District generally denies allegations, and contends that all services, including not limited to the Student's IEs and BIEs, and related services were, and are appropriate and reasonably calculated to provide Student a FAPE. Respondent District also contendsursemep-1 (s)1 ( ths)1 (. )JTJ E ents.d R

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and Student's OT and services were eventually discontinued<sup>32</sup> due to behaviors, specifically on March<sup>33</sup>, 2019.

21. At the ARD reconvene, held May<sup>33</sup>, 2019, it was determined by the ARD committee (with the parent in disagreement) that the District would provide ESY services for the Student. The parent again requested placement<sup>33</sup> at the District's expense. Another ARD was held on June<sup>33</sup>, 2019, and the Student's father, Mr. <sup>33</sup>, participated by telephone. It appears that this meeting was focused more on the placement and the IEP for the 2020 school year. The placement was the <sup>33</sup> (<sup>33</sup>) classroom, which was determined by the committee to be the most appropriate for the Student at that time. Parent disagreed with the placement.<sup>34</sup>
22. Parent did not enroll Student in the District's ESY program that had been set out, and Student<sup>33</sup> during the summer of 2019<sup>35</sup>. Student also continued to attend <sup>33</sup>. As behaviors continued to escalate, the parent communicated with the physician that the Student was not going to return<sup>35</sup>, and requested other options.<sup>36</sup>
23. The District then began to conduct a Full Individual Evaluation (FIE) (or sometimes referred to as a REED<sup>37</sup> re-evaluation) in May 2019. As part of the process, staff went to <sup>33</sup> in order to observe and complete an evaluation of the Student. During the observation, the Student had a 'meltdown'<sup>38</sup>. On another occasion, the District's second attempt to observe the Student, difficulties arose again<sup>38</sup>. Despite several requests for more time and to observe the student in the classroom, the District staff were not permitted to do<sup>40</sup>.
24. The IEP (including the BIP) for the Student for the 2020 school year was a placement within the District, and specifically the (<sup>33</sup> <sup>33</sup>)

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Student to school the following Monday. The District planned for the transition. However, Student did not attend, and was<sup>42</sup> for severe aggressive behaviors.

26. In September and October, 2019, Student was<sup>43</sup> as a result of behavior on three occasions, \*\*\*\*\* .<sup>43</sup>

27. During Student's time at \*\*\*Dr. \*\*\* was consulted, and assisted the parents in locating a residential placement. At parents request, on October<sup>44</sup>, 2019, Dr. \*\*\* sent a letter to the parents' insurance stating that due to Student's behaviors, the Student needed full time or 40 hours a week of Applied Behavioral Analysis (ABA) therapy or alternatively a residential placement.<sup>44</sup> Dr. \*\*\* also testified that the activity in the home is a basis for the recommendation of residential placement.<sup>45</sup>

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- the last few months Student rarely attended.<sup>50</sup> Evidence also shows that the Student attended the speech therapy sessions about one third of the time. It was noted that often Student refused to attend.<sup>51</sup>
33. During Student's time at \*\*\*, the Student's parents visited periodically, and the Covid pandemic made visiting more difficult. Telephone visits with the Student occurred often, and when they were able, the parents<sup>52</sup> and had successful visits with Student.<sup>53</sup> Student's father was able to visit more often.
34. Testimony noted that the Student made friends while at \*\*\*.<sup>54</sup> Records, however, also indicate that Student also had altercations with other students. Some were initiated by student while at other times, Student was attacked.<sup>55</sup> On a few occasions, \*\*\* was necessary as a result, and was<sup>56</sup>
35. The District was never provided a BIP for the Student from even though it was requested. Mr. \*\*\*, the \*\*\* BCBA, testified that Student did not have one in place until April 2020, more than six months after the Student was placed at \*\*\*. He also noted that it takes time to design a BIP, weeks, and even months as it is important to gather data, and moreover it is always subject to modification and revision as more information and data become available.<sup>57</sup>
36. Mr. \*\*\* also testified that he had no set schedule with the Student, but would see Student on the unit or he was called in the event of an emergency. He noted that he generally saw the student several times a week.<sup>58</sup>
37. Testimony established that the Student, while at \*\*, received counseling services, and had weekly sessions, including the family. Student was also provided private individual counseling for ninety minutes a week.
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43. In addition to observing the Student at \*\*\*, and attempts to gather information from the facility, the Dis (bs310.)s (bs310.)hn to1 (tma)J 0d1 ( D Tc 5.239 0Tw 8.65 0 1 (b3[

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49. At the November meeting, the Functional Behavior Assessment (FBA) was also discussed. It was based on the short observation at \*\*\*, along with staff and parental input. Due to the limited information, nd Fir1 4 [c(m)-1 (Td [(4 (n)-3.1 (d )]TJ03  
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experienced teacher, would be the teacher. It was noted that the BIP was to be an interim plan, due to the limited data available to the District, and the initial staffing increase.<sup>79</sup>

54. Testimony noted the appropriateness of the BIP, as based upon the available information that the District was able to obtain. It was also noted that teachers, staff, including even cafeteria workers and bus drivers are all responsible for the implementation of the BIP.

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upon the District information and the District's own evaluation, to the extent it was complete. The IEP also addresses the student's regression.<sup>87</sup>

59. Currently the IEPs have a BIP in place, although it is noted, as many testified to the plan is a living document and is always subject to modification. a sesub .adotudent's rnth

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## B. Duty to Provide FAPE

The primary purpose of the IDEA is to ensure that all children with disabilities have available a free, appropriate public education (FAPE) by 9.0047(1)EMCDES (10) (5) 100



F.3d 245 (5 Cir. 1997) In examining whether the IEPs in question provide a program that provides the Student FAPE components should be reviewed.

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### 3. Behavioral Progress

The record is clear that this Student has behavioral challenges, and the BIP is a vital component in the IEP. The BIP was based upon the data available to the District at the time of the ARD meetings. As noted in the testimony, it takes time to develop a BIP. In fact, at Student's second placement, it took over six months. Testimony also established that a BIP is a living document, with changes and modifications to be completed as the teachers and staff become more familiar with the Student. ~~On~~ ~~the~~ ~~evidence~~ ~~demonstrated~~ ~~the~~ ~~appropriateness~~ ~~of~~ ~~the~~ ~~BIP~~ ~~at~~ ~~the~~ ~~current~~ ~~time~~

In summary, the District crafted the IEP based on available information and knowledge, and as such, the IEPs were reasonably calculated to provide the Student an educational benefit, and make no educational progress, in light of the particular circumstances and the Student's unique needs. Andrew F.

#### Factor II Was the Program Delivered in the Least Restrictive Environment

Certainly, the law is clear that a student's IEP must be administered in the least restrictive environment (LRE). This means that the District is required to educate Student with others who are nondisabled to the maximum extent that is appropriate. 34 RC.F §300.114 (a)(2). This has been emphasized by the courts, noting that students be integrated into the regular classroom. Andrew Fat 1000. The LRE requirement is a key component of an appropriate placement under the IDEA. The evidence showed that the District is committed to ensuring that the Student has access to interaction with nondisabled peers. The placement for the Student was ~~the~~ ~~classroom~~, a self-contained classroom, and while restrictive in nature, the IEP also provided for access to typically developing peers. Specifically, the Student would attend ~~twice~~ ~~in~~ the general education curriculum, as well as a program where the peers come into the Student's classroom.

#### Factor III Were the Services Developed and Provided in a Coordinated and Collaborative Manner by Key Stakeholders.

This factor requires that the educational program be developed by the key stakeholders, and done so in a coordinated and collaborative fashion. ~~The~~ ~~District~~ ~~made~~ ~~significant~~ ~~effort~~ ~~to~~ ~~involve~~ ~~the~~ ~~parents~~ ~~and~~ ~~the~~ ~~ARD~~ ~~members~~, ~~and~~ ~~to~~ ~~obtain~~ ~~feedback~~. t(he)-2 ( Di)-

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Douglas County Sch. Dist. v. ~~Di~~ ~~BE~~1, 137 S.Ct. 988, 998 (2017). of Hendrick Hudson Int. Sch. Dist. v. Rowley, 458 U.S. 176 (1982).

3. The District did not violate parental procedural rights under the IDEA as to participation. 34 C.F.R. §300.513 (2)

4. Student failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. Schaffer v. Weast, 126 S.Ct. 528 (2005); Tatro v. State of Texas, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984).

5. Residential placement is not appropriate for Student at this time. Richardson Indep. Sch. Dist. v. Michael, 280 F.3d 286,299 (5th Cir. 2009).

### ORDERS

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED and all claims of Petitioner are ~~DIS~~ ~~MISS~~ED WITH PREJUDICE.

Signed this the 12th day of April 2021.

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Kimberlee Kovach

Special Education Hearing Officer for  
the State of Texas



X. NOTICE TO THE PARTIES

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