

CONFIDENTIAL
Pursuant to FERPA – 20 U.S.C. § 1232g;
34 CFR Part 99

SOAH DOCKET NO. 701-22-0308.IDEA
TEA DOCKET NO. 031-SE-0921

STUDENT, B/N/F PARENT and

III. DUE PROCESS HEARING

The due process hearing was conducted via the Zoom videoconferencing application on December 1, 2021. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Petitioner’s legal counsel Michael O’Dell. In addition, ***, Student’s mother, attended the due process hearing.

Respondent continued to be represented by its legal counsel Amy Tucker. In addition, ***, the Assistant Director of Special Education for the District, attended the hearing as the party representative. Both parties filed written closing briefs in a timely manner. Th



VI. FINDINGS OF FACT

Student's Educational History

1. Student is ***-year-old child with ***. Student is eligible for special education services under the categories of *** disability and speech impairment.²
2. Student attended the District from the 2013-14 school year through October 2020.³
3. Student began attending the *** on November 17, 2020, and continues to do so. Student was placed at this private school by Parents, who are paying tuition.⁴
4. The *** serves children with moderate to significant disabilities. It clusters students by age and level of assistance required and does not have grade levels. The school has a ratio of one staff member per two students.⁵

The District's 2019 Evaluation of Student

5. On May ***, 2019, the District convened Student's Admission, Review, and Dismissal (ARD) committee to conduct a Review of Existing Evaluation Data (REED). Parents requested a Full Individual Evaluation (FIE), including a Functional Behavior Assessment (FBA) and an Assistive Technology (AT) evaluation in the areas of communication, writing, and reading. The ARD committee determined an FIE was needed to evaluate Student in the areas of psychological, intellectual, adaptive behavior, academic achievement, AT, FBA, speech, and occupational therapy (OT).⁶
6. On September ***, 2019, the District completed the FIE for Student. The evaluators concluded Student continued to meet special education eligibility criteria for *** disability and a speech impairment.⁷
7. The evaluators determined Student has deficits in language, articulation, semantics, syntax, and morphology. Student is able to demonstrate comprehension of more receptive language skills than Student is able to express. Student has errors in connected speech that

² Joint Exhibit (JE) 5; JE 6.

³ JE 5 at 11; Transcript (TR) at 52.

⁴ Petitioner's Exhibit (PE) 1; PE 13; TR at 52-54.

⁵ TR at 132-36.

⁶ JE 6.

⁷ JE 5 at 36-37.



25. The ARD committee developed a behavior intervention plan (BIP) for Student to address noncompliance and physical aggression and teach replacement behaviors.²⁶

Independent Education Evaluations of Student

26. On February ***, 2020, Dr. *** completed an independent FBA. She indicated the



32. The District ***

with Parents and their advocate prior to the ARD committee meetings to discuss the IEP and parental concerns.³⁹

VII. DISCUSSION

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁴⁰ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE

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Richardson Indep. Sch. Dist. v. Leah Z., 580 F. 3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

Petitioner takes issue with the District’s development of Student’s IEP, contending the IEP
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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

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detailed above, this program was based upon Student's identified needs and addressed Student's deficits.

The District developed a program for Student that was reasonably calculated to provide Student educational benefit based upon Student's unique needs. *Andrew F.*, 137 S. Ct. 988. Student's IEP and program were developed using District evaluations, Student's

