

A hearing on the merits took place on May 31 and June 1, 2023 via Zoom. A court reporter recorded and transcribed the hearing. The parties filed post-hearing briefs on

B. Respondent's issues

In response to Student's request for due process hearing, the District generally denies the claims. The District also seeks dismissal of any claims outside the applicable two-year statute of limitations.

The District's own request for due process hearing seeks a decision that its evaluation of Student in March 2023 was an appropriate evaluation under the IDEA.

IV. Findings of Fact¹

Background

1. Student is a *** year-old child with *** . (JX4-3; PX 2-1; Tr. at 264).
2. Student is eligible for special education services under the categories of ***, speech impairment, and other health impairments . (JX3-3; JX4-3).
3. Student, with some exceptions discussed below, has attended different campuses within the Respondent District since the *** grade. (RX3-8).

2021-2022 school year, Student evaluations, and ARD committee meeting

4. Student began *** in the 2021-2022 school year at ***. (JX2-5).
5. On September*** , 2021, the District convened Student's annual Admission, Review, and Dismissal (ARD) committee to review Student's most recent evaluations and to establish an IEP for the current school year. (JX2).

A. Student's 2019 Full Individual Evaluation

6. The District previously had completed a Full Individual Evaluation (FIE) of Student on April *** , 2019. (RX3). That evaluation concluded that Student meets the criteria for the educational disability conditions of ***, speech impairment, and other health impairment. (RX3-21-22).

¹ References to the record evidence in this decision will use the following format: Reference to the

7. Specifically, the evaluators found Student had speech deficits in the areas of receptive language, expressive language, and articulation. (RX3-6). The evaluators also found Student had cognitive deficits that included multiple normative weaknesses in adaptive behavior, as well as scores in the lower extreme range of various cognitive assessments.(Id. at 22) Noteworthy, Student's results from recent assessments, when compared to similar assessments three years earlier, showed no significant regression in skills. (Id. at 13).The evaluators also found that Student, in addition to having cognitive deficits, had Attention Deficit Hyperactivity Disorder (ADHD). (Id. at 22).

8. The FIE also noted that Student has a Behavior Intervention Plan (BIP) in place to address three primary target behaviors: noncompliance (refusing directives, including transitioning), physical aggression (***), and *** . (RX3-9).

9. In addition, the FIE concluded that Student continued to need speech therapy to address significant receptive language, expressive language, and articulation delays. (RX3-27-29).

B. Student's 2021-2022 IEP

10. The ARD committee determined in its September *** , 2021 meeting that Student continued to be eligible for special education services based on the conditions of ***, speech impairment, and other health impairment. (JX2-4).

11. Academically, after reviewing Student's present level of academic and functional performance (PLAAFP), the ARD committee found Student's disabilities significantly affected Student's involvement and progress in the f h m y

The *** incident

22. On the first day of the 2022-2023 school year, the District was not ready JTJ 7.455 0 Td

26. Within a couple days after the ***

31.

1. Student should continue to receive counseling from a practitioner well versed in *** and *** ;
2. Student should not return to the school *** ;
3. Student will benefit in a school environment that can meet Student's needs and provide appropriate services for Student's *** , SI, OHI (AD/HD, ***) and ED.

(PX2 at 34).

44. Dr. *** , the District's Executive Director of Special Programs, disagreed with Dr. *** 's conclusions and her methodology. Dr. *** first took issue with Dr. *** 's primary reliance on the *** assessment because that assessment is not intended for use with children and would never be used in a school setting. (Tr. at 587). Dr. *** also explained that *** uses a four-point scale and that Dr. *** 's report never referenced any scaled score or measure.(Id. at 565-566)Dr. *** was persuasive in her critique of Dr. *** 's report. In addition, there was concern raised during cross-examination of Dr. *** about the absence of documentation, or protocols, in her evaluation report. (Id. at 274286, 305-306).

45. Noteworthy was Dr. *** 's testimony that her evaluation of Student was not intended to be an independent educational evaluation (IEE) for IDEA eligibility or programmatic purposes. (Id. at 239, 311). As such, her conclusion and diagnosis of *** is not determinative in whether the District complied with the IDEA. Tc -010.0 Tw 2.535

46. Dr. *** further testified that the District could meet the recommendations suggested by Dr. *** in her report. Depo 274 .

V. Discussion and Analysis

A. Burden of proof

There is no distinction between the burden of proof in an administrative hearing such as this case or a district court in 1 (ic)Tj 2-2 (hMp()-2799.9 ()JTJ re f EMC BT /H3 </>BDC -0.00t4r

For the 2022-2023 school year, the analysis of Student's academic and nonacademic benefits is more difficult because by October 2022, Father removed Student from the District and enrolled Student instead in the private school. Thus, there is little information to evaluate what academic and nonacademic benefits Student received in the 2022-2023 school year at the District during the few weeks Student was there. But Student's past successful performance in the previous year provides some predictive basis for the current school year, had Student remained in the District.

As noted above, the ARD committee met and agreed in May 2022 on Student's IEP for the following school year. The committee developed new individualized goals for Student, provided necessary and appropriate services and accommodations, and the IEP was approved by all stakeholders – including Student's father. ~~2021 For Cause (w) 2.1 in the 2020-2021 record, Father withdrew Student from the District in the last month of the 2021 -2022 school year and then re-enrolled Student in the District on the first day of the 2022-2023 school year with the last agreed-upon IEP in place. The~~ (D)-TJ -0.0

As part of Student's IEP, the District also had in place a well-developed BIP to address special and unique behavioral concerns affecting Student. The BIP was frequently reviewed and updated throughout the relevant period in this case. The District's most recent update to Student's BIP took place in October 2022, after Student's father withdrew Student from the District.

A fair review of the evidence shows the District stood ready, willing, and able to implement an IEP that was reasonably likely provide Student both academic and nonacademic benefits during the 2022-2023 school year. And based on Student's track record from previous years, it was reasonably likely Student would have made progress in that year as well. It is also worth noting that Student's performance at the private school demonstrated some regression in Student's core skills, suggesting by comparison that the District's IEP with related services and supports previously were working as intended.

Collectively, all of the four Michael F. factors for evaluating whether a school has provided a FAPE weigh in favor of the District. This finding, along with the presumption in favor of a school's IEP, support the conclusion that the Respondent District provided an IDEA-compliant FAPE to Student, including the BIP component of Student's IEP. Student not surprisingly disagrees, challenging some aspects of the IEP or BIP – e.g., the District's not specifically addressing Student's possible *** or failing to target particular behaviors in the BIP. But IEPs are never perfect or metaphysically exhaustive; instead, they must be reasonably calculated to give the student a meaningful educational benefit. Rowley, supra. In this case, they were.

C. Transportation services

Another issue Student raises in Student's complaint relates to Student's special education transportation services. The question presented is:

Whether the District failed to provide appropriate special education transportation services to Student.

Under the IDEA, transportation for students with disabilities can be a "related service." 34 C.F.R. § 300.34(a) All of Student's IEPs in the record reflect that Student's ARD committee agreed to provide Student with special education *** transportation to and from school and included in Student's IEPs a supplement for these services.

The specific issue in this case is whether the District failed to provide appropriate transportation services in the 2022-2023 school year. The District provided Student with special education *** but, through no fault of its own, did not have Student's *** in place at the start of the school year. That's because Father did not re-enroll Student back into the District until the first day of the school year. So on the first day of school it was impossible for the District to have a special education *** ready to pick up Student at Student's front door. The District's transportation department obviously had no reasonable way of knowing Student needed a special education *** in place to transport Student when the school year started.

Despite the District's lack of advance notice, District witness *** testified that immediately upon learning that Student re-enrolled for the 2022-2023 school year, he contacted the transportation department to get Student's special education *** service restarted. And that same day – the first day of school – *** also called Father to advise him that the general *** information he previously had received was not for Student's ***.

Normally it can take to 7-10 days to create a new ***. The District was able to have special education *** transportation in place for Student in place by August ***, 2022 – just four days after school year began and two days after the *** incident. On these facts, it is not reasonable to conclude that the District failed to provide appropriate transportation services to Student. The District acted with all due speed to provide a special education *** for Student, given the late notice of Student's re-enrollment, and did so in less time than normal for establishing new *** service. The District did not deny special education transportation services to Student in violation of the IDEA.

D. Private placement

Next, Student seeks both private placement of Student, as well as reimbursement of past and future expenses for Student's private placement, raising the following issues:

Whether the District should be ordered to provide private placement to Student if it failed to provide FAPE to Student.

Whether the District should be ordered to reimburse Student's parents for expenses incurred in the private placement of Student.

The law on

The starting point for addressing these issues is whether Student has***. Student's basis for claiming *** is the evaluation of Student's private psychologist, Dr. ***. Dr. *** based her diagnosis of Student's having *** primarily on the results of a *** assessment she performed. District witness Dr. *** disagreed with both Dr. ***

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Dr. *** also testified that the District could meet all the recommendations that Dr. *** suggested in her report for Student. The District even offered counseling for Student during its later ARD meetings, but Father declined.

Counseling is a related service under IDEA. 20 U.S.C. § 1401(26)(A); 34 C.F.R. § 300.34(a). A child must receive counseling where that service is necessary for the child with a disability to receive an educational benefit. E.g., *Cerra v. Pawling Cent. Sch. Dist.* 427 F.3d 186 (2nd Cir. 2005).

Based on the record, neither Dr. ***'s evaluation nor the District's March 2023 evaluation warrants requiring the District to reimburse Student for *** counseling. Dr. ***'s diagnosis of *** was

3. In a due process hearing under IDEA, the burden of proof rests upon the party challenging a proposed IEP and placement or seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Teague v. Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127 (5th Cir. 1993).

4. Student did not meet Student's burden of proof by a preponderance of the evidence to show the District violated the IDEA or denied Student a FAPE. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

5. Student did not meet Student's burden of proof by a preponderance of the evidence to show the District violated the IDEA by failing to provide Student necessary transportation services. 34 C.F.R. § 300.34(a).

6. Student did not meet Student's burden of proof by a preponderance of the evidence to show Student is entitled to reimbursement for private placement b3 (b)-8e855001 Tw-34.7

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VIII. Notice to the Parties