

SOAH DOCKET NO. 701-23-05450.IDEA
TEA DOCKET NO. 092 -SE-1122

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

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friend *** (Parent and , collectively, Petitioner), brought this action against the North East Independent School District (Respondent or the 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 Respondent denied Student a free, appropriate public education (FAPE) by failing to provide extended school year services (ESY) and by failing to develop an appropriate Individualized Education Program (IEP).

The Hearing Officer concludes Respondent denied Student FAPE by failing to individualize Student's IEP to address Student's need for ESY and assistive technology (AT).

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Pursuant to FERPA-20

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34 C.F.R. Part 99

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***. Student requires occupational therapy (OT) services to address Student's sensory seeking behaviors and self-regulation.⁹

2020-21 SCHOOL YEAR

10. During the first nine weeks of the 2020-21 school year, Student engaged in *** of school days. For the last nine weeks of the school year, Student engaged in *** of school days and went -0 0 12 447.54 571.92 Tm (92 Tm (92 Tm (95 Tm 12 447.54 .013 Tw 0.385 0 Td [(S)3 (t(y)-1 (s)] 0

- 15. Prior to spring break in March of 2022, Student independently**. After returning to school following spring break, Student***.¹⁵

- 16. On April ***, 2022, the District conducted Student’s annual Admission, Review, and Dismissal (ARD) committee meeting. The District reconvened the ARD committee on May***, 2022, and May***, 2022, to attempt to resolve a disagreement over ~~10~~ 10.98 -0 0 10.98 300.66

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records for Student for August of the 2022-23 school year are incomplete and the data for the remainder of the school year cannot be directly compared to prior years data.²⁵

26. During summer ESY of 2022, Student had no ***. When Student returned to school for the 2022-23 school year, Student had *** in *** school days. Student did not recoup Student's independence in *** during the first nine weeks of the school year.²⁶
27. During the first two weeks of the 2022-23 school year, The District's limited data indicated Student *** at least *** times at school.²⁷
28. The District completed a reevaluation and a functional behavior assessment (FBA) for Student on October ***, 2022. The District conducted the FBA to analyze Student's behavior of ***, defined as ***. Student's teacher indicated Student is most likely to engage in *** during a transition time, such as transitioning from ***.²⁸
29. As part of the FBA, the District determined Student *** from the educational environment while waiting during transitions to engage in the sensory activity of ***. Student enjoys ***

32. The District convened Student's ARD committee on October^{***}, 2022, and reconvened the ARD committee on November^{***}, 2022, to review the FIE and FBA. The committee adopted the BIP that was part of the October^{***}, 2022 FBA. The committee recommended a^{***} for Student to address^{***}.³²
33. On October^{***}, 2022, Student^{***} at school,^{***}. Student was ultimately ^{***}.³³
34. The District is recommending ESY services for Student for the summer of 2023. The District does not recommend ESY services for Student for other school breaks, such as Thanksgiving, winter, and spring break. The District indicated additional ESY services were not necessary for Student, because data did not support significant regression over breaks that could not be recouped in a reasonable time, and that, specifically, ^{***} was decreasing.³⁴
35. The last day of school in the District for the 2022-23 school year is May^{***}, 2023 and the first day of school for the 2023-24 school year is August^{***}, 2023.³⁵
36. Student rides special transportation to and from school. During fall of 2022, Student^{***} on several occasions Student now ^{***}. Student has not ^{***} since Student began^{***}.³⁶
37. The District behavior specialist, Student's teacher, Student's private behavior specialist, and Parent met to exchange data and strategies for addressing Student's behavior. Student's teacher emailed IEP progress data to Parent at the end of each week.³⁷
38. During the ARD Committee meetings, Parent raised the issue of ^{***}. ^{***} used with individuals with ^{***} behaviors. The^{***} is used for^{***}. The manufacturer of ^{***} provides the ability to disable the ^{***} features whi

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IEP proposed by the school district “was reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 137 S.Ct.988, 999 (2017).

B. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S.49, 62 (2005); *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir.2009). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Schaffer*, 546 U.S. at 49; *Endrew F.* 137 S. Ct. at 999.

C. FAPE STANDARD

A hearing officer applies a four factor test to determine whether a school district’s program offers a

the fact-intensive inquiry required in evaluating the school district's educational program. 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 argues the District failed to individualized Student's ESY program, failed to provide necessary AT, and failed to address safe ***, resulting in a deficient IEP. The District was required to consider Student's strengths, Parent's concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental,

significantly jeopardized if the child is not provided an educational program during the summer months. *Alamo Heights Indep. Sch. Dist. v. State Bd. Of Educ.*, 790 F.2d 1153, 1158 (5th Cir. 1986).

Under state regulations, ESY services must be provided when a student has “exhibited, or reasonably may be expected to exhibit, severe or substantial regression” in one or more critical areas addressed in Student’s IEP “that cannot be recouped within a reasonable period of time.” 19 Tex. Admin. Code § 89.1065(2). “Severe or substantial regression means that the student will be unable to maintain one or more acquired critical skills in the absence of be

that continued, and was not recouped over the first nine weeks of the school year, a significant period of time.

The evidence also showed Student experienced substantial regression in *** following extended breaks. During the 2020-21 school year, Student made substantial progress with ***, eventually going *** consecutive days without *** and reducing the frequency of Study

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§ 300.114(a)(2)(i)(ii). To determine whether a school district is educating a student with a disability in the LRE, consideration must be given to:

- x Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services; and
- x If not, whether the school district mainstreamed the student to the maximum extent appropriate.

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VIII. CONCLUSION ON THE FOUR FACTORS

In this case, The District failed to individualize Student's program in accordance with Student's need for ESY during school breaks and Student's need for access to Student's *** year round. As a result, Student did not receive non-academic benefit from Student's program and regressed in ***. When Student's program is considered as a whole, the District did not provide Student a FAPE. *Klein Indep. Sch. Dist. v. Per Hovem*, 690 F.3d 390, 391 (5th Cir. 2012). A preponderance of the evidence showed that Student was denied a FAPE and Student's IEP was not reasonably calculated to address Student's needs in light of Student's unique circumstances. *Rowley*, 458 U.S. at 188, 203-04; *Endrew F.*, 137 S. Ct. at 999.

IX. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District failed to provide Student a FAPE during the relevant time period and Student's IEP was not reasonably calculated to address Student's needs in light of Student's unique circumstances. *Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S.

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2. As ESY services during the summer of 2023, the District is ORDERED to provide Student four hours of services, four days per week, through District personnel or may contract to deliver the services through outside personnel with the capability to implement Student's IEP; and

3. The District is ORDERED to provide Student year-round access to Student's VOD.

Based upon the foregoing findings, the District is ORDERED to implement the following: