

**SOAH DOCKET NO. 701-23-09431.IDEA
TEA DOCKE NO. 140-SE-0123B**

**STUDENT, B/N/F PARENT,
Petitioner**

v.

**TEXAS LEADERSHIP PUBLIC
SCHOOLS,
Respondent**

**HEARING OFFICER FOR

THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (Student), by next friend *** (Parent or, collectively, Petitioner), brings this action against the Texas Leadership Public Schools (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 issues in this case are whether Respondent provided Student a Free Appropriate Public Education (FAPE) in Student's least restrictive environment (LRE) and whether Respondent conducted an appropriate reevaluation of Student. The Hearing Officer concludes that Respondent provided Student a FAPE at all relevant times in Student's LRE, conducted an appropriate evaluation in compliance with the IDEA, and does not owe Student any compensation.

II. PROCEDURAL HISTORY

A. Legal Representation

Petitioner was represented throughout this litigation by their authorized non-attorney representative, Carolyn Morris with Parent-to-Parent Connection Advocacy. Respondent was

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represented throughout this litigation by its legal counsel, Christopher Schulz with Schulman, Lopez, Hoffer & Adelstein, LLP.

III. DUE PROCESS HEARING

The due process hearing was conducted on March 10, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner continued to be represented by Carolyn
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2. Whether the District provided Student a FAPE in Student's LRE with appropriate related services and behavior intervention services.

3. Whether the District implemented

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also qualified

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distracted. The function of Student’s behavior is escaping tasks. Nothing in the District’s evaluation indicated Student could not attend school.⁹

10. As part of the evaluation, evaluators interviewed Parent. Parent indicated Student does not exhibit depressive behaviors or anxiety more often than other children Student’s age but noted Student can “at times” be withdrawn or sad. She also did not think Student was more aggressive or hyperactive than other children Student’s age but reported Student acts without thinking at times and Student is in constant motion. Parent did not mention anything about Student’s inability to attend school.¹⁰

11. mention

remove or expel Student. Instead, the District conducted a Functional Behavioral Assessment (FBA) and developed a Behavior Intervention Plan (BIP).¹⁴

15. Based on the FBA, the BIP addressed four behavioral areas of concern: getting out of Student's seat without permission, becoming easily distracted and not staying on task, fidgeting in Student's seat and distracting others, and verbal/physical aggression. The FBA and BIP did not address Student's inability to attend school because that was not a behavior Student had demonstrated. The District also provided Student a one-on-one paraprofessional to help manage Student's behavior.¹⁵
16. On September ***, 2022, Student ***. Student was ***. The *** paperwork indicated that Student could attend school in the District with no restrictions. However, after September ***, 2022, Parent kept Student from attending school.¹⁶
17. On September ***, 2022, the District received a five-line letter from a *** who claimed to be Student's ***. The letter stated that, as of September ***, 2022, Student could no longer attend school. The letter recommended homebound services. Student had attended school from September ***, 2022, in direct contradiction to the ***'s letter. The ***'s letter also contradicted the *** instructions the *** had sent to the District, which stated Student could attend school without restrictions. Further, Student told District personnel Student enjoyed school, which seemingly contradicted the ***'s assertion that Student was incapable of attending school.^{3c 0's}

19. In contradiction to the ***'s letter, both of Petitioner's experts in this case testified during the due process hearing that there was no need for Student to miss school other than during the brief period of Student's ***. On the contrary, they testified that Student needed to be in school. The decision to keep Student from school had a negative impact on Student. Student needed to meet the demands of daily life, but instead was sheltered from those demands by Parent without a disability-related reason. Student needs the social skills that come from attending school regularly. According to Petitioner's own experts, Student was denied that opportunity without a good cause by being kept from school after September ***, 2022. Student's disability does not prohibit Student from attending school.¹⁹

20. In addition to recommending Parent enroll Student in school immediately, Petitioner's experts made several recommendations for ensuring Student's success. The experts recommended small class sizes, a behavior intervention plan, *** training, and additional time for taking tests. The District's IEP provided each of those to Student. Student's *** did not testify or provide any reports or evidence of Student's need for homebound services during this due process hearing.²⁰

21. After the District completed the FIE on September ***, 2022, the District attempted to work with Parent to schedule an ARD Committee meeting to discuss serving Student. It scheduled and sent notice for an ARD Committee meeting for September ***, D

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, 458 U.S. 176, 188-89, 200-01, 203-04 (1982). The basic inquiry 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.”

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.²⁴ , 546 U.S. 49, 62 (2005). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE to offer a program that is reasonably calculated to provide (20-351) the 49,

118 F. 3d 245, 253 (5th Cir. 1997).²⁵

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district’s educational program.

580 F. 3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, a 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 extent to which the services are provided.

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300.324(a)(1). 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);

703 F.3d 801, 813 (5th Cir. 2012).

The District developed an appropriate IEP with positive behavioral supports based on assessment and performance of Student. When Student transferred, the District implemented services comparable to those Student had received in Student’s prior school district as it was obligated to do. 34 C.F.R. § 300.323(e). At the same time, it obtained consent and completed a reevaluation within a month of enrollment. It also completed an FBA and developed a BIP after Student exhibited difficulty

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

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- a school district's efforts to provide the student with a

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demands. , 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. , 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith

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individualized and designed to confer academic benefit on Student. Whether it would have effectively done so cannot be determined due to Parent’s refusal to send Student to school.

5. FAPE Conclusion

When a parent pulls a student from school based on one letter from a *** and refuses to provide any additional information when requested, a school district cannot be held liable for failure to provide that student a FAPE. _____, 913 F.3d 523, 532 (5th Cir. 2019). As in _____, Parent in the instant case refused to provide the friend

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school. Therefore, Petitioner did not meet their burden to show the District failed to provide Student a FAPE.

D. Evaluation

Petitioner contests the FIE the District completed on September ***, 2022, the same day on which Student last attended school in the District. An FIE must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, to determine whether the child qualifies for

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IX. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

All other relief not specifically stated herein is **DENIED**.

SIGNED April 20, 2023.

Ian Spechler
Special Education Hearing Officer
For the State of Texas

X. NOTICE TO THE PARTIES

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