

SOAH DOCKET NO. 701-23-10263.IDEA
TEA DOCKET NO. 149-SE-0123

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

DECISION OF THE HEARING OFFICER

*** (Student), by next friend Parent (collectively, Petitioner), brings this action against the Joshua Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq.*, and its implementing state and federal regulations. The issues presented in this case are whether the District denied Student a free, appropriate public education (FAPE) by failing to develop an appropriate educational program and failing to ensure Student’s safety needs were met at school. The Hearing Officer concludes the District procedurally and substantively complied with the IDEA and that Student’s educational program was reasonably calculated to provide educational benefit in light of Student’s circumstances.

I. DUE PROCESS HEARING

The due process hearing was conducted on June 8-9, 2023, via the Zoom videoconferencing platform. The hearing was recorded and transcribed by a certified court reporter.

Petitioner was represented throughout this litigation by Jordan McKnight of the Law Office of Jordan McKnight. Student’s parents (Parents) attended, as did Petitioner’s advocate, Debra Liva. Respondent was represented throughout this litigation by Cynthia Buechler of Buechler and

SOAH DOCKET NO. 701-23-10263.IDEA
TEA DOCKET NO. 149-SE-0123

PAGE 2

Associates. ***, the District's Director of Special Education, attended the hearing as the party representative.

The parties offered joint and

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- 7. Teachers rated Student's *** as below average, and Student exhibited refusal when assigned a *** task. Student had difficulty ***. Student had a handwriting average of ** while same age peers wrote ***. Parent reported a severe problem with ***, including *** very slowly, messy ***, and resistance to ***. The general education teacher reported that organizing thoughts for *** was a weakness and Student needed extra time to complete anything involving ***. The teacher listed it as an area of academic challenge.
- 8. Per teacher ratings, Student's responses to interactions initiated by peers fell in the average range. Programmatic recommendations included following the Autism Supplement; reminders to stay on task; breaking down assignments into smaller chunks; preferential seating; positive reinforcement of appropriate sound production ***; brief reminders of social cues as needed in structured activities, small groups, and the classroom and instructional accommodations including adapted seating, headphones, and typing lengthy assignments⁸.
- 9. The January 2022 ** ISD IEP Student's Behavior Plan Student CE (5) CAA (1) 210 T (3) r (n) (s) 10 (c) 3 (u) -6 (nc) 3 (tio) -7 (n) -20 (ing)

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34 C.F.R. Part 99

SOAH DOCKET NO. 701 -23-10263.IDEA
TEA DOCKET NO. 149 -SE-0123

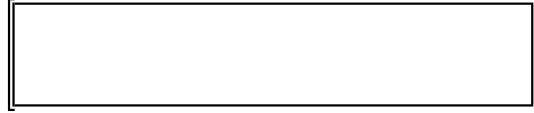
PAGE 10

27. The September 2022 IEP included a *** goal; two adaptive behavior goals targeting** interrupting instruction C5 624.72 T4.52 -38.16 ga2-297d.72 T9.52 sn Qn00 1
-

32. When Student returned to class*** teacher sent Student to the front office. In the hallway, a behavioral aide approached Student and took Student to the counselor, who interviewed Student about what had occurred. Student explained what happened, and the counselor determined that***. Student was not upset, scared, or agitated, and Student returned to class. The counselor reported the incident to the assistant principal and Student was immediately called to the office and interviewed a second time. When asked if Student***. ³²
33. ***. The assistant principal viewed the video footage, which showed Student***. ³³
34. *** Student returned to class and completed the school day. The assistant principal contacted Student's Parent to report the incident. That evening, a District School Resource Officer (SRO) was contacted by the ***, who advised the SRO that Student's Parent reported that ***. ³⁴
35. The SRO contacted the assistant principal who advised him what had occurred that day. The SRO then contacted Student's Parent, who was upset and alleged that***. Student's Parent characterized the incident as ***. After being informed of the conversation with Student's Parent, the SRO's supervisor contacted Student's Parent and advised Parent that ***. ³⁵

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34 C.F.R. Part 99

SOAH DOCKET NO. 701 -



SOAH DOCKET NO. 701 -23-10263.IDEA
TEA DOCKET NO. 149 -SE-0123

PAGE 17

enable Student to make progress appropriate in light of Student's circumstances. Endrew F. ex rel. Joseph R.

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SOAH DOCKET NO. 701 -23-10263.IDEA
TEA DOCKET NO. 149 -SE-0123

PAGE 18

Overall, the weight of the credible evidence established that the September 2022 ARD committee's decision to remove the targeted *** goal did not deny Student a FAPE and the September 2022 IEP

SOAH DOCKET NO. 701 -23-10263.IDEA
TEA DOCKET NO. 149 -SE-0123

PAGE 19

*** showed over a year's worth of academic growth, and on the 2021-22 school year fall *** test, Student demonstrated numerous strengths in addition to areas where improvement was needed. Student achieved an ***% on Student's previous year's *** IEP goals. In the 2022-23 school year, Student's grade of ***% and score of ***% on the first six weeks assessment reflected missing assignments, rather than lack of capacity to do the work. With support provided by the inclusion teacher and Tw 2.38 0 Td (on)Tj -0.0.1 (d)-018285.453118 Tw 1.24 416 n w 1.24 416 enyrt y.24 416 9 (o)-2.1 (r)

SOAH DOCKET NO. 701 -23-10263.IDEA
TEA DOCKET NO. 149 -SE-0123

PAGE 20
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f. Behavior

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b

Appropriate behavioral supports and interventions are important components of FAPE. A need for special education and related services is not limited to academics but also includes behavioral progress and learning appropriate social skills. Venus Indep. Sch. Distv. Daniel S.

b7r s3.4(JTJ /TT3F

the negative. Though Student exhibited behaviors that impacted Student's learning, these behaviors did not significantly interfere with Student's ability to benefit from instruction, as evidenced by Student's academic potential and performance. The weight of the credible evidence supports the conclusion that the September 2022 IEP was appropriate to meet Student's needs in the area of behavior.

g. Autism Supplement

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SOAH DOCKET NO. 701 -23-10263.IDEA
TEA DOCKET NO. 149 -SE-0123

PAGE 22

isolated incident where Student **. Apart from Student reporting that Student ***, Petitioner presented no credible evidence to support the theory that the incident ***—a characterization notably made by Student's Parent, not Student. While the District's explanation that ***, the record does not support Petitioner's contention that Student's safety needs at school were not met to the extent Student was denied a FAPE.

A Hearing Officer cannot predicate a finding of a denial of FAPE on the safety of the student unless the risk to the safety of the student resulted in a denial of FAPE. *J.N. v. Pittsburgh City Sch. Dist.*, 536 F.Supp.2d 564, 577 (W.D.Pa.2008). The weight of the credible evidence demonstrated that Student's September 2022 IEP was appropriate as to Student's safety needs and Student received a FAPE from the District despite the potential need to revisit Student's level of supervision during transitions.

Overall, the evidence showed that Student's proposed program was individualized on the basis of assessment and performance.

2. Least Restrictive Environment

The IDEA requires a student with a disability to be educated with non-disabled peers to the maximum extent appropriate. Special classes, separate schooling, and other removal from the regular education environment may occur only if the nature or severity of the disability is such that education

SOAH DOCKET NO. 701 -23-10263.IDEA
TEA DOCKET NO. 149 -SE-0123

PAGE 27

5. Petitioner did not meet Petitioner's burden of proving that the District denied Student a FAPE.
Schaffer, 546 U.S. at 62.

VI. ORDERS

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requested relief is DENIED.

SIGNED AUGUST 4, 2023

Kathryn Lewis
s