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SOAH Docket No. 701-24-02419.IDEA

TEA Docket No. 036-~~SO~~1533 470th0 Tv0 Td0 Tc 0 Tv24 744

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to allow Student to make appropriate progress in light of Student's unique

circumstances. (c)6-0.8 (lo)-6 (c)6-0i (s)7 st lo64.7 s 14.maksce56.3 (s)7 s-0. (ce76.3 0)-4

II. ISSUES

A. PETITIONER'S ISSUES

Petitioner identified the relevant timeframe as the 2021-2022 school year and raised the following IDEA issues for decision in this case:

1. Whether the District failed to provide Student with a FAPE; and
2. Whether the District failed to implement Student's IEP and behavior intervention plan (BIP) appropriately.

B. PETITIONER'S REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to place Student at ***;
2. Order the District to reimburse Parents for privately obtained educational services, including ***; and
3. Any other relief the Hearing Officer deems appropriate.

C. RESPONDENT'S LEGAL POSITION

Respondent generally denies the factual allegations and asserted the statute of limitations as an affirmative defense. Respondent also asserted that Petitioner did not provide notice of a unilateral placement, that equitable factors bar reimbursement, and that claims against the school Student attended during the 2022-2023 school year are intervening or superseding causes of Petitioner's claims.

Spring 2022 Semester

26. On January ***, 2022, a staffing meeting was held with campus and District-level staff to discuss concerns about Student's behavior and strategies to address it.²⁶
27. On the same date, Student received an office referral for ***. Parents and campus staff exchanged subsequent emails about strategies to address Student's behavior.²⁷
28. An ARD committee meeting was held January ***, 2022 to review the FIE and conduct Student's annual IEP review. The record does not clearly reflect why it took so long for this meeting to occur after Student reenrolled and the FIE was complete. Student's Parent attended but did not want to proceed without Student's Parent and the family's advocate present. The meeting was tabled without further discussion.²⁸
29. The ARD committee meeting continued on February ***, 2022 with both parents and advocate Louis Geigerman in attendance. After some discussion, this meeting was tabled as well. The meeting resumed and ultimately concluded on March ***, 2022.²⁹
30. The FIE was reviewed and eligibility based on specific learning disabilities in basic reading with the condition of dyslexia, math calculation, and written expression with the condition of dysgraphia were recommended, in addition to Student's existing eligibility of OHI for ADHD.³⁰
31. The IEP includes statements about Student's present levels that come from the FIE, as well as updated teacher information and progress data. Weekly data

²⁶ JE 4; Tr. 269-70.

²⁷ PE 4 at 55-61; RE 12.

²⁸ JE 13 at 29.

²⁹ JE 13 at 29-31.

³⁰ JE 13 at 1-2, 28, 45-46.

was presented on Student's noncompliance and inappropriate interactions. Student's reading level was assessed at below a ***-grade level.³¹

32. New annual goals were proposed for: behavior (**), **, math (**), and reading (**).³²
 33. Accommodations were proposed to adapt instruction, adapt materials, alter assignments and testing, manage behavior, and provide assistive technology.³³
 34. The proposed schedule of services for the remainder of the 2021-2022 school year was: 20 minutes of daily dysgraphia intervention, 30 minutes of daily dyslexia intervention, 120 minutes per week of behavior support in the special education setting, 30 minutes four days a week of in-class support in general education modified curriculum, 15 minutes twice a week of inclass support in general education.
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42. From the daily behavior cards, it appears Student only attended *** full days and *** partial day of school during the final nine-week grading period of the school year. Student's Parent testified that Parent withdrew Student from the District at some point in the spring 2022 semester. The record does not otherwise reflect when Student was withdrawn.
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C.F.R. §§ 300.101(a), 300.201; Tex. Educ. Code § 29.001. The District is responsible for providing Student with specially designed, personalized instruction with sufficient support services to meet Student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public

Court's 2017 decision in *Endrew F.*, the test to determine whether a school district has provided a FAPE remains the four-factor test outlined by the Fifth Circuit. *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765-66 (5th Cir. 2018) (citing *Endrew F.*, 580 U.S. 386).

In this case, there are two IEPs at issue that were implemented in the 2021-2022 school year. The IEP that was implemented for the majority of that school year, until the conclusion of the March ***, 2022 ARD committee meeting where a new IEP was developed, was the fall 2020 IEP. Student attended only a handful of school days after the March 2022 IEP was implemented. Therefore, the fall 2020 IEP is what was

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the most critical factors in any analysis as to whether a Student has received a FAPE. *R.P.*, 703 F.3d at 813-14.

The evidence showed that Student made some progress on academic goals during the 2021-2022 school year, but progress was questionable on other goals, including Student's behavior goals. Petitioner cites to Student's worsening behavior over the course of the 2021-2022 school year. The District, on the other hand, points to Student's frequent absences and regression following absences as impediments to progress. Student's attendance record certainly impacted Student's academic and non-academic benefit in the 2021-2022 school year. Petitioner's Closing Brief argues that most of Student's absences were due to school refusal at the fault of the District. However, the evidence generally attributes Student's absences to a combination of***, and school refusal. Even assuming without deciding that the District has a role to play in encouraging Student's attendance in this circumstance, the ARD Committee discussed it when it was raised by Student's Parent and adopted accommodations. Petitioner faults Student's teacher for her testimony that she did not think this type of attendance encouragement was the District's responsibility. Regardless of the teacher's personal feelings, however, she implemented the accommodations. In any event, for reasons that are not clearly reflected in the record, ~~Gold~~ Tw 1.073 0 Td[ind]7 (t)5.4 (.)1

Besides attendance, from the Hearing Officer's perspective, the greatest impediment to Student making more progress in the 2021-2022 school year was the amount of time it took to get a new IEP in place. Student re-enrolled in the District in fall 2021 after a year of home schooling and an interim plan was put in place to implement an old IEP until a new evaluation was completed and a new IEP could be developed. An FIE was completed in October 2021 showing Student had new needs, including newly identified learning disabilities. However, the ARD committee did not conclude developing a new IEP until March ***, 2022, and Student barely attended school after that and then was unenrolled at some point. The record is not totally clear on the cause of this delay, however, the only evidence addressing this indicates that the delay was based on Parents' request to accommodate their and their advocate's schedules for meetings. Therefore, the Hearing Officer cannot conclude that the limitations on progress stemming from the delay are the fault of the District.

Overall, although Student's progress was limited in the 2021-2022 school year, the record reflects that it was an appropriate amount of progress in light of Student's attendance and the limitations the District faced in promptly and collaboratively developing a new IEP for Student.

5. FAPE Conclusion

When looking at the totality of the *Michael F.* factors as applied to the IEPs at issue here, the evidence showed that the IEPs at issue were individualized based on

E. PRIVATE PLACEMENT AND AFFIRMATIVE DEFENSES

Petitioner has

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3. Petitioner did not meet Petitioner's burden of proving that the District failed to implement Student's

VII. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this case is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).