
individualize Student's individualized education program (IEP) to address Student's behaviors, resulting in denial of a FAPE.

I. DUE PROCESS HEARING

The due process hearing was conducted on April 30 and May 1, 2024. The hearing was recorded and transcribed by a certified court reporter. Janelle L. Davis of Janelle L. Davis Law, PLLC represented Petitioner. Debra Liva, Petitioner's non-attorney advocate, and Student's Parent were also present at the hearing. Stephen Dubner of the Law Office of Stephen E. Dubner represented Respondent¹, the Director of Special Programs for District, attended the hearing as Respondent's party representative.

Respondent prepared 15 joint exhibits for the parties, all of which were admitted.¹ Petitioner offered 38 exhibits, 18 of which were admitted over Respondent's objections².

Petitioner offered the testimony of *****³, Student's former teacher and

Officer allowed the document to be introduced into evidence t: EMC BP <</Lbl 0 >>BDC

8. Whether Student made meaningful progress pursuant to the IDEA.

Petitioner requested the following items of relief:

1. An order compelling District to provide an Independent Educational Evaluation (IEE) in all areas of actual or suspected disability, including but not limited to cognitive and achievement, speech, occupational therapy, and a functional behavior assessment (FBA) at district expense;
 2. An order finding
-

10. The FIE was completed on April^{***}, 2022. Regarding Student's speech, the report found that Student has demonstrated growth from Student's previous FIE dated April ^{***}, 2019. The report found that Student was average in most areas but was below average in executing oral directions, comprehension of body language and vocal emotion, social and language inference, and in overall social skills communication. However, the FIE concluded that Student does not demonstrate an articulation, voice, or fluency disorder which would directly impact Student's ability to participate and make progress in the general education curriculum.
11. The report found that Student does not exhibit a communication disorder which adversely affects Student's ability to accomplish the Listening and Speaking Texas Essential Knowledge and Skills (TEKS). The report also found that strategies utilized in the general and special education setting, along with Student's IEP, will allow for more meaningful expanded language opportunities for Student. The report concluded Student no longer required specialized instruction from a speech language pathologist.
12. Regarding Student's behavior, the report noted teacher concerns related to ^{***} and parent concerns with transitions and behavior. Additionally, a review of school records showed that Student struggled with ^{***}, task refusal, classroom disruption,^{***}, refusal to follow adult directives, ^{***}.
13. The report found that Student had mild-to-moderate autism spectrum disorder, resulting in difficulties with appropriate social interaction which affected Student's ability to build and maintain relationships with others. The report also found that Student's behaviors interfere with Student's learning and the learning of others. The report concluded that Student continues to meet the disability criteria as a student with autism.
14. The report recommended that Student needs special education due to Student's autism. Recommendations included providing rewards; a structured environment; well-defined limits, rules, and expectations; consistent feedback and positive reinforcement; creating a safe place to cool down;

***. ***. ***. ***. ***. ***. ***. ***. As a result of this ***. ¹⁹

23. On August^{***}, 2023, District removed Ms.^{***} as Student's
 24. teacher and case manager and made ^{***} Student's case manager instead.²⁰
 25. Student did not attend school from August ^{***}, 2023 to September^{***}, 2023.²¹
 26. On August^{***}, 2023, District sent an email to Parents notifying them that the incident qualified as^{***}; that state law required placement in the disciplinary alternative education program (DAEP) for 30 days; that a manifestation determination review (MDR) would need to be convened; and that, until it could be convened, Student would be placed in in-school suspension (ISS). Any time spent in ISS would be deducted from the 30-day DAEP placement.²²
 27. On September^{***}, 2023, the MDR was held. It was noted that Student's aggressive behaviors had occurred previously on several occasions, that the behavior was included in Student's evaluation and disability determination, and that the behavior was addressed in Student's IEP and BIP. It was determined that Student's behavior^{***} was a manifestation of Student's
-

that the incident was not a direct result of a failure to implement Student's IEP. Parents agreed with not placing Student in DAEP but indicated that they were not agreeing with District on any other points. District attempted to discuss how to support Student moving forward, but Parents tabled the meeting to allow time to process the determination.²³

28. On September^{***}, 2023, ^{***}. ^{***}." Additionally, Student^{***}.²⁴
 29. On September^{***}, 2023, District requested consent for a new FBA due to behavior concerns.²⁵
 30. On October^{***}, 2023, an incident occurred^{**}. However, it appeared to be an acT61 Tdd [(an)37 (acT-0.9 (er)25 (appear)3.4 (e -0.0014w4 (eq)10.00f)
-

biopsychosocial history questionnaire, and administered a variety of assessments including the Behavioral Assessment System of Children, Third Edition (BAS3); the Auen,

*** may change the accommodations, modifications, and services a student receives under IDEA.³⁷

45. District does not evaluate students for ***.³⁸
 46. District's emails to Petitioner show that Student continued to exhibit regular problems with *** between September ***, 2023 and February ***, 2024. However, some of Student's regression is due to Student's ***-long absence from school from ***.³⁹
 47. ***** received her certification as a special education classroom teacher for early childhood through twelfth grade on ***, 2021, which does not expire till ***, 2026. She began working in education as a paraprofessional in *** 2018. Ms. *** received her most recent Crisis Prevention Institute (CPI) training, which is training in de-escalation and restraint, on ***, 2023, which expires on ***, 2025. She testified that she had been previously CPI certified in 2018, while employed
-

V. DISCUSSION

A. DUTY TO PROVIDE A FAPE

The purpose of the IDEA is to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). The district has a duty to provide a FAPE to all children with disabilities ages 3-21 in its jurisdiction. 34 C.F.R. §§ 300.101(a), .201; Tex. Educ. Code § 29.001.

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 expense and comport with Student's IEP. 20 U.S.C. § 1401(9); Bd. of Educ. of Hendrick Hudson Cen. Sch. Dist. v. Rowley, 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." *Endrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 399 (2017).

B. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement.⁴² *Schafer ex rel. Schaffer v. West*, 546 U.S. 49, 62 (2005).

⁴² There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding.

The burden of proof in this case is on Petitioner to show that 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. Id.; Endrew F., 580 U.S. 399.

C. FAPE

A hearing officer applies a four factor test to determine whether a school district's program meets IDEA requirements. Those factors are:

x Whether the program is individualized on the basis of the student's assessment and performance;

x (V\$ €€ x

1. Individualized on the Basis of Assessment and Performance

-4457 ()-132>BDes meeting the obligation to provide a FAPE, the school district 1.4 (E)1.4 4-4085

a) Student's Behavior

Whether or not an IEP is appropriate and sufficient to ensure meaningful progress is not just limited to the Student's academic need. Rather, education

services or was incorrectly dismissed from speech other than the opinion of Student's Parent, who is not qualified by training or experience to offer such an opinion. Therefore, the Hearing Officer concludes that Petitioner failed to prove, by a preponderance of the evidence, that District failed to properly individualize Student's IEP with regards to Student's speech needs or that District's dismissal of Student from speech was improper.

2. Least Restrictive Environment

Both parties recognize that Student needs access to the ^{***}, a more restrictive environment, to address Student's behavior needs, and that Student previously needed access to a speech classroom to assist with Student's speech needs. Neither party has alleged that such a placement was inappropriate, nor does the record reflect that such a placement was inappropriate. Petitioner's request for private placement of Student, which may be considered a more restrictive environment, will be addressed in another section of this decision.

3. Services Provided in a Coordinated, Collaborative Manner by

outcome, because parents do not possess “veto power” over a school district’s decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student’s parents or refusal to listen to them, a school district must be deemed to have met the IDEA’s requirements regarding collaborating with a student’s parents. *Id.*

a) Development of IEPs

At the hearing, Petitioner argued that the IEPs were not developed in a collaborative manner. Student’s Parent asserted that, even though Parent had received the procedural safeguards, had the opportunity to attend and participate in the ARD committee meetings, and signed the forms at the end of the IEP meetings, Parent did not understand that Parent had a right to disagree with the district members of the ARD committee. However, the record reflects regular communication between Parents and District, that District sought feedback from Parents regarding the development of the IEPs, and that Parents’ feedback was considered in the development of the IEP. Therefore, the Hearing Officer concludes that Petitioner failed to prove that the IEPs were not developed in a coordinated and collaborative manner.

b) Speech

Petitioner alleged that Student’s dismissal from speech was pre-determined, as indicated by Ms.***, Student’s speech teacher, emailing Petitioner on August ***, 2022, the same day as the ARD committee meeting, notifying them that Student no longer needed speech therapy in the academic setting. Predetermination occurs when district members of the IEP team unilaterally

dece.7 (r 397.8 .4 (u)-)1.8 (p)- (b)t

prove, by a preponderance of the evidence, that District failed to work with Student's parents to provide services pursuant to HB 4545 or failed to allow Student's parents an opportunity for meaningful participation in scheduling services under HB 4545.

4. Academic and Non-Academic Benefits

Whether a Student received academic and non-academic benefit is one of the 2

that they did, in fact, offer those therapies, that the therapies offered would be appropriate for Student, or that *** was other (e8)32(Tw)0(5)28(0)50138 (of)o47)JTJ /TT0 1.n

6. Petitioner did not meet their burden to prove that District failed to train staff who work with Student appropriately. 34 C.F.R. § 300.156.
7. Petitioner did not meet their burden to prove that Student's proposed private placement was appropriate. 34 C.F.R. § 300.148. *SchooComm. Of Town of Burlington, Mass. v. Dept. of Educ.*, 476 F.3d 33, U.S. (9/15/07) (pro) r0

an ARD committee meeting to discuss the evaluator's report and
consider revisions to Student's IEP. If, within seven calendar days of
District contacting Petitioner, the parties are not able to
c2-0.034 (P)6.192a206 T

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), .516; 19