

SOAH Docket No. 701-23-13018.IDEA
TEA Docket No. 190-SE-0223

Before the State Office of Administrative Hearings

STUDENT , BY NEXT FRIEND PARENT , PETITIONER
v.
LAGO VISTA INDEPENDENT SCHOOL DISTRICT
RESPONDENT

DECISION OF THE HEARING OFFICER

*** (Student), by next friend (Parent or, collectively, Petitioners) brings this action against Lago Vista Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 14001-1482 and its implementing state and federal regulations. Petitioner alleges that the District is attempting to deny Student a free, appropriate public education (FAPE) by moving Student to a more restrictive environment and not providing appropriate modifications and accommodations, including accommodations for Student's ** , among other violations. The Hearing Officer concludes that the District's proposed placement represents

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Both parties timely filed written closing briefs. The Decision in this case is due on January 29, 2024.

II. ISSUES

A. Petitioner's Issues

Petitioner raised the following IDEA issues for decision in this case:

1. Whether the District's proposed placement is appropriate and in Student's least restrictive environment.
2. Whether the District failed to identify Student's eligibility in all categories of suspected disability.
3. Whether the District failed to develop an individualized education program (IEP) with appropriate modifications; accommodations, including accommodations for Student's^{**}; and supplementary aides and services designed to provide Student a FAPE.
4. Whether the District failed to provide appropriate inclusion support to allow Student to be placed in a less restrictive environment.
5. Whether the District failed to train staff who worked with Student on Student's unique needs.
6. Whether the District predetermined aspects of Student's IEP without including input from Parent.
7. Whether the District committed procedural violations of the IDEA, including failing to have appropriate members of the Admission, Review, and Dismissal (ARD) Committee present at meetings and failing to provide prior written notice at all appropriate times.

8. Whether the District failed to update Student's IEP at all appropriate times.

B. Petitioner's Requested Relief

Petitioner requested the following items of relief:

1. Order the District to maintain Student's current p<7 (e)2 (s)20.3 7.94 TI779MCID

III. FINDINGS OF FACT

1. Student is *** years old and in *** grade. Student enjoys ***. Student is eligible for special education services under the IDEA as a student with other health impairment (OHI) and speech impairment (SI). Student has a ***.¹
2. Student has been enrolled in the District since ***. On May ***, 2022, the District recommended eligibility under the category of ***, which Petitioner continues to dispute. On February ***, 2023, the District recommended eligibility under the *** (***) category, which Petitioner agreed with. On October ***, 2023, the District recommended eligibility under the *** (***) category, which Petitioner had been seeking since at least February ***, 2023.²
3. The relevant time period in this matter begins on December ***, 2022, after the signing of a settlement agreement disposing of a prior due process complaint. Information regarding events before the relevant time period is provided for historical context.³
4. Student has received special education services from the District throughout the course of Student's enrollment. Student initially qualified for special education services when Student was *** years old and enrolled in another district's ***.⁴

¹ Transcript (Tr.) 41. It was noted that, while Student is ***; Joint Exhibit (JE) 14 at 1; JE 1 at 1.

² Tr. 41; JE18 at 36; JE16 at 41-42; JE19 at 14.

³ Respondent's Exhibit (RE) 83 at 2-5.

⁴ Petitioner's Exhibit (PE) 24-25, JE3.

5. Student was re-evaluated during Student's ***-grade year in 2019. As part of this evaluation, the District's licensed specialist in school psychology (LSSP) met with Student's Parents to request additional testing to consider whether Student was demonstrating characteristics of *** and attention deficit hyperactivity disorder (ADHD). Parents declined to consent to ad [(t)- Tm [(P)3eitPt to (v)4.9 (e.001 Tc 12.27 Tw 030
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12. Student's annual ARD Committee meeting in *** grade was held on April ***, 2022, but the committee agreed that this meeting would serve as a placeholder while additional evaluations were conducted. The ARD Committee was reconvened on May**, 2022. Petitioner asked to delay this meeting to allow for more time to review the evaluations, but the District refused and

did not take the STAAR in *** grade due to COVID19 closures and did not take the STAAR in *** grade.¹⁵

16. The ARD Committee decided that Student was eligible for the *** grade. The *** is a statewide assessment for students.¹⁶

17. Looking at Student's present levels of academic achievement and functional performance (present levels), District noted that Student was reading *** at a *** grade level independently and at a *** grade instructional level. Student could read short passages at a *** grade level, and long passages at a *** grade level. Student struggled with questions that included inferencing and characterization skills. Student had strengths in decoding and recall. Student exhibited fatigue in reading passages and answering questions, and frequent breaks were needed for Student's success. Student's writing fell in the extremely low range of ability. For math, Student had difficulty identifying the correct

19. On June^{***}, 2022, Petitioner sent a letter of disagreement to the District regarding the June^{***}, 2022 ARD Committee meeting. Petitioner expressed concern that the District had predetermined certain aspects of the IEP. Petitioner noted that modified curriculum for ^{***} and ^{***} was not contained in the April 2021 IEP and that it appeared the District had begun implementing modifications to the curriculum without Petitioner's consent. Additionally, Petitioner complained that the District predetermined Student's eligibility as a student with^{***}.¹⁹

2022-2023 School Year: ^{***} Grade

20. On August^{***}, 2022, the ARD Committee convened again. This ARD Committee meeting ended in disagreement over ^{***} eligibility, ^{***} placement, and modified curriculum for ^{***} and ^{***}. Petitioner informed the District they would be filing a due process hearing request for a "stay put" determination.²⁰

21. On August^{***}, 2022, Petitioner filed a due process complaint.²¹

22. On October ^{***}, 2022, a ^{***} report was prepared by Dr. ^{***}. Dr. ^{***} determined that Student was ^{***} due to ^{***} by ^{***} on ^{***} at ^{***}.
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levels of progress and reading needs indicated a level of modification that is beyond what is appropriate in the** setting. Extended school year(ESY) services were discussed and Parents agreed to conconnd29 Tw eto

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39. On July^{***}, 2023, Student was evaluated by Dr. ^{***} to complete a ^{***}. A ^{***} is a ^{***} used to determine the degree of impact of ^{*****} on a ^{***}. Student scored a ^{***} and was found to have challenges when ^{***}.³⁸

40. Dr. ^{***} is a leading expert on ^{***} and creator of the ^{***} scale assessment tool.³⁹

2023-2024 School Year: ^{***} Grade

41. On October^{***}, 2023, an^{***} report was prepared by ^{***}, a Certified Teacher of the ^{***}. The report found that Student had a ^{***} in the ^{***}, which means that Student^{***}. According to the report, Student's^{***} does not appear to be a concern. ^{1.075(l)1.6 (e-3.2 (n .6 (n .98 729 Timd [(no)-1tw 3.729 q0.98 q0.98}

nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress, not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V. P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

The District's obligation when developing Student's IEP is to consider Student's strengths, Student's parent's concerns for enhancing Student's education, results of the most recent evaluation data, and Student's academic, developmental, and functional needs.³⁴

C.F.R. § 300.324(a)(1).

Student's present levels show weakness across multiple academic areas, including math, ***, ***, and ***, as well as social skills development. This is consistent with the results of Student's evaluations, which show that Student is eligible under the category of *** in addition to Student's other areas of disability. The observations of Student's teacher regarding Student's ability to perform Student's work, as well as

concern over *** eligibility, additional testing was performed and, based upon the results of that testing, *** eligibility was agreed to and additional refinements were made to Student's *** accommodations. While the parties continue to disagree on eligibility in the areas of MD and *** as well as *** placement, the record reflects that the parties have largely been able to agree on goals, accommodations, and modifications, even though they have not been able to agree on the proper placement for Student to receive those services. Taken as a whole, the evidence shows that the District has developed the proposed IEP in consideration of Student's strengths and evaluation data, as well as Student's academic, developmental, and functional needs.

In their closing brief, Petitioner raises several concerns with the District's evaluations of Student. They point to problems with reporting numeric IQ scores when assessing students with ***, issues with the *** elements of the evaluations performed on Student, problems with the *** performed on Student, and perceived errors in the District's ***. Petitioner argues that, due to these errors, the results of the evaluations cannot be the basis for an IEP or Student's educational placement. While Petitioner's experts have pointed to concerns with the evaluations, the record reflects that a variety of assessment tools and strategies were used to gather functional, developmental, and academic information about Student and that the evaluations were administered by trained and knowledgeable personnel who stood by the results of their evaluations. Additionally, while Petitioner argues that these issues may result in errors in the evaluations, there is nothing in the record to reflect that substantial errors did exist in the results of

Student's evaluations or in the recommendations of the District's experts, which largely match the recommendations of Petitioner's experts. The results of the evaluations are consistent with the reports of Student's academic performance, the District's observations,

Student's teachers show that Student is not being graded on Student's academic performance, but rather on Student's effort. Taken together, the record reflects

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F. Current Placement

Petitioner raised two concerns with Student's current placement. First, whether the District failed to provide appropriate inclusion support to allow Student to be placed in a less restrictive environment and second, whether the District failed to update Student's IEP at all appropriate times. Turning to the first issue, the District is currently operating under the "stay put" IEP developed in 2021. This IEP was agreed to by the parties and, while the parties have been working to amend the IEP, they have not been able to reach an agreement. During the relevant time period, the District has been required to abide by the "stay put" IEP. In its closing brief, Petitioner argues that the District failed to implement Student's IEP with fidelity by giving Student Student's information in ***.

The exact language of the accommodations in question are ***⁵⁴, and where possible, substitute ***.⁵⁴ There is no functional difference in this matter between providing Student with assignments in *** or providing Student with the ability to ***. Additionally, none of the accommodations require physical copies of assignments. Therefore, Petitioner did not meet Petitioner's burden of proving that the District failed to implement Student's IEP with fidelity. Nor does the record reflect

⁵⁴ JE14 at 9.

other ways in which the District failed to provide appropriate inclusion support during the relevant time period that would allow Student to be placed in a less

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