

**SOAH Docket No. 701-23-16824      Suffix: IDEA**  
**TEA Docket No. 243-SE-0423**

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**Before the**  
**State Office of Administrative**  
**Hearings**

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**STUDENT by next friend PARENT,**  
**Petitioner**

**v.**

**Northwest Independent School District,**  
**Respondent**

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**DECISION OF THE HEARING OFFICER**

\*\*\* (Student), by next friend \*\*\* (Parent and, collectively, Petitioner), brings this action against the Northwest Independent School District (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.

FAPE reasonably calculated to allow Student to make progress in light of Student's unique circumstances. Respondent also raised a counterclaim to prove the appropriateness of its most recent evaluation and the Hearing Officer concludes that the evaluation appropriately complies with the IDEA.

## **I. DUE PROCESS HEARING**

The due process hearing was conducted on February 8-9, 2024 through the Zoom videoconferencing platform. Attorney Jordan McKnight represented Petitioner. Parent attended the due process hearing, as well as Student's Parent for a portion of the hearing. Attorney Cynthia Buechler represented Respondent. \*\*\*, Assistant General Counsel, and \*\*\*, Special Education Director, also attended the hearing for Respondent.

The parties offered joint and separate exhibits, all of which were admitted.<sup>1</sup> Petitioner offered testimony of Parent; \*\*\*, a crisis coordinator with \*\*\*; and a diagnostician who served as an admission, review, and dismissal (ARD) committee meeting facilitator. Respondent offered testimony of the campus principal, two speech language pathologists, an occupational therapist, a paraprofessional, a behavior interventionist, the Executive Director of Human Resources,<sup>2</sup> a licensed specialist in school psychology (LSSP), and a

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<sup>1</sup> Petitioner's Exhibits 1-9 were not offered because they are duplicative of the joint exhibits.

<sup>2</sup> During the testimony of this witness, questions arose about whether Respondent failed to produce a document previously compelled in Order No. 4. During the hearing, counsel could not confirm whether the document at issue was produced. Counsel for Petitioner was advised that Petitioner may file a motion to reopen the record and recall the witness if Petitioner determined after the hearing that the document had not been timely produced. No post-hearing motions were filed.

diagnostician who participated in Student's most recent evaluation. The speech therapists, occupational therapist, behavior interventionist, LSSP, and the evaluating diagnostician were all designated experts in their respective fields. The hearing was transcribed by a certified court reporter. Both parties filed written closing briefs in a timely manner. The Decision in this case is due April 1, 2024.

## **II. ISSUES**

### **A. PETITIONER'S ISSUES**

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

1. Whether the District failed to provide Student with a FAPE by failing to develop an appropriate IEP for Student, including insufficient speech, Occupational therapy (h 85.2 (a)-r6 (st)-5f)E )TJO

3. Order the District to provide Student services from a board-certified behavior analyst (BCBA).
4. Order the District to facilitate ARD Committee meeting attendance of IEE providers to assist in development of an appropriate IEP and safety plan for Student.
5. Order the District to train staff working with Student on Student's IEP and safety plan.
6. Order the District to reimburse Parent for expenses on evaluations and educational services.
7. Any other relief the Hearing Officer deems appropriate.

**C. RESPONDENT'S LEGAL POSITION**

Respondent generally and specifically denied the allegations stated in the Complaint. Respondent asserted the statute of limitations affirmative defense. On January 16, 2024, Respondent also asserted a counterclaim to prove the appropriateness of its most recent full and individual evaluation (FIE) of Student.

**III. FINDINGS OF F**

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\*\*\* level. Student is identified as a \*\*\*, but Student's communication is in English.<sup>5</sup>

4. During the 2021-2022 school year, Student was in the \*\*\* grade. Student was served in a self-contained special education setting for most instruction and attended specials in the general education setting. Student received speech therapy for 20 minutes eight times per grading period, \*\*\* therapy for 30 minutes seven times per grading period, direct OT for 105 minutes per grading period, consult OT for 30 minutes per grading period, and \*\*\*.<sup>6</sup>
  5. At the time of Student's annual ARD Committee meeting in December 2021, Student was able to read a \*\*\*. New goals were accepted, including a behavior goal targeting inappropriate \*\*\*, elopement, \*\*\*, physical aggression, object aggression, and verbal outbursts.<sup>7</sup>
  6. During the 2021-2022 school year, Student had at least \*\*\*. Student also
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17. Ms. \*\*\*\*\* testified that her statements about the \*\*\* teacher having a pattern of \*\*\*, and not Student.<sup>19</sup>
  18. The principal and Ms. \*\*\* testified that the allegation about \*\*\* did not pertain to Student, that they were about \*\*\*, and that Student was always \*\*\*. Student's \*\*\* at school did not change in the 2022-2023 school year.<sup>20</sup>
  19. Ms. \*\*\* also reported a comment that the \*\*\* teacher made on October \*\*\* concerning Student. Student \*\*\*, \*\*\*” Ms. \*\*\* understood this comment to be in reference to Student. The other paraprofessional giggled. The \*\*\* teacher continued the conversation, \*\*\*. Student was in the same room as the teacher, who was facing away from Student. The giggling paraprofessional may have been standing outside of an open doorway during this conversation with the teacher. Ms. \*\*\* testified that she did not believe Student could hear the comments, but she did not know for sure. 0.6 (he).67Tw r
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21. After the principal began to interview the \*\*\* teacher on October \*\*\*, the teacher \*\*\*. She never returned to the classroom after October \*\*\*,<sup>23</sup>
  22. For the first grading period of the year, ending October \*\*\*Aftete
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investigation and sustained allegations that the \*\*\* teacher “\*\*\*.”  
The letter further stated that the teacher had \*\*\* and that a report  
regarding this conduct had been

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38. Parent eventually had a phone conversation with the campus principal in which the principal apologized for not informing Parent sooner about the allegations. The principal testified that she told Parent that the part in the letter about the \*\*\* was an error and that had not happened to Student. During Parent's testimony, Parent did not recall the principal telling Parent that.<sup>40</sup>

39. The principal also informed human resources staff bTJ.5Tdc42.1 (f)-6.99 (c)0.o1

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43. On February \*\*\*, 2023, Parent sent another email to the diagnostician again requesting an ARD Committee meeting be scheduled to discuss how to help Student following the incident. The diagnostician responded the same day offering possible meeting dates.<sup>45</sup>
44. The District scheduled an ARD Committee meeting for March 2023, but Parent did not respond to the meeting notice. Another meeting was scheduled for April \*\*\*, 2023. Parent attended with advocate Debra Liva. Parent and the advocate left the meeting almost immediately after the advocate requested confidential human 5 ()-1.2 .8 (l (e2J-0d)2.84 Tc 22 Tc ..034 a1 T

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**2023-2024 School Year**

48. In the fall 2023 semester, Student began attending \*\*\* school and Parent was in very regular email communication with Student's teacher about Student's daily activities and behavior.<sup>50</sup>
49. Another REED was completed October \*\*\*, 2023 that added a counseling evaluation to the areas of evaluation recommended for the new FIE. The record does not reflect the impetus for this.<sup>51</sup>
50. An FIE was completed, report dated November \*\*\*, 2023.<sup>52</sup>
51. The speech portion of the evaluation used a standardized teacher rating instrument to identify pragmatic language disorders. Student's ratings were poor or very poor in all areas. Continued eligibility based on speech impairment in expressive, receptive, and pragmatic language was recommended.<sup>53</sup>
52. The OT evaluation included observations, as well as formal and informal assessment measures. Student has adequate gross motor skills and demonstrates appropriate fine motor skills to access school materials; however, Student requires adult supervision for safety. Student demonstrates some sensory sensitivities at home and school, including \*\*\*, planning, and social participation. Ongoing OT was recommended.<sup>54</sup>
53. The Childhood Autism Rating Scale (CARS) was completed and yielded a score in the range for severe symptoms of autism spectrum

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<sup>50</sup> RE 3 at 3-48.

<sup>51</sup> JE 10.

<sup>52</sup> JE 7.

<sup>53</sup> JE 7 at 3, 26; Tr. 392.

<sup>54</sup> JE 7 at 4-11, 25-26; Tr. 345-36.









67. Parent was considered in disagreement with the IEP and did not respond to requests to schedule a reconvene meeting. Parent also did not respond to instructions to submit Parent's request for an IEE in writing. The new IEP was implemented beginning on January \*\*, 2024.<sup>69</sup>
68. On January \*\*, 2024, Respondent filed a counterclaim to defend the appropriateness of the FIE, effecting prior written notice of an intent to deny the IEE request.
69. In the fall 2023 semester, Student made progress on some IEP goals, but not others. Student made progress in speech therapy on \*\*. Student mastered \*\*. Student mastered Student's \*\* goals. Student exhibited increased behaviors of \*\*, physical aggression, object aggression, inappropriate materials use, and verbal outbursts. Student showed progress on reducing elopement and \*\*. <sup>70</sup>
70. A District BCBA testified to analyzing Student's behavior over the past three school years. She found that Student's negative behaviors tend to escalate following school breaks.<sup>71</sup>

#### **IV. DISCUSSION**

Petitioner alleges that the District denied Student a

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Instead, the IEP must

based on Student's present levels at the time and took into consideration Parent's feedback, for example, adding functional math goals to the December 2022 IEP at Parent's request. The 2023 IEP also benefitted from the new FIE information.

Petitioner specifically complains that the IEPs contain inadequate speech therapy, OT, counseling, and psychological services. In the December 2021 IEP, Student received 160 minutes of speech therapy per grading period. This was



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understand it and it had no impact on Student. This puts into context why Parent was

not notified until much later when the District was reporting the teacher to the TEA. However, the record does not reflect that this shared opinion of the school professional was ever explained to Parent until the testimony at the due process hearing in this case. The letter Parent received in January 2023 contained false information that the \*\*\* was applied to Student, which was never corrected through any written record. \*\*\* teacher \*\*\*\*. Further, the letter

does not include any context or when this happened, what was said, that it was said to another adult not to Student and, crucially, that the District does not believe Student heard or understood the comment. The record is not clear on whether Parent ever received this type of information until hearing the testimony at the due process hearing. The District's letter to the TEA also inaccurately described the \*\*\* teacher's conduct and its impact on Student, creating a further paper trail of confusion. I clearly told the Hearing Officer that the District inappropriately and exaggerated its documentation for the purposes of an employment investigation and did not intend to accurately opine on Student's experience and needs in these employment records. This communication was not directed to Parent, it has added to the misunderstandings between the parties.

Parenter also alleges that the District impeded Parent's ability to participate in the IEP development process.

December 2022 ARD Committee meeting (including present) knew

blame for an absence of collaboration is shared between the parties. to  
show that the District excluded Parent in bad faith or refused to listen to Parent .

#### **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 to determine a violation of 13.

from Student's IEP at issue.

## 5. FAPE Conclusion

When looking at the total IEP of the When



at their own expense. 34 C.

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In conducting an evaluation under the IDEA, a school district





## VI. ORDER

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED** and Respondent's request for relief is **GRANTED** to the extent that Respondent is not required to grant Petitioner an IEE at public expense. Any other relief not specifically granted is **DENIED**.

**Signed MARCH 22, 2024.**

ALJ Signature:

Jessica Wte

Residing Administ (tr5)/nt ad