

SOAH Docket No. 701-22-01040.IDEA
TEA Docket No. 275-SE-0622

**Before the
State Office of Administrative
Hearings**

**STUDENT, BY NEXT FRIEND PARENT,
PETITIONER
v.
AUSTIN INDEPENDENT SCHOOL DISTRICT,
RESPONDENT**

DECISION OF THE HEARING OFFICER

***, (Student), by next friend(47)B-0.6.47PON5.2 (n)-5.5 (87-0.012 Tcv7 b)1r Tcv7

A



4. District does not dispute that Student has dysgraphia and ***, or that dysgraphia and *** are qualifying disabilities under the IDEA. District, however, disputes that Student needs special education and related services as a result of these disabilities.⁴

5. Due to Student's ***, Student ***, normally *** hours a day, and *** easily, generally after 60 to 90 minutes. 4500h Td[(d)-2d[(**p4.2 (ia2d[(g)-9 (int-3.1[(d)e2d[(g

reasons in order that they may continue in their regular academic programs with as little loss as possible.⁹

10. Homebound services address core classes only, not *** classes.¹⁰

11. Due to not be itTc 12.5775.01118 Tw 1t44Q 1 Tw 2/MCID 2 BDC -097 (e)]TJ-0.005 T

performed the Wechsler Individual Achievement Test (WISC-V). The formal testing was performed on August ***, 2022.²⁶

27. The FIE found that Student was very advanced for Student's age, falling on the high average range when compared to other children Student's age. Student's weakest performance area, processing speed, was still in the average range. Student was meeting state grade level expectations in writing and Student's gross motor and overall fine motor coordination appeared within normal limits. The report found that the data did not indicate any academic deficits and that Student did not meet criteria as a student with a specific learning disability. Additionally, the report found that assistive technology services were not needed to provide Student a FAPE. The report concluded that Student did not appear to have an educational need for special education services.²⁷
28. On October ***, 2022, an ARD committee meeting was held to discuss the FIE. District agreed with the evaluation's finding that Student was not eligible for special education services. Parent disagreed with the evaluation and informed District Parent would be requesting an independent educational evaluation (IEE). The meeting ended in disagreement.²⁸
29. On November ***, 2022, a *** physician's form was provided to District by Parent regarding Student's ***, notifying District that Student would need a shortened school day, frequent rest breaks, access to the nurse's office, and the ability to go home if Student's symptoms worsen.²⁹
30. On December ***, 2022, Student's physician provided a physician information report with proposed accommodations to District regarding

²⁶ JE 14. At the hearing, Petitioner pointed out that the FIE was inconsistent on if the outdated WISC-IV was given or if the proper WISC-V was given. However, based upon a review of the report and the testimony offered at the hearing by Dr. *** (Tr. 128-129), and Ms. *** (Tr. 167, 213) the Hearing Officer is satisfied that the proper WISC-V was given.

²⁷ JE 14.

²⁸ JE 16.

²⁹ JE 7.

35. An ARD committee me

Both Respondent and Petitioner agree that Student satisfies the first element because Student meets the definition of one or more of the categories of disability due to Student's dysgraphia and ***. However, Respondent contends that Student does not need special education and related services as a result of Student's disabilities. Respondent argues that Student's academic deficits are being addressed through Student's Section 504 plan and that additional accommodations are not needed for Student to receive an educational benefit.

A student needs special education and related services when the student requires those services in order to receive an educational benefit from the educational program. *Marshall Joint Sch. Dist. No. 2 v. C.D.*, 616 F.3d 632 (7th Cir. 2010). A student with an impairment is not eligible for special education under the IDEA unless Student has an educational need for such services. See, e.g. *D.L. v. Clear Creek Indep. Sch. Dist.*, 695 F. App'x 733 (5th Cir. 2017) (holding that a high schooler with anxiety, depression, and ADHD did not require special education or related services under the IDEA).

Evidence that a student with an impairment has made non-trivial educational progress after receiving general education interventions is a strong indicator that Student does not require IDEA services. See, e.g., *M.P. v. Aransas Pass Indep. Sch. Dist.*, 67 IDELR 58 (S.D. Tex. 2016). However, the eligibility team must distinguish between general education interventions and specialized instruction. The fact that some of the special education and related services may also be considered "best teaching practices" or "part of the district's regular education program" does not preclude

time period. O.W., 938 F.3d at 706-07. District argues that Petitioner failed to offer any evidence to show that District failed to take proactive steps during the intervening period. Specifically, they argue that no evidence was offered to show additional inquiries regarding the status of the requested FIE and that, while Petitioner's attorney asked witnesses at the hearing about the request for evaluation, she did not ask about subsequent actions District took

Student's eligibility was predetermined before the ARD committee meeting held to discuss the IEE, but no evidence was offered regarding the basis for this claim. Therefore, Petitioner failed to prove that District predetermined Student's eligibility or failed to collaborate with Petitioner.

H. FAILURE TO TRAIN STAFF

In its closing written closing argument, Petitioner argues that District failed to properly train staff who worked with Student regarding Student's disabilities and in the difference between eligibility under the IDEA and Section 504. However, no evidence was offered to show that District personnel did not have the necessary understanding of dysgraphia or ***. Additionally, beyond the legal disagreement on the classification of the services Student is receiving, there was no evidence offered that District did not understand the differences between the IDEA and Section 504. Therefore, Petitioner did not meet its burden to prove that District failed to properly train staff.

I. INSTRUCTIONAL DAY

and occupational therapy evaluations of Student, these evaluations are related to Student's dysgraphia and the Hearing Officer did not find that Student is eligible under the IDEA for that disability. Therefore, these additional items of relief will not be granted.

VI. CONCLUSIONS OF LAW

1. The burden of proof in this due process hearing is on Petitioner. ~~OF~~ Tc 30.2375 0 0

