

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT, bnf
PARENT,
Petitioner,**

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§
§

v.

DOCKET NO. 047-SE-1014

**SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, STUDENT bnf PARENT (“Petitioner” or “the Student”) brings this action against the Respondent San Antonio Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq. (IDEA) and its implementing state and federal regulations.

Party Representatives

Petitioner was represented by Petitioner’s legal counsel Karen Dalglish Seal, Attorney at Law with the Law Office of Karen Dalglish Seal. Respondent was represented by its legal counsel Stacy Ferguson with the law firm of Escamilla & Poneck.

Resolution Session

Both parties waived the Resolution Session but wished to pursue informal settlement negotiations during the 30 day resolution period. Those efforts were not successful. The parties declined the use of mediation in this case.

Due Process Hearing

The hearing was conducted on February 12-13, 2015. Petitioner continued to be represented by Petitioner’s attorney
[REDACTED] by Petitioner’s attorney

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relationship with

46. Student scored in the below average range for written expression. Student's writing ability was limited. Although spelling was within normal limits Student demonstrated difficulty with appropriate grammar and

53. A set of recommendations to address Student's educational and behavioral needs was included in the April 2014 FIE report. (J. Ex. 3-18, 3-21)(P. Ex. 5-91, 5-92)(R. Ex. 1-21, 1-22)(Tr. Vol. I. pp. 77, 78, 80-81, 90-91)(Tr. Vol. II., pp. 393-394).
54. An Admission, Review & Dismissal Committee (ARD) met on April 14, 2014 to discuss the results of the initial FIE. (J. Ex. 4). Student's ***, the LSSP, an assistant principal, a special education teacher, a general education teacher, and Student all attended the meeting. The LSSP reviewed and explained the results of the initial FIE and the set of instructional recommendations. The ARD concluded Student did not meet eligibility for special education as a student with an emotional disturbance or as a student with a learning disability. (J. Ex. 3-17, 3-18, 3-20)(J. Ex. 4-3, 4-4).(Tr. Vol. I., pp. 90-91, 97).
55. However, the April 2014 ARD also agreed Student exhibited some academic deficits that needed to be monitored and supported through Response to Intervention (RTI). The April 2014 ARD acknowledged Student exhibited some anxiety and depressive tendencies. The school district provided Student's *** Notice of Refusal to Provide Services during the April 2014 ARD. (J. Ex. 4-7).
56. Student experienced a difficult summer between *** and *** grades in 2014. ***. (J. Ex. 2-1)(P. Ex. 2-9). ***. (J. Ex. 1-2)(P. Ex. 2-9).
57. Student was ***. Student was staying with *** at the time and experiencing sadness about ***. *** Student received anger management counseling. (R. Ex. 2-6). Student was *** to address mood issues. (P. Ex. 3-1). A Safety Crisis Plan was prepared as part of Student's treatment to address Student's ***. (P. Ex. 3-2, 3-3).
58. On ***, 2014 Student was ***. Student ***. (J. Ex. 2-1). (P. Ex. 2-9). Student has ***. (P. Ex. 1-2)(R. Ex. 2-5).
59. Student was in the *** grade for the 2014-2015 school year. By this time Student had ***. (J. Ex. 1-1, 1-10)(P. Ex. 2-9, 2-10). The *** conducted an assessment of Student under its *** (***) program beginning in August 2014 and issued a report on October 8, 2014. (J. Ex. 2). Student was quite candid and forthcoming reporting Student's history of ***. (P. Ex. 2)(Tr. Vol. I., pp. 181-182, 184-186).
60. As a result of the *** assessment Student was diagnosed *** with posttraumatic stress disorder, (PTSD), major depressive disorder with psychotic features (by history), ***, parent-child relational problems (***), and psychosocial stressors including past family struggles, current familial strain, ***, academic strain, poor peer relationships, ***, and lack of supervision. (J. Ex. 1-10)(J. Ex. 2).
61. The *** assessment revealed Student experienced ***. Student reported Student witnesses Student's ***. Student reported ***. Student admitted having a lot of distressing dreams and recurrent and intrusive thoughts ***. Student also had difficulty falling asleep, felt irritable and angry, hyper-vigilant, inattentive, and easily startled. (R. Ex. 2-6).
62. The *** assessment described Student as a cooperative, yet self-protective *** year old with a chaotic and neglectful upbringing. Student experienced ***. Student experiences significant perceived loss from ***. Student has difficulty following rules, engages in verbally and physical acts of aggression as well as *** acting out behavior. (R. Ex. 2-11).
63. The *** assessment described Student internalizes Student's trauma through mood symptoms of

interpersonal connectedness but engages in socially inappropriate behavior as a means of achieving these goals. (R. Ex. 2-11). Student views adults who are nice to Student as Student's friends but who then take advantage of

learning of others and Student needed a Behavior Intervention Plan (BIP). (J. Ex. 5-5, 5-12). The Adaptive Behavior IEP and the BIP addressed Student's need to eliminate verbal or physical aggression towards peers or adults, task completion/refusal issues, and, noncompliance. (J. Ex. 5-9, 5-28, 5-29). The BIP identified the set of problem behaviors, antecedents, consequences, a set of reinforcers, and the function of Student's maladaptive behaviors. (J. Ex. 5-30 to 5-33).

81. The IEP included counseling as a related service and provided for one 45 minute counseling session every two weeks for a total of 10 sessions. (J. Ex. 5-20). The Counseling IEP addressed Student's need to develop and use appropriate coping skills to carry out school responsibilities and participate in healthy social relationships and activities. The Counseling IEP addressed Student's stress, anger, and anxiety, self-esteem issues, and developing socially acceptable reactions to conflict situations. (J. Ex. 5-10).
82. A set of accommodations to be utilized in the core academic classes were also approved by the January 2015 ARD. (J. Ex. 5-12, 5-13). A set of behavioral accommodations for all Student's classes were also approved including setting clearly defined limits, frequent reminders of the rules, positive reinforcement, frequent eye contact/proximity control, private discussions about behavior, in-class timeout, following the BIP, and, following the ***. (J. Ex. 5-13). *** IEP was also approved by the ARD to address Student's needs for ***. (J. Ex. 5-11).
83. The instructional arrangement for Student's placement was a "****" at the ***. (J. Ex. 2-1)(J. Ex. 5-23). The IEP included Tier I, II, and III instructional interventions, Title I programs, supplementary aids and services, and the set of accommodations, in a general education setting. (J. Ex. 5-16, 5-17). Student's services and IEP could not be provided *** because of Student's ***. The ARD documents also noted Student's *** for purposes of educational placement. (J. Ex. 5-18).
84. The IEP contemplated seven periods of instruction each day with 50-60 minutes per period. The ARD discussed Student's needs for Extended School Year services but those

more of the enumerated disability classifications. *34 C.F.R. § 300.8 (a)*. A child with a disability may qualify for special education services under more than one classification. *E.M. v. Pajaro Valley Unified Sch. Dist.*, 758 F. 3d 1162(9th Cir. 2014), cert. denied, 2015 U.S. Lexis 204 (2015). However, not every student who struggles in school requires an evaluation for special education. *Alvin Ind. Sch. Dist. v. A.D.*, 503 F. 3d 378, 384 (5th Cir. 2007).

Educational Need

Even if a student can meet the criteria of one or more of the disability classifications a student must also demonstrate a need for special education and related services for eligibility purposes. *34 C.F.R. § 300.8 (a)(1)*. The determination of whether a student who is advancing from grade is “in need of special education” must be determined on an individual basis. *Bd. of Hendrick Hudson Int. Sch. Dist., v. Rowley*, 458 U.S. 176, 207 (1982).

Should the School District Have Identified Student as Eligible for Special Education?

The major issue in this case is whether the school district should have identified student as eligible for special education services during the 2013-2014 school year. As a threshold matter the record shows that it was not until after Student became involved *** in January 2014 that there was any reason to suspect Student might be a student with a disability in need of special education.

As a *** grader Student passed all Student’s classes and made good grades. Although there were a few

The evidence shows the school district was not under an obligation to provide a free, appropriate public education until January 2015 when Student was determined to be eligible under the IDEA for special education. The evidence shows the IEP designed in January 2015 is reasonably calculated to provide Student with a meaningful educational benefit. *Bd. of Educ. of Hendrick Hudson Int. Sch. Dist. v. Rowley*, 458 U.S. at 205 (1982). Student did not meet Student's burden of proof on this issue. *See, Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

Conclusions of Law

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DOCKET NO. 047-SE-1014

SAN ANTONIO INDEPENDENT
SCHOOL DISTRICT,
 Respondent.

SYNOPSIS

Issue:

Whether *** grade student should have been evaluated and identified by school district as student with an emotional disturbance and/or learning disability.

Held:

FOR THE SCHOOL DISTRICT

Sch *** grade.
School district appropriately evaluated student following parental request for special education evaluation as a result of ***.

ropriate. ARD made the correct decision that student did not meet

Issue:

Whether school district should have provided *** grade student with a FAPE.

Held:

FOR THE SCHOOL DISTRICT

School district had no duty to provide FAPE until student was identified as eligible and in need of special education services. That duty did not arise until ***. Once school district completed r(i)(d) in 01c0uc