

STUDENT bnf	§	BEFORE A SPECIAL
PARENT	§	EDUCATION
Petitioner	§	
v.	§	HEARING OFFICER FOR THE
	§	
DALLAS ISD	§	
Respondent	§	
	§	STATE OF TEXAS

FINAL DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

Petitioner, Student *** and Student’s next friend and parent, *** (hereinafter referred to collectively as Petitioner and individually as Student or Parent), brings this action against Respondent Dallas Independent School District (hereinafter referred to as Respondent, the District, or DISD) 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. This action was filed on October 21, 2014.

The issues raised by Petitioner in this proceeding are as follows:

- 1) Whether Petitioner is entitled to reimbursement for tuition and costs, including transportation costs, associated with attendance at *** for the 2013-2014 school year;
- 2) Whether Petitioner is entitled to reimbursement for costs associated with counseling received during the 2013-2014 school year;
- 3) Whether Petitioner is entitled to compensatory services for violations of IDEA sustained during the 2013-2014 school year in the form of reimbursement for counseling and transition services for Student until the age of ***; and
- 4) Whether Respondent violated the procedural protections of IDEA by its failure to review Student’s Independent Educational Evaluation upon its completion?¹

For relief, Petitioner requests the following:

Tuition and costs, including transportation, for attendance at *** for the 2013-2104 school year; reimbursement for counseling obtained during the 2013-2014 school year; and compensatory services in the form of reimbursement for counseling and transition services until Student reaches the age of ***.

PROCEDURAL HISTORY

¹ Issue number 4, a subsidiary issue to Petitioner’s primary issue concerning tuition reimbursement, is not addressed herein because it is not necessary to the resolution of the fundamental issue raised by Petitioner.

Petitioner filed the instant request for due process on October 21, 2014. Roy Atwood, Attorney at Law, represents Petitioner in this proceeding. Sarah Flournoy, Attorney at Law, represents Respondent.

The parties agreed to waive the Resolution Session required by IDEA in lieu of mediation. The parties

5. Student first presented with academic difficulties that resulted in evaluation in ***. At that time, Student was diagnosed with ADHD and as being at risk for developing a language disorder and a dyslexic learning style. (JX 23).
6. Throughout Student's ***, Student attended private schools that served students with disabilities and received supports for academics, social interactions, and ADHD. Evaluation data indicates continued concerns related to ADHD, Reading, and oral and written expression. (JX 23).
7. At ***

implementation of Student's 504 plan and private counseling outside of school to manage anxiety and other emotional issues revealed by the assessment. (JX 1).

13. The ***

overwhelmed by external stimuli, and impaired in Student's judgment. The recommendation indicated that Student's treatment team was seriously concerned about Student's ability to transition to and/or function in a general education environment given the pervasive nature of Student's psychiatric illness and Student's ongoing struggles even within the contained day treatment setting. Again, the recommendation was strongly made that upon discharge, Student transition directly to a "small, highly-structured, contained specialized school setting with a therapeutic component and instructional modifications.... Student... is far too fragile to be placed on a general education campus." (PX 5).

20. At the time of Student's discharge on ***, 2012, *** offered only continued services for Student in the general education setting at *** despite the *** recommendations. (T. 72-73, 76). Parent, knowing Student could not return to ***, ***, who could provide Student with the necessary supports to transition out of the hospital setting. (T. 77-78). Parent *** throughout the 2012-2013 school year.

***** and ***- *** Grade**

21. In Dallas, Student enrolled in ***, a small, highly structured, specialized school that Parent believed could meet Student's needs as identified by Student's psychiatrist's recommendations. *** offers a learning environment for students with learning differences and challenges with very small classes, concrete-teaching methods, and extensive extra supports. (T. 91).
22. Student made a positive transition to *** and completed Student's *** grade year with A's and B's due to the very small class size, structure of the environment, and extensive supports that Student received. (T. 91-92; JX 19).
23. Student's ***, who was ***, recommended that Student develop a relationship with a Texas psychiatrist and be evaluated in Texas in case of a repeated psychotic break. (T. 81). As a result, *** in Dallas completed an evaluation of Student in *** 2013 to provide diagnostic clarification and treatment recommendations. (PX 7).
24. The *** evaluation found Student to be very emotionally and psychologically sensitive and vulnerable. *** recommended holding off on a firm diagnosis *** and diagnosed Student with Major Depressive Disorder in remission and Psychotic Disorder Not Otherwise Specified. *** noted a significant decline in overall intellectual functioning from Student's previous evaluation. *** recommendations included, in relevant part, continued follow-up with Student's psychiatrist for medication management, consistent structure with no significant life changes, and family and individual therapy. (PX 7).

***** *** Grade Placement and *** IEP for *** Grade**

25. Due to ***'s failure to offer Student a placement other in a general education setting for Student's *** grade year, Parent initiated a due process action against ***. On ***, 2013, *** and Parent executed a settlement agreement and release in the then pending due process action, in which *** agreed to reimburse Parent for all educational costs associated with Student's placement at ***, plus counseling services. (PX 8).
26. *** also agreed to continue Student's private placement for the 2013-2014 school year at an appropriate non-public school certified by the ***, plus counseling for 60 minutes per week

and transportation. *** agreed to document the placement agreed to for 2013-2014 on Student's IEP. In the settlement agreement, the Parties agreed that if Student was not accepted into a non-public school for any reason, that Student's placement for 2013-2014 would be the placement and IEP set forth in Student's *** 2012 IEP. ((PX 8, p. 3).

27. On ***

transfer into the district and plan for comparable services... (JX 8, p. 1). The transfer document provides that “Student will receive special education services on a temporary basis...” (JX 8, p. 2). The document then notes that Student’s eligibility for services had been verified by both Parent statement and documentation from *** and ***. Finally, the documentation notes that the services provided by the former school were “unclear.” (JX 8, p.2).

45. The transfer committee found that Student had a disability (specific learning disability), an educational need for special education and related services, and met eligibility criteria to receive services under IDEA. The document indicates that the committee believed additional evaluation was needed and that temporary services would be provided. (JX 8, p. 3).
46. Confusingly, the Transfer Documentation is completed with boxes checked designating that Student is a “parentally placed child with a disability in private school” who “declines enrollment in the home LEA.” The box is not checked next to the statement, “Parent declines enrollment in Dallas ISD and FAPE.” DISD apparently understood that Parent sought a FAPE from Dallas ISD. (JX 8, p. 3).
47. Although the transfer documentation reflects that temporary special education will be provided, the committee did not develop goals and objectives and provided that Student would master all of the TEKS objectives at Student’s grade level in a “mainstream” setting. (JX 8, pp. 11, 13).
48. Minutes of the *** Transfer meeting indicate that the District would reevaluate the Student and develop a plan to provide FAPE. DISD rejected Student’s IEP from *** because: 1) there was no disability specified documented in the FIE; 2) the goal statements are not measurable; and 3) the appropriate ARD committee members did not sign in agreement to the ARD meeting. The committee recommended a re-evaluation to provide a complete and current picture of Student’s eligibility for services. (JX 8, p. 13; T. 138, 387-388)
49. As of the *** 2013 Transfer Meeting, DISD was aware of the *** Evaluation, Student’s hospitalization at ***, Student’s ***, and the recommended need for stability in Student’s placement. (T. 140-141; 388-394). Despite the findings on page 3 of the Transfer documentation, DISD did not offer Student placement at *** or an IEP for services at DISD pending the completion of their re-evaluation.
50. As of ***, 2013, DISD found that Student was not IDEA eligible because neither a determination of a disability or of educational need had been made. (T. 398-399; JX 8).

Evaluation Of Student

51. Following the Transfer meeting in *** 2013, DISD sought and obtained consent to evaluate Student in *** 2014. Due to the adversarial context surrounding the evaluation, several

On *, 2014**

70. The ***, 2014 ARDC reviewed Student's PLAAFPs and developed goals and objectives related to the remaining activities of the school year even though the end date for the goals was set for *** 2015.

90. With the supports and environment offered by ***, Student received a meaningful academic benefit and ***. (JX 19, 20)
91. The tuition for *** for the 2013-2014 school year was ***; Petitioner paid *** the sum of *** as Petitioner received a *** financial aid credit from the school. (PX 52; T. 204).
92. Transportation costs associated with Student's attendance at *** for the 2013-2014 school year totaled ***. (PX 50; T. 207).
93. During the 2013-2014 school year, Petitioner obtained services from Dr. ***, M.D., a psychiatrist, primarily for medication management in the amount of ***. (PX 51; T. 207).
94. Pursuant to the provisions of the *** IEP and as compensatory services, Petitioner seeks counseling services for 240 minutes per month at the rate of \$300.00 per hour until the age of *** years, for a total of \$42,000.00. (T. 208-209).

DISCUSSION

Petitioner framed the central issue in this case as whether Petitioner is entitled to reimbursement for tuition and costs at *** for the 2013-2014 school year.

Petitioner asserts that Petitioner's entitlement to reimbursement for Petitioner's private placement stems from the transfer provision of IDEA that required DISD to provide comparable services to those set forth in Student's *** IEP until such time as DISD conducted a new evaluation and developed a new IEP. *34 C.F.R. § 300.323 (f); 19 T.A.C. § 89.1050(i)(2)*. Petitioner further argues that Petitioner is entitled to reimbursement for Petitioner's private placement because once DISD developed its own IEP, the District's offer of FAPE was both untimely and inappropriate.

DISD argues that the transfer provision of IDEA does not apply in this case because Student never enrolled in DISD.

develops, adopts, and implements a new IEP... *34 C.F.R. 300.323(f)*. For students with disabilities who have been placed by their parents directly in a private school and are referred to the local school district for services, IDEA directs the school district to “convene an ARDC meeting to determine whether the district can offer the student a FAPE. If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student...” *19 T.A.C. § 89.1096*.

Thus, IDEA makes clear that each child with a disability must be offered a FAPE from the local school district, either at the start of the year or upon transfer into the district or referral from a private school.

When IEPs Must Be In Effect: Students Not Identified

The facts of this case perfectly demonstrate the importance of this principle. As in the cases cited above³, requiring Petitioner to enroll Student in DISD in order to request an offer of FAPE from the District, with no information as to the type of program Student would be offered or if Student would be offered any services at all, would place Petitioner in an untenable position given the severity of Student's emotional condition and the clear medical advice against such a major life change. This is especially true here, given that DISD twice found Student to be ineligible for a FAPE at all (** Transfer meeting and ** ARDC meeting) and ultimately found Student IDEA-eligible on **, 2014, after Student had completed all coursework for Student's **. DISD's stated basis in ** 2013 for refusing to provide a FAPE comparable to the ** IEP was that Student was ineligible based on the

later after a new evaluation for eligibility is completed. The need for immediate action by a local school district is made clear by the remainder of the provision: “if the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services... until such time as the parents choose to enroll the student in public school full time.” *Id.*

Under this provision, a district cannot unduly delay for the entire school year, as DISD did in this case, before informing a parent as to whether it can provide FAPE; and therefore, whether the child can access FAPE only by enrolling in the public school.

DISD's Duty To Provide FAPE To Student

The above analysis demonstrates that Student was entitled to an offer of FAPE from DISD, Student's resident district, under the transfer provision, the

grounded in the law. A FAPE cannot be offered to a student if no IEP is developed. More significantly, the evidence conclusively demonstrates that DISD found Student ineligible to receive a FAPE in *** 2013 and ***

*** to DISD, especially in *** 2014 with *** left of school, was not based on *any* available data and failed to take into account Student's well-documented needs. Evaluations from *** and ***, as well as Respondent's FIE, all described Student's substantial emotional challenges and needs, as well as their impact on Student's academic profile and needs. In addition, *** performance data demonstrated the level of support Student required to obtain educational benefit, even in the small, highly supportive and structured environment offered there. The *** evaluation, the only then-current evaluation to address the impact of a school change on Student, clearly documented that such a change would have had a very detrimental effect on Student's emotional condition. Dr. *** confirmed this finding in her *** 2014 psychological consult and DISD's evaluator, Dr. ***, concurred in her testimony at the hearing in this case that moving Student from *** to DISD would constitute a significant life event that would be very stressful for Student. DISD's own FIE failed to account for the substantial supports Student required in Student's education and failed to include formal adaptive behavior testing, resulting in an over-estimation of Student's functional capabilities. Thus, although DISD proposed to serve Student at DISD, the only available evaluation data indicated that Student could not access educational benefit at DISD or sustain the change of placement emotionally.

Second, Student's IEP goals and objectives related solely to organization and self-regulating skills (because there was only one week left of school) and failed to address Student's academic or cognitive deficits at all. Respondent's FIE demonstrated that Student had deficits in Reading Comprehension, Math Reasoning, and Written Expression, as well as in Student's ability to reason, process visual information, use associational memory, and retain overall general knowledge. Student's overall cognitive decline and need for greater services to support Student's learning was also documented by the *** evaluation, ***'s FIE, and Dr. ***'s psychological consult. *** provided actual performance data that was consistent with the findings of the evaluations. Despite the existence of all of this data, the proposed IEP failed to address any of Student's academic or cognitive needs.

Finally, the FIE on which Respondent's proposed IEP was based contained several important deficiencies, which directly impacted the IEP offered to Student. First, as discussed previously, the FIE failed to account for the environment and supports at *** and failed to accurately measure Student's adaptive skills. Second, the FIE was conducted without an observation of Student in the school setting. These important omissions, coupled with the FIE's failure to fully analyze or incorporate information from other available assessments, resulted in an incomplete picture of Student's abilities, leading to an incorrect determination of eligibility. Even though the ARDC changed its eligibility determination in *** 2014 after receiving Dr. ***'s consultation report and other information, the FIE and its recommendations for the development of Student's IEP did not change. They were based on the same limited picture that did not include an IEP at all.

In sum, I find that Respondent's proposed offer of FAPE to Student on ***, 2014 was not based on performance and assessment; but rather, on DISD's desire to offer a program within the public school setting despite the evidence that Student could not be successful there, especially with the limited goals and services delineated in Student's proposed IEP.

Least Restrictive Environment

The parties did not address concerns related to the least restrictive environment provision of IDEA. To the extent that Student's proposed IEP or Student's placement at *** removed Student from the general education environment, the evidence conclusively demonstrated that such removal was both appropriate and necessary for Student to obtain a FAPE.

Coordinated and Collaborative Manner By Key Stakeholders

The evidence shows that DISD coordinated and worked in collaboration with Petitioner, *** and Dr. *** to obtain information about Student. Although the coordination efforts were surely strained by the differences in perspectives and desired outcomes of the parties, I find that DISD made appropriate (except as to timeliness) efforts to obtain the necessary information from key stakeholders; the problem arose with DISD's failure to appropriately incorporate or utilize the information obtained.

Reasonably Calculated To Provide Meaningful Benefit

The evidence conclusively establishes that Student's proposed educational program was not reasonably calculated to provide *** with meaningful educational benefit. The IEP failed to address any of Student's academic needs and provided no academic goals and objectives at all. The schedule of services provided 150 minutes per week per core subject and 60 minutes per week of personal social development in a special education setting, with the remainder of Student's time in a general education environment with in-class support. Given that Student's prior IEP from *** provided for Student to be educated full-time in a special education setting and that Student continued to require substantial support to be academically successful even at ***, the IEP proposed by DISD, offering substantially fewer supports in a significantly larger, less structured environment, was not reasonably calculated to provide Student with a meaningful educational benefit. This does not even take into account the very probable scenario, based on the evidence adduced at hearing, that a move to DISD could have so significantly impacted Student's emotional stability that Student may have)KIBG1LLD68DsWXGHQ||

the District refused, and the parents filed a due process complaint. The parents' subsequent conduct does not excuse the District's initial failure to comply with its obligation to offer a FAPE.” *D.C. at 114*. Similarly, in the instant case, the Parent’s stated intent that Student remain at *** did not relieve DISD of its obligation to make an *offer* of FAPE to Student. Had DISD made a timely offer of FAPE that Parent rejected, Parent’s actions might justify a reduction or denial of the requested tuition reimbursement; however, DISD made no offer of FAPE at all for Parent to consider or reject.

The equitable considerations asserted by DISD do not justify a reduction in the tuition reimbursement requested by Petitioner for the 2013-2014 school year. Petitioner approached DISD soon after the start of the 2013-2014 school year to notify the District of the intent to request a FAPE in the form of placement at ***. Petitioner cooperated with DISD’s desire to evaluate and gather additional information and even participated in the process of developing an IEP with only one week left of school. Ultimately, DISD failed to offer any FAPE at all to Student until the end of the school year despite Petitioner’s request; when DISD did make an offer of FAPE, it was not appropriate to meet Student’s academic or emotional needs. In short, DISD’s offer of FAPE was “too little and too late” and neither the timing of Petitioner’s notice to DISD nor Parent’s intent to continue Student at *** justify DISD’s failure to meet its obligations to Student during the 2013-2014 school year.

Petitioner’s Requested Remedies

Petitioner seeks reimbursement for tuition and transportation costs for attendance at *** for the 2013-2014 school year. The evidence established that Petitioner’s out of pocket tuition costs plus transportation at the pertinent IRS mileage reimbursement rate totaled \$25,426.93. For the reasons fully discussed herein, I find that Petitioner is entitled to full reimbursement for tuition plus transportation for the 2013-2014 school year.

Petitioner also seeks reimbursement for costs for counseling services obtained during the 2013-2014 school year. The evidence established that Petitioner obtained services from Dr. ***, a psychiatrist in the amount of \$825.00. I decline to award Petitioner reimbursement for the costs of Dr. *** because the evidence indicates that Dr. ***’s services were primarily for medication management, a medical service that was not required or necessary for educational purposes.

Finally, Petitioner requests compensa(c)4(e)4(s2047000TBTET0 1 14 T1 0 0)55s 3.02 366, yst

regulations. Dallas ISD was Student's resident district under IDEA for the 2013-2014 school year. DISD had the legal obligation to make FAPE available to Student. *34 C.F.R. § 300.101*.

2. Respondent failed to timely offer an educational program to Student that was reasonably calculated to provide Student with a free appropriate public education for the 2013-2014 school year. *34 C.F.R. 300.323; 34 C.F.R. § 300.111; 34 C.F.R. § 300.19 T.A.C. § 89.1096*.
3. Petitioner is entitled to reimbursement for the out of pocket cost to Student's family for the tuition at the private school, plus transportation, for the 2013-2014 school year because Respondent failed to make a timely offer of FAPE to Student and the private school placement was appropriate. *34 C.F.R. § 300.148*.
4. Petitioner's tuition reimbursement for the 2013-2104 school year is not be reduced or denied based equitable considerations. *34 C.F.R. § 300.148*.

ORDER

After due consideration of the record, and the foregoing Findings of Fact and Conclusions of Law, this Hearing Officer hereby **ORDERS** that the relief sought by Petitioner is **GRANTED IN PART** as follows:

1. Respondent shall reimburse Petitioner for the out of pocket costs for the tuition at *** for the 2013-2014 school year, plus transportation, in the total amount of \$25,426.93.
2. The total amount of \$25,426.93 shall be paid to Petitioner within thirty (30) business days of the date of this decision.

It is further **ORDERED** that all other items of relief not specifically awarded herein are **HEREBY DENIED**.

SIGNED and **ENTERED** this 6th day of May 2015.

/s/ Lynn E. Rubinett

Lynn E. Rubinett

Attorney at Law

Special Education Hearing Officer for the State of Texas

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause 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; 34 C.F.R. § 300.516; 19 Tex. Admin. Code Sec. 89.1185 (n)*.

TEA DOCKET NO. 052-SE-1014

STUDENT bnf	§	BEFORE A SPECIAL
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v.	§	HEARING OFFICER FOR THE
	§	
DALLAS ISD	§	
Respondent	§	
	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether Respondent failed to devise and offer an appropriate and timely IEP to Student for the 2013-2014 school year?

Held: For the Student. Petitioner met Petitioner’s burden of establishing that Respondent failed to devise and offer an appropriate and timely IEP for Student for the 2013-2014 school.

Cite: 34 C.F.R. 300.323

Issue: Whether Petitioner is entitled to reimbursement for tuition and transportation for the private placement obtained for Student for the 2013-2014 school year?

Held: For the Student. Petitioner met Petitioner’s burden of establishing that Respondent failed to make a timely offer of FAPE to Petitioner for the 2013-2014 school year and that Student’s private placement was appropriate. Student further demonstrated that the equities did not require a partial reduction in the amount of Student’s tuition reimbursement.

Cite: 34 C.F.R. § 300.148