

DOCKET NO. 117-SE-1214

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argument. The Decision was timely issued. Based upon the evidence and argument of the parties, the Hearing Officer issues the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. DISD is a political subdivision of the State of Texas and a duly incorporated independent s

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40. On December ***, 2014, Student *** and was followed by a behavior specialist to ensure safety. Student turned on the specialist and threw

49. Student placement in BAC or general education dangerous to ***self, other students, and District staff.⁴⁹
50. The ARD committees appropriately set behavioral goals, accommodations, and BIPs to address S⁵⁰
51. The District adjusted S e environment, depending upon behavior and as appropriate for needs.
52. Student was not subjected to a disciplinary change of placement.
53. At no time was Student Student was not transferred out of district.
54. The S good grades demonstrated.
55. Changes in placement for Student, away from the general education population, were only made when necessary and appropriate, because behavioral needs required a more restrictive environment.⁵¹
56. Student was educated with children who were not disabled to the full extent possible.
57. The District took meaningful steps to accommodate Student in regular education classes.
58. At all times, the District provided Student with a FAPE.
59. Parents were appropriately provided notice for all meetings, including ARD meetings, and of all actions taken by the District staff and ARD committees.
60. Parents attended all ARD meetings and agreed with all decisions made by the ARD committees at the time the decisions were made. The ARD committees appropriately addressed S academic progress, or lack thereof, at each ARD meeting.⁵²
61. A second potential eligibility for special educational services for Student related to other health impairment, but it was not proven necessary.⁵³
62. *** was a licensed specialist in school psychology at ***. Her expert testimony was credible and convincing.

⁴⁹ Tr. at 81.

⁵⁰ Ex. R-5 at 14, 15, and 25; Ex. R-6 at 14, 15, and 23; Ex. R-8 at 4, 13, and 16; and R-9 at 14, 15, and 24.

⁵¹ Ex. R-11 and 12; Tr. at 165.

⁵² Ex. R-8 at 16; R-9 at 4; R-10 at 1.

⁵³ Tr. at 229, 481-482.

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FAPE. Parents want Student to have a one-on-one aid to attend general education classes with Student and help Student academically.⁸⁰ Mother testified that she wanted Student returned to

The *** Assessment essentially continued findings along the same line as the initial two evaluations.
Student is a

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Mother giving inaccurate information to the hospital. Nurse *** explained that, at a minimum, student needed inpatient observation for medication to determine what is most effective and what has unacceptable side effects.⁹³ She testified that this type of evaluation is not performed by a school district and that is why she made calls for over an hour, telling hospitals that the Student was in a crisis and needed immediate care.

Teacher *** is a certified teacher, a certified counselor, and is ***. He has been S the BAC and a primary contact for Parents, on the phone with them as much as 20 times in September 2014 alone. He has felt the brunt of S and has protected the Student and other Students. All of these professionals agree on the special needs of Student and have work

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Petitioner understands that no ARD was requested to address behavioral concerns with the IEP failing then to provide teachers with the necessary classroom strategies. Petitioner argues that a FAPE has not been provided because inclusion in general education with support was never considered before a change in placement was recommended. Thus, Petitioner urges that Student has not been educated in the least restrictive environment (LRE). Petitioner also objects that Student has been in the special education program for *** years with no expectation of placing Student back into general education. Finally, Petitioner asked three specific questions to the Hearing Officer. The questions and answers from the Hearing Officer are immediately presented, followed by a general discussion of this issue.

To be clear, even at ***, if S Student would have been included in general education. But behavior became worse, not better. For this reason, Student began spending less time in the general education classroom. poor behavior began to endanger ***self and others, even when a second District staff member was included in classroom for support. From the initiation of special education until the hearing date, Student remained in either general education or general education with support in the classroom, to the extent behavior allowed.

Turning to the concern about documentation of progress, the ARD did not provide such documentation on the goals and recommendations in the 2013 FIE, because there was no progress to document. The evidence establishes that S Student needed to be moved to a more restrictive placement. Had Student been making progress, goals would have been set to allow Student to remain in the general education classrooms.

ARD meetings were requested to address behavioral concerns, and they resulted in a range of strategies recommended to teachers for Student. At all times, Student was educated in the LRE. The very point of the BAC was to include student in general education to the full extent possible.⁹⁶ So long as behavior allowed for it, S

objectives, Student could have been considered for return to full general education without BAC. However, Student did not. Parents agreed with the determinations made in this ARD, including placement in a BAC at ***. This ARD stated that another ARD meeting would be held within 12 weeks to review progress.

August 28, 2013 ARD⁹⁹

This ARD meeting was within 12 weeks of the initial ARD, as recommended, and was set to review progress and placement. Parents had changed their minds and decided that they wanted Student to remain at home district ***, ***. Rather than referring student to a BAC, this ARD agreed to allow Student to stay at *** with a behavior support team. The BIP and goals and objectives were revised in accordance with S

February 18, 2014 ARD¹⁰⁰

behaviors had not gotten better and Student had added ***. Prior to the ARD, Student was referred to *** where a risk assessment was conducted. The *** findings were considered and the ARD committee explored various strategies to encourage S ccess in the general education classroom. Strategies were added and additional support (including personnel) was provided to assist Student and teachers. Parents were in agreement with the actions taken.

March ***, 2014 ARD¹⁰¹

and physical aggression had increased after the last ARD meeting. The strategies implemented after the last ARD were not working. ***, where it was hoped Student would learn appropriate behaviors so as to be included in general education. At ***, Student would be in general education with support to the full extent possible, as behavior allowed.

December 18, 2014 ARD¹⁰²

⁹⁹ Ex. R-6.

¹⁰⁰ Ex. R-8.

¹⁰¹ Ex. R-9.

¹⁰² Ex. R-10.

This ARD was continued and the request for a due process hearing was filed, resulting in this proceeding ¹⁰³ were implemented by the filing.

The above-listed ARD meetings were all requested to address behavioral concerns so as to provide teachers with the necessary classroom strategies to address S At all times, a FAPE as detailed in S LRE. individualized in accordance with the S assessment and performance, and all IEPs were reasonably calculated to confer a meaningful educational benefit to Student.

best efforts, S eventually resulting in several physical assaults on teachers and peers. The threats became more specific and included ***. Student reached a point by the time of the evidentiary hearing that Student was a serious threat to ***self on the education of other students in the general education classroom and in the BAC. Accordingly, the Hearing Officer ordered S the education of other students could once again begin and in order to protect Student, District personnel, and other students.¹⁰⁴

3. Did the District fail to comply with IDEA procedural requirements by failing to provide the parents with notice of ARD meetings and failing to help parents understand their role in the IDEA program?

Petitioner asserts that no administrator informed or explained to Parents that additional assessments or evaluations were available to help the ARD committee develop classroom strategies. Petitioner further argues there were no notices of ARD meetings concerning behaviors that led to changes.

IDEA establishes certain procedural requirements for informing parents regarding formulating an I

opportunity, or that seriously infringe the parent's opportunity to participate in the development of the IEP result in the denial of a FAPE.¹⁰⁵

In this case, it was not shown that the District committed any procedural errors. The Hearing Officer does not find any evidence to support that any assessment or evaluation (performed or that could have been performed) was withheld by the District from Parents. Moreover, for arguments sake only, had any procedural errors been committed, it was not shown that the S
Contrary to assertions made by Petitioner, notice was provided and signed by Parents for every meeting. Explanations were given to Parents, including the Explanation of Procedural Safeguards

On March 25,

¹⁰⁶ If Parents did not understand their rights and the processes, it was because of their own negligence. Mother testified that she was unsure if she read documents before she signed them.¹⁰⁷ The Admission Review and ¹⁰⁸ She was advised that her rights included the right to receive answers from school personnel to questions she might have.¹⁰⁹ She did not ask any questions.

concerns. District personnel gave Mother their personal cell phone numbers and answered her questions. In particular, when Mother changed her mind about a placement, an additional ARD meeting was called and the ARD changed their previous placement to one that Mother was on the phone with school personnel when some of the most traumatic behavior occurred, like S s ***. Yet still, Mother testified that she did not believe Student *** but that Student ***. When asked if she believed that Student is dangerous to ***self and others, Mother stated: ¹¹⁰ She added that she believed very few of the things that District personnel reported as actually happening.

¹⁰⁵ 20 U.S.C. §1415(f)(3)(E); *Adam J. v. Keller ISD*, 328 F. 3d 804 (5th Cir. 2003).

¹⁰⁶ Ex. R-3.

¹⁰⁷ Tr. at 790.

¹⁰⁸ Tr. at 792.

¹⁰⁹ Ex. R-3 at 1.

¹¹⁰ Tr. at 786.

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3. As the party challenging the educational program proposed by the District, Petitioner bears the burden of proof on issues it brought before the Hearing Officer. *Schaffer-v- Weast*, 126 S.Ct. 528 (2005). *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff* -468 U.S. 883 (1984).
4. District provided FAPE and there were no substantive or procedural violations. *Cypress-Fairbanks Indep. Sch. Dist. V Michael F.*, 118 F.3d 245 (5th Cir. 1997).
5. The District met its burden of proving that Petitioner is not entitled to an IEE because an appropriate FIE waropTi.80 1 88. /ETBT/F3 12 Tf1 0B00480003>5 ed b9(o)-9TJBT0 0 1 451.63 59

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**STUDENT,
bnf PARENTENT,**

§ BEFORE A SPECIAL EDUCATION