

DOCKET NO. 287-SE-0515

(Consolidated with DOCKET NO. 013-SE-0915)

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT	§	
	§	
v.	§	HEARING OFFICER FOR THE
	§	
ALAMO HEIGHTS INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF HEARING OFFICER

On October 19-20, 2015, the parties convened for hearing in the instant action. At all times,

6. Whether District has refused to provide appropriate supports and services to assist Student in the classroom.

Requested Relief

Following a partial dismissal order of Petitioner's request for attorney's fees, Petitioner requested the following relief:

1. An order directing Respondent to pay the cost of private education services at ***, San Antonio, TX;
2. An order directing Respondent to provide transportation to and from the public school;
3. An order directing Respondent to pay for an independent educational evaluation that provides appropriate recommendations for services;

Alternatively, Petitioner requests the following relief:

1. An order directing Respondent to take specific actions required by the IDEA;
2. An order directing Respondent to pay for an independent educational evaluation that provides appropriate recommendations for services;
3. An order directing Respondent to provide compensatory special education or related services;
4. An order directing Respondent to devise measurable goals and objectives;
5. An order directing Respondent to draft a behavior improvement plan based on data collected over a period of time that is reviewed periodically and is measurable, to include a specific system to reward positive behavior;
6. An order directing Respondent to provide appropriate assessments and comply with the recommendations from its own assessments;
7. An order directing Respondent to begin developing a plan that will reduce or eliminate undesirable behaviors;
8. An order directing Respondent to provide a free, appropriate public education;
9. An order directing Respondent to reimburse Parent for all out of pocket expenses;
10. An order directing Respondent to teach Student academic, organizational, behavioral, and *** skills;
11. An order directing Respondent to develop a plan that teaches Student by the most effective means;
12. An order directing Respondent to develop a realistic ***; and
13. An order directing Respondent to develop specific, measurable, attainable, realistic and time-limited goals and objectives; and
14. An order directing District to provide intense training on staff-parent interactions and professionalism.

Stipulations of Fact

The parties made the following

Parent, Advocate and LSSP reviewed the results on April ***, 2015 and the initial ARD meeting was held April ***, 2015, within 30 days of the date of the report. P-10, 20; R

15. On the Wechsler Intelligence Scale for Children-4th edition (“WISC-IV”), Student rated average to above average in all scales. Student’s full-scale intelligence quotient is in the high average range. A cross-battery assessment approach was used to analyze Student’s co

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Regarding an occupational therapy assessment, Student's doctor did not recommend such an assessment. District did not determine a need for an occupational therapy assessment. Petitioner failed to bring evidence to show that Student needed an occupational therapy assessment.

***. ***. *** services are based on a child's individual needs, ***. Petitioner did not allege a failure to provide appropriate *** services. Advocate testified that she normally asks for a ***, but there is no evidence that she requested one for Student.

The evidence reflects that Student gets along with Student's classmates, participates in extra-curricular activities, performs chores at home, is very enthusiastic in *** class, and is working toward ***. Student has ***, and is expected to ***. Student is capable of functioning independently in the community. Student participates in ***. Student's goals are designed to assist Student with task completion, a factor that could complicate Student's ***. Student receives academic support to promote progress toward Student's academic achievement and ***. Petitioner failed to show that *** is needed.

Student's Educational Program

~~Some~~ (was determined el1.7(d)MC ET /c7(m)JT4(e)-1.6(1)6203ITwTc -0.t aeeD**.***Sa.

In the instant action, when Student was determined eligible for special education and related services, four instructional goals were developed: self advocacy, task prioritization, task management, and study skills. Student's self advocacy PLAAFP indicated that Student did not communicate with teachers unless prompted. From there, the goal was developed: within the *** weeks left of school, Student was to ***.

Student's task prioritization PLAAFP indicated that Student lacked the skills needed to identify and create a task prioritization list to address high priority assignments. Student recognized Student's need to learn to manage multiple tasks. From that, Student's goal was to view Student's weekly agenda that contained all of Student's assignments and create a priority plan of implementation for the weekly work. This was to be accomplished within the *** instructional weeks left of school.

Student's task management PLAAFP indicated that Student had to be prompted to write work down to help Student remember and recall the task Student needed to accomplish. The goal required Student to take all calendars that Student researched and identified and transfer them to Student's personal agenda to provide for a central location of work that needed to be accomplished.

Student's study skill PLAAFP indicated that Student lacked knowledge of teachers' websites and location of weekly calendars to view the work at a glance. The goal was for Student to ***.

The duration of services in the April IEP was for the remaining *** instructional weeks. Illogically, the IEP indicates that the goals were to be measured in *** weeks. However, Student's progress was reported for each of the *** weeks that remained in the school year and sent to Parent.

IEP at the beginning of the 2015-2016 school year

Petitioner alleged that District had no IEP in place at the beginning of the 2015-2016 school year, a procedural violation of the IDEA. At the beginning of each school year, each public agency must have an IEP in effect for each child with a disability within its jurisdiction. 34 C. F. R. §300. 323(a).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies —

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (iii) Caused a deprivation of educational benefit. 34 C.F.R. §300.513(a)(2).

At the end of the 2014-2015 school year, Parent requested an ARD meeting. District sent emails and made phone calls in unsuccessful attempts to schedule the meeting in May or early June. There is no evidence that Parent communicated with District regarding an ARD meeting during the summer months after filing the request for due process hearing.

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SYNOPSIS

- ISSUE NO. 1: Whether Respondent failed to identify Student as a child with a disability in need of special education
HELD: For Respondent District
CITATION: 34 C. F. R. §300.311; El Paso Indep. Sch. Dist. V. R. R., 567 F.Supp. 2d 918 (W.D. Tex. 2008); rev'd on other grounds, 91 F. 3d 417 (5th Cir. 2009). Schaffer v. Weast, 126 U. S. 528 (2005)
- ISSUE NO. 2: Whether Respondent made an appropriate education placement of Student in special education or related services under the IDEA
HELD: For Respondent District
CITATION: 34 C.F.R. §300.116; Tatro v. State of Texas, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984); Schaffer v. Weast, 126 U. S. 528 (2005)
- ISSUE NO. 3: Whether Student was denied a free appropriate public education ("FAPE")
HELD: For Respondent District
CITATION: 34 C.F.R. §300.101; Hendrick Hudson Central School District v. Rowley, 458 U.S. 175 (1982); Cypress-Fairbanks Independent School District v. Michael F., 118 F.3d 245 (5th Cir. 1997); Tatro v. State of Texas, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984); Schaffer v. Weast, 126 U. S. 528 (2005)
- ISSUE NO. 4: Whether District failed to evaluate Student in all areas of suspected disability, specifically whether District failed to conduct a functional behavior assessment, occupational therapy evaluation and ***
HELD: For Respondent District
CITATION: 34 C.F.R. §§300.530(f), 300.304, 300.34, 300.43(a)(2)(v); Tatro v. State of Texas, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984); Schaffer v. Weast, 126 U. S. 528 (2005)
- ISSUE NO. 5: Whether District failed to have an individualized education program ("IEP") in place for Student at the beginning of the 2015-2016 school year
HELD: For Respondent District
CITATION: 34 C. F. R. §300. 323(a); Tatro v. State of Texas, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984); Schaffer v. Weast, 126 U. S. 528 (2005)
- ISSUE NO. 6: Whether District has refused to provide appropriate supports and services to assist Student in the classroom
HELD: For Respondent District
CITATION: 34 C.F.R. 300.320(a)(4); Tatro v. State of Texas, 703 F.2d 832 (5th Cir. 1983), aff'd, 468 U.S. 883 (1984); Schaffer v. Weast, 126 U. S. 528 (2005)