

STUDENT, B/N/F PARENT,
Petitioner

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BEFORE A SPECIAL EDUCATION

v.

HEARING OFFICER FOR

HUNTSVILLE INDEPENDENT
SCHOOL DISTRICT ,
Respondent

THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Petitioner, STUDENT, b/n/f PARENT (“Petitioner” or “Student”) brings this action against the Huntsville Independent School District (“Respondent” or “the School District”) under the Individuals with Disabilities Education Act, 20 U.S.C. 141482 (IDEA) and its implementing state and federal regulations. The main issue in this case are whether the School District failed to implement Student’s Individual Education Plan (IEP) and Behavior Intervention Program (BIP) and whether the School District’s proposed change in placement for Student is appropriate.

The hearing officer concluded that the School District implemented Student’s IEP and BIP during the 2017-8 school year and proposed an appropriate placement for Student on January 7, 2018 for good cause at Petitioner’s request. An Independent Educational Evaluation was continued to January 17, 2018.

Paula Maddox Roalson In addition,***, the School District's Director of Special Education, attended the hearing as Respondent's party representative

Both parties filed written closing arguments in a timely manner. The Decision is due March 9, 2018.

III. ISSUES

A. Petitioner's Issues

Petitioner confirmed the following IDEA issues for decision in this case:

Free Appropriate Public Education (FAPE)

1. Respondent has denied Student a FAPE by failing to implement Student's IEP during the 2017-18 school year
2. Respondent has denied Student a FAPE by failing to implement Student's IEP during the 2017-18 school year
3. Respondent has denied Student a FAPE by failing to train School District staff on implementation of Student's BIP.

Placement

4. Respondent has violated the IDEA by changing Student's placement without parental consent.
5. Respondent has failed to educate Student in the Least Restrictive Environment (LRE).

Parental Participation

6. Respondent has denied Petitioner meaningful parental participation by failing to consider the input of Student's parent.

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Respondent contended Petitioner knowingly and willingly released these claims, and thus further litigation of those claims is outside of the jurisdiction of the hearing officer in this matter. Respondent's affirmative defense was granted Order No. 3 and Petitioner's claims were limited to those arising after August 7, 2017.

VI. FINDINGS OF FACT

1. Student is *** year old*** Grade student in the School District. Student has difficulty staying focused and on task in the school environment. Student has an inability *** and demonstrates inappropriate types of behaviors. Student's behaviors significantly affect Student's educational progress and social functioning. Student is eligible for special education services under the category of *** and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). The School District identified Student as eligible for special education services in March of 2016.
2. Student displays a significant level of distractibility impulsivity, ***. Student exhibits ***. Student's ***. Student has difficulty *** expressing Student's emotions and difficulty with being flexible ***.²
3. ***. Student's ability to acquire academic and social skills is negatively impacted by the frequency and nature of these challenging behaviors. Student engages in these behaviors to avoid.38 Tw 12 -0 0 12ngavoitr***esbth ** . [(S)-4(tSpan <)-2(o0 Tw [(3

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10. A School District Board Certified Behavior Analyst (BCBA) is assigned to Student's campus. The BCBA meets with staff working with Student on a daily basis to review Student's behavior and provide guidance to staff on implementation of Student's BIP and other strategies for addressing Student's behavior. The BCBA also meets weekly with the School District behavior coordinator to review Student's behavior and implementation of Student's BIP.¹⁹
11. Student's *** behavior is reinforced when Student is ***. Student will continue to engage in the *** behaviors if engaging in the behaviors results in the Student successfully ***.²⁰
12. Student has been engaging in the *** behaviors at school for ***. Through these behaviors, Student has been successful in avoiding ***. Student will be ***.²¹
13. The School District has tried a variety of strategies and provided many different supplemental services, to meet Student's needs and to address Student's behavior in the general education environment. The School District has attempted positive reinforcement, a token reward system and teaching replacement behaviors. The School District has also provided Student with an inclusion special education teacher in the general education classroom, an educational assistant, frequent breaks during instruction, and reduced assignments and expectations. In addition, the School District contracted with an outside BCBA to conduct a functional behavioral assessment (FBA) to better understand Student's behavior. To date, these supplemental aids and intervention strategies have not resulted in a reduction in Student's *** behaviors.²²
14. To address Student's needs, Student requires targeted interventions in ***, positive behavioral supports, counseling services, and positive school experiences.²³ Student requires counseling services to help Student learn to express Student's feelings appropriately, to problem solve, to develop coping strategies and to *** Student needs regular and consistent positive reinforcement when Student displays appropriate behavior.²⁴²⁵
15. Student reads below grade level. Student has difficulty ***.²⁶

¹⁹ TR Vol. 1, p. 8587.

²⁰ R.Ex. 7, p. 334.

²¹ R.Ex. 7, p. 390.

²² R.Ex. 7, p. 390; R.Ex. 13, p. 34; TR Vol. 1, p. 92.

²³ J.Ex. 1, p. 201.

²⁴ P.Ex. 3, p. 31.

²⁵ P.Ex. 3, p. 32.

²⁶ R.Ex. 13, p. 24.

21. The *** Classroom is staffed with **teacher and ***paraprofessionals and has a small number of students typically from ***. It is a highly structured environment with a focus on individual student behavior interventions and student academic deficits.³⁵
22. Student's Parent attended and participated in the, 2017 ARD committee meeting and a follow-up meeting on***, 2017. Her objections to Student's placement change were received and considered by the School District.³⁶
- 23.

Student's unique and complex needs proposed a program to educate Student in the least restrictive environment

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Student. The Fifth Circuit has articulated a four factor test to determine whether a Texas school district's program meets IDEA FAPE requirements. Those factors are:

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preference in favor of educating students with disabilities in general education settings with their nondisabled peers. However, if a school district cannot satisfactorily educate a student with a disability in the general education setting, then the school district may remove the student from the general education setting and place them in special education classes. 20 U.S.C. § 1412 (a)(5); 34 C.F.R. § 300.114(a) (1) (2) (i) (ii). This requirement of the IDEA is referred to as a school district's obligation to educate a student in the least restrictive environment (LRE). *Id.*

To determine whether a school district is educating a student with a disability in the LRE, consideration must be given to:

- Whether the student with a disability can be satisfactorily educated in general education settings with the use of supplemental aids and services
- If not, whether the school district mainstreamed the student to the maximum extent appropriate.

Daniel R.R. v. El Paso Ind. Sch. Dist., 874 F. 2d 1036, 1048 (5th Cir. 1989).

D. Educating Student In General Education Settings with Supplemental Aids And Services

The determination of whether a student with a disability can be educated in general education settings requires an examination of the nature and severity of the student's disability, the student's needs and abilities, and the school district's response to the student's needs.

This determination requires an examination of:

- a school district's efforts to provide the student with supplemental aids and services in the general education setting
- a school district's efforts to modify the general education curriculum to meet the student's individual needs;
- the educational benefit a student is receiving while placed in the general education setting; and

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