

Respondent

§ **BEFORE A SPECIAL EDUCATION**
§ **HEARING OFFICER FOR**

§ **THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

Petitioner, STUDENT, by next friend PARENT (“Petitioner” or “Student”), brings this action against the Round Rock Independent School District (“Respondent” or “School District”) under the Individuals with Disabilities Education Act, 20 U.S.C. §§1400-1482 (IDEA) and its implementing state and federal regulations. The main issue in this case is whether the School District failed to provide Student with a Free Appropriate Public Education (FAPE) during the 2018-2019 school year and whether the School District continues to fail to provide Student with a FAPE this current 2019-2020 school year.

The Hearing Officer concludes the School District denied Student 7(ct)0.do1.730.006 Tw 13.7 0 Td (a)Tj through the most recent IEP scheduled to end in March 2020; therefore, Student's placement of private placement at ***.

II.

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VI. FINDINGS OF FACT

1. Student was enrolled in the School District in 2014 as *** grader at ***.² Student is eligible for special education services as a student with *** (***) and Other Health Impairment (OHI)-***.³ Student transferred from *** where Student was receiving special education services for a Specific Learning Disability.⁴
2. In July 2013, Student ***.⁵ Student is a “bright” young *** with a “hunger” for education and a “passion” for helping others.⁶
3. *** can have the following effects on a student’s behavior: medical appointments or recovery-related fatigue may result in intermittent or unexpected absences; positive and rapid variation in school performance from day to day or morning to afternoon; more time to process directions and complete tasks; a distractible or inattentive behaviors; academic performance may be different from before ***; irritability with increased stimulation; difficulty organizing large tasks and comprehending large reading assignments; higher-level subjects or cumulative learning may challenge the student; relationships with friends may change; new behaviors, including impulsivity and/or excessive moodiness; disrespectful/inappropriate comments, aggressive behavior, decreased frustration tolerance or depression; ***; side effects from medication that result in fatigue, impaired memory and organization, or unexpected behaviors; transitions from one class or activity to another may take extra time or preparation; and difficulty attending to two tasks simultaneous.^{7(y)39.3d.7(m)0.6}

cognitive functioning test and the academic achievement tests.¹⁰ The only area Student tested below average was ***.¹¹ Student's weakness in visualization testing may affect Student's ability to ***.¹² Student's prior testing from *** indicated Student had difficulties with visual perceptual skills.¹³

6. The FIE recommended that school staff: repeat instructions/provide more detailed directions; give instructions through several channels (written, oral, demonstrsI717(o)5lp.4(ed)6()TJ 0

accommodation for State of Texas Assessments of Academic Readiness (STAAR) testing in reading, writing, and math.²¹ Student received all of Student's services in the general education setting with inclusion support provided in math.²²

10. During the February 2017 ARD Committee meeting, Parent notified the ARD Committee Student suffers from *** in the afternoon and wears down as Student goes through the day.

11. Student has a hard time with loud noises - /LB(dy </) 4:786 0-4(16.6(s)dl)6(3+n)22.t)6(m)0.707

school, and the opportunity to leave class for individualized assistance.³⁰ The ARD committee removed Student's AT needs,

from partial to full days as tolerated.⁵¹ On a special education OHI form, the neurologist noted Student has a heightened alertness to environmental stimuli that results in limited alertness with respect to the educational environment.⁵²

school day.⁵⁸ The ARD Committee's plan was for Student to transition back to school by providing *** morning tutorials before school.⁵⁹

30. Student needed to build up Student's endurance on being able to process sensory input without Student's body shutting down. Due to Student's ***, too much stimulation can increase Student's *** while too little activity can cause a decline in health.⁶⁰ Student was encouraged by Student's physicians to do at least an hour of an "engaged" activity every day to expose Student to some stimulation. Parent advocated for the Monday, Wednesday, and Friday tutorials for Student's "engaged" activity.⁶¹
31. On February ***, 2019, Student's therapist provided her diagnostic recommendations to the School District where she stated Student would benefit from homebound, a shortened school day, or self-paced courses because there is no "ideal" environment for Student to work in. A self-paced program would allow Student to work as slowly or quickly as needed.⁶²
32. On February ***, 2019, the School District's attendance officer filed truancy charges against Parent, which stated Parent was criminally negligent and failed to require Student to attend school as required by law.⁶³ The attendance officer stated Parent did not turn in documentatwj 0.017.63uor Scudent TT2 1tt t2wd8r4(***)JTJ 0.006 Tc 0.161 Tw 5.5 0 Td

34. I(696.1.3(n t)-5.3(he(I)7 s)5.7(pri)-5.3(ng6.1.7(2019 s)5.7(e(I)7m)-5.3(e(I)7s)5.6(t)-5.3(e(I)7r, S)6(t)-5

39. By the end of the 2018-2019 school year in May 2019, Student had ***.⁸¹ Student did not *** ** tutorials, because they only made it through ***.⁸²
40. On June ***, 2019, Parent provided her 10 day notice to the School District of her intent to unilaterally place Student in private school at *** (***)⁸³ In September 2019, Student began Student's treatment at *** and completed the program in late October 2019.⁸⁴ Parent continued to discuss Student's plan at the School District even after she notified them of her intent to enroll Student in ***.⁸⁵
41. Student's neurologist wrote a letter in July 2019, which indicated Student was unable to attend school on a regular basis and needed a modified, flexible, home-based schedule to meet Student's needs. The letter requested the School District continue to send packets of school work to Student for Student to complete before and during Student's stay in ***. In August of 2019, Student was completing outpatient physical and occupational therapy in preparation for Student's *** *** and was unable to attend school regularly due to the prescribed program of ***.⁸⁶
42. On August ***, 2019, the School District's Executive Director of Special Education emailed Parent and proposed Parent and Student tour ***. *** is the School District's *** where Student could receive a limited schedule of classes. The School District proposed conducting an ARD3 -1.15 Td hSTw 4.5 0 8fBondt.On Auanour ***

Teachers at *** are not required to have teaching

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program. *Richardson Ind. Sch. Dist. v. Leah Z.*, 580 F.3d 286, 294 (5th Cir. 2009).

1. Individualized on the Basis of Assessment and Performance

In meeting the obligation to provide a FAPE, the school district must have in effect an IEP at the beginning of each school year. An IEP is more than simply a written statement of annual goals and objectives and how they will be measured. Instead, the IEP must include a description of the related services, supplementary supports and services, the instructional arrangement, program modifications, supports for school personnel, designated staff to provide the services, the duration and frequency of the services, and the location where the services will be provided. 34 C.F.R. §§ 300.22, 300.323(a). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential, the school district must nevertheless provide Student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. V.P.*, 582 F.3d 576, 583(5th Cir. 2009). The basic inquiry in this case is whether the IEP implemented by the school district "was reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances." *Andrew F. v. Douglas Cnty. Sch. Dist. RE-1*, 137 S. Ct. 988 at 999 (2017).

The evidence showed the School District developed IEPs based on

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knowing Student could not tolerate a “full day” based on multiple physician letters. In Student’s January/March 2019 IEP, the School District acknowledged Student had physical limitations that may affect Student’s access to general education and Student needed specialized instructional support; however, the School District did not follow through with individualizing Student’s educational program. The School District continued to offer a full day of school without any specialized instruction to meet Student’s unique needs. Student needed to work Student’s way back to a full class schedule, which means the School District should have provided a shortened day until Student was able to handle a full day. The School District focused on the timeliness of Student’s medical excuses instead of determining what Student needed in Student’s IEP or following their own PLAAFPs for Student. The School District should have recognized Student missed more school in the fall of 2018 than in the fall of Student’s *** year and some type of assessment was needed to address Student’s increasing needs. The IEP was not individualized based on Student’s well-documented needs.

2. Least Restrictive Environment

The IDEA requires that a student with a disability shall be educated with non-disabled peers to the maximum extent appropriate and that special classes, separate schooling and other removal from the regular education environment occurs only if the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. This provision is known as the LRE. 34 C.F.R. § 300.114(a)(2)(i)(ii). State regulations require a school district’s continuum of instructional arrangements be based on students’ individual needs and IEPs and include a continuum of educational settings, including: mainstream, homebound, hospital class, resource room/services, self-contained – regular campus (mild, moderate, or severe), nonpublic day school, or residential treatment facility. 19 Tex. Admin. Code § 89.63(c).

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. *Id.* This determination requires an examination of:

frustration with the truancy charges

Student must meet a two-part test in order to secure continued placement at *** at school district expense. First, Student must prove the school district's proposed program was not appropriate under the IDEA. Second, Student must prove continued placement at *** is appropriate. A private placement may be appropriate even if it does not meet state standards that apply to the public school. *Burlington Sch. Committee v. Dept. of Educ.*, 471 U.S. 359, 370 (1985); *Florence County Sch. Dist. Four v. Carter By & Through Carter*, 510 U.S. 7 (1993).

2. Test Applied to the Facts

A Parent is entitled to reimbursement for the unilateral private placement of a child with a disability if the public school's program does not provide the student with a free, appropriate public education and the private school's program is appropriate. *Burlington*, 471 U.S. 359, 370 (1985).

In this case, the first issue is whether the school district's program was appropriate. If not, the second issue is whether Student's unilateral private placement at *** is appropriate. *Burlington*, 471 U.S. at 370. The private placement need not meet all State requirements for reimbursement purposes so long as the private placement meets Student's individualized needs and is therefore appropriate. *Florence*, 510 U.S. 7, 13, 15 (1993). If both prongs of the *Burlington* test are met, the hearing officer may also consider whether reimbursement should nevertheless be reduced or denied. 34 C.F.R. § 300.148(d).

As detailed above, the School District's program did not offer Student a FAPE in accordance with the IDEA and the four-factor test laid out by the Fifth Circuit. Thus, the Hearing Officer must examine the second *Burlington* prong to determine if placement at *** was appropriate. *** is providing Student an appropriate education. *** provides academic instruction in a 1:1 ratio by teachers who implement a curriculum aligned with the TEKS. The evidence showed Student making academic progress in Student's two classes. Student is also making friends and socializing with peers in the ***. Part of Student's success could be attributed to Student's work at ***; however, *** has provided Student with a program individualized for Student's needs based on doctor's recommendations and Student's abilities, with a plan of ***.

c.