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STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

CONFIDENTIAL
Pursuant to FERPA – 20 U.S.C § 1232g;
34 CFR Part 99

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TEA DOCKET NO. 255-SE-0821

ACCEPTED
701-21-3318
11/16/2021 11:24:39 am
STATE OFFICE OF
ADMINISTRATIVE HEARINGS
Carol Hale, CLERK

██████████ B/N/F ██████████
Petitioner

v.

**MAGNOLIA INDEPENDENT SCHOOL
DISTRICT,**
Respondent

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

ORDER NO. 4
GRANTING RESPONDENT’S MOTION FOR SUMMARY JUDGMENT AND
DENYING ITS MOTION TO STRIKE PETITIONER’S ANSWER AS UNTIMELY

██████████ (Student), by next friend ██████████ (Parent or, collectively, Petitioner), filed a request for an impartial due process hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA) on August 20, 2021. The respondent to the Complaint is the Magnolia Independent School District (Respondent or District). The initial prehearing conference was held on September 9, 2021. Respondent indicated during the conference it would file a dispositive motion related to Petitioner’s claims on or before September 17, 2021. The hearing officer informed Petitioner that ██████ response to the District’s motion would be due two weeks after the District filed its motion and that the date would be set forth in a revised scheduling order. Order No. 2 memorialized the prehearing conference and set October 1, 2021, as the due date for Petitioner’s response to the District’s motion.

Respondent filed a Traditional Motion for Summary Judgment (Motion) on September 17, 2021. Petitioner filed an Answer to the Motion on October 6, 2021. Respondent filed an Objection to Petitioner’s Answer and a Motion to Strike the same day.

I. MOTION FOR SUMMARY JUDGMENT AND RESPONSE

In its response to the Complaint, Respondent asserted the affirmative defense of full and final release. In its Motion, Respondent argues that summary judgment is appropriate because the claims and requested relief set forth in the Complaint were released as part of a mediated settlement agreement (Settlement Agreement) executed in May 2021. Respondent offered evidence in support of its Motion that establishes the following facts:

Petitioner filed a request for a due process hearing in April 2021. Citing Student’s alleged lack of progress, Petitioner claimed that the District denied Student a free and appropriate public education (FAPE) by failing to provide an appropriate individualized education program during the 2020-21 school year.¹ As a result of this alleged violation, Petitioner sought tuition reimbursement from Respondent for a non-public day school placement. On May 26, 2021, Petitioner entered into a Settlement Agreement with Respondent. The Settlement Agreement includes a Full and Final Release (Release) that releases Respondent from:

any and all claims, complaints, demands, damages, causes of action, liabilities or controversies of any kind whatsoever, whether known or unknown, which arise out of, or in any manner pertain to claims based upon (1) any transactions, dealings and/or agreements between the parties which have occurred at any time up to the signing of this Agreement; and/or (2) any cause of action or factual allegation made by, or which could have been made by [Petitioner] against [the District] and its agents, employees, representatives, attorneys, insurers, and Trustees through the effective date of this Agreement.

See Motion at 1, Exh. A. The District’s last day of instruction for the 2020-21 school year was the same day the Settlement Agreement was executed—May 26, 2021. *Id.* at 2, Exh. B. The hearing officer dismissed the matter on June 6, 2021. Petitioner did not take advantage of any items agreed

¹ Petitioner filed [REDACTED] first due process hearing request on April 9, 2021. *See* TEA Docket No. 149-SE-0421.

upon in the Settlement Agreement, including those items that were scheduled to occur or commence over the summer. *Id.*, Exh. D.

Respondent's first day of school for the 2021-22 school year was August 11, 2021. *Id.*, Exh. C. Petitioner notified Respondent that morning that Petitioner had enrolled Student in a non-public day school program on August 2, 2021. *Id.*, Exh. E. Petitioner filed the instant Complaint on August 20, 2021. The issue presented in the Complaint is whether the District denied Student a FAPE by failing to provide an IEP reasonably calculated to enable Student to make appropriate progress, and it seeks the same relief as the April 2021 Complaint—tuition reimbursement for a non-public day school placement.

In ■■■ Answer to the Motion, Petitioner argues that the August 2021 Complaint does not relate to actions occurring before May 26, 2021, but then asserts that the program provided by the District for the last three years was ineffective and, as a result, Student failed to show progress. Petitioner did not produce any evidence to support ■■■ opposition to the District's Motion.

II. SUMMARY JUDGMENT LEGAL STANDARD

Under the Texas Rules of Civil Procedure, a party seeking to recover on a claim, counterclaim, or an affirmative defense may, at any time after the adverse party has appeared or answered, move for summary judgment in the party's favor in whole or in part, with or without supporting affidavits. A summary judgment shall be rendered if the record on file, including discovery responses, the pleadings, affidavits, stipulations of the parties, and authenticated or certified public records, show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Tex. R. Civ. P. 166a(a)-(c).

The substantive law identifies which facts are material. Once the moving party has made an initial showing that there is no evidence to support the nonmoving party's position, the party

opposing the motion must come forward with competent summary judgment evidence of the existence of genuine fact issues. The non-movant's burden cannot be satisfied by conclusory allegations, unsubstantiated assertions, or only a scintilla of evidence. Factual controversies are to be resolved in favor of the non-movant, but only when there is an actual controversy; that is, when both parties have submitted evidence of contradictory facts.²

III. ANALYSIS

A. Petitioner Released Any Claims Against the District Accruing Prior to May 26, 2021, Under the Terms of the Parties' Settlement Agreement.

When the affirmative defense of release is raised, "the defendant bears the burden to plead and prove the existence of an effective and valid release." *Barras v. Barras*, 396 S.W.3d 154, 170 (Tex. Ct. App. 2013). Here, Respondent's Motion and attached evidence demonstrate that Petitioner released any claims accruing before May 26, 2021, when ■■■■ executed the Settlement Agreement. Petitioner does not dispute this. Thus, any claims Petitioner may have had against the District would have had to accrue after May 26, 2021.

B. The District did not Violate the IDEA's Requirement to Provide a FAPE After May 26, 2021.

The evidence offered by Respondent establishes that (1) the last instructional day of the school year was May 26, 2021 (the effective date of the Settlement Agreement); (2) Petitioner failed to take advantage of items agreed to under the Settlement Agreement and offered by the District over the summer; (3) Respondent was ready, willing, and able to complete the terms of the Settlement Agreement; and (4) Petitioner unilaterally enrolled Student in a non-public day school prior to the first instructional day of the 2021-22 school year. Petitioner does not dispute

² *M.L. ex rel. A.L. v. El Paso Indep. Sch. Dist.*, 610 F.Supp. 2d 582 (W.D. Tex. 2009), *aff'd per curiam*, 369 Fed. Appx. 573 (5th Cir. 2010).

these facts or offer any evidence that contradicts them. Instead, ■■■ summarily states in ■■■ response that “the case is not about anything that [happened] before May 26, 2021.”³ Petitioner’s conclusory allegation, by itself, is insufficient to save Petitioner’s Complaint from summary judgment.⁴

Based on the evidence presented, the hearing officer concludes that Petitioner’s failure to avail ■■■ self of items offered to Student by the District pursuant to the terms of the Settlement Agreement does not amount to a denial of FAPE by the District. The federal regulations are consistent with this conclusion. *Cf.* 34 C.F.R. § 300.300(b)(3), (4) (a school district will not be considered to be in violation of the requirement to provide FAPE if parent refuses to consent or revokes consent for special education services).

C. The District is not Required to Pay for Student’s Private Placement under § 300.148(a).

The regulations also provide that a school district is not required “to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if the district made FAPE available to the child and the parents elected to place the child in a private school or facility.” 34 C.F.R. § 300.148(a). As discussed above, the evidence shows that the parties agreed to the provision of certain services by the District. The District repeatedly attempted to coordinate the provision of those services with Parent. Parent, however, unilaterally elected to place Student in a private school. Under these circumstances, the District is not required to pay for the cost of Student’s private school education.

³ Moreover, Petitioner’s statement is at odds with the allegations of the Complaint and the position ■■■ takes elsewhere in ■■■ Answer in which ■■■ alleges that Student failed to make progress over the last three years under the program implemented by the District.

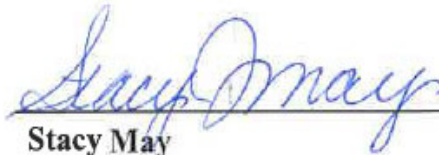
⁴ *M.L. ex rel. A.L.*, 610 F.Supp. 2d at 594.

Because the hearing officer finds that Respondent did not violate the requirement to provide Student with a FAPE, ■■■ does not reach the merits of Respondent's argument under § 300.148(d)(1)(ii) related to Parent's failure to provide adequate notice of a unilateral placement. The hearing officer also denies Respondent's Motion to Strike. A hearing officer has the authority to rule on motions and make any orders as justice requires. 19 Tex. Admin. Code § 89.1170(e). Although Petitioner failed to timely file ■■■ response to the Motion for Summary Judgement, ■■■ failure to do so did not prejudice Respondent. Moreover, the interests of justice and the dispositive nature of a summary judgment weigh in favor of denying the Respondent's Motion to Strike.

ORDER

Based upon the foregoing, the record on file, and in accordance with the Individuals with Disabilities Education Act and its implementing state and federal regulations, it is **ORDERED** that Respondent's Motion to Strike Petitioner's Answer is hereby **DENIED**, and because there are no genuine issues of material fact under Texas Rule of Civil Procedure 166a, it is further **ORDERED** that Respondent's Motion for Summary Judgment is hereby **GRANTED** and this case is **DISMISSED WITH PREJUDICE**.

SIGNED November 16, 2021.



Stacy May
Special Education Hearing Officer
For the State of Texas