

DOCKET NO. 020-SE-0924

**STUDENT,
B/N/F PARENT.**

Petitioner

v.

**SHARYLAND INDEPENDENT
SCHOOL DISTRICT**

Respondent

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§

BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR THE

STATE OF TEXAS

DECISION OF THE HEARING OFFICER

PROCEDURAL HISTORY AND STATEMENT OF THE CASE

Student (Student), by next friend Parent, filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) on September 19, 2024. Respondent in the complaint is Sharyland Independent School District (ISD) (the District). The hearing was conducted on November 19, 2024. The parties met in a resolution session and participated in mediation through the Texas Education Agency but were unable to resolve the dispute in either forum.

At all times during the proceedings, Student was represented by Student's Parent. Respondent school district was represented by Gregory P. Kerr, attorney with Jones, Galligan, Key & Lozano, L.L.P. The hearing was recorded and transcribed by Jennifer Porter, a duly certified court reporter.

Student's Claims

1. Whether the District denied Student a Free Appropriate Public Education (FAPE) when the District failed to provide Student with a one to one aide despite Parent's report of Student's history of improvement when Student had a one to one aide?
2. Whether the District made a predetermined decision before Student's Admission Review and Dismissal (ARD) meeting on September ***, 2024?
3. Whether Sharyland ISD violated Parent's right to full participation in the October***, 2024 ARD because Parent's invitee, an employee of Student's former school district, ***was not permitted to participate in the ARD despite having valuable insights into Student's services and

had the ability to explain what the ***special education director referred to as a clerical error in Student's Individualized Education Plan (IEP)?

4. Whether the District denied Student a FAPE when the District decided to fit Student into a one size fits all approach and, when at the ARD, parents asked for the District to point to academic achievement/competencies where Student has improved or made measurable gain?
5. Whether the District disciplined Student inappropriately for behavior that was a manifestation of Student disability and was in violation of the District's disciplinary policy and IDEA?

Student's Requested Relief

1. An order to compel the District to develop and implement an appropriate Individualized Education Program (IEP) for Student with appropriate supports that includes a one to one aide trained to work with students with autism;
2. Compensatory education for time lost when the District denied Student FAPE by refusing to provide Student with a one to one aide trained to work with students with autism;
3. Any and all further relief that the Hearing Officer deems appropriate.

The Due Process Hearing

The due process hearing began as scheduled on November***, 2024. The hearing was conducted using the virtual Zoom platform. The hearing was open to the public, and Student did not attend. Each party was allowed six hours for the presentation of argument and evidence at the hearing.

Petitioner did not call any witnesses to present evidence in support of Student case at the opening of the hearing. Petitioner stated that Student would present Student case through cross-examination of Respondent's witnesses. Respondent proceeded to make a motion for a directed verdict because Petitioner had not met Student burden of proving Student case. Respondent's motion for directed verdict was denied.

Presentation of evidence concluded on November 19, 2024. At the close of the evidence, both parties presented oral closing arguments. The decision due date in this case is January 1, 2025.

FINDINGS OF FACT

Based on a preponderance of the evidence admitted at the hearing, the Hearing Officer makes the following findings of fact:

1. Sharyland Independent School District (ISD) is a political subdivision of the State of Texas and a duly incorporated Independent School District.
2. Student is enrolled in the *** grade at *** in Sharyland ISD. At all relevant times, Student resided with Student's Parents within the jurisdictional boundaries of the District. (Ex. R-6, P. 1).
3. Student is eligible for special education and related services as a student with***. (Ex. R-1).
4. Student transferred into Sharyland ISD from *** ISD at the beginning of the 2024-2025 school year. (Ex. R-6).
5. On August ***, 2024 Student was *** in Student classroom with Student ***. The classroom teacher saw the behavior and reminded Student that *** was not proper and that at school Student needed to have calm, safe hands. As discipline the teacher put Student's ***. No prohibited aversive technique was used in disciplining Student. (Tr. Pp.36-37).
6. On September ***, 2024, ***, the special education director in***, who had been on the job for six days, sent an email to the principal of Student's campus in Sharyland ISD. In the email *** wrote that Student had received a one to one shadow throughout the day while enrolled at ***and that the omission of the one to one aide in the Student's IEP Accommodations section was a clerical error. (Ex. P-15. P. 2) (Tr. 59, 23-25).
7. Sharyland ISD conducted an Admission Review and Dismissal (ARD) Committee meeting on September *** 2024 to review Student's IEP from ***and to develop an appropriate IEP for Student at Sharyland ISD. (Ex. R-4) (Ex. R-6).
8. The IEP from ***provided for an aide to accompany Student to Student general education *** and for supervision during transitions/unstructured times. (Ex. R-3, P.8).
9. The ***of Student's IEP from ***dated August ***2023, provided for individually determined staff to student ratios, and during transition activities, Student was to have a one to one escort. (Ex. R-3).
10. Both parents of Student attended the September***, 2024, ARD meeting. (Ex. R-6, 17).
11. Student's parents were at all times timely provided with notices of procedural safeguards. (R-6).
12. The Sharyland ISD September ***2024 ARD determined that Student benefits from a program that provides individualized constant supervision throughout the day on a group basis. (Ex. R-6,

- 4).
13. Student received instruction in the *** unit setting in the fall semester of 2024. The class enrollment was *** students, one teacher and two paraprofessionals. In the classroom Student is constantly monitored by either the teacher or *** paraprofessionals. (Tr. 31, 18-21).
 14. When Student went to general education classes, and on breaks and at lunch and recess, Student was accompanied by a one to one aide. (Ex. R-6) (Tr. 31, 15-17).
 15. Both parents disagreed with the ARD decision and wanted Student to be provided with a one to one aide throughout the school day. (Tr. 34, 13-15) (Tr. 147, 24-25) (Tr. 148, 10-12).
 16. A reconvene ARD was held on October***, 2024 to discuss Student's accommodations including Parent's request for Student to have a one to one aide at all times. (Ex. R-8).
 17. Parent invited the special education director at ***to the October***, 2024 ARD. (Tr. 60-61).
 18. On October ***2024, approximately 10 to 15 minutes before the beginning of the reconvene ARD meeting, the Principal of Student's campus received a call from the Special Education Director at***. The Director told the Principal that *** had been invited to the meeting by the parents, but because the parents had filed a grievance against***, *** would not be attending the ARD. (Tr. Pp. 60-61).
 19. On September ***, 2024, a new set of Goals and Objectives was developed by Sharyland ISD for Student. Student's progress on the goals from August, 2024 to September 2024 was documented. (Ex. R-7). Student's progress toward the goals has been slow as of the beginning of the year but is likely to improve by the end of the year as the goals are annual. (Tr. 79).
 20. Student's classroom teacher has already seen a periodic change towards progress in Student's behavior and academics and has seen that Student has been able to function very well. (Tr. Pp. 33-34) (Tr. P 53).
 21. Without a one to one aide Student is more independent and is able to participate to a greater extent in class than when shadowed by a one to one aide. (Tr. P 54).
 22. Since August 2024, Student has attended after school care on Student's campus in a class with *** other students without a one to one aide or constant supervision from 3:30 until a parent picks Student up at around 4:30-5:15. (Tr. pp. 67, 14-25; 68, 1-2).

DISCUSSION

I. The Nature of the Dispute

Petitioner's overriding issue in this dispute is that the District refused to provide Student with a one to one aide and that this refusal violates Student's right to a Free Appropriate Public Education (FAPE). All of Petitioner's claims revolve around the issue of the provision of a one to one aide for Student.

II. The Governing Legal Standards

A. Burden of Proof

Student has the burden of proof to establish the inappropriateness of the educational plan proposed by the District. As the Supreme Court has explained, "(t)Student burden of proof in an administrative hearing challenging an IEP is properly placed upon the party seeking relief." *Schaffer v. Weast*, 546 U.S. 49, 62 (2005). Applying this principle, the Fifth Circuit held that, "the IDEA creates a presumption in favor of a school system's educational plan, placing the burden of proof on the party challenging it." *See White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 377 (5th Cir. 2003). Consequently, Student bears the burden of proof to overcome the presumption that the plan proposed by the District was appropriate. *See id.*

B. FAPE

The IDEA requires that all children with disabilities who are in need of special education and related services are identified, located, and evaluated and that a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. Nothing in IDEA requires that children be classified by their disability so long as each Student who has a disability listed in section 1401 of the IDEA and who, by reason of that disability, needs special education and related services is regarded as a Student with a disability. 20 U.S.C. §1414(a)(3)(a)(B).

The purpose of the IDEA is to ensure all children with disabilities have available to them a Free Appropriate Public Education (FAPE) that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living. 20 U.S.C. § 1400(d). A school district is responsible for providing a student with specially designed personalized instruction with sufficient support services to meet the student's unique needs in order to receive an educational benefit. The instruction and services must be provided at public expense and

comport with the Student's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188- 189, 200-201, 203-204 (1982). (*Rowley*)

The IDEA requires more than a diagnosis of a disability. It requires that a Student exhibit symptoms of a qualifying disability and exhibit them to such a degree that they interfere with the Student's ability to benefit from the general education setting. *Alvin Indep. Sch. Dist. v. A.D.*, 46 IDELR 221 (5th Cir. 2007); *Student v. Lake Travis Indep. Sch. Dist.*, No. A-07-CA-152-SS (W.D. Tex. Filed Aug. 10, 2007).

C. Standards of IEP Appropriateness

The Fifth Circuit has addressed the meaning of the *Rowley* standard in light of the Supreme Court's recent decision in *Andrew F. v. Douglas Cnty. Sch. Dist. No. 15-827*, 580 U. S. 386, 400-01 (2017). The Fifth Circuit concluded that while *Rowley* sets the floor of opportunity for an eligible student, the *Andrew F.* decision does not displace or differ from the Circuit's own standard set forth in *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). Accordingly, the appropriateness of the IEP proposed by the District must be analyzed in accordance with the holding in *Michael F.*

The Court in *Michael F.* determined that a student's IEP is reasonably calculated to provide meaningful educational benefit when:

1. The program is individualized on the basis of the student's assessment and performance;
2. The services are provided in a coordinated and collaborative manner by the key stakeholders;
3. The program is administered in the least restrictive environment; and
4. Positive academic and non-academic benefits are demonstrated.

Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245, 251 (5th Cir. 1997)

A school district's obligation when developing a student's IEP is to consider the student's strengths, the student's parents' concerns for enhancing the student's education, results of the student's most recent evaluation data, and the student's academic, developmental, and functional needs. 34 C.F.R. § 300.324(a)(1)(i). While the IEP need not be the best possible one nor must it be designed to maximize the student's potential, the school district must nevertheless provide the student with a meaningful educational benefit—one that is likely to produce progress not regression or trivial advancement. *Houston Indep. Sch. Dist. v. V.P. ex rel. Juan P.*, 582 F.3d 576, 583 (5th Cir. 2009).

To meet its substantive obligation under the IDEA a district must offer an IEP that is reasonably calculated to enable the Student to make progress appropriate in light of the Student's circumstances. The adequacy of a given IEP turns on whether it is appropriate to the unique characteristics, needs, and circumstances of the Student for whom it was created. *Endrew F. v. Douglas Cnty. Sch. Dist., No. 15-827*, 580 U. S. 386, 400-01 (2017).

II. Student Failed To Prove That Student's September *, 2024 IEP Was Not Appropriate.**

The IEP at issue in this matter is the one the District proposed for Student on September ***, 2024, which is based on Student's most recent Full and Individual Evaluation (FIE), the concerns of the parent, the academic, developmental, and functional needs of Student, and Student's strengths. *See* 34 CFR 300.324(a)(1). Student meets eligibility criteria to receive special education services as a student with Autism (AU) and a Speech Impairment (SI) and is eligible to receive Special Education services and supports.

A. Individualized On the Basis Of Student's Assessment And Performance.

At the September ***, 2024 ARD, Student's present levels of academic and functional performance were reviewed. The ARD Committee determined Student would benefit from individualized constant supervision in a group setting. IEP goals and objectives were created for reading, math, ***, speech therapy, and occupational therapy. Student's ARD Committee determined these services were needed for acquisition of grade level TEKS and prerequisite skills that are below grade level to access the curriculum. The evidence supports the District's determinations. Based on the evidence, Student's IEP was individualized based on Student assessment and performance.

Parent's argument that Student would make better progress if Student were provided a one to one aide at all times throughout the day was not supported by credible evidence. On the contrary, the evidence established that Student's placement should continue as proposed in the September ***, 2024 IEP.

In addition, based on the evidence, Student is likely capable of receiving instruction and making progress toward Student goals and objectives in the life skills unit, a restricted special education

resource setting.

B. Provided in a Coordinated and Collaborative Manner by Key Stakeholders

At all times, Parent was provided with proper notice of ARD meetings and procedural safeguards. The deliberations of the ARD meetings indicate that the Parents fully participated in the ARD meetings and that the District considered and fully discussed parental concerns during ARD meetings. The IEP proposed at the September ***, 2024 ARD, which was continued to October ***, 2024, was developed during the ARD meeting by the required members of the ARD committee, including Parents. However, despite the collaborative effort, Parents were never in agreement with the proposed IEP, and at every ARD convened for developing this IEP, Parents indicated their disagreement with the District's decision not to provide Student with a one to one aide. Nevertheless, the evidence shows that the District met its obligation to conduct the ARD and provide services to Student in a coordinated and collaborative manner.

C. Least Restrictive Environment

The evidence shows that Student can receive an educational benefit in Student placement in the special education *** room with an enrollment of *** students, one special education teacher and two paraprofessionals, a ratio of approximately two students to one trained adult. Student is accompanied to Student's general education *** and during passing periods and at *** by one dedicated adult. This placement allows Student to be educated with peers of Student's age who do not have disabilities to the maximum extent appropriate to Student overall educational needs. *34 C.F.R. § 300.115*. Requiring an aide therefore would not provide Student with a FAPE in the LRE consistent with the requirements of *Andrew F.* and *Michael F.*

D. Positive Academic and Non-academic Benefits Demonstrated

The credible evidence at the hearing showed that the District's provision of special education to Student under the proposed IEP was reasonably calculated to, and would likely, result in meaningful education benefits to Student. Student would likely achieve academic progress and meet the goals and objectives set forth in the IEP.

The evidence does not support Student's claim that Student was denied FAPE because Student's proposed September***, 2024 IEP was not appropriate. Student's IEPs and overall educational

programming do not require the District to provide Student with a one to one aide.

III. Inappropriate Discipline

The credible evidence clearly shows that Student was not inappropriately disciplined for behavior that was a manifestation of Student disability. The disciplinary action in question involved a mild verbal correction for inappropriate behavior and *** because Student *** with the ***. The incident was reported promptly to Parent. This is not evidence of either inappropriate discipline or behavior that is a manifestation of Student's disability. Furthermore, the incident does not prove that the presence of a one to one aide for Student would have prevented Student from engaging in the behavior that resulted in a mild disciplinary action.

IV. Conclusion

When looking at the totality of the *Michael F.* factors as applied to the proposed IEP at issue here, the evidence showed that the IEP offered by the District for the 2024-2025 school year was individualized based on Student's assessment and performance and would likely provide for education in the least restrictive environment in which Student can obtain an educational benefit.

The IEP was developed in a sufficiently coordinated and collaborative manner by the key stakeholders and was designed to provide Student with a program that was reasonably calculated to deliver meaningful academic benefit in light of Student's unique circumstances for the 2024-2025 school year. *Andrew F., 137 S. Ct. at 992.* Based on the four factors of *Michael F.*, the evidence established that the IEP offered by the District on September **, 2024 and again on October ***2024 offered Student a FAPE in the LRE and that the failure of the District to provide Student with a one to one aide was not a failure to provide Student with a FAPE.

Finally, the District did not inappropriately discipline Student.

CONCLUSIONS OF LAW

1. Student did not meet Student's burden of proving that Respondent failed to propose an appropriate IEP for Student for the 2024-2025 school year. *34 C.F.R. §300.320.*

2. Student did not meet Student's burden of proving that the District's proposed IEP for the 2024-2025 school year did not provide for placement of Student in the Least Restrictive Environment in which Student can obtain an educational benefit. *20 U.S.C. § 1412(a)(5), 34 C.F.R. § 300.115.*
3. Student did not meet Student's burden of proving that the District's refusal to provide Student with a one to one aide was not individualized to Student's unique needs, characteristics, and circumstances. *Andrew F. v. Douglas Cnty. Sch Dist. No. 15-827, 580 U. S. 386, 400-01 (2017).*
4. Student failed to meet Student's burden of proving that the District failed to collaborate appropriately with Student's Parents or that the District predetermined Student's IEP prior to the ARD meeting. *Cypress- Fairbanks ISD v. Michael F., 118 F.3d 245, 251 (5th Cir. 1997).*
5. Student failed to meet Student's burden of proving that the District inappropriately disciplined Student for behavior that was a manifestation of Student disability. *34 C.F.R §300.530(e).*

ORDER

Based on the foregoing Findings of Fact, Conclusions of Law, and Discussion, Petitioner's claims are without merit.

ACCORDINGLY, IT IS HEREBY ORDERED THAT: Any and all requested relief is

DENIED.

SIGNED on the _____ day of December 2024.

Sandy Lowe
Special Education Hearing Officer
For the State of Texas