

SOAH Docket No. 701-24-15578.IDEA
TEA Docket No. 243-SE-0424

**Before the
State Office of Administrative Hearings**

—
**STUDENT, by next friend
PARENT,
Petitioner**

v.

**Houston Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

I. STATEMENT OF THE CASE

*** (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 April 8, 2024, with notice issued by the Texas Education Agency (TEA) on the same day. The Respondent to the Complaint is the Houston Independent School District (Respondent or the District).

II. DUE PROCESS HEARING

The impartial due process hearing in this case took place via Zoom on May 22, 2024. Petitioner was represented by Parent in Parent's *pro se* capacity. Respondent was represented by its legal counsel, Hans Graff. The hearing was recorded and transcribed by a certified court reporter. The decision is due on June 24, 2024.

Without objection, the Hearing Officer admitted the following exhibits during the hearing: Joint Exhibits 1-21, 26, 28, 29, 31, 34-36, 39, 40, 43, 44, 46, 48, 52-53, 58, 63-64, 69, 72-76, 78, 82, 92, 93-146, 150, 170-74, 176, 182, 192, 194, 207, 221, 227, 230, 243-44, 254, and 263; and Petitioner's Exhibits 30, 42, 54, 57-58, 61, 72, 78-79, 88, and 90.

Petitioner presented three witnesses. The first was the principal of ***. The second was the special education unit director in the District who works with ***. The third was a resource teacher and dyslexia specialist at ***.

Respondent presented two witnesses. The first was the assistant principal at ***. The second was a licensed professional counsellor assigned to, among seven campuses in the District, ***.

III. ISSUES

A. PETITIONER'S ISSUES

Petitioner raised the following issues for hearing in this matter:

1. Whether Respondent implemented Student's Individualized Education Plan (IEP) with fidelity, including whether Respondent provided Student's behavior interventions and accommodations and whether it collected and provided timely progress data.
2. Whether Respondent included Parent and considered Parent's input in making educational decisions about Student, including refusing to discuss compensatory education and nonpublic school placement.

B. RESPONDENT'S LEGAL POSITION AND ADDITIONAL ISSUES

Respondent generally denies the factual allegations stated in the Complaint. Respondent contends that it provided Student with a FAPE during the relevant time period, that it can continue to do so, and that Petitioner is not entitled to any of the requested relief. Additionally, Respondent asserts the statute of limitations as an affirmative defense.

IV. REQUESTED RELIEF

Petitioner confirmed the following items of requested relief:

1. Order Respondent to implement Student's IEP with fidelity.
2. Order Respondent to develop a detailed plan of action to address the deficiencies in implementation, including deadlines that are agreed upon with Parent and weekly meetings with Parent to examine appropriate implementation.

3. Order Respondent to provide aides to deliver *** for Student.
4. Order Respondent to provide training for staff members involved in implementing the IEP to ensure they understand their roles and responsibilities.
5. Order Respondent to place Student in a non-public school placement at Respondent's expense.
6. Order Respondent to provide data about Student's progress to Parent as written in the IEP.

V. FINDINGS OF FACT

1. Student is *** years old and will enter *** grade at *** in the District in the fall of 2024. Student attended *** during the 2023-24 school year, and, before that, Student attended ***. Student qualifies for special education as a student with autism. Student resides in the District with Student's Parent ***.¹
2. Student was first evaluated for special education and related services in March 2021 when Student was *** years old. Student was attending a full time program at *** at the time of the assessment. Four qualified professionals conducted the evaluation. The evaluators used the *** to evaluate Student's speech, the Behavior Assessment System for Children, Third Edition (BASC-3) to evaluate Student's behavior, two different autism evaluations, and the *** Third Edition to evaluate Student's academic performance and intelligence. They also interviewed Student, Parent, and several others who interact with Student. Finally, they conducted multiple observations of Student.²

¹ Join Exhibit (J) 1, at 2; J2, at 1-2; J10, at 1, 5.

² J1, at 1-2.

3. Student was in the average range in most areas of the evaluation, including Student's cognitive ability, where Student's composite score of *** put Student in the *** percentile. The evaluation found that Student qualified for special education and related services as a student with autism and a speech impairment. It also made several recommendations, including teaching using scripts to encourage appropriate behavior and appropriate conversations, providing choices, providing visualizations and visual schedules, using play partners to address social skills, providing frequent reinforcement and instructions, preparing Student in advance for any changes, and working on social skills and conversation skills across settings.³
4. On March ***, 2023, while Student was attending school at ***, Parent participated in an Admission, Review, Dismissal (ARD) Committee meeting. The ARD Committee agreed on Student's ongoing placement in the *** setting, a self-contained setting designed for students with a wide range of disabilities, including higher functioning children like Student as well as children with ***. *** is only available in ***, so it was not available to Student during the 2023-24 school year. The meeting ended with all parties in agreement.⁴
5. On May ***, 2023, Parent signed a revocation of consent for special education, indicating that Parent no longer wanted Student to receive special education and related services. When Student moved from *** to *** at the beginning of the 2023-24 school year, Student's new teachers spoke to personnel at ***. The personnel at *** informed Student's new teachers about the revocation of consent.⁵
6. At the beginning of the 2023-24 school year, Student was having a number of behavior issues. When staff at *** spoke with staff at ***, the staff at *** reported they had experienced the same difficulties with Student as staff at *** were experiencing at the beginning of the 2023-24

³ J1, at 10, 12-14.

⁴ J7, at 31; Tr. 48, 98.

⁵ J263; Tr. 53, 138,

- school year. Because Student was not receiving special education at *** due to Parent’s revocation of those services, Student was in a general education classroom without supports. Student exhibited *** and aggressive behaviors. ***.⁶
7. The District reevaluated Student in 2023 before Student’s three-year reevaluation was due at Parent’s request because of ongoing concerns with Student’s classroom behavior. Parent formally requested the evaluation on September ***, 2023, and the District completed the evaluation in October 2023. According to the evaluation, Student was exhibiting a number of problematic behaviors, including physical aggression, ***, and frequent tantrums. Student’s Intelligence Quotient of *** fell within the average age for Student’s same-age peers. This was consistent with Student’s academic performance, where Student’s teachers described Student as “high functioning” and “highly intelligent.” Because Student was no longer showing communication deficits, the evaluation recommended removing Student’s eligibility for a speech impairment. Instead, the District recommended Student be identified solely as a student with autism.⁷
 8. After requesting the evaluation on September ***, 2023, on September ***, 2023, Parent signed consent for a new full and individual evaluation (FIE). It was completed in October. On October *** and October ***, 2023, following completion of the FIE, the District held two ARD Committee meetings to reestablish special education services for Student after Parent’s earlier revocation of consent. Parent attended the meetings along with all required District personnel.⁸
 9. The District proposed that Student be placed primarily in *** ** classroom. The *** classroom is designed for high functioning students

⁶ Tr. 138-39.

⁷ J2, at 1, 8, 18, 21; J22; Transcript (Tr.) 19, 84.

⁸ J6, at 31-34.

- with autism who have behavior issues like Student. The goal would be for Student, who is “highly intelligent” and capable of handling the curriculum in a general education setting, to gain social skills and then transition back to full time in the general education setting. Student could work on the general education curriculum in the *** room, where the teacher is a certified general education teacher, but in a smaller setting with more emphasis on social skills. An *** classroom has teaching aides who help redirect and provide social skills. During the portions of the day when Student is in general education classes, Student would have support of *** staff in the general education classrooms and could go back to the *** room if Student needed a break.⁹
10. Parent disagreed with this placement. She stated that special education accommodations had not yet been attempted in the general education setting, so a placement change was premature. The District agreed to continue to provide special education services in the general education setting. The District developed a Behavior Intervention Plan (BIP) and agreed to provide support from a privately contracted Board Certified Behavior Analyst (BCBA) to assist teachers in dealing with Student’s behavioral issues. The ARD Committee agreed to reconvene in December to examine Student’s behavioral progress.¹⁰
11. The ARD Committee met again on December **, 2023, to look at Student’s progress. Academically, Student was making progress and was reading on grade level. However, behaviorally, Student continued to struggle between the October 2023 and the December 2023 ARD Committee meetings. Student was refusing to do work about 50% of the time. Student would ***. The District once again urged Parent to accept the *** classroom placement, and Parent again refused. The ARD Committee agreed to allow Student to continue in general education classes.¹¹

⁹ J6, at 31-34; Tr. 26, 34, 43, 58, 83-89, 106, 125, 132.

¹⁰ J6, at 31-34; Tr. 26, 34, 58, 106, 113, 125, 132.

¹¹ J8.

12. In January 2024, Parent sent an email requesting an ARD Committee meeting. Parent claimed Parent was not receiving progress reports, asked for compensatory education for services that were not provided at the beginning of the school year due to Parent's revocation of consent for special education services, and requested private placement based on what Parent believed to be the District's inability to accommodate Student. In response, the District held an ARD Committee meeting with Parent on January **, 2024. Parent acknowledged during the meeting that Parent was receiving weekly progress reports. The ARD Committee discussed compensatory services and did not agree to provide them since Student was not enrolled in special education at the beginning of the year. Parent left the meeting 20 minutes after it began, and the meeting thus ended.¹²
13. Staff at *** sent home a weekly behavior log to Parent. The unit director assigned to *** had a weekly meeting with Student's teachers to discuss and recommend further behavioral strategies. Additionally, staff at *** collected and sent Parent several progress reports on Student's progress toward Student's IEP goals, which included detailed narratives from Student's teachers about Student's progress toward the goals. They also sent detailed logs on Student's daily behavioral issues.¹³
14. As the year progressed, many of Student's most severe behaviors escalated. For instance, while Student engaged in *** behaviors throughout the 2022-23 and 2023-24 school years, Student began making more frequent *** as the 2023-24 school year went on even though the District had implemented its interventions. When Student engaged in these behaviors, Student had to be removed from the classroom to de-escalate. Student's teachers were not able to serve Student while continuing to serve other students in the class. The District faithfully implemented various behavior interventions from Student's IEP and BIP. Sometimes those strategies were successful in deescalating or preventing problematic behaviors while other times they were not. When Student becomes *** and is not calming down, the District sometimes will call Parent to try to calm Student down. Parent requested

¹² J9, at 31; Tr. 37-38, 174.

¹³ J170, 171, 172, 207; Petitioner's Exhibit (P) 30; Tr. 91, 102, 107.

this not take place while Student is in the room. During one incident in April 2024, the District did call Parent with Student in the room. This intervention is not a part of Student's IEP. The District wanted to do a safety plan, but Parent refused and did not want the District to do a safety plan, so the District has not created one.¹⁴

15. On February 14, 2024, Parent filed a request for a due process hearing. The parties entered into a settlement agreement and Parent dismissed the request without prejudice on March 20, 2024. Parent filed the instant request for a due process hearing on April 8, 2024, because she did not feel the District was implementing the agreement quickly enough in the 19 days between the dismissal and the refiling of the case. The decision is due on June 24, 2024.¹⁵

VI. DISCUSSION

A. BURDEN OF PROOF

Courts should generally presume that public school officials are performing their duties as required under the IDEA. *Forest Grove Sch. Dist. v. T.A.*, 557 U.S. 230, 247 (2009). The burden of proof in a due process hearing is thus on the party challenging the proposed IEP and placement.¹⁶ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). The burden of proof in this case is on Petitioner to show the District failed to provide Student with a FAPE and to offer a program that is reasonably calculated to provide Student with the requisite educational benefit. *Id.*; *Andrew F. ex rel. Joseph F. v. Douglas Cty. Sch. Dist. RE-1*, 580 U.S. 386, 403 (2017).

¹⁴ Tr. 115, 142-46, 153-54, 161.

¹⁵ Prehearing Conference Transcript, at 7 (May 1, 2024).

¹⁶ There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009).

B. PARENTAL INPUT

Petitioner has alleged that the District did not consider Parent’s opinion in making educational decisions. The IDEA contemplates a collaborative process between the school district and the parents. *E.R. ex rel. E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754, 765 (5th Cir. 2018).

The IDEA does not require a school district, in collaborating with a student’s parents, to accede to a parent’s demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student’s parents have the right to dictate an outcome because parents do not possess “veto power” over a school district’s decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student’s parents or refusal to listen to them, a school district must be deemed to have met the IDEA’s requirements regarding collaborating with a student’s parents. *Id.*

In this case, the District considered parental input. During the 2023-24 school year, the District conducted a new evaluation prior to its due date; provided BCBA support; and held a total of five ARD Committee meetings, one at parental request primarily to consider compensatory education and private school placement. The District has been recommending placement in the *** classroom since the October 2023 ARD Committee meetings but has not changed Student’s placement due to Parent’s objection. The District has made an effort to value Parent’s opinion and make Parent a part of planning Student’s education even when the District disagreed with Parent’s opinion.

Petitioner argues that Petitioner has not received sufficient progress reports. However, by Parent's own admission during the January 2024 ARD Committee meeting, Parent received progress reports every week. The District also sent home detailed progress reports on Student's progress toward Student's IEP goals. Teachers were also in regular email communication with Parent.

Petitioner also alleges the District should have considered private school placement and compensatory education. The District held an ARD Committee meeting to do just that in January 2024. The District did not feel it owed compensatory education for not providing Student special education and related services at the beginning of the 2023-24 school year because Parent revoked consent in writing to provide those services.

The District believed Student would thrive in the *** classroom and did not need a private school setting. Student was being educated in *** classroom, which was designed for students with a variety of disabilities during the 2022-23 school year. At the end of the school year, Parent revoked consent for special education and related services, and Student therefore began the 2023-24 school year in a general education classroom without supports.

That was not effective, so beginning in October 2023, the District and Parent agreed that the District would add special education supports and services. The District proposed Student be educated in the *** setting, but Parent disagreed. The District thus placed Student in general education at Parent's request.

Student struggled with Student's behavior and Student's behavior did not improve by the time the due process hearing was held. Student began struggling with *** primarily after the District implemented supports and services. The District wanted to create a safety plan, but it deferred to Parent's desire not to have a safety plan in place.

The District has proposed a placement where Student will access the general education curriculum. It has also provided BCBA support, instructional aides, a BIP, accommodations, and other special education services to try to serve Student in the general education curriculum. Private school settings are the exception, not the default setting, for a student struggling in Student's setting. The IDEA is designed to serve students in public school settings. *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1014-15 (5th Cir. 2010). The District held a meeting to consider the private setting in January 2024 and ultimately determined it could best serve Student in the *** setting.

The right to meaningful input does not mean a student's parents have the right to dictate an outcome because parents do not possess "veto power" over a school district's decisions. Absent bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. In this case, Petitioner did not demonstrate a failure to consider Parent's input, only a failure to accede to Parent's demands for compensatory education and private school placement.

C. IEP IMPLEMENTATION

Petitioner also alleges that the District did not implement Student's IEP. To prevail on such a claim under the IDEA, the party challenging implementation must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school district failed to implement substantial or significant provisions of the IEP. *Bobby R.*, 200 F.3d at 349. This approach affords school districts some flexibility in implementing IEPs while also holding them accountable for material failures and for providing each student with a disability a FAPE. *Id.* Failure to implement a material portion of an IEP violates the IDEA, but failure to execute an IEP perfectly does not amount to denial of FAPE. *See Sumter Cty. Sch. Dist. 17 v. Heffernan ex rel. T.H.*, 642 F.3d 478, 484 (4th Cir. 2011).

Petitioner did not present evidence that the District failed to implement any key portions of the IEP. While Student's teachers testified it would be more appropriate and beneficial to Student to implement Student's IEP in the *** placement, the evidence shows that the teachers were implementing Student's behavior interventions and supports to the best of their ability in Student's current setting. The District implements various strategies from Student's IEP and/or BIP to deescalate or prevent behaviors. While those strategies have varying success, the evidence indicates that District is implementing them with fidelity.

Petitioner presented evidence that there was an incident in April 2024 in which District personnel called Parent to try to deescalate Student while Student was ***. While this was contrary

to Parent's request that the District only call when Student was not present, it did not violate any portion of the IEP or BIP. This was not an intervention in the IEP or BIP. It also seems to be an isolated incident as District personnel were aware not to call Parent while Student was in the room. This was the only example of them forgetting to ensure Student was not in the room. Thus, even if that information had been written into Student's IEP or BIP, an isolated incident would not have been sufficient to constitute a "substantial" or "significant" failure to implement the IEP. *See Bobby R.*, 200 F.3d at 349. This sort of intervention could have been addressed in a safety plan, but the District acceded to Parent's desire not to have one.

Petitioner did not demonstrate other areas in which the District did not implement the IEP or BIP. Petitioner thus did not present sufficient evidence of teachers failing to implement "material aspects" the IEP. *See Id.*

VII. CONCLUSIONS OF LAW

1. The burden of proof in a due process hearing is on the party challenging the IEP. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005).
2. The District appropriately collaborated with Parent in planning Student's education. *White ex rel. White*, 343 F.3d at 380.
3. Petitioner did not demonstrate that the District failed to implement Student's IEP. *Bobby R.*, 200 F. 3d at 349.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

All other relief not specifically stated herein is **DENIED**.

Signed June 24, 2024.

ALJ Signature:



Ian Spechler
Presiding Administrative Law Judge

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this case is a final and appealable order. Any party aggrieved by the findings and decisions made by the Hearing Officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).