

DOCKET NO. 289-SE-0620

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

v.

**INSPIRE ACADEMIES AND THE HAYS
COUNTY JUVENILE DETENTION
CENTER,**
Respondents

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

**ORDER NO. 8
ORDER GRANTING RESPONDENT’S MOTION TO DISMISS**

I. PROCEDURAL HISTORY

██████████ by next friend ██████████ (Student or, collectively, Petitioner), filed a request for a due process hearing under the Individuals with Disabilities Education Act (IDEA) on June 26, 2020 against Inspire Academies (John H. Wood Charter School) and the Hays County Juvenile Center (Respondent or HCJC).

Petitioner resolved ██████ claims against Inspire Academies and filed a Motion to Dismiss on July 8, 2020, leaving only Petitioner’s claims under the IDEA against HCJC pending.¹

Order No. 7 set the deadline to file dispositive motions for February 24, 2021. HCJC filed a Motion for Leave to File Motion to Dismiss and a Motion to Dismiss on February 26, 2021. Petitioner filed a Response to the Motion for Leave on March 1, 2021. The Hearing Officer granted HCJC’s Motion for Leave because its ability to file on time was hindered by an unprecedented winter storm. Petitioner filed a Response to the Motion to Dismiss on March 8, 2021.

¹ Petitioner’s claims under statutes other than the IDEA were dismissed for lack of jurisdiction in Order No. 5.

II. THE RESPONSIBILITY TO PROVIDE A FAPE IN JUVENILE JUSTICE FACILITIES IN TEXAS

Petitioner's due process hearing request raised claims against HCJC and Inspire Academies (John H. Wood Charter School), the local educational agency (LEA) that provides educational services to youth in the care and custody of HCJC pursuant to a memorandum of understanding (MOU) between them.² The claims identified for hearing include whether Respondents: (1) failed to identify and evaluate Student as student with a disability in need of special education; (2) denied Student a free, appropriate public education (FAPE) by failing to develop and implement an Individualized Education Program (IEP) designed to meet ■■■ unique needs; and (3) denied Student a FAPE by failing to provide related services in the areas of speech, counseling, Applied Behavioral Analysis therapy, occupational therapy, and social skills training.³

Under the IDEA, eligible students with disabilities between ages three and twenty-one are entitled to a free, appropriate public education that provides 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)(1)(A); 34 C.F.R. § 300.101(a). These students must receive specially designed, personalized instruction with sufficient support services to meet their unique needs and confer educational benefit. Instruction and services must be at public expense, and comport with the IEP developed by the student's Admission, Review, and Dismissal (ARD) Committee. 20 U.S.C. § 1401(9)(A)-(D); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-89, 200-01, 203-04 (1982).

Except in limited situations for those incarcerated in adult prisons, age eligible students with disabilities in detention, including a secure juvenile correctional facility such as HCJC, are entitled to a FAPE under the IDEA. 34 C.F.R. §§ 300.101-.102. A particular student's eligibility for special education and related services under the IDEA is made on the basis of an evaluation that

² The Complaint identified the John H. Wood Charter School as the LEA that oversees the educational component of the Hays County Juvenile Center. Due Process Hearing Request at ¶ 2.

³ Hearing Officer's Order No. 5.

meets certain criteria and finds a student meets one or more of thirteen eligibility classifications, and by reason thereof, needs special education and related services. 34 C.F.R. §§ 300.8(a), 300.304-.311; 19 Tex. Admin. Code §§ 89.1040(a), (c).

While the right to a FAPE for students with disabilities in correctional facilities, including juvenile justice facilities such as HCJC, is clear, the IDEA and its implementing federal regulations do not specify which public agency in a state is responsible for providing special education and related services to students with disabilities in these settings. Here, the Hearing Officer concludes that, under state regulations governing the provision of a FAPE to students with disabilities in residential facilities, the obligation to provide Student a FAPE rests with the LEA, rather than HCJC.

HCJC, a pre-adjudication and post-adjudication juvenile detention facility, is considered a “residential facility” under the Texas Education Code and state regulations establishing responsibilities for providing a FAPE to students with disabilities in those settings.⁴ State law directs the Texas Education Agency and the Texas Juvenile Justice Department,⁵ which sets minimum standards for and monitors juvenile justice facilities such as HCJC, to cooperatively develop and by rule adopt a memorandum of understanding (MOU) establishing “the respective responsibilities of school districts and residential facilities for the provision of a free, appropriate public education, as required by the Individuals with Disabilities Education Act (20 U.S.C. Section 1400 *et seq.*) and its subsequent amendments, including each requirement for children with disabilities who reside in those facilities.” Tex. Educ. Code § 29.012(d)(1).

⁴ “Residential facility” means a facility operated by a state agency or political subdivision, including a child placement agency, that provides 24-hour custody or care of a person 22 years of age or younger, if the person resides in the facility for detention, treatment, foster care, or any non-educational purpose. Tex. Educ. Code § 5.001(8); 19 Tex. Admin. Code § 89.1115(c)(1). Residential facilities include juvenile pre-adjudication detention facilities and juvenile post-adjudication secure correctional facilities. 19 Tex. Admin. Code § 89.1115(c)(1)(B)(xiii)-(xiv).

⁵ The Texas Juvenile Justice Department Board is authorized to adopt rules setting forth minimum standards for public and private juvenile pre-adjudication secure detention facilities and public juvenile post-adjudication secure correctional facilities that are operated under the authority of a juvenile board or governmental unit. Tex. Hum. Res. Code § 221.002(a)(4).

The MOU required by Tex. Educ. Code § 29.012(d) is memorialized in 19 Tex. Admin. Code § 89.1115 (Memorandum of Understanding Concerning Interagency Coordination of Special Education Services to Students with Disabilities in Residential Facilities).⁶ Specifically, “*LEAs must provide or ensure the provision of a FAPE to students with disabilities residing in residential facilities* in accordance with the IDEA, applicable federal regulations, and state laws and rules. Tex. Admin. Code § 89.1115(d)(1)(A) (emphasis added).

Here, the MOU and state regulations implementing its terms place the responsibility for providing or ensuring the provision of FAPE to students with disabilities residing in residential facilities, including HCJC, squarely on LEAs. Petitioner raised – and previously settled – claims against Inspire Academies, the LEA responsible for providing Student a FAPE while a resident at HCJC. As a result, Student has been evaluated by the LEA, identified as eligible for special education and related services, and has an IEP being implemented by the LEA. Because Student’s educational needs are being met by the Inspire Academies consistent with the LEA’s obligation to provide or ensure the provision of FAPE, dismissal of Petitioner’s claims under the IDEA against HCJC is appropriate.

III. HCJC’S OBLIGATION TO PROVIDE PSYCHOLOGICAL THERAPY AND COUNSELING

As noted above, HCJC has an MOU with the LEA to provide educational services to eligible residential students. The MOU specifically provides that “any psychological therapy/counseling required by a student will be provided by HCJC as a part of the patient’s treatment program.” Petitioner argues that, because HCJC was responsible for providing psychological therapy and counseling under the MOU, ■■■ claims against HCJC for these related services (specifically compensatory counseling services) remain viable.

⁶ The rule refers to the Texas Youth Commission and Texas Juvenile Probation Commission. These agencies were abolished and their respective powers and duties were transferred to the Texas Juvenile Justice Department in 2011. S.B. 653, 82nd Leg. R.S. (2011). Effective December 1, 2011, a reference in other law to the Texas Juvenile Probation Commission or Texas Youth Commission means the Texas Juvenile Justice Department. Tex. Hum. Res. Code §§ 201.001(a)(4), (b).

In this case, however, Inspire Academies, not HCJC, is responsible for developing Student's IEP. Inspire Academies thus determines what related services are necessary to ensure Student receives a FAPE, with HCJC delivering any necessary psychological or counseling services at the direction of Student's ARD Committee. As such, HCJC is a service provider, not the party responsible for ensuring Student receives FAPE and developing [REDACTED] special education program. Though Student previously received special education services, when [REDACTED] was first admitted to HCJC in May 2020, [REDACTED] did not have an operative IEP and had not yet been determined eligible for special education by Inspire Academies. While HCJC may have an independent obligation to provide Student counseling or psychological therapy under [REDACTED] treatment plan, the Hearing Officer finds HCJC did not have an independent obligation under the IDEA to provide those services until [REDACTED] was identified and [REDACTED] ARD Committee directed [REDACTED] receive these services.


IV. CONCLUSION

Here, whether as the LEA or the entity otherwise responsible for providing HCJC residents educational services, including those under the IDEA, Petitioner sought and obtained relief from Inspire Academies and is receiving services under an IEP developed by [REDACTED] ARD Committee. In short, [REDACTED] obtained a remedy and is receiving a FAPE. Dismissal of [REDACTED] claims against HCJC is thus appropriate.

ORDERS

Based on the foregoing, the record on file, and in accordance with the IDEA and its implementing state and federal regulations, it is **ORDERED** Respondent HCJC's Motion to Dismiss is **GRANTED** and Petitioner's claims against HCJC are **DISMISSED**.

SIGNED March 26, 2021.


Kathryn Lewis
Special Education Hearing Officer
For the State of Texas