

DOCKET NO. 231-SE-0415

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT	§	
	§	
v.	§	HEARING OFFICER FOR THE
	§	
EDINBURGH CONSOLIDATED	§	
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF HEARING OFFICER

Petitioner, Student bnf PARENT (“Petitioner” or “Student”) brings this action against the Respondent Edinburgh Consolidated Independent School District (“Respondent” or “District”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1400 et. seq. (IDEA) and its implementing state and federal regulations.

Party Representatives

Petitioner was represented by attorney Christopher Lee Jonas. Respondent was represented by Renee Rodriguez Betancourt and Kevin O’Hanlon, attorneys with the law firm of O’Hanlon, Rodriguez Betancourt and Demerath.

Resolution Session

A resolution session was held on April 30, 2015. However, this matter did not settle at the resolution session.

Procedural History

Petitioner filed a request for a due process hearing on April 17, 2015. Attorney Christopher Jonas filed the request on behalf of the Petitioner. Hearing Officer Sandra Huhn was initially assigned to this matter by Texas Education Agency (TEA) on April 17, 2015. On April 21, 2015, Hearing Officer Huhn set this case for hearing on May 28, 2015. The District filed a Response on April 27, 2015. Hearing Officer Huhn conducted a prehearing telephone conference on May 5, 2015. On May 6, 2015, the District filed its First Amended Response to Petitioner’s Request for Due Process Hearing and Counterclaim for a Special Education Due Process Hearing. On May 22, 2015, the Petitioner filed a Motion for Continuance of this case. On May 22, 2015, Hearing Officer Huhn granted Petitioner’s Motion for Continuance and reset the due process hearing for August 20, 2015. TEA reassigned this matter to Hearing Officer Sherry Wetsch on August 13, 2015.

Due Process Hearing

The due process hearing was conducted on August 20, 2015, in Edinburgh, Texas. Petitioner was represented by attorney Christopher Jonas. The Student and Student's parents attended the due process hearing. Respondent was represented by attorneys Renee Rodriguez Betancourt and Kevin O'Hanlon. The hearing was recorded and transcribed by a certified court reporter. During the hearing the parties requested a deadline of September 21, 2015, to submit post hearing submissions, and an extension of the decision due date to October 12, 2015. On August 21, 2015, Hearing Officer Wetsch issued a scheduling letter granting the joint request of the parties for a deadline of September 21, 2015, to submit post hearing briefs, and an extension of the decision due date to October 12, 2015.

Issues

The issues for decision in this case are:

1. Whether the Respondent failed to evaluate and identify Student as a student who would qualify for services under the IDEA.

Requested Relief

In the Due Process Hearing Request, the Petitioner requested the following items of relief:

1. A Free and Appropriate Public Education to meet Student's unique and individual needs.
2. To be educated in Student's Least Restrictive Environment.
3. To receive an Independent Education Evaluation.
4. To receive any and all appropriately implemented modifications, interventions, and services which are effective, goal oriented and educationally beneficial.
5. Reimbursement for private evaluations for which Petitioner has paid.
6. Up to one year of compensatory educational services, or an amount of compensatory educational services deemed appropriate by the Hearing Officer as set out in *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985), and *Parents of Student W. v. Puyallup School District, No. 3*, 21 IDELR 723 (9th Cir. 1994).
7. An Admission Review Dismissal meeting to implement the Hearing Officer's decision.

In the Petitioner's September 21, 2015, Post Hearing Argument and Brief, the Petitioner requested the following items of relief:

1. An order requiring Edinburgh Consolidated Independent School District (ECISD) to comply with procedural requirements of IDEA applicable to parent participation and the development of student IEPs.

2. An order requiring Respondent ECISD to provide staff training to instructional employees concerning procedural requirements of IDEA applicable to parent participation and the development of student IEPs.
3. An order requiring Respondent ECISD to find Student eligible for IDEA special education services as a student with a learning disability, and deliver such compensatory services as the Hearing Officer deems appropriate.
4. In the alternative, an order requiring Respondent ECISD to afford Student an independent educational evaluation for learning disability including a classroom observation of the type and extent considered necessary by the independent evaluator to determine Student's eligibility.
5. An order requiring Respondent ECISD to provide Student with compensatory education services sufficient to compensate Student for Respondent ECISD's denial of appropriate services in the preceding school year.
6. An order requiring Respondent ECISD to convene an ARDC meeting to consider the requests of Student for instructional modifications.
7. An order requiring Respondent ECISD to convene an ARDC meeting to schedule such compensatory services, if any, as the Hearing Officer may order.

Counterclaim

In its counterclaim, Respondent requested the following items of relief:

1. That Petitioner consent to a Special Education Evaluation to be performed by ECISD for special education services to be conducted on Student.
2. A determination that Respondent had met its obligation to evaluate Student in a timely fashion, given the facts and circumstances concerning Student's educational progress to date.
3. A determination that the Petitioner's request for an Independent Evaluation is premature.
4. Once ECISD's evaluation of Student is complete, a determination that ECISD's evaluation is appropriate in accordance with the IDEA and the rules and regulations promulgated thereunder.

Findings of Fact

Based upon a review of the testimony and documentary evidence submitted in this cause, I find the following facts to be established based on the weight of the credible evidence:

1. At all times relevant to this proceeding, Student lived within the geographical boundaries of ECISD, a political subdivision of the state of Texas and a duly incorporated school district. (Transcript p. 95).
2. Student was born ***. (Respondent Exhibit 8).
3. During the 2014-2015 school year, Student attended the *** grade in the ECISD. (Respondent Exhibit 8).
4. At the time of the due process hearing, Student was *** years old and entering *** grade at *** in the ECISD. (Transcript p. 94).
5. Student's 2013-2014 school year was academically successful. (Respondent Exhibit 11).
6. Student's 2014-2015 school year was academically successful. (Respondent Exhibit 11).
7. Student achieved passing marks and advanced from grade to grade throughout Student's academic career at ECISD. (Respondent Exhibit 11).
8. Student has performed well in Student's classes without modifications to the curriculum, or accommodations which are not available to all students.
9. Student spends approximately two hours a night on homework. (Transcript pp. 158, 162-163).
10. When Student has reading material to do for homework, it is easier when the material is read to Student or Student reads it out loud to ***self. (Transcript p. 158).
11. Student believes math is Student's strongest subject area at school. (Transcript p. 162). Student enjoys math and ***. (Transcript p. 162). Student is *** in *** grade. (Transcript p. 162).
12. Student is involved in extracurricular activities including *** and ***. (Transcript p. 163). Student understands that being involved in extracurricular activities possibly has an effect on Student's course work because it takes up a lot of time that Student could be studying, but it is what Student enjoys doing. (Transcript p. 163).
13. Student's extracurricular activities are self-motivating. (Transcript pp. 163-164).
14. On school nights Student spends about two hours on extracurricular activities. During the weekends Student can spend three or four hours on extracurricular activities. (Transcript p. 117).
15. Student has been able to balance academics, ***, ***, *** and ***. (Transcript pp. 117-119).
16. Both parents of Student ***. (Transcript pp. 95-96, 129).
17. The father of Student believes Student has problems in the area of reading retention. (Transcript p. 98).
18. The father of Student notes that there was no decline in Student's grades until *** grade, but that in performance and behavior there was a decline. (Transcript p. 113).
19. At the beginning of Student's *** grade school year, the father of Student requested that Student be placed in ***. Student was placed in ***. (Transcript p. 114).
20. As an *** grader, Student passed tests that normal *** graders cannot pass. (Transcript pp. 115-116).

21. The father of Student instructed Student to fail the state exam. (Transcript pp. 106-107, 120-122).
22. In *** grade, Student attempted to fail the state exam. (Transcript pp. 172-173).
23. From *** grade through *** grade, Student was allowed to use *** in the classroom and allowed *** in class. (Transcript p. 101).
24. In *** school Student chose not to use the accommodation *** in the classroom. (Transcript pp. 122-124).
25. Student's *** grade English teacher offered Student the accommodation *** when taking a quiz or test. However, Student did not take advantage of the accommodation. (Transcript pp. 170-171).
26. Student's *** grade English teacher never witnessed Student having difficulty reading. (Transcript p. 169).
27. During the 2014-2015 school year, Student was afforded the opportunity for accommodations in the classroom. However, Student chose not to use them.
28. Student's *** grade math teacher was never asked by the parents of Student to accommodate Student in regards to any difficulty Student may have in regards to word problems or reading word problems. The math teacher never had any communications with Student's parents. (Transcript pp.186-187, 193-194).
29. In *** grade Student ***. *** is the same *** that *** graders take ***. (Transcript pp. 186-187).
30. Student has a history of absences during the 2014-2015 school year. (Respondent Exhibit 12; Transcript pp. 171, 188).
31. Educational Diagnostician *** testified that Student performed above Student's peers in the areas of *** and English. (Transcript p. 209).
32. Ms. *** testified that Student has received an educational benefit from Student's access to the general education without regard to any modifications or accommodations. (Transcript pp. 209-210).
33. It is the opinion of the Educational Diagnostician that Student does not need any additional accommodations for Student's continued academic success. (Transcript p. 210).
34. LSSP *** testified that Student's academic performance in general is above Student's age peers. (Transcript pp. 218-219).
35. The LSSP testified that his conclusion is that Student is not learning disabled under Texas law. (Transcript p. 224).
36. As of April 17, 2015, the date of the filing of Petitioner's Due Process Hearing Request, Petitioner had never been evaluated for special education services by the District. (Transcript pp. 108, 146, 201).
37. Dr. ***, Principal at *** with the ECISD, testified that her campus never received a request for special education services for Student prior to the filing of this due process complaint. (Transcript p. 230-232).

38. Dr. *** was Student's principal in *** grade. (Transcript p. 230).
39. When Student was in the *** grade, the parents referred Student for a Dyslexia evaluation by ECISD. (Respondent's Exhibit 9). The *Edinburgh CISD Parental Consent For the Initial §504 Evaluation And Placement* was executed on ***. (Respondent Exhibit 9).
40. Respondent ECISD screened Petitioner for Dyslexia in *** of 2013, and concluded that Student was not eligible according to Section 504 and/or State/Local Board Rules, to receive services as a student with characteristics of Dyslexia. (Petitioner Exhibits 3, 4 & 6; Respondent Exhibit 9; Transcript p. 122).
41. The ***, 2013 *ECISD Dyslexia Student Profile on Testing Results*, states that Student's testing results do not fit the profile of an individual with characteristics of dyslexia. The report also notes that Student is ***, and that Student's report card indicates that Student is passing all subject areas, and that Student has passed Student's state reading exam. (Respondent Exhibit 9; Petitioner Exhibit 3).
42. On ***, 2013, the Edinburgh Consolidated Independent School District's recommendation to the §504 Committee was that the data does not indicate Student exhibits characteristics of dyslexia, and that Student met the characteristics expected for the individual's age, educational level and apparent cognitive abilities. (Respondent Exhibit 9).
43. The 2013 Dyslexia Evaluation Decision was that the data does not indicate that Student exhibited characteristics of dyslexia. (Respondent Exhibit 9).
44. Student's scores from the 2013 evaluation were average in the areas of Written Expression, Word Reading, and Spelling. Student achieved scores in the low average range in the areas of Reading, Fluency, Word Attack and Reading Comprehension when compared to others in the student's age range. Student's phonological processing skills, as evidenced by Student's scores in Phonological Memory, Rapid Naming, and Phonological Awareness, all fell in the average range when compared to others in Student's age range. (Respondent Exhibit 9).
45. The results of the 2013 testing indicate that Student is of average intellectual ability and average listening comprehension skills when compared to others at Student's age range. (Respondent Exhibit 9).
46. While Student was in *** grade, Student's parent executed the *Edinburgh CISD Parental Consent For The Initial §504 Evaluation And Placement* on ***, 2014. (Respondent Exhibit 7).
47. On ***, 2014, ECISD issued a *Notice To Parent Of Section 504 Evaluation Decision* noting that the referral was concluded because the data does not indicate that Student has substantial limitations affecting major life activity that qualified for Section 504 Regular Education services. (Respondent Exhibit 7).

48. The District screened Petitioner for services under Section 504 of the 1973 Rehabilitation Act in 2013 and 2014, and determined that the Petitioner was not in need of 504 services. (Petitioner Exhibits 2 & 5; Respondent Exhibits 7 & 9).
49. Dr. *** testified that based on the Woodcock-Johnson, Student does not have a learning disability in reading comprehension, math calculation, written expression, and math reasoning. (Transcript p. 69).
50. During the April 30, 2015 resolution session, the Respondent requested an opportunity to assess Student with a Full and Individual Evaluation, including the Reading piece, through the Special Education Department. The Petitioner's parent declined the request. (Respondent Exhibit 5).
51. The Respondent conducted a Full and Individual Evaluation (FIE) of Student in *** of 2015. (Respondent Exhibit 14).
52. For the 2015 FIE, the Woodcock-Johnson Tests of Cognitive Abilities, 4th Edition was utilized to measure Cognitive/Intellectual functioning. (Respondent Exhibit 14).
53. For the 2015 FIE, the Woodcock-Johnson Tests of Achievement, 4th Edition, was used to measure Educational/Developmental Performance. (Respondent Exhibit 14).
54. For the 2015 FIE, the Woodcock-Johnson IV Tests of Oral Language was used. (Respondent Exhibit 14).
55. On the 2015 FIE, Student's performance on General Intellectual Ability (***) fell in the average range when compared to others Student's age. (Respondent Exhibit 14).
56. On the 2015 FIE, Student obtained a standard score of *** in the category of Short Term Working Memory, which placed Student in the High Average range as compared to Student's peers. (Respondent Exhibit 14).
57. On the 2015 FIE, Student obtained a standard score of *** in the category of Visual Processing, which ranked Student in the Superior Average range as compared to Student's peers. (Respondent Exhibit 14).
58. On the 2015 FIE, Student obtained a standard score of *** in the category of Long-Term Retrieval, which ranked Student in the High Average range as compared to Student's peers. (Respondent Exhibit 14).
59. On the 2015 FIE, Student obtained a score of *** in the category of Fluid Reasoning, which ranked Student in the Superior range as compared to Student's peers. (Respondent Exhibit 14).
60. On the 2015 FIE, Student obtained a standard score of *** in the category of Comprehension Knowledge, which ranked Student in the average range as compared to Student's peers. (Respondent Exhibit 14).
61. On the 2015 FIE, in the category of Auditory Processing, Student's auditory processing standard score was ***, which is within the average range as compared to Student's peers. (Respondent Exhibit 14).

62. On the 2015 FIE, in the category of Cognitive Processing Speed, Student's processing speed standard score was *** which is within the average range as compared to Student's peers. (Respondent Exhibit 14).
63. On the 2015 FIE, in the category of Basic Reading Skills (***), Student's basic reading skills fell in the High Average range when compared to others Student's age. (Respondent Exhibit 14).
64. On the 2015 FIE, in the category of Reading Comprehension, Student's standard score was *** which fell in the High Average range when compared to others Student's age. (Respondent Exhibit 14).
65. On the 2015 FIE, in the category of Reading Fluency, Student's standard score was ***, which fell in the average range when compared to others Student's age. (Respondent Exhibit 14).
66. On the 2015 FIE, Student's standard score in the category of Math Calculation Skills was ***, which falls in the average range when compared to others Student's age. (Respondent Exhibit 14).
67. On the 2015 FIE, Student's standard score in the category of Math Problem Solving Skills was ***, which fell in the average range when compared to others Student's age. (Respondent Exhibit 14).
68. On the 2015 FIE, Student's standard score in the category of Written Expression was ***, which fell in the High Average range when compared to others Student's age. (Respondent Exhibit 14).
69. On the 2015 FIE, Student's standard score in the category of Listening Comprehension was ***, which was within the average range when compared to others Student's age. (Respondent Exhibit 14).
70. On the 2015 FIE, Student's standard score in the category of Oral Expression was ***, which is within the Low Average range when compared to others Student's age. (Respondent Exhibit 14).
71. On the 2015 FIE, Student's standard score in the category of Academic Fluency was ***, which falls in the average range when compared to others Student's age. (Respondent Exhibit 14).
72. On the 2015 FIE, Student's standard score in the category of Academic Applications was ***, which falls in the average range when compared to others Student's age. (Respondent Exhibit 14).
73. During the 2012-2013 school year, Student passed the State of Texas Assessments of Academic Readiness. (Respondent Exhibit 13).
74. During the 2013-2014 school year, Student passed the State of Texas Assessments of Academic Readiness. (Respondent Exhibit 13).
75. During the 2014-2015 school year, Student passed the State of Texas Assessments of Academic Readiness. (Respondent Exhibit 13).

76. During the 2013-2014 school year, Student received educational benefits from the school's general education services provided to Student by Respondent ECISD.
77. During the 2014-2015 school year, Student received educational benefits from the school's general education services provided to Student by Respondent ECISD.
78. For the 2015-2016 school year, Student's course schedule included ***, ***, ***, and ***. ***, ***, and ***, are ***. (Transcript p. 152-154).
79. Student does not need special education services.

Discussion

The purpose of IDEA is to ensure that all children with disabilities have available to them a free, appropriate public education 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)*.

The educational program offered by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program bears the burden of proof. *Schaffer v. Weast, 126 S.Ct 528 (2005)*. This includes the burden of proof with regard to harm or a deprivation of an educational benefit. The law does not require that the student's educational potential be optimal or "maximized", but that the program enable the student to receive some educational benefit from the student's program. An educational program is meaningful if it is reasonably calculated to confer a meaningful educational benefit. *Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 102 S. Ct. 3034 (1982)*. An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Houston ISD v. Bobby R., 200 F.3d 341 (5th Cir. 2000)*.

The fact that a student's impairment adversely affects his or her educational performance, does not necessarily mean the student is eligible for special education. *Alvin Independent School District v. A.D., 503 F.3d 378 (2007)*. Only certain students with disabilities are eligible for IDEA's benefits. To qualify for special education services a student must both have a qualifying disability, and by reason thereof, need special education and related services. *20 U.S.C. § 1401 (3)(A)*. In making this determination, a state or local education agency must conduct a "full and individual evaluation" following statutorily prescribed standards. *20 U.S.C. § 1414*.

Petitioner alleges that the Respondent ECISD failed to timely evaluate Student in order to identify Student's potential eligibility as a student with an IDEA disability, and Student's entitlement to services and safeguards under IDEA, 20 USC § 1400 et seq. Petitioner also alleged that the District failed to evaluate and identify Student as a student with an IDEA

disability due to Student's deficits in reading comprehension, and that the District failed and refused to accede to the request of Student's parents to have Student evaluated for IDEA disability. Petitioner further alleges that as a result of Respondent ECISD omissions, Student has suffered education deficits impeding Student's progress, deficits that were the responsibility of the Respondent ECISD to evaluate and address under the IDEA.

The Petitioner has the burden of proof in this matter. *Schaffer v. Weast*, 126 S. Ct. 528 (2005). Petitioner did not meet Petitioner's burden of proof. Respondent's evaluation procedure and implementation were done in accordance with IDEA. Although Petitioner is not qualified as a student in need of special education services, the record shows that Petitioner obtained meaningful educational benefits from the school's regular education program.

Conclusions of Law

1. Respondent Edinburg Consolidated Independent School District is an independent district duly constituted in and by the state of Texas, and subject to the requirements of the IDEA and its implementing federal and state regulations. Edinburg CISD is Student's resident district under IDEA for all time periods relevant to this action.
2. Respondent ECISD is responsible for properly identifying and evaluating the student for special education services under the provisions of IDEA, 20 USC §§ 1412 and 1414; 34 C.F.R. 300.301; and 19 T.A.C. § 89.1011.
3. Student bears the burden of proof on all issues raised in this proceeding. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49 (2005).
4. Petitioner failed to meet Petitioner's burden of proof to establish a denial of a free appropriate public education for Student. 34 C.F.R. § 300.101.
5. Petitioner failed to meet Petitioner's burden of proof to establish a violation of Respondent's Child Find duty. 34 C.F.R. § 300.111.
6. Respondent ECISD properly fulfilled its responsibilities under IDEA, 20 U.S.C. §§ 1412 and 1414; 34 C.F.R. 300.301; and 19 T.A.C. § 89.1011.
7. Respondent ECISD has followed all procedural requirements of IDEA.

8. Student is not eligible as a special education student under the provisions of IDEA, 20 U.S.C. § 1400, et seq.; 34 C.F.R. 300.301; and 19 T.A.C. § 89.1011.

Order

After due consideration of the record, and foregoing Findings of Fact and Conclusions of Law, this Hearing Officer hereby ORDERS that all relief sought by Petitioner is DENIED. Any relief not specifically granted herein is DENIED.

SIGNED on the 5th day of October, 2015.

Sherry Wetsch
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause 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. *34 C.F.R. §300.516; 19 Tex. Admin. Code Sec 89.1185 (n).*

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INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS

SYNOPSIS

Issue No. 1: Whether the Respondent failed to evaluate and identify the student for special education services under the provisions of IDEA.

Citations:

34 CFR 300.301

19 T.A.C. §89.1011

Held: For Respondent

Issue No. 2: Whether the student is eligible as a special education student under the provisions of IDEA.

Citations:

34 CFR 300.301

19 T.A.C. §89.1011

Held: For Respondent