

DOCKET NO. 056-SE-1116

STUDENT B/N/F PARENT AND PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
ROUND ROCK INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF HEARING OFFICER

*** (Student), by next friends *** and *** (Parents) (collectively, Petitioner) requested an impartial due process hearing (Complaint), pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. § 1400 *et seq.* The Round Rock Independent School District (Respondent or the District) is the respondent to the Complaint. Petitioner alleges the District failed to provide Parents with a Notice of Procedural Safeguards when Student was assigned to a disciplinary alternative educational placement (DAEP) for *** consecutive school days. The District denies Petitioner’s allegation.¹ The hearing officer finds Petitioner proved the District violated the IDEA as alleged. Therefore, Petitioner’s request for relief is granted.

I. ISSUE, REQUESTED RELIEF, AND BURDEN OF PROOF

A. Issue and Requested Relief

The single issue in this case is whether the District provided Parents with a notice of procedural safeguards on the date the decision was made to remove Student to ***. By way of relief, Petitioner requested the hearing officer to order the District to:

1. Conduct a Functional Behavior Assessment (FBA) of Student as soon as possible; and

¹ Respondent’s Response to Petitioner’s Request for Special Education Due Process Hearing, at 2, filed on November 22, 2016.

2. Convene an Admission, Review, and Dismissal committee (ARDC) meeting upon completion of the FBA, to consider revision of Student's Individualized Education Plan (IEP) and add a Behavior Intervention Plan (BIP), if appropriate.²

B. Burden of Proof

The IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.³ Therefore, Petitioner must prove by a preponderance of the evidence that the District violated the notice requirements of the IDEA.

II. PROCEDURAL HISTORY

Petitioner filed the Complaint on November 15, 2016. Initially, the Complaint was treated as a request for an expedited hearing. The expedited status was removed after it was determined that Petitioner's challenge to Student's disciplinary placement was not ripe because a Manifestation Determination Review (MDR) had not yet been held.⁴ The MDR was subsequently held and Parents did not disagree with the ARDC's determination that Student's misconduct was not a manifestation of Student's disability. However, they continued to claim the District failed to provide them with the required notice of procedural safeguards.⁵

The due process hearing was held January 20, 2017, before Sharon Cloninger, hearing officer, at the District's Administration Building, 1311 Round Rock Avenue, Round Rock, Texas 78681. Parents represented Petitioner. Kelly Shook, attorney, appeared on behalf of the District. ***, Licensed Specialist in School Psychology (LSSP), was the District's party representative.

At the conclusion of the hearing, the District requested an opportunity to submit a written closing argument by January 23, 2017. Petitioner's response was due January 25, 2017. At the

² Complaint, at 7; *see also* Order No.2, issued December 1, 2016.

³ *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005); *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d. 373, 377 (5th Cir. 2003); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 132 (5th Cir. 1993).

⁴ *See* Order No. 2, issued December 1, 2016.

⁵ November 30, 2016 prehearing telephone conference transcript at 5-7.

District's request, the decision due date was extended from January 29, 2017, to February 3, 2017, for good cause shown. This decision is timely issued.

III. DENYING DISTRICT'S MOTION TO DISMISS

On January 23, 2017, along with its closing argument, the District submitted a Motion to Dismiss (Motion), stating Petitioner's requested relief had been provided, rendering the case moot. Petitioner timely responded in opposition to the Motion. The evidence presented at the due process hearing established that the District is in the process of conducting an FBA of Student and intends to hold an ARDC meeting to review the FBA and consider implementing a BIP. However, the evidence does not show that the FBA has been completed or that an ARDC meeting has been convened to consider the results of the FBA.⁶ Accordingly, the case is not moot and the Motion is DENIED.

IV. EVIDENCE

Petitioner offered no documentary evidence. Mother and Father testified on Petitioner's behalf. The District offered two exhibits, which were admitted, and called Ms. *** as a witness.

V. FINDINGS OF FACT

1. Student, ***, resides with Parents within the boundaries of the District.⁷
2. Student is eligible for special education and related services as a Student with an ***.⁸
3. Student attends *** at ***.⁹
4. Student's annual ARDC meeting was held on October ***, 2016. Mother could not attend but agreed the ARDC could meet without her.¹⁰

⁶ *El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp.2d. 701 (WD. Tex. 2008), rev'd on o.g., 591 F.3d 417 (5th Cir. 2009)(controversy is moot where as a result of intervening circumstances there are no longer adverse parties with sufficient legal interests to maintain the litigation).

⁷ District Ex. 2 at 14.

⁸ District Ex. 2 at 7-8.

⁹ District Ex. 2 at 12.

¹⁰ Due process hearing transcript at 9 (Mother).

5. Following the annual ARDC, the District emailed Mother a copy of Student's Individualized Educational Program (IEP) but did not email either Mother or Father a Notice of Procedural Safeguards.¹¹
6. The District incorrectly noted in the ARDC documents that Mother had been provided a Notice of Procedural Safeguards at the October ***, 2016 ARDC meeting.¹²
7. On November ***, 2016, Student engaged in *** at ***.¹³
8. Mother met with the assistant principal on November ***, 2016, to discuss the disciplinary action. She was provided with a disciplinary action sheet but not with a Notice of Procedural Safeguards.¹⁴
9. After the November ***, 2016 meeting with the assistant principal, Mother found a Notice of Procedural Safeguards on the District's website and printed it. She also met with special education personnel in another school district, ***, to find out what she could do to ensure Student's safety at the DAEP.¹⁵
10. Information from the District's website and information obtained from *** led Mother to file the Complaint on November 15, 2016.¹⁶
11. At no time prior to the filing of the Complaint did the District provide Mother or Father with a Notice of Procedural Safeguards, except perhaps when Student was ***.¹⁷
12. On November ***, 2016, the ARDC met to conduct an MDR.¹⁸
13. Mother and Student attended the November ***, 2016 ARDC meeting. Mother participated in the meeting.¹⁹
14. The ARDC determined Student's behavior was not a manifestation of Student's disability or due to the District's failure to provide Student with appropriate services.²⁰
15. Student was assigned to ***, a DAEP, for a ***-day placement.²¹

¹¹ Tr. at 18-19, 36-37 (Mother); Tr. at 23 (Father); Tr. at 31-32 (***)

¹² District Ex. 2 at 11.

¹³ District Ex. 2 at 9-10.

¹⁴ Tr. at 11 (Mother).

¹⁵ Tr. at 17-18 (Mother).

¹⁶ Tr. at 18 (Mother).

¹⁷ Tr. at 37 (Mother).

¹⁸ District Ex. 2 at 7-9.

¹⁹ Tr. at 14 (Mother); District Ex. 2 at 2, 9-10.

²⁰ District Ex. 2 at 7, 10.

16. Parents agreed with the ARDC's manifestation determination but disagreed with the location of the disciplinary placement, because they feared for Student's safety there.²²
17. The LSSP attended the November ***, 2016 ARDC meeting. She was responsible for providing Mother with the Notice of Procedural Safeguards. She does not remember if she provided the required notice or if Mother otherwise received a copy.²³
18. At the conclusion of the November ***, 2016 ARDC meeting, Mother did not receive a Notice of Procedural Safeguards.²⁴
19. The District was responsible for providing Parents with a Notice of Procedural Safeguards without Parents requesting a copy.²⁵
20. At the November ***, 2016 ARDC meeting, Mother signed consent for the District to conduct an FBA.²⁶
21. The FBA was expected to be completed on January ***, 2017.²⁷
22. Following completion of the FBA, the ARDC will meet to review the FBA and determine if a BIP should be developed for Student.²⁸

VI. DISCUSSION

A. The IDEA and Its Implementing Regulations

Under the IDEA and its implementing regulations, school districts in Texas must afford children with disabilities a FAPE. The IDEA defines a FAPE as special education and related services that (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet state standards (including IDEA requirements); (c) include an appropriate preschool, elementary school, or secondary school education; and (d) are provided in

²¹ District Ex. 2 at 7-8.

²² Tr. at 10, 14 (Mother); Tr. at 20 (Father); District Ex. 2 at 2, 7.

²³ Tr. at 32, 34 (***)

²⁴ Tr. at 12-13 (Mother).

²⁵ Tr. at 33 (***)

²⁶ Tr. at 14-15 (Mother); Tr. at 29-30 (***)

²⁷ Tr. at 16 (Mother); Tr. at 30 (***) The expected completion date was after the due process hearing but before the decision due date.

²⁸ Tr. at 15 (Mother); Tr. at 30 (***)

accordance with a properly developed IEP that meets the requirements of 34 C.F.R. §§ 300.320 and 300.324.²⁹

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit.³⁰

The District was required to give Parents a Notice of Procedural Safeguards once every year upon receipt of the first due process complaint in the school year and in accordance with disciplinary procedures.³¹ The District also was required to provide Parents with a Notice of Procedural Safeguards when the District decided upon disciplinary removal of Student from Student's current placement for more than 10 consecutive school days.³²

B. Analysis

The undisputed evidence shows the District did not provide Parents with a Notice of Procedural Safeguards either when Parents filed the Complaint on November 15, 2016, or on November ***, 2016, when the ARDC placed Student at *** for more than 10 consecutive school days.

The District's argues that Petitioner was not harmed by its violation of the IDEA because Mother located the procedural safeguards on the District's website and learned of her right to file a due process hearing request by conferring with *** in another school district. The hearing officer is not persuaded that the District is excused from its duty simply because Mother found the procedural safeguards through her own diligence. Parents were not required to request the information or find it on their own. The District had a duty to provide Parents with a Notice of Procedural Safeguards and failed to do so.

²⁹ 20 U.S.C. § 1401(9); 34 C.F.R. § 300.17.

³⁰ 34 C.F.R. § 300.513(a)(2).

³¹ 34 C.F.R. § 300.504(a)(2)(3).

³² 34 C.F.R. § 300.530.

Nevertheless, the District's violation did not deny Student a FAPE. Mother participated in the November ***, 2016 ARDC meeting and Parents agreed with the MDR decision. Further, there is no evidence that Student suffered a deprivation of educational benefit due to the District's violation. Furthermore, the evidence showed the District is in the process of completing Student's FBA and, upon its completion, intends to convene an ARDC meeting to consider whether a BIP should be developed and implemented.³³

VII. CONCLUSIONS OF LAW

1. The District is a local educational agency responsible for complying with the IDEA as a condition of the State of Texas's receipt of federal education funding, and the District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to the IDEA, 20 U.S.C. § 1400 *et seq.*
2. Petitioner bears the burden of proof on the issue raised in the proceeding. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The District did not provide either Mother or Father with a Notice of Procedural Safeguards as required by law. 34 C.F.R §§ 300.504, 300.530.
4. The District did not deny Student a FAPE because the failure to provide Parents with the requisite Notice of Procedural Safeguards did not significantly impede Parents' opportunity to participate in the decision-making process regarding the provision of a FAPE to Student. 34 C.F.R. §§ 300.513(a)(2)(ii), 300.530(d)(1)(ii).

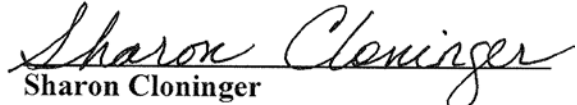
ORDER

Having considered the evidentiary record and the foregoing Findings of Fact and Conclusions of Law, the hearing officer hereby orders as follows:

Petitioner's requests for relief under the IDEA are GRANTED. IT IS ORDERED that the District shall complete Student's FBA no later than February ***, 2017. IT IS FURTHER ORDERED that within 10 school days after the FBA is completed, the District shall convene an ARDC meeting to consider the development and implementation of a BIP. All other relief not specifically stated herein is DENIED.

³³ 34 C.F.R. § 300.530(d)(ii).

SIGNED January 31, 2017.


Sharon Cloninger
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

This Decision of the hearing officer is a final and appealable order. Any party aggrieved by the findings and decision 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

³⁴ 34 C.F.R. § 300.516; 19 Tex. Admin. Code § 89.1185(n).