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Hearing Officer

BEFORE THE OFFICER FOR THE
IDAHO DEPARTMENT OF EDUCATION

[REDACTED]. as legal guardian and parent of [REDACTED], a)
minor,) Case No. H-19-03-01A
)
)
Petitioner,) **MEMORANDUM DECISION**
)
vs.)
)
NAMPA SCHOOL DISTRICT No. 131,)
)
Respondent.)
_____)

Petitioner submitted a Due Process Hearing Request (“Complaint”) on March 1, 2019. The Complaint concerns the Least Restrictive Environment for Petitioner’s child [REDACTED] (“Student”) and Petitioner seeks placement of Student at Nampa High School. Respondent submitted an Answer to the Complaint on March 13, 2019. On May 3, 2019, a due process hearing was convened at the School District office. At the start of the hearing, legal counsel for both parties mutually requested an extension of time for the purpose of conducting an independent evaluation of the Student and an IEP meeting based upon the conclusions of the evaluation. The time in which an opinion must be rendered in this case was extended until September 16, 2019.¹

¹ The time period was initially extended to August 2, 2019. The Parties requested a second extension of time for the purposes of completing the IEP meeting following the independent evaluation. The request for a second

A due process hearing was held on August 15, 2019. At the due process hearing, in support of Petitioner’s case in chief the Petitioner/mother of the Student testified and Petitioner submitted two exhibits into evidence. In defense to the Complaint, Respondent called three witnesses and submitted 31 exhibits into evidence. Petitioner’s and Respondent’s exhibits were admitted into evidence by stipulation of the parties. Transcript (“TR.”) 6:3-10. Following the due process hearing each party submitted written closing arguments.

Although all exhibits and testimony were considered, those exhibits and witness testimony referenced in the findings and conclusions below were considered relevant, credible and given appropriate weight in rendering this Memorandum Decision.

ISSUE

Petitioner asserts that Student has been denied a Free and Appropriate Public Education (“FAPE”) due to the School District violation of the Least Restrictive Environment (“LRE”) requirements of the Individuals with Disabilities Education Act (“IDEA”). Specifically, the issue raised by Petitioner’s Complaint is whether Student was denied FAPE by the School District’s determination that Gateways Secondary School (“Gateways”), rather than Nampa High School, is the Student’s LRE.

BURDEN OF PROOF

“The burden of proof in an administration hearing challenging an IEP is properly placed upon the party seeking relief.” *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62, 126 S.Ct. 528, 163 L.Ed.2d 387 (2005). Commenting on *Schaffer*, the Ninth Circuit stated: “[T]he ordinary default rule [is] that plaintiffs bear the risk of failing to prove their claims, ... [a]bsent some reason to believe that Congress intended otherwise, ... we will conclude that the burden of

extension was granted and the time period for rendering a decision in this matter was extended to September 16, 2019.

persuasion lies where it usually falls, upon the party seeking relief.” *Van Duyn v. Baker School Dist. 5J*, 502 F.3d 811, 820 (9th Cir. 2007).

Applying Schaffer, and the Ninth Circuit opinion in *Van Duyn*, Petitioner, as the party challenging the IEP and the only party seeking relief, bears the burden of proof on the issue for determination in this matter.

FINDINGS OF FACT

1. Student is [REDACTED] years old and has been diagnosed with [REDACTED] and [REDACTED]. TR. 9:10-14.
2. Student qualifies for special education under the IDEA. Exh. 102, 118, 129.
3. In August [REDACTED] Student transferred into the Nampa School District from the West Ada School District. TR. 14:12-18.
4. At the West Ada School District Student was on an Individualized Education Plan (“IEP”) which included a behavioral management plan and goals in the areas of social and emotional behavior, math, written language, communication and reading. TR. 14:19-15:4.
5. Student lives in the geographic area for attending Nampa High School. TR. 11:10-13.
6. During the school year of 2017 - 2018, Student attended the [REDACTED] grade at Nampa High School. TR. 9:5-9.
7. Beginning in April and May of 2017, at the end of Student’s [REDACTED] grade year at Nampa High School, Student started having behavioral problems of [REDACTED] and [REDACTED] [REDACTED] which continued into the beginning of Student’s [REDACTED] year in the fall of 2018. TR. 9:22-10:2; 54:24-56:3.

8. In April and May 2017, Student had a few times when she was [REDACTED] at school and made statements about [REDACTED]. These behaviors occurred several times per day. TR. 17:21-18:10.
9. Petitioner consented to a Functional Behavioral Assessment (“FBA”) of Student which was completed in May 2017. The FBA resulted in a Behavioral Intervention Plan (“BIP”). The BIP resulted in an amendment to Student’s IEP in May 2017 which added CBRS services (one-on-one worker to assist Student). Petitioner agreed with the BIP and amendment to the IEP. TR. 18:16-20:13; Exh. 105, 106.
10. An IEP meeting was held on September 5, 2017, where the IEP team discussed various behavior supports that had been attempted for the Student and that these supports were not working. At the meeting it was agreed that Student would attend a self-contained classroom and Student’s work would be brought to her. Petitioner attended this IEP meeting.
11. On September 6, 2017, Student attempted to leave the Nampa High School campus multiple times and threatened physical harm to school staff. TR. 22:7-23:2.
12. An IEP meeting was held on September 8, 2017, to discuss Student’s behaviors and placement options. Petitioner attended this meeting. TR. 24:19-27:8.
13. Another IEP meeting was held on September 15, 2017. At this meeting, placement at Gateways was discussed and offered to Petitioner as the Student’s LRE. TR. 27:13-23; 66:19-70:4; Exh. 109, 110.
14. Student was [REDACTED] [REDACTED] [REDACTED] TR. 24:16-18; 27:16-18.
15. On September 29, 2017, Petitioner reported that Student was not better since leaving the [REDACTED], and that Student [REDACTED].

Petitioner further reported an incident when Student had a [REDACTED] [REDACTED] Police were called and Student was taken [REDACTED]. TR. 29:10-30:10; Exh. 112.

16. On November 10, 2017, the parties participated in a mediation session and entered into agreement to place Student at Gateways beginning November 15th. The mediation agreement also provided that transitioning Student back to Nampa High School could be discussed when Student showed sufficient progress with consistent positive behaviors. TR. 30:14-31:15; Exh. 115.

17. Gateways monitors student progress with consistent positive behaviors through a level monitoring process where students begin at level 1 and progress to level 4. Students progress to the next level by showing consistent positive behavior over a four-week period. When a student reaches [REDACTED] then Gateways begins working with the student, family and local schools for the student's transition back to the local public school. TR. 96:13-98:22; Exh. 124.

18. Petitioner was informed about Gateway's level monitoring process at the mediation session and in April 2018 after Student began attending Gateways. TR. 98:23-99:14;100:17-101:23.

19. Student did not begin attending Gateways until [REDACTED] [REDACTED] and then attended only sporadically. Student last attended Gateways in [REDACTED]. TR. 31:16-32:3; 34:17-25; 102:2-18; 111:10-16; 122:19-124:1; Exh.116.

20. Student did not progress from [REDACTED] before Student stopped attending Gateways. TR.102:19-103:1; Exh. 116.

21. An IEP meeting was held in [REDACTED] at which Petitioner requested that Student be placed back in Nampa High School. The School District explained reasons for their

concerns for placing Student at Nampa High School, namely, [REDACTED] and lack of data to understand whether changes in Student's medications had effected Student's behaviors. Petitioner told the IEP team that medication changes had made significant changes in Student's behaviors. No medical information was provided to the IEP team to support Petitioner's claim that Student's behaviors had changed. TR. 35:1-36:25.

22. Student last attended school in August 2018. TR. 41:1-6.
23. Since August 2018, Student has not attended any type of activity where Student has been involved with other individuals, other than siblings, who are the Student's age. TR 41:7-22; 46:22-47:6; 76:23-77:23.
24. Student currently suffers from anxiety and depression. TR. 11:1-4; 40:1-14; Exh. 2.
25. The district provides a Emotional/Behavioral Disorder Program ("E/BD") at Gateways and Columbia High School. TR. 80:7-17; 85:15-20.
26. Student's IEP, from the July [REDACTED] meetings, shows IEP team considered placement options for Student and determined that Student's LRE to be Columbia High School. TR. 124:18-126:1; 135:10-139:1; Exh. 129.
27. Nampa High School does not have an E/BD program. TR. 141:6-7.
28. Nampa High School does not have the classroom environment Student needs to attain Student's behavior goals. Gateways and Columbia High School have the environment needed to support Student in attaining Student's behavior goals. TR. 141:13-18.

CONCLUSIONS OF LAW

The purpose of the IDEA is, among other things, to provide all children with disabilities a FAPE that emphasizes special education and related services designed to meet their unique needs

and prepare them for further employment and independent living; to ensure that the rights of children with disabilities and parents of such children are protected; and to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities. 20 U.S.C. § 1400(d)(1)(A)-(C).

In *Endrew F. v. Douglas County School District*, 137 S.Ct. 988 (2017), the U.S. Supreme Court stated, in relevant part, that to meet its substantive obligation under the IDEA a school must offer an IEP “reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” The IDEA states that instruction needs to be offered in a manner that is specifically designed to meet a child’s needs through an individualized program. It needs to take into consideration the child’s present levels of achievement and potential for growth. The “adequacy of an IEP turns on the unique circumstances of the child for whom it was created.” *Id.*

The IDEA requires that school districts should provide students with disabilities the opportunity to learn in the Least Restrictive Environment (“LRE”) meaning:

To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. 20 U.S.C. §1412(a)(5)(A); 34 CFR § 300.114.

In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that –

- (a) The placement decision –
 - (1) Is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and
 - (2) Is made in conformity with the LRE requirements.

- (b) The child’s placement –
 - (1) Is determined at least annually;
 - (2) Is based on the child’s IEP; and
 - (3) Is as close as possible to the child’s home;

- (c) Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled;
- (d) In selecting the LRE, consideration is given to any potential harmful effect on the child or on the quantity of services that he or she needs; and
- (e) A child with a disability is not removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum. 34 CFR § 300.116.

In *Letter to Cohen*, 25 IDELR 516 (OSEP 1996), the U.S. Department of Education, Office of Special Education Programs (“OSEP”) stated that the law requires that “first consideration” must be given to placement in a regular classroom with any necessary supplemental aids and services to make that placement successful before considering more restrictive placement.

Further, OSEP stated that a school district may have two or more equally appropriate locations that meet a student’s special education and related services needs and school administrators should have the flexibility to assign a student to a particular school or classroom, provided that decision is consistent with the IEP team’s determination of placement.

The Ninth Circuit Court of Appeals has adopted a four-factor balancing test for determining whether a Student’s placement is the appropriate LRE:

- (1) The educational benefit of placement full-time in a regular class;
- (2) The non-academic benefits of such placement;
- (3) The effect of the student on the teacher and children in the regular class; and
- (4) The costs involved. *Sacramento City Unified School District v. Holland*, 14 F.3d 1398, 20 IDELR 812 (9th Cir. 1994).

The above legal framework of statutes, caselaw, regulations and administrative guidance are applied to the facts of this case as follows:

- A. Petitioner failed to establish that Nampa School District is Student’s appropriate LRE.

Petitioner agreed with and entered into a mediation agreement for Student's placement at Gateways in 2017. Petitioner testified that since March 2018, when Student stopped attending Gateways, there have been significant changes in Student's behavior warranting a change in placement from Gateways to Nampa High School. The significant changes being that Student positive behavior in the home setting due to medication changes. Petitioner presented two exhibits consisting of Student's medical visit notes for the period of [REDACTED]. These visit notes show that Student consistently reported [REDACTED] during this period, and that Student also reported [REDACTED] in September, October, December 2018, and in January, February, April 2019. No evidence presented by Petitioner, in the form of testimony or documentation, refutes the LRE determination made by Respondent in [REDACTED] or shows that a change in LRE is warranted under the IDEA or the Ninth Circuit's four-factor balancing test for determining Student's LRE. Petitioner's evidence makes no reference to any academic or non-academic benefits to Student's change in placement from Gateways to Nampa High School. Nor does Petitioner's evidence address the effect student's change in placement would have upon the teachers and other students. Further, no evidence was presented showing any procedural problem by Respondent in making the LRE determination. Accordingly, Petitioner failed to meet the burden of proof establishing that Respondent's LRE determination was inappropriate or that Nampa High School, rather than Gateways, is the Student's appropriate LRE.

B. Respondent's LRE determination is appropriate under the Ninth Circuit's four-factor balancing test.

Weighing the Ninth Circuit's four-factor balancing test with the evidence presented by both Petitioner and Respondent tips the scales heavily in support of Respondent's LRE determination.

- (1) Educational benefits: Petitioner and Mrs. Cook, Principal for Gateways, testified that Student did well when attending Gateways. Petitioner specifically testified that the Student did well both academically and behaviorally at Gateways. TR. 32:4-15. This testimony was supported by that of Mrs. Cook. TR. 101:24-102:1.
- (2) Non-academic benefits: Respondent presented evidence that the Gateways campus posed less of a safety risk for the Student and that the student to teacher ratio was much smaller so that Student could obtain more individualized attention. Gateways also has an E/BD program to support Student's behavioral needs. Nampa High School does not have an E/BD program.
- (3) Effect on teachers and students: While at Nampa High School Student exhibited behaviors of self-harm and threatened harm to others. Since Student stopped attending Gateways in March 2018, Student has had no interaction with social or peer groups which could indicate improved behaviors such that Student would not pose a safety risk to the Student or others when placed in a public school setting. Student's placement at Gateways allows Student to exhibit, and Respondent to monitor, the Student's consistent, positive behaviors. Student's progression through Gateways level monitoring process allows Student to transition from Gateways to Nampa High School when Student can safely participate in classroom setting.

The evidence in this case shows that Respondent considered and weighed elements of the Ninth's Circuit's four-factor balancing test in determining that Student's LRE is Gateways.

