

# A Legal Update of the Cases that Involved Autism

Cynthia Buechler  
Buechler & Associates, P.C.  
3660 Stoneridge Rd. Suite D101  
Austin, TX 78746



## Student v. Beaumont ISD

063-SE-1121 (MAY 2022)

## Facts of the Case:

The parent of a student with autism and significant cognitive and behavioral challenges and the school district entered into a settlement agreement for the district to pay for a private school for a period of time. Prior to the end of the time period specified in the settlement agreement, the annual ARD meeting was held to develop an IEP. In total, there were three ARD meetings that were held from April to June.

3

## Facts

The parent was not in agreement with the IEP and requested that the school continue to pay for the private school. At the conclusion of the ARD meeting in June, the parent indicated that he would not be enrolling his child at the school. At that time, the district requested that the parent notify them when or if he planned to enroll the student in the school district.

4

## Facts

In the middle of the fall semester, the parent emailed the school district notice that he would be enrolling the student the next day. The student only attended school for one week. During that time, the school district was attempting to schedule transportation for one of the classes on the student's IEP that was on another campus. Additionally, the teacher tried to upload the communication program but was unsuccessful for the week that the student attended. The teacher also took data on the student's behavior during this time to determine if any changes needed to be made to the IEP.

5

## Facts

After the parent withdrew the student, he enrolled the student in the private school and filed for hearing asserting that the IEP was inappropriate and that the school failed to implement the IEP.

6

## Findings:

The hearing officer found in favor of the school district. The IEP was similar to the previous IEP that the private school was implementing which the parent agreed was appropriate. Further, the hearing officer found that the IEP was substantially implemented.

7

## Take Aways:

- The teacher began pairing on day 1. Pairing is connecting with a student to get the student comfortable with the staff and the environment.
- It is not appropriate to give a student every facet of the IEP on day one in a new school. Working on unmastered IEP goals on the student's first day could cause higher rates of error, higher rates of prompting, and increased physical prompting which is invasive. Additionally, students need time to adjust to the environment and the teachers. Otherwise, a student could make a negative association instead of a positive association or pairing.

8

## Take Aways:

- Children with autism need to become familiar with their environment which does not come overnight.
- When a student has attended a private school, it is important to seek to obtain any records of progress and baselines from the private school in order to develop PLAAFPS.
- If evaluation is not current, make sure to conduct a REED and request new evaluation.

9

## Take Aways:

- When developing an IEP for a student that is currently not in the school, ask to conduct an observation of the student in the private school.
- If the student is in a private school, develop a reintegration plan for the student to transition back into the school district. This could include a visit to the school prior to coming, developing a book with the pictures of staff and the classroom and ,visiting with the student in the private school if the private school will allow a visit.

10

# Student v. Little Elm ISD

088-SE-1122 (JUNE 2023)

11

## Facts of the Case:

The student transferred into the district in February 2019 from another school and was eligible for special education. He was receiving physical therapy, OT and speech therapy. At the transfer ARD, the parent indicated that the student was in the process of being evaluated for autism by the previous school district. The Committee decided to discuss an evaluation at the annual meeting in 30 days. The ARD committee adjusted the student's services from twice a week in the areas of PT, OT and Speech because Texas had a three-hour school day as opposed to a full day.

12

## Facts

At the annual ARD meeting, the parent requested an autism evaluation. The re-evaluation found that the student did not qualify as autistic and no longer qualified for speech. The ARD committee, with the parent in agreement, dismissed the student from special education.

In the following school year, the student had a handful of times when the student would withdraw and stop working. The student preferred to work by their self. The teacher noticed some sensory difficulties; however, the teacher did not observe an academic need for special education services.

13

## Facts

The next school year, the teacher expressed concern regarding the student completing tasks that the student did not want to complete. The teacher began an SST process on the student. The teacher indicated if the parent had concerns about evaluation or diagnosis, he could seek that outside of school and if anything came of it, then the Section 504 process would begin.

The SST occurred in November. The second SST meeting was scheduled to occur in January but did not occur until March. During the interim, the student was not improving and still refusing to do work. The assistant principal and special education teacher indicated that the district is required to do SST interventions before initiating an evaluation.

14

## Facts

In April, the parent requested a re-evaluation of Autism. Consent forms were sent in May and returned by the parent in the same month.

In September, the parent provided an outside diagnosis of ADHD. The school's re-evaluation found that the student did not qualify for speech or autism, even though many of the scales indicated elevated for autism. The FIE acknowledged that the student showed characteristics related to autism such as social awareness and social interaction with peers and adults and concluded these characteristics were related to ADHD. Consequently, the multidisciplinary team determined that the predominant feature impacting the student was ADHD and did not qualify the student as autistic.

15

## Facts

At the ARD meeting, only two elements of the evaluation were discussed which did not include the autism components. The parent received a copy of the proposed IEP in advance. The parent notified the district that he agreed to the initiation of special education services, but did not agree that the student was not autistic and that his agreement was not a blanket agreement to programming, IEP, goals and/or accommodations, but to placement in special education. Because it was not clear what the parent was agreeing to, the district did not implement the IEP.

16



## Facts

A private Evaluation that was conducted by an LSSP, private psychologist and a BCBA was completed and found the student eligible as autistic.

The parent filed for hearing, asserting failure to identify and a denial of FAPE.

17

## Findings:

The hearing officer found in favor of the parents in part. The hearing officer indicated that both the private evaluation and the results of testing in the school's evaluation confirmed an eligibility of autism. She further held that the school failed to evaluate for OT or conduct an FBA.

The hearing officer also found the district failed to timely evaluate for special education. While the hearing officer found that the delay between when the district had notice that the student was suspected of having a disability and referral was unreasonable and found that the district did not meet its obligations under IDEA.

18

## Findings

Finally, the hearing officer found that the district's IEP was not appropriate and did not provide FAPE because it was using the same strategies that were ineffective under SST and did not address the areas identified under the autism supplement.

19

## Take Aways:

- A multidisciplinary team that includes a speech language pathologist, occupational therapist and LSSP is the best practice when conducting an evaluation for autism.
- A delay between when a student is showing difficulty and referral is reasonable if the district takes proactive steps in the interim. SST interventions are proactive steps, but once it is clear those interventions are not working, a district need to act expeditiously to evaluate a student.
- It is important that progress updates under SST occur as often as grade reports so that a district can discern if the interventions are working. That information must be provided to the parent.

20

## Take Aways

- A district cannot wait for a parent to refer a child if it suspects that a student has a disability in need of specialized instruction.
- A student does not have to be provided SST services prior to being referred.
- If a school suspects that a student has a disability in need of specialized instruction, the school cannot require the parent to obtain an outside evaluation in order to determine whether the student meets special education eligibility.

21

## Take Aways

- When a parent brings an outside assessment, the district needs to schedule an ARD meeting to consider the outside assessment. The ARD committee does not have to accept it, but must consider it.
- While the label does not drive the programming, a student's strength and weaknesses do. If the student's scores are indicative of autism, even if the label is not added, consider the items under the autism supplement to see if the student needs them.
- If the student is exhibiting behaviors such as work refusal and the strategies that have been used are ineffective, an FBA needs to be completed and a BIP developed to address these areas.
- If the parent is receiving outside therapies such as OT, the school should conduct an assessment for OT as part of the evaluation.

22



# Student v. Frisco ISD

282-SE-0523

23



## Facts of the Case:

The student originally enrolled in the district in 2017 and left in 2019. The student transferred back into the district in January of 2021. At the previous school district, the student was found eligible for special education under the categories of Emotionally Disabled and OHI for ADHD. Due to the student showing persistent negative behaviors and performing below grade level, the student was placed in a self-contained setting.

24

## Facts of the Case

When the student re-enrolled in January of 2021, the student's home campus did not have a similar setting as the previous school district. Consequently, the ARD committee placed the student in a similar setting which was on a campus other than the home campus. This classroom addresses students' academic and behavioral needs with highly individualized approaches. Additionally, social skills instruction is a critical component of the program. The parent wanted the student on their home campus; however, she did indicate her agreement to the placement.

25

## Facts of the Case

Several ARD meetings and evaluations were conducted between 2021 and 2022. The parent attended every ARD meeting with assistance from various advocates. At these ARD meetings, the parent wanted the student to be placed in general education with a one-to-one aide. It was explained that the student's BIP required three staff members total and two separate classrooms which required the self-contained classroom. Ultimately, the parent marked her agreement to the IEPs, including the placements.

26

## Facts of the Case

In December of 2022, the parent provided the district with a private evaluation that found the student as autistic. The outside evaluation relied on information from a teacher in a previous grade and used the DSM-V to make the diagnosis.

The school agreed to conduct an autism evaluation. As part of the evaluation, the CELF-5 was conducted. The student scored in the very low to severe range of language functioning, but the scores were not valid due to the student's uncooperative behavior. In the previous FIE, the student scored in the average range on the same test. The change in the student's standard scores was a drop of 20 points. Such a drop would be highly unusual and was attributed to the Student's lack of cooperation during testing. The pragmatic language skills were in the average range.

27

## Facts of the Case

The LSSP used several assessments to determine whether the student qualified as autistic. Based upon the results of the assessments, the multidisciplinary team concluded the student did not demonstrate a profile of behaviors consistent with autism. The testing showed that the student did not display difficulty in social communication and reciprocal interaction. The testing also showed that the student's verbal and nonverbal communications are synchronized and that the student made appropriate eye contact during interaction. They found that the student's behavior appeared to be directed, and even though the behaviors were not often socially appropriate, the student appeared to have a good understanding of appropriate/inappropriate behaviors. The student engaged in maladaptive behavior purposefully.

28

## Facts of the Case

The parent disagreed with the evaluation and not adding the eligibility of autism.

The student made significant progress under the IEP. In the last year he attended, he did not have a restraint. He improved academically as well.

29

## Facts of the Case

An incident occurred in April of 2023 where the student was suspended rather than sent to the DAEP. The parent never returned the student after the suspension and filed for hearing seeking private school reimbursement and a finding that the school failed to identify the student as autistic and therefore, failed to provide FAPE in the least restrictive environment.

30

## Findings:

The hearing officer found that the district appropriately evaluated the student and provided an appropriate program in the least restrictive environment.

31

## Take Aways:

- The DSM-V is a medical diagnosis for autism whereas, IDEA has specific criteria for determining autism.
- When a student displays some characteristics of autism, it is important to explain why a student does not meet the criteria of autism that is understandable to the ARD committee.
- Whether or not a student has been determined eligible for special education under the category of autism, the IEP must still address the student's strengths and weaknesses. If social interaction is problematic for the student, it will still need to be addressed in the IEP.

32



## Take Aways

- The items on the autism supplement are available to any student that needs the service.
- While social skills deficits are prevalent in both ED and Autism, the difference lies in whether the student understands what are appropriate and inappropriate social responses but behavior interferes with the consistent application of the skills.
- While home campuses are preferable, specialized programs can be provided at a centralized location.

33

## Take Aways

- While general education is the starting point when considering LRE, when a student's behavior is persistent and disruptive, or the academics is significantly modified, a student may be placed in a more restrictive setting for all or part of the day.
- When a student is in a more restrictive setting for behavior, reintegration criteria to the general education classroom should be included in the IEP.
- When a student has significant behaviors, addressing behavior is critical to helping the student improve academically.

34

# Student v. McAllen ISD

185-SE-0224

35

## Facts of the Case:

The student attended McAllen ISD under an open enrollment transfer policy. In the 2021-2022 school year, the student was in the 6th grade attending in person. He was an average student with good behavior. Both the parents and school staff indicated that during elementary school, Student presented as a normal kid who did fine in school.

On February 17, 2022, the student received a disciplinary referral. One of his teachers reported that he had pinched her on her behind.

36

## Facts of the Case (Continued):

Inappropriate touching of this kind is a very common discipline issue in middle school. The assistant principal spoke to the student in her office, then called a campus police officer into the office to speak with the student about the seriousness of inappropriate touching, as was their standard practice.

The student was contrite, embarrassed, and nervous, which was common of students facing discipline for inappropriate touching. The assistant principal called Mom and parents came to school to meet with her to discuss the incident. The student received a three-day out-of-school suspension.

37

## Facts of the Case (Continued):

The student did not return to school after the incident. The parents asserted that the student would not leave his room after this incident, and that he was scared and embarrassed to return to school.

On March 1, 2022, the parents submitted to the District a level 1 grievance challenging the discipline decision. The grievance stated that the teacher's allegation was fabricated and that being falsely accused had caused the student insomnia, distress, and anxiety. The parents stated that the student was afraid to return to school and was receiving therapy. The grievance requested that the student's disciplinary record be cleared and for the teacher, assistant principal, and police officer to be assigned to different campuses.

38

## Facts of the Case (Continued):

The parents provided a nurse practitioner note that indicated that the student had situational anxiety and an acute stress reaction and needed to be in remote learning for the remainder of the year. On March 4, 2022, the campus principal approved the student to participate in online remote learning. The student remained learning remotely for the rest of the semester.

The student did not return to the District for the 2022-2023 school year. He began attending another school district, which he still attended at the time of the hearing. He attended school virtually for seventh and eighth grade and attended high school in person during the 2024-2025 school year.

39

## Facts of the Case (Continued):

In September and October 2023, the student was evaluated by a private psychologist. The report was not dated, and was provided to the parents in the spring of 2024. The evaluation did not include review of any school information, or any educator input, from any school that Student has attended, other than some documents related to the February 17, 2022 incident provided by the parents.

The private psychologist interviewed the student as part of the evaluation; however, all testing was administered by his psychometrist. The autism portion of the evaluation included administration of the Autism Diagnostic Observation Schedule – 2 (ADOS-2) and Parents completing the Autism Spectrum Rating Scales (ASRS) and Social Responsiveness Scale – Second Edition (SRS-2). While the parents rated some areas of concern on the ASRS, their overall scores were not consistent with a diagnosis of an autism spectrum disorder. Likewise, on the SRS-2, the parents' ratings put the student in the normal range.

40

## Facts of the Case (Continued):

The report concluded that the student met the medical diagnostic criteria for an autism spectrum disorder, as well as meets TEA criteria for special education eligibility based on autism.

At the time of the hearing, the parents had not shared this report with the school district that the student currently attended. The student has never been evaluated for special education by a school district or received any special education services.

The parents filed for hearing against McAllen ISD asserting that the district did not meet its child find obligations and failed to identify the student as autistic. They sought private school and compensatory education.

41

## Findings:

The hearing officer found in favor of the district. The hearing officer stated that the sole issue was what the District knew in February 2022 through May 2022. At that time, the District was aware that the student was struggling with stress and anxiety following a discipline incident that the parents were ardently contesting, that his grades slipped in a grading period where he had a lot of absences, but that he brought his grades back up, and that he had never previously had any behavior or academic issues at school. Consequently, the hearing officer found that this was not sufficient to trigger the Child Find duty.

42

## Take Aways:

- Child Find obligations begin when an educator suspects that a student has a disability that requires specialized instruction.
- Situational anxiety and acute stress reaction are temporary conditions.
- Temporary conditions are not disabilities that would trigger a child find obligation.
- If it is a temporary condition, providing interventions from MTSS may be appropriate.

43

## Take Aways:

- Hospitalization by itself does not automatically trigger the District's child find duties.
- When a student returns from hospitalization, always ask for any evaluations and discharge documents.
- The professional administering the ADOS needs to be the one interpreting it.
- When receiving an outside evaluation, ask for the protocols.
- If a parent is seeking teacher information for an outside evaluation, make sure the teacher keeps a copy of the information that the teacher provided.

44