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| STUDENT <i>b/n/f</i> | § | BEFORE A SPECIAL EDUCATION |
| PARENTS, | § | |
| | § | |
| Petitioners, | § | |
| | § | |
| V. | § | HEARING OFFICER |
| | § | |
| DALLAS INDEPENDENT | § | |
| SCHOOL DISTRICT, | § | |
| | § | |
| Respondent. | § | FOR THE STATE OF TEXAS |

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

Petitioners, Student *b/n/f* Parents (“Petitioner” or “Student”), filed a complaint with the Texas Education Agency (“TEA”), requesting a Due Process Hearing pursuant to the Individuals With Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. §1400 *et. seq.*, contending that Respondent, Dallas Independent School District (“Respondent” or “DISD” or “the District”), denied Student a free, appropriate, public education (“FAPE”). Student asserted the following particular issues for the Due Process Hearing, which issues included school year 2006-2007: 1) DISD failed to timely evaluate Student in all areas of concern; 2) DISD failed to timely provide Student’s parents with the results of his evaluations; 3) DISD failed to provide Student the academic and educational support he needed, including an appropriate amount of compensatory services following affirmative findings by TEA in a complaint; 4) DISD failed to provide Student appropriate speech and language therapy, including an appropriate amount of compensatory services following affirmative findings by TEA in a complaint; 5) DISD failed to provide Student appropriate occupational therapy, including an appropriate amount of compensatory services following affirmative findings by TEA in a complaint; 6) DISD failed to provide Student appropriate assistive technology services; 7) DISD falsified records to extend timelines, resulting in a denial of a timely evaluation for special education and related services and a delay in services; 8) DISD failed to provide Student clearly defined and measurable IEP goals and objections; and 9) DISD failed to provide Student’s parents with information regarding his progress on his IEP goals in a timely manner. ¹

¹ Student alleged two additional issues: 1) DISD retaliated against Student and his mother by providing false documentation to TEA in response to the complaint filed by Student’s mother; and 2) DISD denied Student the benefits of special education and related services by reason of his disability. During the pre-hearing telephone conference these issue were dismissed on jurisdictional grounds.

DISD asserted the affirmative defense of statute of limitations, arguing that Student is precluded from seeking relief associated with DISD's acts or omissions occurring more than one (1) year prior to Student's Request for Due Process Hearing. 19 Tex. Admin. Code 89.1151.²

Following a review of the parties' extensive briefing on the limitations issue, on August 20, 2008, the undersigned issued a revised Scheduling Order confining the issues to the one-year statute of limitations, thereby revising the Due Process Hearing issues to acts or omissions on the part of DISD occurring no earlier than July 8, 2007:

1. DISD failed to provide Student appropriate academic and educational support, including the agreed amount of compensatory services following affirmative findings by TEA in a complaint;
2. DISD failed to provide Student appropriate speech and language therapy, including the agreed amount of compensatory services following affirmative findings by TEA in a complaint;
3. DISD failed to assess Student for, or provide Student with, assistive technology services; and
4. DISD failed to provide Student relevant, clearly defined, and measurable IEP goals and objections.

Student seeks the following relief:

1. DISD shall pay all costs associated with a private placement at public expense, including, but not limited to, tuition, registration fees, admission fees, books, and transportation, at a school chosen by the parents, as compensatory services for the educational instruction lost to Student;
2. DISD shall provide thirty-six (36) hours of one-on-one tutoring in math with a certified teacher, thirty (30) minutes twice weekly after school, as compensatory services;

² This one-year timeframe is tied to when the requesting party "knew or should have known" about the actions underlying the Request for Due Process Hearing. An exception to this one-year period occurs when parents are prevented from requesting a hearing due to "specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint." 20 U.S.C. 1415(f)(3)(D). Student argued that the exception to the one-year statute of limitations obtains here because Student had no knowledge that substantive and procedural violations of IDEIA existed until, at the earliest, Student filed a TEA complaint in her letter dated July 22, 2007

3. DISD shall provide thirty-six (36) hours of one-on-one tutoring in writing composition with a certified teacher, thirty (30) minutes twice weekly after school, as compensatory services;
4. DISD shall provide thirty-six (36) hours of speech and language therapy services as compensatory services;
5. DISD shall pay for an advocate of the parent's choice to attend all ARDs held for Student through school year 2009-2010;
6. DISD shall designate a District level liaison to facilitate communication between the parents and the campus staff; and
7. any other compensation the Hearing Officer sees fit to award.

II. PROCEDURAL HISTORY

On July 8, 2008, the TEA received the Request for Due Process Hearing filed by Student. On July 9, 2008, TEA assigned the case Docket No. 268-SE-0708 and initially assigned it to Hearing Officer Lucretia Dillard. However, due to Ms. Dillard's work schedule, TEA re-assigned the matter to the undersigned Hearing Officer. On July 10, 2008, the undersigned Hearing Officer sent the Initial Scheduling Order to the parties, stating that the pre-hearing telephone conference would convene on July 29, 2008, the Due Process Hearing would take place on August 19, 2008, and the Decision would issue by September 21, 2008. Due to scheduling conflicts the telephone conference was re-scheduled to July 31, 2008.

On July 31, 2008, the parties convened for the first pre-hearing telephone conference. In attendance were the following: 1) Ms. Yvonnilda Muniz, counsel for Student; 2) Ms. Joni R. Jalloh, counsel for DISD; 3) Ms. **, Special Education Supervisor; 4) Mr. **, Principal of ** School; 5) Mr. **, Critical Care Coordinator; 6) the undersigned Hearing Officer; and 7) the court reporter, who made a record of the telephone conference. The parties discussed the issues and finding good cause due to scheduling difficulties, the undersigned granted the first continuance request and by agreement with the parties, re-scheduled the Due Process Hearing for October 20-21, 2008. Also during this first pre-hearing telephone conference, the parties discussed DISD's affirmative defense of statute of limitations and its request that all issues and requests for relief be confined to the one-year statute of limitations implemented in Texas. The undersigned instructed the parties to file briefing related to the limitations argument.

On August 13, 2008, Student filed his Brief in Support of Finding Exception to the Statute of Limitations. DISD filed its Response on August 18, 2008. On August 20, 2008, the undersigned issued an Order Imposing the One-Year Statute of Limitations.

On August 25, 2008, Student filed his Second Request for Production of Documents to Respondent and First Request to Shorten Deadline for Services. On August 26, 2008, DISD filed its Motion to Abate Petitioner's Second Request for Production of Documents, and Notice Contesting Sufficiency of Complaint. On August 29, 2008, the undersigned denied DISD's insufficiency challenge. On September 4, 2008, DISD filed its Response to Petitioner's Second Request for Production of Documents to Respondent.

On October 1, 2008, Student filed its Third Request for Production of Documents, alleging that Student had not received any documents pursuant to the prior discovery requests. Student also requested another pre-hearing telephone conference.

On October 8, 2008, the parties convened for the second pre-hearing telephone conference. In attendance were the following: 1) Ms. Muniz; 2) Ms. **, parent of the Student; 3) Ms. Jalloh; 4) Ms. **; 5) Mr. **; 6) the undersigned Hearing Officer; and 7) the court reporter, who made a record of the telephone conference. The parties discussed the discovery dispute and finding good cause, the undersigned granted a second continuance of the hearing and by agreement with the parties, re-scheduled the Due Process Hearing to November 5-6, 2008, to allow Student's attorney time to review all documents produced.

On October 13, 2008, Student filed his first Motion to Reconsider Statute of Limitations. On October 15, 2008, DISD filed its response to this motion. On October 16, 2008, the undersigned requested that Student provide additional legal authority in support of the limitations issue. Student provided this information on October 24, 2008.

On November 3, 2008, the parties convened a third pre-hearing telephone conference. In attendance were the following: 1) Ms. Muniz; 2) Ms. **; 3) Ms. Jalloh; 4) the undersigned Hearing Officer; and 5) the court reporter, who made a record of the telephone conference. Finding good cause, the undersigned granted the third continuance request and by agreement with the parties, re-scheduled the Due Process Hearing for December 11-12, 2008. On November 7, 2008, the undersigned issued the 1) Second Order Imposing One-Year Statute of Limitations and 2) Fourth Order Scheduling Due Process Hearing.³

³ In the August 2008 Order Imposing One-Year Statute of Limitations, the undersigned stated that because Student recovered all of the relief he sought, and agreed to, in two of the three TEA complaints, the doctrine of "mootness" would apply to those identical issues presented in this proceeding. Following additional argument by the parties, the undersigned withdrew the prior August 2008 order and found that Student's mother had **constructive knowledge** of Student's procedural rights as early as April 2007 when she received the Procedural Safeguards. See *El Paso Independent School District v. Richard R.*, 567 F.Supp.2d 918 (W.D. Texas July 14, 2008) ("[w]hen a local educational agency delivers a copy of IDEA procedural safeguards to parents, the statutes of limitations for IDEA violations commence without disturbance. Regardless of whether parents later examine the text of these safeguards to acquire actual

On November 21, 2008, Student filed his second Motion to Reconsider Statute of Limitations. On December 2, 2008, DISD responded to Petitioner's motion. On December 9, 2008, the undersigned denied Student's second Motion to Reconsider Statute of Limitations. Also on this date, Student requested a continuance of the December 11-12, 2008, Due Process Hearing due to illness. Finding good cause for the fourth continuance request, the undersigned Hearing Officer granted the continuance and requested a fourth pre-hearing telephone conference.

On December 10, 2008, the parties convened a fourth pre-hearing telephone conference. In attendance were the following: 1) Ms. Muniz; 2) Ms. **; 3) Ms. Jalloh; 4) the undersigned Hearing Officer; and 5) the court reporter, who made a record of the telephone conference. The parties agreed to re-schedule the Due Process Hearing for January 28-29, 2009.

Prior to this hearing date, on January 27, 2009, Student requested a fifth continuance of the Due Process Hearing due to the illness of Student's mother. Finding good cause, the undersigned granted the fifth continuance and by agreement with the parties, re-scheduled the hearing for February 18-19, 2009.

The Due Process Hearing convened on February 18, 2009. Both parties introduced documentary evidence; Student called eleven (11) witnesses; DISD called three (3) witnesses. Both parties conducted extensive cross-examination of the witnesses. Although the limitations issue had been determined prior to the hearing, Student was allowed to present evidence related to his exceptions argument. DISD objected and introduced an additional exhibit, consisting of documents either previously disclosed or filed of record, while making an opening argument related to Ms. **'s inconsistently sworn testimony related to when she actually received Procedural Safeguards.⁴

During the hearing, Student was represented by counsel, Ms. Muniz. Student's mother and father attended the hearing both days. DISD was represented by counsel, Ms. Jalloh. Also in attendance throughout the hearing were the following District representatives: Mr. **, Principal of ** School; and Mr. **, Critical Case Coordinator.

knowledge, that simple act suffices to impute upon them constructive knowledge of their various rights under the IDEA.")

⁴ The admitted exhibits, the documents filed of record, Ms. **'s statements during pre-hearing discussions, and her sworn testimony at the hearing establish that she received Procedural Safeguards, *at the very latest*, on May 17, 2007, at Student's ARD Committee meeting.

At the conclusion of the hearing on February 19, 2009, the parties and Hearing Officer agreed to a post-hearing schedule. The undersigned instructed the parties that post-hearing closing arguments were optional. However, if the parties wanted to file closing arguments, they would be due April 3, 2009, and the Decision would be rendered April 9, 2009. The Hearing Officer issued a letter with these dates included and requested that the parties notify her if they were not going to file closing arguments.

On April 2, 2009, Student's counsel requested an extension of time to file his closing argument due to technical problems. DISD objected to this request. Finding good cause, the undersigned granted the extension request, instructed the parties to file their closing arguments on, or before, April 6, 2009, and extended the Decision deadline by one (1) day to April 10, 2009.

Student filed his Proposed Findings of Fact and Conclusions of Law on April 6, 2009. DISD filed a brief statement on that date relying on the evidence presented at the hearing in lieu of a brief. The Decision in this case is due April 10, 2009.

III. FINDINGS OF FACT

1. Student is an ** year old who resides with his parents and siblings within the jurisdictional limits of DISD. Student attends ** School and has always attended school in DISD.
2. DISD is a political subdivision of the State of Texas and a duly incorporated independent school district.
3. In September 2007, Student's Admission, Review, and Dismissal Committee ("ARD Committee") determined that Student is eligible for special education services under the categories of a) learning disabled ("LD") in written expression and b) speech impairment ("SI"). Student began receiving special education services during school year 2007-2008. Prior to that school year, Student had never qualified for, or received, special education services.

School Year 2006-2007 (Grade):**

4. Prior to Student's entry into ** grade, his mother was already concerned about his behavior and academics. Student's mother requested that he be evaluated for special education services in September 2006. DISD scheduled a meeting for September 13, 2006, of the Student Support Team ("SST").⁵

⁵ The SST is the referral process utilized by DISD. Special education referrals can result from this general education screening system. The SST is a group of professionals who assist teachers with instructional strategies, programming, placement recommendations, and monitoring of "at risk" students.

5. Ms. ** was Student's counselor and head of the SST during school year 2006-2007. At its September 13, 2006, meeting, the SST agreed to monitor Student and to provide help in writing and other grade supports. Student also began receiving counseling services at the school.
6. Student's SST implemented interventions through the end of the first semester. These included individual tutoring, peer tutoring, and classroom management strategies. These interventions did not foster the improvement that Student's SST hoped to achieve.
7. Student's counselor noted that he was clingy, frightened, upset, and in need of training and assistance from several sources to help him emotionally, socially, and academically.
8. Student's ** grade teacher was very concerned about his emotional well-being. She noted that he was withdrawn from his peers; that he cried and pouted; that while he was not aggressive towards others, he periodically acted inappropriately in the class and could be disruptive.
9. Student's teacher reported problems with writing (hard to read) and fine motor skills. Student was inattentive to lessons and as time progressed, Student fell further behind his peers. Student manifested problems in reading, math, science, and social studies.
10. The SST has three (3) stages: a) Stage I is the referral to the SST; b) Stage 2 is the meeting of the SST; and c) Stage 3 is the referral to special education, if appropriate. Every student referred for special education evaluations must go through DISD's SST process.
11. Student's SST met in September 2006, November 2006, and late January 2007. The SST noted that interventions had not worked and that a Stage III/Referral for special education evaluation was the necessary next step.
12. DISD uses the enCORE method of tracking SST and special education timelines and activities. If properly utilized, this tracking system targets mandatory deadlines for analysis of interventions, activities related to contact with parents concerning obtaining consent and providing requisite notice, deadlines for assessments, and much more. The enCORE records of Student's SST actions were incomplete, confusing, and in some places, illogical as to stated actions and dates related thereto.
13. On January 29, 2007, the campus diagnostician received the Receipt of Referral to Special Education from Ms. **, which contained the wrong forms. After numerous

requests by the diagnostician, Ms. ** provided her with the correct SST forms on April 17, 2007, and Student finally was evaluated on April 18, 2007.

14. Ms. ** signed a Receipt of Procedural Safeguards in April 2007. Ms. ** received a copy of the Procedural Safeguards prior to Student's evaluation in April 2007.
15. Student's ARD Committee met on May 17, 2007, to discuss Student's evaluation. Student did not qualify for special education services as LD using the discrepancy method, which requires a sixteen-point difference between the Student's intelligence quotient ("IQ") and achievement scores.⁶ Student's mother did not attend the meeting. However, Student's mother met with the diagnostician later that day. The diagnostician provided Student's mother with a folder containing Procedural Safeguards.
16. Student did not pass ** grade; he did not master all necessary skills. His teacher recommended repeating ** grade. At his parents' request, however, Student was placed in the ** grade for school year 2007-2008.
17. On August 20, 2007, in a letter dated July 22, 2007, Ms. ** filed a complaint with TEA's Office of IDEA Coordination, asserting various issues of concern related to Student's education during school year 2006-2007: a) DISD failed to timely evaluate Student for special education and related services; b) DISD failed to provide Student's parents with a copy of the procedural safeguards; and c) DISD failed to ensure that Student was determined eligible or not eligible for special education in accordance with required procedures.

School Year 2007-2008 (Grade):**

18. Student's parents and teachers were concerned with his behaviors and academic performance from the very beginning of Student's ** grade year and it was agreed that additional testing would be done. Based upon these concerns, as well as the issues flagged in the August 2007 TEA filing, a Full and Individual Re-Evaluation of Student was conducted and completed on September 24, 2007. Additional information was obtained concerning Student's behaviors; speech and language assessments revealed moderate deficits in Student's receptive and expressive language skills; DISD administered the Oral Written Language Skills ("OWLS") and found that his score, like the previous score on the WIAT-II, was below his current age and indicated difficulty using correct writing skills; Student had difficulty in oral expression. Under this more comprehensive assessment, Student was found to qualify for special education and related services as LD in written expression. Based upon information gathered from Student's teachers as well as standardized

⁶ Student's full-scale IQ is **, which puts him in the low average range of intelligence. Student scored ** in written expression on the Wechsler Individual Achievement Text II ("WIAT-II"), which was below his predicted score of **.

assessments, the Speech-Language Pathologist found Student to have a moderate language impairment. An Assistive Technology Evaluation found no need for intervention in this area. An Occupational Therapy Evaluation was completed on September 10, 2007, and Occupational Therapy ("OT") was recommended for thirty (30) minutes per week for six (6) weeks to develop a handwriting program. This program would have to be continued at home to garner the maximum benefit.

19. Student's ARD Committee convened on September 25, 2007. Student's mother was in attendance. The ARD Committee found Student eligible for special education services as LD, in written expression, and SI. The ARD Committee developed a program for Student to receive three hundred (300) minutes per week of resource instruction in reading/language arts and two hundred twenty-five (225) minutes per week of in-class support in math. The Occupational Therapist would provide Student's classroom teacher with a commercially available handwriting program and educate the teacher and Student on its use. The Occupational Therapist would provide Student OT thirty (30) minutes a week for six (6) weeks, at which point the school would continue the program. Although Student was to receive speech therapy, there was a therapist vacancy and it was agreed that Student would receive compensatory services when the Speech Therapist vacancy was filled. Goals and objectives were drafted for English/language arts, math, speech/language, and writing, which was included in the English/language arts goals. Student would receive reading pull-out services and inclusion support in math.
20. On October 19, 2007, TEA completed its investigation into the August 2007 complaint and made the following findings: a) DISD had failed to ensure that Student was located, evaluated, and identified in accordance with required procedures; b) DISD had provided Student's parents with a copy of the procedural safeguards in accordance with required procedures; and c) DISD had failed to ensure that Student was determined eligible or not eligible for special education services in accordance with required procedures.
21. TEA ordered DISD to convene Student's ARD Committee to determine appropriate compensatory services for the time period from May 17, 2007, the date Student's ARD Committee determined he did not qualify for special education services, through the date the Student's IEP was implemented in September 2007.
22. DISD complied with this directive and convened Student's ARD Committee on November 7, 2007. Student's mother participated by telephone. The Committee agreed upon the form and substance of the TEA-mandated compensatory services: twenty-six (26) hours in reading/language arts; twenty (20) hours in math; three (3) hours in speech; one (1) additional six (6) weeks of technical assistance from the Occupational Therapist; and tutorials.

23. Student's November 2007 ARD Committee reviewed his progress to date on his September 2007 IEP. Student's teachers had some difficulties with him at the beginning of the school year. Student appeared to shut down. His writing continued to be difficult to read. However, Student appeared to be cooperative and eager and great improvement was noted in reading. He scored ** on the reading benchmark for the Texas Assessment of Knowledge and Skills ("TAKS") in October 2007. Student had mastered his reading goals and was reading on grade level. Accordingly, Student's ARD Committee revised his reading goals.
24. Student had not made like progress in math. He scored ** on the October 2007 math benchmarks. The Committee agreed to maintain his math goals.
25. Student's mother concurred with the ARD Committee's determination related to compensatory services and IEP updates on November 7, 2007.
26. DISD did not provide all of the compensatory services to Student by the end of school year 2007-2008. However, DISD agreed to provide any outstanding compensatory services to Student during the summer program 2008. The evidence was insufficient to establish DISD failed to provide all of the compensatory services as agreed or that if such failure occurred, it was more than a *de minimis* failure.
27. DISD provided the services specified in Student's 2007-2008 IEP. Student manifested academic and non-academic growth during this school year. Student's behavior improved. Although Student did not manifest growth on the ITBS in math or reading between ** and ** grade assessments, any deficits in reading were addressed early in school year 2007-2008 as evidenced by his mastery of his reading goals by November 2007 and his reading on grade level. He showed academic growth in his school subjects, passing all classes: ** (fine arts); ** (language arts); ** (social studies); ** (math); and ** (science/health).
28. Student's goals and objectives were relevant, clearly defined, and measurable. Student's IEP was developed in a coordinated and collaborative manner by Student's key stakeholders who reached consensus on all elements of his program and placement, including compensatory services.

29. The evidence was insufficient to establish that DISD failed to evaluate Student in all areas of need.

IV. DISCUSSION

IDEIA mandates that all state school districts receiving federal funding must provide all handicapped children a FAPE. The United States Supreme Court, in *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982), established a two-part test for determining whether a school district has provided a FAPE: 1) the school district must comply with the procedural requirements of IDEIA, and 2) the school district must design and implement a program "... reasonably calculated to enable the child to receive educational benefits." An educational benefit must be meaningful and provide the "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 200-01. In determining whether a child is receiving a FAPE, the *Rowley* Court insisted that the reviewing court must not substitute its concept of sound educational policy for that of the school authorities. *Id.*, 458 U.S. at 206. Although the school district need only provide "some educational benefit," the educational program must be meaningful. *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). The educational benefit cannot be a mere modicum or *de minimis*. It must be likely to produce progress, not regression or trivial educational advancement. *Houston Independent School District v. Bobby R.*, 200 F.3d 341, 347 (5th Cir. 2000).

In *Cypress-Fairbanks Independent School District v. Michael F.*, the Court set forth four (4) factors that aid in evaluating whether a student is receiving the "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit" to that student: 1) whether there is an individualized program based on the student's assessment and performance; 2) whether the individualized program is administered in the least restrictive environment ("LRE"); 3) whether the services are provided in a coordinated and collaborative manner by the key stakeholders; and 4) whether positive benefits are demonstrated both academically and non-academically.

1. **Student's 2007-2008 IEP Was Individualized And Based Upon His Assessments And Performance.**

Student avers generally that the assessments done in September 2007 failed to assess Student in all areas of concern, asserting that Student continued to manifest emotional problems in fall 2007 under the IEPs developed after the more comprehensive September 2007 assessments.

Student's real argument is not with the form or substance of the September 2007 re-evaluation. It is with the April 2007 assessment, which was clearly incomplete, inaccurate, and inappropriate as stated in TEA's findings that DISD failed 1) to ensure that Student was located, evaluated, and identified in accordance with required procedures, and 2) to ensure that Student was determined eligible or not eligible for special education services in accordance with required procedures. Indeed, TEA ordered DISD to provide compensatory services to Student to correct these failures. However, as set forth above, Student's claims related to the April 2007 assessment are barred by the one-year statute of limitations. Accordingly, the following analysis concerns the Full and Individual Re-Evaluation done by DISD in fall 2007.

Evaluation procedures are carefully spelled out in the federal and state rules and regulations implementing IDEIA. 34 C.F.R. §300.304 specifies that in conducting the evaluation, the public agency, *i.e.*, the school district, must 1) use a variety of assessment tools and strategies to gather functional, developmental, and academic information; 2) not use a single measure or assessment as the sole criterion for determining a disability; and 3) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. The school district must ensure that the assessments are selected and administered in a non-discriminatory manner, provided in the child's native language and in a form likely to provide accurate information, used for the purposes for which the assessments are valid and reliable, administered by trained and knowledgeable personnel, and administered in accordance with any instructions provided by the producer of the assessments. The district is charged with administering assessments and other evaluation materials that are tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. Assessments must be selected and administered in a manner that best ensures that the assessment results accurately reflect the child's aptitude or achievement level or other factors that the test is measuring. The child being assessed must be evaluated in all areas related to the suspected disability. The assessment must be sufficiently comprehensive to identify all of the child's special needs.

As part of the overall evaluation, the assessors should review all existing evaluation data, including information provided by the parents, current classroom-based, local, or state assessments, classroom-based observations, observations by the child's teachers and related-services providers. 34 C.F.R. §300.305. Once the assessments and other evaluation measures are completed, the student's ARD Committee must consider all of the information gathered and make a recommendation based upon that information. In determining whether the child is a child with a disability and an educational need for special education intervention, the ARD Committee must draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as physical condition, social or cultural background and adaptive behavior. 34 C.F.R. §300.306.

Student's ARD Committee met on September 25, 2007, to review his assessments and determine whether he qualified for special education services. The ARD Committee reviewed the following evaluation data and attendant information: 1) information from the parents, educational records, classroom teachers, student interview/observation, and school nurse; 2) prior assessments from April 2007; and 3) new assessments in the areas of behavior, speech/language, articulation, achievement, assistive technology, and occupational therapy.

The ARD Committee determined that 1) Student is LD in written expression and SI. The Committee found no need for behavioral interventions because Student's behaviors were not interfering with his learning. Based upon the entirety of Student's assessments, the ARD Committee determined that Student would receive special education services in the resource room, general education setting with in-class supports, and pull-out services in OT and speech.

The record establishes that DISD assessed Student by using a plethora of instruments, consisting of standardized tests, observations, and interaction with Student. The assessors were qualified professionals. Based upon these assessments, Student was provided with a program entailing clearly articulated, measurable goals and objectives for services in his areas of need: speech-language, English/language arts/reading/writing, and mathematics. Student's ultimate performance under the 2007-2008 IEP manifests the appropriateness of Student's assessments and the resulting 2007-2008 IEP.

2. Student's Special Education Services Were Provided In School Year 2007-2008 In A Coordinated And Collaborative Manner By The Key Stakeholders In The Least Restrictive Environment.

The evidence simply failed to prove that Student was not receiving all services under his 2007-2008 IEPs. Indeed, the fact that he achieved ** on his TAKS benchmark in reading in October 2007 and mastered his reading goals and objectives by November 2007 evidence that Student was receiving appropriate services.

The record does establish that DISD owed Student some of the TEA-mandated compensatory services due to the vacancy in the speech therapist position. But these services were provided to Student, as agreed to by Student's mother, during summer 2008.

The Occupational Therapist provided the writing program, "Handwriting Without Tears," as proscribed by the ARD Committee. A key component of this program, which was to aid Student in developing cursive handwriting, was extra work at home. The record is unclear whether Student received the needed extra work at home. Although he did not make the progress the Occupational Therapist wanted during the six-week

program, Student's teachers testified that he is doing better with his writing, that he can write in cursive, and that cursive writing is actually a skill that he does not have to integrate into his work until ** grade.

To prevail on his claim that DISD failed to implement his IEP, it was incumbent on Student to show more than a *de minimis* failure to implement all elements of the IEP. Student had to show that DISD failed to implement substantial or significant provisions of the IEP. *Houston Independent School District*, 200 F.3d at 349. This burden was not met. To the contrary, the record reveals Student has many highly competent, devoted adults working with him in a collaborative manner so that he can, and does, receive educational benefit. The delivery of these services is in the least restrictive environment for Student.

3. Student Made Academic And Non-Academic Progress During 2007-2008.

Student's 2007-2008 IEP provided him with academic and non-academic progress. He passed every class every six (6) weeks of his ** grade year. In many areas he is working on grade level. His service providers and teachers note much improvement in his behavior. He interacts with his peers, his teacher, and his service providers.

Going into the hearing the legal presumption was that Student's 2007-2008 IEP provided him a FAPE. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). To overcome this presumption, Student had the burden of proving that DISD failed to provide him a FAPE under this IEP. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Student failed to meet this burden.

V.

CONCLUSIONS OF LAW

1. Student is eligible for special education services, based upon his classification of learning disabled in written expression and speech impairment, as mandated under the provisions of IDEA and its implementing regulations. 20 U.S.C. §1400 *et seq.*
2. Student failed to meet his burden of proving that his 2007-2008 was inappropriate because it was not based upon assessments in all areas of need. 34 C.F.R. §300.304; 34 C.F.R. §300.305; and 34 C.F.R. §300.306.
3. Student failed to meet his burden of proving that DISD failed to implement substantial and significant provisions of his 2007-2008 IEP, including those services mandated by TEA. *Houston Independent School District v. Bobby R.*, 200 F.3d at 349.

VI.
ORDER

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Petitioner is DENIED.

Finding that the public welfare requires the immediate effect of this Decision, the Special Education Hearing Officer makes it effective immediately.

Original signed 10th day of April 2009.

Deborah Heaton McElvaney, Hearing Officer

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