

ALIEF INDEPENDENT	§	BEFORE A SPECIAL EDUCATION
SCHOOL DISTRICT	§	
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
STUDENT b/n/f	§	
PARENT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

**DECISION OF THE HEARING OFFICER**

**I.  
STATEMENT OF THE CASE**

On November 9, 2007, the Texas Education Agency (“TEA”) received the Request for Due Process Hearing (“the complaint”) filed by Alief Independent School District (“Petitioner”) under the Individuals with Disabilities Education Act (“IDEA”). TEA assigned the case Docket No. 049-SE-1107 and assigned the matter to Hearing Officer Sharon Ramage. On November 12, 2007, Hearing Officer Ramage sent the Scheduling Order to the parties, Petitioner and Student *b/n/f* Parent (“Respondent”), stating that the prehearing telephone conference would be held on November 19, 2007, that the Due Process Hearing was scheduled for December 3, 2007, and that the Decision due date was December 24, 2007. Due to conflicting schedules, the prehearing telephone conference was rescheduled to November 20, 2007.

On November 19, 2007, Respondent filed a Notice of Insufficiency of Petitioner’s Complaint, asserting that Petitioner’s complaint violates the pleading requirements of 34 C.F.R. §300.508 in that it fails to state with specificity the issues for the hearing.

On November 20, 2007, TEA reassigned this case to the undersigned Hearing Officer before Hearing Officer Ramage ruled on Respondent’s insufficiency complaint. The undersigned received the file from Hearing Officer Ramage on November 24, 2007, and denied Respondent’s insufficiency challenge on November 29, 2007. In the same Order on November 29, 2007, the Due Process Hearing that was scheduled for December 3, 2007, was continued, and a prehearing conference was set for December 4, 2007.

On December 4, 2007, the Hearing Officer convened the prehearing conference, and the parties discussed the issues. In order to allow Respondent time to obtain representation in this case, the Hearing Officer granted another continuance and set another prehearing conference for December 18, 2007. At the request of the parties, the conference was rescheduled to January 4, 2008. Much time during the conference was spent discussing Parent’s request for the hearing to be conducted at a neutral site, and whether the date for the hearing would need to be changed if a site could not be located that would be available on the date selected. For this reason the parties

discussed the alternative dates for the Due Process Hearing of either February 7-8 or March 13-14, 2008, depending on the Hearing Officer's ability to secure a neutral site.

Ultimately, the Hearing Officer arranged for the Due Process Hearing to be conducted at the Region IV Education Service Center. Therefore, the Order Following Prehearing Conference and Order Extending Decision Deadline was issued on January 22, 2008, specifying the Due Process Hearing would be held on March 13-14, 2008, starting at 9:00 a.m. at the neutral site of the Region IV Education Service Center, and the Decision Deadline was extended until April 14, 2008.

The Hearing Officer formally convened the Due Process Hearing at 9:08 a.m. on March 13, 2008 and continued through March 14, 2008, at the Region IV Education Service Center, located at 7145 West Tidwell in Houston, Texas, about nineteen miles from the administration offices for Alief ISD. The hearing was open to the public in accordance with Respondent's previous written request. *See* 34 C.F.R. § 300.512 (c) (2). Mr. J. Erik Nichols and Ms. J. Leanne Bram Lundy from the law firm Feldman & Rogers, L.L.P. represented Petitioner. The Special Education Director served as the representative of Petitioner at the hearing. Both Student and Parent attended the hearing. Respondent was represented by a parent advocate, who was permitted to question all witnesses.<sup>1</sup>

During the hearing 12 witnesses testified, and the Hearing Officer received over 1,700 pages of documentary evidence. The transcript of the hearing prepared by the court reporter was 471 pages, reflecting the one and one-half days length of the hearing. The parties were given the option to present post-hearing briefs to summarize their arguments by April 7, 2008, and both parties submitted timely briefs. The Decision of the Hearing Officer complies with the Decision deadline of April 14, 2008.

## **II.**

### **DUE PROCESS HEARING ISSUES AND RELIEF REQUESTED**

As the hearing began the following issues were deemed relevant by the Hearing Officer to this proceeding:

1. Whether the District developed an appropriate Individual Educational Program ("IEP") for Student for the 2007-2008 school year;<sup>2</sup>
2. Whether the District has evaluated Student in all areas of suspected disability;
3. Whether the District's evaluations of Student have been appropriate, and its refusal to provide independent evaluations has been appropriate; and

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<sup>1</sup> Respondent's parent advocate is not an attorney, and Petitioner objected to the advocate being permitted to examine or cross-examine witnesses. The Hearing Officer overruled Petitioner's objection. *See* 34 C.F.R. § 300.512 (a) (1) and (2).

<sup>2</sup> The Hearing Officer conducted a prehearing conference on March 4, 2008, to determine whether a request by Petitioner to include an amendment to its complaint was a new issue in the case. The Hearing Officer determined that it was sufficiently linked to the issue of the IEP for the 2007-2008 school year to be heard in this case.

4. Whether the District provided a free, appropriate, public education (“FAPE”) to Student during the 2006-2007 and 2007-2008 school years.

The Petitioner seeks the following relief:

1. An Order finding that the District and the ARD Committee evaluated Student in all areas of suspected disability, and that Student has been properly identified as mentally retarded (“MR”), speech impaired (“SI”), and other health impaired (“OHI”).
2. An Order finding that Student’s placement for the 2007-2008 school year is appropriate and that his IEP is appropriate, measurable, and designed to provide Student with meaningful educational benefit, and meet the requirements of 34 C.F.R. § 300.320.
3. An Order finding the evaluations conducted by the District are appropriate, and therefore, it is not required to pay for the requested independent evaluations.
4. An Order finding that the District provided Student with a FAPE during the 2006-2007 and 2007-2008 school years.
5. A declaratory Order that the amount of compensatory services offered by the District was appropriate.

At the conclusion of the first day of the hearing Petitioner formally withdrew its complaint with respect to the provision of FAPE for the 2006-2007 school year and its request for relief associated with that complaint. Thus, the first portion of issue #4 has been withdrawn; the first portion of request for relief #4 has been withdrawn, as has request for relief #5.

### **Findings of Fact**

Based upon the matters of record and matters of official notice, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following findings of fact based on a preponderance of the credible evidence:

1. Student attends a \*\*\* school within the geographic boundaries of Alief Independent School District. Student qualifies for special education services under the classifications of MR, SI, and OHI because of Student’s diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”).
2. Student additionally has a mild, bilateral sensorineural hearing loss and wears hearing aids in both ears.
3. According to the most recent intelligence testing that was performed on Student by Alief ISD in February 2006, using the Wechsler Intelligence Scale for Children-IV, Student scored in the \*\*\*\* range in the areas of Verbal Comprehension, Perceptual Reasoning, Working Memory, Processing Speed, and Full Scale IQ. On the Adaptive Behavior Assessment System – Second Edition, Student scored in the \*\*\*\* range.

On the Woodcock Johnson III Tests of Achievement, Student's performance proficiency is considered \*\*\*\*.

4. The testing performed by Alief ISD in February 2006 for Student was appropriate. The assessments are scientifically normed and are valid tools to evaluate Student. The information contained in the assessments is accurate and a true reflection of the suspected disabilities of Student.
5. An independent neuropsychological and speech and language evaluation performed in June 2007 revealed similar results using different evaluation instruments. On the Stanford-Binet Intelligence Scale-Fifth Edition, Student was in the \*\*\* range of abilities overall. Student's nonverbal IQ was slightly lower than the verbal IQ. The examiner also used the Test of Nonverbal Intelligence-III. The academic functioning that was tested using the Woodcock-Johnson III, fell into the \*\* percentile range of every area, except \*\*\*. Two had \*\*\*\*\*. The report also assessed Student using the Vineland Adaptive Behavior Scales-II based on interviews with Parent. The report recommended:

“[Student's] overall performance falls in the mentally retarded range with his academic performance, language skills and adaptive behavior falling in the same range. His strongest area of performance was on the Test of Nonverbal Intelligence-III which placed him in the upper end of the retarded range. Freehand drawing was in the borderline range of abilities.

While [Student] has a mild, bilateral high frequency sensorineural hearing loss, his hearing with amplification falls in the normal range. However, his ability to process speech and language is severely impaired and he is unable to process information when noise is present. This would be consistent with an Auditory Processing Disorder. He does not show evidence of auditory neuropathy . . . .”

6. The Admission, Review and Dismissal (ARD) Committee (or ARDC) met in May of 2007 and several more times in September through October of 2007 to develop an Individual Educational Program (IEP) for Student. In developing the IEP the ARDC spent many, many hours considering the various reports and assessments – among them, the medical evaluation, psychological evaluation, speech/language evaluation, vision report, occupational therapy assessment, assistive technology assessment, auditory impairment evaluation, and the Full Individual Evaluation.
7. The ARDC prepared goals and objectives for Student in most of the areas of developmental life skills, domestic skills, community skills, recreation and leisure skills, social skills and vocational skills. Additional goals and objectives were prepared for math, speech and behavior. The goals and objectives that were prepared were measurable and appropriate for Student.
8. At the beginning of the 2007-2008 school year Student received most of his instruction in the life skills classroom. Student's math IEP was implemented in the general education classroom with the assistance of an additional in-class teacher. Quite a number of modifications were provided to Student in all of his classes, including many that applied to testing, some that applied to adapted classwork and homework assignments, some that applied to instructional support, and some to assistive technology.

9. At the September 2007 ARDC meetings the assessments concerning Student's hearing were reviewed, in particular the report from the Brazoria-Fort Bend Regional Day School Program for the Deaf (RDSPD). The report contained two findings that stated:
  - [Student] does not have a hearing impairment that is so severe that processing linguistic information through hearing might adversely affect language development and/or academic performance.
  - [Student] does not meet the state/federal guidelines for the eligibility of Auditory Impairment (AI) as described in Commissioner's/State Board of Education Rule (SBOE) 89.1040(c)(3) and the Code of Federal Regulations 34 CFR, 300.7 (c)(3) and 34 CFR, 300.7 (c)(5).
10. Student's Parent disagreed with the findings in the RDSPD report. Parent asked a number of questions about the report and the AI classification at the ARDC meetings in September and October 2007, but Parent never did feel that they were answered. Parent believed [the parent's] input was not considered when the Auditory Impairment report was prepared. However, RPSPD had a current parent information form at the time it prepared its report.
11. Student began the 2007-2008 school year receiving math instruction in the general education classroom with the assistance of an in-class special education instructor. The special education teacher and Student would observe the general education teacher at the beginning of the class. Then they would take what was being worked on by the rest of the class and use it in conformance with Student's IEP. The concepts being taught by the general education teacher were so far ahead of the goals and objectives contained in Student's IEP that the special education teacher ended up creating a class within a class for the benefit of Student. Student did not interact with any of the other students in the class. Student expressed to the in-class special education teacher that Student did not want to go to math class.
12. In October 2007 the ARD Committee met to discuss the issue of changing Student's placement for math to the life skills class. Parent did not agree to the change, but the school district proceeded with the change in placement.
13. The rationale for placing Student in the life skills classroom for math was, as explained by the life skills teacher, "It wasn't working." In the life skills classroom the opportunity exists to re-teach a concept, to slow down the pace of instruction such as working on one IEP objective for a minimum of one week, and utilize other teaching strategies that would not be available in a middle school general education classroom.
14. The Hearing Officer found the life skills teacher and the special education teacher that assisted Student in the general education math class both to be particularly credible witnesses.
15. Since the beginning of November 2007 Student has demonstrated progress on recognizing coin value and adding those values on a calculator. Student has made meaningful progress on measurement skills. Student has also learned to tell the temperature on a thermometer with assistance. Additionally Student has made progress on sequencing the letters of the alphabet.

16. Almost all of the teachers and administrators that testified were aware that Student has a hearing loss and wears hearing aids. The teachers that regularly work with Student never observed any difference in Student's working with the teacher, regardless of whether Student was wearing a hearing aid. Student's responses indicated that Student had heard and understood.
17. In October 2007 the ARD Committee adopted a goal and objectives for Student in the orchestra class, an elective. The goal and objectives were drafted by the orchestra director who collaborated with the ARDC. As the fall semester progressed, the orchestra director sensed that Student became frustrated because Student was not able to perform the things first set up in the IEP. After consulting with special education team leader and the life skills teacher at the school, the orchestra director drafted an amendment to the IEP, containing new objectives. The amendment has never been presented to an ARD committee for approval.
18. The evidence has been contradictory at times with respect to Parent's requests for independent evaluations. The ARDC documents clearly reflect ongoing requests for clarification on the issue of AI classification and disagreement by Parent with the District's disqualification of Student as AI or hearing impaired. Another reference in the documents indicates a request by Parent for a functional behavioral assessment. Parent acknowledged at the Hearing on the record the school district had agreed to provide any and all independent evaluations that had been requested. The Hearing Officer concludes Petitioner has supplied all requested independent evaluations requested by Respondent.
19. All of the procedural aspects of IDEA have been complied with by Alief ISD.

## **Discussion**

### Does the Hearing Officer Have Jurisdiction?

The threshold question in this case is jurisdiction. Respondent concedes that a school district may request a Due Process Hearing to defend its evaluation and its refusal to supply an independent evaluation at public expense. However, Respondent has challenged whether the Hearing Officer can hear any other claims brought by Petitioner. Respondent cites 34 C.F.R. § 300.507 (a) (2) and emphasizes the portion highlighted:

(2) The due process complaint must ***allege a violation*** that occurred not more than two years before the date the parent or public agency knew or should have known about the alleged action that forms the basis of the due process complaint, or, if the State has an explicit time limitation for filing a due process complaint under this part, in the time allowed by that State law, except that the exceptions to the timeline described in §300.511(f) apply to the timeline in this section.

34 C.F.R. § 300.507 (a)(2).

Respondent does not believe Petitioner has standing to bring this case, except to defend its evaluations. Respondent asserts that even though Parent may have disagreed with parts, but not all, of the IEP for the 2007-2008 school year the District implemented all services and placements in the IEP over Parent's disagreement. Respondent further contends there was no action on the parent's part to block Petitioner from carrying out the IEP. Based on the foregoing facts, Respondent contends nothing in 300.507(a)(2) permits Petitioner to request a hearing or obtain declaratory relief stating that FAPE has been provided.

Respondent's argument has merit, so far as it goes. However, Respondent's argument fails to consider what claims are permitted by a party by the previous sub-section, 34 C.F.R. § 300.507 (a) (1):

(1) A parent or a public agency may file a due process complaint on any of the matters described in §300.503(a)(1) and (2) (relating to the identification, evaluation or educational placement of a child with a disability, or the provision of FAPE to the child).

34 C.F.R. § 300.507 (a)(1).

For completeness, it should be noted that § 300.503(a)(1) and (2) specify:

(a) *Notice.* Written notice that meets the requirements of paragraph (b) of this section must be given to the parents of a child with a disability a reasonable time before the public agency—

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child.

34 C.F.R. § 503(a)(1), (2).

Therefore, from these federal regulations, it is clear that a public agency may file a due process complaint “on the provision of FAPE to the child.” Petitioner is such a public agency contemplated by the regulation. All of the issues in this case requested by Petitioner fit within the areas of identification, evaluation, placement, or provision of FAPE. The Hearing Officer concludes that jurisdiction is bestowed by the regulations quoted above.

Respondent argues secondarily about the timing of the filing of the case, contending that because the case was filed in November 2007, only two months into the school year, there was no way to determine that Student had mastered the objectives for the 2007-2008 school year. It is Respondent's belief the Hearing Officer should not make a ruling whether the Petitioner has provided FAPE for the 2007-2008 school year, because it could interfere with or preclude the Parent from requesting a Due Process Hearing within a year of the IEP in order to argue a lack of FAPE being provided.

Respondent's second argument seems to be a fusion of a ripeness argument and a claim that the school district may not bring a claim as party for FAPE. If Respondent is claiming that a party must wait until a school year has ended before a Due Process Hearing may be requested to ascertain whether a child has made progress, no authority has been cited for that proposition. To the extent the argument concerns standing, the issue is addressed above. To the extent the argument goes to ripeness, Respondent's argument is addressed elsewhere.

### Who Has the Burden of Proof?

The party seeking relief under the IDEA, in this case Alief ISD, bears the burden of proof. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 535-537 (2005). In *Schaffer* the Court stated, "a party attacking the appropriateness of an IEP established by a local educational agency bears the burden of showing why the IEP and the resulting placement were inappropriate under the IDEA." In this instance the converse applies, because the party seeking to defend the IEP and resulting placement has brought the case, and therefore must bear the burden of proof.

### Did the District Provide an Appropriate Education?

In determining whether the District provided an appropriate education to Student, the standard is described as one that enables a student to obtain "some benefit" from her education. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982). The test is not whether the education is designed to maximize a student's potential. The IDEA guarantees a "basic floor of opportunity," requiring a school to provide "access to specialized instruction and related services which are individually designed to provide educational benefit." *Rowley*, 458 U.S. at 201.

An IEP can be determined appropriate based upon the four-factor test approved by the Fifth Circuit in *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245, 253, (5th Cir. 1997). The Court said that an IEP must be geared to provide some benefit, and that is demonstrated where:

- (1) the program is individualized on the basis of the student's assessment and performance;
- (2) the program is administered in the least restrictive environment;
- (3) the services are provided in a coordinated and collaborative manner by the key "stakeholders"; and
- (4) positive academic and non-academic benefits are demonstrated.

The record in this case amply demonstrates that Alief ISD prepared Student's IEP based on the most recent assessment and performance data. Although Parent disagrees about the AI assessment, the Hearing Officer concurs with Petitioner's judgment.

The second factor is whether the program is administered in the least restrictive environment ("LRE"). The ARDC changed Student's placement from the general education

setting to the more restrictive setting of the life skills classroom. This decision did not occur without careful consideration or without good reason. In *Daniel R.R. v. State Bd. Of Educ.*, 874 F.2d 1036 (5<sup>th</sup> Cir. 1989), the Fifth Circuit devised a two-part test to determine whether LRE has been complied with:

First, we ask whether the education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child. *See* § 1412(5)(B). If it cannot and the school intends to provide special education or to remove the child from regular education, we ask, second whether the school has mainstreamed the child to the maximum extent appropriate. *See id.* A variety of factors will inform each state of our inquiry; the factors that we consider today do not constitute an exhaustive list of factors relevant to the mainstreaming issue. Moreover, no single factor is dispositive in all cases. Rather, our analysis is an individualized, fact-specific inquiry that requires us to examine carefully the nature and severity of the child's handicapping condition, his needs and abilities, and the schools' response to the child's needs.

*Daniel R.R.*, 874 F.2d at 1048. Given Student's abilities and needs, and given the experience that the gap between Student's level of understanding compared with what else was occurring in the general education classroom was not beneficial to Student, Petitioner acted appropriately in considering the alternative placement of the life skills classroom. Student has quite a number of other opportunities to interact with non-disabled children, even after the change in placement for his math class.

The third factor recognizes the importance of an educational plan developed by various professionals and the parent that collaborate and coordinate for the benefit of the student. In this case Alief ISD relied on otologists, audiologists, psychologists, occupational therapists, speech and language therapists, assistive technology specialists, physical therapists, medical doctors, nurses, educational diagnosticians, special education teachers and supervisors, school administrators, and the parent. Parent was active in the development of Student's IEP. Nothing in the record suggests that the well-being of Student was not the primary objective of both Alief ISD and Parent or that the key stakeholders did not work together in developing a plan. The evidence supports the third factor.

The fourth factor likewise is supported by the evidence in the record. From the testimony of the teachers and the class work that was offered into evidence as examples of Student's work, the Hearing Officer concludes that Student has demonstrated positive academic and nonacademic benefits.

#### All Areas of Suspected Disability Evaluated?

In this case Student has been classified as eligible for special education services as MR, SI, and OHI. Parent's concern centers on Student's hearing loss, and more specifically on Petitioner's seeming disregard – to Respondent – of the classification of hearing impairment, as

identified in 34 C.F.R. § 300.8(c)(5). Under the federal regulation hearing impairment is defined as follows:

(5) *Hearing impairment* means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but that is not included under the definition of deafness in this section.

34 C.F.R. § 300.8 (c)(5).

According to the Commissioner's Rules Concerning Special Education, for Texas the eligibility criteria for the two classifications of auditory impairment and hearing impairment must meet the same standard:

(3) ***Auditory impairment.*** A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.8(c)(3), ***or for hearing impairment as stated in 34 CFR, §300.8(c)(5).*** The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. An audiological evaluation by a licensed audiologist shall also be conducted. The evaluation data shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification (emphasis added).

19 TEX. ADMIN. CODE §89.1040 (c)(3).

Note, however, that in 34 C.F.R. § 300.8 (c) (3), the federal regulation refers to deafness. The Commissioner's Rule quoted above uses the term "auditory impairment" instead of deafness, and also includes hearing impairment, under the same, merged classification of auditory impairment.

In this case, the critical missing piece for eligibility is one factor, "adversely affects a child's educational performance." In order to be eligible for services, regardless of whether a student were to qualify under auditory impairment or hearing impairment, a student must have a hearing loss that affects the child's educational performance in an adverse way. In this case all of the testimony indicated Student's performance was not affected by his hearing loss. The evaluations, including those of Respondent's experts, did not indicate the hearing loss itself, adversely affected Student's educational performance.

The only possible effect, mentioned in one report, was that of noise, possibly an indicator of an Auditory Processing Disorder. The ARDC reviewed the report. That is all it is required to do.<sup>3</sup>

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<sup>3</sup> The ARDC has also been exploring the use of an FM system for Student. So far it has not been successful. To the Hearing Officer this indicates the ARDC is mindful of the issue of noise around Student.

The Hearing Officer concludes the ARDC has evaluated all areas of suspected disability for Student.

### Amendment to the Orchestra Goal and Objectives

The very experienced orchestra director sensed Student's frustration with Student's lack of ability to perform the tasks first set up in the IEP at the beginning of school. With input from the life skills teacher and special education team leader, the orchestra director crafted an amended set of objectives for Student's IEP. Because the new portion of this program has not been presented to an ARD Committee, or approved by Parent as an amendment to the IEP, it is premature for the Hearing Officer to approve the objectives, regardless of the Hearing Officer's opinion of them.

### **Conclusions of Law**

After due consideration of matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. Student is eligible for special education services under the IDEA as a child who is mentally retarded, other health impaired, and speech impaired. 20 U.S.C. §1401 (3) (A); 34 C.F.R. §300.8 (c) (6), (9), (11); 19 TEX. ADMIN. CODE § 89.1040 (c) (5), (8), (10).
2. Petitioner Alief ISD bears the burden of proof with respect to its claims in this case. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 535-537 (2005).
3. Petitioner Alief ISD met its burden of proof to demonstrate it developed an appropriate individual education program for Student for the 2007-2008 school year through March 14, 2008. *See Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997).
4. Petitioner Alief ISD met its burden of proof to demonstrate that it has evaluated Student in all areas of suspected disability.
5. Petitioner Alief ISD met its burden of proof to demonstrate that its evaluations of Student have been appropriate and there has been no refusal to provide independent evaluations.
6. Petitioner Alief ISD met its burden of proof to demonstrate that it provided a free, appropriate, public education (FAPE) to Student during the 2007-2008 school year through March 14, 2008.
7. With respect to the orchestra goal and objectives of the IEP for Student, the issue is not yet ripe for submission to a Due Process Hearing because it has not yet been presented to an Admission, Review and Dismissal Committee for approval.

**ORDER**

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the relief sought by Petitioner at the conclusion of the Due Process Hearing on March 14, 2008, is GRANTED, with the exception of the issue concerning the orchestra goal and objectives, which is DENIED. Finding that the public welfare requires the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

SIGNED this 14<sup>th</sup> day of April 2008.

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*Lucretia Dillard*  
Special Education Hearing Officer

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DOCKET NO. 049-SE-1107

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SCHOOL DISTRICT	§	
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STUDENT b/n/f	§	
PARENT,	§	
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Respondent.	§	FOR THE STATE OF TEXAS

**SYNOPSIS**

**ISSUE:** Whether the Hearing Officer has jurisdiction to hear a case brought by a Local Education Agency?

**HELD:** For Petitioner

**CITATIONS:** 34 C.F.R. § 300.507 (a)(1), (2)

**ISSUE:** Whether Petitioner developed an appropriate individual education program for Student during the 2007-2008 school year?

**HELD:** For Petitioner

**CITATIONS:** 34 C.F.R. § 300. 21; 34 C.F.R. § 300.22; 34 C.F.R. § 300.114

**ISSUE:** Whether Petitioner evaluated Student in all areas of suspected disability?

**HELD:** For Petitioner

**CITATIONS:** 34 C.F.R. § 300.8 (c) (3), (5); 19 TEX. ADMIN. CODE §89.1040 (c) (3)

**ISSUE:** Whether Petitioner's evaluations of Student have been appropriate, and its refusal to provide independent evaluations has been appropriate?

**HELD:** For Petitioner

**CITATIONS:** 34 C.R.F. § 300.304

**ISSUE:** Whether Petitioner provided a free, appropriate, public education to Student during the 2007-2008 school year?

**HELD:** For Petitioner

**CITATIONS:** 34 C.F.R. § 300.17