
DOCKET NO. 052-SE-1006

STUDENT	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENT	§	
	§	
vs.	§	HEARING OFFICER
	§	
DALLAS INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Procedural History

Petitioner¹ submitted the above-captioned due process complaint to the Texas Education Agency on October 24, 2006. The case was assigned to and filed by this Hearing Officer on October 25, 2006, the date on which Respondent was deemed to have received notice of the complaint. This Hearing Officer sent notice of scheduling deadlines to the parties on October 26, 2006, and set the case for hearing on December 5, 2006, with a decision due date of January 7, 2007. The parties attended a resolution meeting on November 9, 2007, in which some issues were addressed and others were not. The parties jointly requested a continuance of the trial setting to undertake discovery, discuss further evaluation, and discuss settlement. The request was granted and the hearing continued to January 11, 2006, with a disclosure date of February 13, 2007.

The parties initially disagreed about Respondent obtaining its evaluation of the student. On December 20, 2007, Respondent filed its Counterclaim to Override Lack of Consent for Evaluation along with a request for continuance. A telephone pre-hearing conference of record convened on December 22, 2007; at that time the parties were still engaged in obtaining discovery from third parties and considering further evaluation of the student, as well as discussing settlement. On February 1, 2007, Respondent filed an agreed motion for continuance on behalf of both parties seeking additional time to pursue these issues, which motion was granted for good cause shown and the hearing continued to March 27 – 29, 2007. A second pre-hearing conference of record convened on March 15, 2007, to obtain requested clarification concerning the nature of Petitioner’s claims. Respondent sought leave to withdraw Respondent’s counterclaim, and leave was granted. Petitioner requested leave to amend Petitioner’s issues for hearing, and Petitioner’s request was granted. On March 16, 2007, Petitioner filed Petitioner’s First Amended Request for Hearing. Because of Petitioner’s amendment, the hearing necessarily was continued, and was re-set for April 17, 2007. The parties agreed to set aside three days for the presentation of evidence. The

¹ “Petitioner” herein refers to the student, by and through the student’s parent as Next Friend. “Student” herein refers specifically to the eligible child who is the subject of this complaint, and “parent” or “parents” refers specifically to the Next Friend, or to the student’s parents. Specific information concerning Petitioner that is deemed not legally essential -- including specific dates, or the names of specific facilities, campuses, and individuals associated with the student -- has been omitted in the effort to preserve confidentiality within the four corners of this Decision.

hearing convened as scheduled. The parties were unable to present their evidence in the time allotted, and so requested and were granted additional time. The hearing recessed and resumed on May 21 – 22, 2007; the record of evidence was closed on May 22, 2007.

The nature of the Petitioner's complaints prompted the Hearing Officer to request briefing from counsel concerning two legal issues. Counsel requested and were granted leave to file closing arguments in writing, to be submitted along with briefs as ordered, on or before June 29, 2007. Petitioner requested a brief extension of this deadline to July 9, 2007; the request, being unopposed, was granted. The continuances of the trial setting, the extension necessitated by the parties' request to present additional evidence, and the extension of the deadline for filing briefs and closing arguments collectively resulted in a final decision deadline of August 11, 2007. The Hearing Officer requested supplemental briefing and argument on one additional issue, which briefing the parties timely submitted. To accommodate this request the decision deadline was extended to August 17, 2007.

Statement of the Case: Petitioner's Complaint and Relief Request

According to Petitioner's original complaint for due process hearing and first amended complaint, Petitioner alleges the following IDEA violations against Dallas I.S.D. ("DISD"):

1. Following the student's initial enrollment in DISD, the student's ARDC² failed to provide appropriate transportation services insofar as the student was not scheduled to receive transportation at public expense from his home to the campus where the student's special education program was situated – a campus other than the student's home campus;
2. at the initial ARDC meeting for the student in DISD in October 2005, members of the committee did not discuss how the student's disability might impact his educational program despite the occurrence of behavior referrals, made available to the ARDC, that documented severe alleged behaviors;
3. at the initial ARDC meeting for the student in October 2005, DISD failed to schedule the participation of a licensed specialist in school psychology ("LSSP") to inform the committee regarding the student's appropriate placement and behavior program in DISD;
4. DISD's initial IEP for the student was inappropriate for omitting present levels of performance, measurable specific behavioral goals, and recommendations for counseling, further testing, and possible removal to a more therapeutic setting;
5. DISD failed to call an ARDC meeting to review the student's educational program and needs after the student was hospitalized for suicide threats, to consider appropriate additional interventions such as counseling or other supports;
6. DISD's program has failed to address the student's needs by providing sufficient staff consistently available for tutoring, and controlling behaviors, such as threats made against staff and against the student, by other students in the same placement;

² To clarify basic terminology used in this Decision, the individualized special-education program that the IDEA requires public schools to develop and document for each eligible child will be identified herein as the "Individualized Education Program" or "IEP." See 34 C.F.R. §300.320. The group of knowledgeable persons authorized by the Act to develop the IEP is identified by federal law as the "IEP Team." 34 CFR §§300.321. Texas regulations refer to the IEP Team as the "Admission, Review, and Dismissal Committee" or "ARD Committee." 19 TAC §89.1001 et seq. This Decision generally reflects the State's terminology, but may also reference the federal regulatory language, with no implication of fact nor legal consequence intended.

7. DISD failed to inform the parents of their procedural safeguards or notify them about the continuum of placement options available for the student;
8. DISD scheduled but refused to complete an ARDC meeting with the parents in August 2006 to develop a proposed program for the student, and refused to consider parent input;
9. when the student was present for enrollment in DISD in January 2007, DISD failed to convene a transfer ARDC meeting in a timely fashion;
10. after January 2007 DISD's placement of the student was inappropriate for failing to place the student with same grade level peers, failure to implement the student's IEP by maintaining the student in a self-contained setting, failure to provide the student with Highly Qualified Teachers in core academic subjects, failure to consider parent input regarding the student's behavior program, and failure to implement a physical education program in the student's placement;
11. in the student's current placement, DISD additionally failed to provide appropriate specific and measurable behavior goals in the student's individualized education plan ("IEP"), failed to address the student's individualized needs with an appropriate program based on his particular disability, and failed to consider the full continuum of alternative placements for the student including residential placement proposed by the parents.

Petitioner's request for relief, premised on a showing of violations as alleged, included the following:

1. Residential placement of the student at Meridell, a TEA-recognized facility, and/or a similar mutually agreed residential placement at DISD expense, including a period of transition at DISD expense that includes work with the student's treating medical team;
2. compensatory education and related services including but not limited to private counseling to address the student's disabilities to the greatest extent possible to ensure success;
3. reimbursement of out-of-pocket expenses incurred by the parents for private school tuition and residential treatment;
4. yearly staffing for all staff members working directly or indirectly with the student to include review of IEP and BIP or any other parental concerns;
5. an independent educational evaluation of the student in all areas of known or suspected disability;
6. an ARDC meeting to be convened with the student's treating physician to participate in the meeting, at DISD expense, to establish appropriate IEP and BIP services and measurable goals;
7. reimbursement of all costs and attorney's fees incurred by the parents in pursuing this request for mediation;
8. any and all other remedies to which the Petitioner may be entitled under the law.

Findings of Fact

1. It is not disputed that the student is, at the time of the hearing, a ** male who resides within DISD and is enrolled in the District. He is eligible for special education because of emotional and behavioral problems.
2. The student has manifested serious emotional and behavioral problems since his earliest years. These problems likely are associated with early trauma including severe neglect and abuse predating his

parents' involvement in his life. He displays currently an impaired capacity for interpersonal attachments, a variety of interpersonal and conduct problems, and an apparent major depressive disorder. He has taken and continues to take a variety of medications for these conditions. Transcript pages (Tr.) 172; 21-66; 161-170.

3. The student began education in public ** where he did reasonably well. In ** grade, he became more resistant to school work and homework. He displayed many extreme attention seeking behaviors. He progressed through ** grade in a public charter school making some academic progress but complicating his education with frequent and chronic manipulative behaviors, lying to teachers and parents, taking others' belongings without permission, touching of peers and teachers inappropriately, and making rude, threatening, and sexually inappropriate statements to peers and teachers. His parents have remained closely involved with his education through frequent communication with teachers. Tr. 95 – 158; Exhibit (Ex.) 172.
4. The student's annual IEP for the 2004-2005 school year was drafted in September 2004 by the student's IEP team in a public school district where the student was then enrolled, in the general vicinity of DISD. The IEP contained a functional behavior assessment (FBA) indicating instructionally problematic behaviors described as follows. Ex. 179.

Argues; disrespectful; makes underlying condescending remarks to others; when angry may kick furniture. Does not put forth effort. Uses threatening language – puts fists up and says “you better not come toward me.” Goes home & tells about [illegible] at school that did not happen and vice versa; angered because of parent-teacher communication.
5. Target behaviors identified in the FBA include off task/task completion; poor peer interaction; verbal aggression; physical aggression; noncompliance; does not relate information in a factual manner. Positive intervention strategies of “teacher calls mother almost daily” and “close monitoring” were rated as very effective; taking away privileges was not effective. The FBA recommended and the IEP Team approved a detailed behavior intervention plan (BIP) and behavior IEP for the student for the 2004-2005 school year. Ex. 179.
6. The student's IEP report card from the student's ** grade year, the 2003-2004 school year, indicated that the student had mastered grade-level academic objectives. IEP objectives for the 2004-2005 school year, the student's ** grade year, scheduled the student to work on grade level reading, written language, math, science, and social studies curriculum. ARDC documentation indicated the need for current intellectual, academic, and psychological evaluations. The student was placed in a self-contained campus program because of his need for a structured, supervised setting to deal with behaviors and inability or lack of motivation to do class work independently. Ex. 179.
7. At the end of the 2004-2005 school year progress reports show the student passed academic subject matter areas but was continued on behavior IEP objectives. The student's ARDC met late in April 2005 to consider the student's current full and individual evaluation (FIE) and psychological evaluation. The ARDC continued the student's special education eligibility. The student was scheduled to be transitioned in ** grade from a segregated campus to his home campus in a self-contained instructional arrangement with access to regular classes, with ** grade academic objectives and alternative state-mandated testing at ** grade level. Ex. 7, 8.
8. The student's ARDC of late April 2005 considered recent assessment results that showed, as of March 2005, the student was performing in a low average to average range on standardized testing for basic academic skills, with general intellectual ability measuring near the average range. Ex 2.

9. The March 2005 psychological evaluation referenced current teacher reports indicating persistent behavioral problems in the nature of noncompliance with classroom rules, blaming problems on others, not taking responsibility, lack of empathy, manipulative behaviors, difficulty with peer relationships, and not working cooperatively with others. He was rated also as being generally happy, and showing average adaptability, response to praise and correction, and resistance to minor setbacks – in the context of a classroom setting for children with severe emotional problems. The parent noted prior behavioral history that included law-enforcement intervention for hitting a teacher, and for breaking windows in the family’s neighborhood. Home behavior issues centered around excessive anger and fearfulness. Sibling relationships were described as troubled but improving at that time. Daily parent contacts with the teacher were noted to be important to keep the student motivated to do his school work. Ex. 3.
10. The psychologist in March 2005 interviewed the student and found him to be manipulative, particularly in taking care for what he thought the examiner wanted to hear. Generally, however, his self-presentation was not particularly remarkable. The student described classroom difficulties generally consistent with teacher reports, and difficulties that he perceived his family to be experiencing. Overall, the psychological assessment suggested the student lacked insight regarding his own behaviors and was troubled by chronic mistrust of people, misunderstanding social relationships, and excessive anxiety, all present despite a superficially appropriate demeanor. The student was recommended to continue special education eligibility due to behaviors and emotions interfering with his school work. The psychological report made concrete recommendations for behavioral interventions and other matters that the student’s would need to address, including the recommendation for a structured, self-contained classroom setting. Ex. 3.
11. The student’s April 2005 ARDC considered the student’s FIE and psychological evaluation. The ARDC membership included the student’s parents, and also included assessment representatives. In-school counseling as such was not specifically recommended in the psychological evaluation, and was not scheduled as a related service by the April 2005 ARDC. Ex. 4.
12. The parents moved into DISD after the student’s ** grade year, enrolling him in school in late August 2005, after school had started, due to some confusion over new DISD campus attendance zones. A transfer ARDC meeting convened concurrently with the student’s enrollment, and considered parent information, the April 2005 full and individual evaluation (FIE), the March 2005 psychological evaluation, a June 2005 FBA, and other unspecified prior school records. Ex. 15; Tr. 634-655.
13. The student’s parent completed DISD’s student enrollment form near the end of August 2005, for the student’s 2005-2006 academic year, listing the student’s grade level as “**.” Ex. 9.
14. Documentation from the student’s previous school district, from the 2004-2005 school year, indicates that the previous district considered the student to be a ** grader in the 2004-2005 school year, and administered standardized testing, including state-mandated reading and math assessments of April 2005, at the ** grade level. Ex. 2–8.
15. The August 2005 transfer ARDC scheduled the student in a self-contained special education placement on a regular campus for what DISD believed to be the student’s ** grade year, the 2005-2006 school year. This placement followed the instructional arrangement, namely self-contained special education, as planned by the student’s April 2005 ARDC. The transfer IEP was developed initially with attendance at the student’s home campus in mind. Ex. 15.

16. The ARDC re-convened three days later, in order to add transportation as a related service and make other modifications, necessitated because the self-contained placement contemplated for the student was not available on the student's home campus but rather on a different, "centralized" campus with a specialized behavior unit. The "location of services" information specified "special education" for all instructional areas. Ex. 15-16; Tr. 634-650; Tr. 1015-1025.
17. At DISD's August 2005 IEP Team meeting, the parent and Next Friend received and signed receipt for explanation of procedural safeguards, and signed consent for a full and individual evaluation. Ex. 11.
18. Parents expressed concern because the student, being capable of good social skills at times, did not consistently manifest behaviors as serious as those of other students in the self-contained program. The concern was that school staff might not understand the severity of behavioral risk that the student potentially could present. The ARDC had no current FBA to review and deferred in drafting a BIP until the annual ARD. Tr. 110-122; Tr. 967-1001.
19. No school psychologist, evaluation specialist, or behavior specialist attended the transfer ARD. Tr. 1015-1099; Ex. 10.
20. The student's behavior unit program on the ** grade campus was organized so that students could have the support of the special education classroom full-time if necessary, but would attend grade-level general education classes according to the IEP, based on the student's behaviors in school. The student's transfer ARDC did not schedule modifications for any general education classes the student might attend. Tr. 203-210; Ex. 10, 171.
21. Behavior incidents occurred in school during fall 2005 that the student's parents were made aware of. These included classroom AWOL, inappropriate or provocative touching of other students, and inappropriate or provocative statements to other students. The student received between three and five office referrals while in his fall 2005 placement, all in the latter part of September 2005 for behaviors such as out of seat, treating materials roughly, and making derogatory remarks to staff and teachers. Tr. 1110-125, 970-998; Ex. 21.
22. In some classes that were more structured, the student displayed few problem behaviors and was able to work on assigned materials without particular difficulty. His test grades were variable, even though he appeared able to master class work. Tr. 1110-125, 970-998; 1545-1560.
23. During the last week of September 2005 the student also was given an office referral by one teacher because, according to the referral form as written up by the teacher, he "sexually harassed / molested a student ... first he ... hugged her then shortly after, he faced her and placed his hand on her breast." The referral form originated from the student's general education drama class. Because of the criminal nature of this alleged conduct, DISD police were called to investigate. Steps were taken also to set up a manifestation ARD. Ex. 20, 21; Tr. 210-215, 1015-1100; 1270-1391.
24. The teacher who submitted the office referral documenting alleged molestation also had documented additional, less serious behavior incidents and listed them all on a single referral form. The behaviors included jumping out of seat, "manhandling" the overhead projector and transparencies, inappropriate verbalizing of "bathroom habits," and making derogatory remarks about the teacher and students. This teacher also noted that the student appeared intelligent, willing to improve, and eager to participate. Ex. 21.
25. The referral form was delivered to the campus administrator at the end of September 2005, and the dates listed on the referral form for the various behavior incidents were in the last week of September.

The administrator assumed that the alleged sexual incident occurred day before the form was delivered. However, the teacher's reporting format precluded identifying specific dates on which specific incidents occurred, and precluded delivering timely consequences. Ex. 21; Tr. 1015-1100.

26. DISD police investigated the alleged molestation. Police records are not made part of a student's educational file. The student's special education teacher was made aware of the results of the investigation, and was left with the impression that the investigator was unable to establish that any inappropriate touching the student had done was deliberate. The student wrote an apology letter. No manifestation ARDC meeting occurred, and the student was not suspended. No record was placed in the DISD's student records concerning the outcome of the investigation or the content of the investigative report. The investigative report itself was not maintained in DISD student records. The student, following this multiple-incident report, was removed from the general education drama class because of the apparent lack of appropriate structure. Tr. 1015-1100, 1350-1370; Ex. 16.
27. DISD convened an IEP Team to draft an annual IEP for the student in the first week of October 2005. Both parents were in attendance. ARDC documentation reflects that procedural safeguards were given to the parents and the parents signed agreement with the IEP. The ARDC reflected competencies "on grade level" in reading and reading comprehension, and at a ** grade level in written language. The ARDC planned for the student to work on regular ** grade academics without content modification, but with special education supports including small-group testing. The ARDC scheduled the student to take grade-level alternative standard state-mandated assessments in reading, writing and math. The IEP scheduled services to be delivered in general education and the determination of placement was classified as "mainstream general education." Ex. 16; Tr. 1275-1390.
28. Although the parent had signed a consent for full and individual evaluation (FIE) in August 2005, the October 2005 ARDC decided to base its determinations on assessment from the student's prior school district, obtained in spring 2005 and thus current, and determined that no further assessment was then necessary. The October 2005 ARDC did not include a school psychologist, evaluation specialist or behavior specialist in attendance. Tr. 1015-1100, 1427-1429; Ex. 13, 16.
29. Following the incident in drama class, and parent concerns, the October ARDC discussed inappropriate sexual behavior as a target objective, along with certain other problem areas. The parent had substantial formal training and experience relating to the student's disability, and was an active participant throughout the student's ** grade educational program in DISD. Ex. 16, 20, 21; Tr. 1275-1390.
30. The October 2005 ARDC considered counseling, to the extent of noting that the parents would be taking the student to their private counselor. Parent concern was discussed, about the student having multiple counselors in light of his tendency to manipulate other people including professionals as well as his parents. Ex. 16; Tr. 1328-1335.
31. All members of the October 2005 ARDC including the student's parents signed agreement with the IEP. Ex. 16.
32. Some time into the fall term, the parent visited the campus and met with the principal and special ed staff informally to discuss the student's needs and make adjustments to his program. The campus agreed to attempt to make someone available to assist the student individually at all times, should one-on-one assistance be needed. Tr. 180-190.
33. The October 2005 ARDC considered the special education teacher's FBA report for the student, indicating the following problem areas:

- Disrespectful verbal comments to peers
- Inappropriate sexual behavior

The FBA reported that the student did not take responsibility for his inappropriate behavior; made inappropriate comments to peers concerning money or religion; was dishonest in relaying information between home and school; would touch students inappropriately and come into their personal space; and become loud and verbal on the bus. Information from the parent was recorded, that some of the same behaviors were present in the home, that the student did not play fairly with siblings, would not take the blame for his behaviors, and would destroy property at home when upset. Ex. 16; Tr. 1360-1370.

34. The October 2005 ARDC approved a behavior IEP for the student and an individualized behavior intervention plan. Target behaviors included appropriate bus behaviors (sit in front seat, read assigned material quietly), taking responsibility of inappropriate behavior [sic] and accepting consequences, and relaying information truthfully (behavior, homework, consequences etc.). Behavior IEP objectives generally addressed completing homework and classroom assignments, accepting help when needed, checking work, and bringing materials and homework to class. Verbal praise, and tangible rewards or privileges were seen as effective positive consequences, while detention, loss of privileges, parent conference, and principal or vice-principal referral were effective or somewhat effective negative consequences. Ex. 16.
35. DISD's self-contained behavior program operated under a level system where students were awarded a number of points for compliance with generic classroom performance expectations such as "respectful of others," "respectful of property," "remain in assigned area," "had positive interactions with teacher," and the like. Points earned were tallied on a form that provided for teacher narrative comments. Point accumulations determined the student's level, and the level in turn determined whether the student would attend general education classes determined appropriate in the student's IEP. Ex. 20, 171.
36. Point sheets were either missing for most school days after October 2005. Ex. 20; Tr. 1150-1200.
37. The student's special education teacher encountered few behavior problems with the student in ** grade, prior to his withdrawal. The teacher monitored the student's behaviors in general education classes at least on a weekly basis but usually every day. The teacher did not believe the student needed to be in a more restrictive placement at that time. Tr. 1350-1360.
38. The student was maintained on Level I throughout his ** grade year in DISD, insofar as the student's available point sheets disclose. Under the level system, it is necessary for the student to earn Level II to attend general education classes scheduled in the student's IEP. However, the student's ARDC determined that he would attend general education classes as long as his behavior was progressing and was not disrupting class. Ex. 20, 171; Tr. 1445-1450.
39. As of mid-October 2005 the student was experiencing difficulties in physical education (PE) class. The coach recorded in a note home that the student was having difficulties with peers and getting upset. Shortly after this note was written, he over-reacted to some minor correction from the coach during PE class and became agitated and disruptive, then fearful about the coach. While preparing to leave school at the end of the day, he verbally threatened to either jump in front of the school bus or run out into traffic and try to get run over. His parent was notified about his statements; he was allowed to ride home on the bus, but on arrival home was hospitalized directly by his parent due to

concern about possible suicidal thinking and remained hospitalized for about one week. Tr. 110-120, Ex. 20.

40. The student returned to DISD in the last week of October 2005 after his discharge from the hospital. The parents did not provide DISD with reports from treating professionals at the hospital, and DISD did not otherwise take steps to obtain them. The parents did meet with the student's special education teacher and with the school principal some time after October 26, 2005, and it was agreed informally that he would receive all instruction in the self-contained classroom with assignments and/or instruction provided by his designated general education teachers. After he returned from this October 2005 hospitalization and limited to the special education classroom, his behaviors were okay, however he wasn't bringing any work home. Tr. 120-130, 1365-1375; Ex. 178.
41. The student had excused and unexcused absences prior to his withdrawal in ** grade, totaling between 9 and 16 days, depending on the class period. Ex. 17.
42. The parents decided to withdraw the student from DISD and enroll him in a private day school for students with emotional and behavioral problems. The student was withdrawn from DISD early in the third week of January 2007. Ex. 22; Tr. 120-130
43. The parents were concerned after the student's hospitalization that DISD seemed to be treating the student with "kid gloves" by not requiring him to do any work at school, and making no demands on him, just to keep him contained. Tr. 120-130.
44. The student performed academically on grade level in the private school, and made passing grades, but his behaviors became very problematic with sexual acting out and physically aggressive behavior. It became necessary for the private school counselor to come to the student's home, to help him get to school in the mornings. The extent and nature of threats the student was making in the school setting, combined with violent outbursts, were such that the parents and the school staff did not consider the student capable of being maintained safely at home or in the school, based on school behaviors and behaviors at home. Owing to the nature of one parent's employment, the other parent often was left for extended periods to try and manage the student's episodic outbursts and simultaneously protect and nurture his siblings. He was hospitalized again for about one week, then transferred to an out-of-state residential treatment center in June 2006. Tr. 125-135; Ex. 39-46.
45. In June 2006 the student was admitted to the out-of-state residential treatment program and remained there through October 2006. The program at this facility involved psychiatric treatment and monitoring, and participation in a treatment environment whose approach included confronting the student about behaviors – both by staff members, and by peers in therapy group meetings. Because of the program's physical location, the student's in-person contacts with his parents were limited. Ex. 58-59.
46. While at this facility the student episodically engaged in physical aggression with peers and staff, made rude and threatening statements to peers and staff, damaged property, attempted to leave the facility without permission, and made suicidal threats and gestures. He participated in classroom structures appropriately at times, but his school work was extremely variable, and deteriorated increasingly such that his grades were generally poor. He was capable of following facility rules, sometimes for days, but invariably relapsed. By the time of his discharge in October 2006, he essentially was refusing participation in treatment program and his behaviors were uncontrolled, as reflected in frequent incident reports documenting violent and/or threatening behaviors alternating with suicidal threats and/or gestures. Ex. 58-59, 73.

47. The student left his out-of-state treatment program at the end of October 2006, and was transferred directly into another residential treatment program within-state, and thus somewhat closer to home. He remained there until the first week of January 2007. The student's placement at this program occurred at time when his parents' emotional and financial resources, whether for continuing his residential treatment or else contemplating how to manage his behaviors in the community, were overwhelmed. Ex. 82.
48. The student's initial presentation at the admission psychiatric interview in the in-state facility was remarkable only by virtue of the physician's notation that he appeared emotionally regulated, non-psychotic, cooperative, and expressing fair judgment. The physician noted his prognosis to be "fairly good" with continued "treatment" but poor otherwise. Ex. 85.
49. The in-state residential program targeted the student's aggression, mood instability, opposition defiant behavior, family conflicts, school problems, and certain medical issues. Initially, his aggressive behavior was difficult to control, as with the previous facility. He required four physical restraints, or "holds," because of behaviors; all of these occurred in mid November 2006 over the space of approximately three days. Behaviors improved, however, and no subsequent physical holds were documented. He remained verbally aggressive and displaying attention seeking behaviors, as well as arguing and refusing directions. He was moved to a higher-level setting and this seemed to work better for him. For the remainder of his stay he did not display major behavioral problems but was engaging in cursing on the unit, which he admitted, but claimed was intended to gain peer acceptance. Family therapy sessions were consistently problematic due to disagreements between the parents that were distressing to the student. Medications were adjusted. Ex. 98-102, 104.
50. In the charter school program that served the student in his in-state residential program, the student generally behaved relatively well, albeit with some tendency to get caught up in peer conflicts. However he did make efforts to stay on task and participate in the educational component. More problematic were his anxiety, worry about earning points, and approval-seeking that distracted from assigned work. He showed grade-level reading skills, but with poor retention. He responded to teacher praise and redirection. Ex. 103.
51. On dates in mid-August 2006, prior to the student's discharge from the out-of-state treatment program and while the student was still residing out-of-state, his parent visited the principal of the school he last attended in DISD and filled out paperwork necessary to enroll the student, indicating his previous school to have been the local private school where he was enrolled prior to his residential placement. The student's special education teacher scheduled an ARD meeting in anticipation of the student's return to DISD in the fall 2006. Ex. 25, 192; Tr. 1305-1315.
52. On the date of the anticipated ARDC meeting in August 2006 the parent appeared, but without the student present for enrollment. The teacher cancelled the ARDC meeting, and the parent subsequently met with special education administrative staff from DISD regarding the student's status. DISD advised the parent that DISD would not convene an ARDC to propose an IEP for the student until the student enrolled in DISD. The parent informed DISD that the parent was seeking reimbursement from DISD for the student's placement at the residential out-of-state treatment center where he was living at that time. DISD followed up with a letter to the parent confirming that DISD "is unable to schedule an ARD meeting ... to explore [student's] needs until he is physically enrolled and attending" DISD. Tr. 1205-1260, 1305-1320; Ex. 29.
53. Some time after August, and probably in September, the parent visited with the campus principal at the campus where the student attended in ** grade, asking for a letter from DISD stating that the

student was enrolled in DISD. The principal's understanding was that DISD will not enroll a student who is not residing in the district and thus able to attend school. The parent requested enrollment paperwork, and other records, which the principal refused to deliver on advice of DISD counsel. DISD believed that the parent was represented by counsel at that time and communications should go through the attorneys. Tr. 190-196.

54. In November 2006 the parent met with DISD and signed limited releases for specified DISD psychological staff to speak with representatives of the student's previous private school and previous residential placements, and receive specific information. Ex. 46-79, 122, Tr. 560-575.
55. The student returned to DISD from his in-state residential placement in late January 2007 and was placed in a specialized self-contained crisis intervention unit referred to as the "CSU" at one of the District's high-school campuses. The campus is not age-appropriate for the student, who was enrolled in ** grade for the 2006-2007 school year, but the CSU does from time to time serve ** grade students who require the unit's services. Tr. 225-244, 250-370.
56. When the student returned to DISD his ARDC met late in January 2007 to create a temporary IEP. The meeting occurred approximately three days prior to his intended enrollment date, although the student did not enroll until several days later. The meeting was attended by general and special education teachers, a DISD psychologist, a DISD behavior consultant, DISD administrators, and others. The parents participated by conference call and had available the assistance of an advocate who provided input to the meeting. Ex. 131; Tr. 250-370.
57. This CSU where the student was contemplated for temporary placement is designed for stabilization of students with crisis-level problems, or children returning from psychiatric hospitalization or residential treatment and needing additional support, monitoring and assessment. It is designed as a short-term placement, for thirty days up to one semester, and this is the typical length of placement. The unit currently has two **-grade students, one **-grade student, and four staff members consisting of two teachers and two paraprofessionals. The unit has a built-in, structured, behaviorally-oriented program and social skills curriculum, and uses approved nonviolent crisis intervention methods. Academics are provided individualized according to each student's IEP. Ex. 146, 170; Tr. 250-370, 250-370.
58. DISD proposed to place the student in the CSU at the initial ARDC meeting. The placement was chosen in part to gather information about the student in a structured, controlled setting where behaviors could be documented. The parent was not in agreement with this placement. No individualized BIP was developed initially; the student was scheduled to work on grade-level curriculum objectives. Counseling was considered as a related service but DISD representatives deferred to the parent's preference to use the student's private counselor. Transportation was scheduled. Tr. 260-270, 535-600; Ex. 131.
59. At the transfer ARDC meeting that placed the student in CSU, the committee discussed specific target goals including on task, remain in assigned area, respect others, and respect property. The parent agreed to the following additional target goals, which are standard unit goals for all students, of accept responsibility for behavior, appropriate interaction with peers and adults, and no verbal or physical aggression. DISD agreed to monitor the student's computer use closely due to parent concern about inappropriate web surfing. Transportation was arranged. The ARDC agreed to begin academics with ** grade material. Daily parent communication was agreed upon regarding bus behavior at parent request, and DISD agreed, again at parent request, to send home daily behavior sheets and daily work. The ARDC contemplated behavior interventions according to the built-in unit point system, level

system, and other standard procedures for behavior emergencies. The parent submitted an addendum reinforcing disagreement about the appropriateness of DISD's placement; disagreement with temporary goals that were not measurable; requiring specific procedures in case the student had a behavioral "melt down," and adding concern for the student's potential for violence and inappropriate sexual touching. Ex. 131; Tr. 910-960.

60. The parent participated in the January 2007 transfer ARDC meeting by telephone and was assisted by a parent advocate who gave input. The parent also gave input regarding behavior concerns. Tr. 910-960.
61. Development of an individualized BIP at the transfer ARD was deferred in order to complete an FBA within the structure of the CSU. Part of the concern about developing a BIP at that time was the extreme discrepancies among various data sources then available to DISD, including the prior public school placement and two residential facilities, in describing the student's behavior and capacity for adjustment. Tr. 550-580.
62. Some records from the student's in-state residential placement were available to participants at the student's transfer ARDC based on the parent having previously given consent for DISD to communicate and obtain records. These included a psychological evaluation and a temporary ARDC document from the charter school serving that facility. Tr 255-260, 275-280; Ex. 123.
63. The parent agreed to, and DISD obtained, psychiatric and psychological evaluations of the student at or following the transfer ARDC meeting. Subsequently, mechanics of acquiring complete records from all of the student's recent prior treatment facilities complicated preparations for the student's annual IEP meeting that followed the transfer ARDC meeting. Tr. 535-545.
64. The student was evaluated by a psychologist and psychiatrist prior to the March 2007 ARDC meeting. The psychiatrist is regularly employed on a part-time basis with DISD. The psychologist is a Licensed Specialist in School Psychology in private practice on contract with DISD to evaluate the student. The psychiatrist recommended medical care, cognitive therapy, and a behavioral classroom primarily, as well as an exercise program. The psychiatrist recommended interventions but did not recommend a specific instructional arrangement. The psychologist specifically did not recommended residential placement as a necessary service for the student to receive educational benefit. Ex. 139-140.
65. The student has generally average or low-average learning ability for academics with weakness in specific areas of working memory and executive functions. He is capable of displaying appropriate, if immature, social skills, but his emotions and behaviors still can escalate quickly and unpredictably. He still exhibits some maladaptive social behaviors as well as inability to trust or form normal attachments with other people. His moods are unstable. The student has taken and continues to take medications symptomatically to treat depression, impulsivity, and psychotic symptoms. His underlying conditions are life-long and incurable. It is not unusual for children with his conditions to behave differently in school than at home. A stable and structured environment, consistent nurturing, and therapy, are recommended interventions, however, along with medication. He will remain high-risk particularly with instability, including family instability, in his life. His best odds of improvement are in a controlled, structured environment with stable caregivers. Tr. 20-159, 710-801, 805-905; Ex. 89, 186, 172.
66. It is possible that the student could experience a general disintegration of his behavior across all settings to where he could not be maintained, in which case residential placement would be educationally necessary. Tr. 815-902.

67. It is unclear whether challenging the student academically would provoke behavior problems, or whether presenting watered-down classroom demands might have the same effect. Tr. 815-902.
68. The student's teacher in his CSU placement is highly qualified in core academic subjects, certified as a special education teacher, and appropriately trained to design and implement classroom interventions for students with severe emotional and behavioral problems. The teacher, who has prior mental health work experience, made efforts to learn more about the characteristics of the student's disabilities. Tr. 1105-1145, 266-270.
69. At the transfer ARDC meeting members were made aware of parent concerns about the student's access to inappropriate media and also his need for PE services owing to his hypertension and need to stay fit. Since then, the student has generally not accessed computer games. No adult witnessed the student accessing pornographic media on the computer in the CSU. Tr. 250-368, 555-565.
70. Mainly between the January 2007 transfer ARDC meeting and the March 2007 annual ARDC meeting, DISD's CSU was not always able to deliver scheduled PE for the student due to facilities availability, and concern about the student's interactions with female staff. During times the student missed PE, his teacher arranged for academic or crafts activities in the classroom. After the March 2007 ARDC, DISD ensured that the student attended PE on a normal schedule. Tr. 300-305.
71. DISD removed the student from the CSU classroom on occasion to participate in a special education reading program in a reading lab in a different classroom. He is escorted by one of the staff from the CSU. Tr. 250-368.
72. The CSU reinforces behaviors with a "point" system in which the student can earn rewards by complying with specified general classroom behavior and social skills expectations. Compliance earns points that can be exchanged for activities including classroom recreational activities at the end of the week. The student generally has earned all or most of his possible points in this program. The student's teacher is of the opinion that the student has been challenged, including academically due to his progression to working on some grade-level curriculum objectives without resulting escalation in behaviors at school. Tr. 250-368; Ex. 134, 145.
73. Student behavior sheets sent home as agreed by the January 2007 ARDC documented the occurrence of target behaviors and problem behaviors. These included on-task responses, remaining in assigned area, respectful of others, respectful of property, works satisfactorily and completes assignments, maintain self-control, interact with peers appropriately, respect others and property, has emotional outbursts, sexually inappropriate behaviors, and threatening to others and their property. DISD considered these sheets to provide feedback on the behavior concerns expressed by the parent to DISD at the January 2004 ARDC. Ex. 134.
74. The student has not presented major behavior problems in DISD's CSU program. Mainly he is argumentative but can be redirected verbally. When his teacher was confronted by reports of the student describing use of a violent video game, the teacher explained the issue to the student, that video games were not part of the program. The student sometimes arrives moody and complaining about his home, but can be redirected to school work. He typically has lost points for disrespectful behavior such as rolling his eyes at staff, or talking excessively with peers including a female peer. He can be redirected to his academic work. Tr. 250-368; Ex. 20, 134, 145.
75. In the student's current placement his teacher began with using work samples at different levels. He uses ** grade curriculum materials as much as possible. Tr. 250-368

76. The student took grade-level state-mandated standardized academic testing and diagnostic “release” tests on occasions while in DISD. He has not passed a state-mandated competency or diagnostic test in DISD. DISD blames this on the student’s prior difficulties with residential placements; his ARDC has not discussed the issue of these failures from an assessment- or evidence-based standpoint or considered the impact of his inappropriate grade placement while he was in attendance the preceding year. Tr. 250-368, 535-620; Ex. 191, 136-7.
77. The student requires support in doing school work; when required to attempt independent class work he struggles with it. He does not receive homework assignments in his current program because usually, students in the CSU just don’t do it. He is working on some ** grade-level material but not consistently. It has been some challenge for the student to maintain behavioral and social skills expectations of the classroom. Tr. 535-690, 250-368; Ex. 10, 16, 131, 136, 137, 142, 191.
78. Generally the student’s classroom teacher and parent have enjoyed productive communication. Concern was expressed by the parent about one of the movies the student was allowed to watch during reward time he earned, that the movie contained some violent content. The teacher has restricted the student’s access to any content the teacher would not consider appropriate for a **-year old. Tr. 250-368.
79. The student’s ARDC met in the first week of March 2007 to complete his annual IEP. One of the modifications introduced in that meeting was the procedure of using point sheets to exchange information daily between the teacher and the parents. The parent works hard with him on describing his school day truthfully when he gets home, without lies and omissions. The ARDC considered the parent’s report, that problem behaviors in the home were somewhat less frequent and intense, after the student’s last residential placement, in light of his new medication program from that facility. Tr. 250-368; Ex. 142.
80. The ARDC discussed present levels of performance based on the teacher’s assessment of the student’s present competencies at that time. Tr. 315-325; Ex. 142.
81. The annual ARDC developed a behavior IEP and an individualized behavior management program. The objectives on the student’s behavior IEP include the following. E. 142.
- Follow all directions the first time given
 - Exhibit no verbal aggression toward staff or peers
 - Exhibit appropriate reactions to frustrations by not lying or having angry outbursts
 - Complete all assigned work the first time given
 - Exhibit no physical aggression towards staff, peers, or property.
82. The student’s teacher can observe and measure the behaviors referenced in those objectives, other than possibly lying, which is complicated to detect on a day-to-day basis but can be measured when an occurrence is identified. The ARDC chose limited objectives in part to ensure that the objectives were specific and measurable as well as attainable by the student. Objectives also were chosen in part based on information about things the student had done in the past that were not yet observed in his DISD program but would present significant risk. The BIP is a document that is more or less readily subject to modification by an ARDC if changes become appropriate. Tr. 315-325, 580-590.
83. The March 2007 ARDC considered results of evaluations of the student obtained by DISD as well as records of other facilities that had been collected at the time. The ARDC considered an FBA conducted by DISD that targeted three areas of problem behavior. According to the student’s teacher

these were listed in the FBA essentially as “high risk” behaviors based on history, as the behaviors had not been observed in the student’s brief tenure back in DISD’s CSU. Tr. 315-325, 545-555.

84. The March 2007 ARDC considered counseling as a related service for the student, and offered counseling provided through DISD. Tr. 320-330.
85. The March 2007 ARDC considered placement options for the student for the upcoming academic year. Disagreement occurred in the placement deliberations, with the student’s teacher and others recommending placement at a behavior unit on a regular ** school campus to facilitate the student’s transition to his ** home campus the following year. The student’s evaluator and others recommended maintaining the student in the CSU to avoid multiple transitions – from the unit to the ** school behavior program to the ** school, all in a period of months. DISD representatives ultimately decided to retain the student in the CSU. Tr. 250-368; Ex. 142.
86. Residential placement was not discussed by DISD representatives at the student’s March 2007 ARDC because DISD had already decided that residential placement was not necessary. The student’s parent did request placement of the student in a residential treatment program at the meeting. ARDC representatives were not asked for comments or questions regarding the parent’s request for residential placement. DISD’s representatives considered placement issues to be “obvious.” The student’s parent and advocate left the meeting before it concluded, after DISD gave no consideration in the meeting to the possibility of a residential placement. Tr. 320-330; 605-615, 1035-1050.
87. The student has received services in varying amounts from a private, duly-licensed mental health counselor for about two and one-half years. This counselor is of the opinion that the student requires a long-term residential placement where he can express and work through his emotional issues in a safe, contained environment involving some degree of confrontation to force his coming to terms with such issues, and that no other treatment approach will accomplish anything beyond allowing him to “maintain.” Tr. 30-60.
88. The student was “staffed” in October 2006 by the local state-mandated community agency coordinating group involving community mental health and juvenile justice agency representatives, among others. The staffing included the student’s private counselor, and the group recommended residential placement for the student. DISD did not participate in this group. Ex. 175.
89. When the parents withdrew the student from DISD, and thereafter, they did not give DISD written notice that they would be seeking to have DISD pay for the student’s private placements. The parents checked “agree” on the October 2005 ARDC documentation, and events transpired later leading the parents to seek private placement without involving DISD as a participant in that decision. Tr. 375-385; Ex. 10, 16.

Discussion

The framework of the IDEA entitles every child with a disability to receive a free, appropriate public education (FAPE), consisting of individualized instruction along with sufficient related and supportive services to permit the child to benefit from the instruction. 20 U.S.C. 1412(a)(1); Board of Education v. Rowley, 458 U.S. 176 (1982). IDEA requires schools to afford specific procedural safeguards to ensure that parents have the opportunity to participate meaningfully in development of an individualized education plan (IEP) governing instructional objectives and services for the child. 20 U.S.C. 1414(d), 1415; Rowley, *supra*; Honig v. Doe, 484 U.S. 305 (1988). The Fifth Circuit in Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 247-48 (5th Cir. 1997), offered guidelines to

gauge LEA compliance with IDEA requirements. The child's IEP must be designed specifically for the child's unique needs, must be individualized based on assessment and performance, and must be supported by services that permit the child to receive meaningful benefit from instruction. The IEP must be delivered in the least restrictive environment (LRE) and in a collaborative and coordinated manner by the key "stakeholders." And whether the child in fact achieves or fails to achieve positive academic and non-academic benefits is relevant in determining school district compliance with IDEA. *Id.* A school district's proposed IEP is presumed to be appropriate; a parent who challenges the IEP carries the burden to prove by a preponderance of evidence that the IEP was not developed according to procedural safeguards, or that the IEP failed or would fail to provide a free and appropriate public education in the least restrictive environment. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983). This general standard, along with specific governing regulations and relevant case law, will be discussed for each of Petitioner's claims.

Statute of Limitation

Petitioner before the due process hearing moved to toll the running of the one-year limitation period applicable in IDEA hearings, arguing that by invoking statutory mediation procedures provided under IDEA in September 2006 Petitioner is entitled to extend the actionable time period to cover one year prior to the mediation, instead of one year prior to the filing of the due process complaint. IDEA's limitation provision, found in 20 U.S.C. §1415(b)(6)(B) and incorporating 19 T.A.C. §89.1151(c), effectively bars relief in a due process complaint for violations occurring more than one year before the filing of a due process complaint. The only exceptions are implicit in the "knowledge" provision where the complainant for some reason becomes aware of a violation belatedly. IDEA and its regulations make no allowance in due process hearings to adjust the limitation period solely because of a party's utilization of other dispute resolution procedures.

Issues for Decision

1.

Petitioner contends that DISD failed to provide the student with appropriate transportation services at the time of his first enrollment in the district, in light of his placement at a centralized program on a campus other than his home campus. Transportation is a related service to which a student may be entitled in an appropriate case. 34 C.F.R. §300.34(c)(16). The record does not support Petitioner's contention, however, that the student was denied appropriate transportation where transportation was scheduled at a follow-up ARD meeting just a few days after the initial meeting. Any injury that may have occurred is de minimis. In any case, the August 2005 events of which Petitioner claims occurred more than one year before Petitioner filed his request for hearing.

2.

Petitioner contends that the student's October 2005 ARDC did not adequately discuss the severity of the student's disability or its potential impact on his education, and did not consider relevant documentation, including behavior referrals, establishing the severity of the disability. Petitioner further

contends that the October 2005 ARDC omitted necessary participants and in particular a psychologist to discuss the student's disability and inform the ARDC regarding program and placement.

It should be kept in mind that, owing to the statute of limitation, the student's October 2005 annual ARDC meeting as such took place outside the time period for actionable conduct by DISD in this hearing. 19 T.A.C. §89.1151(c). However, the annual IEP developed at that meeting is potentially actionable, including presumably the question whether it was "reasonably calculated" to confer an educational benefit on the student. Rowley, supra.

The required matters to be considered in developing an IEP, and the identify of participants who should be involved, are set out in 34 C.F.R. §§300.320-321 and §324. Petitioner attacks the ARDC's statement of present levels of performance, and it is accurate to say that this portion of the ARDC documentation is very general, indicating only by way of a checklist the student's difficulty with independent work and the existence of unspecified behavior that interferes with learning. More importantly, however, the IEP documentation also includes a FBA that discloses in considerable detail the presence of specific problems, including inappropriate sexual behavior and other behaviors observed with the student, as well as behaviors reported by parents. The FBA substantially conforms, in its description of identified problem behaviors, to the content of daily point sheets up to October 2005, and to the one teacher discipline referral form referencing sexually inappropriate behavior. Therefore Petitioner has not shown that any deficiency in consideration of the student's present levels of behavioral performance resulted in an IEP content deficiency that made the student's behavior program inappropriate, as designed.

Petitioner's complaint about the composition of this annual ARDC meeting is probably untimely. But even if the "reasonably calculated" standard revives the issue, any procedural violation that may have occurred does not implicate a substantive violation, nor an issue of parent participation denial. 34 C.F.R. §300.513(a). First, Petitioner has not shown that the October 2005 IEP itself was insufficient to provide the student a free appropriate public education, or that the absence of a psychologist at the meeting caused a deprivation of educational benefit. Neither did Petitioner establish that the omission of a psychologist at the meeting impeded the parent's opportunity to participate in the decision-making process in that ARDC meeting. The ARDC considered the student's recent psychological evaluation. The psychological evaluation report shows that the parents were involved in that evaluation process. ARDC records from the prior school district establish that the parents, along with evaluation personnel from that district, already had discussed the psychological evaluation in an ARDC meeting. DISD's placement and program determinations in the October ARDC generally were consistent with recommendations of the evaluation. The parent agreed with DISD's October 2005 IEP and remained highly involved throughout the student's educational process in DISD. The parent did not request further ARDC intervention in the student's program at that time. Petitioner's expression of concern about the composition of the October 2005 ARDC, in the context of this student's complex disabilities, is well-taken in principle. In fact, however, the circumstances leading up to and including the October 2005 ARDC meeting did not cause a denial of educational opportunity, nor effectively interfere with parent participation in the decision making process.

3.

Petitioner contends that DISD's initial IEP for the student was inappropriate for omitting present levels of performance, measurable goals and objectives, counseling, further assessment, and consideration of an appropriate therapeutic setting.

IDEA establishes the requirements for the content of IEPs for eligible students in 34 C.F.R. §300.320. When the student transferred in to DISD he had a recent FIE and psychological evaluation. Petitioner has not alleged that the student's evaluations were procedurally deficient or substantively incorrect. Early on, DISD obtained a consent for evaluation as a matter of course, but determined there was no need to repeat evaluations. The issue of evaluation was not raised by any ARDC members in the student's ** grade year.

Concerning Petitioner's complaint about measurable goals and objectives, first, the student's academic objectives were driven by the general-education state-mandated curriculum. The decision to subject the student to the general curriculum without content modification is reviewable. But neither the IDEA nor the Commissioner of Education Rules give this hearing officer jurisdiction to modify the content of the statewide general education curriculum, or make any ruling respecting the measurement of student achievement in the general curriculum – at least where the ARDC has not seen fit to alter assessment through supplementary aids and services. Petitioner did not challenge, nor does the record preponderate to establish any basis procedurally for challenging, the ARDC's decision in October 2005 to follow a general education academic curriculum with the student.³

The record does not, however, disclose why the parent listed the student as a ** grader when enrolling him in DISD in fall August 2005, or why DISD promoted the student academically from ** grade to ** grade. The ARDC in the student's 2005-2006 school year consistently treated the student as a ** grader, with full agreement of the student's parent. The grade level placement, then, is an issue that the student's ARDC will need to address; it was not specifically an aspect of Petitioner's due process complaint, and the ARDC decision itself is not within the actionable time frame for the case.

Concerning the issue of measurable goals and objectives in the student's BIP, behavior IEP, and unit behavior program, first, the student had no BIP or behavior IEP in the first month of his ** grade year in DISD. His transfer ARDC afforded him an instructional arrangement similar to the arrangement contemplated by his previous school district's ARDC for the upcoming school year. His transfer ARDC did not have sufficient other information about the student's behaviors in DISD to complete an FBA for the transfer ARDC, or draft an individualized behavior plan. Rather, the student was subject to the self-contained unit management system and behavior expectations, with the addition of certain behaviors of concern identified by the parents.

Petitioner has not established by a preponderance of evidence that either the behaviors specified in the unit management system, or additional behaviors incorporated in the point system prior to his October 2006 IEP and BIP, were inappropriate or were so vague that they could not be measured. The student received point sheets from the special education program referencing for both behavior unit expectations and individualized objectives, and these were sufficiently specific to inform the teacher and parents of what behaviors were targeted. They were not worded identically with the October 2006 behavior IEP objectives or BIP target behaviors developed by the annual ARDC, but the behaviors in the daily report

³ It is now apparent that the parents and DISD ARDC representatives were unaware when the student transferred into DISD that the student was enrolled as a ** grade student by mistake, and that the student insofar as the record discloses was not exposed to content of the ** grade curriculum when the ARDC in DISD decided to apply the ** grade curriculum. The decision in principle to utilize the general curriculum with this student was not error, and was agreed to by all of the ARDC members.

were not inconsistent with the individualized objectives. The student's special education teacher was able to understand and implement appropriate objectives. Data sheets from the behavior unit, completed regularly by the special education teacher at least through September 2005, were specific enough to establish present levels of performance for ARDC consideration, for behaviors addressed on the point sheets. Parents did not complain then of inability to understand what behaviors were being addressed in school.

Difficulties arose in one of the student's general education classes prior to the development of the student's annual IEP and BIP. The general education teacher's handling of behavior incidents in that class resulted in the student not receiving timely consequences, and ultimately resulted in a more restrictive placement for the student insofar the student was pulled out of this general education class and was not scheduled in an alternate general education class. No one disputed this schedule change. So in this limited sense the management program in effect for the student was not sufficiently structured at all times and in all respects to reliably "measure" incidents occurring in all of the student's general education classes. Even so, it is not clear that responsibility for the deficiency lay with the design of the program itself or with specificity of unit behavior objectives operative at that time when viewed from the perspective of the ARDC that initially designed the student's program.

After the ARDC meeting of October 2006, the student had an individualized BIP and behavior IEP, and remained subject to the same behavior unit expectations and consequences in the unit point system and level system. The student's teacher continued to make entries on the student's point sheets reflecting behavior objectives from the general unit management system along with behaviors of concern expressed by the parent at the time of the student's transfer ARDC meeting. Point sheets were not modified to reflect changes in the IEP, specifically the behavior IEP objectives and the BIP target behaviors. The October 2006 ARDC did not specifically discuss or require incorporating BIP targets in the daily point sheet. The BIP target behaviors were, however, observable and measurable. The student's special education teacher monitored his behaviors by observation and by regular communication with the student's general education teachers for the most part. No separate documentation was generated by teachers concerning behavior IEP objectives or BIP target behaviors during the time the student was in attendance between the October 2005 ARDC meeting and the student's withdrawal from DISD. The special education teacher omitted point sheets on unit behavior objectives for a substantial number of days, most such omissions occurring after the student's October 2005 ARDC meeting, and after the student's hospitalization and return to a full-time instructional setting in the self-contained behavior classroom. But is it not evident that the student was displaying, at that time, significant behaviors in school that would require close monitoring.

Looking generally at the student's behavior program in light of Petitioner's complaint, the problems that the student encountered in general education core academic classes, behaviorally speaking, and any issues of documentation, prior to his agreed removal from those classes, did not interfere with the student's participation in the general curriculum or deny the student a free, appropriate public education. Teacher testimony tended to establish that the student did not present serious behavior problems in general education classes – at least, those that operated in a more structured fashion than did the drama class. So no IEP deficiency was proven, that interfered with the student's access to appropriate educational services.

The record did indicate areas of concern. Present levels of performance for objectives on the behavior IEP and for targets on the BIP were omitted. However, there was no disagreement in the ARDC that developed these objectives and BIP targets, and there is not evidence that the listed behaviors occurred with any problematic frequency. The lack of consistent documentation with regard to the student's individualized program, and documentation omissions in the student's behavior unit daily point system, are troublesome. But such issues, when viewed in the context of the student's overall educational experience in ** grade, were not legally significant. DISD in fact appears to have addressed behavior issues appropriately in ** grade; the incident that triggered the student's October 2005 hospitalization was isolated, and unexpected in terms of the potential behavior problems then identified by the student's ARDC, including the parents.

DISD did not provide counseling as a related service to the student. The ARDC record does not disclose the reasoning behind the ARDC's decision to omit in-school counseling as a related service. It was not specifically recommended in the then-current psychological evaluation, and was not included in the schedule of services in the prior school district's most recent proposed annual IEP. The student's special education teacher recalled that the parents were concerned at IEP meetings – and this concern is evident and well-supported throughout the record – about the student's propensity to manipulate adult caregivers by “triangulating” them by means of misrepresentations. The parents agreed with the transfer IEP placement and with the October 2005 annual IEP. The most likely inference is that in-school counseling was discussed and rejected by the ARDC due to the aforementioned concerns. This scenario does not implicate an IDEA violation.

Petitioner alleges that DISD fell short in its omission to consider a therapeutic setting. But the student's placement in DISD in the student's ** grade year was consistent with what the previous school professionals and parents had agreed upon, and was not subject to any objection from the student's parents in either ARDC meeting during the student's ** grade year. To the extent Petitioner is contending that DISD improperly failed to consider a residential placement for the student during his ** grade year, the record does not preponderate to show that consideration of such a placement would have been appropriate. It was not recommended to DISD by the student's parents or by any DISD staff who worked with the student that year.

4.

Petitioner contends that DISD erred in failing to convene an ARDC after the student's initial hospitalization for suicide threats in order to consider the student's potential need for additional supports such as counseling.

Petitioner's complaint in this regard has some merit. IDEA 2004 relaxed requirements for modification of IEPs following development of the annual IEP by the student's IEP Team. 34 C.F.R. §300.324(a)(4). Parents and school officials can amend the IEP so long as their decision in this regard is memorialized in a written document and the IEP Team is informed of the changes. In this case, the incident that triggered the student's hospitalization and subsequent conference involving the parents and school representatives was a serious matter; DISD knew that much. And the incident followed close on the heels of other school behaviors that raised concern. These events, considered in isolation, would not necessarily have triggered special education to convene an ARDC meeting in this case, but the evidence also shows that as a result of the initial hospitalization, and owing in substantial measure to parent

concern about the student's involvement in general education, the student was removed from all of his general education classes after returning to DISD, and was confined to the special education classroom for all of his instruction.

DISD did not pursue with reasonable diligence obtaining contemporaneous hospital records that might have shed light on issues relevant to the student's needs; at the same time, the parents did not volunteer these records to DISD. The evidence establishes that this schedule change was decided largely based on parent request with the agreement of the student's special education teacher and campus administrator. The change was not made according to the behavior unit regular procedures for transitioning students in or out of general education classes, and it was not made according to any procedures in the IEP in place at that time, and it was not made in consideration of any new assessment. It was an individualized decision to deviate from the unit behavior program and from the existing BIP, which contemplated implementation in general education. It seems highly questionable that the parties chose to approach this placement change with a §300.324(a)(4) meeting instead of convening a full ARDC. But they had the option to do so. The evident omission of a written document, disseminated to ARDC members including general education teachers, violated this section, but did not in itself deny the student an appropriate education or impede parent participation; indeed, the changes appear to have been made at parent initiative.

In regard to counseling, the evidence shows that the student's ARDC had discussed counseling previously and decided for reasons indicated to rely solely on the student's private counselor for this service. The private counselor chose to remain uninvolved with the student's educational program, and DISD chose not to attempt to involve the private counselor in school matters. In retrospect the failure to convene an ARDC also for the purpose of addressing counseling – either by revisiting the question of in-school counseling or involving the private counselor more closely in the educational process – probably was a mistake. But viewed from the perspective of October 2006, omitting to convene an ARDC for the particular purpose of addressing counseling did not clearly violate IDEA safeguards.

5.

Petitioner contends that DISD has consistently failed to provide sufficient staff to deliver individualized instruction and control the student's behaviors including threats made by the student toward others and threats made against the student by peers.

IDEA obligates school districts implement a student's IEP, including any individualized behavior management program, which implies having sufficient staff appropriately trained. 20 U.S.C. §1414(d)(2). The record does not support Petitioner's contention. Before the student's first residential placement he was involved in one physical altercation where he was slapped by another student. On another occasion, the record shows that he touched another student inappropriately in a possible attempt to do so in a sexual manner. Otherwise testimony along with discipline and behavior records show that the student, while somewhat talkative and overly active was capable of being managed adequately in the school setting, both in special education and in all but one of this general education classes. This record and the incidents it discloses does not tend to establish any failure on the part of DISD to provide enough staff to implement the student's IEP and provide for his safety in DISD. If the incidents reflected lapses of staff coverage or training, those were de minimis.

Petitioner contends that DISD failed to inform the parents of their procedural safeguards and inform them of the continuum of available placement options that DISD is obligated to make available.

Petitioner's contention lacks merit. IDEA at 34 C.F.R. §300.504 establishes requirements for providing safeguards notice to parents. The parents received notice of procedural safeguards at the time of transfer to DISD and on more than one occasion afterward. Notice requirements under IDEA specifically include the requirement to notify parents of procedures governing unilateral placement of eligible students in private school at public expense. *Id.* The parents in this case are otherwise familiar with special education. This Hearing Officer has, in the past, placed some responsibility on parents for familiarizing themselves with the procedural safeguards, once the school district fulfills its obligation to give required notice. The extent of the school district's responsibility may vary from one situation to another, and IDEA regulations address this. 34 C.F.R. 300.504(d). Here, the evidence establishes that DISD provided the required safeguards notice.

What is not evident is that DISD provided the parents with a required notice of refusal at the March 2007 annual ARDC meeting. The parties at that meeting discussed the student's current placement. Efforts by DISD to characterize this as a consensus ARDC are disingenuous. There was no real doubt at this juncture, owing among other things to the pendency of this litigation, that the parents were seeking a residential placement at public expense. While DISD's ARDC representatives may have been uncertain amongst themselves about the "best" placement for the student for the upcoming school year, there is no evidence that any disagreement existed among DISD representatives, nor any confusion on the part of the parents and their counsel, that residential placement was not on the table for discussion.

Regulations at 34 C.F.R. 300.503(a)(2) require school districts to provide notice containing specific and detailed information whenever the school district refuses a parent proposal to change, among other things, the educational placement of the child. This information must include a description of the action refused; an explanation of why the action was refused; a description of each evaluation, assessment, record, or report that served as a basis for the refused action; a statement that the parent has recourse to procedural safeguards; sources for parents to contact to obtain assistance in understanding the applicable regulations; a description of options that the IEP Team considered and an explanation of why options were rejected; and a description of "other factors" that are relevant to the school district's refusal. *Id.* No such notice is in evidence.

DISD committed a procedural violation by omitting this notice. The omission did not violate the student's right to a FAPE, however. The omission itself had no impact on the student's educational program, and therefore no implication for the student's receipt of educational benefit or right to a FAPE. *Id.* More important, typically, is the question of effective parent participation (and in some cases participation by other ARDC members), and how a procedural omission of this nature can affect participation where explicit educational decisions are not made subject to deliberation required by IDEA procedural safeguards. *Student v. McAllen I.S.D.*, No. 027-SE-1005 (SEA TX 2006). In this case, while deliberations were curtailed, the pendency of litigation and the involvement of counsel at this stage of the decision-making leave little room for doubt, but that the parties understood their respective positions apart from any formal notice that IDEA required.

Petitioner contends that DISD scheduled and then refused to complete an ARDC meeting with the parents in August 2006 to develop an IEP for the student, and refused at that time to consider parent input. Petitioner's factual assertion is correct, but Petitioner is mistaken to believe that the sequence of events surrounding the attempted enrollment and attempted ARDC in August or September 2006 violated IDEA.

Analysis of Petitioner's claim requires some attention to Texas law regarding residency. Hearing officers are required to address residency, in cases where it arguably implicates provision of a free, appropriate public education. See, eg., Washoe County School Dist., 29 IDELR 569 (SEA NV 1999).

Texas law requires local school districts to offer the benefit of the state's public education program to children who are eligible for admission, subject to statutory requirements of enrollment. Texas Educ. C. §§25.001; 25.002. A child is eligible for admission to a school district if the child and either parent reside in the school district; if a court-appointed conservator of the child resides in the district regardless of whether the child resides in the district; if the child resides in the district along with a guardian or other person with legal control of the child under a court order; or if certain other conditions are met that are not relevant here. Id., §25.001(b). IDEA obligates states to locate, identify and evaluate all children residing in the state who have or are suspected of having disabilities and resulting need for special education and related services, and to make a FAPE available to those children. Rowley, supra.; 34 C.F.R. 300.111(a). IDEA does not dictate specific processes by which states are to fulfill these obligations. See Manchester Sch. Dist. v. Crisman ex rel. Kimberli M., 37 IDELR 211 (1st Cir. 2002). The Texas Education Code and the administrative regulations of the Commissioner of Education delegate the process to local school districts and local ARDCs, subject to State law and Agency regulations. Texas Educ. Code §§11.002; 29.001; 19 T.A.C. §89.1050.

The local school district's obligations under IDEA extend to any child residing within the district, including children living in a residential facility within the school district's boundaries. Texas Educ. C. §25.001(b)(7); 19 T.A.C. §89.1001(c). The Education Code requires among other things that each school district convene an ARDC and develop each eligible child's individualized education program before the child is enrolled in a district special education program. Id. §29.005. This is consistent with IDEA requirements concerning when IEPs must be "in place." 34 C.F.R. §300.223. Texas Education Agency regulations for transfer students require school districts to take certain steps when put on notice that a transfer student has been receiving special education services. 19 T.A.C. §89.1050(f).

In light of this framework for enrolling the student in DISD and convening an ARDC, DISD acted appropriately in August when the student's parent attempted to enroll him and convene an ARDC. The fact that this sequence of events was appropriate, was not necessarily based on DISD's articulated standard for implementing child find or commencing services. A student who is eligible to enroll and also eligible or suspected of being eligible for special education is not required to wait some indeterminate period until the school district and parents can schedule an ARDC meeting, in order to receive special education. Under the Commissioner's Rules, once parents verify that a student previously was receiving special education, enrollment in school and the ARDC meeting to commence services are supposed to be concurrent. And the Rules are flexible. Procedures of 19 T.A.C. §89.1050(f)(2) provide for modification of a temporary placement. Additionally, a child who resides within a school district and who is suspected of having a qualifying disability is entitled to identification, evaluation, and an offer of appropriate

services regardless of enrollment status (although developing an IEP may not be necessary if parents unequivocally prefer not to enroll the student in the public school). OSEP Memorandum to Chief State School Officers, 34 IDELR 263 (May 2000).

Notwithstanding the foregoing, what happened in this case was that the student simply did not reside in DISD in August or September 2006, when the parents approached school officials about enrolling the student, obtaining assistance with his placement, or obtaining some type of enrollment documentation. In Texas, with few exceptions that do not apply here, a public school district's obligation to admit a student is a function of the student's residence. Accordingly, the student here was not eligible for admission to DISD, or enrollment in any of DISD's programs, and DISD had no obligation at the time to offer the student a FAPE. In sum, then, Texas law entitles an IDEA-eligible student, as defined, to enrollment and an offer of FAPE from the district in which the student resides. In August 2006, the student did not reside in DISD.⁴

8.

Petitioner contends that DISD failed to convene a transfer ARDC meeting in a timely manner in January 2007, after the student returned to DISD. Neither party disputes that delays occurred at that time in scheduling a meeting. The parties by then were actively involved in this litigation. Ordinary scheduling problems were amplified aggravated by schedule conflicts of counsel. At trial, counsel acknowledged this state of affairs; Petitioner reasonably stipulated as to the cause of the delays and subsequently elected at trial not to pursue this issue.

9.

Petitioner contends that the ARDC's January 2007 IEP program and placement for the student were inappropriate, for failing to place the student with age-appropriate peers; failing to implement IEP provisions requiring a self-contained placement; failing to provide the student with highly qualified teachers in core academic subjects; failing to consider parent input regarding the student's behavior program; and failing to implement the PE program scheduled in the student's IEP.

With respect to DISD's alleged failure to provide the student with highly-qualified teachers in core academic areas, the record establishes that the student's teachers in core academic subjects are and have been highly qualified. Even had they not been, Petitioner could not predicate a due process complaint solely on the grounds that a school employee is not highly qualified. 34 C.F.R. §300.18(f). And Petitioner failed to show that any of the student's special education teachers were incapable of implementing the student's IEPs. Petitioner also complained that the student was deprived of the self-contained placement in his current IEP when he went to another classroom for a special education reading lab. Testimony established that the reading lab was conducted by a special education teacher and that the student was escorted by staff from the CSU. Of course the placement was still "self contained" insofar as instruction was provided predominantly (or in the student's case entirely) in special education. To the extent

⁴ Texas Educ. Code 25.001(b)(2) seems confusing on this point, but is interpretable by a literal reading. It applies only to a school district's obligation to admit a student who does not reside in the district, but who has one of the designated legal entities residing in the district – that is, a joint or sole managing conservator, or a possessory conservator. These are entities created by and according to the Texas Family Code. So subsection (b)(2) does not apply when parents have not been so designated by a court, typically in a suit affecting the parent-child relationship. Op. Texas Educ. Agency General Counsel, July 19, 2002 <<http://www.tea.state.tx.us/tao/legal071902.html>>; see, e.g., Yonko v. Dept. of Family and Protective Services, 196 S.W.3d 236 (Tex. App. - Houston [1st Dist.] April 27, 2006).

Petitioner complains that the student was deprived of educational benefit for leaving the CSU to attend a reading lab, Petitioner's complaint is not supported by a preponderance of the evidence.

The ARDC that met in January 2007 to develop a transition program for the student documented discussion of a number of issues prompted by concerns expressed by the parent or the parent's advocate in the meeting. These concerned sending point sheets home for communication to the parent; coordinating reporting of the student's behaviors on the bus with the parent; additional target behaviors (in addition to common behaviors addressed by the behavior unit program) of verbal and physical aggression, interactions with peers and adults, and positive conflict resolution; and close monitoring of internet use. The ARDC agreed to address or attempt to address these issues. So it is not evident that the parent was denied the opportunity for input at that ARDC meeting.

Petitioner did establish that the CSU staff and the campus facilities were not always sufficient to permit the student to attend PE during the first month of the student's placement in that unit. The student worked on academic or arts and crafts activities that the teacher considered to be related to PE, during times that the student was unable to attend PE in that first month. The record does not establish that the student was harmed by DISD's failure to implement this portion of the student's IEP for this relatively brief period of time, and DISD moved promptly to correct the situation when the issue came up at the March 2007 ARDC meeting.

10.

Petitioner contends that the student's IEP omits specific and measurable behavioral goals and objectives, omits appropriate goals and objectives to address the student's disability, and does not contain an appropriate placement for the student insofar as the student requires residential placement in order to provide a free, appropriate public education.

Petitioner has not established by a preponderance of evidence that the student's March 2007 behavior objectives are not specific and measurable. Facially, they appear to implicate observable behaviors. The student's teacher and psychologist expressed the opinion that they are measurable, and there was no contrary expert opinion. Objectives can always be refined and improved if parties have concern about them. Here, the objectives facially appear fitting to the student's in-school behavior issues and appropriate for being susceptible of addressing and documenting behaviors of concern.

Petitioner also contends that the student requires a residential placement in order to receive appropriate education. Petitioner has not met his burden on this issue by a preponderance of the evidence. Primarily, Petitioner has to show that DISD's program is inappropriate and that the residential placement is appropriate. Teague Independent School District v. Todd L., 999 F.2d 127 (5th Cir. 1993). See Student v. Fort Bend I.S.D., No. 217-SE-0302 (SEA TX 2002); Kruelle v. New Castle County School Dist., 642 F.2d 687 (3rd Cir. 1981). However the evidence weighs in favor of the view that the student's current placement is appropriate. The placement is individualized for the student based on his current assessment and performance. Recent evaluations conducted by DISD recommend a community-based placement. And the recommendations of these assessments were considered by the student's annual ARDC in March 2007 in designing his current program. While that ARDC involved some discussion about the more desirable instructional arrangement within DISD, the current placement at the time of the hearing has the essential characteristics of external structure, a therapeutic rather than punitive environment, expectations

and consequences, and the like. These are the sorts of characteristics that were recommended for the student by DISD's evaluators and indeed by many professionals who have seen and evaluated the student. The current program, being self-contained with close involvement of the parents and with relatively few DISD stakeholders, is implemented in a coordinated and collaborative manner. Review of the student's behavioral point sheets, and work samples, and hearing the testimony of the student's current teacher, the greater likelihood is that the student is receiving meaningful behavioral benefit in the program. The same is shown to be true academically; despite past confusion about the student's appropriate instructional level, the CSU teacher has worked productively with the student at the academic level where he is able to perform. And the program, at least as planned in the transfer IEP, was the least restrictive environment for the student -- transferring, as he did, from a series of residential treatment facility placements. Cypress-Fairbanks I.S.D. v. Michael F., 118 F.3d 245 (5th Cir. 1997).

Finding that DISD's current placement for the student, or a similar structured placement such as has been discussed by the student's ARDC, is appropriate, it is not necessary to address in depth other elements of Petitioner's burden on the claim for residential placement. Suffice it to say briefly that the student's placements at the local private school and the out-of-state residential program appear to have been grossly inappropriate. The in-state residential placement does appear to have been an appropriate placement for the student, offering a program where the student received benefit. However seen in perspective of the student's behavior in DISD, that residential program was not the least restrictive setting where the student could be educated. Alternatively it might in some ways be considered an optimal placement, but DISD is not obligated to provide an optimal placement.

The other problem for Petitioner is the matter of notice. There is no dispute but that Petitioner never notified DISD as required under 20 U.S.C. 1412(a)(10)(C)(iii)(I) until shortly before this complaint was filed, and long after the student had been hospitalized and placed residentially, that the parents would seek reimbursement from DISD for the private placement. A number of hearing officers and courts have held that, in the absence of a statutory exception, notice is a crucial element in a reimbursement claim. See, eg., Student v. Gregory-Portland I.S.D., 330-SE-0505 (SEA TX 2006); Berger v. Medina City School Dist., 348 F.3d 513 (6th Cir. 2003). Omission of prior notice certainly is no "bar" or "condition precedent" to a private school reimbursement claim, and reimbursement could be ordered as an equitable matter regardless of the omission of notice. See Maine School Admin. Dist. No. 56 v. K.S., 47 IDELR 219 (D. ME 2007). But the interests served by IDEA's notice requirement are substantial. By alerting the school district of a potential dispute, the school district is put on notice of the possibility that its services may be insufficient, and prompted to re-examine the student's circumstances. In this manner, notice increases the odds of discovering potential flaws in the IEP and promoting compromise among the essential stakeholders. Here Petitioner has no equitable basis to excuse the omission of notice.

11.

The parties were asked, pending issuance of this Decision, to brief and argue the circumstances surrounding DISD's enrollment of the student in the wrong grade in September 2005 and continuously thereafter. Given the ARDC's representation that documents from the student's previous school district were reviewed at the first transfer ARDC meeting and at the annual ARD, and DISD's conclusion that those documents could be relied on to justify DISD omitting its own evaluation of the student, DISD's placement of the student in the wrong grade level is basically shocking. Equitably, however, the same can be said of the student's parent, whose enrollment form listed the wrong grade.

Counsel briefed this issue of grade placement, but the troublesome question not addressed by counsel and essential to any decision on the question is whether inappropriate grade placement was pled. The issue of grade placement as such was not specifically raised by Petitioner in his original or amended complaint. The question was not tried by Petitioner nor did the district put on evidence of the issue in its defense. Petitioner did complain about Petitioner's goals and objectives and the statement of "present levels of performance" for the student's ostensible ** grade year, but the record shows that grade placement per se was not implicated. In framing this case, the parties focused secondarily on academics. Petitioner argued that the student was succeeding in school relative to his behaviors only because DISD did not challenge him academically. It seems ironic, then, that the student has been educated one grade level above what should have been his correct grade placement.

But the bottom line is that this question essentially was not raised by either party, nor was the question put to trial, nor is there evidence sufficient to enter a decision or order relief. The student's has the wrong grade placement; he has had the wrong grade placement for two years. The parties will have to address this; it would be improper to do so now as an aspect of this decision, on the current state of the record. But justice requires that the parties address it.

In sum, there is no question in my mind, nor in the opinions of the professionals who have evaluated the student, even on behalf of DISD, but that the student is a young man with extremely severe problems – emotional, behavioral, possibly neurological – that put him at risk of school failure, varieties of severe misconduct, and residential placement. The greater weight of evidence and professional opinion is that he can benefit from the setting he has now. His parents love and understand him; this is important for him. DISD needs to understand, if it does not already, that few parents could accomplish what these parents have, for this student.

Conclusions of Law

1. Dallas I.S.D., as a local education agency and political subdivision of the State of Texas, is subject to requirements of IDEA, 20 U.S.C. §1400 et seq., and its implementing federal and state regulations.
2. ** is an IDEA-eligible student enrolled in Dallas I.S.D. and is entitled to a free, appropriate public education provided by Dallas I.S.D. at no cost to the parents and in the least restrictive environment.
3. DISD failed to provide written documentation as required by 34 C.F.R. §324(a)(4) in regard to changing the student's instructional arrangement in October 2005.
4. DISD failed to provide a notice of refusal required by 34 C.F.R. §300.503(a)(2) when DISD rejected the parents' request for residential placement at public expense in January 2007.
5. The ARDC, without disagreement, has maintained the student in a grade placement since the student's enrollment in DISD that is not consistent with his prior educational history.
6. Despite the procedural errors enumerated, Dallas I.S.D. has provided the student with a free, appropriate public education.

Orders

In consideration of the foregoing,

IT IS ORDERED the relief requested by Petitioner herein is **DENIED**.

SIGNED this 2nd day of August 2007.

A handwritten signature in black ink, appearing to read "James N. Hollis", with a long horizontal flourish extending to the right.

JAMES N. HOLLIS
SPECIAL EDUCATION HEARING OFFICER
FOR THE STATE OF TEXAS

DOCKET NO. 052-SE-1006

STUDENT	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENT	§	
	§	
vs.	§	HEARING OFFICER
	§	
DALLAS INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS OF DECISION

ISSUE: Whether Dallas I.S.D. failed to provide appropriate transportation services for the student.

CITATION: 34 C.F.R. §300.34(c)(16)

HELD: For the District. Respondent's very brief delay in initiating transportation as a related services for the student did not interfere with the student's receipt of appropriate services.

ISSUE: Whether Dallas I.S.D. on multiple occasions failed to address the student's disability, educational needs, and appropriate services, failed to ensure the attendance of essential personnel, in the student's ARD process, and failed to provide appropriate measurable objectives.

CITATION: 34 C.F.R. §§300.320, 321, 324

HELD: For the District. The ARD Committees that convened had appropriate personnel present under the circumstances of this student's situation, and addressed parent concerns as well as the student's disabilities and behavioral needs. The student's behavioral objectives facially were measurable and credible teacher testimony established that teachers could measure and utilize the objectives in the student's program.

ISSUE: Whether Dallas I.S.D. inappropriately declined to convene an ARD Committee to discuss the student's needs following his psychiatric hospitalization.

CITATION: 34 C.F.R. §300.324(a)(4)

HELD: For the District. Dallas I.S.D. and the students' parents mutually agreed to modify the student's schedule without utilizing all of the safeguards of the formal ARD Committee

process. While some requirements of the regulation that permitted the parties to exercise this option were not met, the parties' actions overall did not interfere with the student's receipt of appropriate services or with parent participation.

ISSUE: Whether Dallas I.S.D. failed to provide sufficient trained staff to implement the student's IEPs, including in the student's current placement.

CITATION: 20 U.S.C. §1414(d)(2)

HELD: For the District. Evidence did not tend to establish that staff who implemented the student's IEPs were not sufficiently trained and qualified, or that the District failed to provide enough staff to implement the student's IEPs.

ISSUE: Whether Dallas I.S.D. failed to implement the student's IEP in the student's current placement.

CITATION: 20 U.S.C. 1414(d)(2)

HELD: For the District. Evidence showed that the student's IEP requirement for participation in physical education was not implemented consistently in the student's first month of attendance after transferring back to the District. The District corrected this situation by the time of the student's annual IEP meeting, and the omissions that occurred were de minimis and did not interfere with the student's receipt of an appropriate educational program.

ISSUE: Whether Dallas I.S.D. failed to provide the parents with notice of procedural safeguards and to consider parent input in developing the student's IEP.

CITATION: 34 C.F.R. §§300.322, 504

HELD: For the District. Evidence showed that the District delivered notice of procedural safeguards at the ARD Committee meeting convened when the student first transferred into Dallas I.S.D., and thereafter. Parent participation at the student's last ARD Committee meeting prior to the hearing was curtailed, on the issue of residential placement. However by the time of this meeting the parties were well advanced into this litigation and there is no question but that all parties were, as a practical matter, fully aware of the parents' concerns about placement. Thus the procedural omission was harmless insofar as parent input was received and considered by the District's representatives.

ISSUE: Whether Dallas I.S.D. failed to provide an appropriate placement for the student in a residential treatment center at public expense.

CITATION: 34 C.F.R. §§300.104, 114, 115

HELD: For the District. The testimony and evidence in the hearing established that the student's current placement in the District is appropriate and the least restrictive placement in which the student can receive educational benefit.