

TEA DOCKET NO. 272-SE-0806

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

FINAL DECISION OF THE HEARING OFFICER

Appearances for Petitioner:

Pro Se Petitioner

Appearances for Respondent:

Nona C. Matthews, Esq.
Walsh, Anderson, Brown, Schulze & Aldridge
Irving, TX

Mia M. Martin, Esq.
Richardson Independent School District
Richardson, TX

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FINAL DECISION OF THE HEARING OFFICER

Statement of the Case

The Petitioner (child or adolescent)¹ brings this action against the Respondent (district), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq. The Petitioner was permitted to pursue four claims at the Due Process Hearing:

1. That the Respondent failed to abide by an alleged agreement of the admission, review and dismissal (ARD) committee of August 21, 2006 to maintain the Petitioner in the *** grade through the first six-weeks grading period (Fall, 2006 semester);
2. That the Respondent failed to provide notice of and failed to permit the parent to attend and participate in a meeting about the Petitioner at the Petitioner's school on August 23, 2006;
3. That the Respondent failed to conduct a proper ARD committee meeting on August 31, 2006; and
4. That the Respondent failed to make available a free appropriate public education (FAPE) to the Petitioner on or after August 14, 2006 (Fall, 2006 semester).

As relief, the Petitioner requests that the Respondent reimburse the Petitioner for and continue to pay for the cost of enrollment of the Petitioner in a private school.²

Procedural History

The Texas Education Agency (TEA) received the Petitioner's Due Process Complaint on August 23, 2006. The TEA initially assigned this case to another Hearing Officer. Subsequently, however, the TEA reassigned this case to this Hearing Officer.

¹ To protect the privacy of the Petitioner, the Petitioner is referred to as "child" or "adolescent" in this Decision.

² Hr'g Tr. at 357 (vol. 1) (Oct. 18, 2006); Hr'g Tr. at 487, 490 – 91 (vol. 2) (Dec. 15, 2006).

This Hearing Officer consolidated three other Due Process Complaints filed by the Petitioner against the Respondent with this case. Thus, this action incorporates claims raised by the Petitioner in these other cases:

- No. 273-SE-0806 (filed on August 24, 2006 and consolidated on September 8, 2006);
- No. 006-SE-0906 (filed on September 11, 2006 and consolidated on September 19, 2006); and
- No. 007-SE-0906 (filed on September 11, 2006 and consolidated on September 19, 2006).

The parties held a resolution session on September 11, 2006, but no agreement was reached.

On September 18, 2006, this Hearing Officer considered and granted the Petitioner's request to place the child in an *** grade program as the stay-put placement for the duration of this proceeding. On September 28, 2006, this Hearing Officer conducted a status hearing to take testimony and evidence on the district's compliance with this Hearing Officer's stay-put determination. On October 2, 2006, this Hearing Officer found that the district had made available the stay-put placement to the Petitioner.³

This Hearing Officer conducted a final prehearing conference on October 17, 2006. This Hearing Officer, among other things, limited the Petitioner to prosecuting four claims against the Respondent.

The Due Process Hearing began on October 18, 2006. The Hearing was recessed to accommodate the availability of an expert witness this Hearing Officer determined had relevant and material testimony to offer on the Petitioner's claims.⁴ The Hearing was resumed on December 15, 2006. During the Hearing, the Petitioner was afforded a fair opportunity to offer and solicit evidence and testimony to satisfy the Petitioner's burden of persuasion as assigned under *Schaffer v. Weast*, 126 S. Ct. 528 (2005). This Hearing Officer extended the decision due date to allow the parties to file post-hearing written closing statements. The Petitioner submitted its written closing arguments on January 12, 2007,⁵ and the Respondent submitted its written closing arguments on January 19, 2007.

³ See "Order on Implementation of Stay-Put" of October 2, 2006.

⁴ Hr'g Tr. at 360 – 64 (vol. 1) (Oct. 18, 2006); Hr'g Tr. at 379 – 80 (vol. 2) (Dec. 15, 2006).

⁵ The Petitioner's submission doubled as a response in another case filed by the Petitioner.

***, b/n/f *** v. RICHARDSON ISD

NO. 272-SE-0806

FINAL DECISION OF THE HEARING OFFICER

PAGE 3 of 18

Findings of Fact

Based upon the testimony and evidence taken on the record in this proceeding, this Hearing Officer makes the following findings of fact:

1. The child is a young adolescent with an emotional disturbance. (Hr'g Tr. at 172, 275, 294, 300 (vol. 1) (Oct. 18, 2006); Hr'g Tr. at 422 (vol. 2) (Dec. 15, 2006); Resp't Ex. 5, 11)
2. During the 2005-06 school year, the child was a *** grade student in the district. (Hr'g Tr. at 174 (vol. 1) (Oct. 18, 2006); Resp't Ex. 1)
3. On October 11, 2005, the child's ARD committee met. There was no modification of the general education curriculum or promotion standards for the child. The parent participated in the meeting; the parent indicated agreement with the ARD committee on the committee members' signature page. (Hr'g Tr. at 174 – 75, 296 (vol. 1) (Oct. 18, 2006); Resp't Ex. 1)
4. The October 11, 2005 ARD committee's listing of *** grade general education classes for the 2006-07 school year anticipated that the child would meet promotion standards and continue to have interest in the electives listed. (Hr. Tr. at 130 – 31, 163, 174, 294 – 95 (vol. 1) (Oct. 18, 2006); Resp't Ex. 1-12)
5. On February 16, 2006, the child's ARD committee met. The ARD committee, among other things, conducted a functional behavioral assessment and developed a behavioral intervention plan. The parent participated in the meeting; the parent indicated agreement with the ARD committee on the committee members' signature page. (Resp't Ex. 2)
6. On February 21, 2006, the Petitioner filed a Due Process Complaint with the TEA. This Due Process Complaint was docketed as No. 129-SE-0206.
7. On March 8, 2006, the child's ARD committee met. The ARD committee, among other things, completed a pre-assessment plan for reevaluating the child. The parent participated in the meeting; the parent indicated agreement with the ARD committee on the committee members' signature page. The parent subsequently submitted a written statement. (Hr'g Tr. at 236 – 44 (vol. 1) (Oct. 18, 2006); Resp't Ex. 3)
8. On April 5, 2006, the district completed the reevaluation of the child. (Resp't Ex. 5)

9. On April 10, 2006, the Special Education Hearing Officer in No. 129-SE-0206 issued an “Agreed Order of Final Judgment.” Among other things, the child was to continue in mainstream classes with special education inclusion support. (Resp’t Ex. 4)
10. On April 10, 2006, the child’s ARD committee met. The ARD committee, among other things, reviewed the reevaluation report on the child. The committee confirmed the presence of an emotional disturbance and ruled out the presence of a learning disability and speech or language impairment. The committee ruled out the need for any occupational therapy services. The parent participated in the meeting. (Resp’t Ex. 6)
11. On May 26, 2006, the child’s school determined that the child failed *** grade language arts, math and social studies. The school notified the child’s parents that the child would be required to pass *** grade language arts and math to be promoted to the *** grade. (Hr’g Tr. at 94 – 95, 194 – 98 (vol. 1) (Oct. 18, 2006); Pet’r Ex. PC 1-2; Resp’t Ex. 7-1)
12. On June 21, 2006, the child’s ARD committee met. The ARD committee, among other things, offered two weeks of summer school free of charge with one-on-one instruction with a special education teacher for the child. This was calculated to allow the child to pass *** grade language arts and math and be promoted to the *** grade. The ARD committee indicated that the individualized education programs (IEPs) of October 11, 2005 and February 16, 2006 otherwise remained in effect. The parents participated in the meeting and accepted the summer school offer; the parents indicated agreement with the ARD committee on the committee members’ signature page. (Hr’g Tr. at 114 – 16, 200 – 02, 234 (vol. 1) (Oct. 18, 2006); Resp’t Ex. 8)
13. Subsequent to the June 21, 2006 ARD committee meeting, the parents reconsidered the summer school offer and declined to send the child to summer school. (Hr’g Tr. at 79, 116 – 17, 201 (vol. 1) (Oct. 18, 2006))
14. On June 22, 2006, the Petitioner filed a Due Process Complaint with the TEA. This Due Process Complaint was docketed as No. 246-SE-0606.
15. The 2006-07 school year began on or about August 14, 2006. (Hr’g Tr. at 229 (vol. 1) (Oct. 18, 2006))
16. On or about August 16, 2006, the child entered the *** grade per a stay-put Order issued by the Special Education Hearing Officer in No. 246-SE-0606.
17. On August 21, 2006, the child’s ARD committee met. The ARD committee, among other things, discussed adding a “pre-AVID” class to the child’s schedule. According to the meeting notes: “The committee decided that [the child] likes his schedule right

- now and we are not going to add pre-AVID at this time.” (Hr’g Tr. at 122 – 23 (vol. 1) (Oct. 18, 2006); Pet’r Ex. PC 2-4; Resp’t Ex. 9-9)
18. The August 21, 2006 ARD committee also agreed that at the end of the six-weeks grading period, it would review the child’s progress and reconvene if necessary. (Hr’g Tr. at 124 – 25 (vol. 1) (Oct. 18, 2006); Pet’r Ex. PC 2-4; Resp’t Ex. 9-9)
 19. The August 21, 2006 ARD committee did not agree to maintain the child in the *** grade for the first six-weeks grading period. (Hr’g Tr. at 80, 125, 132, 209 – 11, 325 (vol. 1) (Oct. 18, 2006))
 20. The parent participated in the August 21, 2006 ARD committee meeting. The meeting ended in disagreement and a 10-day recess was declared. At the conclusion of the meeting, the parent prepared a written statement providing further parental input. (Resp’t Ex. 9-1, 9-7, 9-10 – 11)
 21. On August 23, 2006, No. 246-SE-0606 was dismissed. The stay-put Order in No. 246-SE-0606 terminated with the dismissal.
 22. On August 23, 2006, the district’s special education director and the child’s guidance counselor met about the child in the counselor’s office at the child’s school. The meeting was not prearranged. While on the school’s campus, the child’s parent became aware of the meeting and asked to join it but district staff did not allow the parent to attend. (Hr’g Tr. at 85 – 86, 92 – 94, 100, 125 – 27, 147 – 48, 149 – 50, 152, 212, 330, 333 – 35 (vol. 1) (Oct. 18, 2006))
 23. During the August 23, 2006 meeting, the district’s special education director and the child’s guidance counselor conferred and changed the child’s grade level assignment from the stay-put placement in *** grade that had terminated with the dismissal of No. 246-SE-0606 to *** grade. They also modified the child’s class schedule by moving the child from *** grade core classes to *** grade core classes and adding a “pre-AP” class for the child. With respect to the addition of the “pre-AP” class, the guidance counselor testified: “[W]e also discussed putting him in the science pre-AP class because we felt like he had been successful in the *** grade regular class the year before and so we wanted to give him a little more challenge and we knew that he connected with [the teacher].” (Pet’r Ex. PC 3-2; Hr’g Tr. at 86, 106 – 07, 333 – 35 (vol. 1) (Oct. 18, 2006))
 24. On August 23, 2006, the Petitioner filed this Due Process Complaint with the TEA. This Due Process Complaint was docketed as No. 272-SE-0806.

25. After August 23, 2006, the parent allowed the child to attend only certain classes at school; the child never returned to school on a full-time basis. (Hr'g Tr. at 120, 212 – 13, 232 – 33 (vol. 1) (Oct. 18, 2006); (Hr'g Tr. at 388 (vol. 2) (Dec. 15, 2006); Resp't Ex. 10-4, 10-10, 10-14)
26. On August 31, 2006, the child's ARD committee met after a ten-day recess. The ARD committee, among other things, discussed the child's grade level assignment and class schedule. (Hr'g Tr. at 81 (vol. 1) (Oct. 18, 2006); Resp't Ex. 10-4 – 5, 10-10 – 13)
27. The August 31, 2006 ARD committee confirmed that the district agreed to an independent educational evaluation (IEE) for the child. (Hr'g Tr. at 110, 131, 298 – 300 (vol. 1) (Oct. 18, 2006); Resp't Ex. 10-6)
28. The August 31, 2006 ARD committee meeting lasted approximately 2½ hours and covered 29 items of discussion. During the course of the meeting, the parent had the opportunity to participate. At the conclusion of the meeting, the ARD committee members, with the exception of the parent, indicated their agreement or disagreement on the ARD report and departed. The parent remained and prepared a written statement providing further parental input. (Hr'g Tr. at 87 – 88, 128, 132, 216 – 17 (vol. 1) (Oct. 28, 2006); Pet'r Ex. PC 4-1 – 14; Resp't Ex. 10-1, 10-10 – 15)
29. The August 31, 2006 ARD committee meeting was properly conducted.
30. On September 14, 2006, the IEE was completed. The IEE is accurate and reliable. (Hr'g Tr. at 299 – 301 (vol. 1) (Oct. 18, 2006); Hr'g Tr. at 387 – 421 (vol. 2) (Dec. 15, 2006); Resp't Ex. 11)
31. The IEE confirmed the child has an emotional disturbance and ruled out the presence of a learning disability or other disabilities. (Hr'g Tr. at 255, 300 – 01, 303 (vol. 1) (Oct. 18, 2006); Hr'g Tr. at 422 – 23, 456 (vol. 2) (Dec. 15, 2006); Resp't Ex. 11)
32. The IEE found that the child is a “non-resilient” young adolescent. (Hr. Tr. at 293, 300 – 01, 336 (vol. 1) (Oct. 18, 2006); Hr'g Tr. at 421, 426 (vol. 2) (Dec. 15, 2006); Resp't Ex. 11)
33. The IEE found that the child's self-perception is one of inadequacy. According to the evaluator, the child struggles to develop a sense of identity and tends to withdraw from tasks perceived as too difficult. (Hr'g Tr. at 392, 401 – 02, 406, 411, 425 – 26, 474 (vol. 2) (Dec. 15, 2006); Resp't Ex. 11)
34. The IEE found that the child's learning issues are secondary to the disability of emotional disturbance. (Hr'g Tr. at 423 (vol. 2) (Dec. 15, 2006))

35. The IEE found that the child is an academically capable student. (Hr’g Tr. at 393, 421 – 22, 428, 435, 473 (vol. 2) (Dec. 15, 2006))
36. The independent evaluator concluded that promotion standards should not be modified for the child and that concern about possible emotional concomitants of retention should not preclude holding the child to general education promotion standards. (Hr’g Tr. at 434 – 37 (vol. 2) (Dec. 15, 2006))
37. The independent evaluator concluded that a general education placement would better serve the child to avoid the child being pulled away from the mainstream and exacerbating the child’s feelings of difference from other students. (Hr’g Tr. at 428 – 29, 473 – 74, 480 (vol. 2) (Dec. 15, 2006))
38. On September 18, 2006, the child was permitted to reenter the *** grade per a stay-put Order issued by this Special Education Hearing Officer in No. 272-SE-0806.
39. The district implemented the stay-put Order and made the stay-put placement available to the child. The district prepared a tutoring plan to help the child make up school work missed during the period when the parent withheld the child from school following the August 23, 2006 meeting. (Hr’g Tr. at 217 – 20 (vol. 1) (Oct. 18, 2006))
40. On October 5, 2006, the child’s ARD committee met. The ARD committee, among other things, reviewed the IEE report and adopted its recommendations. The ARD committee proposed an IEP and placement reasonably calculated to confer educational benefits. (Hr’g Tr. at 221 – 22, 301 – 04, 306 – 09 (vol. 1) (Oct. 18, 2006); (Hr’g Tr. at 424 – 27, 431 – 32, 435, 438, 454, 471 – 73 (vol. 2) (Dec. 15, 2006); Resp’t Ex. 12-18)
41. The October 5, 2006 ARD committee proposed placing the child in *** grade core general education classes and *** grade elective general education classes with the assistance of a “helping teacher” – a special education teacher – who would enter the general education classrooms and provide needed assistance to the child. (Hr’g Tr. at (vol. 1) (Oct. 18, 2006); Resp’t Ex. 12-5, 9 – 12, 21)
42. The October 5, 2006 ARD committee proposal to retain the child in *** grade core classes was reasonably calculated to confer educational benefit as the child had not met promotion standards for the *** grade and allowing the child to advance to the *** grade would not serve the child’s academic needs. (Hr’g Tr. at 158 (vol. 1) (Oct. 18, 2006))
43. The October 5, 2006 ARD committee proposal to retain the child in *** grade core classes included provisions to assist the child to adapt emotionally and academically,

such as supportive counseling and before- and after-school tutoring. The ARD committee reviewed tutoring packets to aid the child's mastery of the *** grade curriculum. (Hr'g Tr. at 156 – 57, 164 – 70, 225 – 29, 310 – 11, 339 (vol. 1) (Oct. 18, 2006); Resp't Ex. 12)

44. The October 5, 2006 ARD committee proposed an IEP for the child that included, among other things, annual goals for social skills and study skills, intended to help the child develop into a resilient adolescent as recommended by the IEE. (Hr'g Tr. at 301 – 04 (vol. 1) (Oct. 18, 2006); Resp't Ex. 11-21 – 24; Resp't Ex. 12)
45. The October 5, 2006 ARD committee proposed an IEP for the child that included, among other things, new training for staff as recommended by the IEE. (Hr'g Tr. at 223, 301 – 03, 306 – 07 (vol. 1) (Oct. 18, 2006); Resp't Ex. 11-22, 12-5, 18)
46. The October 5, 2006 ARD committee proposed an IEP for the child that included, among other things, boosting the child's self-advocacy skills and solution-generation skills as recommended by the IEE. (Hr'g Tr. at 307 – 08 (vol. 1) (Oct. 18, 2006); Resp't Ex. 11-23, 12-6 – 7)
47. The October 5, 2006 ARD committee proposed an IEP for the child that included, among other things, counseling services to assist the child to cope with retention in the *** grade. (Hr'g Tr. at 136, 226, 308 – 09 (vol. 1) (Oct. 18, 2006); Resp't Ex. 12-5, 10 – 11)
48. The October 5, 2006 ARD committee proposed an IEP for the child that included, among other things, a functional behavioral analysis and behavioral intervention plan. (Resp't Ex. 12-14 – 16, 20)
49. The parent participated in the October 5, 2006 ARD committee meeting. At the conclusion of the meeting, the parent prepared a written statement providing further parental input. (Resp't Ex. 12-1, 12-23 – 24)
50. On or about October 20, 2006, the child stopped attending school in the district completely and enrolled in and began attending *** school. ((Hr'g Tr. at 441 (vol. 2) (Dec. 15, 2006))

Discussion

Alleged Admission, Review and Dismissal (ARD) Committee Agreement

In this action the Petitioner first alleges that the Respondent failed to abide by an agreement of the August 21, 2006 ARD committee to maintain the child in the *** grade through the first six-weeks

grading period of the 2006-07 school year. Under the IDEA, a school district must implement the child's IEP as soon as possible following an ARD committee meeting.⁶ This would reasonably include a duty to implement any ARD committee consensus items as soon as possible following the meeting.

The Petitioner failed to establish by a preponderance of evidence that there was any agreement to maintain the child in the *** grade through the first six-weeks grading period. The ARD committee determined that it would review the child's progress at the end of the first six-weeks grading period and reconvene if necessary, but this is not the same as agreeing that the child's grade level assignment would remain unchanged for the first six weeks.

In conclusion, I find that the Respondent prevails on Issue No. 1.

Parent Participation in Meeting

The Petitioner's second allegation is that the Respondent failed to provide notice of and failed to permit the parent to attend and participate in a meeting about the Petitioner at the Petitioner's school on August 23, 2006. Under the IDEA, a school district must afford parents of a child with a disability the opportunity to participate in meetings with respect to the identification, evaluation and educational placement of their child, and the provision of FAPE to their child.⁷ This provision is generally known as the "parent participation in meetings" rule. The U.S. Department of Education, in nonregulatory guidance, has outlined factors to identify which school meetings parents must be notified about and allowed to attend:

"Whether or not a meeting is prearranged is not the deciding factor in determining whether parents would have the right to attend; rather, the fact that the meeting is to discuss and potentially resolve one or more of the issues identified in paragraph [(a)](2) triggers the parents' right to be involved. In practical terms, this means that meetings to which the child's parents must be afforded the opportunity to attend cannot be convened without providing parents with reasonable notice. . . . The right of parents to participate in meetings where the provision of FAPE to their child is being discussed is statutory. The point of the provision is to ensure parents have the opportunity to participate in discussions where substantive decisions regarding their child's education are made – a key principle of the IDEA Amendments of 1997."⁸

Further, the U.S. Department of Education, by regulation, has excluded certain conversations and activities from the definition of meetings to which parents must be notified about and allowed to

⁶ 34 C.F.R. § 300.342(b)(1)(ii) (July 1, 2006).

⁷ 20 U.S.C. § 1415(b)(1); 34 C.F.R. § 300.501(a)(2) (July 1, 2006).

⁸ 64 Fed. Reg. 12607 (1999).

***, b/n/f *** v. RICHARDSON ISD

NO. 272-SE-0806

FINAL DECISION OF THE HEARING OFFICER

PAGE 10 of 18

attend.⁹ These regulatory exceptions are to “reduce unnecessary burden by clarifying what constitutes a ‘meeting.’”¹⁰

On August 23, 2006, the district’s special education director and the child’s guidance counselor had a meeting about the child in the counselor’s office. The parent, who was present on the school campus at the time, became aware of the meeting, asked to be permitted to attend, but was not allowed to do so. The question is whether this meeting was subject to the “parent participation in meetings” rule. Here, after weighing the testimony and evidence, this Hearing Officer finds that the meeting was covered by the “parent participation in meetings” rule and the district violated the rule when it held the meeting without letting the parent take part. The meeting was about the child’s grade level assignment and class schedule. Specifically, the district’s special education director and the child’s guidance counselor changed the child’s grade level assignment from *** grade to *** grade. Further, they modified the child’s class schedule, moving the child from *** grade core classes to *** grade core classes and adding another class they believed would be beneficial for the child.

Under the circumstances of this case, the actions of the special education director and guidance counselor implicate the provision of FAPE to the child and thus subjected the meeting to the “parent participation in meetings” rule’s notice and participation requirements. In this child’s situation, class and course selection had earlier been brought within the ambit of special education and FAPE consideration. For instance, the child’s placement in mainstream classes was the subject of a final order of judgment in a prior request for a due process hearing.¹¹ Further, the child’s ARD committee contemplated courses the child would have to pass for promotion or might take to meet the child’s needs.¹² Hence, when the special education director and guidance counselor unilaterally picked a course they deemed of educational benefit to the child, they usurped decision-making authority the child’s ARD committee had assumed as recently as two days earlier.¹³

The U.S. Department of Education regulatory exceptions did not exempt the August 23, 2006 meeting. Although unscheduled, it went beyond the conversation stage when substantive decisions were made and effectuated by district personnel.

While the district committed a procedural violation of the “parent participation in meetings” rule, this alone is not sufficient for a finding against the Respondent. Under the IDEA, procedural inadequacies must rise to a certain level to constitute a breach of the statute. For there to be a breach of the IDEA, a procedural lapse must: (1) impede the child’s right to FAPE; (2) significantly impede the parents’ opportunity to participate in the decision-making process regarding the provision of FAPE to the child; or (3) cause a deprivation of educational benefits.¹⁴ Here, after weighing the testimony

⁹ 34 C.F.R. § 300.501(b)(2) (July 1, 2006).

¹⁰ 64 Fed. Reg. 12664 (1999).

¹¹ Resp’t Ex. 4-2.

¹² Pet’r Ex. PC 2-4; Resp’t Ex. 8-2, 9-9.

¹³ See Finding of Fact No. 17.

¹⁴ 20 U.S.C. § 1415(f)(3)(E)(ii).

***, b/n/f *** v. RICHARDSON ISD

NO. 272-SE-0806

FINAL DECISION OF THE HEARING OFFICER

PAGE 11 of 18

and evidence, this Hearing Officer finds that none of these conditions are satisfied. The right to FAPE was not impeded. There was not a deprivation of educational benefits. The first and third conditions are elaborated on in the FAPE discussion below.

As to the second condition, the parents' opportunity to participate in the decision-making process regarding provision of FAPE to the child was not "significantly impeded" as required.¹⁵ The exclusion of the parent from a meeting that the parent was entitled to attend was an isolated event. The parent otherwise had the opportunity to participate in several ARD committee meetings and provide input. Indeed, the August 31, 2006 ARD committee meeting where the parent offered both oral and written opinions and information was devoted in part to a review and discussion of the child's grade level assignment and course schedule – the same subject matter as the August 23 meeting. Between the August 23, 2006 meeting and the August 31, 2006 ARD committee meeting, the parent withheld the child from school except for the first two periods of the school day – elective classes not changed. Therefore, the child was not subjected to the course changes before the parent had a forum to address the actions of the special education director and guidance counselor.

In sum, while it was a mistake to hold the August 23, 2006 meeting without notice to the parent and without the parent in attendance, viewed in the overall context of the three conditions outlined above, there is no breach of the IDEA. In conclusion, I find that the Respondent prevails on Issue No. 2.

ARD Committee Meeting of August 31, 2006

The Petitioner's third allegation is that the Respondent failed to conduct a proper ARD committee meeting on August 31, 2006. Specifically, the Petitioner alleges that school members of the ARD committee left the meeting before the parent completed providing input. Under the IDEA and TEA regulations, a school district must afford parents the opportunity to participate in ARD committee meetings.¹⁶ Further, under TEA regulations, at the end of committee meetings, each member must indicate agreement or disagreement with the committee's decisions.¹⁷ Also, any ARD committee member who disagrees with the committee decisions must be offered the opportunity to write a statement.¹⁸

This Hearing Officer finds that there were no procedural irregularities at the August 31, 2006 ARD committee meeting. The parent was provided an opportunity to participate. When the agenda was completed and the committee was at an impasse in resolving the differences between the school and parent over the child's education, the district administrator concluded the meeting and the school members indicated their agreement or disagreement on the ARD report. The parent's refusal to sign at

¹⁵ 20 U.S.C. § 1415(f)(3)(E)(ii)(II).

¹⁶ 34 C.F.R. § 300.345(a) (July 1, 2006); 19 Tex. Admin. Code § 89.1050(h).

¹⁷ 19 Tex. Admin. Code § 89.1050(e).

¹⁸ 19 Tex. Admin. Code § 89.1050(h)(5).

***, b/n/f *** v. RICHARDSON ISD

NO. 272-SE-0806

FINAL DECISION OF THE HEARING OFFICER

PAGE 12 of 18

that point did not oblige the school members to remain. The parent was properly allowed to remain and prepare a written statement that was attached to the ARD report.

In conclusion, I find that the Respondent prevails on Issue No. 3.

Free Appropriate Public Education (FAPE)

The Petitioner's fourth allegation is that the Respondent failed to make available FAPE to the Petitioner. Under the IDEA, a school district's fundamental duty is to provide each child with a disability with FAPE.¹⁹ The question of whether there is a denial of FAPE is examined under a two-part test enunciated by the U.S. Supreme Court in *Board of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982). According to *Rowley*, there is a deprivation of FAPE if a child's program and services are not (1) in compliance with IDEA procedures, and (2) reasonably calculated to enable the child to receive educational benefits.

My analysis concentrates on the second prong of the *Rowley* inquiry. In the Fifth Circuit – which includes Texas – there are four factors to examine when deciding whether or not a child's program and services are reasonably calculated to confer educational benefits. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 253, 26 IDELR ¶ 303 (5th Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).

Individualized Services

Under the first *Michael F.* factor, the IEP for the child must be individualized. This Hearing Officer finds that the child's IEP is tailored to meet the child's needs. The Petitioner's theory at the Due Process Hearing was that the child's alleged multiple disabilities had not been correctly identified and, as a consequence, the child's IEP was not individualized and appropriate.²⁰ Here, the child was evaluated by an independent evaluator in Fall, 2006. The IEE confirmed the district's identification of the child's disability – emotional disturbance. Further, the IEE confirmed that the child does not have any other disabilities under the IDEA. On October 5, 2006, the district held an ARD committee meeting to review the IEE and adopt its recommendations to meet the child's unique needs.

Least Restrictive Environment (LRE)

The second *Michael F.* factor is whether the child's program is administered in the least restrictive environment (LRE). This Hearing Officer finds that the district served and planned to serve the child in the LRE. The IEE found that the child needs as mainstream a placement as possible to avoid self-perception as different and cognitively incapable. The district's actions were in accord with this IEE finding. The district had the child placed in general education classes. The October 5, 2006

¹⁹ 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.121, 300.300 (July 1, 2006).

²⁰ Hr'g Tr. at 352 – 54 (vol. 1) (Oct. 18, 2006).

***, b/n/f *** v. RICHARDSON ISD

NO. 272-SE-0806

FINAL DECISION OF THE HEARING OFFICER

PAGE 13 of 18

ARD committee planned to continue the inclusion placement with a “helping teacher” going into the child’s general education classrooms to provide necessary support.

Key Stakeholders

Under the third *Michael F.* factor, the child’s key stakeholders must work in a coordinated and collaborative manner. This Hearing Officer finds no problems under this factor. There was no evidence produced at the Due Process Hearing to suggest that communication and collaboration among the school staff and service providers were faulty. While the parent had on-going disagreements with the district, the parent remained engaged in the ARD process.

Educational Benefit

The fourth *Michael F.* factor is whether the child’s IEP is reasonably calculated to generate educational benefits. This Hearing Officer finds that the district developed a plan reasonably calculated to offer FAPE to the child. My analysis begins by recognizing that the child in this case is a young adolescent with an emotional disturbance. According to the independent evaluator, the child has succumbed to negative and defeatist mentation. Consequently, the child is "non-resilient" and without a positive self-image, identity and attitude to engage socially and academically in school. Thus, the child's needs are in the realm of emotional development.

This case centers around the district’s determination that the child should be essentially retained in the *** grade for the 2006-07 school year. The parent’s main concern is that retaining the child in *** grade this year would retard the child’s emotional development and that retention would be an emotional setback the child is not prepared to cope with. This Hearing Officer’s assessment of the issue turns on whether the district's plan for retaining this child in *** grade core courses, including the October 5, 2006 proposed IEP, is appropriately calculated to take into account the child's lack of self-esteem and emotional resiliency.

After weighing the testimony and evidence, including the views of the independent evaluator who examined the child in Fall, 2006, this Hearing Officer finds that the district’s plan adequately takes into account the child’s emotional development needs. The district has a strategy to assist the child to cope with retention both academically and emotionally. The IEE recommendations also adopted make the success of the plan reasonably plausible, which is the IDEA requirement. While the parent is very apprehensive about the child being retained, the preponderance of the evidence supports the district’s proposal.

This Hearing Officer finds that the *Michael F.* factors in the FAPE analysis weigh in favor of the Respondent. In conclusion, I find that the Respondent prevails on Issue No. 4.

Private School Reimbursement Request

As relief, the Petitioner seeks reimbursement for a private school placement. Under the IDEA, the question is not whether the private school is superior to the district's school. In other words, there is no comparative analysis. Rather, a two-part test is applied: first, whether the district can offer an appropriate education to the child and, if not, second, whether the private school can do so. Here, as discussed above, this Hearing Officer finds that the Respondent can offer an appropriate education to the Petitioner. The reimbursement request is thus denied.

Petitioner's Motion for Sanctions and Penalties

On January 19, 2007, the Petitioner filed "Motion for Sanctions and Penalties for Respondent's Acts of Contempt of the Hearing Officer's Orders, for Bearing of False Witness, for Perjury In Fact, for Subordination Of Perjury, and to be Awarded Prevailing Party Status Due to Respondent's Procedural [sic] Violations and Procedural Inadequacies [sic] Under Section 615 (f)(3)(E)(i)(ii)." The Petitioner's motion focuses on the testimony about the circumstances surrounding the August 23, 2006 meeting at the child's school. After reviewing the testimony in question and the Petitioner's motion, this Hearing Officer finds that the motion should be denied.

Conclusions of Law

After due consideration of the foregoing findings of fact, I make the following conclusions of law:

1. The Respondent did not fail to implement the August 21, 2006 ARD committee meeting. 34 C.F.R. § 300.342(b)(1)(ii) (July 1, 2006).
2. The Respondent improperly excluded the Petitioner's parent from a school meeting on August 23, 2006. The exclusion, however, did not impede the Petitioner's right to FAPE, significantly impede the Petitioner's parent's opportunity to participate in the decision making process regarding the provision of a FAPE, or cause a deprivation of educational benefits. Thus, there was no breach of the IDEA. 20 U.S.C. § 1415(f)(3)(E)(ii); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003).
3. The Respondent appropriately held an ARD committee meeting on August 31, 2006. 34 C.F.R. § 300.345(a) (July 1, 2006).
4. The Respondent did not deny the Petitioner a FAPE. 20 U.S.C. § 1415(f)(3)(E)(i).

Order

Based upon the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED THAT:

1. All relief sought by the Petitioner shall be and is **DENIED**.

SIGNED this 29th day of January, 2007.

/s/ Steven R Aleman _____
Steven R. Aleman
Special Education Hearing Officer

Notice

Any party aggrieved by the findings and decision of this Hearing Officer has the right to bring a civil action seeking review in a state or federal court of competent jurisdiction. The party bringing the civil action shall have no more than 90 days from the date of this Decision to file the civil action. 20 U.S.C. § 1415(i)(2).

TEA DOCKET NO. 272-SE-0806

***, b/n/f ***	§	
Petitioner	§	BEFORE A
	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
RICHARDSON	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

SYNOPSIS

ISSUE 1: Whether the Respondent failed to abide by an alleged agreement of the ARD committee of August 21, 2006 to maintain the Petitioner in the *** grade through the first six-weeks grading period (Fall, 2006 semester).

CITE: 34 C.F.R. § 300.342 (July 1, 2006)

HELD: For the Respondent. The ARD committee did not agree to maintain the Petitioner in the *** grade through the first six-weeks grading period of the 2006-07 school year.

ISSUE 2: Whether the Respondent failed to provide notice of and failed to permit the parent to attend and participate in a meeting about the Petitioner at the Petitioner's school on August 23, 2006.

CITE: 34 C.F.R. § 300.501 (July 1, 2006)

HELD: For the Respondent. While there was a procedural violation of 20 U.S.C. § 1415(b)(1) and 34 C.F.R. § 300.501 (July 1, 2006) because the parents should have received notice of, and had the opportunity to attend, the August 23, 2006 meeting, the procedural violation did not impede the child's right to FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. Consequently, the procedural inadequacy does not reach the threshold for a breach of the IDEA per 20 U.S.C. § 1415(f)(3)(E)(ii).

ISSUE 3: Whether the Respondent failed to conduct a proper ARD committee meeting on August 31, 2006.

CITE: 34 C.F.R. § 300.345 (July 1, 2006)

HELD: For the Respondent. The ARD committee afforded the parent the opportunity to participate in the meeting and prepare a written statement of disagreement.

ISSUE 4: Whether the Respondent failed to make available FAPE to the Petitioner on or after August 14, 2006 (Fall, 2006 semester)).

CITE: 34 C.F.R. § 300.300 (July 1, 2006)

HELD: For the Respondent. The district's proposed IEP and placement were individualized and reasonably calculated to confer educational benefit to the child in the LRE.