

STUDENT b/n/f PARENT	§	BEFORE A SPECIAL EDUCATION
	§	
VS.	§	HEARING OFFICER
	§	
SAN ANTONIO INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF HEARING OFFICER

Statement of the Case

Student, by her next friend and parent, Parent, (hereinafter “Petitioner” or “Student”), brought a complaint pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1400, et seq., complaining of the San Antonio Independent School District (hereinafter “Respondent,” “the District,” or “SAISD”). Petitioner was represented by her attorney, Matthew Finch. Respondent was represented by Stacy Ferguson, attorney with the firm of Escamilla and Poneck, Inc.

Petitioner filed a request for hearing on November 5, 2004. By agreement of the parties, the pre-hearing which began on November 19, 2004 was continued to December 2, 2004. Petitioner filed her First Amended Petition on December 1, 2004. On December 9, 2004, the parties entered into a Rule 11 Agreement to postpone the deadline for disclosure of documents in order for Respondent to deliver additional records to Petitioner. The parties filed an Agreed Motion for Continuance on December 14, and the disclosure deadline was scheduled for January 5, 2005. The hearing date was continued to January 12, 2005.

On January 3, 2005, Petitioner filed a Motion for Continuance of Deadline for Disclosure requesting that the deadline be set for January 7, which motion was denied by the hearing officer. On January 5, Petitioner filed a Motion to Compel Discovery and amended that motion on January 11. The parties convened by telephone conference on January 11, 2005 to argue the Motion to Compel Discovery. During the conference, a continuance of the hearing was offered to Petitioner in order to allow time to review certain documents that Respondent had not delivered to Petitioner’s attorney. Without objection from Respondent, Petitioner was further

given the opportunity to amend her petition prior to the hearing date. Petitioner filed her Second Amended Petition on January 11. Petitioner declined the offer of continuance and chose to proceed with the due process hearing on January 12.

On January 12, 2005, at the onset of the hearing and at the offer of Respondent, the hearing officer again gave Petitioner the opportunity to continue the due process hearing in order to allow more time to review the documents that were untimely submitted by Respondent. Again, Petitioner elected to go forward with the hearing. Following the presentation of each party's case, the parties filed written closing arguments and, by their agreement, the decision in this matter was to be issued on or before February 25, 2005, in compliance with the forty-five day rule.

Issues and Requested Relief

Petitioner alleged that Respondent failed to provide services that were of meaningful benefit to her and denied her a free, appropriate public education ("FAPE") under the Individuals With Disabilities Education Act ("IDEA") in that it:

1. Failed to timely assess Petitioner with a Full and Individual Evaluation ("FIE") at the initial 2003 Admission, Review, and Dismissal ("ARD") and exempted her from all areas of the TAAS/TAKS despite the lack of a current assessment;
2. Failed to request consent for a medical evaluation or to provide an Other Health Impairment ("OHI") form at the initial ARD of 2003;
3. Failed to perform a Functional Behavioral Assessment;
4. Failed to conduct a Manifestation Determination prior to removing Petitioner to an Alternative Education Placement, ("AEP"), and inappropriately placed Petitioner in the ***;
5. Inappropriately assigned Petitioner to an AEP in excess of ten (10) days despite the absence of drug or weapons issues;
6. Failed to convene an ARD when Petitioner was consistently absent during the 2004 spring semester and the 2004-2005 school year;
7. Failed to provide Petitioner with appropriate related services; specifically, the March, 2004 ARD committee recommended a counseling referral to be completed within 90 days, and the District has not done so;
8. Held an ARD meeting in November, 2004 without providing notice to Petitioner's parent;
9. Failed to address Petitioner's Attention Deficit Hyperactivity Disorder ("ADHD") from 1997;
10. Failed to address Petitioner's physical and occupational needs from 2000; and
11. Failed to implement an appropriate Behavior Intervention Plan ("BIP") and Individual Education Plan ("IEP") for Petitioner since 2000.

Petitioner requested the following relief in this proceeding:

1. Compensatory education and related services to address Petitioner's disabilities to the greatest extent possible to ensure that she succeeds, including but not limited to private tutoring, an independent assessment, assistive technology, and/or counseling;
2. Placement of Petitioner at *** ** School or *** **, whichever would best serve her at the discretion of Petitioner and her family;
3. An Independent Evaluation to assess all areas of Petitioner's known and suspected disabilities;
4. Parent training in the area of Petitioner's disabilities;
5. An order that an Admission, Review and Dismissal ("ARD") meeting be convened and an appropriate IEP and BIP be developed to meet Petitioner's unique needs;
6. Sanctions against Respondent for withholding school records when requested and for failure to produce records until ordered to do so by the hearing officer;
7. Reimbursement of all costs and attorneys fees; and
8. Any other relief to which Petitioner may be entitled.

Based upon the evidence and argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. Student is a * year old, * grade student who resides with her Parent in the SAISD.
2. Student has a severe emotional disturbance ("ED") and is eligible to receive special education services. [Petitioner's Exhibit 6]
3. SAISD is a political subdivision of the State of Texas and a duly incorporated independent school district responsible for providing Student a free appropriate public education in accordance with the IDEA, 20 U.S.C.A. §1400, *et seq.*, and the rules and regulations promulgated pursuant to the IDEA.
4. During some of Student's years at SAISD, the District classified her as OHI due to a diagnosis of ADHD; however, it no longer classifies her as OHI. [Tr. 244]
5. Student has several physical problems including fibromyalgia, Raynaud's phenomenon, left finger cellulites, and scleroderma. She experiences tightness of skin, back, neck and shoulder pain, headaches, and poor circulation in her hands causing them to become numb at times. [Tr. 22, 93-95]
6. Student received counseling services from *** in the fall, 2002. [Respondent's Exhibit 40]
7. In December, 2003, it was reported that Student had stopped private counseling and SAISD offered counseling services. Student's Parent declined the offer, opting to obtain counseling through outside sources. [Respondent's Exhibit 4]
8. Following a December 11, 2003 incident involving Student at *** ** School, a Manifestation Determination Review ("MDR") was held. The MDR committee determined that Student's behavior was a manifestation of her disability and made a schedule change for Student. [Petitioner's Exhibit 4]

9. On January 20, 2004, Student was involved in another incident at ***during which she was hit on the head with a trash can. [Respondent's Exhibit 16]
10. At the March 4, 2004 ARD, Student's placement remained at ***. [Respondent's Exhibit 3; Petitioner's Exhibit 3]
11. *** is a special education campus divided into two sides. One side is a disciplinary alternative education campus and the other side is a special education campus that provides a continuation of services for students who are unsuccessful on a regular campus and need a more structured school environment. At the March 30, 2004 ARD meeting, the committee, with Student's Parent's agreement, placed Student in the placement side of ***. [Petitioner's Exhibits 2 and 4, Respondent's Exhibit 2; Tr. 249]
12. Student's ADHD is noted in the ARD documents. [Petitioner's Exhibits 3, 4 and 6; Respondent's Exhibits 3,4, and 38]
13. Student's intelligence quotient has remained stable during her school years at SAISD, ranging from ** to **. [Tr. 44-47]
14. Current testing shows Student's grade equivalency to be ** in mathematics and ** in reading. [Respondent's Exhibit 33]
15. During the 2003-2004 school, Student was a *** at *** ** School. Initially she was in some resource classes and some mainstream classes. In order to help modify some inappropriate behaviors, the ARD committee determined that Student should be placed in a BAC class where the class size is smaller and there is more supervision. At the March 30, 2004 ARD, the committee placed Student at ***. [Petitioner's Exhibit 2; Tr. 169-175]
16. The District conducted a Functional Behavioral Assessment on May 7, 2003 and on November 30, 2004. [Respondent's Exhibits 33 and 35; Tr.50-51, 61-62, and 65]
17. ARD meetings were convened for Student on March 4, 2004, March 30, 2004, September 22, 2004, and November 11, 2004. [Respondent's Exhibits 1-3 and 33; Petitioner's Exhibit 1-3]
18. The District provided notice of the November, 2004 ARD to Student's parent. [Respondent's Exhibit 33; Tr. 98 and 135]
19. The District conducted a three-year reevaluation on September 30, 2002. [Petitioner's Exhibit 17; Tr. 39-42]
20. On March 26, 2004, the district conducted a Full and Individual Evaluation of Student. [Petitioner's Exhibit 6; Respondent's Exhibit 6]
21. In 2003, the District exempted Student from all areas of the TAAS/TAKS. [Petitioner's Exhibit 2; Respondent's Exhibit 2]
22. The March 4, 2004 ARD committee determined that there was a need for a counseling referral. The referral was to be completed within 90 days. The referral for counseling assessment was completed on March 4, 2004. The Licensed Specialist in School Psychology ("LSSP") recommended counseling services in an Eligibility Report dated March 4, 2004. The March 30 ARD minutes state, "The counseling referral for Student has been submitted." [Petitioner's Exhibits 3 and 6, Respondent's Exhibits 2 and 28]
23. The first attempt to provide counseling services to Student was September 24, 2004. At hearing date, Student had received one counseling session on October 19, 2004. [Respondent's Exhibit 28; Tr. 224]
24. Student does not need assistive technology devices or services. [Petitioner's Exhibit 6]
25. Prior to her placement at ***, Student had a series of behavioral incidents during the 2003-2004 school years at *** ** School. [Respondent's Exhibits 15-20]

26. Student had some behavioral incidents at ***; however, her behaviors are improving. [Respondent's Exhibits 22-24; Tr. 236]
27. From September, 2002 to November, 2004, Student's competency levels have been above a *** grade level. [Respondent's Exhibits 2,3, 33, 35, 38]

Discussion

Statute of Limitations Issue

Petitioner filed her request for a due process hearing on November 5, 2004. Respondent argues that all claims falling outside the one year statute of limitations should be dismissed.

The relevant rule in Texas is:

Effective with requests for due process hearings filed on or after August 1, 2002, a parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request. 19 Tex. Admin. Code §89.1151(c)

This rule has been approved by the Texas Court of Appeals. Texas Advocates Supporting Kids with Disabilities v. Texas Education Agency, 112 S.W. 3d 234 (Tex. Ct. App.-Austin 2003). The one year statute of limitations rule applies to Petitioner's case since it was filed after the effective date. Therefore, any of Petitioner's claims that arose before November 5, 2003 are barred by the one year statute of limitations.

Did the District fail to timely assess Petitioner with a Full and Individual Evaluation at the initial 2003 ARD and exempt her from all areas of the TAAS/TAKS despite the lack of a current assessment?

The IDEA requires a school district to reevaluate each child with a disability at least once every three years. The reevaluation is called a triennial evaluation. The group that is responsible for the reevaluation is charged with the responsibility of reviewing existing data and identifying what additional data, if any, is needed to determine whether the child continues to have a disability, the present levels of performance and educational needs of the child, whether the child continues to need special education services, and whether any modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in his/her IEP. 34 CFR § 300.533 and § 300.536.

The ARD committee conducted a three year re-evaluation of Student on September 30, 2002. The committee, with the agreement of Student's parent, determined that no additional data was required. Since the District conducted a re-evaluation of Student in September, 2002, there was no failure by the District to timely assess Student with a Full Individual Evaluation at the initial 2003 ARD meeting.

Did the District fail to request consent for a medical evaluation or to provide an OHI form at the initial ARD of 2003?

Although at one time in Student's educational years at the District, she was classified as OHI due to ADHD, for some reason that was not clearly explained, the District now only classifies her as ED. The District did not request consent for a medical evaluation or provide an OHI form at the initial ARD of 2003.

Did the District fail to perform a Functional Behavioral Assessment?

The ARD committee conducted a Functional Behavioral Assessment of Student on May 7, 2003. The document is not titled as such, but the necessary process for such an assessment was completed. The committee considered Student's behaviors and the factors that preceded such behaviors.

On November 30, 2004, the ARD committee conducted another FBA using a form entitled as such. Although Respondent used different forms for the two assessments, the process that the ARD committee used was consistent and sufficient for the performance of a Functional Behavior Assessment.

Did the District fail to conduct a MDR prior to removing Petitioner to the *** and did it inappropriately assign Petitioner to an AEP in excess of ten days despite the absence of drug or weapons issues?

Following a December, 2003 incident involving Student at ***** School, the District conducted a MDR. The MDR committee determined that Student's conduct was a manifestation of her disability. The ARD committee changed Student's schedule and modified her BIP.

On January 20, 2004, Student was involved in another incident referred to as the "trash can incident." After that time, Student expressed fear of the students at ***. Student's Parent kept her out of school and decided to withdraw her from school. The March 4 ARD placed

Student at ***. On March 30, 2004, with the agreement of Student's Parent, the ARD committee determined to reassign Student to what is called the placement side of *** where she currently attends school. Although there is a discipline side of the *** campus, Student has no contact with that portion of the campus.

The IDEA requires that a manifestation determination review take place when a district changes the placement of a child with disabilities for disciplinary reasons. 34 CFR § 300.519-§300.523. Student is not in the disciplinary side of the center; therefore, no MDR was necessary and Student was not inappropriately assigned to the placement side of ***.

Did the District fail to convene an ARD when Petitioner was consistently absent during the 2004 spring semester and the 2004-2005 school year?

The IDEA requires that ARD meetings be called to review and revise IEPs not less than annually to address any lack of expected progress toward the annual goals, the results of any reevaluation conducted, information about the child provided to, or by, the parents, the child's anticipated needs, or other matters. 34 CFR §300.343.

At least in part, due to her physical illnesses, Student has had many absences from school. During the time period in question, the District did not convene an ARD because of her absences. However, two ARDs were held in the spring semester, 2004, and two ARDs were held in the fall semester, 2004. The record indicates that Respondent was aware of Student's health problems and necessary absences and made some accommodations for her.

Did the District fail to provide Petitioner with appropriate related services; specifically, did the District fail to complete within 90 days the counseling referral that was made by the March, 2004 ARD committee?

Student has severe emotional problems and a school history of misconduct and aggressive behavior. She has a low stress tolerance and limited self-control. During the 2003-2004 school year, Student began exhibiting inappropriate behaviors of a sexual nature. She had numerous disciplinary reports for disruptive behavior.

On March 4, 2004, the ARD committee determined that a counseling referral was needed for Student. The Eligibility Report for Counseling was completed March 4, 2004. The referral for counseling assessment was submitted and the evaluation was completed within the required 90 days. Attempts to schedule counseling for Student began September 24, 2004.

Did the District fail to provide Student's Parent with notice of the November, 2004 ARD meeting?

The IDEA requires that a school district notify parents of an ARD meeting to ensure that a parent is present at the meeting or are afforded the opportunity to participate. 34 CFR §300.345. During the due process hearing, Petitioner's Parent testified that she received notice of the November, 2004 ARD meeting. Other evidence confirmed that the District provided notice of the meeting to Student's parent.

Did the District fail to address Student's ADHD diagnosis from 1997?

Although the District failed to classify Student as ADHD, its staff testified that the ADHD was taken into consideration in the development and implementation of her IEP. Respondent's witness noted that Student's IEPs addressed issues that students with ADHD encounter such as an inability to stay focused and an inability to interact appropriately with peers. Numerous ARD documents reflected Student's ADHD. Petitioner presented no evidence in contravention of such testimony.

Did the District fail to address Petitioner's physical and occupational needs from the year 2000 to the present?

Student has certain physical conditions that affect the circulation in her hands and causes her to have tightness of the skin. Further, she experiences shoulder and back pain. Petitioner's physical conditions are treated with medication. The ARD documents reflect that the committee regularly considered her physical and occupational needs and determined that she did not need such services. There was no credible evidence presented to show that Petitioner needs any physical or occupational therapy.

Did the District fail to implement appropriate BIPs and IEPs for Petitioner from the year 2000 to the present?

An appropriate placement under IDEA is one that enables a student to obtain "some benefit" from his education. While schools are not required to provide all services from which a

child might benefit, they must provide personalized instruction with sufficient support services to permit the student to receive an “educational benefit,” i.e., a program that is meaningful and is reasonably calculated to produce progress rather than regression or trivial educational advancement. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Houston Independent School District v. Bobby R., 200 F.3d 341 (5th Cir. 2000); Cypress-Fairbanks Independent School District v. Michael F., 118 F.3d 245 (5th Cir. 1997).

Based on information contained in ARD documents, the following table summarizes Student’s goals in math and English and her competencies in reading and math from February 20, 2002 through November 30, 2004.

ARD Date	Math IEP Goal Level	Written Language/English IEP Goal Level	Competencies
2/20/02 Annual Review	* grade	* grade	Reading: * Math: * (Source: class performance)
9/30/02 Annual Review	No measurable annual goal given; short term objectives- * grade	No measurable annual goal given; short term objectives-* grade	Reading: * Math: * (Source: Observation and Performance)
5/7/03 Annual Review	* grade	* grade	
11/13/03	* grade	* grade	
3/30/04 Annual Review	• grade	* grade	Reading: * Math: * (Source: reevaluation 3/26/04)
11/30/04 Review and Revise IEP and update in related services	Congruence and the geometry of size: The student extends measurement concepts to find area, perimeter, and volume in problem situations. (Instructional area: Math-Geometry)	Given reading and writing/research assignments, student will respond to increasingly higher level questions and use increasingly higher level vocabulary and correct grammar.	Reading: * Math: * (Source: STAR dated 11/30/04)

Student’s reading competencies have been above a *** grade level since the fall, 2002. Her math competencies were higher than *** grade from the fall, 2002 until November, 2004 when they fell from a * level to a * level. Since September, 2002, Student’s annual IEP goals remained at levels below her competencies with the exception of her math competency in November, 2004.

The November 30, 2004 ARD documents indicate that the District made an effort to base the annual goals on Student's present level of performance. At that time, Student had spent approximately 2 ½ years with IEP goals at the * grade level.

In December, 2002, Student transferred to ***** Charter School and returned to SAISD in April. At a May, 2003 ARD, the committee wrote new goals for Student in language and math at a * grade level. Because of a hospitalization, the committee discussed altering Student's school day after she obtained a doctor's release.

The September, 2003 ARD committee placed Student in a BAC/Student with resource setting. In November, the committee assigned Student to BAC unit for five periods and to a regular education classroom for two electives. It lowered her goals to * grade level. In December, after a behavioral incident, the District conducted its MDR and, after learning that Student had stopped receiving outside counseling, offered the service to Student's Parent who declined the offer in favor of seeking counseling from an outside service.

At all relevant times, instructional modifications and BIPs were in place for Student. Further, Student's chronic absences were noted in the ARD documents.

The IDEA requires a school district to review a child's IEP periodically, but not less than annually, to determine whether the annual goals for the child are being achieved. The district should revise an IEP to address any lack of expected progress toward the annual goals and the results of any reevaluation conducted. 34 CFR §300.343.

Based on the evaluation data, it does not appear that Student obtained some benefit in the areas of math and written language/English. Although it was reported that Student made good grades in the fall, 2004, her goals were still at the * grade level. At the November 13, 2003 ARD meeting, Student's goals in English and math were reduced from * to * grade level. The District should have known at that time that her previous IEPs were not reasonably calculated to produce progress rather than regression or trivial educational advancement. Although the District made regular classroom reassignments, there was no credible evidence that other academic support services were considered.

There was no credible evidence presented that supported Petitioner's position that Respondent failed to implement appropriate BIPs for Student. Petitioner failed to meet her burden of proof under Tatro in regard to her BIPs.

Conclusions of Law

1. Student is a student who is eligible for special education and related services under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The San Antonio Independent School District is the local education agency responsible for the provision of Student's free appropriate public education. 20 U.S.C. §1401(a)(18).
3. Petitioner's claims arising outside the applicable one year statute of limitations period in Texas are outside the jurisdiction of the special education hearing officer and must be dismissed. Claims arising prior to November 5, 2003 are outside the applicable one year limitation period. 19 Tex. Admin. Code §89.1150(c); Texas Advocates Supporting Kids with Disabilities v. Texas Education Agency, 112 S.W. 3d 234 (Tex. Ct. App.-Austin 2003).
4. Respondent timely reevaluated Student and was not required to perform a Full and Individual Evaluation ("FIE") at the initial 2003 ARD meeting. 34 CFR § 300.533 and § 300.536.
5. SAISD failed to request consent for a medical evaluation or to provide an Other Health Impairment ("OHI") form at the initial ARD of 2003. However, SAISD's failure to request a consent for medical evaluation or to provide an OHI form at the initial ARD of 2003 did not deny FAPE to Petitioner. Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Cypress Fairbanks Independent School District v. Michael F., 118 F.3d 245 (5th Cir. 1997).
6. Petitioner did not meet her burden of proof regarding a failure by SAISD to perform a Functional Behavioral Assessment. Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984).
7. Petitioner did not meet her burden of proof regarding a failure by SAISD to conduct a Manifestation Determination prior to removing Petitioner to an Alternative Education Placement, ("AEP"). Further, Petitioner did not meet her burden of proof regarding an inappropriate placement of Petitioner in the ***. Petitioner was not removed from ***** School and inappropriately placed in *** for disciplinary reasons, thus, no MDR was required. 34 CFR § 300.519-§300.523; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984).
8. Petitioner failed to meet her burden of proof that SAISD inappropriately assigned her to an AEP in excess of ten (10) days despite the absence of drug or weapons issues. 34 CFR §300.520; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984).
9. Petitioner did not meet her burden of proof regarding a failure of SAISD to convene an ARD when Petitioner was consistently absent during the 2004 spring semester and the 2004-2005 school year. 34 CFR §300.343; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984).

10. SAISD submitted a counseling referral within the required 90 days as stated by the ARD committee. Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984).
11. Respondent provided notice to Petitioner's parent of the November, 2004 ARD meeting. 34 CFR §300.345.
12. SAISD appropriately determined that Petitioner does not need physical or occupational therapy. 34 CFR §300.24; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984).
13. SAISD implemented an appropriate BIP for Petitioner. Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984).
14. SAISD failed to implement appropriate IEPs for Student and such failure denied Student FAPE. SAISD should have known that Student's IEPs in math and English were not appropriate in November, 2003. 34 CFR § 300.300 and § 300.347; 19 T.A.C. §89.1055; Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Cypress Fairbanks Independent School District v. Michael F., 118 F.3d 245 (5th Cir. 1997); Houston Independent School District v. Bobby R., 200 F.3d 341 (5th Cir. 2000).

Order

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, and in light of the District's failure to provide Student with an educational program that is meaningful and is reasonably calculated to produce progress rather than regression or trivial educational advancement, Respondent is ordered to provide Petitioner with one (1) year of compensatory services in the form of 35 weekly, one-to-one tutoring sessions in math and written language/English. Respondent is ordered to convene an Admission, Review, and Dismissal Committee meeting at the earliest practicable time, but no later than March 18, 2005 at which time the ARD committee shall do the following:

1. Review Student's past math competencies and their fluctuations and consider re-evaluation of Student's competency in math;
2. Develop an appropriate IEP for Student in the areas of math and written language/English based on her present level of performance;
3. Provide the necessary support services to enable Student to receive an educational benefit from her math and written language/English IEP;

4. Schedule and provide no less than 35 weekly, one-to-one tutoring sessions for Student in conformity with her individual needs in math and written language/English; and
5. With Student's Parent, consider the need for evaluation of Student for ADHD.

All other relief not specifically granted is hereby DENIED.

The district shall timely implement this Decision within 10 school days in accordance with 19 T.A.C. §89.1185(q) and 34 C.F.R. §300.514. The following must be provided to the Division of **Special Education Programs and Complaints** at the Texas Education Agency and copied to the Petitioner within 15 school days from the date of this Decision: 1.) Documentation demonstrating that the Decision has been implemented; or 2.) If the timeline set by the Hearing Officer for implementing certain aspects of the Decision is longer than 10 school days, the district's plan for implementing the Decision within the prescribed timeline, and a signed assurance from the superintendent that the Decision will be implemented.

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

SIGNED this 25th day of February, 2005.

_____/s/_____
Brenda Rudd
Special Education Hearing Officer

Issue: Whether Respondent failed to convene an ARD when Petitioner was consistently absent during the 2004 spring semester and the 2004-2005 school year.

Held: For Respondent

Citation: 34 CFR §300.343; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984)

Issue: Whether Respondent failed to provide Petitioner with counseling as a related service following a March, 2004 ARD that recommended a counseling referral to be completed within 90 days.

Held: For Respondent

Citation: 34 CFR § 300.24; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984)

Issue: Whether Respondent held the November, 2004 ARD without providing notice to Student's parent.

Held: For Respondent

Citation: 34 CFR §300.345; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984)

Issue: Whether Respondent failed to address Petitioner's physical and occupational needs from the year, 2000.

Held: For Respondent

Citation: 34 CFR §300.24; Tatro v. State of Texas, 703 F. 2d 823 (5th Cir. 1984)

Issue: Whether Respondent failed to implement appropriate BIPs and IEPs for Petitioner.

Held: For Petitioner in regard to IEPs; For Respondent in regard to BIPs

Citation: 34 CFR § 300.520, § 300.347 and § 300.300; 19 T.A.C. §89.1055; Board of Education of the Hendrick Hudson Central School District v. Rowley, 458 U.S. 176 (1982); Cypress Fairbanks Independent School District v. Michael F., 118 F.3d 245 (5th Cir. 1997); Houston Independent School District v. Bobby R., 200 F.3d 341 (5th Cir. 2000);