

**BEFORE A SPECIAL EDUCATION
HEARING OFFICER FOR THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

*****, b/n/f
*** & ***,
Petitioner**

v.

**NORTHSIDE
INDEPENDENT SCHOOL
DISTRICT,
Respondent**

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DOCKET NO. 245-SE-0606

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DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner, acting through his parents as next friend, requested a due process hearing pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, as amended. The issues for hearing were as follows:

1. Failure of the student to demonstrate adequate yearly progress in areas related to the student’s disabilities, including writing and reading;
2. Failure of Respondent to provide accurate information and documentation concerning the student’s present level of functioning, the student’s reading assistance, or the student’s progress to the parents;
3. Failure of school instructional personnel to adequately communicate between teacher and parent regarding writing assignment and strategies;
4. Failure to provide homework or information to the student during the last two months of the 2005-2006 school year, including failure to respond to the parents’ request as to why the student did not receive homework;
5. Failure of Respondent to provide information on Dysgraphia to the parents;
6. Failure to provide a graphic organizer, as provided in the student’s Individualized Educational Program (“IEP”);
7. Failure to provide a behavioral baseline for the student at the request of parents during the 2005-2006 school year;
8. Inappropriate placement of the student during lunch periods during the 2005-2006 school year without decision of the Admission, Review, and Dismissal Committee (“ARDC”) until February 2006;
9. Continued inappropriate placement of the student during lunch after decision of the February 2006 ARDC by the student’s teacher;
10. Failure to provide disciplinary records, parental access to records and evaluations of the student, and failure to respond to repeated parental requests for the records;
11. Failure to follow the student’s Behavioral Intervention Plan (“BIP”) by not providing positive reinforcement for the student;
12. Failure to send a copy of the student’s behavior contract home each school day for parental signature to monitor the student’s behavior;

13. Use of disciplinary actions that the student's February 2006 ARDC deemed ineffective, and inappropriate discipline of the student after February 2006 for behavior which was a manifestation of the student's disability;
14. Failure to implement interventions or modifications during the 2005-2006 school year to reduce conflicts with the student and the student's classmates, including proper intervention when the student was being bullied by classmates and failing to follow Respondent's anti-bullying policy for the student;
15. Denial of a Free Appropriate Public Education ("FAPE") to the student in the least restrictive environment ("LRE") during the student's transition periods between classes without attempting other behavior modifications to address behavioral disruptions during transition periods;
16. The student exhibited increased anxiety and anxiety-related physical complaints during Spring 2006, following actions of school personnel towards the student that significantly worsened the student's anxiety disorder;
17. Failure to address the student's writing remediation needs, reading help, or behavioral needs during the 2005-2006 school year, resulting in a denial of FAPE to the student;
18. Failure to specifically describe services to be provided to the student in writing to ensure commitment of Respondent's resources to enable the student to receive needed special education and related services;
19. Inappropriate modification of the student's BIP by the ARDC on May 17, 2006, without objective and adequate justification for the decision;
20. Failure to allow the student's parents to participate and be informed of the student's special education program;
21. Failure of Respondent to provide a minimal requirement of an educational benefit for the student.

As relief, Petitioner seeks the following relief from Respondent:

1. An Order stating Petitioner was denied FAPE by Respondent's failure to place the student in the LRE;
2. Provision of compensatory special education or related services, including compensatory writing and reading services, for the student;
3. As previously agreed to by Respondent, the completion and review of an Assistive Technology Evaluation to determine the student's assistive technology needs, including whether the student needs keyboarding instruction;
4. Determination and maintenance of a behavioral baseline for the student to aid in monitoring the student's behavioral progress;
5. Convene an ARDC meeting to address the student's BIP and IEP and LRE, including:
 - a) assistance of a one-on-one aide for writing instruction and behavior intervention during classroom transition periods; and,
 - b) specific behavioral objectives for the 2006-2007 school year.
6. In-service training for Respondent's staff delivering direct services to the student on how to provide and serve the needs of students with anxiety disorders and proper communication skills between staff and parents;
7. Provision of an appropriate school environment for the student by use of positive reinforcement and appropriate behavioral consequences; and,
8. Provision of compensatory counseling services for the student.

HELD, for Respondent.

Procedural History

Petitioner (“Student”) filed the above-captioned request for due process with the Texas Education Agency on June 22, 2006. The Hearing Officer issued an order on June 23, 2006, setting July 6, 2006, as the apparent statutory resolution-meeting deadline and setting the hearing on July 28, 2006, following the required 30-day resolution period. Northside ISD (“Respondent” or “NISD”) did not file an objection to the sufficiency of Petitioner’s Request for Due Process. The Decision Due Date was set for September 5, 2006.

During the pendency of this docket, the parties participated in four telephonic pre-hearing conferences. The Hearing Officer granted three continuance requests for good cause shown. Petitioner sought and was granted leave to amend his complaint on September 1, 2006, to clarify relief sought in this proceeding. On September 25, 2006, the student’s ARDC convened and discussed some of the educational issues in Petitioner’s Request for Due Process. On October 4, 2006, Respondent filed its Motion to Dismiss (“MTD”), seeking dismissal based on Respondent’s belief that the ARDC had agreed to provide Petitioner’s requested relief in this dispute. Petitioner filed his Response to Respondent’s MTD on October 5, 2006, contending that Petitioner’s claims for hearing were not resolved during the ARDC meeting of September 25, 2006. To allow sufficient time for discovery and document production, the hearing was reset and held on November 15-16, 2006, and the Decision Due Date was extended to December 26, 2006. Prior to the conclusion of the hearing, the parties agreed to extend the Decision Due Date to January 5, 2007, to allow sufficient time for preparation of the hearing transcript and the Hearing Officer’s review of the same. The record was closed on November 17, 2006. The Decision of the Hearing Officer was issued on January 5, 2007.

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

Background

1. Petitioner is a *** year-old student who lives with his parents within the jurisdictional boundaries of NISD. [Petitioner’s Exhibit (“P.Ex.”) 15; Respondent’s Exhibit (“R.Ex.”) 39; Transcript (“Tr.”) Volume (“Vol.”) II at 619-620].

2. The student was referred for special education testing during his *** year in 2001 and placed into special education as a student with a Speech Impairment (“SI”). Upon Petitioner’s re-evaluation by Respondent in 2005 during his *** grade year, he no longer qualified for special education as a student with SI but did meet qualifications as a student with an Emotional Disturbance (“ED”) due to elevated anxiety and a Learning Disability (“LD”) in Written Expression, and scored in the moderate range for Visual Dyslexia and in the borderline range for Auditory Dyslexia. He scored within the severely moderate range for Dysgraphia. [P.Exs. 13-15; R.Ex. 39; Tr.Vol.II at 563].

Evaluation and Re-evaluation

3. During the student’s *** grade year on February 24, 2005, Respondent performed a Full Individual Evaluation (“FIE”) of the student. His intelligence as measured by the Reynolds Intelligence Assessment Scale scores showed better developed verbal than nonverbal abilities with a total Verbal Intelligence Index of 99, or Average range, in contrast to a Nonverbal Intelligence Index of ***, or the *** Average range. On the Wechsler Individual Achievement Test – II (“WIAT-II”), the student received the following standard scores and grade equivalents: Oral Expression – *** at ***; Listening Comprehension – *** at ***; Written Expression – *** at ***; Basic Reading Skills –*** at ***; Reading Comprehension – *** at ***; Mathematics Calculation – *** at ***; and, Mathematics Reasoning – *** at ***. While the student exhibited a significant discrepancy of more than *** points between his intellectual ability and his performance in Written Expression, he scored within his intellectual ability in all other areas except for Oral Expression, which is significantly *** his intellectual ability. [P.Ex.13; R.Ex. 39].

Behavioral Issues

4. Throughout his education in the school district, the student has had behavioral issues that resulted in referrals to the campus administrator. [Tr.Vol.II at 618-621].

5. On March 4, 2005, the ARDC conducted a Functional Behavioral Assessment (“FBA”) of student’s behaviors to determine behavioral antecedents, what happens after the problem behavior occurs, the effectiveness of strategies and reinforcers used over the past year, and the function of the problem behaviors. The FBA targeted physical aggressive acts (hitting, pushing, and biting peers), peer interactions, and poor self-management. The BIP targeted physical aggressive acts and peer interactions as follows:

3/4/05 BIP	Target One: Physical Aggression	Target Two: Peer Interactions
Observed Frequency:	2 times a month	1 time per week
Classroom Environment (Behavior Support)	<ul style="list-style-type: none"> • Set well-defined behavior limits, rules, and task expectations; • Provide a structured environment; • Establish a consistent routine; • Provide student with a quiet, non-threatening, non-stimulating place in order to regain control when needed (safe place). 	<ul style="list-style-type: none"> • Set well-defined behavior limits, rules, and task expectations; • Provide a structured environment; • Provide student with a quiet, non-threatening, non-stimulating place in order to regain control when needed (safe place).
Classroom Strategies (Behavior Support)	<ul style="list-style-type: none"> • Praise behaviorally appropriate students; • Provide nonverbal signal for appropriate behavior; • Provide verbal reinforcement for appropriate behavior; • Use verbal reminder; • Use proximity control; 	<ul style="list-style-type: none"> • Offer choices; • Praise behaviorally appropriate students; • Provide nonverbal signal for appropriate behavior; • Provide verbal reinforcement for appropriate behavior; • Use verbal reminder;

	<ul style="list-style-type: none"> • Direct overactivity into productive tasks in or out of the classroom; • Break down tasks; • Premack Principle¹; • Time away from class or group; • Other: Social Skills. 	<ul style="list-style-type: none"> • Use proximity control; • Time away from class or group; • Other: Student/Teacher/Parent conferences – communication.
Reward System (Behavior Support)	<ul style="list-style-type: none"> • Positive reinforcers; • Earn activities/privileges; • Tangible reinforcers; • Social reinforcers; • Scheduled reinforcement. 	<ul style="list-style-type: none"> • Positive reinforcers; • Earn activities/privileges; • Social reinforcers; • Scheduled reinforcement.
Social Skills Training (Behavior Support)	<ul style="list-style-type: none"> • Direct instruction in pro-social behaviors; • Teach alternative behaviors; • Set up and reinforce social interaction. 	<ul style="list-style-type: none"> • Direct instruction in pro-social behaviors; • Teach alternative behaviors; • Role play modeling of social skills; • Other: BMC² interventions – social skills.
Consequences Reasonably Calculated to Improve Behavior	<ul style="list-style-type: none"> • Not able to earn points on point sheet; • Withhold activities/privileges; • Student/teacher conference; • Parent contact; • Office referral; • In-school suspension; • Suspension; • Other; daily point sheet. 	<ul style="list-style-type: none"> • Not able to earn points on point sheet; • Withhold activities/privileges; • Student/teacher conference; • Parent contact; • Office referral; • In-school suspension.

[R.Ex.34]

6. The student received point sheets as part of monitoring the student’s progress towards achievement of his IEP goals. During 2004-2005, the goals included following directions, staying on task, and peer interactions. These targets remained the same for 2005-2006. The student’s point sheet goals for 2006-2007 were changed to working well with others, self-management; and, appropriate grade-level behavior. [P.Ex.18; R.Exs. 23, 28, and 55].

7. The ARDC developed his 2005-2006 IEP on May 17, 2005. Under this IEP, the student went to the BMC and also received Social Skills training in the special education setting. [R.Ex. 33].

8. The 2005-2006 BMC special education teacher used positive verbal praise of the student, making positive comments to the student’s teacher, and intermittent reinforcers of stickers and “bug” tickets for “being unusually good” during the BMC lesson. Students can save the bug tickets to later redeem them for tangible rewards. [R.Ex. 33; Tr.Vol.II at 470-471].

¹ Premack Principle: “If you do your work, then you may have computer time.”

² “BMC” is the abbreviation for Behavior Mastery Center.

9. On February 9, 2006, the ARDC conducted an FBA and based on that data, revised the student's BIP to address three goals of physical aggression, peer interactions, and self-management. His self-management goal included setting well-defined limits, rules, and task expectations as well as establishment of a consistent routine. Classroom strategies included setting easily obtainable daily goals, offering choices, praise of behaviorally appropriate students, nonverbal signal for appropriate behavior, verbal reminder usage, proximity control, the Premack Principle, and time away from the class or group. Rewards for this goal included positive reinforcers, earn activities/privileges, social reinforcement, and scheduled reinforcement. Social Skill training for the goal included helping the student to use language (communication system) to label and communicate feelings, direct instruction in pro-social behaviors, set up and reinforce social interaction, and student/teacher conferences. Consequences for the goal included not earning points on his point sheet, student/teacher conference, and a parent conference. [R.Ex. 31].

10. The student's parents requested a behavioral baseline for the student during his 2005-2006 school year. Documentation of the ARDC meetings held on February 9, 2006, and on May 17, 2006, included documentation that established the baseline of the student's behaviors. [R.Ex. 30 at 3; R.Exs. 31-21].

11. As part of the ARDC deliberations of May 17, 2006, the ARDC performed an FBA of the student using a variety of data sources that included the student's conduct grades from current and previous report cards, written documentation produced by teachers and/or administrators, classroom observations by three teachers including the CMC teacher and the BMC teacher, and observation by the classroom teacher, information from the student, the BIP, the student's discipline records, his behavior checklist, Respondent's evaluations of the student, and parental information. Based on these sources, the ARDC concluded a baseline of the student's behaviors and exhibited physically aggressive behaviors about *** times a month in all school locations. The student exhibited poor self-management in the classroom once a week. He had problems with peer interaction in all school locations *** a week. [R.Ex.30; Tr.Vol.I at 159-162 and Vol.II at 435-438 and 441-442].

12. The ARDC included additional revisions to the student's BIP based on the student's FBA of the same date and input of ARDC members on May 17, 2006, as follows:

5/17/2006 -- Revisions to the Student's BIP		
Aggressive Behaviors	Peer Interactions	Self-Management (Self-Monitoring)
<u>Classroom Environment</u> (no change)	<u>Classroom Environment</u> (no change)	<u>Classroom Environment</u> Add: • Removing Distractions
<u>Classroom Strategies</u> Delete: • Breaking down tasks • Premack Principle Add: • Permit the student to engage in physical	<u>Classroom Strategies</u> Delete: • Setting easily obtainable daily goals • Ignoring minor inappropriate behavior • Directing overactivity into productive tasks in	<u>Classroom Strategies</u> Delete: • Directing overactivity into productive tasks in or out of classroom

activities	or out of classroom	
<u>Reward</u> Delete: <ul style="list-style-type: none"> Scheduled Reinforcement Add: <ul style="list-style-type: none"> Intermittent Reinforcement Home/School Reward System 	<u>Reward</u> (no change)	<u>Reward</u> (no change)
<u>Social Skills Training</u> Add: <ul style="list-style-type: none"> Training in the use of language (communication system) to label and communicate feelings Role play/modeling 	<u>Social Skills Training</u> (no change)	<u>Social Skills Training</u> Add: <ul style="list-style-type: none"> Set up and reinforce Social Interaction
<u>Consequences</u> Delete: <ul style="list-style-type: none"> Daily Point Sheet Add: <ul style="list-style-type: none"> Verbal Warning 	<u>Consequences</u> Delete: <ul style="list-style-type: none"> Verbal Warnings In-School Suspension 	<u>Consequences</u> (no change)

[R.Exs.30 and 31]

13. During the entirety of the 2005-2006 school year, the student received *** day of in-school suspension for participation in a fight with another student and had a total of *** office referrals. A summary chart of the student's 2005-2006 behavior documentation shows that he had approximately *** behavioral incidents during the school year. [R.Exs. 12 and 23; Tr.Vol.I at 62 and 209].

14. The student's regular education teacher during 2005-2006 used positive reinforcement in her interactions with the student, including stickers, pencils, and verbal praise, and "bug" tickets. The regular education teacher observed that once the student had earned enough "bug" tickets to redeem for a wanted item, he would quit working. [Tr.Vol.I at 232-233 and 292-293].

Illness, Attendance, and Tardies

15. During the 2005-2006 school year, the student was frequently tardy and absent from school for a variety of reasons including doctor appointments, oversleeping, and sickness. He missed approximately 14 hours of school during the first semester and approximately 36 hours of school during the second semester, based upon school documentation. [R.Ex. 59; Tr.Vol.I at 45-46 and Vol.II at 637-638].

16. The student made frequent visits to the nurse’s office during the 2005-2006 school year, making approximately 23 visits to the school clinic. He gets sick when he experiences increased anxiety. By contrast, he has had only two school clinic visits during Fall 2006. [P.Ex. 29; R.Ex. 22; Tr.Vol.I at 45-46 and 64].

17. As part of the conditions for the student’s “Parental Choice” placement at his current elementary school campus, the student must have good attendance and avoid discipline referrals. The student has excellent attendance and the student has had no office referrals during the 2006-2007 school year. [P.Ex. 2; R.Ex. 41; Tr.Vol.II at 640].

IEP Goals and Objectives

18. The student began his 2005-2006 school year with an IEP in place with three annual goals, benchmarks, and specific modifications/strategies for Language Arts, behavior skills, and anxiety coping skills, as follows:

Goal One: Increase Language Arts to 3rd Grade Texas Essential Knowledge and Skills (“TEKS”)	
Benchmark/Short-Term Objectives	Specific Modifications and Strategies
1. Identification of written language errors in a given text (capitalization, punctuation, usage, and spelling) with at least 70% accuracy.	Systematic check, orally process, spell check.
2. Write an original composition with idea development, focus, organization, coherence, application of written language conventions to a level that scores 2 of 4 on a writing rubric.	Model and reinforce writing strategies, use graphic organizers for brainstorming, idea development; use technology to word process and check spelling/grammar errors, communication between teacher/parent for writing assignment and strategies.
3. Improve handwriting skills by correctly forming all letters at 90% accuracy.	Routine practice using weekly spelling lists organized by patterns; structured handwriting practice.
Goal Two: Increase Behavior Skills to an Appropriate Developmental Level (By meeting objectives below):	
Benchmark/Short-Term Objectives	Specific Modifications and Strategies
1. Improve peer interactions by keeping hands and feet to himself 80% of the time per nine-week grading period.	Positive reinforcement, role play, visual cues, proximity control, modeling appropriate behaviors, student/teacher conferences, social skills.
2. Demonstrate self-management by remaining in seat activity focused on the task at hand with one reminder for the duration of 30-45 minute instructional period once during academic day.	Verbal/visual reminder, proximity control, task analysis, student/teacher conference.

Goal Three: Increase Anxiety Coping Skills above Baseline (As measured by data collection to meet Objectives below):	
Benchmark/Short-Term Objectives	Specific Modifications and Strategies
1. Identify characteristics of anxiety and stress with a school staff person.	Reminders, behavior specific feedback, positive reinforcers, student/teacher/parent communication.
2. Demonstrate use of relaxation techniques to cope with feelings of anxiety.	Behavior specific feedback, modeling, role-playing, student/teacher/parent communication.
3. Identify and verbalize causes of anxiety.	Social Skills training, Adult guidance and redirection.

[R.Ex. 34]

19. On October 21, 2005, the ARDC revised the student's goals and objectives to accommodate his Dysgraphia and Dyslexia, such as allowing him more time for written assignments. His IEP Report Card on this date shows good progress on identification of written language errors and handwriting. He made minimal progress on development of ideas into writing. Although he continued to have difficulty keeping his hands and feet to himself, he made good progress toward another behavior goal of reaching the 30-minute focus level during instruction. Additionally, he made good progress on using relaxation techniques to manage his anxiety, almost mastering verbalization and identification of the causes of his anxiety, with prompts and reminders. [R.Ex. 32].

20. The ARDC again modified the student's IEP goals and objectives on February 9, 2006. At this time, his Language Arts objectives were decreased to two objectives to target achievement of at least a *** grade TEKS level. [R.Ex.31].

21. The student's June 2, 2006, IEP Report Card shows continued improvement in Language Arts benchmarks. The student made *** improvement on mastery of writing an original composition but made improvement in independent ability to formulate a first draft. Although he still required one-on-one assistance for idea development and editing the final copy, he showed improved spelling skills that helped him achieve a grade of *** in Language Arts. [R.Ex. 17].

22. According to the June 2, 2006, IEP Report Card, the student made *** progress on behavior objectives of decreasing physical and verbal aggression by keeping his hands, feet, and objects to himself, or by reaching out of his personal space to communicate with peers. He was able to self-monitor for a 30 minute period and continued to make good progress, but had difficulty getting his assignments completed in a timely manner. The student showed *** progress toward mastery of anxiety benchmarks, with the ability to verbalize relaxation techniques, but with practice still needed to transfer these new skills to everyday use. [R.Ex. 17].

Writing Skills

23. During the 2005-2006 school year, the majority of the student's writing assignments were completed within the classroom and kept in a writing portfolio with few homework writing assignments. Respondent communicated information to Petitioner

regarding the student's progress by means of E-mail communications between the parents and student's teachers, progress notes sent home with the student, parent-teacher conferences, and with direct interactions with the parents during the school day. These communications included information on the student's writing assignments and strategies from his regular education teacher such as review of the student's writing journal and the writing rubric. [P.Ex. 2; R.Exs. 7 and 23- 25; Tr.Vol.I at 287-289].

24. The student's writing skills improved during his *** grade year, yet as an area of his disability, continue to remain underdeveloped and will likely remain an area of difficulty for the student. His 2005-2006 regular education teacher observed the student stop writing after two to three sentences during writing prompt practice, announcing that he was "done." By the end of the school year, the student would occasionally go back and edit his work. [Tr.Vol.I at 289-290].

Reading Skills

25. During 2005-2006 and 2006-2007, the student works with a reading specialist under the regular education program. [Tr.Vol.II at 539].

26. According to the student's 2005-2006 and 2006-2007 teachers, the student reads on grade level and is making consistent progress. During the second semester of the 2004-2005 school year, the student read at a *** grade second semester level. He read at a *** grade first semester level during his first semester of 2005-2006. By the end of his *** grade year, he continued to read at a *** grade second semester level. At the present time, the student reads at a *** grade first semester level. [R.Ex. 58; Tr.Vol.I at 149 and 271-274 and Vol.II at 609-610 and 640].

27. The student's 2006-2007 reading specialist instructs the student on a daily basis for fluency and four days a week for comprehension, including 30 minutes each morning from 7:30 a.m. to 8:00 a.m. Monday through Friday. The reading specialist instructs the student on fluency issues and Dysgraphia interventions, utilizing the "Fastrack" program to help develop the student's ability to read text. Since the beginning of the 2006-2007 school year, the student progressed from *** grade to *** grade text. He has improved his fluency scores from *** to *** words per minute and is approaching *** grade fluency. [R.Ex. 57; Tr.Vol.II at 538-547].

28. Respondent regularly tests students using the Flynt-Cooter Informal Reading Inventory – Form A. At the beginning of his *** grade year in August 2005, the student tested on grade *** level materials with adequate silent passage comprehension and adequate oral reading accuracy. By the end of *** grade in May 2006, he tested at grade *** level materials with *** to *** questions missed on silent reading comprehension. His oral reading errors included repetitions and were not counted against him during this testing. By the beginning of his *** grade year in August 2006, his reading comprehension retelling measured at 100% *** grade level. His accuracy was at ***% on the same passage. On two one-minute probes to measure his fluency, he read *** words per minute on the first passage and *** words per minute on the second passage. His fluency measured below average for the *** grade at a *** grade second semester level. The parents received information about these results at a parent conference on September 7, 2006. [P.Ex. 3; R.Exs. 2 and 50; Tr.Vol.I at 25 and 271-274 and Vol.II at 609-614].

29. The student participated in the “STEPS to Success” program offered by Respondent in June 2002. The “STEPS” program is a summer half-day program for students to work on reading and language arts deficiencies at no cost to parents and with transportation provided. Although Respondent offered the program to the student on subsequent summers, the student and his family chose other summer camp activities for the student such as acting camp. [R.Ex.48; Tr.Vol.II at 638-639].

Texas Assessment of Knowledge and Skills Testing

30. On the February 2006 administration of the Texas Assessment of Knowledge and Skills (“TAKS”) testing for Reading, the student scored well above minimum standards, answering *** of *** items correctly. On the April 2006 TAKS testing for Mathematics, the student met minimum standards with a score of *** out of *** items. [R.Ex. 18; Tr.Vol.I at 54-56].

31. Although the student’s 2006-2007 reading specialist holds the professional opinion that the student will find it challenging to pass the Writing TAKS test in Spring 2007, the *** grade curriculum is focused on the TAKS writing requirements. [Tr.Vol.II at 554-555].

Assistive Therapy (“AT”) and Occupational Therapy (“OT”) Needs

32. At an ARDC meeting held on October 27, 2005, the ARDC accepted a recommendation of the CMC teacher to assign an AlphaSmart word processor to the student for the 2005-2006 school year for home and school use. [R.Ex. 32; Tr.Vol.I at 52-53, 129-131, and 201].

33. At the ARDC meeting of May 17, 2006, the ARDC planned to conduct an AT evaluation of the student prior to the start of the 2006-2007 school year. [R.Ex.30].

34. In August 2006, Respondent completed a three-day AT, OT, and computer need evaluation of the student, conducted by Respondent’s lead AT specialist in collaboration with the campus reading specialist and observed by the occupational therapist. The evaluation targeted the student’s ability for general writing with handwriting skills, ability to use word-processing software, computer usage abilities, and keyboarding skills. The evaluation included handwriting and word processor samples of the student’s work to assess reading performance on a passage and subsequent story development. The student generated a story with handwriting and with the AlphaSmart word processor. Results of the evaluation indicate that the student possesses good computer skills typical for his age and exhibits an ability to access the word processing program using a hunt-and-peck style of keyboarding. However, the student currently writes twice as fast as he can produce writing with word processing. The occupational therapist compared the student’s writing with a past OT evaluation. The student’s writing is legible, but with immature letter forms. He is able to generate sentences with good syntax, grammar, and punctuation. [P.Ex. 29; R.Ex.49; Tr.Vol.II at 509-518].

35. On September 25, 2006, the ARDC met to consider the completed AT/OT/computer and counseling evaluations and to revise IEP goals. The 2006-2007 classroom teacher reports that the student functions on grade level instructionally, performs within the classroom, and shows improvement on his classroom behavior goals. The 2006-2007 classroom regular education teacher planned to utilize the AlphaSmart word processor

as a workstation within the classroom. The ARDC determined that counseling would be offered to the student through the Child Guidance Center and accepted the AT recommendation that the student use an AlphaSmart word processor for both home and school writing activities and keyboarding. [P.Ex. 5].

36. Currently during the 2006-2007 school year, the student works on use of the AlphaSmart while rotating through a classroom center in a group with four other students to work on keyboarding skills for 30 minutes twice a week. He is progressing in learning the computer keyboard and is increasing his speed. He also works on keyboarding training in the content mastery setting twice a week for five to ten minutes each session. [P.Ex. 29; R.Ex. 49; Tr.Vol.I at 57-58 and Vol.II at 520].

Counseling

37. At the ARDC meeting held on March 4, 2005, the student's parents informed the school that the student would be receiving private counseling and that the student's mother "will sign a release of information enabling the school and private counselors to collaborate as they feel is appropriate." [R.Ex.34 at 16; Tr.Vol.II at 569-572].

38. On May 17, 2005, the ARDC again discussed referring the student to counseling through the school district at the Child Guidance Center ("CGC"). Documentation of this meeting indicates that the parents had agreed to sign a release and that the paperwork was in progress. [R.Ex. 33 at 2].

39. Petitioner's "Authorization for Release of Information" forms from the CGC, signed by the student's mother and dated April 25, 2005, were not received by Respondent prior to November 15, 2006. On November 16, 2006, Respondent received a release from the CGC dated October 25, 2006, for 2006. [P.Ex.33; Tr.Vol.II at 644-645 and 650-651].

40. Records from the CGC confirm that releases and a questionnaire form were sent to the parents in 2005. CGC was unable to confirm that the forms were mailed or brought into CGC. Records from the CGC may have been destroyed upon the retirement of an intake worker in October 2005. [Letter from CGC, dated November 17, 2006, Pleading File].

Allegations of Mistreatment of the Student by School Staff

41. Contrary to the student's statements, the student's 2005-2006 reading specialist did not slap the student four times and provided instruction to the student without excluding the student from other students. [Tr.Vol.I at 196-199].

42. Contrary to the student's statements, the student's 2005-2006 BMC teacher did not physically push the student 15 times during his third grade year. [Tr.Vol.1 at 204].

43. There were no reports made to the student's BMC teacher, the campus principal, or reports from other teachers and students to support the student's claim that he experienced rough treatment from the BMC teacher. The student's BMC teacher denies ever pushing the student into his seat or hitting the student, but did inform the parents on one occasion when the BMC teacher stopped the student by placing the teacher's hands on the student's hands to stop him. [Tr.Vol.II at 430-432 and 625-626].

44. The student's *** grade reading specialist recalls having to correct the student and send him back to his classroom before the group was over for disruptive behaviors during

class, making noises, and pushing at the table. When the student's parents sent an E-mail to the reading specialist inquiring about an injury the student received during the reading class., the reading specialist informed the parents that no injury to the student had been observed and the student had not complained during class of any injury. Shortly after this incident, the student's mother sought to remove the student from the specialist's reading class. [Tr.Vol.II at 611-612].

Student Allegations of Peer Bullying

45. The student claims he was bullied by other students at school. At hearing, the student explained that on one occasion he got into trouble for hitting a student, but that the other students involved had lied to the principal. The student alleges that his regular education teacher did not believe him and instead listened to the other students. [P.Ex.18; R.Ex. 28; Tr.Vol.I at 193].

46. During the 2005-2006 school year in response to an E-mail from the student's mother about allegations of bullying by other students, the student's regular education teacher talked to his rotation teachers and discovered that the student had not reported the behavior to his teachers. [Tr.Vol.I at 301-302].

47. The student's 2005-2006 BMC teacher instructed the student's class as to what constituted bullying behavior and what to do if someone is being bullied. In response to several allegations by the student, the BMC teacher talked to the student and other students, ultimately concluding that these incidents did not occur as reported by the student. Although the student's physical contact of other students, such as not keeping his hands to himself, had escalated in a couple of instances when other students reacted in response, the BMC teacher's investigation did not show that other students had attacked him. As the BMC teacher used role playing, modeling, and practice of ways to handle different situations through the student's social skills training, the student had difficulty using the skills for his transition periods in and out of his classroom. [Tr.Vol.II at 443-446].

48. The student's 2005-2006 regular education teacher reported that other students asked to be moved away from the student during lunch because of the student's eating habits and conversation. At the ARDC meeting on February 9, 2006, his regular education teacher gave input that the student often receives negative attention for playing with his food and continues to have difficulty at lunch even though he has been moved a couple of times. The regular education teacher discussed sitting with the student at lunch with the other students, enlisted their help, and in response, redid the seating chart when students volunteered to sit with around him again. [R.Ex.31, Tr.Vol.I at 305-307].

Transition Periods

49. The student's difficulty with behavior during transition periods persisted during the 2005-2006 school year. By the end of the year, at the request of the parent, the student was sent ahead when his class went on transitions. Although he did not have any additional conflict, the regular education and BMC teachers noted that he did not have the interaction with other students for additional practice on proper interaction with peers. [Tr.Vol.I at 31, 228-229, and Vol.II at 444-446].

50. The student is not experiencing difficulty with his transition times between classes during the 2006-2007 school year. [Tr.Vol.I at 31].

Communications with Parents and Responses to Parental Requests

51. Respondent kept the student's parents informed as to the ARDC process, provided notice to the parents, offered to schedule ARDC meetings, and re-schedule ARDC meetings at parental request, enabling them to participate in person or by telephone in scheduled meetings. ARDC documents for the 2005-2006 and 2006-2007 school years detail the services to be offered to the student as part of his educational plan. [R.Exs. 24 and 30-34].

52. ARDC documents for the 2005-2006 and 2006-2007 school years detail the services to be offered to the student as part of his educational plan. [R.Exs. 24 and 30-34].

53. Respondent communicated the student's progress to the parents by his report card and his IEP report card. [R.Exs. 3, 17, and 43; Tr.Vol.I at 249-250].

54. In February 2006, the parents expressed concern regarding the student's reading assistance and program when the student gave his parents fairly negative reports of his time with the reading specialist. Respondent promptly replied to these concerns expressed in E-mail communications between February 7-13, 2006, and scheduling a parent conference to specifically discuss the parental concerns about lunch, recess, after-school, and time with the reading specialist. [P.Ex. 2; R.Ex. 24].

55. The record evidence does not include a written request from the student's mother for information on Dysgraphia from Respondent, or a refusal from Respondent to provide Dysgraphia information to the parent. [Tr.Vol.I at 43 and 123].

56. The student's parents did not receive many of the student's unsigned daily reward sheets until they received Respondent's disclosure in July 2006. The student did not always bring home his behavior contract to his parents each school day, sometimes leaving incomplete behavior contracts in his desk at school despite assistance from his BMC and the CMC teachers to help organize his desk and assist him in organizing his work. [Tr.Vol.I at 115 and 232-233].

57. During the last months of the 2005-2006 school year, the communication between the regular education teacher and the parents became somewhat strained when the parents filed a grievance based on concern that the teacher did not respond to reports that the student was bullied in the classroom. [Tr.Vol.II at 652].

Student Progress

58. On his report cards for the 2005-2006 school year, the student received the following nine-week and yearly average: Reading – ***, ***, ***, ***, Average: ***; Language Arts – ***, ***, ***, ***, Average: ***; Math – ***, ***, ***, ***, Average: ***; Science – ***, ***, ***, ***, Average: ***; Social Studies – ***, ***, ***, ***, Average: ***. His overall average was an ***. He received either *** or *** level grades in his non-core subjects of Music, P.E., P.E. Behavior, Music, Music Behavior, Art, and Art Behavior. Areas in which the student had “****” noted under his “Responsibility” and “Respect and Citizenship” include working in groups, respecting/cooperates with adults, and respecting/cooperating with other students. [R.Exs. 3 and 43].

59. The student made academic progress during his 2005-2006 school year and by the end of the school year, was reading at the *** grade level. He met Respondent's math promotion standards and scored a *** on his writing promotion assessment. Under Respondent's scoring guidelines, a student must receive a *** or *** to meet the writing promotion assessment for promotion rather than placement into the next grade level. [R.Ex.3].

60. The student had a Social Skills IEP for 2005-2006 that provided him with 60 minutes of social skills training by his BMC teacher each week. As part of this curriculum, the BMC teacher helped the student process through any recent incidents, discussing how he felt, what he did, ways to change his behavior, and filling out a self control chart and a behavior plan to work through different incidents throughout the year. [R.Ex. 28; Tr.Vol.II at 405-411].

61. At the end of the 2005-2006 school year in mid May, the student's mother became concerned that his regular education and rotation teachers weren't listening to the student. At the parent's suggestion, a "pass" was instituted to allow the student to leave his classroom to go see his BMC teacher whenever he chose to do so. After the student began using his pass at will, his regular education and BMC teachers observed regression in the student's work completion and in avoidance of talking about his peer conflicts, as he spent most of his time going back and forth between the BMC center. [Tr.Vol.I at 307-308, 319-321, and Vol.II at 454-456].

62. Respondent addressed the student's behavioral needs during the 2005-2006 school year by monitoring the student's BIP, revising the BIP based on assessment data, and working with the student throughout the year on behavior issues. Both the regular education and the BMC teachers communicated with the parents regarding the student's behaviors by E-mail, direct conversation, and teacher conferences. [R.Exs. 4, 11-12, 23-24, and 28; P.Exs. 2, 18, 25, and 30; Tr.Vol.I at 252-254 and Vol.II at 435-441].

Discussion

Background

While Petitioner and Respondent agree that the student is thriving at his current campus in 2006-2007, Petitioner asserts that the student was deprived of services in 2005-2006 to help the student address his LD in Written Expression and his ED due to anxiety. As a result, Petitioner believes that the student's increased anxiety in 2005-2006 was exacerbated by actions of school staff, with the increased anxiety causing the student to miss school. Petitioner believes that the student is entitled to receive compensatory services to address the deficits in his third grade program, including keyboarding instruction and social skills training.

By contrast, Respondent asserts that the student received services above and beyond what is required to provide FAPE to the student in 2005-2006, including specialized reading instruction. Respondent believes that the student exhibited progress in all areas last year under Respondent's program.

Legal Standard

It is well-settled that school districts that receive federal funds must provide a FAPE to its disabled students. 20 U.S.C. §§1412(a)(1) and 1414(d).³ As long as a student receives “some benefit” from his education, the student’s education is deemed appropriate under IDEA; school districts are not required to “maximize” the student’s educational potential with every service that may benefit a student so long as the student receives a meaningful educational benefit that is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Rowley, supra.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

The Fifth Circuit in *Cypress-Fairbanks* used four factors to evaluate compliance with IDEA. First, an eligible student’s IEP should be individualized and developed based on student assessment and performance. Second, the IEP is delivered in the LRE. Third, the student’s IEP must be delivered in a collaborative and coordinated manner by key stakeholders. And fourth, the school’s program for the student must result in positive academic and non-academic benefits. *Id.*, at 247-248. A student’s educational potential does not have to be maximized or improved in every area for a student to receive an educational benefit. *Bobby R., supra*, at 350.

The school district’s educational program for the student is presumed to be appropriate. *Tatro v. Texas*, 703 F.2d 823 (5th Cir.1983) *aff’d on other grounds sub nom., Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984). The burden of proof rests with the party attacking the appropriateness of the student’s IEP and the attacking party must prove why the IEP and provided services were not appropriate under IDEA. *Schaffer v. Weast*, 156 S.Ct. 528, 44 IDELR 150 (2005); *Cypress-Fairbanks, supra.* Petitioner failed to meet his burden of proof.

Written Expression

The undisputed evidence in this proceeding shows that the student’s disabling conditions are ED due to elevated anxiety and LD in Written Expression, with moderate Visual Dyslexia, borderline Auditory Dyslexia, and severely moderate Dysgraphia. Although the student does not qualify for special education in Reading, Petitioner alleges that the student did *** make adequate yearly progress in disability-related areas during 2005-2006 -- including his writing and reading skills. By contrast, Respondent points to the student’s documented progress under his IEP, his grades, his passing TAKS scores, and his current success in *** grade as evidence of the student’s progress in his educational program during his *** grade year. I agree with Respondent.

Under Respondent’s regular education program for 2005-2006, the student routinely completed his writing assignments within the classroom setting, used a graphic organizer on end-of-the-year assignments, and kept a writing journal. [Tr.Vol.I at 280]. The *** grade curriculum covered the writing rubric, and focused on mastery of the mechanics of story writing in various styles. In 2005-2006, the record evidence established that the student made *** grades in all his subjects and, even with his challenge of a disability in Written

³ In summary, school districts must comply with the procedural requirements of IDEA and must design and implement an educational program that is reasonably calculated to confer educational benefits to a disabled student. *Hendrick-Hudson District Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).

Expression, achieved a passing grade on the TAKS testing in Spring 2006. Additionally, the ARDC discussed the student's IEP Report Cards and student progress toward IEP goal and benchmark achievement at meetings with the parents present in October 2005 and February 2006. Respondent's 2005-2006 and 2006-2007 teachers acknowledge that the student will face a challenge in achieving a passing score in Writing for the *** grade level TAKS in Spring 2007, yet his *** grade regular education places specific emphasis on skills he will need to pass the TAKS. While his parents are understandably concerned that he won't meet that level with a disability in Written Expression, this concern is premature.

Reading Skills

Likewise, the preponderance of the record evidence establishes that the student has made progress in his reading skills under his IEP during the 2005-2006 school year, again as reflected in the student's grades, achievement of one point *** a commended level on the *** grade TAKS test, and in the specific measurements of his reading skills under the Flynt-Cooter Informal Reading Inventory administrations. He improved throughout his *** grade year and consistently read on grade level, reaching the expected *** grade second semester level by the end of his *** grade year. Yet his parents remain concerned about the student's ability to read accurately and quickly, measured as reading fluency, as the student measured at a *** grade second semester level fluency rate in August 2006.

At hearing, the student's current reading specialist gave convincing testimony that the student is making progress under his specialized reading instruction five days a week, with his fluency level almost reaching the *** grade level. I find that the preponderance of the record evidence establishes that the student made progress in reading during his *** grade year and continues to do so under his present IEP for the 2006-2007 school year.

Student Behavior

The student's long-standing behavioral challenges have persisted throughout his education by Respondent despite on-going efforts of the school district and the student's parents through the ARDC process to devise an effective plan to help the student gain appropriate control of his behavior. The record evidence establishes that the ARDC devised a behavioral plan for the student, revisited the BIP, and made changes to the student's BIP before, during, and subsequent to the student's *** grade year in 2005-2006. Petitioner's complaints center on the implementation of the BIP and subsequent revisions during the student's *** grade year, discussed separately below.

Implementation of the BIP

The student's parents allege that Respondent did not properly implement the ARDC's 2005-2006 behavioral plan for the student by failing to provide positive reinforcement for the student, not contacting the student's parents when behavioral incidents occurred, and frequently failing to transmit behavioral information to the parents including the student's behavior contract. Respondent asserts full compliance with the student's BIP in all areas. Based on my review of the record evidence, I agree with Respondent.

The preponderance of the record testimony and exhibits show that Respondent's regular education and special education teachers of the student used a variety of positive reinforcers with the student including award tickets for "being unusually good" redeemable for trinkets, stickers, and verbal praise with the student. Records from the regular education

and BMC teacher including E-mail correspondence, teacher conference documentation, discipline documentation, and records of parent contact by telephone show effort throughout the 2005-2006 school year to communicate with the student's parents about the student's behavior and behavioral incidents, even though the student did not always take home his point sheet documentation for his parent's signature. Although the parents allege that communication between the regular education teacher and the parents was lacking at the end of the student's *** grade year, I find that the preponderance of the record evidence and credible testimony in this proceeding regarding proper implementation of the student's BIP overwhelmingly weighs in favor of the school district.

Revision of the BIP

Petitioner alleges that the ARDC revisions to the student's BIP in February 2006 resulted in consequences for the student's behavior that the ARDC deemed ineffective, so that the student was improperly disciplined for manifestations of his disability after February 2006. At hearing, Petitioner's mother testified that the student had received *** of in-school suspension in May 2006, a strategy that the ARDC had determined "made no difference" as a consequence for the student. [Tr.Vol.I at 35 and 265-266]. By contrast, Respondent asserts that ARDC revisions to the student's BIP were made with the input, participation, and assent of both parents, were based on the results of an FBA of the student's behavior of the same date, and the disciplinary consequence of *** of in-school suspension was an appropriate consequence and did not result in improper removal of the student. I agree with Respondent.

The ARDC documentation from the meeting of February 9, 2006, show that both parents participated in the meeting and agreed with the decisions of the ARDC that included listing in-school suspension as a consequence for hitting, pushing, and biting peers. Based on the record evidence and testimony in the records, Respondent properly disciplined the student in accordance with the student's BIP for the student's participation in an altercation with a peer in May 2006.

Bullying Allegations

Petitioner alleges that the student not only experienced bullying by his peers in 2005-2006, but that Respondent improperly responded to these allegations by dismissing the student's claims and taking the word of other students instead. Respondent counters these allegations by written documentation and testimony of the 2005-2006 regular education teacher and the 2005-2006 BMC teacher detailing investigation, interview of the student and his peers, interview of other educators, and their conclusion that the student was not bullied by his peers. I find the preponderance of the evidence weighs in favor of concluding that the student was not bullied by his peers. Even if the student did in fact experience peer interaction that rose to the level of bullying, I find that Respondent took appropriate action to respond to Petitioner's allegations by investigation of the claims and preventative steps to educate the student and his peers in proper behavior and how to handle bullying situations.

Student Mistreatment by School Staff

During the due process hearing, the student testified that in 2005-2006 he had been slapped on his hand at least four times by his reading specialist and pushed down into his chair on about 15 occasions by his BMC teacher. Respondent denies that the student suffered any

mistreatment by his teachers and received no reports during the 2005-2006 school year that these incidents occurred. I find for Respondent on this issue.

Supplementary Aids and Services

Petitioner alleges that the student's need for a word processor, the AlphaSmart, was not met in accordance with the student's IEP during 2005-2006. Specifically, Petitioner alleges that although the student received an AlphaSmart word processor for home and school use in October 2005, neither the parents nor student received proper instruction in usage of the device, the student did not have home access to the device between March and May 2006, and as a result, the student did not have the opportunity to use the word processor to develop his writing skills. Respondent denies these allegations, pointing instead to ARDC documentation and equipment sign-out sheets as well as testimony of the student's third grade campus staff that the student had access to and used the AlphaSmart word processor under Respondent's educational program for the student's *** grade year. I find for Respondent on this issue.

Under IDEA, school districts have a duty to provide needed related services, supplementary aids and services, and assistive technology with the student's special education. 34 C.F.R. §§ 300.300 and 300.308. The definition of supplementary aids and services under IDEA implementing regulations includes the aids, services, and other supports that are provided in the regular education classroom to enable disabled students to be educated with non-disabled students to the maximum extent possible. 34 C.F.R. §300.28. Assistive technology services are described as any item, piece of equipment, or product system that is used to increase, maintain, or improve the functional capabilities of a child with a disability. 34 C.F.R. §300.5.

The parties do not dispute that the student's ARDC addressed the student's need for an AlphaSmart word processor on October 27, 2005, or that the student received a device for home and school in October 2005. Instead, the parents' challenge is that not enough support was given to the student and his parents for use of the AlphaSmart device. By contrast, the record evidence established that the student's program in the school classroom setting used word processing, the student used the device at school, and had keyboarding practice during the school day.

In the student's *** grade year, it is undisputed that the student is using the AlphaSmart device at home and school, showing improvement in his keyboarding skills, and continues to master these skills to assist in production of writing. While the ARDC made further assessment of the student's AT, OT, and computer needs in August 2006, I do not find that the parents requested and were refused this evaluation prior to this time. Based on the preponderance of the record evidence in this dispute, Petitioner has not sustained his burden on this issue.

Counseling

Related services are defined under the IDEA implementing regulations to include counseling services, social skills training, therapeutic recreation, and psychological services as well as other services such as parent training and social work services. 34 C.F.R. §300.24(a). For a special education student to be eligible to receive these services as part of the school's program, there must be an identified educational need exhibited by the student.

While the parties do not dispute that Respondent identified and offered counseling services to the student, Petitioner alleges that the parents were confused by ARDC meeting minutes on how the student's counseling needs would be provided and coordinated by the school district, including how consent for communication between the school and private counselors would be finalized. It is undisputed that the parents consented to counseling in October 2006, but the parties disagree on whether or not the parents gave proper consent for counseling as a related service by the CGC in Spring 2005.

Record evidence conflicted, but the preponderance of evidence establishes that the school district did not have written parent consent for counseling services. This is congruent with statements in the record by the parent to the effect that the parents were intent on pursuing private counseling for the student on their own. Under these facts, the school district's omission of counseling services does not create a procedural violation or a denial of appropriate services.

Educational Benefit

Based on the preponderance of the record evidence, the student received an educational benefit from his education during his *** grade year. Specifically, Respondent's *** grade program was based on assessment and performance and delivered within the LRE of the regular education classroom. While the parents claimed that the school district deprived the student of the LRE at the end of the school year by sending him ahead during transition times, the credible evidence established that this was at request of the parents and attempted to lessen the student's peer conflicts, and achieved that specific result. I find that this modification did not deprive the student of the least restrictive setting for his education and is without merit.

Conclusion

The student progressed during his *** grade year in academic areas and showed some improved ability in his behavior that is more than trivial. By the end of his *** grade year, the student more frequently took responsibility for his actions, talking out and identifying his feelings more frequently, and identifying and practicing behavioral choices and strategies with adult prompting. Respondent placed the student into the *** grade with continued support for his behaviors and LD needs and the student continues to progress under Respondent's program. While the school district did not provide every conceivable support or service that might benefit the student, I find that the school district provided a FAPE to the student that is producing steady educational progress.

Conclusions of Law

1. The student is entitled to special education and related services at no cost to the parents under the provisions of the IDEA, 20 U.S.C.A. §1400, *et. seq.*, and its implementing regulations.
2. The student and his parents reside within the jurisdictional boundaries of Respondent, a legally constituted independent school district operating as a political subdivision of the State of Texas. Respondent is responsible for providing the student with a free appropriate public education. 20 U.S.C. §1412(a)(1); *Hendrick-*

Hudson District Bd. of Educ. v. Rowley, 458 U.S. 176 (1982); 20 U.S.C.A. §1412; 34 C.F.R. §300.300; 19 T.A.C. §89.1001.

3. The educational program proposed by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program offered by Respondent, bears the burden of proof. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd on other grounds sub nom., Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5th Cir. 1986).
4. Petitioner did not meet his burden to prove that Respondent's educational program for the student's 2005-2006 school year was inappropriate.
5. Respondent provided the special education services specified in the student's IEP for the 2005-2006 school year that were reasonably calculated to provide him with a free appropriate public education with sufficient individualized instruction and support services to allow him to benefit from his education. *Houston ISD v. Bobby R.*, 200 F.3 341 (5th Cir. 2000); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); 34 C.F.R. §§300.346-300.347; 19 T.A.C. §89.1055.
6. Respondent provided an AlphaSmart word processor and implemented social skills training during the student's 2005-2006 school year to address the student's needs for related services and assistive technology. As a result, Petitioner is not entitled to an award of compensatory services of keyboarding instruction and social skills training as compensation for the delay. *Burlington School Comm. v. Department of Educ.*, 471 U.S. 359 (1985); *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5th Cir. 1986); 34 C.F.R. §§ 300.300, 300.308, and 300.532(g).
7. The student's behavioral goals and objectives from the student's BIP in place during the 2005-2006 school year were measurable, based on data collected by Respondent, and were revised during the 2005-2006 school year based on the student's current performance under the BIP. 34 C.F.R. §§300.346-347.
8. The student made some behavioral progress under his BIP and subsequent BIP revisions during the 2005-2006 school year and received meaningful educational benefit from NISD. *Houston ISD v. Bobby R.*, 200 F.3 341 (5th Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

ORDERS

Based upon the record of this proceeding, the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that all relief requested by Petitioner is **DENIED**.

IT IS FURTHER ORDERED that any findings of fact that are more properly characterized as conclusions of law, and any conclusions of law that are more properly characterized as findings of fact, shall be considered and shall have the same effect as if properly characterized.

IT IS FURTHER ORDERED that any and all additional or different relief not specifically ordered herein is **DENIED**.

Signed this 5th day of January 2007.

/S/ Mary Carolyn Carmichael

Mary Carolyn Carmichael
Special Education Hearing Officer

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

DOCKET NO. 245-SE-0606

***, b/n/f
*** & ***,
Petitioner
v.
NORTHSIDE
INDEPENDENT SCHOOL
DISTRICT,
Respondent

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BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

SYNOPSIS OF DECISION

ISSUE: A. *Whether the student made adequate yearly progress in his writing and reading skills, during 2005-2006?*

CITATION: 34 C.F.R. §300.346.

HELD: **For the District.**

The student progressed on goal and benchmark achievement during the 2005-2006 school year and met state passing standards for state assessments for reading and writing skills. By the end of the school year, the student read at grade-level.

ISSUE: B. *Whether the school district properly implemented the student's Behavioral Intervention Plan ("BIP") during 2005-2006 school year?*

CITATION: 20 U.S.C. §1414(a); 34 C.F.R. §300.346(a)(2).

HELD: **For the District.**

The school district followed the student's BIP for the 2005-2006 school year with regular and special education staff providing positive reinforcement, verbal praise, and other strategies and supports for the student. Respondent communicated with the parents by means of conferences, behavior contract sheets, and calling the parents.

ISSUE: C. *Whether revisions to the student's BIP included consequences deemed ineffective by the Admission, Review, and Dismissal Committee ("ARDC"), resulting in improper discipline of the student?*

CITATION: 34 C.F.R. §§300.346-300.347; 19 T.A.C. §89.1055.

HELD: **For the District.**

Revisions to the student's BIP accepted by the ARDC committee on February 9, 2006, added in-school suspension as a consequence for the student's misbehavior. The student's parents participated in the decision to add the consequence. Subsequent discipline of the student with one day of in-school suspension for hitting a peer was appropriate under the revised BIP.

ISSUE: **D. *Whether the student was bullied by other students during the 2005-2006 school year and, if so, whether the school district appropriately took action to address the problem?***

CITATION: **34 C.F.R §300.300 and TEC§25.0341.**

HELD: **For the District.**

The school district investigated the student's allegations of bullying by other students. Interviews of the student, school personnel, and the alleged perpetrators did not substantiate the student's claims.

ISSUE: **E. *Whether school district staff improperly mistreated the student during the 2005-2006 school year by hitting and pushing the student?***

CITATION: **34 C.F.R §§300.23, 300.300, and 300.346(d)(1) .**

HELD: **For the District.**

The allegations by the student that school district personnel mistreated the student during the 2005-2006 school year were not substantiated by the record evidence.

ISSUE: **F. *Whether the school district provided appropriate assistive technology that met the student's needs in accordance with the student's Individualized Education Program ("IEP") for 2005-2006?***

CITATION: **34 C.F.R. §§300.24, 300.300, and 300.308.**

HELD: **For the District.**

The school district provided an AlphaSmart word processor for the student's home and school use during 2005-2006 in accordance with the student's October 2005 IEP. The student's IEP did not specify that the parents and student would receive training on how to use the device.

ISSUE: **G.** *Whether the school district coordinated counseling services for the student with private counseling providers during the 2005-2006 school year?*

CITATION: 34 C.F.R. §300.24(a)

HELD: **For the District.**

The school district did not receive signed consent forms by the parents in 2005-2006 to allow the school district to proceed with coordination of counseling services for the student. As a result, the school district was unable to coordinate counseling services for the student in 2005-2006.

ISSUE: **F.** *Whether the school district denied the student a meaningful program that conferred educational benefit to the student, to allow the student to progress rather than regress during the 2005-2006 school year?*

CITATION: *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); 34 C.F.R. §§300.346-300.347; 19 T.A.C. §89.1055.

HELD: **For the District.**

The school district provided a meaningful program for the student for the 2005-2006 school year and, as a result of that program, the student made academic progress and received some behavioral benefit.