

DOCKET NO. 101-SE-1103

Student, BNF Parent	§	BEFORE A SPECIAL EDUCATION
PETITIONER	§	
	§	
V.	§	HEARING OFFICER
	§	
BROWNSVILLE INDEPENDENT	§	
SCHOOL DISTRICT, RESPONDENT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

PETITIONER

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RESPONDENT

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Statement of the Case

Petitioner, Student by her next friend Parent, brought this action against Brownsville Independent School District, pursuant to the Individuals with Disabilities Education Act (hereafter "IDEA"), as amended by the IDEA Amendments of 1997, 20 U.S.C. § 1400 *et seq.*, claiming that it denied Student a free appropriate public education by failing to identify her as a student with mental retardation, by failing to provide her mother with timely notice of ARD Committee meetings and by failing to adequately provide support services to Student after she was allegedly *** by a substitute teacher.

Procedural Background

This IDEA due process hearing was initiated by Petitioner on November 24, 2003. I was assigned as the hearing officer and this matter was initially set for hearing on December 12, 2003. A prehearing conference was held on December 3, 2003, wherein legal counsel for Student identified the following three issues for hearing: (1) whether Student met the eligibility criteria for a specific learning disability in the area of written expression; (2) whether Student was denied a free appropriate public education in the areas of reading, reading comprehension and written expression; and (3) whether Student's alleged *** by a substitute teacher in the spring of 2003 resulted in her being denied a free appropriate public education. During the prehearing conference, the parties requested a postponement of the hearing seeking additional time to complete discovery. I granted this request and the hearing was rescheduled for January 13 and 14, 2004. On January 8, 2004, Petitioner requested and obtained another continuance of the hearing to allow Petitioner's counsel additional time to review documents produced in accordance with his discovery requests. The hearing was rescheduled for March 23 and 24, 2004. On February 13, 2003, Petitioner added as an issue whether Student's mother received timely written notices of ARD Committee meetings from Brownsville ISD. On March 11, 2004, Petitioner withdrew her first two issues and substituted the issue of whether Brownsville ISD failed to identify Student with mental retardation. Also, on March 11, 2004, Brownsville ISD filed a counterclaim against Petitioner seeking a declaration that it had provided Student with a free appropriate public education. On March 22, 2004, the parties agreed to reduce the time needed for the hearing to one day and to commence the hearing on March 24, 2004. At the hearing in this matter, Brownsville ISD withdrew its counterclaim. Accordingly, in this proceeding, the parties adjudicated the following three issues: (1) whether Brownsville ISD failed to identify Student with mental retardation; (2) whether Student's mother received timely written notices of ARD Committee meetings; and (3) whether Student's alleged *** by a substitute teacher in the spring of 2003 resulted in her being denied a free appropriate public education. At the request of the parties, the decision due date was extended to April 29, 2004, to allow the parties to submit post-hearing proposed findings of fact and conclusions of law.

Based upon the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law:

Findings of Fact

1. Student is an ***-year-old student repeating the *** grade who resides with her mother within the jurisdictional boundaries of Brownsville ISD. [T. 17].
2. Brownsville ISD is a political subdivision of the State of Texas and a duly incorporated independent school district located in Cameron County, Texas. Brownsville ISD is responsible for providing Student with a free appropriate public education. [Official Notice].
3. Student attended *** grade during the 2002-2003 school year within Brownsville ISD. [T. 17-18].

4. Student is a bilingual student. Her native and dominant language is Spanish. She and her mother speak both Spanish and English at home. At school, Student is in the bilingual program and receives 80% of her instruction in Spanish and 20% in English. In English, Student has average receptive abilities but below average expressive abilities. In Spanish, Student has average receptive and expressive abilities. The Woodcock-Munoz Language Survey indicates that Student has poor language proficiency in both languages. In Broad Spanish Ability she has an overall measure of language proficiency of "Very Limited Spanish." [Resp. Exh. #1, 2 and 12]. In Broad English Ability, Student has an even lower overall measure of language proficiency.
5. At the beginning of the 2002-2003 school year, Student's teacher told Student's mother that Student could not read and did not know and could not write letters of the alphabet or numbers. Additionally, at that time, Student was receiving mostly *** grades. [T. 17-18].
6. On November 19, 2002, Student's teacher referred her for special education services. [Resp. Exh. #8].
7. A full and individual evaluation of Student was completed by Brownsville ISD on January 10, 2003. This evaluation was conducted by a bilingual assessor. The results of the Woodcock-Munoz Language Survey established that Student had very limited proficiency in Spanish Oral Language and Spanish Reading-Writing. For her age level, Student performed overall proficiency tasks with only a *** success rate in Spanish and with only a *** success rate in English. Despite these results, informal observations during testing coupled with teacher and parent input indicated that Student's language abilities and articulation, voice and fluency appeared within normal limits. [Resp. Exh. #12].
8. The assessment information addressing Student's emotional and behavioral domains indicated that Student was not easily encouraged to do things and had to be constantly reminded to do things. [Resp. Exh. #12].
9. Intellectually, Student was administered the Universal Nonverbal Intelligence Test. She obtained a full scale IQ score of ***, which was in the *** average range of intelligence. Her adaptive behavior was assessed using informal measures and was determined to be consistent with her intellectual functioning. [Resp. Exh. #12].
10. Academically, Student was administered the Bateria Woodcock-Munoz Pruebas de Aprovechamiento- Revisada and the Woodcock-Johnson III Tests of Achievement. The results of these tests, when compared to Student's full scale IQ score, established that she had significant discrepancies in the areas of basic reading and reading comprehension. Also noted were areas of weakness in math and written expression. [Resp. Exh. #12].
11. ARD Committee meetings were held on January 21, 2003 and February 10, 2003, to review Student's full and individual evaluation and make placement decisions. Based on the results of Student's full and individual evaluation, these ARD Committees found that Student met the IDEA's eligibility criteria as a student with learning disabilities. To address Student's educational needs, the ARD Committees maintained Student in her bilingual regular education class, implemented classroom instructional modifications including oral or modified tests and shortened assignments, provided Student with Content Mastery services, and provided her with inclusion support for reading. Student's mother expressed concern over the inclusion reading program but agreed with the decisions of the ARD Committees. [Resp. Exh. #15-16].
12. Student's grades and self-esteem improved after being provided with reduced assignments and other special education services. [T. 139]. She made some progress academically. By the end of the 2002-2003 school year, Student could identify numbers 1 through 20, could recite the alphabet and could copy letters of the alphabet. However, Student could not read or spell and had weaknesses in identifying letters and shapes. She did not master any of the goals and objectives of her IEP, yet she received passing grades. [Resp. Exh. #20-21, 23; T. 21].
13. On April 30, 2003, Student's teacher left on maternity leave. A male substitute teacher was assigned to Student's class. On or about May 23, 2003, Student alleged that the substitute teacher ***. Although investigated by law enforcement authorities, these alleged acts of *** were not proven. [T. 62]. However, they affected Student emotionally and psychologically. Thereafter, she had difficulty sleeping, she began sleep-walking, she lost her appetite and she was placed on medication for depression and anxiety. She feared returning to school and did not want to attend summer school. [T. 25].

14. Brownsville ISD provided Student with counseling on the day the incident was reported. [T. 35].
15. On May 27, 2003, an ARD Committee meeting was held to review a parental request for dyslexia services. No additional assessment data had been obtain but the *** found, based upon the prior results of Student's full and individual evaluation, that Student did not qualify for dyslexia services. The *** issue was not raised or addressed by this ARD Committee and no request for counseling services was made by Student's mother. [Resp. Exh. #21; T. 33].
16. At the request of Student' mother, Student was retained in the *** grade for the 2003-2004 school year. [T. 20].
17. During the summer of 2003, Student's mother obtained a psychological evaluation of Student from Dr. **. As part of his evaluation, Dr. ** had Student complete a Stanford-Binet Intelligence Scale 4th Edition in English. It does not have a nonverbal IQ score. However, her overall score measured **, which placed her performance in the slow-learner range. Student's academic abilities were evaluated in English using the Wide Range Achievement Test, Rev. 3. Dr. ** found that she could not read or spell and that she was functioning at the ** and ** levels, consistent with her level of intellectual functioning. Dr. ** measured Student's adaptive behavior by interviewing her mother and completing the Vineline Adaptive Behavior Scales, Interview Edition. He found that Student's level of adaptive behavior was uniformly delayed and was consistent with her delays in intellectual and achievement functioning. Emotionally and behaviorally, Dr. ** found Student to be withdrawn and depressed. He concluded that Student met the criteria for mild mental retardation and adjustment disorder with mixed symptoms of depression and anxiety. He found that Student continued to show the signs of an adjustment reaction to what she felt was abuse by a substitute teacher and recommended counseling with a female therapist. [T. 39-42; Pet. Exh. #22].
18. Certain aspects of Student's psychological evaluation by Dr. **, including the testing of her intellectual functioning are suspect since the testing was not completed in her native language of Spanish. Additionally, during the testing, Student was shy and withdrawn and informed Dr. ** that he reminded her of the substitute teacher. Dr. ** noted that she was hesitant to respond to him and may have performed better with a female evaluator. Moreover, Dr. ** acknowledged that he did not have any information from Student's teachers or her school to review. [T. 40, 50-51, 54-55, 108-109; Pet. Exh. #22].
19. During the 2003-2004 school year, Student was placed in a resource class for math and has made some progress.
20. In January, 2004, Dr. ** gave Student the Kaufman Brief Intelligence Test in English. She answered in Spanish and obtained a non-verbal score of ** and a verbal score of **, which continued to indicate that Student was functioning in the mildly mentally retarded range. [T. 65].
21. Brownsville ISD initially attempted to schedule Student's annual ARD Committee meeting for January 14, 2004. An invitation to attend this meeting was given to Student's mother on January 8, 2004. [T. 73]. January 8, 2004 was the 5th school day prior to the January 14, 2004 meeting. Student's mother did not respond to this notice. [Pet. Exh. #23, Resp. Exh. #27, 30].
22. On January 12, 2004, Brownsville ISD sent two additional notices to Student's mother seeking her response as to whether she could attend the scheduled January 14, 2004 meeting. Apparently, these notices also went unanswered so a third notice was sent to her on January 12, 2004 which rescheduled the ARD Committee meeting for January 16, 2004. January 12, 2004 was the 5th school day prior to the scheduled January 16, 2004 ARD Committee meeting. On January 12, 2004, Student's mother responded to this notice indicating she and her attorney could not attend the January 16, 2004 meeting. [P. Exh. #23]. Another attempt by Brownsville ISD to reschedule the ARD Committee meeting for January 19, 2004 also failed. [Pet. Exh. #23, Resp. Exh. #27, 30].
23. On January 15, 2004, Brownsville ISD sent another notice to Student's mother rescheduling the ARD Committee meeting for January 21, 2004. This was the one year anniversary date of the prior annual ARD Committee meeting. A notice of this meeting was also sent by facsimile to Student's legal counsel on January 15, 2004. January 15, 2004 was the 5th school day prior to the scheduled January 21, 2004 ARD Committee meeting. [Pet. Exh. #23, Resp. Exh. #27, 30].
24. Student's mother and legal counsel received 5 school days advance notice of the January 21, 2004 annual ARD Committee meeting but did not attend that meeting. [Resp. Exh. #27, 30].

25. No complaint or evidence was presented by Petitioner concerning the alleged lack of timely notice for any other ARD Committee meeting.
26. Student has made educational progress during the 2003-2004 school year. She has progressed in math, her self-esteem has improved and she is on the A-B Honor Roll (modified grades). [T. 29-30]. However, Student still cannot read proficiently. She can only read simple words in English and Spanish but her fluency has improved to reading 12-18 words per minute from 5-6 words per minute at the beginning of the school year. She also participates more in class. [T. 146-148].
27. During the 2003-2004 school year, Student has received private outside counseling services on 5 or 6 occasions to address her emotional condition as it relates to the alleged *** incident. [T. 83].
28. The current valid assessment information regarding Student does not indicate that Student meets the IDEA's eligibility criteria as a student with mental retardation.
29. During the 2003-2004 school year, through the hearing date, Student has not demonstrated the need for counseling services to assist her in benefiting from special education services.

Discussion

Petitioner claims that Brownsville ISD failed to identify Student's disability of mental retardation and has incorrectly labeled her as a student with learning disabilities.¹ For purposes of determining eligibility for special education services under the IDEA, mental retardation means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior and manifested during the developmental period that adversely affects a child's educational performance. 34 C.F.R. §300.7 (c)(6). In Texas, a student with mental retardation is one who has been determined to be functioning two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.² 19 Tex. Admin. Code §89.1040(c)(5).

Petitioner's misdiagnosis claim is based on the results of the psychological evaluation of Dr. ***, a clinical psychologist, who diagnosed Student with mild mental retardation. In determining Student's intelligence quotient, Dr. *** administered the Stanford-Binet Intelligence Scale, 4th Edition, and obtained an overall score of ***, which placed Student in the slow learner or mild mental retardation range. Her sub-classification scores were *** for Verbal Reasoning, *** for Short-Term Memory, *** for Quantitative Reasoning, and *** for Visual Reasoning. Additionally, in determining Student's adaptive behavior functioning, Dr. *** utilized the Vineland Adaptive Behavior Scales, Interview Edition, and determined that her Adaptive Behavior was deficient and commensurate with the slow learner or mild mental retardation range. Additionally, Dr. *** determined that her academic performance was also commensurate with the slow learner or mild mental retardation range. [T. 39-42; Pet. Exh. #22]. Subsequently, in January, 2004, Dr. *** administered to Student the Kaufman Brief Intelligence Test. Student obtained a non-verbal score of *** and a verbal score of ***, which continued to indicate that she was functioning in the mildly mentally retarded range. [T. 65]. These tests were administered to Student in English, which was not her native language.

Brownsville ISD completed its assessment of Student in January, 2003. The *** for the District administered the Universal Nonverbal Intelligence Test (UNIT) to Student because Student was a bilingual student and because the *** found it to be a good test for students that have language problems or that come from a different ethnically cultural background. The UNIT was nonverbal in its administration and in its response. Student obtained a full scale IQ score of ***, which was in the *** average range of intelligence. The Diagnostician did not obtain a formal assessment of Student's adaptive behavior because Student's full scale IQ score of *** was in the *** average range of intelligence. Instead, the *** informally determined, based on teacher reports and the *** observations, that Student's adaptive behavior was consistent with her intellectual functioning. [T. 102-103]. Student's testing by Brownsville ISD was done in her native language of Spanish and also in English.

¹ An ARD Committee may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of mental retardation. 34 C.F.R. §300.541(b)(2).

² An intelligence quotient two standard deviations below the mean is considered to be below ***. See, Tex. Admin. Code §700.1353(a)(2).

In reviewing and comparing the evidence concerning these competing evaluations, I find that Brownsville ISD's full and individual evaluation is more accurate and entitled to greater weight and consideration. The evidence established that Dr. *** administered his psychological evaluation to Student, including the Stanford-Binet Intelligence Test, 4th Edition, and the Kaufman Brief Intelligence Test in English, which was not Student's native language. 34 C.F.R. §300.19. Although Dr. *** testified that he believed Student fully understood what was asked of her during the testing, he acknowledged that he did not test her language dominance (although he was aware it was Spanish) and that she might have obtained different scores if tested in Spanish. [T. 66].

The IDEA's implementing federal regulations require that when public agencies conduct evaluations, the evaluation materials used to assess a child be provided and administered in the child's native language or other mode of communication unless it is clearly not feasible to do so and that materials and procedures used to assess a child with limited English proficiency be selected and administered to ensure that they measure the extent to which the child has a disability and needs special education, rather than measuring the child's English language skills. 34 C.F.R. §300.532(a)(1)(ii) and (2). Dr. *** psychological evaluation of Student did not comply with this federal regulation, while Brownsville ISD's full and individual evaluation of Student did comply with this federal regulation.

Additionally, Dr. *** acknowledged in his testimony that Student's test results may have been more accurate if the intelligence test he used had a nonverbal IQ component, especially given the fact that Student is a bilingual student. [T. 52]. Dr. *** also testified that Student did not respond well to him and had difficulties opening up to him as a male examiner and that Student's test results could have varied had the testing been administered by a female evaluator. [T. 53-54]. He further acknowledged that he did not have access to information from the school district when conducting his evaluation and that such information would have given him a more accurate sense of how she was performing at school. He also admitted that it was possible that Student was a slow-learner with limited English proficiency and not mentally retarded. [T. 55].

For the foregoing reasons, I give greater credence and weight to Brownsville ISD's evaluation of Student and find that Petitioner failed to establish by a preponderance of the evidence that Dr. ***'s evaluation was appropriate or that Student met the IDEA's eligibility criteria as a student with mental retardation.

Petitioner next alleged that she did not receive timely written notice of the January 21, 2004 annual ARD Committee meeting. I find that Petitioner failed to establish by a preponderance of the evidence that Student's mother did not receive timely notice of this ARD Committee meeting. Federal regulations require that parents be notified of ARD Committee meetings early enough to ensure that they have the opportunity to attend. 34 C.F.R. §300.345(a)(1). In Texas, such notice must be in writing and given to parents at least 5 school days before the meeting, unless parents agree otherwise. 19 Tex. Admin. Code §89.1015.

The evidence establishes that initially, Brownsville ISD attempted to schedule Student's annual ARD Committee meeting for January 14, 2004. An invitation to attend this meeting was given to Student's mother on January 8, 2004. [T. 73]. January 8, 2004 was the 5th school day prior to the January 14, 2004 meeting. Student's mother did not respond to this notice. Consequently, on January 12, 2004, Brownsville ISD sent two additional notices to Student's mother seeking her response as to whether she could attend the scheduled January 14, 2004 meeting. Apparently, these notices also went unanswered so a third notice was sent to her on January 12, 2004, which rescheduled the ARD Committee meeting for January 16, 2004. January 12, 2004 was the 5th school day prior to the scheduled January 16, 2004 ARD Committee meeting. On January 12, 2004, Student's mother responded to this notice indicating she and her attorney could not attend the January 16, 2004 meeting. [P. Exh. #23]. On January 15, 2004 Brownsville ISD sent another notice to Student's mother rescheduling the ARD Committee meeting for January 21, 2004. This was the one year anniversary date of the prior annual ARD Committee meeting. A notice of this meeting was also sent by facsimile to Student's legal counsel on January 15, 2004. January 15, 2004 was the 5th school day prior to the scheduled January 21, 2004 ARD Committee meeting.

Based on the foregoing evidence, I find that Student's mother and legal counsel were provided with at least 5 school days prior written notice of the January 21, 2004 ARD Committee meeting. Accordingly, Petitioner's contention that Brownsville ISD failed to provide Student's mother with 5 school days prior written notice of the January 21, 2004 ARD Committee meeting is without merit.

Petitioner also contends that Student's alleged *** by a substitute teacher in the spring of 2003 resulted in her being denied a free appropriate public education. Petitioner, in her Post-Hearing Closing Argument seems to indicate that the alleged denial of free appropriate public education involves Brownsville ISD failing to appropriately intervene and address

the emotional trauma associated with the alleged *** (lack of sleep, loss of appetite, being withdrawn, etc.) by providing counseling services to Student as a related service.³ [T. 26, 35].

Petitioner has the burden of establishing by a preponderance of the evidence that the alleged *** incident resulted in Student being denied a free appropriate public education.⁴ I find that Petitioner failed to meet this burden. First and foremost, there was no evidence that the alleged *** occurred. However, there was evidence that Student was emotionally traumatized by some type of unwanted but benign touching by the substitute teacher. The evidence established that a counselor from Brownsville ISD met with Student on May 23, 2003, the day the incident was reported, but Petitioner apparently claims this was insufficient and that Student required more intensive counseling services from Brownsville ISD to assist her in benefiting from her special education services. [T. 35]. The only supportive evidence presented by Petitioner was testimony from Student's mother that Student felt traumatized by the alleged *** incident and testimony from Student's private counselor to the effect that Student could benefit educationally from counseling. [T. 26-27, 43-44, 88-90]. However, it is undisputed that the alleged incident occurred at the very end of the 2002-2003 school year. Moreover, Student's mother had the opportunity to raise the need for additional counseling services at the May 27, 2003 ARD Committee meeting but failed to do so.⁵ Additionally, and most importantly, I find no evidence in the record that the alleged incident has adversely affected Student's educational performance during the current school year. Instead, the evidence showed that Student has been participating more in class, is making academic progress and is achieving a significant educational benefit from her special education instruction. Accordingly, I find that the School District adequately addressed the alleged incident by providing Student with counseling on the day of the incident was reported. Although Student's mother subsequently obtained private counseling services for Student, there is a lack of credible evidence that for the 2003-2004 school year (through the date of the hearing), Student needed such counseling as a related service to assist her in benefiting from her special education services. *See*, 34 C.F.R. §300.24. There is no credible evidence that Student has been denied a free appropriate public education as a result of the alleged *** incident. 34 C.F.R. §300.13. Accordingly, Petitioner's express or implied claims, if any, for additional counseling services for Student or reimbursement for privately obtained counseling services are without merit and are denied.

Conclusions of Law

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

1. Student qualifies for special education services from Brownsville ISD as a student with learning disabilities. 34 C.F.R. Sec. 300.7.
2. Brownsville ISD, being Student's resident school district, has the responsibility of providing her with a free appropriate public education in the least restrictive environment.
3. Student does not currently qualify for special education services as a student with mental retardation since the testing that purportedly showed mental retardation was not administered to Student in her native language. 34 C.F.R. §300.532(a)(1)(ii) and (2).
4. Federal regulations require that parents be notified of ARD Committee meetings early enough to ensure that they have the opportunity to attend. 34 C.F.R. §300.345(a)(1). In Texas, such notices must be in writing and given to parents at least 5 school days before the meetings, unless parents agree otherwise. 19 Tex. Admin. Code §89.1015.
5. Brownsville ISD complied with applicable federal and state laws in providing Student's parent and legal counsel with timely notice of the January 21, 2004 ARD Committee meeting.

³ In this proceeding, Petitioner failed to establish that Student was *** by a substitute teacher. In fact, Student's psychologist testified that although Student felt violated and didn't want to be touched by her teacher, her reports of touching had been benign. [T.44].

⁴ A free appropriate public education means special education and related services that: (a) are provided at public expense, under public supervision and direction, and without charge; (b) meet the standards of the State Educational Agency, including the requirements of the IDEA; (c) include preschool, elementary school or secondary school education in the State and (d) are provided in conformity with an individualized education program (IEP) that meets the requirements of 34 C.F.R. §300.340-300.350. *See*, 20 U.S.C. §1401(8).

⁵ Student's mother testified that the *** asked her not to raise the *** issue at the ARD Committee but that did not prevent her from requesting additional counseling services for Student.

6. Counseling as a related service, must be provided to students with disabilities when required to assist the student in benefiting from special education. 34 C.F.R. §300.24.
7. Student does not currently require counseling services as a related service to assist her in benefiting from special education services. 34 C.F.R. §300.24.
8. Brownsville ISD provided Student with a free appropriate public education from February 10, 2003 to the end of the 2002-2003 school year. 34 C.F.R. §300.13.
9. Brownsville ISD provided Student with a free appropriate public education from the beginning of the 2003-2004 school year through March 24, 2004, the date of the hearing. 34 C.F.R. §300.13.

ORDER

After due consideration of the record and the foregoing findings of fact and conclusions of law, I ORDER that all relief requested by Petitioner is DENIED.

Finding that the public welfare requires the immediate effect of this Final Decision and ORDER, I hereby make it effective immediately.

SIGNED this 29th day of April 2004.

/s/ James W. Holtz

James W. Holtz
Special Education Hearing Officer

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SYNOPSIS

Issue: Whether School District failed to identify student with mental retardation?

Held: For the School District. Private psychological assessment obtained by parent indicating student's mental retardation was not administered in student's native language of Spanish. School District's evaluation indicating specific learning disabilities and not mental retardation was administered in student's native language and complied with the IDEA's evaluation requirements. School District's evaluation was determined to be the most credible evidence of student's intellectual and academic abilities.

Cite: 34 C.F.R. §300.532(a)(1)(ii) and (2); 34 C.F.R. §300.19

Issue: Whether School District failed to provide parent with timely notice of annual ARD Committee meeting?

Held: For the School District. School District provided parent and parent's legal counsel with 5 school days notice of annual ARD Committee meeting and rescheduled the meeting at parent's request because parent could not attend on the date scheduled.

Cite: 34 C.F.R. §300.345(a)(1); 19 Tex. Admin. Code §89.1015.

Issue: Whether School District appropriately addressed emotional needs of student with disabilities who was allegedly *** by substitute teacher?

Held: For the School District. Petitioner failed to establish that any *** occurred. Additionally, the School District adequately addressed the alleged incident, which occurred at the end of the 2002-2003 school year, by providing student with counseling on the day the incident was reported. Although parent subsequently obtained private counseling services, there was a lack of credible evidence that for the 2003-2004 school year, counseling, as a related service, was required to assist student in benefiting from special education services.

Cite: 34 C.F.R. §300.24.