

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

**STUDENT, bnf
Parent,
Petitioner,**

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v.

DOCKET NO. 104-SE-0110

**HOUSTON INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, Student (“Petitioner” or “Student”) brings this action against the Respondent Houston Independent School District (“Respondent,” “the school district,” or, “HISD”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

Party Representatives

Student has been represented throughout this litigation by his legal counsel Dorene Philpot, Attorney at Law. The school district has been represented throughout this litigation by its legal counsel Hans Graff, Assistant General Counsel for HISD.

Resolution Session and Mediation

The parties met in a Resolution Session but were not able to reach a mutually agreeable settlement. The parties engaged in informal settlement negotiations but also were not able to reach a mutually agreeable settlement. Respondent declined the opportunity to attempt mediation as an alternative form of dispute resolution in this case.

Procedural History

Petitioner filed his initial request for hearing on January 6, 2010. An initial Scheduling Order was issued on January 7, 2010. The case was first set for hearing on March 3-4, 2010. A prehearing conference was conducted on February 5, 2010 with counsel for both parties. The hearing was continued once and reset to April 20-22, 2010 at Petitioner’s request in order to resolve a scheduling conflict for Petitioner’s counsel.

The due process hearing was conducted on April 20, 21 and 22, 2010. Both parties continued to be represented by their legal counsel. Student and his mother, *** attended all three days of the due process hearing. In addition, ***, Special Education Program Specialist for HISD, attended the first day of the due process hearing as the party representative and ***, Special Education Manager for HISD - West Region, attended the second and third days of the due process hearing as the party representative.

The parties requested an opportunity to submit written closing briefs. The record remained open and the parties submitted their briefs in a timely manner. The Decision of the Hearing Officer was extended to June 14, 2010 and again, by agreement, to June 18, 2010.

Issues

Petitioner submitted the following broad, overall issue: whether the school district provided Student with a free, appropriate public education (FAPE) in the least restrictive environment within the meaning of the Individuals with Disabilities Education Act (IDEA); and specifically:

1. Whether the school district failed to devise and implement an appropriate transition plan for Student;
2. Whether the school district failed to implement Student's Individual Educational Plan (IEP);
3. Whether the school district failed to provide Student with FAPE because his IEP failed to address his needs as student with dysgraphia;
4. Whether the school district failed to provide Student with FAPE because his IEP failed to address his difficulties in mathematics;
5. Whether the school district failed to provide Student with FAPE because he is not ready to ***; specifically because he has not met IEP goals of meeting grade level standards for: (a) the state mandated curriculum known as Texas Essential Knowledge and Skills (TEKS); (b) the district's own assessment instrument -- the Stanford Achievement test; and (c) he was unable to take the *** Test (***) with accommodations due to the alleged failure of the school district to complete the requisite paperwork;
6. Whether the school district failed to provide Student with FAPE because his IEP does not contain an individualized, personal graduation plan;
7. Whether the school district failed to implement Student's IEP by failing to complete a functional vocational assessment as stated in the November 2009 IEP;
8. Whether the school district failed to provide Student with FAPE when it allegedly failed to conduct an *** assessment for *** purposes, ***, and, in order for Student to take the *** with accommodations;
9. Whether the school district failed to assess Student's auditory processing and processing deficits and failed to provide Student with appropriate educational services as a result;
10. Whether the school district failed to conduct an updated Assistive Technology (AT) evaluation for purpose of providing Student with AT as a related service;
11. Whether the school district failed to provide Student with additional educational services when his IQ score fell significantly and whether the failure to notify Student's parent that a significant drop

in IQ can be the basis for additional services denied Student FAPE;

12. Whether the school district failed to provide Student and his parent with the requisite prior notice when: (i) it denied parental requests for changes in services and programming and (ii) when it made unilateral changes in Student's IEP by failing to implement IEP provisions;
13. Whether the school district failed to provide Student's parent with access to his educational records and, if so, whether that constitutes a denial of FAPE;
14. Whether the school district failed to include Student's parent or to convene an Admission, Review & Dismissal Committee (ARD) in making decisions about Student's educational program; and,
15. Whether Student is entitled to compensatory educational services as a result of the school district's alleged failure to provide Student with FAPE within the meaning of the IDEA.

Relief Requested

Petitioner requests the following items of requested relief:

1. Findings of fact and conclusions of law that the school district failed to provide Student with a free, appropriate public education in the least restrictive environment;
2. The school district provide Student with one year of compensatory educational services including timely submission by the school district of necessary paperwork to ensure Student will be eligible to take the *** with appropriate accommodations;
3. The school district will provide Student with a tutor in the subject areas where he has not yet met grade level standards for the TEKS and to address his needs in math and as a student with dysgraphia and processing deficits - the scope and schedule of which is to be determined by the hearing officer based upon the evidence submitted in the due process hearing;
4. The school district conduct assessments in all areas of suspected disability and all other necessary assessments, including a functional vocational assessment, an updated AT assessment, and assessments to address deficits in mathematics, auditory processing, processing speed, and as a student with dysgraphia; and,
5. The school district provide Student's mother with written progress reports on Student's IEP goals and objectives in a timely manner.

Status of Re-evaluation

The school district raised the issue of whether it may conduct a re-evaluation of Student and override a lack of parental consent to do so during the prehearing conference conducted on February 5, 2010. (Transcript, Prehearing Conference, February 5, 2010, p. 13)(referred to hereafter as "Prehrg. Tr., pp. _). The parties reached an agreement during the prehearing conference that Student's mother would execute the requisite consent forms. Counsel for the parties agreed to exchange the forms to facilitate the evaluation.

Respondent agreed to conduct a comprehensive assessment including the specific evaluations Student's mother requested: assistive technology, occupational therapy (OT), and auditory processing. (Pre-Hrg. Tr., pp. 13-15, 21). The agreement was confirmed by subsequent order of the hearing officer. First Interim Order and First Revised Scheduling Order (February 5, 2010). On February 12, 2010 Petitioner's counsel confirmed receipt of the signed consent forms from Student's mother by mail and her intent to scan the forms and transmit them to Respondent via email.

The issue of parental consent to conduct the re-evaluation did not arise again until the due process hearing. Respondent contended the consent obtained from Student's mother was insufficient for purposes of proceeding with the re-evaluation. The school district requested an order overriding the lack of parental consent in order to proceed with the re-evaluation. The school district also argued that the lack of sufficient parental consent was a defense to Petitioner's claim that the school district failed to conduct the re-evaluation in a timely manner. Petitioner contended the consent provided was sufficient. (Transcript, Volume III, pp. 715-717, referred to hereafter as "Tr. Vol. ___, p. ___").

FINDINGS OF FACT

1. Student is a *** year old *** grader eligible for special education as a student with a learning disability (LD) and Other Health Impairment (OHI). He has been identified as a student with dysgraphia and auditory processing and processing speed deficits. (Respondent's Exhibit 2, referred to hereafter as "R. Ex. ___") (R. Ex. 15) (R. Ex. 22, pp. 1006-007). He has also been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). (R. Ex. 7, p. 614) (R. Ex. 10). There is no dispute about Student's eligibility for special education services from HISD.
2. Historically, Student's writing fluency has been assessed as below average and below age level expectancy. (P. Ex. 3, pp. 8-11) (P. Ex. 5, p. 17) (P. Ex. 9, p. 42) (R. Ex. 2, pp. 747, 750). Student's processing deficits affect his written language communication needs and abilities. (P. Ex. 17, p. 93). Student also has a history of difficulty with math. (P. Ex. 23, pp. 125, 130) (P. Ex. 45, p. 261) (R. Ex. 2, pp. 747-750) (R. Ex. 23 pp. 1108, 1110, 1113) (R. Ex. 24, p. 1131) (R. Ex. 42) (Tr. Vol. I, p. 140-141) (Tr. Vol. II, pp. 263, 267).
3. Student has been described as intellectually bright with strengths in verbal comprehension and reasoning and perceptual and non-verbal reasoning. His full scale IQ scores range from a high of *** in second grade to *** more recently. (P. Ex. 2) (R. Ex. 3). IQ measurements from a variety of assessments fall primarily in the *** range. (P. Ex. 5, p. 20) (P. Ex. 8, p. 36) (R. Ex. 3). IQ scores can vary over time depending on a number of factors. A variance of 10 points over time is considered to be normal and does not necessarily indicate a loss of intelligence, intellectual capability, or education. (R. Ex. 2, p. 744) (R. Ex. 3, pp. 861-862) (Tr. Vol. I, pp. 252-253).
4. Student has been consistently described as polite, kind, and trustworthy. (R. Ex. 1, p. 744). His teachers note difficulties with organization and turning work in on time. (R. Ex. 1, pp. 687, 689-690, 779) (R. Ex. 4, p. 507) (R. Ex. 23, p. 1113) (R. Ex. 24, p. 1129) (R. Ex. 25, pp. 1138-1139).
5. Student has attended the *** School (***) since ninth grade. *** is a special charter school

operated by HISD. *** is a *** program that provides eligible students with an opportunity to earn *** high school and *** credit subject to certain requirements. (R. Ex. 55). Students may either graduate from high school after four years or, if eligible, may choose to “hold back” some of their high school requirements ***. (Tr. Vol. III, pp. 634, 638-639).

6. Eligible students may take *** classes at *** beginning in their junior year. The *** campus adjoins *** campus. (P. Ex. 79). The *** earned at *** are transferable to other *** Texas institutions. One of the requirements for *** enrollment is that the student must demonstrate mastery of the knowledge and skills necessary for success *** through specified scores on the *** test. (P. Ex. 79).
7. During the fifth year the student is primarily enrolled in *** courses with individualized support provided by ***. Students who *** from *** under this option have the potential to earn *** and an *** at the *** level. (P. Ex. 79) (Tr. Vol. I, p. 48).
8. *** utilizes a block schedule. This allows teachers to pace lessons according to student needs. The school week is divided into “A” and “B” days Monday through Thursday and a “C” schedule on Fridays with the content classes alternating a 55 minute class period every other week. A *** student goes to four content classes per day for almost 90 minutes per class four days per week. Tutorials are offered for one hour after school Monday through Thursday. (P. Ex. 79, p. 6).
9. At the promotional ARD from *** school to *** Student’s mother was advised of the “probation procedures” for ***. (R. Ex. 32, p. 805). The promotional ARD also included a written graduation plan with Student’s anticipated date of graduation as ***. (R. Ex. 32, pp. 809-810). A transition plan with enrollment at a four year college or university as the stated objective was also included in the promotional ARD. (R. Ex. 32, p. 811).
10. *** issues each student a Handbook. Student received a copy of the Handbook. The Handbook contains an explanation of the mission, philosophy and structure of the *** model. It also contains a set of written academic policies and procedures. (P. Ex. 79, p. 7). The Handbook includes a course outline “matrix” for years one through five. The Handbook includes a notice that students must maintain a “B” (3.0) or better grade point average (GPA) as recorded on HISD transcripts and a 2.0 in *** courses as stated on *** transcripts in order to maintain the *** enrollment progression displayed in the matrix. (P. Ex. 79, pp. 11-12)(R. Ex. 51 pp. 1035-1036, 1038)
11. The Handbook also includes specific provisions on how to drop a *** course and the procedure for doing so. A student who wishes to drop an *** class must obtain approval from their ***, notify the *** and submit a copy of their new schedule for placement in their Personal Graduation Plan. A student must be enrolled in at least one HISD required course for *** in order to maintain *** status for waiver of the ***. (P. Ex. 79, p. 12). Student signed a contract acknowledging to abide by these rules. (R. Ex. 51, p. 1036).
12. The 3.0 GPA requirement was not strictly followed during Student’s first two years at ***. By his *** year, the newly assigned *** realized there was a need to change the “culture” of the campus in order to consistently apply and abide by the requirements and criteria of the ***

- program. (Tr. Vol. I, pp. 202-203) (Tr. Vol. III, pp. 640-641).
13. The *** and the Special Ed Chair were Student's academic advisors. (Tr. Vol. II, pp. 130, 132-133)(Tr. Vol. III, pp. 608-609). The Dean of Students also supervised Student's academics and discipline. (Tr. Vol. II, p. 133)(Tr. Vol. II, p. 546. In the fall of 2009 *** conducted a record review of students who did not maintain a 3.0 GPA. Student was identified as one of those students. (R. Ex. 20, pp. 956-958) (R. Ex. 42, p. 1497) (Tr. Vol. II, pp. 548-549, 557-558).
 14. This meant that Student was no longer eligible to remain at *** for the fifth year. Several *** staff members discussed Student's status by email on October 30, 2009. They agreed Student should *** in May *** under the four year high school program. Student needed four courses in the spring of 2010 to *** in May. (P. Ex. 53, p. 363) (R. Ex. 21, p. 978) (Tr. Vol. II, p. 549). In late fall of his *** year Student was advised by the Special Ed. Chair and *** that he was not eligible for the fifth year. He was told to change his class schedule and plan to *** in May 2010. (Tr. Vol. II, p. 524, 527)(Tr. Vol. II, pp 520-521, 719, 721).
 15. A personal graduation plan is to be developed beginning in sixth grade and reviewed annually under school district policy. (P. Ex. 58, p. 397) (Tr. Vol. II, p. 360). There are three possible types of high school programs a student may pursue: Core, Recommended or Distinguished. The Recommended program is used at *** as the minimum expectation for graduation. (P. Ex. 79, pp. 8-10). The Distinguished program requires one additional credit of a foreign language and a number of specific "advanced measures." Both plans require a student earn a total of 26 credits. (P. Ex. 79, p. 10) (R. Ex. 22, pp. 1025, 1031). Student is ***. (R. Ex. 43, p. 1510).
 16. An IEP devised on April 10 and 24, 2007 was in place from April 10, 2007 to April 2008 (from the end of *** grade to late spring of *** grade) (P. Ex. 15) (P. 17, p. 104). The IEP contained annual goals for mastering grade level TAKS objectives and using organizational skills to complete and turn work in on time. (P. Ex. 15, p. 69).
 17. A set of modifications applicable in all classes was also included in the IEP. These involved extended time for assignments, use of a laptop for written work, extended time on tests, copies of lecture notes/overheads, copies of students notes, use of graph paper (for math), use of a calculator, and tutorials with teachers and peer tutors. (P. Ex. 10, pp. 49-50) (R. Ex. 23, p. 1117). (P. Ex. 15, p. 70) (P. Ex. 17, p. 95). Weekly status checks, progress reports and report cards for Student's mother were included as a component of the educational plan. (P. Ex. 15, p. 71) (P. Ex. 17, p. 97).
 18. The IEP was revisited at an ARD on October 3, 2008 with the duration of services beginning on October 3, 2008 to October 2, 2009 (*** grade through fall of *** grade). The annual goal in the revised IEP was for Student to pass the TAKS test in all areas and score at or above grade level on the Stanford Achievement Test. The IEP noted Student was performing at grade level in all academic areas except math. Continued support in math through tutorials was included in the revised IEP. (P. Ex. 37) (R. Ex. 23, pp. 1113, 1126).
 19. To address difficulties in math a specific math IEP was also developed with an annual goal that Student would meet minimum standards for passing grade level TAKS objectives and complete all assignments. (P. Ex. 37, p. 215). The use of the lap top and calculator continued as support

- services. Small group testing and dividing long term assignments were accommodations included in the new IEP. (P. Ex. 37, pp. 214, 218-219). In order to meet Student's needs in math he was "double-blocked." This meant he had math instruction and worked on math every day instead of every other day. (Tr. Vol. I, p. 1142) (Tr. Vol. III, pp. 694, 711-712).
20. Although Student failed Algebra I he was successful when he re-took the class in summer school. Student was then able to take Algebra II the following year and passed the class. (R. Ex. 42) (R. Ex. 44). By *** grade Student also earned sufficient scores on the *** and was therefore able to begin taking *** classes at ***. (R. Ex. 50) (Tr. Vol. II, p. 539).
 21. The teachers monitored Student's assignments and allowed him to complete work during class and in tutorials as part of the educational plan. Student's unfinished math assignments were also monitored by the Special Ed Chair. The Special Ed Coordinator assigned to the *** campus was enlisted to follow up with the campus at least twice a month and to communicate with Student's mother following those visits. (R. Ex. 23, pp. 1126-1128) (Tr. Vol. I, p. 142).
 22. The *** Test (***) is a common measure of *** readiness required by many ***. (P. Ex. 79, p. 13). The *** Board administers the *** exams. The *** allows some students with disabilities to use certain specified accommodations in taking the ***. There is a strict application process to secure approval from the *** Board to use the accommodations. (P. Ex. 79). Student's mother began asking questions of school staff about Student's eligibility to use the *** accommodations in June 2007 and again in September 2009. (P. Ex. 26, p. 158) (P. Ex. 49, p. 269).
 23. A school district may assist the student in completing an application for the use of accommodations in taking *** exams. Student's mother sought the assistance of *** in submitting the necessary *** accommodations paperwork. (R. Ex. 58) (Tr. Vol. II, p. 429). In September 2009 the Special Ed Chair submitted a request for extended testing time and small group testing as *** accommodations. The *** Board approved the request. However, Student's mother also sought the use of a laptop as an accommodation for Student on the writing portion of the ***. The Special Ed Chair submitted another request for the laptop accommodation after Student's mother brought the matter to her attention. (R. Ex. 58).
 24. The *** Board approved all three accommodations on December 16, 2009 by facsimile letter to the Special Ed Chair at ***. (P. Ex. 65, pp. 512-513) (Tr. Vol. I, p. 197). The *** Board also mailed notice of the approval to Student. (R. Ex. 43). Student and his mother claimed they did not receive notice of the approval of the laptop until January 2010 when the Special Ed. chair sent a copy of the facsimile notice home. (Tr. Vol. II, p. 417).
 25. Student did not sign up to take any of the scheduled *** examinations during the fall 2009 or early spring 2010 due to the delay and confusion over *** Board approval for all three SAT accommodations. He did sign up to take the May 2010 ***. (Tr. Vol. II, pp. 513-514). Without an *** Student was unable to meet several *** deadlines for the 2010 fall semester. (R. Ex. 43, pp. 1499-1502) (Tr. Vol. I, pp. 167, 173). However, Student could have submitted a request for *** accommodations directly without waiting for the school to act. Directions for direct application for *** accommodations were included on the *** Board's website. Student's mother was aware of the website. (R. Ex. 58, pp. 1304-1307).

26. HISD conducted a triennial evaluation on April 27, 2007 – the spring of Student’s *** grade year. (R. Ex. 1) (R. Ex. 25, p. 1187). Student’s re-evaluation was due in April 2010 while this case was pending. The need for the re-evaluation was noted at ARD meetings in the fall of 2009. (R. Ex. 23, p. 1126) (R. Ex. 22, p. 1023). However, HISD was not successful in securing the requisite written parental consent to proceed with the re-evaluation in the fall of 2009. (Tr. Vol. II, pp. 335-336).
27. The issue of parental consent was discussed during the prehearing telephone conference conducted in this case on February 5, 2010. Petitioner agreed to execute and return the requisite consent forms so that the re-evaluation could proceed. (P. Ex. 72) (Prehrg. Tr. pp. 13-15, 21). However, the consent forms returned to HISD contained notations by Student’s mother. The Consent for Release of Medical Information indicated that notice of procedural rights was attached to the form. Student’s mother noted the procedural safeguards were not in fact attached to the form received via email. (P. Ex. 72, p. 551).
28. The Consent for Full and Individual Evaluation asked the parent to confirm receipt of the name and telephone number of a school staff member to call for more information or to answer questions about the proposed evaluation. Student’s mother noted she did not receive that information. (P. Ex. 72, p. 553). Although she signed the consent forms HISD did not consider them to be sufficient due to the notations. (Tr. Vol. III, p. 698). Student’s mother did not receive any revised consent forms from the school district after February 2010. (Tr. Vol. III, p. 724).
29. Student’s progress in meeting IEP goals was provided to Student’s mother through report cards and progress reports. Each semester is divided into two nine-week grading periods. A semester final average grade for each class is calculated by weighting each nine-week grade (40% of the final grade) and the final exam grade (20%). A student must earn a minimum grade of 70 in order to earn credit for purposes of high school ***. School-wide progress reports are sent home with the student during the fourth and seventh weeks of each nine-week grading cycle. In 2009-1010 school year report cards were sent home on November 4, 2009, January 13, 2010, March 31, 2010 and a final report card was scheduled for June 2, 2010. (P. Ex. 79, p. 8).
30. Grades were reported numerically. In *** grade Student’s final first semester grades in core academics were: ***. His final second semester grades in core academics were: ***. In the first semester of *** grade Student’s final first semester grades in core academics were: ***. (R. Ex. 42) (R. Ex. 44). Student made educational progress at ***. Student admitted he has improved as a student over the years. (Tr. Vol. III, pp. 721, 723).
31. Student took the *** in January 2009. A report was issued that compared Student’s performance to other *** grade students across the nation. His achievement scores were expressed in terms of national percentiles. For example, Student’s percentile score of *** in total reading meant that he performed as well or better than *** of students nationally in that subject. His percentile score in mathematics was ***; Total Language ***; Spelling ***; Science ***; Social Science ***; and Thinking Skills ***. In terms of grade equivalents, Student placed *** on all subtests. (P. Ex. 78, p. 589) (R. Ex. 47).

32. Student also took the *** TAKS. The scores were reported in May 2009. Student met the minimum state standards for English/Language Arts and Science. Student not only met the minimum state standards but scored high enough to earn commended performance in Mathematics and Social Studies. (P. Ex. 78, p. 588). The TAKS scores meant Student was eligible to ***, and indicated his readiness for *** (P. Ex. 79, p. 10) (R. Ex. 46).
33. After learning that he would need to *** in May Student dropped the spring 2010 semester *** classes he was registered for in an attempt to remain at *** for another year. He did so without the requisite approval. The *** discovered the change in Student's spring 2010 schedule. Thinking it was an error in the system she re-registered Student in the classes. Student made a second attempt to ensure *** high school by dropping an *** class also without the requisite approval. (Tr. Vol. II, pp. 535-536)(Tr. Vol. III, pp. 614-615, 617, 619-620).
34. An annual ARD was required by October 2009. (R. Ex. 59, p. 1003). The parties had some difficulties agreeing on a mutually convenient date for the annual ARD. A number of emails were exchanged between the school and Student's mother in attempts to schedule the annual ARD. The parties were not successful in communicating by phone. (R. Ex. 22, p. 963). On October 26, 2009 Student's mother requested copies of all records to be reviewed at the ARD in advance so that she could be prepared. (R. Ex. 59, p. 1065).
35. The school proposed three possible dates in November for the ARD: November 9, 10 or 11th. (R. Ex. 59, p. 1005). The school sent Student's mother three ARD notices for each of the proposed dates. The three notices were transmitted to Student's mother on the same day. (Tr. Vol. II, p. 403). This resulted in some confusion and miscommunication between the parties. The ARD was not confirmed with Student's mother until the morning of November 11th. (P. Ex. 57) (P. Ex. 59, p. 419) (R. Ex. 59, p. 1004). Student's mother complained that she had not received the requisite five days prior notice of the November 11th ARD. (P. Ex. 59, p. 432).
36. The annual ARD meeting was conducted on November 11, 2009. Student's mother participated by telephone. Student did not attend. (R. Ex. 22) (Tr. Vol. II, p. 401). Student's IEP was revised with a single measurable annual goal: "Student will master grade level TEKS in all academic subjects". A set of accommodations for the remainder of the school year were also included in the revised IEP. (R. Ex. 22, p. 1014). These included: extended time, math tables and formula sheets, use of laptop for note taking and written work, note taking assistance, and, small group administration for tests. (R. Ex. 22, p. 1014). The graduation plan proposed at the November 11th ARD meeting was for Student to graduate in May *** under the Recommended High School Program. (R. Ex. 22, p. 1024). Student's mother did not agree with the recommendation for Student to graduate from high school in May 2010. (R. Ex. 22) (Tr. Vol. II, pp. 401-402).
37. Transition needs were also addressed at the November 11th ARD. A written Personal Graduation Plan was completed as a component of the ARD paperwork. (R. Ex. 22, pp. 1024-1031). Student's post high school plans to attend a four year college or university were previously discussed and documented in ARD meetings beginning as early as ninth grade. (R. Ex. 28, pp. 1184, 1186) (R. Ex. 29, pp. 662-663, 682).
38. Student's mother requested copies of the November 11th ARD paperwork and any educational

materials including transcripts that were reviewed and a tape recording of the ARD. The principal met Student's mother on school grounds on November 13, 2009 and provided her with the requested records with the exception of the tape recording. (R. Ex. 59, pp. 1417-1419) (Tr. Vol. II, p. 401).

39. The November 11th ARD recessed and reconvened on November 24, 2009. The ARD again ended in disagreement ***. Student's mother also continued to express concerns about the delay in securing the *** accommodations. (R. Ex. 21, pp. 978, 980). A set of handwritten corrections to the November 11th ARD minutes prepared by Student's mother was attached to the ARD paperwork. (R. Ex. 22, pp. 963-967).
40. HISD prepared a written Notice of Refusal on December 18, 2009 after the two November ARD meetings ended in disagreement ***. (R. Ex. 20, pp. 961-962). The Notice was transmitted to Student's mother by email and regular first class mail on January 4, 2010. (Joint Exhibit 1, referred to hereafter as "J. Ex. 1")(R. Ex. 20).
41. Student's mother has been an active participant and advocate for Student throughout his attendance at ***. Over the past two years she maintained frequent communication with the Special Ed Chair, the principal, the Special Ed Coordinator assigned to the *** campus and with a number of Student's teachers. Student's mother also voiced concerns and communicated with other administrative staff in the HISD hierarchy. (R. Ex. 58). School staff communicated with one another, with Student, and with the Special Ed Coordinator to ensure implementation of Student's IEP and educational progress towards graduation. (R. Ex. 54) (R. Ex. 58).
42. As of the date of the hearing, the only class Student needs to *** high school is the *** class. (Tr. Vol. III, p. 622). He can take the class in summer school, through credit recovery, or at ***. (Tr. Vol. II, pp. 588-589). Student may also continue his studies at ***. (Tr. Vol. II, pp. 591-592). *** provides supports services to students with disabilities. A student must apply for the services. Documentation of disability and the need for services is a component of the *** application process for disability services. (R. Ex. 56) (R. Ex. 57).

DISCUSSION

Statute of Limitations

The IDEA establishes a two year statute of limitations period unless the state has its own explicit statute of limitations rule. *34 C.F.R. § 300.511 (e)*. In Texas a parent must file a request for due process hearing within one year from the date the parent knew or should have known about the alleged action that forms the basis of the hearing request. *19 Tex. Admin. Code § 89.1151 (c)*. The statute of limitations rule does not apply if the parent was prevented from filing a due process request due to: (1) specific misrepresentations by the school district that it resolved the problem forming the basis of the due process complaint; or (2) the school district withheld information from the parent that it was otherwise required under IDEA to provide. *34 C.F.R. § 300.511 (f)*.

In his initial request for a due process hearing Petitioner asserted claims within the past two years from the date of his request for hearing. The application of a two year rather than one year statute of limitations period was not specifically discussed during the February 5, 2010 prehearing telephone conference.

Petitioner submitted a motion to extend the limitations period at the beginning of the due process hearing. Petitioner argued that Respondent waived application of the one year limitations rule in this case. In response, and prior to the presentation of the evidence, Respondent objected to Petitioner's motion to extend the one year limitations periods as untimely and that there is no basis in the law for doing so. Petitioner's motion to extend the limitations period remained pending during the due process hearing to provide Petitioner with an opportunity to prove one or both of the two exceptions to the limitations rule. *See, J.W. bnf P. & M. W. v. Silsbee Ind. Sch. Dist., Dkt. No. 268-SE-0709 (SEA. Tex. 2009) (school district waived objection to extension of SOL where objection not submitted until written closing argument and hearing was completed).*

Misrepresentation Exception

The first exception to the statute of limitations rules requires proof that the misrepresentation alleged was intentional or flagrant. Petitioner must show the school district subjectively determined that Student was not receiving FAPE and intentionally misrepresented that fact to Student's mother. *See, Evan H. v. Unionville-Chadds Ford Sch. Dist., 2008 U.S. Dist. LEXIS 91442, pp. 4-5 (D.C. Pa. 2008) (no evidence school district determined student eligible for special education but specifically misled parents otherwise); Sch. Dist. of Philadelphia v. Deborah A., 2009 U.S. Dist. LEXIS 24505, pp. 3-4 (D.C. Pa. 2009) (school district's representations that student making educational progress were not misrepresentations to extend SOL).*

While there is evidence in the record to conclude the parties disagreed from time to time on Student's educational program there is no credible evidence of an intentional or flagrant misrepresentation by the school district to warrant extension of the one year limitations period.

Failure to Provide Required Information

The second exception to the statute of limitations rule requires a showing that the school district failed to provide Student's mother with information required under IDEA. The information that a school district must provide to parents under IDEA includes:

- Notice of evaluation procedures the school district proposes to use;
- Notice that the school district has determined no further evaluation is necessary and that parents may then seek an IEE;
- Notice of procedural safeguards; and,
- Prior notice any time the school district proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE or refuses to change the identification, evaluation, or educational placement of the child or the provision of FAPE.

20 U.S.C. § 1415 (b) (6) (A) (B) (c); 34 C.F.R. § 300.511 (f).

Petitioner failed to meet his burden of proving that the school district did not provide the requisite notices regarding evaluations. The evidence demonstrated that the school district acknowledged the need for a three re-evaluation and took steps to initiate the process. Student's mother participated in ARD meetings where the need for the re-evaluation was discussed. The school district did not refuse to conduct an evaluation.

The evidence also confirmed Student's mother had both actual and constructive knowledge of her parental rights under IDEA. *See, El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (D.C. Tex. 2008), *aff'd in part and vacated on o.g.* 591 F. 3d 417 (5th Cir. 2009); *Sch. Dist. of Philadelphia v. Deborah A.*, *supra* (parent must show she was prevented from requesting a hearing due to school district's withholding information regarding procedural rights).

Student's mother was actively involved in and participated in his educational programming. She advocated for his needs, asked questions, and took steps to secure educational documents. She maintained frequent communications with teachers and other school district staff about Student's educational program and accessed the HISD chain of command. The school district provided Student's mother with the requisite prior written notice when the two November ARD meetings ended in disagreement about Student's *** high school. The credible evidence shows that Student's mother was not prevented from filing a due process request because the school district failed to provide her with information required by the IDEA. 34 C.F.R. § 300.511 (f).

Therefore, Petitioner's claims are limited to the one year limitations period established under both state and federal law and Petitioner's motion to extend the limitations period shall be denied. 34 C.F.R. § 300.511 (e); 19 Tex. Admin. Code § 89.1151 (c); *Fern v. Rockwood R-VI Sch. Dist.*, 48 IDELER 35, (D.C. Mo. 2007)(holding neither of the exceptions applied where record showed parents fully participated in IEP process, met with district representatives and were continuously advised of the status of child's program).

FAPE Issues

Petitioner alleges a broad overall issue: i.e., that the school district failed to provide him with a free, appropriate public education at ***. He describes this alleged failure specifically to include the following: a failure to devise and implement an appropriate transition plan, a failure to implement his IEP, a failure to address his needs as a student with dysgraphia, a failure to address his difficulties with math, failure to provide additional services when his IQ score fell, and a failure to provide him with a graduation plan. Petitioner also alleges he is simply not ***. Petitioner contends he has not mastered the state mandated curriculum as measured by the TAKS and the Stanford Achievement test. Petitioner also complains that the school district failed to assist him in securing accommodations in order to take the *** in a timely manner.

Legal Analysis to Determine FAPE: The Four Factors Test

In Texas the Fifth Circuit has articulated a four factor test to determine whether a school district's program provides FAPE. Those factors are:

- The program is individualized on the basis of the student's assessment and performance;
- The program is administered in the least restrictive environment;
- The services are provided in a coordinated, collaborative manner by the "key" stakeholders; and,
- Positive academic and non-academic benefits are demonstrated.

Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5th Cir. 1997).

These four factors need not be accorded any particular weight nor be applied in any particular way. Instead, they are merely indicators of an appropriate program and intended to guide the fact-intensive inquiry required in evaluating the school district's educational program in order to determine whether the program provided the student with FAPE. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d 286, 294 (5th Cir. 2009).

First Factor: Individualized and Based on Assessment Data

The credible evidence shows Student's program met this criteria. The assessment data established that Student had the intellectual capability to master the *** curriculum at ***. His IEP included accommodations to support him in the classroom and in completing assigned work. He was provided with extra time to complete work, to take tests in a small group setting, the use of a laptop for written assignments, note taking assistance, study sheets, and, the use of a calculator for math. These accommodations addressed his needs arising from his dysgraphia, processing speed deficits, and ADHD. When Student stumbled in math he was provided with tutorials and the opportunity to take the class again in summer school where he was ultimately successful.

The ARD could have written an IEP goal that Student would master the TEKS in all classes at 80% instead of passing at 70%. However, I do not conclude the choice made by the ARD as a failure to individualize Student's program. Passing classes is no more or no less than what is expected of any student. The IDEA ensures only to provide a student with a disability a basic floor of opportunity with access to the regular education curriculum and not the maximum benefit possible. *Bd. of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 176, 198, 201 (1982).

Second Factor: LRE

Student was educated with his non-disabled peers to the maximum extent by attending ***. He had the benefit of learning along with other high school students who had similar goals and aspirations. There is no real dispute that the program was administered in the least restrictive environment. 34 C.F.R. § 300.114(a) (2) (i) (ii).

Third Factor: Coordinated, Collaborative Manner

The evidence demonstrated that school staff worked together to support Student in mastering the curriculum, passing the TAKS, and ***. Special ed staff monitored and followed up with teachers to ensure his accommodations were being followed. ARD meetings were convened when adjustments to his program were required. Student and his mother had the choice of participating in those meetings. Student's mother was in frequent communication with school staff and HISD administrators in raising issues related to his educational program and in securing information.

Fourth Factor: Educational Benefit

Student passed the *** TAKS and earned commended performance on two of the TAKS subject matter tests. He passed the *** test and was therefore eligible to begin taking *** classes at *** – which he did. This past semester he did very well in his two *** classes. By his own admission, Student is a better student this year than he was when he first entered *** as a freshman.

When Student chose to attend *** he also chose to abide by the special requirements of the unique program provided under the school's charter. Maintaining a 3.0 GPA *** was a requirement for all *** students in pursuing *** at *** under the *** option. Student was not the only one who did not meet that measure. He was advised in the same way that other students similarly situated were advised. The matter was properly presented at his annual ARD in November 2009 – the fall of his *** year. Student could have *** on schedule this May if he had not dropped his *** class without permission.

The evidence also showed that Student earned *** credits under his IEP. He has been *** and may continue his education there. He may use the opportunity to attend *** as a springboard for application to admission to a ***. The evidence showed he is ready for ***. In that regard he has received the requisite meaningful educational benefit. *Rowley, supra*.

Transition Plan

The evidence showed the school district prepared a transition plan and that it was discussed at a number of ARD meetings for Student. Student's goal to attend a four year college or university was confirmed a number of times. He was enrolled in a *** course of study at *** and completed a number of *** classes as a high school student. The transition plan was a component of ARD meetings beginning in 2008 through the current school year. It is unfortunate that Student did not attend or participate in the recent ARD meetings because he may have had a better understanding of what the transition plan was and what it looked like had he done so. There is simply no credible evidence to suggest the school failed to prepare a transition plan. I conclude Petitioner did not meet his burden of proof on this issue. *Shaffer v. Weast, 546 U.S. 49 (2005)*.

Implementation of Student's IEP

The evidence showed that the school district implemented Student's IEP as written. Petitioner did not meet his burden of proving otherwise. *Shaffer v. Weast, supra*.

Dysgraphia

Similarly, Petitioner did not meet his burden of proof that the school district failed to meet his needs arising from his dysgraphia. *Id.* Instead, the evidence established that appropriate accommodations were in place to address those needs including extended time for assignments and the use of a lap top for written work. The school district supported Student in compensating for his dysgraphia and he was able to achieve academically. *Rowley, supra*.

Math Issues

There was no evidence that Student experienced difficulties in math during his senior year – the relevant time period in dispute. The evidence also supported the school district's appropriate efforts in meeting Student's difficulties in math over time. ARD meetings were convened and solutions reached when Student faced failure in his math class. The use of a calculator, graph paper, tutorials, and, monitoring assignments by both regular education and special education staff were put into place to address math issues. The school district arranged for Student to retake a math class and he was able to earn the requisite math credits ***. Petitioner did not meet his burden of proof on this issue. *Shaffer v. Weast, supra*.

Readiness ***: TEKS and *** Issues

Student met the minimum standards for the state mandated TEKS curriculum in all subjects by passing the *** TAKS in *** grade. He also scored high enough on the ***test and on the *** test required by *** to demonstrate readiness for *** work. He also demonstrated readiness to *** high school by taking several *** classes at *** and earning *** credit. Although there was delay in securing approval from the *** Board for *** accommodations Student did not necessarily have to rely on the school district to apply for the accommodations. He could have applied directly to the *** Board himself. Petitioner did not meet his burden of proof on this issue. *Id.*

Graduation Plan

The evidence also showed the school district also prepared and revised a graduation plan for Student throughout his time at ***. School staff and peer counselors discussed Student's graduation plan with him when he signed up for high school classes ***. I conclude Petitioner did not meet his burden of proof on this issue. *Id.*

Drop in IQ

Any claims that the school district failed to provide additional services due to a drop in Student's IQ are barred by the one year statute of limitations in this case. Instead, the evidence showed that Student's intellectual abilities were measured by a variety of examiners and that there was some variability in his IQ scores over time. He was in early elementary school when he was assessed with a full score IQ score of ***. Subsequent evaluations were more consistent with one another placing him in the average to high average IQ range. Those scores did not vary more than 10 points or so from one another.

In sum, there is little evidence to suggest a significant decrease in Student's intellectual ability as measured by standardized IQ tests and thus no need for additional services to his educational program. Instead, the evidence showed that Student was able to master grade level work with accommodations and the support of his teachers and some extra work. Petitioner did not meet his burden of proof on this issue. *Shaffer v. Weast, supra.*

Assessment Issues

Petitioner also alleges a number of assessment issues: that the school district failed to: conduct an agreed upon functional vocational assessment, an *** assessment for *** purposes – for *** from special education and in order to take the *** with accommodations. Petitioner further alleges the school district failed to conduct an auditory processing assessment and, as a result, failed to provide him with services to address his alleged auditory processing deficits. Petitioner also alleges the school district failed to conduct an AT evaluation or provide AT as a related service.

The evidence showed that the failure to conduct the required three-year re-evaluation was a result of poor communication and the fault of both parties. Student's mother picked apart the consent forms sent to her and her notations on the forms were an obstacle in going forward. She could have picked up the telephone and contacted any number of school staff to resolve her concerns about the consent forms. It is reasonable to infer from the evidence that Student's mother was familiar with evaluation procedures and knew who to talk to at *** or within HISD.

The school district is also at fault for failing to provide the information stated on its own consent forms. Had it done so, Student's mother would not have had anything to complain about. While the school district is to be commended for its willingness to conduct a full individual evaluation including whatever specific components were requested by Student's mother, it left the matter unresolved by failing to follow up with Student's mother and provide her the information she noted was missing. The school district's counsel also failed to bring the problem with the consent forms to the attention of either opposing counsel or the hearing officer until the due process hearing. Student's three year evaluation was due by April 27, 2010. He needs an updated evaluation for purposes of securing disability services from ***.

*** Assessments

The *** grade *** TAKS is the *** assessment required by the State to determine whether a high school student is ready to ***. There is no other type of assessment required by law. Student not only successfully met state mandated curriculum objectives on the *** TAKS but earned commended performance on two out of four of the TAKS components. Student also placed *** on every measure of the *** and tested high enough on the *** to earn the privilege of enrolling in *** classes as a *** student.

Procedural Issues

Petitioner alleges a number of procedural issues: first, that the school district failed to provide his mother with the requisite prior written notice when the parties disagreed about whether Student should *** this year; second, that the school district failed to provide Student's mother with access to his educational records; and, third; that the school district failed to include Student's mother in ARD meetings or to convene an ARD at her request in order to make decisions about his educational program.

The credible evidence showed that the school district provided Student's mother with the requisite prior written notice when the November ARD meetings ended in disagreement over the *** issue. Furthermore, the evidence also shows that the school district provided Student's mother with access to his educational records.

Finally, although there was some confusion in scheduling the annual ARD the evidence showed that Student's mother participated in the ARD meetings and she was provided with the opportunity to ask questions and state her concerns. She was an active advocate for Student throughout his attendance at ***. In that regard, Petitioner did not prove that procedural violations, if any, significantly impeded the opportunity for Student's mother to participate in the decision-making process, impeded Student's right to FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513 (a) (2) ((i) (ii) (iii)).

Assistive Technology

There is no dispute that Student needs the use of a laptop to complete written work and for note taking assistance. The evidence showed this assistive technology was provided to him and he was encouraged to use it. It is appropriate to re-assess his assistive technology needs at this time as a component of his three year re-evaluation. The information will be useful in discussing appropriate disability support services when Student continues his *** education at the ***. However, I find insufficient evidence that the school district failed to meet Student's needs with regard to assistive technology.

Prior Written Notice

The credible evidence shows that the school district provided the requisite prior written notice to Student's mother when the parties were unable to resolve the disagreement over the *** issue at the November 2009 ARD meetings. It appears to have been transmitted as an email attachment. Perhaps Student's mother did not print out or open the attachment. However, the evidence shows it was prepared and transmitted appropriately.

Access to Educational Records and Parent Involvement and ARD Meetings

The school district provided Student's mother with ARD documents when requested. She was also provided with an extensive set of educational records through production of those documents to Student's legal counsel as a component of this litigation. Petitioner did not meet his burden of proving that any difficulties in securing access to educational records resulted in a substantive educational harm or prevented Student's mother with actively participating in educational decision-making for Student. 34 C.F.R. § 300.513 (a) (2).

CONCLUSIONS OF LAW

1. Petitioner's claims are limited to those that arose within one year of the date Petitioner knew or should have known about the alleged actions that serve as the basis for Petitioner's request for hearing. Petitioner did not meet his burden of proving the two exceptions to the one year statute of limitations rule. 34 C.F.R. § 300.300.511 (e); 19 Tex. Admin. Code §§ 89.1151 (c), 89.1180 (d).
2. Petitioner did not meet his burden of proving that the school district failed to provide him with a free, appropriate public education. *Shaffer v. Weast*, 546 U.S. 49, 61 (2005). Respondent met student's needs with an individualized program based on assessment and performance, administered in the least restrictive environment, provided in a coordinated, collaborative manner by key stakeholders, with demonstrated positive educational benefit. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5th Cir. 1997).
3. Petitioner failed to prove procedural violations, if any, resulted in a substantive educational harm to the student or deprived student's mother of participating in educational decision-making. 34 C.F.R. § 300.513 (a) (2) (i) (ii) (iii).
4. Respondent is responsible for conducting an updated three year re-evaluation. 34 C.F.R. § 300.303. The three year re-evaluation became due while this litigation was pending. The delay in proceeding with the re-evaluation is a shared responsibility of both parties. Respondent made reasonable efforts to obtain informed parental consent for the re-evaluation. Respondent is entitled to conduct the re-evaluation and override lack of parental consent. 34 C.F.R. § 300.300 (c).

ORDERS

Based upon the foregoing findings of fact and conclusions of law it is therefore **ORDERED** that an Admission, Review and Dismissal Committee (ARD) convene within 10 business days from the date this Decision is issued (calculated beginning on June 21, 2010 and counting forward) for the purpose of reviewing Petitioner's status for *** high school and to discuss, explain, and clarify Petitioner's options in securing whatever *** he lacks, if any, in order to ***.

It is further **ORDERED** that both Petitioner and his mother make every effort to attend the ARD in person and that the ARD is scheduled at a time and place agreeable to Petitioner and his mother in order to do so.

It is further **ORDERED** that a representative from the Disability Support Services Office of *** shall be invited to the ARD meeting.

It is further **ORDERED** that the ARD Committee will also review the status of the three-year evaluation and Respondent shall provide Petitioner's mother with any and all information and attachments referenced in the parental consent forms.

It is further **ORDERED** that Respondent is entitled to conduct the re-evaluation without parental consent if Petitioner's mother fails to execute the requisite parental consent forms and Petitioner shall cooperate in scheduling and appearing for all components of the re-evaluation.

It is further **ORDERED** that the re-evaluation shall be conducted and completed no later than 30 business days from the date of the ARD meeting, unless agreed otherwise by both parties.

It is further **ORDERED** that all other relief requested not specifically stated herein is **DENIED**.

SIGNED the 18th day of June 2010

Ann Vevier Lockwood
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. *19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).*

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

STUDENT, bnf

Parent,

Petitioner,

v.

HOUSTON INDEPENDENT

SCHOOL DISTRICT,

Respondent.

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DOCKET NO. 104-SE-0110

SYNOPSIS

ISSUE:

Whether school district's program provided high school student with dysgraphia, ADHD and processing speed deficits with FAPE in charter high school using *** model operated by public school district; specifically, whether school district failed to devise and implement appropriate transition plan, implement IEP, address needs as student with dysgraphia, address difficulties with math, provide additional services when IQ score fell, and failed to provide graduation plan.

HELD:

FOR THE SCHOOL DISTRICT.

Student did not meet burden of proof that school district did not provide FAPE. Credible evidence demonstrated school district provided individualized program based on assessment and performance, administered in the least restrictive environment, with services provided in coordinated, collaborative manner by key stakeholders and with demonstrated educational benefits.

Student mastered TEKS curriculum under more rigorous *** program with appropriate accommodations and teacher support that met his needs. Student was educated with non-disabled peers in regular and pre-AP classes as well as *** classes at *** charter school earning *** high school *** credit. School staff communicated with student, parent and one another in implementing IEP.

School district developed, discussed and regularly reviewed both transition and graduation plans with student and parent as component of ARD meetings and as component of ** enrollment.

Student passed *** grade *** TAKS in all four subject areas, earning commended performance in two. Student scored *** grade equivalents on all measures of *** and passed *** test for eligibility to take dual enrollment college level classes at affiliated community college.

Although there was a delay in securing approval from *** Board for *** accommodations student was able to sign up for late spring *** and could have applied directly to *** Board for accommodations without waiting for school district to do so.

34 C.F.R. §§ 300.17, 300.43, 300.320

Synopsis

Dkt. No. 104-SE-0110

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ISSUE:

Whether school district failed to conduct requisite three year re-evaluation in timely manner.

FOR THE STUDENT IN PART AND FOR THE SCHOOL DISTRICT IN PART

Three year re-evaluation was not due at time student filed initial complaint but was pending at time of due process hearing. Parties' informal agreement to conduct comprehensive assessment including all components requested by parent during prehearing telephone conference and confirmed on the record did not result in proceeding with evaluation. School district failed to include certain information (including notice of procedural safeguards) stated on parental consent forms when transmitted to parent for execution.

Parent's notations on face of signed consent forms regarding omissions rendered forms insufficient for purposes of informed consent and evaluation could not proceed. School district did not bring matter to attention of opposing counsel or hearing officer until due process hearing. School district entitled to proceed with re-evaluation and override lack of parental consent if informed consent cannot be obtained since re-evaluation now due and student needed updated information to apply for disability services ***.

34 C.F.R. §§ 300.300 (c), 300.303**ISSUE:**

Whether school district's alleged failure to provide prior written notice when disagreement over *** plan arose at ARD meetings, and alleged failures to provide parent with access to educational records and opportunity to participate in ARD meetings resulted in denial of FAPE.

HELD:**FOR THE SCHOOL DISTRICT.**

Student did not meet burden of proving procedural violations or that violations, if any, resulted in substantive educational harm to student or deprived student's mother of participating in educational decision-making.

Credible evidence established school district did provide requisite prior notice when disagreement over *** plan arose, provided student with access to educational records and parent communicated frequently with school staff and participated in ARD meetings.

34 C.F.R. §§ 300.503, 300.513 (a) (2)