

TEA DOCKET NO. 248-SE-0510

STUDENT, b/n/f PARENTS	§	
	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
ARGYLE	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
and DENTON COUNTY SPECIAL	§	
EDUCATION COOPERATIVE	§	
Respondents	§	

FINAL DECISION OF THE HEARING OFFICER

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Statement of the Case

The Petitioner (Student or Child)¹ initiated this action against the Respondents (District)² under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. 1400). The Petitioner complains that the Respondents:

1. Failed to appropriately evaluate and reevaluate the Petitioner.
2. Failed to appropriately identify the disabilities of the Petitioner.
3. Failed to conduct an appropriate functional behavioral assessment (FBA) of the Petitioner and provide an appropriate behavioral intervention plan (BIP).
4. Failed to provide an appropriate individualized education program (IEP) to the Petitioner, including appropriate measurable annual goals and appropriate special education, related services and supplementary aids and services.
5. Failed to appropriately provide the education records of the Petitioner to the parents.
6. Failed to afford the parents the opportunity to participate in admission, review and dismissal (ARD) committee meetings.
7. Failed to appropriately place and/or change the educational placement of the Petitioner.
8. Significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education (FAPE) to the Petitioner.³

As relief, the Petitioner asks that the Respondents be directed to provide: (1) compensatory special education and related services; (2) independent educational evaluations

¹ To protect the privacy of the Petitioner, the Petitioner is also referred to as "Student" or "Child" in this Decision.

² In this action, the Petitioner has asserted claims against two entities – a school district and the special education cooperative where the school district is a member. For convenience in this Decision, the Respondents may collectively be referred to as the "District."

³ This list closely tracks but is not a verbatim reiteration of the Petitioner's claims in the Amended Due Process Complaint. The Petitioner's statement of claims has been edited here, in part, to combine related issues. See Pet'r's Amended Due Process Complaint at 2 – 5 (dated Sept. 14, 2010).

(IEEs) at public expense; (3) an ARD committee meeting; (4) placement of the Petitioner in a private school at public expense; (5) reimbursement of private educational expenses; (6) counseling services; (7) annual staffing meetings; (8) staff training; (9) an assistive technology assessment; (10) monitoring of services; (11) personnel training; and (12) reimbursement of home schooling expenses.

Procedural History

The Texas Education Agency (TEA) received the Petitioner's original Due Process Complaint requesting a due process hearing on May 21, 2010. The parties participated in the mandatory resolution meeting on June 4, 2010 but were unable to resolve the parental complaints. This Hearing Officer held an initial prehearing teleconference with the parties on June 10, 2010. Among other things, the scope of the Petitioner's complaints was reviewed and a hearing date selected. Subsequently, several developments over the following months occurred including the Petitioner receiving permission to amend the Due Process Complaint, the parties engaging in ongoing settlement talks, the parties engaging in discovery, and the Child undergoing further evaluations.⁴ This Hearing Officer issued continuances for good cause shown to accommodate the parties without objection.

With the completion of all evaluations and discovery, and the unsuccessful conclusion of resolution efforts, the parties were prepared for a due process hearing. With all parties and expert witnesses available, the hearing was conducted on January 13, 2011, March 9, 2011, and March 10, 2011. Altogether, 19 witnesses were called and testified. Altogether, 56 exhibits (either in total or in part) were admitted into evidence, including audio recordings of ARD committee meetings. During the hearing, the Petitioner was afforded a fair opportunity to offer and solicit evidence and testimony to satisfy its burden of persuasion as assigned under *Schaffer v. Weast*, 546 U.S. 49, 57 – 58 (2005). Subsequent to the hearing, the parties were permitted to submit written closing arguments.⁵

Findings of Fact

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

1. At the beginning of the 2009-10 school year, the Student was *** year old in the *** grade in *** school. (Hr'g Tr. at vol. 2, pp. 415 – 16; Pet'r Ex. 19 at 1; Resp't Ex. 19 at 1)

⁴ The Petitioner filed an amended Due Process Complaint under 34 C.F.R. 300.508(d)(3)(ii) on Aug. 27, 2010. The Petitioner, however, did not serve Respondent Denton County Special Education Cooperative until Sept. 14, 2010. Under 34 C.F.R. 300.508(a)(1), (d)(4), the resolution timelines begin again once a party files and serves the other parties with the amended complaint. Consequently, this Hearing Officer determines that under the Texas one-year limitations period at 19 Tex. Admin. Code 89.1151(c) the Petitioner is limited to pursuing claims based on those alleged actions that serve as the basis for the hearing request occurring on or after Sept. 14, 2009 – the one-year period preceding Respondent Denton County Special Education Cooperative's receipt of the amended complaint.

⁵ Following the hearing, the decision due date was extended upon motion for good cause shown.

2. At the beginning of the 2009-10 school year, the Student had already been identified as a child with a disability under the IDEA. The Student's eligibility for special education was under the emotional disturbance and other health impairment (OHI) categories. (Pet'r Ex. 19 at 1, 20; Resp't Ex. 19 at 1, 20)
3. After the start of the 2009-10 school year, the Student had an IEP, dated September 10, 2009. Among other things, the Student's IEP included annual goals. One annual goal was demonstrating mastery of the Texas Essential Knowledge and Skills in the areas of English, math, science and social studies. This annual goal specified a "70% accuracy as measured by daily work, tests, participation and/or teacher observation." The IEP indicated that the Student would receive instruction in math and science on grade level in the general curriculum. (Pet'r Ex. 19 at 3, 9; Resp't Ex. 19 at 3, 9)
4. The Student's IEP also included an annual goal of increasing mastery of adaptive behavior skills as demonstrated by meeting short-term objectives. The short-term objectives were compliance with adult directives and responding appropriately to "stress/frustration." Mastery for the compliance objective was "9 out of 10 times" and mastery for the stress/frustration objective was "8 out of 10 opportunities." (Pet'r Ex. 19 at 4; Resp't Ex. 19 at 4)
5. The Student's IEP indicated that the Student's behavior impeded the Student's learning or that of others. A BIP was included in the IEP. Among other things, the BIP stated that the targeted behavior was "managing emotions and compliance." The BIP described the optimal features of the classroom environment for the Student as including: well-defined limits, rules and task expectations; no distractions; and a "quiet, non-threatening, non-stimulating" safe place for regaining control when needed. The BIP listed tips and observations regarding the Student, including: the Student "does best when [the Student] spends the first part of the day . . . in a smaller, calm setting"; the Student should be allowed to go to a smaller setting "to regroup" if the Student becomes "overly anxious or upset"; and the Student should be seated at the back or side of the classroom to "minimize attention-seeking behavior." The BIP identified triggers for the Student's misbehavior as including: competitive games; activities involving physical touch; noisy environment; and "certain students." The BIP listed as classroom strategies the following: offer choices; frequent verbal reinforcement; verbal reminder; stand near student; create positive environment; defuse tense situation with humor; avoid sarcasm; and "remain calm no matter how upset [the Student] becomes." The BIP included the following under the category of social skills training: help student use language to label and communicate feelings; direct instruction in "pro-social behaviors"; teach alternative behaviors; and coach in problem-solving situations. The BIP also outlined an eight-step strategy if the Student becomes upset or noncompliant. Among these steps were: do not force the Student to calm down before the Student "is ready"; approach in a calm manner; acknowledge the feelings the Student expresses; offer the Student options to calm down; offer praise as the

Student calms down; process the event once the Student is calm; invite the Student to return to class activity; and give the Student an opportunity for apologizing if appropriate. The IEP stated that the Student is capable of following the District's student code of conduct with modifications listed in the BIP. (Hr'g Tr. at vol. 3, p. 589; Pet'r Ex. 19 at 2, 20, 22 – 23; Resp't Ex. 19 at 2, 20, 22 – 23)

6. The Student's IEP included the provision of psychological services as a related service. These services were on a consultative basis for two 10-minute sessions per six-week grading period. (Pet'r Ex. 19 at 13; Resp't Ex. 19 at 13)
7. The Student's IEP included the provision of occupational therapy services as a related service. These services were on a consultative basis regarding sensory processing skills and strategies for the Student for one 10-minute session per six-week grading period. (Pet'r Ex. 19 at 5, 13; Resp't Ex. 19 at 5, 13)
8. After the start of the 2009-10 school year, the Student's placement was in the general education setting. (Hr'g Tr. at vol. 3, pp. 588 – 89, 627; Pet'r Ex. 19 at 12 – 13, 19 – 20; Resp't Ex. 19 at 12 – 13, 19 – 20)
9. On September 16, 2009, the Student was involved in a disciplinary incident. The Student *** in the classroom. As a consequence, the District assigned the Student to a disciplinary alternative education program (DAEP) for five days. The Student performed well at the DAEP placement. After returning from the DAEP placement, the Student's behavior at school was generally positive for the remainder of the semester. (Hr'g Tr. at vol. 3, pp. 627 – 28, 643 – 46, 675, 703, 705 – 06, 762, 801, 855 – 56; Resp't Ex. 7 at 1 – 2; Resp't Ex. 10 at 20 – 27; Resp't Ex. 18 at 1 – 3)
10. On October 14, 2009, an ARD committee for the Student met. The Student's parents participated in the meeting and signed in agreement. Among other things, the ARD committee reported that in regard to present levels of academic achievement and functional performance the Student was two grade levels above placement in reading and was on grade level in written expression and math. In regard to behavior, the IEP reported that the Student had made "good behavioral progress" and had "demonstrated more appropriate behavior overall." During the ARD committee meeting, a teacher of the Student, along with a licensed specialist in school psychology (LSSP), reported that the Student had "improved significantly" behaviorally and was making good progress academically. School staff did note, however, that in "less structured settings" the Student might exhibit compulsive behavior. The LSSP stated that behavioral incidents should be anticipated as the Student develops. (Hr'g Tr. at vol. 2, p. 445 – 46; Hr'g Tr. at vol. 3, pp. 766 – 67; Pet'r Ex. 18 at 2, 20 – 21, 24; Resp't Ex. 17 at 2, 20 – 21, 24)
11. The ARD committee reviewed social skills training for the Student. (Pet'r Ex. 18 at 20 – 21; Resp't Ex. 17 at 20 – 21)

12. The ARD committee added additional counseling services for the Student in the IEP. The school counselor was made available for the Student as the Student determined necessary. The LSSP was assigned to supplement the school counselor's direct services for up to for 20 minutes per six-week grading period. (Hr'g Tr. at vol. 2, p. 445 – 46, 448; Pet'r Ex. 18 at 18, 21; Resp't Ex. 17 at 18, 21)
13. The ARD committee agreed to conduct a new FBA of the Student at parental request. (Pet'r Ex. 18 at 19 – 20; Resp't Ex. 17 at 19 – 20)
14. The ARD committee revised the Student's BIP. The revised BIP stated that the Student qualifies under the emotional disturbance category on account of "inappropriate types of behaviors or feelings under normal circumstances and a general pervasive mood of unhappiness or depression." The statement of targeted behavior was revised to state: "Making positive choices in managing emotions and increasing compliance." Additional guidance was added that stated: "Problematic behavior may result in an office referral and implementation of the daily behavior sheet in order to provide [the Student] with increased self monitoring of [the Student's] behavior. The daily data sheet will continue until [the Student] demonstrates an acceptable level of behavior for a designated number of days (e.g. 5 days). The daily data sheet will be picked up in the resource room and then turned in to the office at the end of the day. Once [the Student] demonstrates the desired level of behavior for the designated number of days, then the daily behavior sheet will be discontinued. Continued problematic behavior while the daily data sheet is being used may result in an office referral and then increased faculty monitoring during the identified problem time (e.g., during passing periods, etc.) until [the Student] demonstrates acceptable self-monitoring behavior for a designated number of days (e.g., five days of problem free behavior at the identified time)." (Hr'g Tr. at vol. 2, p. 446 – 47; Hr'g Tr. at vol. 3, p. 589; Pet'r Ex. 18 at 20 – 23; Resp't Ex. 17 at 20 – 23)
15. On or about November 10, 2009, the District conducted a new FBA of the Student. (Hr'g Tr. at vol. 3, p. 766; Pet'r Ex. 17 at 21; Resp't Ex. 15 at 21)
16. On or about December 8, 2009, the District had a preliminary meeting with the parents to review the November, 2009 FBA of the Student. (Resp't Ex. 18 at 9)
17. On December 10, 2009, an ARD committee for the Student met. The Student's parents participated in the meeting and signed in agreement. Among other things, the ARD committee reviewed the November, 2009 FBA of the Student. Among other things, the FBA identified four primary misbehaviors at school: disruption of the classroom; verbal aggression; physical aggression; and tardiness. The BIP identified the function of – or what maintains – each of the misbehaviors as follows: disruption of classroom – control and attention seeking; verbal aggression – control and attention seeking; physical aggression – control and escape; and tardiness – control and attention seeking. Antecedents to the

misbehaviors were identified. Among the antecedents were a request or directive from an adult; less structured setting; provocation by peers; and sensory overload. Reinforcers and consequences of the misbehaviors were identified along with effectiveness. Among the most effective reinforcers were public and private social attention; earned activities and privileges; a home/school reward system; and job responsibility. Among the most effective consequences were alternative education program (AEP); private correction; office referral; timeout; restitution; removal from group; and cooling off. As part of the FBA, the parents reported that they were observing more compulsive behaviors by the Student. The LSSP who conducted the FBA stated at the ARD committee meeting that the FBA and BIP were consistent. (Hr’g Tr. at vol. 3, pp. 590, 622, 768 – 69, 771 – 73, 796 – 99, 801 – 03, 818, 844; Pet’r Ex. 17 at 20 – 26; Resp’t Ex. 15 at 20 – 26)

18. On or about January 27, 2010, the Student was involved in a disciplinary incident. The Student made inappropriate comments to *** classmate and kicked and shoved ***. (Pet’r Ex. 8 at 1; Resp’t Ex. 10 at 11, 14)
19. On February 2, 2010, an ARD committee for the Student met. The Student’s parents participated in the meeting and signed in agreement. Among other things, the ARD committee reported that in regard to present levels of academic achievement and functional performance the Student was “well above” grade level in reading and was on grade level in written expression and math. In regard to behavior, the IEP reported that the Student “continues to have difficulties with making appropriate behavioral choices at times in school and with complying with adult directives in a respectful manner. Once a negative response occurs, behavior difficulties have been typically occurring throughout the remainder of that school day.” During the ARD committee meeting, a teacher of the Student reported that the Student was making good progress academically. The LSSP reported that the Student had demonstrated improvement behaviorally. (Hr’g Tr. at vol. 3, p. 591; Pet’r Ex. 15 at 1 – 2, 20; Resp’t Ex. 13 at 1 – 2, 20)
20. During the ARD meeting, among other things, the committee discussed the Student’s inappropriate behavior toward *** classmate. Recently, the Student had made comments about *** and made physical contact with ***. The school principal and the Student’s case manager admonished the Student. (Hr’g Tr. at vol. 3, pp. 590 – 91, 612 – 13; Pet’r Ex. 15 at 20; Resp’t Ex. 13 at 20)
21. The ARD committee discussed new goals to address current needs. In regard to the adaptive behavior annual goal in the Student’s IEP, the committee revised the short-term objective on compliance with adult directives. As revised, the objective stated: “After obtaining [the Student’s] attention, [the Student] will promptly and respectfully (i.e., no negative remarks) comply with adult request/directives in 3 out of 5 times.” (Hr’g Tr. at vol. 3, p. 843; Pet’r Ex. 15 at 4, 20; Resp’t Ex. 13 at 4, 20)

22. The ARD committee revised the Student's BIP. The statement of targeted behavior was revised to state: "Increase acceptable behavioral responses after a directive or when stressed/frustrated." The BIP's list of tips and observations regarding the Student's classroom environment was revised to include: "When possible greet [the Student] when [the Student] arrives in class in order to start the class off on a positive note" and "If [the Student] becomes overly anxious or upset, consider allowing [the Student] to take a break or go to a smaller setting (e.g., counselor's office) to regroup. A hallway pass should be used for safety and to increase personal responsibility/accountability." (Hr'g Tr. at vol. 3, p. 616; Pet'r Ex. 15 at 20 – 21; Resp't Ex. 13 at 20 – 21)
23. On February 17, 2010, the District met with the parents to discuss, among other things, improved communication between school and home over the Student's behavior. (Resp't Ex. 7 at 4)
24. On February 25, 2010, the Student was involved in two different disciplinary incidents. In one the Student *** classmate. In the other the Student made inappropriate comments to *** classmates. The Student's teacher sent the Student to the counselor's office for counseling on the misbehavior. (Pet'r Ex. 8 at 1; Resp't Ex. 7 at 5; Resp't Ex. 10 at 4 – 10; Resp't Ex. 18 at 12)
25. On March 2, 2010, the District met with the parents to discuss, among other things, the Student's inappropriate comments to *** classmate and disciplinary consequences. One of the parents commented: "I think that with continued positive reinforcement [the Student] will keep improving . . . behavior and language issues." (Resp't Ex. 7 at 6; Resp't Ex. 18 at 13)
26. On or about April 1, 2010, the Student was involved in a disciplinary incident. The Student *** classmate. The Student also made inappropriate comments to ***. The principal and counselor met with the Student to discuss consequences and engaging in more appropriate behavior. The District notified the Student's parents. (Pet'r Ex. 8 at 1; Resp't Ex. 10 at 1 – 2)
27. On or about April 9, 2010, the District received notification of previously unknown comments by the Student toward *** classmate at school. These comments were reported as including: "****"; "****"; and "****" (Pet'r Ex. 8 at 2; Pet'r Ex. 10 at 1 – 2; Resp't Ex. 8 at 1; Resp't Ex. 9 at 1 – 2)
28. On April 13, 2010, the District met with the parents to discuss, among other things, the Student's inappropriate behavior towards *** classmate and disciplinary consequences. One of the parents commented: "We believe you all are keeping [the Student's] best interest in my [sic] mind, regarding [the Student's] current placement." (Pet'r Ex. 16 at ; Resp't Ex. 6 at 21; Resp't Ex. 7 at 9)

29. On April 20, 2010, an ARD committee for the Student met. The Student's parents participated in the meeting; they disagreed with the determinations. Among other things, the ARD committee reported that in regard to present levels of academic achievement and functional performance the Student was "well above" grade level in reading ability and was on grade level in written expression and math. In regard to behavior, the IEP reported: "[The Student] is an *** year old *** grader, that currently qualifies for Special Education service under the eligibility categories of Emotionally Disturbed and Other Health Impaired [sic]. [The Student] has been diagnosed with a mood disorder, NOS, with anxious and depressive features and ADHD, combined type. [The Student's] current assessment also indicates that [the Student] continues to meet the diagnostic criteria of ADHD, combined type. [The Student's] emotional disturbance is a result of significant symptoms of anxiety and depression. [The Student] is bright and doing well academically. [The Student] takes pride in [the Student's] academic successes. [The Student] is frequently observed being compassionate to less popular students. [The Student] has an outside interest in cars. [The Student] is very willing to give [the Student's] opinion. [The Student] continues to have difficulties with making appropriate behavioral choices at times in school and with complying with adult directives in a respectful manner. Once a negative response occurs, behavioral difficulties have been typically occurring throughout the remainder of that school day. Recently there have been several instances where [the Student] has singled out a particular *** and *** and *** inappropriately. The documentation also indicated that [the Student] received attention from peers on several occasions following [the Student's] behaviors. Behaviors have occurred regardless of whether an adult was present or not." (Pet'r Ex. 22; Pet'r Ex. 16 at 1 – 2; Resp't Ex. 6 at 1 – 2)
30. During the ARD meeting, among other things, the committee discussed the Student's inappropriate behavior toward *** classmate. The committee reviewed available documentation, including a letter from the parent of the *** classmate. The committee also reviewed prior attempted interventions of counseling, the BIP and IEP. The parents shared the concerns of a private psychologist treating the Student that the Student believes the Student is above consequences. The District determined that the Student's inappropriate behavior was not caused by, nor had a direct and substantial relationship to, the Student's disabilities. (Pet'r Ex. 22; Pet'r Ex. 16 at 19 – 20; Resp't Ex. 6 at 21 – 22, 33 – 34)
31. The ARD committee discussed a change in placement for the Student. The District determined that the Student was unable to participate in the general education setting "due to safety concerns for [the Student] and the other students." The District proposed a change of placement to a self-contained special education classroom at the *** school for the remainder of the school year. (Pet'r Ex. 22; Pet'r Ex. 16 at 14 – 15, 17 – 20; Resp't Ex. 6 at 16 – 17, 19 – 22)
32. During the ARD committee meeting the parents stated their concerns and disagreement with the District's determinations, informed the District that they

were rejecting the proposed placement and stated their intent to privately educate the Student at public expense. (Pet'r Ex. 16 at 20; Pet'r Ex. 21 at 1; Pet'r Ex. 22; Resp't Ex. 6 at 22, 41)

33. The ARD committee revised the FBA of the Student. Among other things, the revised FBA identified “*** and ***” as a misbehavior at school. The BIP identified the function of the misbehavior as: control and attention seeking. Antecedents to the misbehaviors were identified. Among the antecedents were the Student being in less structured settings, being in computer and art classes and being off task. Reinforcers and consequences of the misbehaviors were identified along with effectiveness. Among reinforcers, results from the use of a behavior chart were inconsistent. Among consequences, results from the use of verbal correction, office referral and in-school suspension were inconsistent. (Pet'r Ex. 16 at 20 – 28; Resp't Ex. 6 at 22 – 30)
34. The ARD committee revised the Student's BIP. An additional statement of targeted behavior was added that stated: “Zero incidents of *** or *** for one year.” The BIP described the optimal features of the classroom environment for the Student as including: well-defined limits, rules and task expectations; and a structured environment. The BIP listed as classroom strategies the following: minimize unsupervised and unstructured periods of time; praise behaviorally appropriate students, including the Student; provide nonverbal signal for appropriate behavior; frequent verbal reinforcement for appropriate behavior; visual monitoring; and interruption of inappropriate comments. As a reward system, the BIP stated that faculty should verbally praise appropriate interactions with peers. The BIP included the following under the category of social skills training: meet with school counselor and/or LSSP; direct instruction in pro-social behaviors; and coaching in problem solving. The BIP identified among consequences the following: referral to principal; and notification of counselor and/or LSSP. (Pet'r Ex. 16 at 31 – 32; Resp't Ex. 6 at 31 – 32)
35. The ARD committee report included a notice of parental access to education records and a District phone number and address for any questions. (Pet'r Ex. 16 at 18; Resp't Ex. 6 at 20)
36. On May 10, 2010, the District notified the parents that it had received a request from their advocate for the Student's education records. The District stated that it did not have a release on file authorizing the advocate to receive the Student's education records. The District stated it would provide access to the parents. (Resp't Ex. 5 at 1)
37. From June 4, 2010 to July 7, 2010, the District conducted a full reevaluation of the Student. The evaluation report was completed on July 12, 2010. The reevaluation was conducted upon the request of the ARD committee that met on April 20, 2010. The scope of the reevaluation included: physical/health; emotional/behavioral; language and communication; speech and language;

assistive technology; intelligence and academics; adaptive behavior; and sociological. The reevaluation included an evaluation for autism at parental request. (Resp't Ex. 3 at 1 – 2, 16, 27)

38. The reevaluation team reviewed existing evaluation data. The reevaluation team also interviewed and observed the Student. (Resp't Ex. 3 at 14 – 16, 27 – 28, 38 – 39)
39. The reevaluation team administered a battery of assessments. In the area of autism, trained and knowledgeable LSSPs administered the Autism Diagnostic Observation Schedule (ADOS), the Autism Spectrum Rating Scales, and the Gilliam Autism Rating Scale. Among other instruments, the Social Skills Improvement System was also administered to the Student. In regard to the ADOS, it was administered in accordance with instructions by one LSSP without any observers interacting with the Student. In regard to the Gilliam Autism Rating Scale, a teacher of the Student and the parents completed rating scales. (Hr'g Tr. at vol. 3, pp. 507, 578, 722 – 26, 739 – 42, 746 – 47; Resp't Ex. 3 at 1 – 2, 8 – 10, 12 – 13, 32 – 34, 36)
40. In the area of speech and language, a trained and knowledgeable speech pathologist administered the Comprehensive Assessment of Spoken Language and the Pragmatic Language Skills Inventory – a measure of pragmatic language. In regard to the Pragmatic Language Skills Inventory, a special education teacher of the Student and the parents completed rating scales. (Hr'g Tr. at vol. 2, p. 182; Hr'g Tr. at vol. 3, pp. 506 – 07, 561; Resp't Ex. 3 at 1 – 6)
41. In the area of adaptive behavior, a trained and knowledgeable educational diagnostician and LSSP administered the Adaptive Behavior Assessment System II and the Behavior Assessment System for Children (2nd edition) (BASC). In regard to the BASC, teachers and the parents completed rating scales. (Resp't Ex. 3 at 9 – 10, 17 – 18, 32, 36 – 37)
42. In the area of emotional and behavioral, a trained and knowledgeable LSSP administered, among other things, the Scale for Assessing Emotional Disturbance. The parents completed the rating scales. (Resp't Ex. 3 at 12, 35 – 36)
43. The reevaluation team found that the Student is not a child with autism, including Asperger's Syndrome. (Hr'g Tr. at vol. 3, p. 726; Resp't Ex. 3 at 16, 41)
44. On July 15, 2010, an ARD committee for the Student met. The Student's parents participated in the meeting; they disagreed with the determinations. Among other things, the ARD committee reviewed the new reevaluation. With regard to qualification under the autism eligibility category, LSSPs reviewed the reevaluation results. The committee discussed the results and the District determined that the Student is not a child with autism, including Asperger's Syndrome. Among other things, the District relied upon the Student's

developmental history before the age of three, which did not feature characteristics of a child with autism. The District also relied upon, among other instruments, the ADOS, which found that the Student did not present behaviors consistent with autism or an autism spectrum disorder. The District also relied upon, among other instruments, the Pragmatic Language Skills Inventory, which found that the Student's pragmatic language skills were average. A speech pathologist explained that if the Student had autism, the Student's pragmatic language skills would have been affected. (Hr'g Tr. at vol. 3, pp. 501 – 02, 514, 559 – 60, 562, 565; Pet'r Ex. 22; Pet'r Ex. 13 at 20 – 21; Resp't Ex. 2 at 20 – 21; Resp't Ex. 3 at 5, 9)

45. At the ARD committee meeting, the District proposed that the Student return to the *** school for the 2010-2011 school year. The District offered placement in the mainstream with a new adaptive behavior annual goal and a revised BIP. In regard to the adaptive behavior annual goal in the Student's IEP, the District proposed the following new short-term objective: "After [the Student] is given a scenario, [the Student] will be able to state how to make friends and appropriately resolve conflicts that may occur with peers in four out of five trials." Among other things, the proposed BIP added to the optimal features of the classroom environment by including: the posting of classroom rules or expectations; the teaching and review of class procedures and routines; and awareness of where the Student is seated. The proposed BIP added as classroom strategies the following: ignore minor inappropriate behavior; firm, sensitive and immediate response to negative attention seeking behaviors; encouragement to accept responsibility for inappropriate behavior; and provision of a reminder card to, among other things, keep hands to myself. For the targeted behavior of zero incidents of *** and ***, the proposed BIP adds as classroom strategies for staff to remain calm when speaking with the Student; and staff reinforcing the Student to apologize. In terms of social skills training, the proposed BIP calls for the Student to receive age appropriate training and engage in exercises on the prevention of ***. (Pet'r Ex. 22; Pet'r Ex. 13 at 5, 21, 31 – 34; Resp't Ex. 2 at 5, 21, 31 – 34)
46. The ARD committee meeting recessed in disagreement. (Pet'r Ex. 22; Pet'r Ex. 13 at 21; Resp't Ex. 2 at 21)
47. On August 2, 2010, the ARD committee for the Student reconvened. The Student's parent did not attend. Among other things, the District considered alternative placement options within the District. (Hr'g Tr. at vol. 2, p. 485; Pet'r Ex. 13 at 22; Resp't Ex. 2 at 22)
48. In August, 2010, the Student enrolled in and began attending a private school – the *** School. (Hr'g Tr. at vol. 2, pp. 338, 372, 485; Pet'r Ex. 11 at 1)
49. From September 26, 2010 to November 18, 2010, the parents obtained an IEE of the Student. The IEE report was completed on December 17, 2010. The IEE indicated that the Student is a child with Asperger's Syndrome. In the area of

speech/language functioning, however, the results of the standardized assessment administered – the Test of Problem Solving – *** – were all in the average range. (Hr’g Tr. at vol. 2, pp. 179 – 81; Pet’r Ex. 1 at 1, 3, 13 – 14)

50. Some of the results of the IEE might not be as reliable as the District’s reevaluation. For instance, the Asperger’s Syndrome Diagnostic Scales (ASDS) was administered. The IEE indicated that the ASDS should only be completed by those who are familiar with the subject. The Student’s teacher and administrator at the private school completed the ASDS. The Student had only been at the private school for at most two months at the time they completed the ASDS. (Hr’g Tr. at vol. 2, p. 164, 166 – 67; Pet’r Ex. 1 at 1, 3, 15)
51. On January 11, 2011, the independent evaluator completed an addendum to the IEE report. The independent evaluator added a staff training recommendation. (Pet’r Ex. 1A at 1)

Discussion

This discussion will address the Petitioner’s complaints by substantive area rather than by numerical listing.

Reevaluation and Identification

One of the Petitioner’s claims is that the Respondents failed to appropriately reevaluate the Child.⁶ Another claim of the Petitioner is that the Respondent failed to appropriately identify the disabilities of the Child.⁷ Under the IDEA, reevaluations must be conducted in accordance with a specified process.⁸ In general, there are three phases of any IDEA reevaluation: (1) an initial review of existing assessment data; (2) an administration of any needed assessments; and (3) an interpretation of results and determinations of eligibility and educational needs.⁹ The administration of any new assessments must occur in compliance with IDEA protocols.¹⁰ Upon the completion of the new data collection step, school districts must assemble a group that includes the child’s parents and qualified professionals to interpret all of the information and determine the child’s eligibility under the IDEA’s definition of a child with a disability.¹¹ In addition to these federal requirements, there are state evaluation requirements, especially with regard to children with autism.¹²

Here, the Petitioner failed to demonstrate by a preponderance of the evidence that the review of existing assessment data was inappropriate.

⁶ Claim No. 1. In this case, the initial evaluation of the Child occurred outside the statute of limitations period. Therefore, this Hearing Officer will limit and analyze this claim only with regard to reevaluation of the Child.

⁷ Claim No. 2.

⁸ 34 C.F.R. §§ 300.15, 300.122.

⁹ 34 C.F.R. §§ 300.305(a) – (c), 300.306.

¹⁰ 34 C.F.R. § 300.304.

¹¹ 34 C.F.R. § 300.306.

¹² 19 Tex. Admin. Code § 89.1040(c)(1).

Here, the Petitioner failed to demonstrate by a preponderance of the evidence that the administration of assessments was inappropriate.¹³ The Respondents utilized a variety of tests that were administered in accordance with instructions by trained and knowledgeable evaluators in the native language of the Child. While the Petitioner's expert witness raised some questions surrounding the administration of the ADOS, an autism assessment, the Respondents' LSSP demonstrated that it was given to the Child properly.

Here, the Petitioner failed to demonstrate by a preponderance of the evidence that the Respondents' interpretation of reevaluation results and determination of eligibility were inappropriate. Under the IDEA, for a child who is over the age of three to qualify as a child with autism, the child must have a developmental disability that significantly affects verbal and nonverbal communication as well as social interaction.¹⁴ The Respondents' results showed that the Child could not meet an essential element in the IDEA standard – the Child's communication ability was not significantly limited. Indeed, the only standardized assessment included in the Petitioner's IEE for speech/language also did not reveal any significant limitation in the Child's communication ability.

This Hearing Officer finds that the Child is not a child with autism as defined under the IDEA. Consequently, the child cannot be considered as a child with Asperger's Syndrome. Therefore, the Respondents did not fail to accurately identify the disability of the Petitioner.

In conclusion, this Hearing Officer finds that the Respondents prevail on the Petitioner's claims regarding reevaluation and identification.

IEPs and FAPE in LRE

The Petitioner claims that the Respondents failed to provide appropriate IEPs for the Petitioner, and failed to appropriately place the Petitioner.¹⁵ According to the standard set by the U.S. Supreme Court in *Board of Education v. Rowley*, a school district fails to provide FAPE to a child with a disability under the IDEA if the child's IEP is (1) not compliant with the IDEA procedures, and (2) not reasonably calculated to enable the child to receive educational benefits.¹⁶ Regarding the second prong of the *Rowley* standard, the U.S. Court of Appeals for the Fifth Circuit, in *Cypress-Fairbanks Independent School District v. Michael F.*, announced four factors to consider in deciding whether a child's IEP is reasonably calculated to confer educational benefits: (1) individualized services; (2) placement in the LRE; (3) coordination of key stakeholders; and (4) provision of educational benefits.¹⁷

The analysis here will focus on each of the *Michael F.* factors as determinative of whether the IEPs and placement were appropriate. Procedural compliance will be addressed below under the claims raising procedural defects, such as lack of parental participation.

¹³ See, e.g., *Blake B. v. Council Rock Sch. Dist.*, 51 IDELR 100 (E.D. Penn. 2008) (evaluation of child tested for Asperger's Syndrome appropriate when variety of assessment tools utilized in accordance with IDEA procedures).

¹⁴ 34 C.F.R. §§ 300.8(c)(1)(i), (iii).

¹⁵ Claims No. 4 and 7.

¹⁶ *Board of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982).

¹⁷ 118 F.3d 245, 253 (5th Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).

Individualized Services

Factor 1 under *Michael F.* is whether the child's IEP has been individualized. An IEP is individualized if it includes the goals and programming that respond to the identified special needs of the child. Here, the Petitioner failed to demonstrate by a preponderance of the evidence that the Respondents were not aware of the Child's needs and failed to act to address them. Over the course of several ARD committee meetings, the Respondents acknowledged the behavioral needs of the Child and continually revised the IEP and BIP to respond.

Least Restrictive Environment

Factor 2 under *Michael F.* is whether the child has been served in the LRE. Compliance with the LRE mandate is evaluated through the two-part test announced by the Fifth Circuit in *Daniel R.R. v. State Board of Education*.¹⁸

First Prong of the *Daniel R.R.* Test

The first prong of the *Daniel R.R.* test asks whether full-time education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily. Several factors are considered under the first prong, such as the steps the school has taken to accommodate the student, the sufficiency of these efforts, the ability of the student to receive educational benefit in the regular classroom, the overall experience of the student, and the effect of the student on his or her classmates.¹⁹ Here, the Respondents practiced inclusion with continued efforts to accommodate the Child in the mainstream. Clearly, in terms of academics, the Child was properly included in the general curriculum as demonstrated by the Child's success. In terms of nonacademic considerations, until the incidents with ***, both the school and family believed the Child had improved behaviorally. Because the parents withdrew the Child, there is no direct evidence for the Hearing Officer to weigh as to whether these incidents with *** marked just a temporary stall in otherwise steady behavioral progress or marked the end of behavioral growth in the mainstream. Given that the Respondents' initial plan was to refer the Child to the DAEP because of the incidents with *** and that the DAEP had generally proved an effective intervention previously upon the Child's return to regular classes, this Hearing Officer finds that overall, the Respondents' continued efforts to place the Child in the general education environment were appropriate.

Second Prong of the *Daniel R.R.* Test

The second prong of the *Daniel R.R.* test asks which setting permits the child to be mainstreamed to the maximum extent appropriate if removed from the regular education setting. Here, in determining inclusion to the maximum extent appropriate, the Hearing Officer finds the referral to the DAEP was appropriate in the fall of 2009. The Petitioner failed to demonstrate by a preponderance of the evidence that the Respondents' account of the Child's success while in the DAEP and following upon return to the intermediate school was not credible. The

¹⁸ 874 F.2d 1036, 1048 (5th Cir. 1989)

¹⁹ 874 F.2d at 1048 – 49.

Respondents were within reason to think that instead of causing harm to the Child, the Child could benefit from a removal to the DAEP based on the track record from the fall of 2009.

Key Stakeholder Coordination

Factor 3 under *Michael F.* is whether key stakeholders acted in a coordinated manner. Here, while there were the ultimate disagreements over placement and identification, the parents and the school district met often and maintained communication throughout the Child's last year in the school district. Further school district staff and Coop staff worked together in a coordinated manner around the DAEP referral.

Educational Benefit

Factor 4 under *Michael F.* is whether the child received educational benefits. As mentioned above, the Child received academic benefits while in intermediate school. Regarding nonacademic benefits, the Child made overall progress in behavior. As discussed below, this Hearing Officer finds that the plans of the Respondent were reasonably calculated to continue that behavioral progress once the misbehavior toward the *** classmate was discovered.

In conclusion, this Hearing Officer finds that after weighing the *Michael F.* factors, the Respondents satisfied the *Rowley* standard calling for an IEP reasonably calculated to confer educational benefits. Therefore, the Respondents prevail on the questions regarding IEP and placement.

FBA and BIP

One of the Petitioner's claims is that the Respondents failed to conduct an appropriate FBA and provide an appropriate BIP for the Petitioner.²⁰ Under the IDEA, an FBA is required in disciplinary situations when (1) a school removes a child from his or her current placement to an interim alternative educational setting because of special circumstances: weapons, illegal drugs, or infliction of serious bodily injury; (2) a school removes a child from his or her current placement for more than 10 school days and the child's behavior is not a manifestation of his or her disability; and (3) a school conducts a manifestation review and determines the child's behavior is a manifestation of his or her disability.²¹ Also under the IDEA, a child's IEP is required to include positive behavioral interventions and supports for those children whose behavior impedes learning.²² According to nonregulatory guidance from the U.S. Department of Education, an FBA typically precedes the development of these positive behavioral interventions and supports, but is not required.²³ Under the IDEA, a BIP is required if a school conducts a manifestation review and determines the child's behavior is a manifestation of his or her disability.²⁴

²⁰ Claim No. 3.

²¹ 34 C.F.R. § 300.530.

²² 34 C.F.R. § 300.324(a)(2)(i).

²³ 71 Fed. Reg. 46575, 46683 (2006). In addition, according to the U.S. Department of Education, it is a function of the ARD committee to determine whether an existing FBA is current and valid or a new FBA is needed. 71 Fed. Reg. 46721 (2006).

²⁴ 34 C.F.R. § 300.530(f)(1)(i).

Here, the Respondents did several either full or partial FBAs. Given that the central point of the FBA is to identify the function or purpose of the misbehaviors in question, the Petitioner failed to demonstrate by a preponderance of the evidence that the function or purpose as identified by the Respondents was wrong. The Petitioner never offered an alternative purpose or function of the Child's inappropriate conduct. This Hearing Officer finds that the FBAs were appropriate.

Here, the Child had more than one BIP over the school year. As needs arose, the Respondents revised the BIP in a tailored manner to specifically address the most recent behavioral challenge. This Hearing Officer finds that the final proposed BIP was reasonably calculated to confer benefit to the Child. The final BIP has concrete actions to extinguish any engagement in sexual harassment through both classroom interventions as well as training for the Child.

In conclusion, this Hearing Officer finds that the Respondents prevail on the claim regarding the FBA and BIP.

Parental Participation

Two of the Petitioner's claims are that the Respondents failed to allow the parents to participate in the ARD committee process, and significantly impeding the Petitioner's and parents' opportunity to participate in the decision-making process.²⁵ Under the IDEA, protecting and securing parent involvement is central in the provision of FAPE to children with disabilities. Among other things, schools are required to ensure parents are afforded an opportunity to participate in ARD committee meetings.²⁶ The Fifth Circuit, in *White v. Ascension Parish School Board*, indicated that a school district does not satisfy its responsibility for getting parental participation if there is bad faith exclusion of parents or a refusal to listen to and consider input from the parents.²⁷ Further, under the IDEA, for lack of parental participation to rise to the level of a denial of FAPE, the parent's participation must have been "significantly" impeded.²⁸

Here, the parents participated and were actively engaged in the ARD committee process. There were several ARD committee meetings and at least one parent attended each one until the Child was moved to private school. Further, there were several school meetings with the parents outside the ARD process. The Respondents responded to parental requests such as to conduct an evaluation for autism.

In conclusion, this Hearing Officer finds that the Respondents prevail on the claim regarding parental participation.

Education Records

²⁵ Claims No. 6 and 8.

²⁶ 34 C.F.R. § 300.322; 19 Tex. Admin. Code § 89.1050(h).

²⁷ 343 F.3d 373, 380 (5th Cir. 2003).

²⁸ 34 C.F.R. § 300.513(a)(2)(ii). See also *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 811 – 13 (5th Cir. 2003).

One of the Petitioner's claims is that the Respondents failed to respond to the parents' records requests.²⁹ Under the IDEA, parents may ask to inspect and review their child's education records and receive an explanation and interpretation of the records.³⁰ A school district must respond to such a request "without unnecessary delay" but no later than 45 days after the request was made.³¹ Parents may also request that the district provide a copy of their child's education records.³² If parents request a copy of the records, the IDEA permits the district to charge a copying fee as long as the fee does not "effectively prevent" the parents from exercising their right to access their child's records.³³

Here, the parents – through their advocate – exercised the right to ask for the Child's education records. The Respondents responded with a letter that they could not provide access or turn over the records to the parental advocate without a release on file. The letter also stated that the parents would be provided full access in accordance with the law. The Petitioner failed to demonstrate by a preponderance of the evidence that a release was ever submitted or that the access offered to examine the records was denied.

In conclusion, this Hearing Officer finds that the Respondents prevail on the claim regarding records.

Requested Relief – Private Placement

The Petitioner asserts that as a result of the alleged violations of the IDEA, the Respondents are obligated to cover and reimburse the parents for privately secured services provided to the Child. Under the IDEA, reimbursement for home schooling and private schooling is possible under specified conditions.³⁴ Procedurally, parents generally must demonstrate that they provided advance notice to the school district before removing the child for private instruction.³⁵ Substantively, parents must demonstrate that they have satisfied both parts of a two-part test: first, showing that the school district cannot offer an appropriate education to the child and, second, showing that the private instruction did so.³⁶

Here, the Petitioner did comply with the notice provisions for a reimbursement request. Under the IDEA, one way a party may provide notice is through an ARD committee meeting before the child is removed. Parents desiring reimbursement must (1) inform the ARD committee that they are rejecting the placement proposed by the school district; (2) state their concerns; and (3) state their intent to enroll the child in private school at public expense.³⁷ The Student's parents followed these steps at the April 20, 2010 ARD committee meeting.

²⁹ Claim No. 5.

³⁰ 34 C.F.R. §§ 300.613(a) – (b)(1).

³¹ 34 C.F.R. § 300.613(a).

³² 34 C.F.R. § 300.613(b)(2).

³³ 34 C.F.R. § 300.617(a).

³⁴ 34 C.F.R. § 300.148.

³⁵ 34 C.F.R. § 300.148(d)(1).

³⁶ 34 C.F.R. § 300.148(c).

³⁷ 34 C.F.R. § 300.148(d)(1)(i).

As discussed above, however, this Hearing Officer finds that the Petitioner has failed to demonstrate that the Respondents cannot provide an appropriate education to the Student.

In conclusion, this Hearing Officer finds that the Petitioner is not entitled to a private school placement at public expense.

Conclusions of Law

After due consideration of the foregoing findings of fact, this Hearing Officer makes the following conclusions of law:

1. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, appropriately evaluated the Petitioner, ***, under 34 C.F.R. §§ 300.303 – 300.306; 19 Tex. Admin. Code §§ 89.1040(b), (c)(1).
2. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, appropriately determined the disabilities of the Petitioner, ***, under 34 C.F.R. § 300.306.
3. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, appropriately conducted an FBA and devised and implemented a BIP for the Petitioner, ***, under 34 C.F.R. §§ 300.324(a)(2)(i), 300.324(b)(2).
4. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, appropriately devised IEPs for the Petitioner, ***, under 34 C.F.R. § 300.101; *Board of Educ. v. Rowley*, 458 U.S. 176 (1982); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997), *cert. denied* 522 U.S. 1047 (1998); and *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.), *cert. denied* 531 U.S. 817 (2000).
5. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, did not fail to respond to the records requests of the parents of the Petitioner, ***, under 34 C.F.R. §§ 300.501(a), 300.613.
6. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, did not fail to allow the parents of the Petitioner, ***, to participate in the ARD committee process under 34 C.F.R. §§ 300.322, 300.513; 19 Tex. Admin. Code § 89.1050(h); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 811 – 13 (5th Cir. 2003); *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003).
7. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, appropriately placed the Petitioner, ***, in the LRE under 34 C.F.R. § 300.114 and *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989).

8. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, did not significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE. 34 C.F.R. 300.513(a)(2) and *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003).
9. The Respondents, Argyle Independent School District and Denton County Special Education Cooperative, have not incurred an obligation to cover and reimburse the parents for private schooling of the Petitioner, ***, under 34 C.F.R. § 300.148.

Order

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

IT IS HEREBY ORDERED THAT:

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

SIGNED this 6th day of May, 2011.

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

TEA DOCKET NO. 248-SE-0510

STUDENT, b/n/f PARENTS	§	
	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
ARGYLE	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
and DENTON COUNTY SPECIAL	§	
EDUCATION COOPERATIVE	§	
Respondents	§	

SYNOPSIS

CLAIM 1: Whether the Respondents failed to appropriately reevaluate the Petitioner.

CITE: 34 C.F.R. §§ 300.303 – 300.306; 19 Tex. Admin. Code §§ 89.1040(b), (c)(1)

HELD: For the Respondents. The Respondents' reevaluation was appropriate.

CLAIM 2: Whether the Respondents failed to appropriately identify the disabilities of the Petitioner.

CITE: 34 C.F.R. § 300.306

HELD: For the Respondents. The Petitioner is not a child with Asperger's Syndrome.

CLAIM 3: Whether the Respondents failed to conduct an appropriate FBA of the Petitioner and provide an appropriate BIP.

CITE: 34 C.F.R. §§ 300.324(a)(2)(i), 300.324(b)(2)

HELD: For the Respondents. The FBAs conducted were appropriate along with the resulting BIPs.

CLAIM 4: Whether the Respondents failed to provide an appropriate IEP to the Petitioner.

CITE: 34 C.F.R. § 300.101

HELD: For the Respondents. The IEPs were individualized, focusing on behavioral needs of child.

CLAIM 5: Whether the Respondents failed to appropriately provide the education records of the Petitioner to the parents.

CITE: 34 C.F.R. §§ 300.501(a), 300.613

HELD: For the Respondents. The school district notified the parents in writing that they could obtain access to the records in accordance with the IDEA.

CLAIM 6: Whether the Respondents failed to afford the parents the opportunity to participate in ARD committee meetings.

CITE: 34 C.F.R. §§ 300.322, 300.513; 19 Tex. Admin. Code § 89.1050(h)

HELD: For the Respondents. The parents were actively involved in ARD committee meetings.

CLAIM 7: Whether the Respondents inappropriately placed and/or changed the educational placement of the Petitioner.

CITE: 34 C.F.R. § 300.114

HELD: For the Respondents. The child received academic benefits from mainstream placement and had made overall behavioral improvement. Temporary removals to the DAEP for discipline were not inconsistent with the BIP and proved an effective intervention upon the child's return to regular classes previously.

CLAIM 8: Whether the Respondents significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of FAPE to the Petitioner.

CITE: 34 C.F.R. 300.513(a)(2)

HELD: For the Respondents. The parents and school were in regular contact about the education of the child, holding meetings separate from ARD committee meetings. The school district honored parental request for scope of reevaluation to include autism.