

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER FOR THE
	§	
CORPUS CHRISTI	§	
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
	§	

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner brings this appeal, pursuant to the Individuals with Disabilities Education Improvement Act 20 U.S.C. § 1400 et seq., (hereinafter referred to as "IDEA"), against Respondent (hereinafter referred to as "Respondent" or "School District"). Petitioner (hereinafter referred to as "Petitioner" or "Petitioner") filed a written request for a due process hearing which was received by the Texas Education Agency ("TEA") on January 4, 2011 (Docket No. 101-SE-0111). Petitioner filed a second request for Due Process Hearing with TEA on February 28, 2011 (Docket No. 148-SE-0211). On March 7, 2011, Respondent filed a *Motion to Consider Docket No. 148-SE-0211 an Amended Complaint, or, in the Alternative, to Consolidate Petitioner's Two Pending Due Process Complaints*. On March 8, 2011, in light of general agreement among the parties regarding consolidation and the hearing schedule, the Hearing Officer ordered the consolidation of the two Complaints. Throughout this proceeding, Petitioner was represented by Attorney Christopher Jonas of Corpus Christi, Texas. Respondent was represented by CCISD General Counsel John Janssen and Staff Attorney Andrew Thompson, CCISD in-house counsel in Corpus Christi, Texas. The Due Process Hearing was convened on Thursday, April 7, 2011, and the hearing was recessed before completion due to medical concerns of Petitioner's counsel. A Motion for Continuance was heard at the scheduled second day of hearing on Monday, April 23, 2011, and granted due to an emergency requiring the absence of Petitioner from the hearing. The hearing was completed on Wednesday, June 1, 2011 in Corpus Christi, Texas. The parties agreed to file post-hearing briefs on or before Monday, June 20, 2011.

Petitioner states that Petitioner is a ***-year old in the *** Grade. Petitioner has been receiving special education. Petitioner's consolidated Requests for Special Education Due Process Hearing and Required Notice ("Complaint") raised the following issues regarding the special education identification, evaluation, placement, programs and services of Petitioner and Respondent's alleged denials of a free appropriate public education ("FAPE"):

1. Petitioner has Attention Deficit Hyperactivity Disorder ("ADHD"), Bipolar Disorder, and exhibits aggressive behaviors. Petitioner is classified as a child with a disability who meets eligibility criteria for Emotional Disturbance and Speech Impairment.

2. Petitioner suffered and struggled at school all of the last school year. Petitioner was punished and was sent home on a regular basis for inappropriate behaviors directly related to Petitioner's disabilities. Respondent implemented punishment for Petitioner's disabilities; Petitioner's mother was called to pick Petitioner up from school and told that school personnel would not continue to deal with Petitioner's inappropriate behaviors.

3. Petitioner has not been provided academic programming which would allow Petitioner to be successful. Petitioner reads at a *** grade level, has failed to advance in reading, has regressed in mathematics, and did not meet TAKS standards last school year.

4. Respondent has not provided appropriate evaluations. When Respondent provided a Full and Individual Evaluation (“FIE”) in 2008, Respondent did not conduct assessment to determine diagnosis for behavioral problems. The January 2010 Behavior Intervention Plan (“BIP”), was written without recommendations from a behavioral specialist.

5. Respondent failed to timely identify Petitioner for an Emotional Disturbance and Other Health Impairment (“OHI”). Respondent did not provide a psychological evaluation until November, 2010. Petitioner was never provided an OHI form related to Petitioner’s ADHD.

6. Respondent’s psychological evaluation is inappropriate because it does not include: Recommendations for behavior interventions and strategies; In-school recommendations regarding teacher/staff training as to Petitioner’s individual needs; Recommendations for counseling or whether counseling would be appropriate. Additionally, Respondent did not provide a counseling evaluation for Petitioner.

7. Respondent did not provide a Functional Behavior Assessment (“FBA”), nor did Respondent implement an appropriate Behavior Intervention Plan (“BIP”). Petitioner is in a behavior intervention classroom, and is not being transitioned into mainstream classes with appropriate special education services, including behavior interventions, shadow and aide support, and other services needed to allow Petitioner to be educated with non-disabled peers. Petitioner is isolated in the classroom and only recently received a BIP for the behavior classroom. Petitioner should have had a BIP established and appropriately implemented before the 2009-2011 school year.

8. Respondent did not provide appropriate Extended School Year Services, and Petitioner regressed over the summer.

As relief in this Special Education Due Process Hearing, Petitioner requests that Respondent be ordered to do the following, as deemed appropriate by the Hearing Officer:

1. Provide Petitioner with a FAPE to meet Petitioner’s unique and individual needs.
2. Educate Petitioner in the Least Restrictive Environment (“LRE”).
3. Provide Petitioner any and all appropriate evaluations including a Full Independent Evaluation.
4. Provide Petitioner any and all appropriately implemented modifications, interventions and services which are effective, goal oriented and educationally beneficial to Petitioner.
5. Provide Petitioner with up to one year of compensatory educational services or an amount of compensatory educational services deemed appropriate by the Hearing Officer.
6. Hold an Admission, Review, or Dismissal Committee meeting (“ARD”) to implement the Decision of the Hearing Officer.

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

II. Findings of Fact

1. Petitioner is a ***-year old child with a disability who resides within the School District.

2. The School District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing Petitioner a free appropriate public education in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. § 1400, *et seq.*, and the rules and regulations promulgated pursuant to IDEA.

3. Petitioner is eligible for special education as a child with a disability who meets eligibility criteria under the following handicapping conditions: Specific Learning Disabilities in Basic Reading, Reading Comprehension, Reading Fluency, Math Calculation and Math Problem Solving. As of the December 14, 2010 ARD it was determined that Petitioner also meets eligibility criteria for Severe Emotional Disturbance. Petitioner has not been identified as having a Speech Impairment or OHI.

4. Petitioner was identified as a child with a disability with Specific Learning Disabilities in February 2008, while attending *** School. Based on a February 1, 2008 FIE, which included scores on the Wechsler Intelligence Scale for Children – 4th Edition, (WISC – IV), and the WIAT – II. Petitioner was determined to have a Full Scale I.Q. with a qualitative description as “***.” Petitioner achieved composite scores described as in the “****” Range for working Memory; “****” for Processing Speed; and in the *** range for Verbal Comprehension and Perceptual Reasoning on the WISC –IV. Petitioner achieved WIAT – II scores with grade equivalents of *** on Reading Comprehension; *** on Numerical Operations and Written Expression; *** in Word Reading; and *** in Math Reasoning.

5. Petitioner’s behavior was found to influence education placement, programming or discipline. Specific behaviors of concern were: Does not initiate activities independently; may not work cooperatively with others; may not have an even, usually happy, disposition; and ***may become discouraged by difficulties or minor setbacks (Emphasis supplied)***. Petitioner’s teacher rated the behavior issues as below average and not poor, and determined the behaviors were contributing, but not primary, factors influencing educational performance. As to the Emotional/Behavioral component of the FIE, the multi-disciplinary team concluded that “if Petitioner’s behaviors of concern (all of which were non-aggressive) continue after sufficient opportunities and interventions have been in place additional testing can be requested.” Petitioner advised the ARD Committed that Petitioner was taking medication for attention difficulties.

6. Petitioner began exhibiting significant behavioral difficulties with aggressive tendencies in January 2009, when the ARD Committee reported that Petitioner would not do work, and at times was disrespectful to authority figures. Later that semester, Petitioner was referred to the *** (sometimes referred to as “****”), Respondent’s disciplinary alternative education placement, for ***. In addition to the placement, Respondent addressed the escalating bad behavior by conducting an FBA and developing a BIP.

7. During the 2009-2010 School Year, Petitioner attended another school district, but returned to School District on November ***, 2009, to attend *** Grade at *** School. Petitioner exhibited behavior problems at *** School, which resulted in frequent disciplinary referrals to the office. In fact, according to Respondent's records, Petitioner enrolled at *** School on November ***, 2009, and had 12 disciplinary office referrals and on day of In-School Suspension ("ISS") before the end of the year. From ***, 2010 through ***, 2010, when Petitioner was placed in the ****, Petitioner had 19 disciplinary incidents, resulting in 1 day of ISS, 6 days of Out of School Suspension, and 16 office referrals.

8. Petitioner's IEP and BIP documents were separated from the ARD documents, with IEP/BIP records applicable to multiple dates, making it difficult to determine which IEP goals were discontinued on which dates, when IEP goals were applicable, and whether the IEP/BIP documents contained the actual recommendations of the stated ARD, or whether the documents were complete or composite versions of various ARDs held over the 2010 and 2011 school years.

9. Petitioner's Annual Review ARD was convened on **January 5, 2010** to consider Petitioner's program at *** School. Instruction was to be provided in the general education classroom only, with special education support and recommendations. Goals of the IEP/BIP applicable at some time during the time period from January 10, 2010 through September 17, 2010 may have included the following:

- (a) Achieve mastery of the school district curriculum by completing hi/her assignments and maintaining passing grades;
- (b) Increase positive behaviors and/or decrease negative behaviors;
- (c) Acquire an extensive vocabulary through reading and systematic word study; and
- (d) Compose original texts applying the conventions of written language such as capitalization, punctuation and penmanship to communicate clearly and spell proficiently.

10. At the January 5, 2010 ARD, the ARD Committee recommended a Behavior Specialist for support, and the Special Education Department Chair was directed to begin the referral packet for the Behavior Specialist Intervention. All members of the January 5, 2010 ARD Committee agreed with the recommendations; Petitioner did not attend the ARD.

11. Petitioner withdrew from *** School and enrolled in *** School on February ***, 2010. A Review ARD was convened on **February 26, 2010**. The purpose of the ARD was to change Petitioner's schedule to reflect the schedule of *** School. Petitioner's schedule was also changed to provide 90 minutes per day in the Resource Classroom for Language Arts support. *** School was contacted to forward the paperwork for the Behavior Specialist to *** School. All members of the February 26, 2010 ARDC agreed with the recommendations; Petitioner was not present for the ARD.

12. Petitioner was given the assistance of the *** staff during the 2009-2010 school year. The *** staff shadowed Petitioner, walking Petitioner to class, staying with Petitioner all day, and monitoring behaviors related to Petitioner's BIP. Even with the *** staff support, Petitioner was unable to be successful in the classroom and in Petitioner's behaviors. A behavior intervention specialist was finally assigned to Petitioner in April, 2010, but was not able to provide services to Petitioner until September 2010. When Petitioner was placed in the SAIL Program classroom in September, 2010 following the September 17, 2010 ARD, the behavior intervention specialist services ended.

13. Petitioner had significant attendance problems at *** School and also exhibited aggressive and threatening behavior, which increased in severity. A Review ARD for disciplinary purposes was convened at *** School on **March 11, 2010**. At the ARD, the Committee reviewed Petitioner's disciplinary hearing for the past year in connection with an FBA. The review indicated that ISS, which had been used for two days, and OSS, which had been used for 5 days of the past year, and daily conferences were somewhat effective. The only consequence or reinforce which was determined to be effective was "Special privileges." No special privileges or other rewards were specified in the FBA, although the plan for the current year did include the general item, "positive reinforcement" among 17 other negative consequences for Petitioner's misbehavior.

14. The purpose of the March 11, 2010 ARD was to determine if Petitioner's consistent misbehavior had a direct and substantial relationship to the disability. The Assistant Principal indicated that Petitioner refuses to follow school rules, is rude and disrespectful to teachers, administrators and the school officer, and fails to comply with directives. The ARD Committee, including Petitioner, determined that the frequent disciplinary incidents were not a manifestation of the disability, and Petitioner was referred to ***. At the same ARD, the ARD Committee also noted that the referral packet for the behavior specialist had not been received from *** School in the two (2) months since the January 5, 2010 ARD. It was agreed that if the referral packet paperwork was not received in that week, then *** School personnel would proceed without it. All members of the March 11, 2010 ARD Committee agreed to the ARD recommendations, including Petitioner.

15. A Review ARD was convened at *** on **April 8, 2010**. The purpose of the meeting was to consider an appropriate BIP for Petitioner at ***. The ARD Committee determined that Petitioner should attend school until 4:00 p.m. daily and attend "appropriate academic and/or preventive programs based on the behavior or infraction resulting in Petitioner's removal from home school and placement at ***. Petitioner's IEP was amended to add the goals: (a) Achieve mastery of the school district curriculum by completing his/her assignments and maintaining passing grades; and (b) Increase positive behaviors and/or decrease negative behaviors. All members of the April 8, 2010 ARDC agreed with the recommendations, except Petitioner, who did not attend the ARD.

16. Petitioner returned to *** School, Petitioner's home campus, again in September, 2010. Again, Petitioner began having behavior problems immediately. Additionally, the ARD Committee, including the Behavior Specialist, agreed that *** was not a successful placement for Petitioner, and Petitioner's behaviors continued to interfere with learning and progress. A Review ARD Meeting was convened on September 17, 2010. The purpose of the ARD was to discuss the Petitioner's proposed placement at *** in the SAIL program due to the Petitioner's lack of success/progress with behavior supports and interventions. The Behavior Specialist recommended that Petitioner be transferred from *** School to the behavior intervention classroom at ***. The behavior intervention classroom implements the Successful Academic Inclusive Learning Program ("the SAIL Program), which monitors student behaviors, provides daily social skills classes, and allows students to attend general education classes for instruction when their behaviors allow it. Finally, the ARD Committee discussed the need to complete Petitioner's re-evaluation by February 1, 2011. All members of the September 17, 2010 ARD Committee agreed with the ARD recommendations, including Petitioner.

17. Petitioner received an FIE dated November 13, 2010. The FIE was for reassessment after Petitioner was placed in the SAIL Program classroom at ***. The purpose of the re-evaluation was to meet the

requirement for re-evaluation every three years and to determine if Petitioner had a speech, language or learning deficit and/or physical, mental emotional condition that required special education services in order for Petitioner to be successful in an education setting.

18. As part of the November 13, 2010 FIE, Respondent evaluated Petitioner's communication skills. Based on informal observations, and information from school staff and Petitioner's parent(s), it was determined that Petitioner's expressive and receptive language skills were average, and articulation, voice and fluency were within normal limits. Petitioner had mastered speech therapy goals and had been dismissed from speech therapy on or about March 2, 2007.

19. Petitioner was given several tests to evaluate Petitioner's psychological status and behavior and emotional needs. Petitioner was not cooperative on the House-Tree-Person test and the Rorschach Inkblot test. There was significant agreement between the responses given by Petitioner's parent and the responses given by one teacher, whose responses agreed in their negative assessment of Petitioner. Petitioner's mother's "overly negative" responses, which indicated Clinically Significant issues of Externalizing problems, Hyperactivity, Aggression, Conduct Problems, Internalizing Problems, Anxiety, Depression (with concern for suicidal tendencies), Atypicality, Withdrawal, Attention problems, Adaptive skills, Activities of Daily living, and Functional communication, were deemed invalid, as were the negative responses of the teacher.

20. As a result of the November, 2010 psychological testing, with reference to the teacher's valid, consistent and not overly negative responses, Petitioner was determined to qualify for special education based on having Emotional Disturbance. Based on the FIE, Petitioner was determined to have characteristic behaviors which included: Misreading social cues resulting in a tendency to paranoia, Physical and verbal aggression toward peers, and verbal aggression toward adults. In fact, Petitioner had been exhibiting these psychological symptoms and behavioral issues since early 2009.

21. As a result of the November, 2010 psychological testing, with reference to the teacher's valid, consistent and not overly negative responses, petitioner was determined to qualify for special education based on having Emotional Disturbance. Based on the FIE, Petitioner was determined to have characteristic behaviors which included: Misreading social cues resulting in a tendency to paranoia, Physical and verbal aggression toward peers, and verbal aggression toward adults. In fact, Petitioner had been exhibiting these psychological symptoms and behavioral issues since early 2009.

22. For the portion of the November FIE concerning intellectual functioning, Respondent and the ARD Committee reviewed the February 2008 WISC - IV and WIAT -II results. Because no new IQ or achievement testing was ordered, Respondent and Petitioner must have believed the almost 3 year old information provided an accurate reflection of Petitioner's current levels of performance.

23. The November 13, 2010 FIE also contained a recommendation that Petitioner be evaluated for OHI disability, stating that only a physician could provide this eligibility determination. The FIE recommended that Petitioner be provided a form for the physician to complete.

24. Petitioner's *** counselor worked with Petitioner during the fall semester 2010, ending in November 2010. The *** counselor met with Petitioner outside the SAIL Program classroom on a couple of

occasions at least, when Petitioner was “very upset.” The counselor also spoke with school personnel who stated that Petitioner needed more help with academics; school personnel believed that Petitioner was struggling and was having difficulties controlling anger during the school day, especially due to restriction to the SAIL Program classroom. The *** counselor reported that Petitioner was frustrated being relegated to the SAIL Program classroom for so much of the school day.

25. Although Respondent testified that Petitioner spoke with a counselor in connection with disciplinary infractions, Respondent did not provide consistent and routine counseling services, nor did Respondent provide counseling goals and objectives based on Petitioner’s Emotional/Behavioral evaluation results. There was no counseling evaluation associated with the November, 2010 FIE.

26. An annual review ARD was convened on December 14, 2010. Based on a review of an FIE dated November 13, 2010, which included an evaluation by an LSSP, Petitioner’s eligibility was updated to include Emotional Disturbance as Condition 1, and Specific Learning Disabilities as Condition 2. All instruction, except Social Skills, was to be in the general education classroom with daily monitoring by SAIL Program personnel. Petitioner was scheduled to receive 45 minutes per day of Social Skills training in the SAIL Program classroom.

27. From March 11, 2010 through November 10, 2010, Petitioner was involved in 23 separate disciplinary incidents where the District Police Department was involved, including 2 incidents for information only, 7 incidents of violations of daytime curfew, 10 incidents of disorderly conduct (language), 2 incidents of disruption of class, on incident of tobacco on school property, and one incident of assault by contact. Petitioner was involved in many incidents where police were not involved where Petitioner refused to go to class, was aggressive, used racial slurs and profanity, and ran away from class and school.

28. Petitioner’s attendance record shows sporadic attendance in *** Grade classes at both *** School and ***. The number of missed days and portions of days is shown on the chart below.

Month	Number of School Days Recorded	Absences for All or Part of School Day	Suspensions for All or Part of School Day	Medical/Hospital Absence for All or Part of School Day	Tardy for All or Part of School Day
August 2010 (*** School)	6	6	0	0	3
September 2010 (*** School)	10	10	5	1	2
September 2010 (***)	4	2	0	1	1
October 2010 (***)	14	12	1	1	7
November 2010 (***)	14	14	0	5	0

December 2010 (***)	13	13	0	0	0
January 2010 (***)	20	12	0	0	0
February 2010 (***)	15	13	0	5	0
March 2010 (***)	3	3	0	0	1

29. Respondent charged Petitioner with Truancy for voluntary, unexcused absences noted by the Attendance Officer based on personal knowledge and school records. Student could not ride the bus due to behavioral problems and altercations with other Students. Parent, who accepted responsibility for transporting Petitioner to school often could not get Petitioner go to school until mid morning, on many school days. When Petitioner did arrive at school, Petitioner often preferred to stay in the SAIL classroom rather than be subjected to ridicule for being behind in academics. In the SAIL classroom, the Special Education Teacher tried to work with Petitioner on Reading on a one-to-one basis. There was no evidence regarding Petitioner's academic supports other than the assistance of the SAIL classroom teacher with reading and the opportunity to attend general education classes when behavior warranted. Petitioner's SAIL Program classroom teacher testified that he had never seen a student so angry at such a young age.

30. Petitioner has failed *** grade, due to failing academic classes and failing to meet standardized testing requirements pursuant to the TAKS. Petitioner's school work records include failures for lack of attendance. Petitioner's SAIL classroom teacher stated that Petitioner had shown no educational growth at all this school year. Petitioner has also not made progress in terms of mastering appropriate behavioral responses. Petitioner has fallen further behind peers in terms of academic mastery and development of age appropriate social skills and appropriate behaviors.

31. Throughout Petitioner's history of significant behavior and discipline issues, beginning in January, 2009, Respondent has consistently relied on Petitioner's parent to assist in calming Petitioner down, picking up Petitioner from school when Petitioner had a significant behavior incident, and obtaining crisis intervention from ***. Respondent has not provided the emotional and behavioral services necessary for Petitioner to be successful in school, and Petitioner has fallen behind or made no further progress.

32. Respondent will retain Petitioner in the *** grade due to failure of core academic content areas, failure to meet compensatory attendance requirements, and failure to meet TAKS requirements. Respondent attributes these failures to absences, however, Petitioner's SAIL Program classroom teacher stated that Petitioner was an extremely angry young person, who resented being academically far behind Petitioner's peers so much so that Petitioner would not perform in front of them. About 95% of the time, Petitioner refuses to go to the general education classroom, and when Petitioner does go, there are often significant behavior issues.

The SAIL Program classroom teacher believes that individual special education services are needed, including tutoring, home study (not homebound placement),

III. Discussion

The evidence in this case established that Respondent did not timely conduct an assessment of Petitioner for Emotional Disturbance, even in the face of overwhelming evidence linking Petitioner's behavior to an area of suspected disability. Petitioner's first referral for Special Education and the 2008 FIE noted behavior problems and recommended additional testing if behavior concerns continued. Petitioner's behaviors escalated and became more intense and disruptive. Respondent placed Petitioner, twice, in a disciplinary alternative education placement, ***, and still Respondent refused to consider assessment for behavior/emotional concerns until almost two years after the initial determination of behavior concerns and their relationship to educational achievement. Despite Respondent's assertions in its Closing Argument to this case, the record provided no justification for the District's delay in light of Petitioner's disability, escalating behaviors, and lack of response to disciplinary responses such as office visits and placement in ***.

Respondent asserts that Petitioner's attendance is responsible for lack of educational progress. However, it is clear that Petitioner's failure and refusal to attend school is a manifestation of Petitioner's disabilities. Respondent's witnesses testified that Petitioner feared being made fun of for being so far behind Petitioner's peers in the general education classroom—so much so that Petitioner prefers the relative isolation of the SAIL Program classroom. More importantly, Petitioner's placement in the general education classroom for instructional purposes clearly does not meet Petitioner's educational needs. Because of the Petitioner's emotional disability and history of little academic success, placement in a general education setting without sufficient supports and a modified BIP amounted to placement that was not LRE for the Student. Respondent is charged with providing instruction in the least restrictive environment *for Petitioner*, considering Petitioner's unique needs, not just the least restrictive instructional setting, generally. Petitioner needs a placement and method of instruction which will allow Petitioner to make educational progress while not being subject to ridicule by Petitioner's non-disabled peers or even other students in the SAIL classroom. Respondent is charged with developing a means of educating Petitioner, not just addressing behavioral needs.

While behavior needs have overshadowed academic concerns, both issues are necessary for Petitioner to make educational progress. On this record, the District did not show the Student's limited IEP and BIP provided the Student with the basic educational floor of which the U.S. Supreme Court spoke in *Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982). For Respondent to continue with the same general goals and objectives which continue to be less and less effective constitutes a denial of FAPE. Petitioner is entitled to one full year of compensatory services, and summer programming for the years 2011 and 2012 to make up for the time since January 4, 2010, when Petitioner should have begun receiving intensive educational and counseling services to address behavior and academic deficits. Additionally, Respondent must again take responsibility for providing transportation for Petitioner to and from school, with full consideration of Petitioner's behavioral difficulties, so that Petitioner can be present to take advantage of special education services such as tutoring, counseling and social activities.

IV. Conclusions of Law

1. Petitioner is a student with the School District who is eligible for special education services based on a classification as a student who has an emotional disturbance by virtue of a severe Bi-Polar Disorder. [20 U.S.C.A. §1400(3); 34 C.F.R. §300.7; 19 T.A.C §89.1040.]

2. Respondent has a responsibility to provide Student with a free appropriate public education. [20 U.S.C.A. §1412; 34 C.F.R. §300.300; 19 T.A.C §89.1001.]

3. Petitioner proved that Respondent denied FAPE by failing to implement effective behavior management strategies timely and by punishing Petitioner for behaviors which were manifestations of his disability. The Respondent also failed to provide the Petitioner with appropriate related services of special education transportation. [*Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir., 1989); *Cypress-Fairbanks ISD v. Michael F.* 118 F.3d 245 (5th Cir., 1997); 34 C.F.R. §§300.34, 300.530(e)(f), 300.536]

4. Petitioner proved that Respondent denied FAPE by not providing academic programming which would allow Petitioner to be successful in the least restrictive environment. Education in the general education classroom with SAIL classroom supports has proven ineffective in Petitioner reads at a *** grade level, has failed to advance in reading, has regressed in mathematics, and did not meet TAKS standards last school year. [34 C.F.R. §§ 300.22, 300.323, 300.324, 300.114; *Cypress-Fairbanks ISD v. Michael F.* 118 F.3d 245 (5th Cir., 1997); *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir., 1989)]

5. Petitioner proved that Respondent did not provide an appropriate evaluation for Petitioner in the area of Emotional Disturbance and with the assistance of a behavior specialist or a Licensed Specialist in School Psychology. Respondent has not provided a counseling evaluation, or counseling goals and objectives as part of Petitioner's IEP. Petitioner's BIP is overly general and does not address Petitioner's specific behavior problems, such as failure and refusal to attend school. [34 C.F.R. §§300.8(b)(4), 300.323, 300.324(a)(2)]

6. Petitioner proved that Respondent failed to timely identify Petitioner as a child with a disability who meets eligibility criteria for Emotional Disturbance. [34 C.F.R. §§300.305, 300.306]

7. Respondent failed to provide appropriate Extended School Year Services, and Petitioner regressed over the summer. [*Loren F. v. Atlanta Independent School System*, 349 F.3d 1309 (11th Cir., 2003); *Doe v. Defendant*, 898 F.2d 1186 (6th Cir., 1990); 34 C.F.R. §300.106]

V. Order

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner be GRANTED.

Respondent is hereby ORDERED to do the following:

1. Provide a counseling evaluation, and establish goals and objectives for counseling which address the emotional and behavioral issues identified in the November 13, 2010 FIE. Amend Petitioner's BIP to provide goals specific to Petitioner's behaviors, including especially school avoidance, and to provide the staff support needed to implement the BIP, including PBS staff, special education staff, and other support staff. Additionally, the BIP must provide special computer privileges and other specified positive reinforcement rewards for appropriate behaviors, and must provide for coordination among all persons working with Petitioner, including teachers, staff and counselors.
2. Provide IQ testing not later than the first month of the 2011-2012 school year to establish Petitioner's present levels of academic performance and to establish a baseline to determine educational benefit from Petitioner's IEP over the next school year.
3. Establish an IEP for Petitioner which addresses his unique needs as a child with a disability, including educational programming which may be implemented on a self-paced basis, outside of the general education classroom and throughout the campus so as to minimize issues of extensive confinement to the SAIL program classroom when behaviors do not allow attendance in the general education classroom. Provide tutoring and other 1:1 assistance as needed to allow Petitioner to master the individualized curriculum. Provide intensive social skills training in both group and individual settings. Provide opportunities for Petitioner to participate in extracurricular, community and cultural options in support of his academic program and social skills training. Special educational goals and objectives must be more specific than: "Increase positive behaviors and/or decrease negative behaviors." Special education goals and objectives must be measurable in time periods of no more than 6 weeks, preferably shorter, so as to provide for close monitoring of Petitioner's progress. Goals and objectives must also be individualized based on Petitioner's present levels of academic performance, and evaluation results which identify Petitioner's areas of weakness, as well as his skills and abilities.
4. Provide special education transportation to and from school for Petitioner.
5. Provide the forms for Petitioner's physician to determine whether Petitioner is eligible for special education as Other Health Impaired.
6. Develop effective school responses to Petitioner's behavior issues so that the Parent is not called to school routinely to address Petitioner's behavior issues.
7. Provide compensatory education services for Petitioner for one full year (12 months), including specialized computer programming which will allow Petitioner to access self paced learning modules both at home and in the classroom. The 12 months of compensatory educational services must include counseling to address Petitioner's school avoidance issues, and summer programming beginning the summer of 2011 and continuing in the summer of 2012 to transition Petitioner from the unsuccessful IEPs and placements of the previous years to an IEP which is reasonably calculated to provide an educational benefit.

8. All the above educational programming, services and IEP requirements are to be addressed by a duly constituted ARD convened no later than 14 days from the date of this Decision of the Hearing Officer.

All relief not specifically granted in this order is expressly DENIED.

SIGNED in Austin, Texas this 1st day of July 2011.

/S/Gwendolyn Hill Webb
Gwendolyn Hill Webb
Special Education Hearing Officer

STUDENT b/n/f PARENT	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER FOR THE
	§	
CORPUS CHRISTI INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether the School District denied a FAPE to a learning disabled Student with an educational history of chronic behavioral problems by failing to timely evaluate and determine that the Student was eligible for special education services as a student with a severe emotional disturbance.

Federal Citation: *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir., 1989); *Cypress-Fairbanks ISD v. Michael F.* 118 F.3d 245 (5th Cir., 1997); 34 C.F.R. §§ 300.8, 300.22, 300.106, 300.114, 300.305, 300.306, 300.323, 300.324, 300.530, 300.536.

State Citation: 19 TAC §§89.1050; 89.1055; *Tatro v. State of Texas*, 625 F.2d 557 (5th Cir., 1980)

Held: For the Petitioner. The Student's long history of consistent behavioral problems, chronic truancy, psychological treatment and early evaluations suggesting the possibility of an emotional disturbance; provided the District with more than enough information that the Student may need additional assessment, a modified IEP that included transportation to school and ESYS, and a developed BIP to receive a FAPE. The District's failure to timely determine that the Student had an emotional disturbance resulted in the Student not being educated in the LRE and failing to receive a FAPE for an entire school year.