

STUDENT b/n/f PARENTS	§	BEFORE A SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER FOR THE
	§	
FRISCO INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner Student by next friends Parents (“Petitioner” is referred to within this Decision as “Student,” “Parent,” or “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 Frisco Independent School District (hereinafter referred to as "Respondent," "School District," or “Frisco ISD”). Petitioner filed a written request for a due process hearing which was received by the Texas Education Agency (“TEA”) on May 24, 2011, which was styled and docketed as shown above. Petitioner was represented by Attorney Daniel Garza of Cirkiel & Associates in Round Rock, Texas, and was assisted by Parent Advocate David Beinke. Respondent was represented by Attorneys Nona Matthews and Michael Clark of the law firm Walsh, Anderson, Gallegos, Green & Trevino in Irving, Texas. The Due Process Hearing in this matter was held Wednesday, September 5, 2012 through Friday, September 7, 2012, in Frisco Independent School District. Following the conclusion of the hearing, the parties agreed that written closing arguments would be filed by Friday, September 28, 2012, and that the Decision of the Hearing Officer would be issued on or before Thursday, October 11, 2012.

At a March 2, 2012 Prehearing Conference, the parties outlined the issues to be addressed in the due process hearing. Petitioner’s Request for Special Education Due Process Hearing and Required Notice (“Complaint”) raised issues regarding the special education identification, evaluation, placement, programs and services of the Student, and Respondent’s alleged denials of a free appropriate public education (“FAPE”):

1. Failure to evaluate the Petitioner in all suspected areas of disability timely and appropriately.
2. Failure to appropriately address the Petitioner's needs related to the student’s diagnosis of Encephalopathy, including failure to appropriately consider the Other Health Impairment (“OHI”) forms submitted by student’s physicians and accompanying letters of medical necessity.
3. Failure to respond to Petitioner's next friends’ repeated requests for a special education evaluation appropriately and timely.
4. Failure to provide the Student’s parents with prior written notice at all required junctures.
5. Failure to ensure that all required personnel attend the Admission, Review and Dismissal Meeting (“ARD”), more specifically, a "representative of the public agency who" is knowledgeable and "qualified to provide, or supervise the provision of, specially designed instructions to meet the unique needs of children with disabilities."
6. Failure to provide Petitioner’s next friend with OHI forms timely and failure to review and consider the forms in good faith.

7. Failure to find petitioner eligible for special education services based upon the provision of several OHI forms and letters of medical necessity, all indicating areas of educational need and the necessity for specially designed instruction.
8. Failure to develop and implement an Individualized Education Program (“IEP”) based on parental input of educational need as well as medical professionals’ and neuropsychologists’ recommendations for specially designed instruction.
9. Failure to provide parents with the opportunity to participate meaningfully in the ARD process.
10. Failure to consider the "academic, developmental, and functional needs of the child" when determining eligibility and in the development of an IEP.
11. Whether, as a result of the above, including but not limited to Respondent's alleged failure to devise an appropriate IEP for the Student, the Student is entitled to compensatory educational services/payments and private placement at public expense, both for the past (including reimbursement for the Petitioner already incurred out-of-pocket expenses and mileage) and future and reimbursement for the private services that the Petitioner obtained, plus mileage, including any and all of the proposed remedies mentioned below.
12. Failure to provide the Petitioner with the requisite notices that would have enabled the Petitioner to pursue Due Process in years past. Petitioner specifically contends that the Student’s next friends’ right to request an evaluation prior to Petitioner’s dismissal from special education resulted in a withholding of information by the Respondent that precluded Petitioner from bringing a due process suit, earlier.

As relief in this Special Education Due Process Hearing, the Petitioner requested that Respondent be ordered to do the following:

1. That Respondent consider Petitioner eligible for special education services based on the OHI forms previously submitted.
2. Provide the Petitioner an appropriate IEP in the least-restrictive environment that complies with all the procedural and substantive requirements of the IDEA and Texas special education law.
3. That the Respondent be ordered to provide Petitioner’s next friend with reimbursement for past expenditures for the private related services.
4. That the Respondent be ordered to provide Petitioner’s next friend with reimbursement for the Petitioner's private evaluations.
5. That the Respondent be ordered to provide Petitioner’s next friend with payment for future private placement expenses and mileage.
6. That the Respondent be ordered to provide Petitioner’s next friend with reimbursement for related services the Petitioner obtained in the past and appropriate related services going forward, plus mileage.

After considering the evidence of record, the Special Education Hearing Officer makes the following Findings of Fact and Conclusions of Law:

II. Findings of Fact

1. The Student is a ***-year old child who resides within geographical boundaries of Frisco Independent School District. Student is a *** grade student.

2. Respondent 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 Federal and Texas rules and regulations promulgated pursuant to IDEA.

3. In a **May 31, 2006 Section 504 Committee review meeting**, members found the Student to have processing needs that required extra intervention. The members established the following accommodations for the Student's success:

- a. Extra time for completion of assignments;
- b. Task analyze, sequence assignments;
- c. Frequent checkpoints for long term assignments;
- d. Extra time for oral response;
- e. Extra time for written response;
- f. Check for understanding of directions; and
- g. Help with organization and prioritizing.

4. A **Section 504 - Committee meeting** was held on the Student's behalf on **September 19, 2006**. The purpose of the meeting was to review the initial evaluation of the Student for Section 504 services.

5. The September 19, 2006 Section 504 Committee found the Student to be eligible for Section 504 services, and allowed the Student preferential seating and lengthened time required for tasks in Math, English/Language Arts, Science and Social Studies.

6. The September 19, 2006 Section 504 Committee meeting found the Student to be eligible for Section 504 services, allowing the Student preferential seating, lengthened time required for tasks, frequent breaks, reduced distractions, clear written instructions and directives for projects and a copy of lecture notes in Math, Reading, English, Science, Social Studies and electives. The Student will have shortened homework assignments in Math and electives.

7. The Notice of Admission, Review, Dismissal ARD/IEP Committee Meeting ("Notice of ARD") was mailed to the Student's parents on March 22, 2007 for a **March 27, 2007 ARD meeting**. The purpose of the meeting was to review results of the March 20, 2007 Full Individual Evaluation ("FIE"), develop an Individualized Education Program ("IEP") and initiate eligibility for special education services based on the FIE.

8. An ARD meeting was held on the Student's behalf on March 27, 2007. The purpose of the meeting was to perform an initial review of the Student's educational placement and programs.

9. The Student's March 27, 2007 ARD Committee ("ARDC") reviewed a Full Individual Evaluation ("FIE") dated March 20, 2007, school records, and parent information. Based on the information presented, the Student's ARDC concluded that the Student met the eligibility criteria as a student with Speech Impairment ("SI").

10. The Student's March 27, 2007 ARDC determined that the School District would accommodate the Student using the following support instruction:

- a. Reduced assignments without the reduction of TEKS;
- b. Extra time for completing assignments/projects; and
- c. Checking with Student for understanding of assignments/tasks.

The ARDC determined that School District Staff does not need specific training or support to assist the Student.

11. The Student's March 27, 2007 ARDC determined that the Student's Least Restrictive Environment ("LRE") is in the general education setting with 300 minutes per 30 school days of pull-out Speech Therapy.

12. The Student's March 27, 2007 ARDC determined that the Student's measurable annual goals to produce developmentally appropriate articulation and intelligibility in conversational speech were as follows:

- a. Discriminate between correct and incorrect production of the target phonemes;
- b. Produce the /th, s, z/ in isolation;
- c. Produce the targeted phonemes in all initial positions of words;
- d. Produce the targeted phonemes in all medial positions of words;
- e. Produce the targeted phonemes in all final positions of words;
- f. Produce the /th, s, z/ phoneme correctly in selected positions in words while reading or creating sentences;
- g. Produce the targeted phonemes in all positions of words in short response to questions or during a game;
- h. Make and explains appropriate inferences about a pictured situation based on available information or evidence;
- i. Problem solve by predicating the outcomes and consequences of all the options available for solving the problem; and
- j. Match figurative spoken sentences with their meanings.

13. During the Student's March 27, 2007 ARD, the Student's parent addressed concerns regarding issues that the Student has had with articulation in speech. After the Student's Goals and Accommodations were created by the ARDC, the Student's parent signed in agreement along with the remainder of the Student's March 27, 2007 ARDC. The Student's parent also executed the Consent for Initial Provision of Special Education Services and received the Notice of Procedural Safeguards.

14. The Notice of ARD was mailed to the Student's parents on February 12, 2008 for a **March 4, 2008 ARD meeting**. The purpose of the meeting was to develop, review and/or revise the Student's IEP.

15. An ARD meeting was convened on the Student's behalf on March 4, 2008. The purpose of the meeting was to conduct an annual review of the Student's special education program and placement.

16. The Student's March 4, 2008 ARDC reviewed the Student's FIE dated March 20, 2007, district assessment and observations by instructions. The Student's March 4, 2008 ARDC concluded that the Student was still classified as a student with Speech Impairment ("SI"), and that no additional accommodations are needed beyond the accommodations that were already in place.

17. The Student's March 4, 2008 ARDC determined that the Student's LRE is in the general education setting with 150 minutes per 30 school day of Speech Therapy. The March 4, 2008 ARDC reduced the Student's Speech Therapy due to the Student's academic and speech skills improvement, and indicated that it would consider a dismissal of the Student from special education at the beginning of the Student's *** grade.

18. The Student's March 4, 2008 ARDC determined that the Student's measurable annual goals to produce developmentally appropriate articulation and intelligibility in conversational speech were as follows:

- a. Produce the target sounds in all positions of words in spontaneous conversation with peers or teachers in the speech room for at least 20 minutes of the 30 minutes session; and
- b. Demonstrate problem solving strategies by brainstorming acceptable solution to conflicts with peers and adults.

19. The Student's parent signed in agreement along with the remainder of the Student's March 4, 2008 ARDC.

20. The Notice of ARD was mailed to the Student's parents on March 13, 2009 for an **April 14, 2009 ARD meeting**. The purpose of the meeting was to propose dismissal or graduation of the Student from special education services.

21. An ARD meeting was convened on the Student's behalf on April 14, 2009. The purpose of the meeting was to propose dismissal of the Student from receiving special education services.

22. The Student's April 14, 2009 ARDC reviewed the Student's FIE dated March 20, 2007, previous TAKS scores, school records, parent information and an outside report. The Student's April 14, 2009 ARDC concluded that based on all available data and assessments, the Student mastered all speech goals and no longer qualified for special education as a student with a Speech Impairment.

23. During the April 14, 2009 ARD, the Student's parent addressed concerns regarding the Student's *** school due to the Student's inability to finish homework in a timely fashion. ARDC determined that the Student does not qualify for Section 504 services, however the *** school is equipped with a learning lab open to all students in order to efficiently complete student's homework.

24. During the discussion of the April 14, 2009 ARD, the Student's teachers recommended the following ways for Student to execute effective time management:

- a. With the assistance of visual and verbal reminders of classroom teachers;
- b. The Student ***; and
- c. Allow Student extra time to complete work.

25. At the April 14, 2009 ARD, the Student's parent notified the ARDC that the Student had been seeing a psychiatrist for Generalized Anxiety Disorder ("GAD") and Obsessive Compulsive Disorder ("OCD"). At that time, the parent reported that no diagnosis had been made and the Student had not been formally assessed by a doctor.

26. The Student's parents signed in agreement along with the remainder of the Student's April 14, 2009 ARDC.

27. The Student's parents did not ask for an FIE when the Student was dismissed for special education in April 14, 2009 ARD meeting.

*****, Ph.D. Neuropsychological Evaluation**

28. *** , PhD performed a Neuropsychological Evaluation on the Student on December 2, 2009 when student was *** years and *** months, and when the Student was in the *** grade. *** administered the Wechsler Intelligence Scale for Children, 4th Edition; the Wechsler Individual Achievement Test II; the Woodcock Johnson Tests of Achievement III; the Beery-Buktenica Development Test of Visual-Motor Integration; the Nepsy-II: A Development Neuropsychological Assessment, 2nd Edition; the Controlled Oral Word Associations Test – FAS; the Children’s Color Trials Test; the Grooved Pegboard Test; the Wilde Range Assessment of Memory and Learning; the California Verbal Learning Test-Children’s Version; and the Rey-Osterrich Complex Figure Test.

- a. The information upon which *** relied on for her December 2, 2009 evaluation was derived from her clinical interview with the Student, her review of the Student’s records, and her interview with the Student’s mother. *** did not interview or speak to any of the Student’s teachers or any employee of the District to reach her conclusions. She reviewed a questionnaire completed by one of the Student’s teachers. The primary nexus for the December 2, 2009 evaluation appears to be a concern from the Student’s mother that the Student could have a processing disorder or OCD. According to *** report, the Student’s mother admitted that the Student does well academically, but spends what student’s mother describes as too much time at home on student’s schoolwork. Student’s mother also reported that the Student has a great deal of anxiety about student’s homework. *** noted that the Student exhibited other compulsive behaviors at home. Finally, *** noted that the Student’s mother’s reports of OCD, Autism, convulsions or seizures, organizational problems, hyperactivity and difficulty paying attention is various family members, including cousins.
- b. In her December 2, 2009 evaluation *** concludes that the Student demonstrates high average intellectual skills with no significant difference seen between student’s very superior verbal skills and superior nonverbal/visual and spatial skills. *** noted average work reading and pseudo word decoding skills; high average reading comprehension skills; high average basic math calculation skills; high average basic spelling skills; and borderline writing fluency skills. *** noted extremely low speed of processing task performance; and low average performance on focused attention and vigilance; as well as average speeded visual perception. *** concluded that the Student’s overall processing speed was extremely low, but student’s performance was high average for spatial scanning and sequential reasoning.
- c. *** concludes in her December 2, 2009 evaluation that the Student displays no difficulties with student’s ability to inhibit student’s impulses and stop student’s behavior at the appropriate time nor with student’s ability to control student’s emotions and impulses, for monitoring student’s thoughts and action, student’s ability to make transitions, tolerate change, problem solve flexibility, or in expressing and regulating student’s emotions appropriately. *** noted that the Student did not report any areas of concern. The Student reported a normal attitude to school and to teachers, denied social stress anxiety, depression, atypical behaviors, and attention problems or hyperactivity. The Student reported high self-esteem, normal self-reliance and normal interpersonal relations and relations to parents.
- d. *** concludes in her December 2, 2009 evaluation that the Student meets the criteria for a Learning Disorder, not otherwise specified (“NOS”), but does not meet the criteria for any specific learning disorder. *** concludes that the Student would benefit from:

- i. Shortened assignments and reduction of repetitive work/busy work;
 - ii. Extended time to complete assignments and projects; and
 - iii. No timed assignments.
- e. *** wrote a letter to the District's Special Education Director, characterizing the correspondence as a "supplement" to her December 2, 2009 Evaluation. This letter was received by the District on March 9, 2011. In the letter, *** acknowledged that she did not recommend that the Student be accommodated only through special education services. She amended her professional opinion in the letter to the Special Education Director by stating that the Student should be considered for special education services based upon meeting the criteria for Other Health Impaired ("OHI") due to the Student's present neurocognitive and processing deficits." *** did not, however, make any changes to her original December, 2009 recommended accommodations.
- f. *** December 2, 2009 evaluation of the Student relies too heavily on family reports without sufficient balancing of other information taken from other settings. For example, *** did not question the reason for the discrepancies between the data received from the Student's mother's reports and the data received from other reporters.

29. A **Section 504 – Committee meeting** was held on the Student's behalf on **November 30, 2010**. The purpose of the meeting was to review the initial evaluation of the Student for Section 504 services.

30. The November 30, 2010 Section 504 Committee meeting reviewed the referral document, grade reports, standardized tests, special education records, and the Student's support team records.

31. On **January 11, 2011**, Petitioner filed a **Complaint with the United States Department of Education Office for Civil Rights ("OCR")**. Petitioner alleged that Respondent retaliated against Petitioner in the following ways:

- a. Sent the complainant a letter on January 10, 2011, in which it denied her request for special education placement for her ***, without first having a meeting to discuss her request;
- b. Refused to provide the complainant the requested forms needed to file a due process claim; and
- c. Refused to provide the complainant the request OHI form that her *** doctor needs in order to fill out her report that would show the complainant's *** need for special education services.

32. On **April 11, 2011**, Petitioner filed a second **Complaint with OCR** alleging that Respondent retaliated against Petitioner when Respondent refused to categorize Petitioner under OHI, per Petitioner and doctor's request.

33. A **Section 504 – Committee meeting** was held on the Student's behalf on **April 12, 2011**. The purpose of the meeting was to re-evaluate the Student and review accommodations in place.

34. The April 12, 2011 Section 504 Committee meeting reviewed the referral document, grade reports, standardized tests, special education records, and the Student's support team records.

35. The April 12, 2011 Section 504 Committee meeting found the Student to be eligible for Section 504 services, with the following impairments: OCD, ***, and processing disorder.

36. The April 12, 2011 Section 504 Committee meeting found the following accommodations appropriate for student: preferential seating, lengthened time required for tasks, frequent breaks, reduced distractions, allow the Student to

go to the learning lab and a copy of lecture notes in Math, Reading, English, Science, Social Studies and electives. The Student will have shortened homework assignments in Math and electives.

37. The Notice of ARD was mailed to the Student's parents on May 5, 2011 for an **ARD meeting** to take place on **May 19, 2011**. The purpose of the meeting was to discuss parents' request to review medical information and consider development of an IEP. An ARD meeting was convened on the Student's behalf on May 19, 2011.

38. The Student's May 19, 2011 ARDC reviewed a Neuropsychological Evaluation completed by Dr. ***, an OHI form completed by Dr. ***, an OHI form completed by Dr. ***, previous TAKS results and classroom performance including grades, curriculum-based assessments and state assessments. The district offered to conduct an FIE on the Student to determine whether the Student was eligible for special education based on outside diagnoses. However, the offered FIE was rejected by the parent.

39. The Student's May 19, 2011 ARDC concluded that based on all assessments and reports provided by the parents, the Student would qualify for special education. During the discussion in this meeting, the Student's teachers described the Student as very friendly, popular, motivated, outgoing, and relaxed. The teachers noted no social awkwardness at school, and the ARDC recommended that the school district complete an FIE, in the educational environment as well as the home setting.

40. The Student's parents did not agree with the remainder of the May 19, 2011 ARDC. The Student's parents did agree to provide a statement outlining all areas of disagreement and stated that they would consider providing consent to the district to perform an FIE. The Student's parents agreed to conduct a social emotional assessment of the Student, however requested the term "Emotional Disturbance" not be referenced on the Student's consent form. The Student's parents did agree to reference OCD and ADHD. On May 26, 2011, the Student's parent executed an Informed Consent for Psychological and Educational Evaluation.

41. During the May 19, 2011 ARD the Student's parents argued that the Student should be found to be eligible for special education under LD and/or OHI designations. The remainder of the Student's ARDC wanted to review data that reflected the Student's functioning in student's home setting. The ARDC request was based on the Student's parents' reports of difficulties with homework and the lack of problems reported by the Student's classroom teachers. The Student's teachers reported no problems that required specialized instruction for the Student. However, the Student's parents declined consent for home observation, based on privacy reasons.

42. During the Student's May 19, 2011 ARD, the Student's teachers reported that the Student had not exhibited any outward signs of anxiety. However, the ARDC agreed to perform an FIE on the Student because of the Student's doctors' written opinions that were considered and the Student's parents' voiced concerns about homework problems.

43. On **June 28, 2011, Petitioner filed a third Complaint with OCR** alleging that during the Spring Semester 2011, Student's History, English, and Spanish teachers' failed to provide Student the related aids and services outlined in Student's Section 504 plan by not providing Student with the following:

- a. Extended time for test review;
- b. Copies of school work assignments;
- c. Preferred seating;
- d. Visual breaks; and
- e. Assistance in organizing homework.

44. On July 13, 2011, OCR issued its report that addressed the allegations of the January 11, 2011 and April 11, 2011 Complaints. The OCR found that there was insufficient evidence to support a conclusion of noncompliance with Section 504 or Title II, with regard to the issues of either Complaint.

45. In **August, 2011**, Petitioner filed a subsequent communication with **OCR** alleging that during the Fall Semester 2011, Student’s History teachers failed to provide Student the related aids and services outlined in Student’s Section 504 plan and failing to evaluate Student prior to placement in Spring Semester 2011.

Respondent’s September 26, 2011 Full Individual Evaluation

46. The District performed an FIE on the Student that was completed on September 26, 2011. The FIE was conducted to determine the extent of the Student’s disabilities and potential need for educational intervention.

- a. The District’s September 26, 2011 FIE used the following Evaluation Procedures as completed by the following individuals:

<u>Input from Staff & Parents:</u>	<u>Completed By:</u>	<u>Date(s):</u>
Review of Records	Evaluation Team	08/04/2011
Parent Interview	***, Ph.D., LSSP Educational Diagnostician	08/10/2011
Teacher Interviews	***, Ph.D., LSSP Speech-Language Pathologist Educational Diagnostician	09/01/2011
Classroom Observations	***, Ph.D., LSSP	08/25/2011 09/01/2011 09/16/2011

<u>Test/Evaluation Instrument</u>	<u>Completed By</u>	<u>Date(s)</u>
Woodcock Johnson Tests of Cognitive Abilities – Third Editions (WJ III Cog)	Educational Diagnostician	08/12/2011 08/17/2011
Select subtests from the Differential Abilities Scales – Second Edition (DAS II)	Educational Diagnostician	08/18/2011
Wechsler Individual Achievement Test – Third Edition (WIAT III)	Educational Diagnostician	08/16/2011 08/18/2011
Social Development Language Test Adolescent	Speech-Language Pathologist	08/18/2011

Arizona Articulation Proficiency Scale, Third Revision	Speech-Language Pathologist	09/02/2011
Comprehensive Assessment of Spoken Language	Speech-Language Pathologist	08/18/2011 09/02/2011 09/16/2011
Behavioral Assessment System for Children, Second Edition	Mother Student Teacher Teacher Teacher	08/11/2011 08/12/2011 09/02/2011 09/02/2011 09/02/2011
Behavior Rating Inventory of Executive Function	Mother Student Teacher Teacher	08/12/2011 08/16/2011 09/02/2011 09/06/2011
Social Skills Improvement System	Mother Student Teacher Teacher	08/12/2011 08/12/2011 09/02/2011 09/06/2011
Multidimensional Anxiety Scale for Children	Student	08/12/2011
Revised Children's Manifest Anxiety Scale	Student	08/16/2011
Piers-Harris Children's Self-Concept Scale, Second Edition	Student	08/16/2011
Brown Attention-Deficit Disorder Scales for Adolescents	Student	08/16/2011

- b. The District's September 26, 2011 FIE relied heavily on the Student's actual performance and attendance in student's classes. There was significant information in the evaluation that resulted from classroom observation, teacher interviews and written teacher contributions, and the Student's grades and test scores. The District's FIE included data from the administration of assessment instruments. However, the District's FIE, as an evaluation of the Student's actual classroom and school experience, provided the most probative measure of how the Student copes with student's identifiable disability while student is at school.
- c. The District's September 26, 2011 FIE indicates that the Student functions well on academics during the school day. The Student participates in classroom discussions, completes assignment and tests and works with peers on assigned projects that require pairings or small groups without apparent problems that are distinguishable from student's peers. The Student's natural reticence usually prevents student from volunteering answers or initiating academic discussions. However, once student is called upon to answer a question or complete a task, student functions at the highest levels of a general education (including ***) classroom. The Student appears to use the accommodations of

extra time and breaks, only occasionally and when student feels the need to use them. Student's consistent final grades of A- to A in student's subjects are accurate measures of student's observed classroom academic progress.

- d. The District's September 26, 2011 FIE indicates that the Student interacts with student's peers appropriately. The Student is shy and quiet. However, the Student responds appropriately to friendly overtures from student's classmates; laughs at jokes and humorous situations, has consistent friendships and generally engages student's peers and teachers in a polite and somewhat quiet manner. If the Student does have a disability in an area that could impair social function, such as an Autism Spectrum Disorder, the Student has been able to overcome such disability to the extent that student is required to function at school, socially.
- e. The District's September 26, 2011 FIE reveals a difference between how the Student and the Student's teachers perceive the Student and how the Student's parent perceives the Student. When the Behavior Assessment System for Children- Second Edition was given to the Student's parent, *** teacher, *** teacher and *** teacher, the following scores were obtained:

	Parent Rating	*** Teacher	*** Teacher	*** Teacher
<i>Clinical Scales</i>				
Hyperactivity	58	43	43	43
Aggression	48	45	45	45
Conduct Problems	61	44	44	44
Anxiety	67	54	38	58
Depression	60	45	45	45
Somatization	60	47	43	55
Attention Problems	69	44	40	40
Learning Problems	N/A	44	47	52
Atypicality	71	45	45	49
Withdrawal	71	59	44	47
<i>Adaptive Scales</i>				
Adaptability	36	61	61	52
Social Skills	41	53	61	59
Leadership	42	53	58	50

<u>Clinical Scales</u>	<u>Adaptive Scales</u>	<u>T-Score Ranges</u>
Clinically Significant	Very High	70 and above
At-Risk	High	60 to 69
Average	Average	41 to 59
Low	At-Risk	31 to 40
Very Low	Clinically Significant	30 and below

(T-Score mean = 50, standard deviation = 10, norms based on age and gender)

Similarly, the Behavior Rating Inventory of Executive Function (Brief) is designed to illustrate the adult's perception of the child's general self-control and problem-solving skills across a number of areas. In this assessment, score with values of 65 or greater are considered to be "clinically significant."

Index	Parent T-Score	*** Teacher	*** Teacher	*** Teacher	Student Report
Behavioral Regulation Index	68	45	45	57	56
Metacognition Index	64	44	45	48	60
Global Executive Composite	66	44	44	51	59

Composite	Subtest	Parent T-Score	*** Teacher	*** Teacher	*** Teacher	Student Report
Behavioral Regulation Index	Inhibit	68	45	45	45	45
	Shift	70	45	45	73	69
	Emotional Control	61	46	46	50	62
Metacognition Index	Initiate	63	43	46	54	N/A
	Working Memory	67	48	48	44	58
	Plan/ Organize	72	46	46	49	49
	Organization of Materials	52	46	46	52	49
	Monitor	52	42	42	45	42

The apparent differences in perception between key stakeholders of how the Student copes with school work could explain some of the persistent disagreements between members of the Student's ARDC while developing the Student's IEP's.

- f. The District's September 26, 2011 FIE concluded that this Student's independently diagnosed disabilities of ADHD, OCD, *** and processing disorder may impact the Student's pace of work completion, especially during test situations and/or activities that are of more substantial length, but they do not significantly impair student's social functioning, communication skills, attention and activity levels, or emotional functioning within the school setting of the degree that the Student requires specially designed instruction through special education. The FIE concludes that the Student can continue to be adequately served through the continued implementation of education accommodations provided by student's Section 504 Accommodations and Services Plan.
- g. The District's FIE report indicated that the Student's parents suspected that the Student might be eligible under a PDD-NOS designation. However, the data from the rest of the FIE contradicts the parents concerns about this designation. Moreover, the Student's teachers did not report any of the evidence of social awkwardness that would be indicative of a student with PDD-NOS.
- h. On **October 19, 2011**, the District issued an **Addendum** to the Full and Individual Evaluation that had been completed on September 26, 2011. The Addendum was issued as a result of the deliberations of the Student's October 4, 2011 ARD meeting. At this meeting, Dr. *** participated by telephone and offered her input and recommendations. Based on the independent diagnoses of ADHD, OCD and Processing Disorder the FIE Addendum concludes that the Student meets the criteria of Other Health Impairment. The FIE Addendum further concluded that the Student's articulation disorder meets the criteria for a Speech Impairment. Based on these determinations the FIE Addendum concluded that the Student qualifies for special education with a functional impairment that affects educational performance in the areas of OHI and SI.

47. The Notice of ARD was mailed to the Student's parents on September 27, 2011 for an **October 4, 2011 ARD meeting**. The purpose of the meeting was to review the Student's educational program.

48. An ARD meeting was held on the Student's behalf on October 4, 2011. The purpose of the meeting was to perform an initial review of evaluation and assessment data to determine whether the Student is eligible for special education services.

49. The Student's October 4, 2011 ARDC reviewed a FIE dated September 26, 2011 and previous TAKS results. Based on the information presented, the Student's ARDC concluded that the Student met the eligibility classification as a student with Other Health Impairment ("OHI").

50. The Student's October 4, 2011 ARDC determined that the Student does not have a need for specially designed instructions/services and the Student will be placed in the general education classroom.

51. The Student's parent was not in agreement with the October 4, 2011 ARDC's recommendations, stating that the Student is not functioning at home, often becomes upset and that the learning lab is not an appropriate environment for the Student due to frequent distractions.

52. Not all members of the October 4, 2011 ARDC were in consensus of the Student's disability and educational needs, and the ARDC reconvened on October 12, 2011.

53. The Notice of ARD was e-mailed to the Student's parents on October 24, 2011. The purpose of the meeting was to develop an IEP to meet the Student's educational needs.

54. The **October 4, 2011 ARD meeting was reconvened** on the Student's behalf on **October 24, 2011**. The purpose of the meeting was to review information acquired since the last ARD meeting, develop an IEP, determine the Student's educational placement, and consider *** goals and ***.

55. The Student's October 24, 2011 ARDC reviewed district assessments and observations by instructional staff and previous TAKS results. The Student's October 24, 2011 ARDC concluded that the Student is eligible for special education as a Student with OHI and SI.

56. The Student's October 24, 2011 ARDC determined that the Student's placement is a general education setting, with the following supplemental aids and services:

- a. Extend time allotted to complete all texts, quizzes, projects, class work and homework – 100% extra time at this time;
- b. Access to the Learning Lab to complete tests and or use of *** during testing to reduce distractions, with exception of Spanish class;
- c. The Student may take breaks in or outside of the classroom as necessary to rest student's eyes;
- d. Opportunity to write directly on test documents;
- e. Shortened assignments in Math and Spanish to reduce redundancy;
- f. Preferential seating away from distractions;
- g. After a few items have been completed, provide feedback on performance by checking work to ensure that student is within the parameters of teacher expectations and not "overdoing" assignments;
- h. Copy of teacher notes prior to instruction;
- i. Provision of completed study guides or test reviews prior to tests;
- j. Provision of written instructions for projects;

- k. Support as needed regarding organization of materials and use of time; ad
- l. Use of computers in the library or learning lab to complete writing assignments as needed.

57. The Student's October 24, 2011 ARDC determined that the Student's measurable annual goals to produce developmentally appropriate articulation and intelligibility in conversational speech were as follows:

- a. Within six instructional weeks, identify 90% of incorrect productions of /s/, /s/ blends and /z/ during listening tasks with student's pre-recorded spontaneous speech samples;
- b. Within 12 instructional weeks, correctly produce /s/, /s/ blends and /z/ 100% of the time in spontaneous speech for 20 minutes measured in speech samples with the speech therapist;
- c. Within 36 instructional weeks, identify 90% of instances of incorrect production of /s/, /s/ blends and /z/ during 10 minutes spontaneous speech samples with the speech therapist; and
- d. Within 36 instructional weeks, identify and report at least 3 times per week: instances of incorrect production from conversations with teachers, peers and student's parents; overall self evaluation of student's speech; and information student's parents, teachers or peers may have shared with student about student's speech.

58. During the October 24, 2011 ARDC, the district agreed to evaluate the Student for Autism. However, the Student's parent did not provide consent for an Autism Evaluation to be conducted by the district because the parent insisted that an outside Autism evaluation should be conducted, first.

59. During the October 24, 2011 ARD, the Student's ARDC agreed to pay for an IEE on the Student, in the interest of compromise. The Student's parents did not provide consent to the District for an autism evaluation, on the advice of their attorney.

60. The October 24, 2011 ARDC determined that the Student's social skills are within the normal limits. The Student's teachers stated that the Student is cooperative, gets along with peers, takes leadership roles, establishes friendships, has high self-esteem and requests more time for clarification if necessary.

61. During the October 24, 2011 ARD, parent requested that the Student receive supplemental instruction in ***, and the ARDC agreed to provide additional instruction.

62. During the October 24, 2011 ARD, it was agreed that the campus/LSSP will consult with teachers regarding helpful strategies for the Student's success. The October 24, 2011 ARDC determined that the Student has a *** which may affect student's ability to ***.

63. The Student's October 24, 2011 ARDC recommended an in home/parent training evaluation to analyze difficulties the Student has when initiating homework and to recommend strategies to assist the Student in completing homework in a timely manner, thereby decreasing anxiety and compulsive behaviors.

64. The Student's October 24, 2011 ARDC recommended that the Student work with a Speech Therapist individually as follows:

- a. 120 minutes per 6 weeks for the first 2 grading periods of the IEP (20 minute sessions);
- b. 60 minutes per 6 weeks for the second 2 grading periods of the IEP (10 minute sessions); and
- c. 30 minutes per 6 weeks for the last weeks of the IEP (5 minute sessions).

65. The Student's parent signed in partial agreement along with the remainder of the Student's October 24, 2011 ARDC, and waived the five school day waiting period for the IEP to be implemented. Parent executed a Notice of Full and Individual Evaluation for in/parent training; parent denied an FIE for autism.

66. Not only did the Student's parents refuse consent for in-home evaluators to observe the Student's home, as requested by the Student's October 24, 2011 ARDC, but the Student's parents did not cooperate with the evaluators' request to meet and talk *about* the Student's home life. The Student's ARDC determined that it would provide the Student with some homework support, even without data about the Student's home life.

67. On November 14, 2011, Petitioner filed a Complaint with the United States Department of Education Office for Civil Rights alleging that Student's teachers' failed to implement Student's IEP that was developed and put in place on October 24, 2011.

68. In Petitioner's subsequent communications filed with OCR, Petitioner specifically alleges that Student's Spanish, Algebra, Science, and History classes failed to implement Student's IEP. Petitioner stated that petitioner did not wish to pursue this allegation concerning any other of Student's classes.

69. On December 22, 2011, OCR issued its report that addressed the allegations of the June 28, 2011 Complaint, and August, 2011 subsequent communications. The OCR found that there was insufficient evidence to support a conclusion of noncompliance with Section 504 or Title II, with regard to the issues of failing to provide an appropriate education in this Complaint.

February 23, 2012 Independent Education Evaluation

70. An IEE was completed on the Student on February 23, 2012. The IEE report summarized nine (9) days of evaluation by ***. The purpose of the IEE was to conduct psychological, speech, and educational assessment in order to determine whether the Student has an educational disability and to make recommendations.

- a. The February 23, 2012 IEE report listed the following Evaluation Procedures:
 - Parent interview
 - Teacher progress report
 - Student clinical interview
 - Behavior Assessment System for Children, Second Edition – Parent Rating Scale
 - Behavior Assessment System for Children, Second Edition – Teacher Rating Scale
 - Beck Youth Inventories – Beck Self Concept Scale
 - Beck Youth Inventories – Beck Anxiety Inventory
 - Beck Youth Inventories – Beck Depression Inventory
 - Bloom Sentence Completion
 - Multiscore Depression Inventory for Children (MDI-C)
 - Adaptive Behavior Assessment System – II – Teacher Form
 - Adaptive Behavior Assessment System – II – Parent Form
 - Differential Ability Scales, Second Edition (DAS-II)
 - Kaufman Test of Educational Achievement, Second Edition (KTEA-II)
 - School Motivation and Learning Styles Inventory (SMALSI) – Teen Form
 - Kaufman Assessment Battery for Children, Second Edition (KABC-II), selected subtests
 - Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV), selected subtests

- Wide Range Assessment of Memory and Learning, Second Edition (WRAML2), selected subtests
 - Comprehensive Test of Phonological Processing (CTOPP), selected subtests
 - NEPSY, Second Edition (NEPSY-II), selected subtests
 - Goldman Fristoe 2 Test of Articulation
 - Comprehensive Assessment of Spoken Language (CASL)
 - Pragmatic Language Skills Inventory (PLSI)
 - Informal Assessment of Oral Motor and Feeding
 - Review of records
- b. The February 23, 2012 IEE considered a parent interview that summarized the Student's medical history from early childhood, including family medical history; the history of educational accommodations made by multiple local educational agencies; the alleged maladaptive and compulsive behaviors of the Student at home and while completing homework; and the alleged anxiety toward the Student's peers. The IEE considered information from the Student's English and Science teachers, who completed a progress report. This information describes a polite, academically capable Student with an extremely high concern for completing assignments correctly, who uses the accommodations that are often unnecessary. The IEE considered Dr. *** December, 2009 Evaluation; a letter diagnosing a *** condition; a completed OHI form diagnosing ADHD, OCD and "Processing Disorder;" a completed OHI form indicating diagnosis of ADHD and "encephalopathy manifested by OCD;" a completed OHI form with no diagnosis; the September 26, 2011 FIE completed by the District; an October 19, 2011 addendum to the District's FIE; and ARD documents from the Student's October 24, 2011 ARD.
- c. *** observed the Student at school on November 9, 2011. The observations describe the Student as a quiet, polite student who is serious about schoolwork, deferential socially, but capable of participating academically and socially during the school day.
- d. The IEE concludes that the Student demonstrated average to above average cognitive/processing abilities in the broad areas of crystallized knowledge, fluid reasoning, short-term memory, long term retrieval, visual processing and auditory processing. The Student presented with a normative weakness on one broad area of psychological processing under the C-H-C model that of processing speed. The IEE concludes that there is no evidence of a learning disability. The IEE also notes out adaptive behavior was rated as inconsistent across measures and was found to be generally commensurate with the Student's cognitive abilities.
- e. The IEE recognized that the Student's processing speed deficits may become more apparent as the Student progresses through more difficult or higher level reading or technical tests, tasks assignments, mathematical functions or writing compositions. The IEE suggests that the Student's processing deficits can best be addressed by the use of "cognitive load conditions" to free up the Student's resources to handle increasingly challenging learning tasks. Reduction in cognitive load can be realized by allowing the Student more time to process new information, minimizing environmental distractions, reducing unnecessary verbalization, focusing on one complex process at a time, presenting new information in an organized format; shortening the length of a lesson covering complex material, pre-teaching vocabulary and concepts, sequencing material from simple to complex, providing opportunities to automatize aspects of learning, and alternating between presentation of new information and refreshing previously learning information. *The IEE predicts that*

the Student may have increasing struggles in the management of student's workload as schoolwork increases in complexity over the next few years. The IEE recommends increasing the effectiveness of student's accommodations over the next few years.

- f. The February 23, 2012 IEE concludes that the Student demonstrates a complex picture of strengths and deficits, notably processing speed deficits and anxiety associated with or demonstrated by OCD. The IEE noted the potential value of testing the Student for an Autism Spectrum Disorder ("ASD") but also acknowledged the Student's refusal to consent for an ASD evaluation. The IEE commented on the multiple interventions by the Student's ARDC and 504 Committee, particularly in the area of extended time – but notes that such accommodations may also exacerbate the Student's OCD. The IEE summarizes the Student's educational needs relative to student's deficits thusly:

“[The Student] displays disabilities that warrant specialized services and supports. Determinations for eligibility are the responsibility of the ARD Committee. [The Student's] ARDC has previously determined that student is eligible for services. It is recommended that the committee continue to provide [The Student] with needed supports through IDEA.”

The IEE lists twenty-one specific recommendations to implement accommodations for the Student.

71. The Notice of ARD was mailed to the Student's parents on February 28, 2012. The purpose of the meeting was to discuss parents' request to review the Student's current IEP. An **ARD meeting** was convened on the Student's behalf on **March 7, 2012**.

72. The **March 7, 2012 ARD meeting** was **reconvened** on **April 13, 2012**. The Notice of ARD was mailed to the Student's parents on March 29, 2012. An ARD meeting was held on the Student's behalf on April 13, 2012. The purpose of the meeting was to review the current IEE, discuss speech therapy goals and transition service needs.

73. The Student's April 13, 2012 ARDC reviewed FIE's dated September 26, 2011 and October 19, 2011. The Student's April 13, 2012 ARDC concluded that the Student does not have a learning disability.

74. During the April 13, 2012 ARD, the district offered, for a second time, to conduct an Autism Evaluation. Parent requested the district to pay for a private autism evaluation; and the district declined. District, again, offered in home training as a strategy to assist the Student with homework anxiety; Parent stated that the Student did not want this option.

75. During the April 13, 2012 ARD, the Student's teachers noted that the Student was completing tests and classroom work in a timely manner, receiving exceptional grades on all work done at school. Therefore, the ARDC recommends that Student's 100% extra time should be reduced.

76. The April 13, 2012 ARDC recommended in-home services to the Student to address strategies for managing homework. The Student will receive three 30 minute sessions.

77. The Student's parent signed an agreement along with the remainder of the Student's April 13, 2012 ARDC, and waived the five school day waiting period for the IEP to be implemented.

78. Prior Written Notice was mailed to the Student's parents on April 24, 2012, notifying the Student's parents that Student's IEP services will be amended as follows:

- a. The Student will receive three 30 minute sessions during the remainder of this IEP. Two sessions before the end of the 2011-2012 school year and one session after school begins in the 2012-2013 school year;
- b. The Student will have two new speech goals and increased from 10-20 minutes per session; and
- c. The accepted *** will be in place before the Student's *** birthday.

79. On May 7, 2012, OCR issued its report that addressed the allegations of the November 14, 2011 Complaint, and subsequent communications. The OCR found that there was insufficient evidence to support a conclusion of noncompliance with Section 504 or Title II, with regard to the issues of failing to implement Student's IEP.

80. An **ARD meeting** was held on the Student's behalf on **May 31, 2012**. The Student's parent requested this ARD meeting to discuss educational services for the Student upon ***. At the conclusion of the May 31, 2012, the Student's parent did not indicate consensus on the IEP documents.

81. During the May 31, 2012 ARD meeting, it was discussed that the Student will have an annual review after six weeks of *** to determine what accommodations will work best for the Student at the *** level. District staff will assist the Student with ***. The Student will participate in *** over the summer, and following ***, the Student and district staff will focus on specifics of student's ***.

82. Prior Written Notice was mailed to the Student's parents on June 6, 2012, notifying the Student's parents that the Student's *** will be provided as follows:

- a. Assist the Student with finding an interest group or club (i.e., Chess Club) where the Student can develop friendships;
- b. Assistance with organization throughout the day;
- c. Staff training in non-verbal cues to learn the nuances of the Student's disability and how they manifest themselves in the classroom. Training will be provided by *** and ***. Input will also be provided by the Student's classroom teachers regarding what supports work best for the Student in the classroom;
- d. Allow the Student to spend 3-4 hours before school starts learning the Student's schedule and routine;
- e. Stress to the Student the need to take the opportunity to communicate directly with the Student's teachers in order to advocate for the Student's self;
- f. Possibly provide the Student a copy of the Student's accommodations to prioritize them – the Student will make the decision if this will be helpful and/or needed;
- g. Identify a point person at the campus as parent/student liaison;
- h. Staff with teachers once every 6 weeks to discuss how the Student is doing in class and if any changes to student's IEP are indicated;
- i. In the future, consider facilitating *** with the Student;
- j. Revise the assignment sheet to better meet the needs of the Student's block schedule next year and consider any tweaks that may need to be made after school begins once the teacher gets to know the Student; and
- k. Conduct the Student's annual ARD/IEP meeting after the first six weeks of school.

83. The Student's father recalls being given a copy of the Procedural Safeguards at each ARD meeting, and he recalls reading them. Also, he assumes that there is always an option available to him to appeal an adverse determination of an ARD.

84. The Student currently attends *** classes in ***, ***, *** and ***. Student usually receives mostly A's and B's during each semester and *** of student's final grades are ***. Last school year student received ***.

85. The Student's Spanish teacher during the *** and *** grades implemented the Student's accommodations from student's IEP. The Spanish teacher said that she told the Student that student could have as much time on class assignments as student needed. She told student that student only had to complete ever other homework assignment. She never observed the Student needing to take a *** in the two years that she taught student.

86. The District does not have a specific policy for evaluating students with OCD as being eligible for special education under an "ED" classification. However, because OCD is usually associated with an anxiety disorder the ED classification is a relevant special education eligibility classification for a student with OCD.

87. This District will consider any OHI form that satisfies the criteria for a proper OHI form. It is the District's procedure to convene a student support team committee meeting once it is given a completed OHI form. In the Student's particular case, the student support team happened to be student's 504 Committee.

88. It is not the District's policy to provide a blank OHI form to a parent to be completed. It is the District's policy to provide an OHI form after it agrees that a physician should complete one. However, if a qualified, completed OHI form is presented, to the District from a source that was not previously discussed with the District, the District will review and consider the completed OHI form.

89. The Student's teachers generally report that the Student is usually shy in class and not very talkative. However, they uniformly report that the Student is functional in the classroom and with student's peers.

90. Student has received the following 13 assessments and evaluations dating from November 14, 2000 to February 23, 2012 that have been considered by the Student's ARDC:

<u>Evaluation</u>	<u>Completed by:</u>	<u>Date(s)</u>
Initial Diagnostic Assessment Report	***	***
Initial Consultation Summary	***	***
Diagnostic Review	***	***
*** Re-Evaluation Team Summary Report	*** School District	***
Occupational Therapy Discharge Plan	***	***
Full and Individual Evaluation	Respondent	***
Full Individual Re-Evaluation	Respondent	***
Neuropsychological Evaluation (evaluated on four different dates: 10/27/2009, 11/11/2009, 11/19/2009 and 12/02/2009)	***	***
Vision Evaluation	***	***

Vision Evaluation	***	***
Full and Individual Evaluation	Respondent	***
Full Individual Evaluation	***	***

III. Ruling on Respondent’s Motion for Summary Judgment

At the close of Petitioner’s presentation during the hearing, Respondent made an oral Motion for Summary Judgment (“Motion”) on each of the allegations listed in Petitioner’s Complaint. Based on the evidence presented by the Petitioner, Respondent’s Motion with respect to the following points was GRANTED from the bench:

3. *Whether the District failed to appropriately identify and address the Petitioner’s needs related to Petitioner’s diagnosis of Encephalopathy, including failure to appropriately consider the OHI forms submitted by Petitioner’s physicians and accompanying letters of medical necessity;*
6. *Whether the District failed to ensure that all required personnel attend the ARD Meeting, more specifically, a “representative of public agency who” is knowledgeable and “qualified to provide, or supervise the provision of specially designed instruction to meet the unique needs of children with disabilities”;*
8. *Whether the District failed to find Petitioner eligible for special education services based upon the provision of several OHI forms and letters of medical necessity, all indicating areas of educational need and the necessity for specially designed instruction; and*
12. *Whether the District failed to provide the Petitioner with the requisite notices that would have enabled Petitioner to pursue Due Process in years past. Petitioner specially contends that the Student’s next friends’ right to request an evaluation prior to Petitioner’s dismissal from special education resulted in a withholding of information by the Respondent that precluded Petitioner from bring ad due process suit, earlier.*

IV. Discussion

Generally

In any due process hearing, the ultimate question before a special education hearing officer is whether the student in question received a FAPE. Due process hearings typically involve many disputed fact issues and allegations of procedural violations of IDEIA, or its many implementing regulations. However, the question of whether the student received a FAPE is always the central issue in the case. The alleged procedural violations are evaluated to determine if they, individually or collectively, amounted to a denial of FAPE. IDEIA, itself, requires a procedural violation to rise to the level of a substantive violation of a FAPE. [20 U.S.C. §1415(f) (3) (E) (ii)].

The limits of special education and a FAPE have been defined by the courts. The United States Supreme Court and the Fifth Circuit Court of Appeals decisions in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) and *Cypress Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997) read together, define a FAPE as an individualized educational intervention that provides an impaired student with a basic educational floor on which the student can make meaningful educational progress. The Fifth Circuit decision of *Houston ISD v. Bobby R.*, 200 F.3d 341, 349 (5th Civ. 2000) followed the holdings announced in *Michael F.* and, as particularly relevant to this case, held that a failure to receive a FAPE is not shown by a *de minimis* failure to implement *all* aspects of a student's IEP. The court concluded:

Therefore, we conclude that to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failure and for providing the disabled child a meaningful educational benefit. (See, *Bobby R.*, supra, at P. 349)

The issues in this case will be discussed, individually following each allegation, but the bases of this decision are ultimately informed by the foregoing caselaw. This record contains many allegations and accusations. To the extent that each allegation raises a separate issue of FAPE it will be discussed.

1. *Whether the District failed to provide Petitioner with a FAPE.*

This record demonstrates with absolute clarity, that consistent with the cited case and statutory authority, the Student received a FAPE. The Student's exceptional academic record in first-level general education classes answers most of the question of the Student's receipt of a FAPE. The fact that the Student has no discipline problems, appears to socialize freely with student's peers and teachers – is even *** – answers the rest of the FAPE issue. The Student obviously received much more than a “basic educational floor” (*Rowley*) or *de minimus* educational benefit (*Michael F.*). Frankly, the fact that the Student appeared to benefit substantially, from a process that has been too often needlessly contentious is the least difficult issue to decide in this case.

There may be some disconnect between FAPE and the ancillary or procedural issues raised in this case. If *any* student has any disability, then special education is only necessary if to accommodate the disability, the student requires special curriculum, or educational setting, or instructional method, or all three. If a student can be accommodated by a 504 Committee it is not clear why such a student's parents would want that student to be admitted to *special education*. This seems to have been a frequently debated issue with the Student's parents in this case. The *services themselves* matter, not their *labeling*. Likewise, issues like Prior Written Notice or effective parental participation in ARD meetings become particularly important issues when the subject student has *failed* to receive more than *de minimus* educational benefit – not *** A's in *** courses, as is this Student's academic record. Nevertheless, it is clear that the Student's

parents were given appropriate notice of what the District intended to do with and for the Student's educational program and it is clear that the Student's parents vigorously participated in the process.

What is not clear is why the Student's parents did not participate *more completely* in the identification of problem issues. The Student performs in a superior fashion *at school*. If the problem is with homework or the Student's attitude toward student's schoolwork while at home as the parents' argue, then it makes no sense that those same parents would repeatedly *deny* the Student's ARDC access to issues about the home setting; directly or indirectly. The Student's parents cannot claim that the District ignores the Student's homework issues on the one hand and then claim privacy as a bar to all in-home interventions, on the other.

Finally, this comprehensive, well-documented record does reveal a potential problem for the Student that is partial vindication for the Student's parents' concerns. The Student is a perfectionist and a diligent, serious person who wants to do well on student's schoolwork. Student has a processing disorder that *could* become an increasingly serious impediment to student's academic goals as student progresses in grade levels and more challenging work. This is the conclusion of the IEE. Student is very intelligent and motivated and student does well *now*. Student's future academic success is not as clear. Maybe student will have more problems academically or maybe student will *refine* the academic coping skills that student had developed up to now. It is not uncommon for highly successful people at all levels to battle disabilities all their lives. Also, it is not uncommon for disabilities to get the best of otherwise intelligent people, later in their academic careers. No doubt, the Student's mother may have a more complete view of the toll educational success has on the Student. Future cooperation, rather than conflict would seem the most logical way to monitor and plan for future problems that may or *may not* materialize.

However, the issues of this or any other due process hearing is the *now* (or immediate past) rather than the speculative future. The Student has received a FAPE, now. Whether the Student continues to receive a FAPE in the future is an open question for all of student's stakeholders.

2. *Whether the District failed to timely and appropriately evaluate Petitioner in all suspected areas of disability.*

The record shows that the District appropriately evaluated the Student in all suspected areas of disability. To the extent that the District and the parent did not always agree about what was a suspected disability, any delay should not be held to be the fault of the District. The parents did not always provide timely consent for evaluations.

4. *Whether the District failed to timely and appropriately respond to Petitioner's next friends' requests for a special education services evaluation.*

The record shows that the District timely and appropriately responded to all request for evaluations, to the extent that consent for evaluations was given timely by the Student's parents.

5. Whether the District failed to provide Prior Written Notice “at all required junctures.”

The record shows that the District appropriately provided Prior Written Notice for all actions within the one (1) year statute of limitations applicable for this case.

7. Whether the District failed to provide Petitioner’s next friend with OHI forms and fail to review and consider the forms in good faith.

The provision of blank OHI forms to the parent is not a separate obligation imposed on the District by the IDEIA. However, once the District was provided with a completed OHI form from any medical professional, it appropriately considered all information within the completed OHI form.

9. Whether the District failed to develop and implement an IEP based on parental input of educational need as well as medical professionals’ and neuropsychologists’ recommendations for specials designed instruction.

The record shows that the parent and all medical professionals had substantial, continuing input in the development of the Student’s IEP’s. Most of the time, the District implemented the substantive portions of the parents’ requests in an IEP or a 504 Accommodations Plan. The failure to adopt *all* recommendations or request; in *each* of the Student’s multiple IEP’s does not indicate a violation of the District’s obligations under IDEIA.

10. Whether the District failed to provide parents with the opportunity to participate “meaningfully” in the ARD process.

The Student’s parents were not only provided the opportunity to participate “meaningfully” in *all* the Student’s multiple ARD meetings, but the record clearly shows that the Student’s parents *did* participate meaningfully. Often, where the ARD meetings did not end in general consensus the Student’s ARDC would change direction on important questions, such as the very eligibility of the Student for special educations. This allegation is completely without merit.

11. Whether the District failed to consider the “academic, developmental, and functional needs of the child” when determining eligibility and in the development of an IEP.

The record shows that the District consistently and appropriately considered all of the Student’s needs in determining the Student’s eligibility for special education and developing the Student’s IEP.

V. Conclusions of Law

1. Petitioner is a student in School District who is eligible for special education services as a Student who has Speech Impairment as is Other Heath Impaired. 20 U.S.C. §1401; 34 CFR §300.8; 19 TAC §89.1040.
2. Respondent has a responsibility to provide Student with a free appropriate public education. 20 U.S.C. §1412; 34 CFR §300.17; 19 TAC § 89.1001.
3. Student made educational progress and obtained a meaningful educational benefit from the IEP which was implemented by the Respondent. *Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 US 176 (1982); *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
4. Petitioner failed to demonstrate, through a preponderance of the evidence that Respondent failed to provide Petitioner with a free appropriate public education. *Michael F. supra.* p. 252.

VI. 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 is DENIED.

SIGNED in Austin, Texas this 11th day of October, 2012.

/s/
Stephen P. Webb
Special Education Hearing Officer

STUDENT b/n/f PARENTS	§	BEFORE A SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER FOR THE
	§	
FRISCO INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether the School District failed to provide student with appropriate evaluations, accommodations and support services, denying Student a FAPE.

Federal Citation: 20 U.S.C.A. § 1414; *Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989); *Cypress-Fairbanks Indep. School Dist. v. Michael F.*, 118 F.3d 245, 258 (5th Cir.-1997); 34 CFR §§ 300.324; 300.305.

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

Held: For the Respondent. The Student has made exceptional progress in general education settings. The Student has been able to interact with teachers and peers in an appropriate manner.