TEA DOCKET NO. 301-SE-0612

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

FINAL DECISION OF THE HEARING OFFICER

Appearances for Petitioner:

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FINAL DECISION OF THE HEARING OFFICER

Statement of the Case

The Petitioner (Student or Child)[1] initiated this action against the Respondent (District or School) under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. § 1400). The Petitioner complains that the Respondent violated the IDEA because it allegedly:

1. Failed to implement an appropriate plan of action for addressing *** issue involving the Student.
2. Failed to implement a meeting in an alternative educational setting and conduct a "manifestation determination review."
3. Failed to notify the Student's parent after reporting the Student ***.
4. Failed to timely conduct a "functional behavioral assessment" (FBA).
5. Failed to conduct a counseling evaluation and consider appropriate counseling services.
6. Failed to conduct an assessment before removing an aide for the Student.
7. Failed to explain the "autism supplement" to the Student's parent.
8. Failed to provide "parent training" to the Student's parent.
9. Failed to provide a "free appropriate public education" (FAPE) to the Student.[2]

As relief, the Petitioner asks that the Respondent provide the Petitioner: (1) appropriate evaluations; (2) an "admission, review and dismissal" (ARD) committee meeting; (3) appropriate modifications, interventions and services to enable the Petitioner to receive a FAPE; (4) appropriate special education and related services that meet the unique and individual needs of the Petitioner; (5) placement in the "least restrictive environment" (LRE); and (6) compensatory educational services.[3]

Procedural History

The Texas Education Agency (TEA) received the Petitioner's Due Process Complaint requesting a due process hearing under the IDEA on June 7, 2012. The Respondent held the mandatory resolution meeting on June 19, 2012, but the parties left that meeting without a resolution agreement.[4] This Hearing Officer conducted a prehearing teleconference with the parties on July 9, 2012. Among other things, the scope of the Petitioner's complaints was reviewed and the case timetable was established. A final prehearing teleconference

[1] To protect the privacy of the Petitioner, the Petitioner is also referred to as "Student" or "Child" in this Decision.
[2] This list is not a verbatim reiteration of the Petitioner's claims in the Request for Special Education Due Process Hearing. The Petitioner's complaints have been edited here to succinctly state them for the purpose of this introduction. See Pet'r's Request for Special Educ. Due Process Hr'g at 1 – 2 (June 7, 2012).
[3] Pet'r's Request for Special Educ. Due Process Hr'g at 2 (June 7, 2012).
[4] 34 C.F.R. § 300.510(a). The Respondent contests whether the Petitioner participated in good faith in the resolution session as the basis of the Respondent's request for a finding that the Petitioner has unreasonably protracted the final resolution of issues in controversy in this case. Prehearing Conf. Tr. at 5 – 7 (July 31, 2012). The question of unreasonable protraction is addressed below.

was conducted on July 31, 2012, during which oral arguments were received on motions that were filed after the parties made disclosure of witnesses and exhibits for the due process hearing. Among other things, the Hearing Officer also discussed with the parties the Respondent's request for a finding that the Petitioner has unreasonably protracted the final resolution of issues in controversy in this case.[5]

The due process hearing was conducted on August 1, 2012. Altogether, four witnesses were called and testified. Altogether, 21 exhibits were admitted into evidence. For the hearing, the Hearing Officer utilized his authority under the TEA regulations and set time limitations on the Petitioner and Respondent for the presentation of exhibits and the calling of witnesses.[6] In this Hearing Officer's determination, such time limitations were reasonable and afforded the Petitioner a fair opportunity to offer and solicit evidence and testimony to satisfy its burden of persuasion as assigned under *Schaffer v. Weast*, 546 U.S. 49, 57 – 58 (2005). Subsequent to the hearing, the parties were permitted to submit written closing arguments.

Findings of Fact

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

1. The Child qualifies under the IDEA as a child with a disability. The Child is eligible for special education as a child with autism. (Hr'g Tr. at 17, 99; Pet'r Ex. 5 at 2; Resp't Ex. 4 at 2)

2. The Child has a diagnosis of "pervasive developmental disorder not otherwise specified." (Hr'g Tr. at 99 – 101)

3. At the beginning of the 2011-2012 school year, the Child was a *** attending a *** school in the District. (Hr'g Tr. at 17 – 18, 99, 101; Pet'r Ex. 6 at 1; Resp't Ex. 3 at 1)

4. The Child's educational placement was in five general education classes along with a resource math class and a resource language arts class. The Child was also placed in the ***. (Hr'g Tr. at 103; Pet'r Ex. 6 at 4, 6 – 7; Resp't Ex. 2 at 5, 9; Resp't Ex. 3 at 4, 6 – 7)

5. The *** is a behavioral improvement class with a program designed to support children with challenging behaviors. It includes, among other things, social skills training. The *** has an aide who provides monitoring of students. (Hr'g Tr. at 101, 103 – 05, 149, 151; Resp't Ex. 17 at 1 – 2; Resp't Ex. 18 at 1)

6. At the beginning of the 2011-2012 school year, the Child's "individualized education program" (IEP) provided for, among other things, an annual goal of "The student will demonstrate appropriate participation." The short-term objective for this goal was that the "[Child] will participate in class and will not make comments under [Child's] breath toward following school rules and teacher direction." Among other things, the IEP identified as an implementing strategy for this goal monitoring of the Child in mainstream classes by the *** staff. (Hr'g Tr. at 73, 160; Resp't Ex. 1 at 3, 55)

7. Among other things, the IEP also included as an annual goal "The student will demonstrate measurable progress in interpersonal skills." The short-term objectives for this goal were that the Child would: "use acceptable verbal behavior when interacting with adults/authority figures"; "meet social expectations for general school settings"; and "meet social expectations for special school settings." (Resp't Ex. 1 at 3, 56)

[5] 19 Tex. Admin. Code § 89.1185(m)(1).
[6] 19 Tex. Admin. Code § 89.1185(f).

8. At the beginning of the 2011-2012 school year, the Child's IEP also included an autism supplement. Among other things, the autism supplement indicated that the School would provide "positive behavior support strategies" to the Child through a "behavioral intervention plan" (BIP). The BIP was based on a FBA conducted by the school district that the Child attended before enrolling in this District. Among other things, the BIP/IEP indicated that "serious or persistent infractions [by the Child] will result in return to the *** structure for 1 to 3 days." The BIP/IEP indicated that positive reinforcements and consequences were: "structured reward/consequence system; contingent increase in privileges; and behavior monitoring." (Hr'g Tr. at 143; Resp't Ex. 1 at 3 – 5, 55; Resp't Ex. 2 at 16 – 18)

9. Among other things, the autism supplement indicated that the School identified no need for parent training but included as a parental resource the local Education Service Center. (Resp't Ex. 1 at 4; Resp't Ex. 2 at 17)

10. The School suspended the Child on ***, October ***, 2011, and ***, October ***, 2011. The suspension was for ***. (Hr'g Tr. at 59 – 60, 116 – 17, 161; Pet'r Ex. 5 at 24; Resp't Ex. 4 at 24; Resp't Ex. 11 at 1; Resp't Ex. 15 at 1 – 2)

11. Subsequent to the October, 2011 suspension, the Child's parent contacted the *** teacher by phone and they discussed the parent's concern that the Child had a need for a higher level of monitoring at school. The School responded by assigning an aide from the *** to supervise the Child during passing periods between classes. (Hr'g Tr. at 66 – 67, 116 – 17, 160 – 61)

12. On November ***, 2011, ***. An administrator at the school was aware of the arrest. An administrator called the parent and left a voice mail message requesting that the parent contact the school. The parent learned of *** from a school administrator. (Hr'g Tr. at 43 – 45, 64 – 65, 112; Resp't Ex. 9 at 1 – 2)

13. The School suspended the Child from school on ***, November ***, 2011, and ***, November ***, 2011. The suspension was for *** at school. (Hr'g Tr. at 60, 114, 161; Pet'r Ex. 5 at 25; Resp't Ex. 4 at 25; Resp't Ex. 11 at 1 – 2; Resp't Ex. 15 at 1, 3)

14. The School assigned the Child to the *** for *** at school beginning on ***, November ***, 2011. The assignment to the *** was for two weeks. The School referred to the Child's restriction to the *** as a "level 2" intense redirection. During the two weeks, the Child continued to have access to course work and completed assignments. (Hr'g Tr. at 158, 161 – 63, 170, 172; Resp't Ex. 11 at 2)

15. The School did not conduct a manifestation determination review regarding the Child's *** and subsequent suspension and assignment to the ***. (Hr'g Tr. at 45, 115)

16. The School did not prepare a FBA report regarding the Child's *** and subsequent suspension and assignment to the ***. The School understood the function of the Child's ***; the Child was trying to emulate peers. (Hr'g Tr. at 115, 124)

17. Upon the Child's completion of 10 days in the ***, the Child resumed the Child's schedule of general education and resource classes. (Hr'g Tr. at 170)

18. The Child did not have any issues with *** at school either before or after the November ***, 2011 ***. (Hr'g Tr. at 116, 123, 146, 168 – 69)

19. On November 30, 2011, the Child's ARD committee met. The Child's parent attended and participated in the committee meeting. The Child also attended the meeting. Among other things, the committee discussed and approved the *** staff increasing its monitoring and supervision of the Child while the Child is in transition between classes and when the Child leaves a classroom for a restroom break and other errands. (Hr'g Tr. at 46, 76 – 77, 88, 93; Pet'r Ex. 6 at 8 – 9; Resp't Ex. 3 at 8 – 9)

20. Among other things, the November 30, 2011 ARD committee meeting discussed the parent's request for counseling services for the Child. The committee did not make a referral for counseling. Individual counseling was not recommended by a "licensed specialist in school psychology" (LSSP) who was familiar with the Child because the LSSP believed that the Child would not benefit from counseling as the Child had expressed a strong opposition to meeting with a counselor. In the judgment of the LSSP, counseling at school would agitate the Child and not be productive or beneficial for the Child. (Hr'g Tr. at 55 – 56, 77 – 78, 118 – 19, 128 – 31)

21. Following the November 30, 2011 ARD committee meeting, the parent spoke with the LSSP in person and they discussed opportunities for parent training. The LSSP identified autism conferences in Texas that a parent of a child with autism could attend. Subsequently, the District did not offer any parent training to the Child's parent. (Hr'g Tr. at 78 – 80, 87, 137)

22. Following the November 30, 2011 ARD committee meeting, the parent asked the LSSP for copies of ARD documentation and IEPs from meetings the parent was not able to attend. (Hr'g Tr. at 78)

23. On January 25, 2012, the Child's ARD committee met. The Child attended the committee meeting. Among other things, the committee reviewed the Child's present levels of academic achievement and functional performance. The review indicated that the Child had passing grades and was making progress toward IEP goals. The Child had ***. (Pet'r Ex. 5 at 4 – 6, 23 – 24, 33 – 58, 75; Resp't Ex. 4 at 4 – 6, 23 – 24, 33 – 58, 75)

24. Among other things, the committee reviewed and revised the Child's IEP. The committee developed new annual goals for the Child. Among the new annual goals was that "[The Child] will demonstrate appropriate verbal and gestural interactions." The short-term objective for this goal was that the Child would "respond appropriately to correction." (Pet'r Ex. 5 at 3, 44 – 45, 75; Resp't Ex. 4 at 3, 44 – 45, 75)

25. Among other things, the January 25, 2012 IEP also included as a new annual goal "[The Child] will demonstrate appropriate physical actions towards others." The short-term objective for this goal was that the Child would "maintain appropriate physical contact." (Pet'r Ex. 5 at 3, 46 – 47; Resp't Ex. 4 at 3, 46 – 47)

26. Among other things, the January 25, 2012 IEP also included as a new annual goal "[The Child] will maintain [compliant] behaviors." The short-term objective for this goal was that the Child would "extinguish profanity." (Pet'r Ex. 5 at 3, 48 – 49; Resp't Ex. 4 at 3, 48 – 49)

27. The January 25, 2012 IEP also included an autism supplement. Among other things, the autism supplement indicated that the School would provide "positive behavior support strategies" to the Child through a BIP and IEPs. (Pet'r Ex. 5 at 27 – 28; Resp't Ex. 4 at 27 – 28)

28. Among other things, the January 25, 2012 autism supplement indicated that the School continued to mark "not needed" for parent training despite the conversation the District's LSSP had with

the parent on November 30, 2011 revealing parental interest in, and request for, parent training. (Hr'g Tr. at 40; Pet'r Ex. 5 at 27; Resp't Ex. 4 at 27)

29. The January 25, 2012 IEP also included a "personal care services supplement." Among other things, the personal care services supplement indicated that the School would provide observation and monitoring of the Child to supervise and redirect the Child as needed to maintain safety, assist the Child in maneuvering throughout the campus, and prevent the Child from eloping from the campus. The *** staff would conduct the observation and monitoring. (Pet'r Ex. 5 at 29, 75; Resp't Ex. 4 at 29, 75)

30. The January 25, 2012 IEP did not provide any related services for the Child. (Hr'g Tr. at 40; Pet'r Ex. 5 at 68; Resp't Ex. 4 at 68)

31. Among other things, the January 25, 2012 ARD committee meeting maintained the Child's placement in general education classes and resources classes along with participation in the ***. (Pet'r Ex. 5 at 67, 72 – 73, 75; Resp't Ex. 4 at 67, 72 – 73, 75)

32. The Child's parent did not attend the January 25, 2012 ARD committee meeting. The School invited the Child's parent and provided notice of the ARD meeting. The Child's parent notified the School about not being available to attend; the parent did not request an alternate meeting date. After the committee meeting, the School mailed a copy of the ARD documentation and IEP to the Child's parent. (Hr'g Tr. at 70 – 71; Pet'r Ex. 5 at 74 – 79; Resp't Ex. 4 at 74 – 79)

33. In April, 2012, the Child was administered the modified English language arts, mathematics, social studies, and science tests of the Texas Assessment of Knowledge and Skills (TAKS). The Child failed to achieve passing scores. (Hr'g Tr. at 49, 167; Pet'r Ex. 9 at 6)

34. In the Spring, 2012 semester, the Child had no disciplinary incidents. (Hr'g Tr. at 116, 141 – 42, 154, 163)

35. On or about June 1, 2012, the District issued IEP progress reports that indicated that the Child was progressing toward mastery of IEP goals and objectives. (Resp't Ex. 7 at 6 – 13)

36. For the 2011-2012 school year, the Child earned passing grades in all classes. (Hr'g Tr. at 154 – 55, 157 – 58; Resp't Ex. 12 at 1)

37. For the 2012-2013 school year, the Child has advanced to the *** grade. (Hr'g Tr. at 17 – 18, 101, 154 – 56, 157 – 58)

38. The Petitioner filed its Due Process Complaint with the TEA on June 7, 2012.

39. The District held a resolution session on June 20, 2012. The parent attended and participated. Among other things, the parent expressed concerns about the education of the Child. (Hr'g Tr. at 181; Resp't Ex. 8 at 1, 4)

40. During the resolution session, the District made an offer to compromise and settle the Petitioner's claims. (Hr'g Tr. at 80 – 81, 180; Resp't Ex. 8 at 1 – 4)

41. At the conclusion of the resolution session, the parent opted not to accept the District's offer. The parent stated that the parent would confer with legal counsel and follow up with the District. The parent did not follow up with the District. (Hr'g Tr. at 51, 84, 180; Resp't Ex. 8 at 4)

42. The Child's parent did not protract the resolution session as the parent left the session having rejected the District's offer. The parent's lack of follow-up did not adversely affect the District as it was already on notice that its settlement offer was not acceptable to the parent.

Discussion

The Petitioner's overall complaint is that the Child was denied FAPE by the Respondent. The Petitioner identifies eight specific problems that it alleges constitutes the denial of FAPE. This Hearing Officer will analyze each problem in turn and then consider the FAPE issue in light of the Petitioner's specific charges.

Action Plan for *** Issue

The Petitioner's first specific charge is that the School failed to implement an appropriate plan of action for addressing a *** issue involving the Student. Under the IDEA, a child's IEP is required to include positive behavioral interventions and supports for those children whose behavior impedes learning.[7] Under the TEA regulations implementing the IDEA, school districts must consider and address in the IEPs for children with autism, when needed, "positive behavior support strategies" based on relevant information.[8]

Here, the Student was *** in the fall of 2011. According to all the testimony, this was a single incident involving the Student. The Petitioner failed to demonstrate by a preponderance of the evidence that the Student had an issue with *** that necessitated specific behavioral interventions or a "plan of action." The School responded to the incident utilizing an existing special class – the *** program – that delivered intense redirection to the Student and apparently proved effective because the Student did not repeat this negative behavior.

Manifestation Determination Review

The Petitioner's second specific charge is that the School failed to hold a meeting and conduct a manifestation determination review for the Student. In general, a school district may only make a disciplinary removal of a child with a disability for more than ten consecutive school days if the behavior that gave rise to a violation of the school code is determined not to be a manifestation of the child's disability.[9] Under the IDEA, however, a school district may remove a child with a disability to an "interim alternative educational setting" for up to 45 school days in "special circumstances" involving either weapons, illegal drugs, or infliction of serious bodily injury.[10] In these disciplinary cases involving special circumstances, such as a child's *** at school, a manifestation determination review is not required.[11]

Here, the Petitioner contends that a manifestation determination review was required because the Student was subjected to a long-term disciplinary removal following ***in the fall of 2011.[12] The School imposed both an out-of-school suspension (2 days) and placement in *** (10 days). This Hearing Officer finds that even under the Petitioner's theory that there was a long-term disciplinary removal of the Student, no manifestation determination review was required because of the underlying offense – *** at school. This case falls under the IDEA special circumstances exception that a school district may take disciplinary action (for no more than 45 school days) regardless of whether the child's conduct was a manifestation of disability.

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[7] 34 C.F.R. § 300.324(a)(2)(i).
[8] 19 Tex. Admin. Code § 89.1055(e)(4). In Texas, the consideration of these and other strategies for children with autism are typically addressed in the autism supplement to the IEP.
[9] 34 C.F.R. § 300.530(c).
[10] 34 C.F.R. § 300.530(g)(1) – (3).
[11] 34 C.F.R. § 300.530(g). Under these special circumstances, a school district may remove a child with a disability to an interim alternative educational setting "without regard to whether the behavior is determined to be a manifestation of the child's disability."
[12] Pet'r's Post-Hearing Argument and Brief at 3 (Sept. 4, 2012).

In the alternative, even if the School was required to perform a manifestation determination review, this Hearing Officer finds that the failure to do so was a procedural error and did not either impede the child's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit.[13] Regarding educational benefit, the Student apparently was able to keep up with course work while in *** and eventually received passing grades for the fall, 2011 semester.

Notification of Parent

The Petitioner's third specific charge is that the School failed to notify the Student's parent after ***. Under the IDEA, a school district is ***.[14]

This Hearing Officer finds no basis for this claim. Here, the Student was ***. The staff of the Student's school attempted to contact the Student's parent. By the end of that school day, the school staff was able to make contact and inform the parent of what had transpired.

Functional Behavioral Assessment

The Petitioner's fourth specific charge is that the School failed to timely conduct a FBA. Under the IDEA, when a school district removes a child from his or her current placement to an interim alternative educational setting because of special circumstances, such as ***, the school district must provide, among other things, an FBA "as appropriate."[15]

Here, the Petitioner contends that a new FBA was required because the Student demonstrated inappropriate behaviors at school such as ***. This Hearing Officer finds that under the Petitioner's theory that the Student was subjected to a long-term disciplinary removal, a new FBA was not automatically required because the disciplinary removal fell under the IDEA special circumstances exception. In a disciplinary removal because of a special circumstance, a new FBA is not mandatory; it is only required if appropriate. In this case, the School understood the function of the Student's behavior and therefore an assessment of the function of *** was not necessary. According to the School, the function of the misconduct was emulation of peers to fit in and gain social acceptance. The Petitioner did not bring forward any evidence to discount this explanation why the Student ***. A new FBA would not have been appropriate as it would not have added any new insight into the Student's behavior.

In the alternative, even if the School was required to perform a new FBA, this Hearing Officer finds that the failure to do so was a procedural error and did not either impede the child's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit.[16] Regarding educational benefit, the Student apparently learned a lesson while restricted to *** because there were no more inappropriate behaviors.

Counseling Evaluation

The Petitioner's fifth specific charge is that the School failed to conduct a counseling evaluation and consider appropriate counseling services. Under the IDEA, a school district must reevaluate a child with a disability if it determines that the related services needs of the child warrant a reevaluation.[17] Under the IDEA,

[13] 34 C.F.R. § 300.513(a)(2).
[14] ***
[15] 34 C.F.R. § 300.530(d)(1)(ii).
[16] 34 C.F.R. § 300.513(a)(2).
[17] 34 C.F.R. § 300.303(a)(1).

counseling is among the related services that might assist a child with a disability to benefit from special education.[18]

Here, the School did not evaluate the Student for counseling services. The basis of the School's determination that an evaluation was not warranted was that the Student had expressed a strong opposition to meeting with a counselor. In the judgment of the School's LSSP, counseling at school would agitate the Student and not be productive or beneficial for the Student. The Petitioner did not counter the basis for the School's determination that a counseling evaluation was not warranted other than expressing that counseling could be beneficial.

In the alternative, even if the School was required to perform a counseling evaluation, this Hearing Officer finds that the failure to do so was a procedural error and did not either impede the child's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the Student, or caused a deprivation of educational benefit.[19] Regarding educational benefit, the Student remained in school, demonstrated no inappropriate behaviors at school after ***, and achieved academic progress by making passing grades and advancing a grade level.

Paraprofessional Evaluation

The Petitioner's sixth specific charge is that the School failed to conduct an assessment before removing an aide for the Student. Under the IDEA, a school district must reevaluate a child with a disability if it determines that the educational needs of the child warrant a reevaluation.[20] Under the IDEA, the provision of an aide would be a supplementary aid or service.[21]

Here, the 2011-2012 school year began with an aide from *** monitoring the Child in accordance with the Child's IEP/BIP. During the 2011-2012 school year, the School never removed an aide for the Student. Indeed, during the 2011-2012 school year *** staff, including the aide, increased its monitoring of the Student. This Hearing Officer finds no basis for this claim.

Autism Supplement

The Petitioner's seventh specific charge is that the School failed to explain the "autism supplement" to the Student's parent. Under the TEA regulations implementing the IDEA, school districts must consider and address various specified strategies in the IEP of a child with autism.[22] School districts typically address these strategies in an attachment to the child's IEP that is commonly referred to as the autism supplement. Under the IDEA, school districts must provide a copy of the child's IEP, including the autism supplement, to the parents upon the completion of an ARD committee meeting.[23]

Here, the Student's parent did not attend the annual ARD committee meeting in January, 2012. During the January, 2012 annual ARD meeting, among other things, the autism supplement was considered and addressed. The School notified the parent about the annual ARD meeting. Before the annual ARD meeting, the parent notified the School about not being available to attend. The parent did not request an alternate meeting date for the annual ARD. The School moved forward with the annual ARD meeting. After the committee meeting, the School mailed a copy of the ARD documentation and IEP to the parent.

[18] 34 C.F.R. § 300.34(c)(2).
[19] 34 C.F.R. § 300.513(a)(2).
[20] 34 C.F.R. § 300.303(a)(1).
[21] 34 C.F.R. § 300.42.
[22] 19 Tex. Admin. Code § 89.1055(e) – (f).
[23] 34 C.F.R. § 300.322(f).

This Hearing Officer finds that the School afforded the parent the opportunity to participate in the annual ARD and had no legal duty to explain the autism supplement to the absent parent. This Hearing Officer does not find the caselaw cited by the Petitioner in its post-hearing brief applicable in this case.[24] In *Deal v. Hamilton County Bd. of Educ*., the school district denied the parents participation in the process because the district predetermined the child's program, not because it did not explain the IEP.[25]

Parent Training

The Petitioner's eighth specific charge is that the School failed to provide "parent training" to the Student's parent. Under the TEA regulations implementing the IDEA, school districts must consider and address in the IEPs for children with autism, when needed, parent training.[26]

Here, the Student's parent expressed an interest in and wish for parent training to the School's LSSP in the fall of 2011. The School, however, failed to consider the parent's request for parent training at the January, 2012 annual ARD committee meeting when the School, among other things, reviewed the Student's autism supplement. This Hearing Officer finds that the Respondent failed to provide parent training to the Petitioner.

Although the School failed to provide parent training, this Hearing Officer finds that the failure to do so did not deprive the Student of educational benefit. The Student remained in school during the 2011-2012 school year, the Student's behavior improved as the Student had no inappropriate behaviors at school after ***, and the Student achieved academic progress by making passing grades and advancing a grade level.

Free Appropriate Public Education

According to the standard set by the U.S. Supreme Court in *Board of Education v. Rowley*, a school district provides a FAPE to a child with a disability under the IDEA if the child's IEP is (1) compliant with the IDEA procedures, and (2) reasonably calculated to enable the child to receive educational benefits.[27]

COMPLIANCE WITH IDEA PROCEDURES

Regarding the first prong of the *Rowley* standard, this Hearing Officer finds that, as discussed above, even if there were procedural flaws, there is no violation of the IDEA. Under the federal regulations implementing the IDEA, for a procedural violation to amount to a denial of FAPE, the procedural inadequacy must either impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit.[28] The Petitioner failed to establish by a preponderance of evidence that either the right to FAPE was impeded, the parents participation was significantly impeded, or that the Child was denied educational benefit.[29]

REASONABLE CALCULATION OF IEP TO ENABLE RECEIPT OF EDUCATIONAL BENEFITS

Regarding the second prong of the *Rowley* standard, the U.S. Court of Appeals for the Fifth Circuit, in *Cypress-Fairbanks Independent School District v. Michael F*., announced four factors to consider in deciding whether a child's IEP is reasonably calculated to confer educational benefits: (1) individualized services; (2) placement in the LRE; (3) coordination of key stakeholders; and (4) provision of positive academic and nonacademic benefits.[30]

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[24] Pet'r's Post-Hearing Argument and Brief at 9 (Sept. 4, 2012).
[25] 392 F.3d 840 (6th Cir. 2004).
[26] 19 Tex. Admin. Code § 89.1055(e)(6).
[27] *Board of Educ. v. Rowley*, 458 U.S. 176, 206-07 (1982).
[28] 34 C.F.R. § 300.513(a)(2).
[29] See the discussion below.
[30] 118 F.3d 245, 253 (5th Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).

Regarding the second prong of the *Rowley* standard, this Hearing Officer finds that, as reflected in the discussion above, that the Child's IEP was individualized. This Hearing Officer finds that, as reflected in the discussion above, the Child was placed in the LRE. This Hearing Officer finds that, as reflected in the discussion above, there was coordination of key stakeholders. Finally, this Hearing Officer finds that, as reflected in the discussion above, the Child received positive academic and nonacademic benefits during the 2011-2012 school year.

In conclusion, this Hearing Officer finds that the Respondent prevails on the allegations raised by the Petitioner.

REQUESTED FINDING – PROTRACTION

In this case, the Respondent seeks a finding that the Petitioner has unreasonably protracted the final resolution of issues in controversy in this case.[31] At the final prehearing conference, the Respondent specifically identified the Petitioner's participation in the resolution session as the basis of the Respondent's request. The Respondent questions whether the Petitioner participated in the resolution session in good faith.

Under the IDEA, a resolution meeting allows a school district an opportunity to meet with the child's parent and attempt to resolve the parent's complaint early in the hearing process.[32] When parents attend a resolution session, they have a specific responsibility. Parents must "discuss the due process complaint, and the facts that form the basis of the due process complaint."[33] This Hearing Officer finds that in this case, the Child's parent did discuss the complaint and its alleged facts. Nothing more is required of a parent to be considered as having participated in a resolution session.

In conclusion, this Hearing Officer denies the Respondent's request for findings against the Petitioner that the Petitioner protracted the resolution session.

Conclusions of Law

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

1. The Respondent, Corpus Christi Independent School District, appropriately devised and implemented behavioral interventions for the Petitioner, Student, under 34 C.F.R. § 300.324(a)(2)(i) and 19 Tex. Admin. Code § 89.1055(e)(4).

2. The Respondent, Corpus Christi Independent School District, properly determined that a manifestation determination review was not required for the two-week assignment of the Petitioner, Student, to the *** under 34 C.F.R. § 300.530(g).

3. The Respondent, Corpus Christi Independent School District, properly notified the parent, ***, upon the Respondent's referral of the Petitioner, Student, to ***.

4. The Respondent, Corpus Christi Independent School District, properly determined that a FBA was not required for the two-week assignment of the Petitioner, Student, to *** under 34 C.F.R. § 300.530(d)(1)(ii).

[31] 19 Tex. Admin. Code § 89.1185(m)(1).
[32] 34 C.F.R. § 300.510(a).
[33] 34 C.F.R. § 300.510(a)(2).

5. The Respondent, Corpus Christi Independent School District, properly determined that a reevaluation was not warranted for considering the provision of the related service of counseling for the Petitioner, Student, under 34 C.F.R. § 300.303(a)(1).

6. The Respondent, Corpus Christi Independent School District, properly determined that a reevaluation was not warranted for considering the provision of an aide for the Petitioner, Student, under 34 C.F.R. § 300.303(a)(1).

7. The Respondent, Corpus Christi Independent School District, properly provided a copy of the IEPs, including the autism supplement, to the parent, ***, under 34 C.F.R. § 300.322(f).

8. The Respondent, Corpus Christi Independent School District, failed to include parent training on the autism supplement for the Petitioner, Student, under 19 Tex. Admin. Code § 89.1055(e)(6). The failure of the Respondent to provide parent training to the parent, ***, however, did not cause a deprivation of educational benefit to the Petitioner.

9. The Respondent, Corpus Christi Independent School District, provided the Petitioner, Student, a FAPE under 34 C.F.R. § 300.101(a); *Board of Educ. v. Rowley*, 458 U.S. 176 (1982); and *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).

10. The Petitioner, Student, b/n/f Parent, did not unreasonably protract the final resolution of issues in controversy in this case under 19 Tex. Admin. Code § 89.1185(m)(1).

Order

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

IT IS HEREBY ORDERED THAT:

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

2. All relief sought by the Respondent shall be and is **DENIED**.

SIGNED this *_11th_* day of August, 2012.

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

TEA DOCKET NO. 301-SE-0612

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

SYNOPSIS

CLAIM 1: Whether the Respondent failed to implement an appropriate plan of action for addressing a *** issue involving the Student.

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

HELD: For the Respondent. The Student did not have a *** issue that required behavioral intervention.

CLAIM 2: Whether the Respondent failed to implement a meeting in an alternative educational setting and conduct a manifestation determination review.

CITE: 34 C.F.R. 300.530(g)

HELD: For the Respondent. The Student knowingly *** at school and under the IDEA a manifestation determination review is not required before a removal for up to 45 school days.

CLAIM 3: Whether the Respondent failed to notify the Student's parent after ***.

CITE: 34 C.F.R. 300.535

HELD: For the Respondent. The Respondent attempted to contact the parent following *** at school and made contact with the parent by the end of the school day.

CLAIM 4: Whether the Respondent failed to timely conduct a FBA.

CITE: 34 C.F.R. 300.530(d)(1)(ii)

HELD: For the Respondent. A FBA was not required by the IDEA under the circumstances. The Respondent understood the function of the Student's misbehavior.

CLAIM 5: Whether the Respondent failed to conduct a counseling evaluation and consider appropriate counseling services.

CITE: 34 C.F.R. 300.303(a)(1)

HELD: For the Respondent. The Respondent reasonably determined that a counseling evaluation was not warranted.

CLAIM 6: Whether the Respondent failed to conduct an assessment before removing an aide for the Student.

CITE: 34 C.F.R. 300.303(a)(1)

HELD: For the Respondent. The Respondent did not remove an aide for the Student.

CLAIM 7: Whether the Respondent failed to explain the "autism supplement" to the Student's parent.

CITE: 34 C.F.R. 300.322(f)

HELD: For the Respondent. The Respondent is not required to provide an explanation of the IEP.

CLAIM 8: Whether the Respondent failed to provide "parent training" to the Student's parent.

CITE: 19 Tex. Admin. Code § 89.1055(e)(6)

HELD: For the Respondent. Although the Respondent should have indicated a need for parent training on the autism supplement, the failure to provide parent training did not deprive the Student of educational benefit.

CLAIM 9: Whether the Respondent denied FAPE.

CITE: 34 C.F.R. 300.101(a)

HELD: For the Respondent. The Student's IEPs were reasonably calculated to confer educational benefit.

COUNTER-CLAIM: Whether the Petitioner unreasonably protracted the final resolution of issues in controversy in this case.

CITE: 19 Tex. Admin. Code § 89.1185(m)(1)

HELD: For the Petitioner. The parent did not protract the resolution session because the parent participated in the session and informed the District of rejection of the settlement offer at the end of the session.