

STUDENT b/n/f PARENTS	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER FOR THE
	§	
CROWLEY 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 Crowley Independent School District (hereinafter referred to as "Respondent," "School District," or “Crowley ISD”). Petitioner filed a written request for a due process hearing which was received by the Texas Education Agency (“TEA”) on March 7, 2012 which was styled and docketed as shown above. Petitioner was represented by Attorney Dorene Philpot of Philpot Law Office in Galveston, Texas. Respondent was represented by Attorneys Janet Bubert and Bruce Moon of the law firm Brackett & Ellis, P.C. in Fort Worth, Texas. The Due Process Hearing in this matter was held on Thursday and Friday, May 10 and 11, 2012, in Crowley Independent School District. Following the conclusion of the hearing, the parties agreed that written closing arguments would be filed by Friday, May 25, 2012, and that the Decision of the Hearing Officer would be issued on or before Tuesday, May 31, 2012. The Hearing Officer issued the Decision on June 1, 2012, which was not later than mandated by IDEA and the implementing State and Federal regulations, based on the requested continuances which were granted for good cause, and the hearing date in this case.

A Prehearing Conference was held on Thursday, March 29, 2012, at which time the issues to be addressed in the due process hearing were defined. Petitioner’s Request for Special Education Due Process Hearing and Required Notice (“Complaint”) raised the following issues regarding the special education identification, evaluation, placement, programs and services of Petitioner, and Respondent’s alleged denials of a free appropriate public education (“FAPE”):

1. Petitioner and Respondent agreed that Student attends school in School District and qualifies for special education and related services as a student with Emotional Disturbance.

2. Petitioner maintains that Student is non-functional in public school due to the severity of student's disability, and Student has \*\*\* following school suspensions. Therefore, Petitioner is a danger to \*\*\*self and others;

3. Petitioner disagrees with the School District's placement of Petitioner and contends that Petitioner needs immediate care in the form of a day treatment or residential treatment center.

4. Petitioner also contends that Respondent has failed to provide a free appropriate public education for Petitioner since October, 2011, including the following asserted specific denials of FAPE:

- (a) Failure to educate student in the Least Restrictive Environment ("LRE"), which would be a day treatment or residential treatment center;
- (b) Failure to conduct a timely and appropriate Functional Behavioral Assessment ("FBA") and to devise an appropriate Behavior Intervention Plan ("BIP");
- (c) Failure to offer therapeutic counseling services, parent counseling or in home training;
- (d) Failure to develop appropriate goals and objectives, and individualized services;
- (e) Failure to give Prior Written Notice when denying parental requests;
- (f) Failure to provide compensatory services;
- (g) Failure to implement Student's Individualized Education Plan ("IEP"), including failure to provide progress reports; and
- (h) Failure to provide an appropriate Transition Plan for Student.

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

1. Provide Petitioner an appropriate IEP in the Least Restrictive Environment consistent with IDEA.
2. Provide Petitioner private placement at Respondent's expense, if the District cannot provide an appropriate placement for Petitioner.
3. Provide Petitioner compensatory services for denial of FAPE.
4. Provide any other relief deemed appropriate by the Hearing Officer.

The Complaint also notes that Petitioner will request attorney's fees and expert witness fees.

In its response to the Complaint, Respondent denied that Petitioner was entitled to any of the requested relief and proposed resolutions. Respondent asserted that Petitioner's request for residential treatment were related to Petitioner's difficulties with Student at home, and that School District had addressed Petitioner's school behaviors with appropriate instructional placements in School District.

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

## **II. Findings of Fact**

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

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. Student is eligible for special education as a child with a disability who meets eligibility criteria with the handicapping condition of Emotional Disturbance.

4. Petitioner enrolled in School District most recently on \*\*\*, 2011.

5. Student has a complicated social and family history. Student is the \*\*\* oldest of \*\*\*, who range in age from \*\*\*. Student's \*\*\* is \*\*\*. Student's biological father \*\*\* when Student was \*\*\* years old. Student's \*\*\* are \*\*\*. Student expressed feelings of displacement and emotional upset regarding the \*\*\* birth of the youngest \*\*\*. Student was not happy being relocated to make room for the baby and \*\*\*. Student's older \*\*\* in \*\*\*, 2011, and has only \*\*\*. The older \*\*\* is reported to have \*\*\*.

6. Student has a history of \*\*\* and psychiatric problems, noted as beginning in \*\*\*, 2007 with \*\*\* for \*\*\* and \*\*\* family members \*\*\*. Student continued to receive psychiatric therapy through \*\*\* during 2007 for \*\*\*. Parents placed Student in \*\*\* from \*\*\*, 2007 through \*\*\*, 2007 "due to continued aggressive, self injurious, \*\*\* behaviors."

7. From 2008 through 2010, Student received probation through the Juvenile Probation Department and/or psychiatric hospitalization for 8 incidents, including:

- a. Probation- \*\*\*;
- b. \*\*\*- \*\*\*;
- c. \*\*\*- Discharged for being too aggressive and needing a residential placement;
- d. Probation- \*\*\*;
- e. Probation- \*\*\*;
- f. \*\*\*;
- g. Probation- \*\*\*; and
- h. \*\*\*.

8. Student had few reported discipline problems at school during the 2008-2010 time period. Student was suspended from school in 2008 for \*\*\*. In 2009, Student was \*\*\* at school for "imminent serious physical harm to others."

9. Before starting school in 2011, Student was \*\*\* on May \*\*\*, 2011, and \*\*\* from May \*\*\*, 2011 through October \*\*\*, 2011. Student was \*\*\* at the beginning of School Year 2011-2012, including enrollment at \*\*\* for \*\*\*, until enrollment in Crowley ISD. Before enrolling, Student had stopped doing school work or participating in the home school curriculum.

10. Respondent conducted a Full and Individual Evaluation (“FIE”) on Petitioner on October 22, 2007, which found Petitioner to be eligible for special education and related services as a student with Emotional Disturbance. The October 22, 2007 FIE is Petitioner’s most recent FIE.

11. The October 22, 2007 FIE relied, in part, on a psychological evaluation and observations of \*\*\*, Psy.D. dated August 23, 2007. The August 23, 2007 psychological evaluation determined the following:

- a. Petitioner is in average range of cognitive functioning for math, reading and writing expression.
- b. Petitioner does better when information and tasks are presented in an auditory manner.
- c. Petitioner does not have a learning disorder.
- d. Petitioner is uncomfortable when experiencing and expressing emotions, causing anxiety.
- e. Petitioner’s anxiety results in social avoidance and isolation.
- f. Petitioner must be further evaluated to rule out visual motor coordination problems.

12. The October 22, 2007 FIE also relied on Crowley ISD’s Initial Psycho-Educational Report. This Psycho-Educational Evaluation determined that Student does not have a learning disability and that Student’s has average intelligence and a personal strength in Math. Based on the test results and observations, Petitioner was determined to have both a disability (Emotional Disturbance) and an educational need for special education and scheduled to receive Behavior Intervention Classroom (“BIC”) support and Content Mastery support. It was noted that Student’s behavioral history should be considered when making educational plans.

13. On October \*\*\*, 2011, Respondent completed Documentation of Consultation Provision of Services for Transfer Student. For transfer purposes the District relied on the November 5, 2007 FIE, September 15, 2010 \*\*\* Admission, Review, or Dismissal Committee Meeting (“ARD”), and the October 21, 2010 \*\*\* REED (Review of Existing Evaluation Data) ARD.

- a. The September 15, 2010 \*\*\* ARD Committee (“ARDC”) determined that Intensive Program Instruction and Student Success Initiative continue to be appropriate, and that positive behavioral interventions and supports are necessary. The ARDC did not require a reevaluation.
- b. The October 21, 2010 ARD was conducted for development of the REED. The ARDC determined that no further testing was needed and all decisions from the annual ARD would remain in place.

14. During October and early November 2011 communications between and among Petitioner and Respondent did not reveal any significant school behavior or academic issues. Student was placed in the Behavior Intervention Classroom (“BIC”) for thirty (30) days for monitoring and observations. The Special Education teacher in BIC observed Student complying with dress code, attending school daily and on time, and

having appropriate interactions with peers and adults. Student did good work on assignments, and showed impressive insight in the literary analysis of \*\*\*. The only concern raised by Parents during this period was Student's transfer from the special education bus to the general education bus, which Petitioner and Respondent both agreed was appropriate.

15. An Admission/Initial ARD was convened on Petitioner's behalf on November 10, 2011. The purpose of the meeting was to make a determination of Student's present levels of educational performance and needs; and to review evaluation data and other information.

16. The November 10, 2011 ARD document stated that the ARD Committee ("ARDC") reviewed October 21, 2010 FIE; however, the "FIE" referenced by the ARDC was actually an October 21, 2010 ARD document from the REED ARD held by the \*\*\* on that date. The FIE reviewed by the October 21, 2010 ARDC is the October 22, 2007 FIE done by Respondent.

17. The November 10, 2011 ARDC reviewed results of previous assessments, unspecified records from other school districts, information from school personnel, unspecified information and records from other agencies or professionals, and parent's concerns for enhancing Student's education. Student was determined to be on grade level in all core subjects except Math. Student is below grade level in Math.

18. Based in large part on the report of the BIC teacher, the November 10, 2011 ARDC determined that Student should receive all instruction and services in the general education setting with Behavior Intervention Classroom ("BIC") support, with the opportunity to leave class for individual assistance.

19. The November 10, 2011 ARDC determined that Petitioner's behavior impedes student's learning or the learning of others. The ARDC also determined both that Student is capable of following the Student Code of Conduct without modifications, and that Student needs a Behavior Intervention Plan ("BIP"). But, there is no evidence that a BIP was developed.

20. The November 10, 2011 ARDC reviewed the competencies and present levels of educational performance and set forth the following measurable annual goal:

By the end of 36 instructional weeks, when given student's accommodations as determined in student's IEP, Student will master the TEKS of student's core subjects 70% of the time. Student's implementers will be the General and Special Education teachers; and progress will be evaluated from report card grades

The ARDC also determined that Student should receive all instruction and services in the general education setting with supplementary aids and services, including allowing Student to leave class for individualized assistance in Language Arts/English, Math, Social Studies/History, Science, Career/Technology and Electives, and providing support for the general education teacher from the Special Education staff.

21. The November 10, 2011 ARD included an Individualized Transition Plan which focused on Student's \*\*\*.

22. All the parties present at the November 10, 2011 ARD, including Petitioner, were in agreement with the ARDC's recommendations and determinations.

23. Parents began seeing increased Student behavior problems beginning in late November, 2011. At home, the frequency and intensity of Student's anger, frustration, defiance and disrespect increased. Parent tried a variety of efforts to increase positive social interactions, including soccer, \*\*\* and church. Student was not interested in church. Student began to refuse to obey parents, would not do assigned chores, and would go to town to socialize with persons parents considered negative influences and return home with \*\*\*.

24. Student had a difficult \*\*\*. Student reported to the BIC aide on the Monday after \*\*\* that Student's \*\*\* had \*\*\*, caused a highly charged emotional incident resulting in \*\*\*. Student became upset \*\*\*; Student was then was \*\*\*. Student was observed with \*\*\*. Respondent's BIC aide counseled Student regarding appropriate ways to handle anger.

25. Communications between and among Petitioner and Respondent during November 2011 do not indicate any significant psychological issues, other than Student's November \*\*\*, 2011 report regarding \*\*\*. Student's parent asked for and was given access to the school database for monitoring Student's grades and attendance. Student's parent asked to restrict Student's internet access because Student was being punished for an incident at home, and school personnel complied. As to academic issues, Student's teachers requested intervention plans for Student, because Student was failing \*\*\*.

26. Academic issues detailed in December email correspondence included Parent's request to communicate with Student's teachers, which Respondent granted. Respondent's paraprofessional also complained about being required to grade Student for the first period "Student Aide" class, when Student was really having a study hall. The para-professional stated that Student neither did Student Aide work nor studied, but usually fell asleep with a book.

27. Student had an extremely difficult time at home during \*\*\*. Student received \*\*\*, although Student was \*\*\*. Student's parents were upset that Student did not understand the danger and potential consequences of \*\*\*. Student was hospitalized from \*\*\*, 2011 through \*\*\*, 2011 at \*\*\* for aggressive, \*\*\* behaviors. Student returned to school as scheduled on \*\*\*, 2012, and left early, with permission, when picked up by Parent for a doctor's appointment.

28. Respondent's BIC aide worked to gather information regarding Student's grades before the January 19, 2012 ARD.

29. An ARD meeting was held on January 19, 2012 at Parent's request. The purpose of the ARD meeting was to review the Student's current program, consider/revise Student's IEP as needed, and to discuss possible placement changes based on increased symptoms of Bipolar Disorder at home.

30. During the January 19, 2012 ARD, Parent reported that Student's behavior at home was complicated, violent, and malicious, and that Petitioner had \*\*\*. The ARDC members agreed that Student's behavioral issues were related to home incidents, and, also, there were no behavioral issues at school. The ARDC did not recommend a more restrictive environment from Student's current placement in general

education setting with BIC support, because Petitioner's escalating behaviors at home did not seem to be affecting educational or behavioral progress in school. However, the ARDC recommended building in a 15 minute cool down period at the end of the school day so that Student could discuss the day and share any concerns with the BIC aide.

31. All the parties present at the January 19, 2012 ARD, including Parent, were in agreement with the ARDC's recommendations and determinations.

32. Student's BIC aide, who had established rapport with Student, detailed escalating behavior problems during the period from \*\*\*, 2012 through \*\*\*, 2012. Problem behaviors included:

- a. Walking out of \*\*\* class to the BIC without permission after a so-called "rough-night" (\*\*\*, 2012);
- b. Attempting to \*\*\* and getting upset with stopped (\*\*\*, 2012);
- c. Refusing to go to or remain in class, refusing to do work in BIC, and stating that school was "stupid," and that student was going to \*\*\* (\*\*\*, 2012);
- d. \*\*\* instead of going to class; leaving class with a bathroom pass and \*\*\* (\*\*\*, 2012);
- e. Appearing at school with \*\*\* (allowed) and \*\*\* (prohibited) without Parent's knowledge (\*\*\*, 2012); and
- f. Refusing to comply with Dress Code by \*\*\*; being defiant, cursing, and having to be removed from \*\*\* class by an \*\*\*. (This was listed as \*\*\*, 2012, but was probably \*\*\*, 2012).

32. Email communications between Petitioner and Respondent during February 2012 show increasing strains and frustrations among the parties. Respondent sometimes marked Student absent erroneously and notified Parent, while Student was in BIC or had an excused absence. Student refused to ride the bus home, and would not notify Parents of student's whereabouts. Student used racial slurs and disrupted classes. One parent was \*\*\* of the time for work, and was unavailable to assist at home, where Student's problem behaviors continued, increasing in intensity and frequency. Parent referred Student to \*\*\* for evaluation, but \*\*\* determined that Student was not a danger to self or others and would not admit Student. Student refused to take prescribed medication and was increasingly emotionally unstable.

33. Student was suspended from school on the following dates for the reasons indicated:

- g. \*\*\*, 2012- Refusing to follow directions (failure to \*\*\* comply with Dress Code)- 1 day Out of School Suspension; and
- h. \*\*\*, 2012- Disruptive behavior in the IBIC; and \*\*\* - 3 days Out of School Suspension.

34. An ARD convened on February 22, 2012, on behalf of Student at Parent's request. The purpose of the ARD meeting was the development of the Individualized Education Program ("IEP"). The ARDC determined that there were no changes in Student's present level of performance, and that the previous IEP were to remain in effect. The Student's previous IEP was not attached to the ARD document for reference or provided any dates.

35. The February 22, 2012 ARDC had the following observations: Student's next friend's concerns was that Student was suspended from school for one day on \*\*\*, 2012 for insubordination after refusal to \*\*\* and for using foul language to teachers. Student had to be removed from the general education setting \*\*\*. The ARDC discussed Student's suspension, and Parent reported Student's \*\*\*, and that Student was \*\*\* after suspension.

36. The February 22, 2012 ARDC determined that Student's behavior had been escalating and an Administrator recommended "lock down" (highly supervised, restrictive, self contained behavior classroom setting), in the Behavior Intervention Classroom ("BIC"). The Student's Special Education teacher reported that Student's grades were declining from the first semester and that Student was failing \*\*\* classes. The ARDC and Petitioner agreed that Student's placement should be changed to self-contained Behavior Intervention Classroom ("BIC") for three (3) weeks, in light of the escalating behavior problems. The ARDC also determined that the School Nurse could administer Student's medication at school if Student didn't take them at home.

37. The February 22, 2012 ARDC, including Petitioner were in agreement with the ARDC's recommendations and determinations.

38. Petitioner was suspended from school for \*\*\* days on February \*\*\*, 2012 after Petitioner \*\*\*. Petitioner \*\*\* and was hospitalized and did not return to CISD until \*\*\*, 2012.

39. On March 1, 2012, Parent requested an IEE from Respondent in a telephone conversation. On March 3, 2012, Petitioner's next friend requested an IEE and residential treatment center placement in writing. A Brief ARD meeting was convened on March 5, 2012 at the request of Petitioner to determine proper placement and to consider changes to Petitioner's schedule of services and transportation supplement.

40. The March 5, 2012 ARDC determined that Petitioner's placement should be in a more restrictive behavior management classroom, the Intensive Behavior Intervention Classroom ("Intensive BIC") \*\*\*. Placement in the Intensive BIC was to continue until it was determined Student could handle returning to the general education setting. The Intensive BIC program begins and ends earlier in the school day to decrease distractions. Additionally, the ARDC members thought Student would benefit from removal from negative peer influences.

41. The March 5, 2012 ARDC agreed to develop a Behavioral Plan and to convene an ARD the week of March 22, 2012 to discuss goals. Student's parent came to the meeting with a representative of \*\*\* and requested an IEE and residential placement.

42. Student was reported to have several successful days in the IBIC, and to earn some privileges, and complete some school work. At the same time, Student was often difficult and refusing to do school work.

43. Petitioner filed the Request for Due Process Hearing on March 7, 2012 with the Texas Education Agency. No further ARDs were held, and Student was reported to have stopped attending school after \*\*\*, 2012.

44. During the time Student has been attending Crowley ISD, Student has experienced continuing emotional and behavioral difficulties in the home or outside school setting. Student has \*\*\*, and exhibited other self injurious behavior, including \*\*\*. Student has \*\*\*. Student has refused to take student's medication regularly, and, more recently, has \*\*\*.

45. In addition to the 2007 FIE, including the psychological evaluation by \*\*\*, Psy. D., Student has received 6 evaluations over the last few years, including:

a. A January 25, 2011 psychological evaluation by \*\*\*, Ph.D. for current cognitive, behavioral and emotional functioning. Petitioner was referred to Dr. \*\*\* for a psychological evaluation from \*\*\*, Petitioner's placement at the time. The psychological evaluation contained no educational recommendations, however, individual psychotherapy was recommended to address immediate concerns of separation, adjustment, family issues, negative relationships, anxiety and depression. Dr. \*\*\* did not recommend a residential treatment center or hospital placement.

b. In 2009, \*\*\* staff believed that a structured RTC or hospital would be a more appropriate setting for Student.

c. Dr. \*\*\* diagnosed Student with a Mood Disorder, not otherwise specified (onset 3/23/2010), and a Conduct Disorder unspecified onset. Dr. \*\*\* does not believe Student is Bipolar, because Dr. \*\*\* has not noted any manic episodes. Dr. \*\*\* noted continuing problems with taking medication, medication refusal was noted beginning in 2010. Respondent's school nurse also stated that Student refused to take medication. According to Dr. \*\*\*, one important benefit of residential placement would be to get Student stabilized on medication. Dr. \*\*\* recommendations were primarily based on student's medical and psychiatric needs, rather than educational needs. Additionally, Dr. \*\*\*, noted that Student did not "open up" or confide with her, such that treatment was difficult. Dr. \*\*\* did not make recommendations regarding Student's academic needs.

d. Student was evaluated by \*\*\*, PMHMP in the emergency department of \*\*\* on May \*\*\*, 2010 based on a referral by an MHMR therapist, who was concerned that Student had \*\*\*. Parents stated their desire for "long-term residential care" for Student. Nurse Practitioner \*\*\* noted additional concerns for Student, including: sleep disturbance, mood lability, defiance towards parents, and \*\*\*. Student was known to have social problems, including difficulties with peers, teachers, all family members, and other adults. Because Parents were fearful for the family's safety and requested long-term residential care, Nurse Practitioner \*\*\* recommended inpatient psychiatric admission for ongoing evaluation and intervention. \*\*\* diagnosed Student as having Bipolar Disorder, not otherwise specified, Oppositional Defiant Disorder, Rule out Conduct Disorder, Rule out \*\*\*, and noted other issues of Hypothyroidism, and moderate academic, primary support, social and legal issues.

e. Parents also had the use of a family counselor from \*\*\*. The counselor detailed 15 home visits from April 12, 2011 through August 30, 2011. The counselor worked with the family members to address interpersonal family relations, including communications, sibling rivalry, substance abuse, independence, adolescent rebellion by Student's \*\*\*. The counselor helped the family to establish family meetings to discuss what was and what was not working in the family dynamic, and assisted the

family members in improving communication so that the individual members could contribute to a happier, more positive family life.

f. Parents contacted \*\*\* in early 2012. Apparently, \*\*\* is a social service consortium which relies on the efforts and files of other social service agencies in working with clients to obtain services. The \*\*\* file indicates that the MHMR case worker had noted “odd dynamics in the home,” and detailed family concerns with payment for residential placement and payment for Student’s medication. It was reported that parents allowed Student to go off medication due to financial concerns. Notably, the \*\*\* therapist stated that the family refused to come to family therapy sessions. Recommendations from \*\*\* were based on the parents’ desire for additional social services for Student. The goal of \*\*\* was to assist the family in obtaining services the parents identified as needed services, based on parent or caregiver questionnaires. The \*\*\* recommendations for residential treatment placement were not based primarily on Student’s educational needs. The family had already contacted additional \*\*\*, \*\*\* and others regarding long term placement for Student, and was looking to \*\*\* for a means to finance the placement in light of the limited insurance coverage Student and parents had. \*\*\* counseled Parents to contact an advocate to learn more about educational services, and also to put the request for additional testing and residential placement in writing to Respondent.

46. Student had generally good attendance while attending Crowley ISD. School attendance records indicate that Student attended regularly, with only 4 excused absences, 4 unexcused absences, 4 days of Out of School Suspension and one day of In School Suspension. Although Petitioner asserts that Student has a problem with refusing to attend school, Student did not generally refuse to attend school until \*\*\*, and continuing after the Due Process Hearing Complaint was filed in this case.

47. There were 4 ARDs while Student was attending Crowley ISD. Petitioner agreed to the special education and related services at three of the ARDs (11/10, 2011, 1/19/2012, and 2/22/2012), but did not agree with Student’s IEP and related services after Student’s \*\*\* after the second school suspension.

48. Petitioner never requested and was not offered individual counseling for Student, or family counseling. Petitioner did request assistance with getting Student to school, after Petitioner’s attendance stopped becoming routine in \*\*\*. Respondent did not provide Truant Officer assistance getting Student on the school bus, however, Student’s teachers attempted to locate Student and bring student to school on at least one occasion when Student had already arrived at school, unknown to the parent.

49. Petitioner contacted school personnel on March 1, 2012 requesting an IEE. Petitioner also requested an IEE in writing by email on March 3, 2012. Respondent neither provided the IEE nor provided a written explanation of why the IEE would not be provided. Additionally, Respondent did not attempt to defend the appropriateness of its FIE.

50. Student had 4 different classroom placements during \*\*\* Grade:

- a. From \*\*\*, 2011 until \*\*\*, 2011, Student was placed in the Behavior Intervention Class (BIC) at \*\*\* School.

- b. From \*\*\*, 2011 until \*\*\*, 2012, Student was placed in general education classes at \*\*\* School \*\*\* with support from a BIC paraprofessional.
- c. From \*\*\*, 2012 until \*\*\*, 2012, Student was placed back in BIC at \*\*\* School.
- d. From \*\*\*, 2012 until Student stopped attending on \*\*\*, 2012, Student was placed in the Intensive Behavior Intervention Class (“IBIC”).

54. Student’s educational progress was not documented in a typical or contemporaneous manner. When Student was placed in BIC and IBIC, Student did not attend classes with the general education students and received grades based on assignments given by the BIC or IBIC teacher. Therefore, not all of the lessons were in accordance with standard curriculum guidelines as to content and mastery. Other than that, Student’s First Semester grades were changed to allow credit for school work done while Student was \*\*\*. For example, Student was given a grade of \*\*\* for the first period \*\*\* for \*\*\*, but Student never actually attended a class or performed any work as a \*\*\*.

55. Student’s grades in the Fifth Six Weeks were given by the IBIC teacher, based on Student’s efforts on a few assignments completed at some point during the time Student was in the IBIC class. Student’s IBIC teacher awarded grades for the six week period did not reflect any standardized curriculum content or mastery. For example:

- (a) Student was given \*\*\* in \*\*\*, but this was based solely on Student’s completing \*\*\* during the six week period;
- (b) Student was given a \*\*\* in \*\*\*, based on 3 assignments, which included one \*\*\*;
- (c) Student was given a \*\*\* in \*\*\* based on 5 assignments over the entire 6 weeks regarding Chapter 27 and then Chapter 23.
- (d) Student was given a \*\*\* in World Geography, based on completing one daily assignment with a \*\*\*, and after deleting a Daily Grade of \*\*\*;
- (e) Student was given a grade of \*\*\* in \*\*\*, based on completing 4 Daily assignments with the lowest being a \*\*\*, and one “Unit 9 Quiz;”
- (f) Student was given an \*\*\* in \*\*\*, based on completing 2 daily assignments, one with a \*\*\* and one with a \*\*\*.

Student did not take or pass any standardized tests for the \*\*\* Grade.

56. Student was repeatedly hospitalized for psychiatric purposes for \*\*\* and \*\*\* (\*\*\*/2011 through \*\*\*/2011); \*\*\* following school suspension (\*\*\*/2011); and \*\*\* following school suspension (\*\*\*/2012). At the time of the hearing, Student was reported to be hospitalized and still \*\*\* behavior. At school, Student has not displayed the \*\*\* and destructive behaviors seen at home or outside school, although Student’s behaviors became increasingly oppositional and defiant at school. Student was not shown to have appropriate social relationships at either home or school, and these social skills deficits were reported to school personnel.

57. Although Respondent maintains that Student’s social, emotional and behavior issues are primarily associated with stressors at home, Student has not had an FIE since 2007, such that Student’s educational needs have not been evaluated in light of existing circumstances at home and at school. Respondent provided behavioral support primarily through the BIC aide, whose efforts became unsuccessful beginning in

January 2012. Student's need for counseling and Student's psychological needs in the educational setting have not been recently evaluated. Respondent developed a Draft Functional Behavior Assessment after the Complaint was filed, but Respondent has yet to provide a completed Functional Behavior Assessment ("FBA") and Behavior Intervention Plan which all the ARDC agree Student needs. None of the ARDCs developed or reviewed an FBA or developed a BIP, nor did the ARDC identify any specific behavioral interventions, supports or other strategies to address Student's behavior.

58. The Executive Director of the \*\*\* testified regarding a residential treatment center which would accept Student, and which can provide educational and psychological services for adolescents with Emotional Disturbance. \*\*\* is a \*\*\* facility which provides psychotherapy and educational services. \*\*\* is also approved by the Texas Education Agency for contracting. Petitioner has no insurance coverage at this time or other resources which would allow them to finance the long term stay at \*\*\* they think is appropriate for Student. Therefore, Student could only be placed at \*\*\* at Respondent's expense.

59. In recent hospitalizations, Petitioner has incurred approximately \$8,780 in residential placement expenses as follows:

- a. \*\*\*, \*\*\* 2010 through \*\*\*, 2011- \*\*\*/month for \*\*\* months for a total of \$6,780.00.
- b. \*\*\* placement, \*\*\* 2010 through \*\*\*, 2011- \*\*\*/month for \*\*\* months for a total of \$2,000.00.

Only \*\*\* months occurred during the one year period before the Complaint was filed. Petitioner maintains that Petitioner was not informed that Student could be dual enrolled in Crowley ISD and in those placements, causing Petitioner to withdraw from Crowley ISD unnecessarily.

### **III. Discussion**

Petitioner and Respondent both agree that Student needs special education and related services and should receive a free appropriate public education from Respondent based on having Emotional Disturbance.

The disability, Emotional Disturbance is defined in IDEA regulations as follows:

*34 Code of Federal Regulations, Sec. 300.8(c)(4)(i).* Emotional disturbance means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- (A) An inability to learn that cannot be explained by intellectual, sensory, or health factors.
- (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
- (C) Inappropriate types of behavior or feelings under normal circumstances.
- (D) A general pervasive mood of unhappiness or depression.
- (E) A tendency to develop physical symptoms or fears associated with personal or school problems.

By definition, Student's disability is not isolated to the home setting, but has been determined to adversely affect Student's educational performance. In this case, the facts demonstrate that Student's disability adversely

affected educational performance, and that Respondent did not provided a timely response to Student's demonstrated educational needs. Petitioner's request for residential treatment center placement has to be evaluated seriously, applying the legal standard to the facts of this case.

The primary relief requested by Petitioner in this Due Process Hearing is Student's placement in a residential treatment center, or private placement at public expense. Legal guidelines for reimbursement for private school placement at public expense are specified in IDEA and its implementing Federal regulations. Specifically, IDEA at 20 United States Code, §1412(a)(10)(C), states, in part:

“[A] hearing officer may require the agency (school district) to reimburse the parents for the cost of that [private school] enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child prior to that enrollment [in private school].”

A review of the evidence in this case establishes, without a doubt, that Respondent did not offer Petitioner a free appropriate public education before Petitioner left Crowley ISD, and prior to Student's enrollment in private school.

#### Residential Placement

The law in the Fifth Circuit of the United States Court of Appeals regarding the appropriate legal analysis for the request for public reimbursement of residential placement in a due process hearing was established in *Richardson Independent School District v. Michael Z.*, 580 F. 3d 256 (5<sup>th</sup> Cir. 2009) (This case will be referred to in this discussion as “*Michael Z.*”). In that case, the Fifth Circuit established a two prong analysis to determine when reimbursement for a parent's residential placement of a student with an educational disability is appropriate under IDEA. The Fifth Circuit's opinion examined and rejected the legal tests announced by two different Appeals Circuits before declaring the standard that should be applied by the Hearing Officer in the case.

The facts of *Michael Z.* are very relevant to this case. The student, Leah Z., was diagnosed with attention deficit disorder, oppositional defiant disorder, bipolar disorder, autism, separation anxiety disorder, and pervasive developmental disorder. (*Michael Z.*, at p. 289). Leah experienced emotional and behavioral difficulties at “numerous” private schools (Court's characterization) before being enrolled in Richardson ISD (“RISD”) in the fifth grade and later being placed in a “Behavioral Adjustment” (“BA”) Class in RISD. (*Michael Z.*, at p. 289) In the eighth grade, Leah's academic and behavioral difficulties escalated. She began leaving class without permission almost daily; arriving at school late; taking lengthy two hour lunch breaks and running away from school. On the recommendation of her psychiatrist, RISD educated Leah in a homebound

setting for four days prior to the school's winter break. (*Michael Z.*, at p. 290) In February, Leah began engaging in sexual activities with other students in the school's bathroom. RISD responded by hiring a long-term substitute who was not certified to teach in Texas to supervise Leah. The Court noted that RISD offered "little assistance to the substitute." (*Michael Z.*, at p. 290) After a two week pattern of disruptive behavior and refusal to do work that ended in an incident at Leah's home wherein Leah scratched her father and caused him to bleed, Leah's psychiatrist recommended to Leah's parents that she be admitted to the Texas NeuroRehab Center ("TNRC"). Leah's parents placed Leah in the TNRC unilaterally and without notice to RISD.

Once in TNRC, Leah's adverse behavior initially persisted, before it improved. At first, she groped staff members, attempted to remove other patients' clothing, engaged in self mutilation, and refused to follow directions or attend class at TNRC. Leah's behavior improved, according to her doctors, because of a combination of TNRC's structured environment, medication, and intensive counseling and therapy sessions. (*Michael Z.*, at p. 294) Leah was discharged from TNRC in November, with a recommendation that she attend a special class with one-on-one supervision to prevent future behavioral problems related to a lack of supervision. (*Michael Z.*, at p. 291).

Subsequently, in June, Leah's parents requested an ARD meeting so that they could request Leah to be placed at TNRC. Leah's ARDC found that RISD remained capable of providing her with a FAPE and denied the request for residential placement. Leah's parents filed a request for a due process hearing alleging that RISD failed to provide Leah with a FAPE and requested reimbursement for her placement at TNRC. The hearing officer found for the parents and awarded the parents \$54,714.40 as reimbursement for the room and board, comprehensive therapy services, nursing services, and neurological diagnostics. The district court upheld the hearing officer's decision and also awarded the parents \$36,768.20 in attorneys' fees and costs. (*Michael Z.*, at p. 291).

The Fifth Circuit discussed the district court's conclusion that RISD failed to provide Leah with a FAPE. The Court rejected RISD's arguments that the district court had misapplied the decisions *Adam J. v. Keller ISD*, 328 F.3d 804, 810 (5<sup>th</sup> Cir. 2003) and *Houston ISD v. Bobby R.*, 200 F.3d 341, 347 (5<sup>th</sup> Cir. 2000) that the LEA need only provide some educational benefit rather than maximizing the disabled student's potential. The Court held:

"The district court, however, did not base its ruling on a failure to maximize Leah's potential; it concluded that the June 2004 IEP was insufficient to confer any educational benefit upon Leah at all. This conclusion was not based exclusively on Leah's failure to progress. Rather, it was the stark pattern of

regression over a significant period of time under similar IEPs, combined with RISD's documented inability to keep Leah in the classroom, that indicated that any IEP substantially similar to the previous ones was doomed to fail."

*Michael Z.*, at p. 294.

The court then examined the two existing Circuit Court decisions regarding the appropriateness of residential placement at the public's expense; *Kruelle v. New Castle County Sch. Dist.*, 642 F.2d 687 (3<sup>rd</sup> Cir. 1981) and *Dale M. v. Bd. Of Educ. Of Bradley Bourbonnais High School Dist. No. 307*, 237 F.3d 813,817 (7<sup>th</sup> Cir. 2001). In *Kruelle*, the Third Circuit used a test for residential placement that assessed whether the child's medical, social or emotional problems were "inextricably intertwined" with the learning process, to determine when reimbursement was required by IDEA. If a court could not segregate such medical or treatment issues from the child's learning process, the school district must reimburse the parents for the private residential placement. (*Michael Z.*, at p. 298). The Seventh Circuit's test in the *Dale* decision focused on whether the residential placement is "primarily educational." (*Michael Z.*, at p. 298). The Fifth Circuit's quote of the following portion of the Seventh Circuit's opinion was important to its ultimate conclusion:

"... [t]he essential distinction is between services primarily oriented toward enabling a disabled child to obtain an education and services oriented more toward enabling the child to engage in noneducational activities. The former are "related services" within the meaning of the statute, the latter, not."

*Michael Z.*, at p. 299. (emphasis added)

The court also cited 34 CFR § 300.302 as partial authority for its conclusion that the *Kruelle* standard is simply too broad.

The Fifth Circuit then announced its standard:

"In order for a residential placement to be appropriate under IDEA, the placement must be (1) essential in order for the disabled child to receive a meaningful educational benefit, and (2) primarily oriented toward enabling the child to receive an education."

*Michael Z.*, at p. 299.

The Fifth Circuit's standard would deny reimbursement if residential placement is not *essential*, even if it is clearly *helpful* to the disabled student's education. Also, the Fifth Circuit explained that its first prong was meant to acknowledge that IDEA never intended to "shift the costs of treating a child's disability to the public school district." (*Michael Z.*, at p. 300) The Court specifically cited IDEA's definition of "related services," [20 U.S.C. § 1401(22)] as authority for this conclusion<sup>1</sup>. The second prong of the Fifth Circuit test hinges upon a

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<sup>1</sup> "Related Services" is defined: (26) Related Services. (A) In General. The term "related services" means transportation, and such developmental, corrective, and other supportive services (including, speech-language pathology and audiology services, interpreting services, *psychological services*, physical and occupational therapy, recreation, including therapeutic recreation, social work services,

fact intensive review of whether the services provided by the residential placement fall within the aforementioned definition of “related services.” The residential placement is judged, in part, upon whether the child’s progress at the facility is primarily judged by educational achievement. The Court acknowledged that this is not the *only* criteria possible to evaluate residential placement for public reimbursement. Finally, the Fifth Circuit concludes that IDEA mandates reimbursement of only those treatments provided in a residential placement that are “related services” as defined by IDEA. This portion of the Fifth Circuit’s opinion acknowledges the practical impossibility of separating the need for treatment from the educational process while limiting the expenses incurred by school districts to educational, rather than medical expenses.

Since the issuance of *Michael Z.* Decision, there has been at least one application of the Fifth Circuit’s standard for residential placement reimbursement by a district court. In *Klein ISD v. Hovem*, 745 F. Supp 2<sup>nd</sup> 700 (S.D. Tex. 9-27-2010), the Federal Court for the Southern District of Texas rejected a special education hearing officer’s decision which held in favor of the parents, that awarded reimbursement for residential placement. The student, Per Hovem, was a high school senior who had been diagnosed with attention deficit disorder and a learning disability. Per’s writing skills were extremely limited, his spelling and hand writing skills were very poor, and he had difficulty transferring words to paper. (*Klein* at p. 22) However, with an IQ of 142, Per otherwise excelled in all of his other general education classes. As Per was about to graduate and pursue college, his family discovered that not only were his deficits very severe, but also that his ARD Committee adopted IEP’s over the last several years that had completely failed to provide him with the opportunity to make any significant progress in his deficient areas. The District Court reviewed the district’s failure under an analysis that was similar to a *negligent* failure by the ARD Committee, rather than a failure of the district to have the *capability* to remediate Per’s educational deficits.

The student’s family placed Per in a private school known as The Landmark School that used a program that focused on Per’s deficits. The Landmark School instructed Per with a specific teaching method called Lindamood Phoneme Sequencing Program. (*Klein*, at p. 90) The hearing officer and the District Court found that Per’s placement in The Landmark School was appropriate and that Per received significant educational benefit at the private school. Also, both the hearing officer and the District Court both agreed that Per’s residential placement in the dormitories of the Landmark School was meant to address an *educational* need.

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school nurse services designed to enable a child with a disability to receive a free appropriate public education as described in the individualized education program of the child, *counseling services*, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special educational, and includes the early identification and assessment of disabling conditions in children.

(B) Exception. The term does not include a medical device that is surgically implanted, or the replacement of such device.  
20 U.S.C. § 1401 (26)

Therefore, the second prong of the *Michael Z.* standard was satisfied. Where the district court differed from the hearing officer's conclusion (which did not have the benefit of the *Michael Z.* standard when he held the hearing) was its determination that the Landmark School placement was not *essential* to Per's educational progress. The district court found that the Landmark School placement as helpful, even appropriate, but it nevertheless failed the *first* prong of the *Michael Z.* standard for residential placement.<sup>2</sup>

The *Michael Z.* and *Klein* decisions demonstrate that both prongs of the *Michael Z.* two prong test must be satisfied. In the *Michael Z.* case, Leah Z.'s placement in the psychiatric facility was found to be *essential* to her education, but the Fifth Circuit was not certain that the services provided were primarily *educational* in nature. The *Michael Z.* Court reversed and remanded the case to the district court to determine which portion of the services provided by TNRC to Leah would satisfy IDEA's definition of "related services." In *Klein*, the Landmark School placement was certainly *educational*, it was simply not *essential* to the Per's education.

In the instant case, it is clear that Student's behaviors have spiraled so far out of control that Student has been hospitalized in a psychiatric unit and can \*\*\*. Therefore, placement in a residential treatment center is essential in order for Student to receive a meaningful educational benefit. The Hearing Officer could hardly argue with Student's treating physicians that Student cannot receive any educational (or life) benefits without the structure, supports, and psychological and medical therapies provided in the residential treatment setting. To be sure, Student has even demonstrated difficulty staying physically healthy and \*\*\* in the hospital setting.

Unfortunately, the Hearing Officer has no factual basis to conclude that placement in a residential treatment center would be primarily oriented toward enabling Student to receive an education. Very simply, none of the assessments, evaluations, or reviews provide the necessary educational supports and strategies needed for Student to obtain educational progress. Respondent failed to provide an FIE, and Petitioner's expert witnesses, who are medical professionals or representatives of medical facilities, also failed to provide *educational* recommendations. Under *Michael Z.*, it is not enough to state that Student's mental health is such that student must be hospitalized for student's physical and mental health and safety and that the hospital or RTC can offer educational benefit. It is legally required that the residential placement be *primarily* focused on providing a free appropriate public education. Without specific educational recommendations, it is impossible to identify a residential treatment center a very restrictive setting, as Petitioner's appropriate and Least Restrictive Environment.

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<sup>2</sup> The *Klein* decision has been appealed to the 5<sup>th</sup> Circuit Court of Appeals. The parties have argued the case and await the Court's ruling. However, the district court's decision regarding residential placement was not cross-appealed by the parents.

Considering the foregoing, the Hearing Officer finds that Petitioner is the prevailing party in this Due Process Hearing, and that almost all of Petitioner's requested relief should be granted. As to Student's placement in a residential treatment center, however, Petitioner is entitled to an IEE by a qualified professional to determine:

- a. Petitioner's educational needs, and specific behavior supports, strategies and interventions based on Petitioner's unique needs and circumstances, and
- b. The appropriate *instructional* setting for Petitioner to receive a free appropriate public education.

Following the IEE, Respondent must convene an ARD and implement the placement and recommendations. In the absence of Respondent either providing an IEE or defending the appropriateness of its FIE, the IEE may be performed by one of Petitioner's existing or previous providers, but only if that professional is qualified and agrees to make specific recommendations to address Petitioner's special education placement, programs and services.

Finally, the Hearing Officer finds that Petitioner is entitled to compensatory services. Given Respondent's failure to provide Petitioner a free appropriate public education, and specifically to provide services needed to allow Petitioner to remain in school and pass the \*\*\* Grade, the Hearing Officer finds that Petitioner is entitled to a summer program to address the educational, social, behavioral and psychological deficits. A summer program in a residential treatment facility will also allow Petitioner to obtain essential mental health benefits and is warranted under the facts of this case. The Hearing Officer awards these compensatory services in lieu of providing reimbursement as requested by Petitioner for the previous expenses associated with the juvenile justice issues, to keep resources focused on current educational issues.

#### **IV. Conclusions of Law**

1. Petitioner is a student who resides within the School District who is eligible for special education as a child with the disabilities Emotional Disturbance. [20 U.S.C.A. §1400(3); 34 C.F.R. §300.8(c)(4); 19 T.A.C §89.1040.]

2. Respondent has a responsibility to provide Student with a free appropriate public education including reimbursement for Petitioner's private school placement if Respondent did not provide Petitioner a free appropriate public education. [20 U.S.C.A. §1412; 34 C.F.R. §300.300; 19 T.A.C §89.1001.]

3. Petitioner proved that Respondent denied Petitioner a free appropriate public education based on the unique needs of a child with emotional disturbance. [20 U.S.C.A. §1414; 34 C.F.R. §300.1, et seq.; 19 T. A.

C. §89.1001; *Bd. Of Education v. Rowley*, 458 U.S. 176, 73 L.Ed 2d 690, 102 S. Ct. 3034(1982), *Cypress Fairbanks ISD v. Michael F.* 118 F.3d 245 (5<sup>th</sup> Cir. 1997)].

4. Petitioner proved that Petitioner is entitled to an Individual Educational Evaluation because Respondent neither provided an evaluation, nor attempted to defend the appropriateness of the Full and Individual Evaluation provided by Respondent. There is no current FIE which could be defended by Respondent, because the last FIE was provided in 2007 and the Student's actual FIE was not current. Petitioner proved that the circumstances surrounding the student's escalating misbehavior warranted a re-evaluation of the student, including a psychological evaluation, that Respondent failed to initiate. [20 U.S.C. §1414(a)(2); 34 C.F.R. §300.301, 34 CFR §300.303(a)(1), 34 CFR §300.303 (b)(2); and 34 C.F.R § 300.502.]

5. Petitioner proved that Student has not been assessed in all areas of disability for educational purposes. Specifically, Petitioner proved that Petitioner has been deprived of a Functional Behavior Assessment, a Behavior Improvement Plan, specific behavior supports, strategies and interventions for the school setting, a counseling assessment, and social skills training all of which Petitioner needs to receive a free appropriate public education. [34 C.F.R. §300.8(a)(4)(i); 34 C.F.R. §300.301; 34 C.F.R. §300.303.]

6. Petitioner did not prove that the Hearing Officer should order Petitioner to be placed in a private residential treatment center at public expense in order for Petitioner to be provided a free appropriate public education; there is insufficient evidence in the record to support residential placement to provide primarily educational services. The qualified professional providing the Individual Educational Evaluation must make recommendations to include the appropriate special education placement for Petitioner. [20 U.S.C. §1412(a) (1), and §1412(a) (10) (B); 34 C.F.R. §300.104; *Richardson Independent School District v. Michael Z*, 580 F. 3d 256 (5<sup>th</sup> Cir. 2009); 19 T.A.C. §89.1125, and §89.61, Tex. Educ. Code, §29.008.]

7. Petitioner did not prove that Respondent was denied a Transition Plan or appropriate Transition Services. [14 U.S.C. 1401(34); 34 C.F.R. §300.43; 19 T.A.C. §89.1055, and Tex. Educ. Code, §29.011.]

8. Petitioner proved that Petitioner is entitled to compensatory services to be determined by the Hearing Officer associated with Respondent's denial of FAPE. The Hearing Officer determines that appropriate compensatory services for Petitioner include an 8 week summer special education program at \*\*\* which, it is hoped, will allow Petitioner to obtain medication stabilization, make academic progress, reinforce coping skills for school and home, and remove Petitioner from the environmental stresses which have contributed to the out of control behaviors at home and school. [20 U.S.C. §1415; (2)(B) (iii), 20 U.S.C. §1412 (10) (C) (iii); *Burlington School Comm. v. Dept. of Education*, 471 U. S. 359 (1985); *Alamo Heights ISD v. State Bd. of Education*, 790 F. 2d 1153 (5<sup>th</sup> Cir. 1986)]

## **V. Order**

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is GRANTED. Respondent is ordered to:

1. Contact \*\*\* within 10 days of receiving this Decision to establish the beginning and end dates, and the scope and programming for Petitioner's 8 week Summer Program at \*\*\*. Respondent and \*\*\* staff shall collaborate to design appropriate summer programming, based on Petitioner's educational needs with a focus on social and behavioral needs outlined in the Decision of the Hearing Officer.
2. Contact a qualified provider or providers of Petitioner's choice to provide the IEE within 20 days of this Decision to provide the Individual Educational Evaluation as required under IDEA and its implementing regulations, including a psycho-educational evaluation in all areas of suspected disability, not necessarily limited to:
  - Educational ability and achievement;
  - Functional Behavior Assessment;
  - Behavior Intervention Plan;
  - Behavior supports, strategies and interventions
  - Individual and Family Counseling; and
  - Social Skills Training
3. Conduct an ARD promptly upon receipt of the IEE, but no later than 2 weeks before the start of the 2012-2013 School Year to implement the recommendations of the IEE and incorporate them into Petitioner's IEP.
4. Place Petitioner in a private residential treatment center at public expense if Respondent cannot provide FAPE in accordance with the recommendations of the IEE.

ISSUED in Austin, Texas this 1<sup>st</sup> day of June, 2012.

\_\_\_\_\_/s/\_\_\_\_\_  
Gwendolyn Hill Webb  
Special Education Hearing Officer

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

**SYNOPSIS**

**Issue:** Was Petitioner entitled to placement at a residential treatment center when it was shown that Student had emotional disturbance, and increasing behavior problems in school and out of school required Petitioner to be hospitalized repeatedly as a danger to self or others, such that Student was no longer able to attend school?

**Federal Citation:** 20 U.S.C. §1412(a) (1), and §1412(a) (10) (B); 34 C.F.R. §300.104; *Richardson Independent School District v. Michael Z*, 580 F. 3d 256 (5<sup>th</sup> Cir. 2009).

**Texas Citation:** 19 T.A.C. §89.1125, and §89.61, Tex. Educ. Code, §29.008.

**Held:** *For Petitioner.* Even where Student’s behavioral and emotional difficulties may have resulted from a difficult home situation, Respondent School District that did not provide and implement recommendations from a current educational evaluation to address educational and behavioral needs at school, failed to provide Petitioner a free appropriate public education. Where Petitioner did not show that placement at a private residential treatment center was both essential and made primarily for educational purposes, Petitioner did not prove that Petitioner was entitled to private placement at a residential treatment center at public expense.