

**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT, bnf**

**PARENT,**

**Petitioner,**

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§

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**v.**

§

**DOCKET NO. 200-SE-0511**

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**CORPUS CHRISTI**

§

**INDEPENDENT SCHOOL DISTRICT,**

§

**Respondent.**

§

**DECISION OF THE HEARING OFFICER**

Introduction

Petitioner, Student bnf Parent (“Petitioner” or “Student”) brings this action against the Respondent Corpus Christi Independent School District (“Respondent,” “the school district,” or, “CCISD”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

Party Representatives

Student was represented throughout this litigation by student’s legal counsel Christopher Jonas, Attorney at Law. Student’s grandmother, \*\*\*, and student’s mother, \*\*\*, were also present during the due process hearing. Respondent was represented by its legal counsel Andrew Thompson, Assistant General Counsel for CCISD and his Legal Assistant Heather Ramos. \*\*\*, Coordinator for Psychological Services, served as the party representative for the school district during the due process hearing.

Resolution Session and Mediation

The parties met in a Resolution Session on May 26, 2011 but were not successful in reaching an agreement. The school district declined the opportunity to attempt mediation. The parties conducted informal settlement negotiations but those were not successful in resolving the issues in this case either.

Procedural History

Petitioner filed petitioner’s initial request for hearing on May 16, 2011. An initial Scheduling Order was issued on May 17, 2011 setting the case for hearing on June 16-17, 2011. A prehearing conference was conducted on June 8, 2011 with counsel for both parties. The issues and items of requested relief were identified, confirmed and clarified. The hearing was continued and reset, by agreement, for July 20-21, 2011. The hearing was conducted and completed on July 20, 2011. The record remained open to allow both parties to submit written closing arguments and legal briefs. The Decision of the Hearing Officer was therefore extended to September 27, 2011. Both parties submitted their post-hearing briefs in a timely manner.

## Issues

The following issues were submitted for decision in this case:

1. Whether the school district's proposed placement for the next school year to retain Student in \*\*\* grade in regular education classes is reasonably calculated to provide student with a free, appropriate public education (FAPE) in the least restrictive environment (LRE) within the meaning of the Individuals with Disabilities Education Act (IDEA) and its implementing state and federal regulations;
2. Whether the school district's placement this past school year in regular education classes provided Student with FAPE in the LRE within the meaning of IDEA;
3. Whether the school district failed to provide Student with FAPE during this past school year; by specifically failing to provide Student with:
  - a. an Individual Educational Plan (IEP) that sufficiently addressed student's sensory issues, especially student's resistance to eating;
  - b. an IEP that sufficiently addressed student's needs to develop living and self care skills;
  - c. a summer 2011 program of educational services;
  - d. the use of a vibrating pen as assistive technology for use at home;
  - e. individualized tutoring in all academic subjects and in particular in math; and,
  - f. the use of a "quiet place" when Student became overwhelmed at school during the school day; and,
4. Whether the school district failed to conduct an appropriate evaluation to determine the level of impact Student's sensory deficits have on student's educational program.

## Relief Requested

Petitioner requested the following items of relief:

1. An Admission, Review & Dismissal Committee (ARD) convene for the purpose of revising Student's IEP to include the following:
  - a. the use of a vibrating pen at home as assistive technology;
  - b. an extended year services program in the summer of 2011;
  - c. IEP goals and objectives to address Student's sensory deficits;
  - d. IEP goals and objectives to address Student's need to develop living and self care skills;
  - e. the use of a "quiet place" as an accommodation in student's IEP when Student becomes overwhelmed at school during the school day; and,
  - f. individualized tutoring in all academic subjects and in particular in math;
2. Place Student in regular \*\*\* grade classes with sufficient support services and personnel;

3. Conduct a sensory evaluation and use the results and recommendations to revise Student's IEP as noted above; and,
4. One year of compensatory services (or an amount deemed appropriate by the hearing officer) to address needs and deficits established by the evidence at the due process hearing.

#### FINDINGS OF FACT

1. Student is \*\*\* years old and eligible for special education services from CCISD as a student with autism. There is no dispute about student's eligibility. Petitioner's Exhibit 1, p. 2 (referred to hereafter as "P. Ex. \_\_\_"); Respondent's Exhibit 1, p. 2 (referred to hereafter as "R. Ex. \_\_\_"). Student came to CCISD previously identified by \*\*\* Independent School District as a student with autism and a speech impairment. P. Ex. 10, p. 2; R. Ex. 9, p. 2. Student is due for student's 3 year re-evaluation by May 20, 2012. P. Ex. 1, p. 1; R. Ex. 1, p. 1. The school district plans to conduct a Full Individual Educational Evaluation at that time. Transcript Vol. I, p. 142 (referred to hereafter as "Tr. Vol. I, p. \_\_\_").
2. Student also has a history of severe asthma and chronic migraine headaches. Tr. Vol. I, p. 76; P. Ex. 15, 27. Student required \*\*\* surgery last year and was excused from attending school by student's physician for two weeks. These medical issues had an impact on Student's attendance. Student missed 25 full days of school, additional partial days of school, and 3 unexcused tardies. P. Ex. 12, p. 5; P. Ex. 16; P. Ex. 25, pp. 1-2. The school principal became concerned about the effect the absences had on Student's learning. She discussed her concerns at an ARD meeting with the family. Tr. Vol. I, pp. 149-150; R. Ex. 2, p. 12.
3. Student's grandmother has taken care of Student since student was 2 years old because both student's parents work late hours. Student's grandparents are both retired and take care of Student 85% of the time although student's mother remains very involved. Student's grandmother has power of attorney for Student. Tr. Vol. I, pp. 76-77; Stipulation of Fact No. 1.
4. Last school year Student was in a regular \*\*\* grade inclusion classroom. A special education teacher came into the regular class once or twice a day on a regular schedule. P. Ex. 22; R. Ex. 2, pp. 4, 12; R. Ex. 3, pp. 6, 12; Tr. Vol. I, pp. 32-33, 45. Student received all student's instruction in the \*\*\* grade inclusion classroom with no "pull out" except for testing. Tr. Vol. 1, pp. 29, 122. Student benefits from placement in a regular classroom both academically and behaviorally. Student's peers provide student with appropriate role models. Tr. Vol. I, pp. 42, 44, 122-123, 131.
5. The special education and \*\*\* grade classroom teachers conferred daily and planned lessons together at least once a week. Student's grades were calculated by the special education teacher and recorded by the \*\*\* grade teacher. Tr. Vol. I, pp. 62-65.
6. Student also received occupational therapy (OT) as a related service once a week for 30 minutes per session. R. Ex. 3, pp. 4, 6, 12. Student has difficulty with handwriting. The focus of student's OT IEP was on handwriting using an assistive technology (AT) device known as "Alpha Smart." R. Ex. 2, pp. 6, 14; R. Ex. 3, pp. 12, 15-18, 23; Tr. Vol. I, pp. 50-51. Student used the Alpha Smart for spelling tests, to answer questions in center activities, for small group instruction, and, for review work. Student also used a leaded pencil and special paper. Student's regular \*\*\* grade teacher observed student made "some measure of improvement" in student's handwriting last year. R. Ex. 10; Tr. Vol. I, pp. 33, 58. Student's grandmother requested the school district provide an Alpha Smart for use at home but that request was not fulfilled. R. Ex. 1, p. 24; Tr. Vol. I, pp. 83, 170.

7. The occupational therapist also worked with Student on student's handwriting using a device known as a "vibrating pen." This device was presented to Student towards the end of the \*\*\* grade year. The \*\*\* grade teacher felt student's handwriting improved with the use of the vibrating pen although much of student's handwriting continued to be illegible. Tr. Vol. I., pp. 34-35, 50. The occupational therapist recommended using the vibrating pen for the next school year. P. Ex. 1, pp. 6, 16-17, 19; R. Ex. 1, p. 24.
8. Student struggled in \*\*\* grade math. The first six weeks of \*\*\* grade were used as a period of review and assessment. The \*\*\* grade teacher felt student started the year already behind student's peers. Tr. Vol. I, pp. 65-66. By the second six weeks school staff continued to see Student's difficulties in math and student's frustration mounted. P. Ex. 12, p. 5; Tr. Vol. I., pp. 35-36. An ARD meeting was convened on December 8, 2010. Concerns about Student's difficulty with \*\*\* grade math and attendance issues were discussed. P. Ex. 2, pp. 1, 12.
9. School staff decided to place Student back into a \*\*\* grade math program with 1:1 instruction from the special education teacher. The \*\*\* grade math program was provided to Student with instruction from the special education teacher and a computer program. The special education teacher used highlighters, larger print, manipulatives, shortened assignments and the computer. Tr. Vol. I., pp. 38, 41.
10. The special education teacher provided Student with daily math instruction. She also served several other students in the \*\*\* grade classroom. Tr. Vol. I, p. 45. At times the special education teacher missed a day or two if she was ill or late due to an emergency or if she needed to conduct 1:1 testing but she always made up the time. Tr. Vol. I., pp. 46-47. Although Student was exposed to the daily \*\*\* grade math lesson student worked individually with the special education teacher on the \*\*\* grade curriculum while student's classmates were doing their own work. Tr. Vol. I., pp. 36, 62-63.
11. Student's frustration in math decreased after the change was made to the \*\*\* grade math program. Student worked on using money, counting by 5's and 10's, basic re-grouping and basic calculation skills. P. Ex. 13, p. 3; R. Ex. 10, p. 3; Tr. Vol. I., p. 36-37.
12. Student also had some problems with reading comprehension although student demonstrated competency in reading grade level sight words. A reading comprehension goal was included in student's \*\*\* grade IEP and for the IEP proposed for the 2011-2012 school year. P. Ex. 1.; R. Ex. 10, p. 2; Tr. Vol. I., p. 39.
13. Student was not a behavioral concern for the \*\*\* grade teacher. Student had a small group of friends, was not stigmatized, and higher performing classmates often requested they be allowed to help Student in the classroom. Tr. Vol. I., pp. 41-42. An inclusion expert conducting an observation of the classroom could not identify Student as a student with special needs from student's classmates. R. Ex. 1, p. 12; Tr. Vol. I., pp. 137-138. The \*\*\* grade teacher did not observe any issues related to loud noises for Student or any problems using the restroom. The \*\*\* grade teacher always sent Student to the bathroom with a partner. Tr. Vol. I, pp. 42-43, 48-49.
14. The \*\*\* grade teacher recalled Student did \*\*\* at school once and went home that day. Tr. Vol. I., p. 55. Student does \*\*\* and came home from school a number of times with \*\*\*. The school district never addressed this issue despite requests by student's grandmother to do so. Tr. Vol. I., pp. 88-89, 160, 170.

15. Student cannot dress **\*\*self** independently at home, tie student's shoes, has poor hygiene (for example, student only brushes student's teeth with assistance) and cannot make **\*\*\*self** a sandwich. Tr. Vol. I, p. 89.
16. There was also a lot of math review during the last six weeks in the **\*\*\*** grade classroom. Student made a **\*\*\*** on student's daily grades the last six weeks. P. 12, p. 5; Tr. Vol. I, pp.41, 60-61. Student's success during the final six weeks of math was in contrast to difficulties in math during the previous fifth six weeks. The special education teacher used that time period to evaluate how well Student could work independently using the **\*\*\*** grade math skills they'd been working on. Student clearly struggled to work independently and made a **\*\*\*** for the fifth six weeks. P. Ex. 12, p. 5; Tr. Vol. I, pp. 61-62.
17. Student ate lunch in a separate spot towards the back of the cafeteria. Student's grandmother brought student student's lunch daily because student resisted eating the cafeteria food. She often brought student fast food from McDonalds or Chick-Fil-A. Student ate lunch separately from student's peers because the noise generated by the other students in the cafeteria bothered student. Tr. Vol. I, pp. 57, 90-92.
18. Student is able to feed **\*\*\*self**. Tr. Vol. II, p. 93. The school district advised Student's grandmother not to bring student lunch in order to encourage greater independence. She did not follow this advice because student would not eat and needed help **\*\*\***. Tr. Vol. I pp. 87-88. The school district has discussed Student's need to develop greater independence in the school setting with student's family. P. Ex. 1, p. 9; Tr. Vol. I, p. 87. Student loses opportunities to socialize and develop greater independence by eating lunch separately from student's peers. Tr. Vol. I p. 152.
19. An annual/failure ARD was held on May 4, 2011. P. Ex. 1; R. Ex. At that ARD the occupational therapist explained the use of the vibrating pen, proposed using it the next school year, and gave Student's grandmother information about the pen – suggesting that the family consider purchasing the pen for Student. P. Ex.18.; Tr. Vol. I, pp. 50-51, 67-72, 83-84. The school district did not provide the pen to Student for use at home or over the summer. Tr. Vol. I, p. 72.
20. At the May 4<sup>th</sup> ARD the principal told Student's family that student would not pass **\*\*\*** grade because student was failing math and had excessive absences. P. Ex. 1, pp. 9, 12. The May 4<sup>th</sup> ARD also proposed retaining Student in **\*\*\*** grade for another year due to concerns about student's maturity and below grade level math skills. Student's family disagreed with this proposal because it would be socially detrimental. P. Ex. 1, pp. 8-9; Tr. Vol. I, p. 130.
21. Extended School Year Services were considered but not offered at the May 4<sup>th</sup> ARD. P. Ex. 1, p 9; R. Ex. 1, p. 13. While the use of the Alpha Smart and vibrating pen were both discussed and the school district could provide those devices for use at home the steps needed to set that up were never taken. Tr. Vol. I, pp. 162-164, 166-167.
22. An ARD conducted the previous May developed an IEP for **\*\*\*** grade to be implemented from May 12, 2009 through May 12, 2011. The ARD Supplement for Students with Autism was reviewed at that ARD. In home training was considered but rejected. Instead, implementation of a "daily schedule" was aimed at helping Student with transitions and to ease anxiety about changes at home and school. Student's mother and grandmother also declined the opportunity to receive individual parent training. P. Ex. 3, pp. 5, 20; R. Ex. 3, pp. 12-13.
23. One year later, at the May 4, 2011 ARD, the ARD Supplement for Students with Autism was reviewed

again. This time Student's mother and grandmother requested parent training to learn how to recognize behavior related to Student's autism and respond to it with appropriate interventions. R. Ex. 3, p. 13. Student's grandmother also asked for additional social skill training for Student to address "consistency of independence" between home and school. R. Ex. 3, p. 14.

24. Student's grandmother also raised self care issues at the May 4<sup>th</sup> ARD. The school district offered to provide in home training for the following school year to help Student work on daily living skills. However, there is no evidence that an in home training assessment was conducted. Furthermore, there are no IEP goals or objectives to address sensory issues or daily living skills in Student's \*\*\* grade IEP or in the IEP proposed for the 2011-2012 school year. R. Ex.1, p. 16; R. Ex. 2, pp. 13-17.
25. At the end of the school year an additional eight days of school, known as the Optional Flexible Year Program (OFYP), was provided for students who had attendance issues, didn't pass courses or the TAKS test, or who just needed some extra help. Tr. Vol. I, pp. 51-52, 153-154. Student attended the OFYP through June 6, 2011. P. Ex. 19. . Doing so assisted student in passing math for the last six weeks of the school year. P. Ex. 17, p. 2. A \*\*\* grade teacher worked with Student during the OFYP intervention. She conducted a math review using games, manipulatives, small group and 1:1 instruction. Tr. Vol. I, pp. 59-60. After participating in the OFYP intervention Student passed \*\*\* grade and was promoted to \*\*\* grade. P. Ex. 12, p. 5; P. Ex. 17, p. 2; Tr. Vol. I, pp. 40, 154.

## DISCUSSION

### Proposed Placement This Year

The first issue is whether the school district's proposed placement to retain Student in \*\*\* grade for the 2011-2012 school year provides Student with an appropriate education in the least restrictive environment. To the extent that the school district revised its position on this issue after Student completed the Optional Flexible Year Program (and thus passed \*\*\* grade) this issue now appears to be moot. An issue is moot if there is no longer a live controversy. *Honig v. Doe*, 484 U.S. 305, 317 (1987); *Brown v. Bartholomew Cons. Sch. Corp.*, 442 F.3d 588, 598 (7<sup>th</sup> Cir. 2006).

### \*\*\* Grade Placement Last Year

The second issue is whether Student's placement in a regular \*\*\* grade inclusion classroom during the 2010-2011 school year provided student with an appropriate public education in the least restrictive environment. The evidence showed that Student benefitted academically and socially from placement in the \*\*\* grade inclusion classroom. Student was exposed to the regular \*\*\* grade curriculum and was able to interact with student's regularly developing \*\*\* grade peers. There was some evidence that Student was provided with some meaningful educational benefit from student's placement in the \*\*\* grade inclusion class while also receiving specialized instruction from a special education teacher on a daily basis. I conclude Petitioner did not meet student's burden of proof on this issue. 34 C.F.R. § 300.114 (a)(2)(i)(ii); *Schaffer v. Weast*, 546 U.S. 49, 62, (2005).

### Failure to Address Sensory Issues and Self Help Skills

The evidence also showed that Student copes with some sensory and self help issues that the school district did not assess or adequately address in student's IEP despite family concerns. While there is some evidence that the school district proposed providing in-home training there is no evidence an in home training assessment was ever completed. In addition, there was sufficient evidence to suggest that the school district should have conducted some kind of sensory assessment to determine whether Student does indeed have some issues with excessive noise

(especially in the school cafeteria), tactile resistance to certain foods or textures, as well as whether student needs to develop greater independence in dressing, \*\*\* and hygiene.

The school district had some concerns about Student's maturity and lack of independence which were factors in the initial proposal student be retained in \*\*\* grade. The IEPs lacked any goals and objectives to address Student's need to dress \*\*\*self, \*\*\*, brush student's teeth, tolerate the school cafeteria environment, eat the school cafeteria food or, bring a lunch from home. The evidence showed school district personnel felt Student needed to develop greater independence but the IEP did not address that need. These omissions in Student's IEP resulted in the failure to provide student with FAPE. *34 C.F.R. § 300.101(a); 300.304 (c)(4); See, Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 253 (5<sup>th</sup> Cir. 1997)(whether program is individualized on the basis of student's performance and assessment a factor in determining FAPE).*

### Extended School Year Services

Extended school year services (ESY) must be provided if the ARD determines they are necessary in order to provide the student with FAPE. *34 C.F.R. § 300.106.* In Texas extended school year services are defined as individualized instructional programs beyond the regular school year for students with disabilities. The need for ESY must be determined on an individual basis by the ARD Committee. The need for ESY services must be documented from formal and/or informal evaluations provided by the school district or the parents. *19 Tex. Admin. Code § 89.1065 (1)(2).*

The documentation must demonstrate that in one or more critical areas addressed in the student's current IEP objectives, the student has exhibited (or reasonably may be expected to exhibit) severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means the student has been (or will be unable to) maintain one or more acquired critical skills in the absence of the ESY services. *19 Tex. Admin. Code § 89.1065 (1)(2)* The reasonable period of time for recoupment of acquired critical skills must be determined on the basis of needs identified in the student's IEP. In any case, the period of time for recoupment must not exceed eight weeks. *19 Tex. Admin. Code § 89.1065 (3).*

A skill is "critical" when the loss of the skill results in, or is reasonably expected to result in, placement in a more restrictive instructional arrangement and/or significant loss of acquired skills necessary for the student to appropriately progress in the general curriculum. *19 Tex. Admin. Code § 89.1065 (4)(A)(B).*

The evidence showed that Student entered \*\*\* grade behind student's peers in student's math and could not keep up -- even after the initial six week review and assessment period. The evidence also showed that even when student was provided with 1:1 specialized instruction (a more restrictive instructional arrangement) student could not demonstrate mastery of those skills independently as far into the school year as the fifth six week grading period -- well beyond the eight weeks of recoupment required by state law. Indeed, the evidence showed that student's inability to master the \*\*\* grade math curriculum led to serious consideration of retention at end of the 2010-2011 school year.

By the May 4, 2011 ARD it was reasonable to conclude that Student exhibited severe regression in student's math skills that could not be recouped within a reasonable time period and student could be expected to demonstrate severe or substantial regression in math the next school year. The school district should have offered Student ESY for math in the summer of 2011 and did not do so. This aspect of Student's educational program did not provide student with the requisite educational benefit and thus led to a failure to provide student FAPE in that regard. *34 C.F.R. § 300.106; 19 Tex. Admin. Code § 89.1065.*

## Assistive Technology – Vibrating Pen and Alpha Smart

The school district has a legal obligation under IDEA to make available assistive technology devices or services as part of a student's special education, as a related service, or as a supplementary aid or service when the student needs the device or services in order to receive FAPE. 34 C.F.R. § 300.105. An assistive technology device is any item, piece of equipment or product system that is used to increase, maintain or improve the functional capabilities of a child with a disability. 34 C.F.R. § 300.5.

The evidence showed that Student was provided with the use of an Alpha Smart device at school that was useful in assisting student to respond and participate in instructional and educational activities. The evidence also showed that student would have benefitted from the use of an Alpha Smart at home in order to complete homework. While student had access to the device at school, student did not at home. In that regard the school district did not provide student with FAPE.

The evidence also showed that the occupational therapist experimented with the use of a vibrating pen to improve Student's handwriting and that there was merit in continuing its use for the following school year. While legible handwriting is still a goal for Student the evidence showed that access to the vibrating pen may increase or improve student's functional handwriting capability and, at the very least, maintain that function.

Although the use of the vibrating pen was discussed at the May 4<sup>th</sup> ARD the record is inconclusive as to whether the school district was willing to provide the family with a pen for use at home or whether the family was advised to purchase the device at their own cost. The evidence showed Student should have been provided with continued access to AT services in the use of the vibrating pen both at home and at school and student was not, for whatever reason. Continued work using the vibrating pen was another skill that could have been addressed during an ESY program in the summer of 2011. The failure to do so resulted in a failure to provide Student with FAPE in that regard. 34 C.F.R. §§ 300.5; 300.105.

## Individualized Tutoring and Use of a "Quiet Place"

Petitioner did not meet petitioner's burden of proving the need for individualized tutoring or the use of a "quiet place" at school. There was virtually no evidence that Student became overwhelmed at school or that the use of a quiet place was effective or necessary in addressing any behavioral issues. While there was some evidence that Student may have sensitivity to loud noise, especially in the cafeteria, this does not equate to the need for a "quiet place" without further data to support it. The evidence also showed that Student essentially received individualized tutoring in math from the special education teacher when she worked with student in the \*\*\* grade inclusion class. Petitioner did not meet petitioner's burden of proof on these issues. *Schaffer v. Weast, supra*.

## Evaluation

The school district should have conducted an assessment to address family concerns about Student's sensitivity to noise, tactile defensiveness to certain foods, and lack of age appropriate \*\*\*, hygiene, and self help skills. An in home training assessment was apparently contemplated but never conducted and the service was not provided. School district concerns that Student needed to develop greater independence and that student's grandmother was doing too much for student also warranted an offer of a parent training assessment. Parent training is reasonably calculated to support the family in learning how to foster greater independence for Student.

While Student's three year re-evaluation is not due until next spring it makes sense to conduct the FIE sooner rather than later. The law provides that a re-evaluation must be conducted no later than every three years and whenever other circumstances so warrant. Specifically, the school district must ensure a reevaluation whenever a parent or teacher requests it, or when the school district determines the student's educational or related service

needs warrant the re-evaluation in order to improve academic achievement or functional performance. *See, 34 C.F.R. §300.303 (a)(1)(2)(b)(1)(2).*

Given that Student barely passed \*\*\* grade math and did so only with an intensive intervention, and that student continues to demonstrate difficulty mastering the \*\*\* grade math curriculum, an updated assessment of student's academic skills is warranted in order to determine whether educational and/or related services need to be adjusted to address any academic achievement or functional performance issues. It is an appropriate remedy to order the FIE be conducted this fall rather than waiting until the end of May 2012.

### CONCLUSIONS OF LAW

1. The issue of whether it is appropriate to retain Petitioner in \*\*\* grade for the 2011-2012 school year is dismissed as moot. *Honig v. Doe, 484 U.S. 305, 317 (1987)*. Placement in a regular \*\*\* grade inclusion classroom with instructional support provided by a certified special education teacher and occupational therapy as a related service is reasonably calculated to provide Student with a free, appropriate public education in the least restrictive environment. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 203-204 (1982); 34 C.F.R. § 300.114*.
2. Petitioner's placement in a regular \*\*\* grade inclusion classroom during the 2010-2011 school year with special education instructional support and occupational therapy as a related service, provided Petitioner with a free, appropriate public education in the least restrictive environment. *Id.*
3. Petitioner met petitioner's burden of proving that Respondent failed to conduct sensory, in-home training and/or parent training evaluations in order to address sensory issues and development of age appropriate daily living and self care skills. *34 C.F.R. § 300.304 (c)(2)(3)(4)*. The failure to conduct these evaluations meant those issues were not addressed in Petitioner's IEP and in that regard petitioner's educational program did not provide student with FAPE. *34 C.F.R. § 300.34 (a) (c) (8); 19 Tex. Admin. Code § 89.1055 (e) (3) (6); See, Klein Ind. Sch. Dist., v. Michael F., 118 F. 3d 245, 253 (5<sup>th</sup> Cir. 1997)*.
4. Petitioner met petitioner's burden of proving Respondent failed to offer or provide student with Extended School Year services, specifically to address math skill deficits, during the summer of 2011 and thus failed to provide Petitioner with a free, appropriate public education. *34 C.F.R. § 300.106; 19 Tex. Admin. Code § 89.1065*.
5. Petitioner met petitioner's burden of proving student would have benefitted from the use of assistive technology at home, including specifically an Alpha-Smart and vibrating pen, and that Respondent's failure to provide that technology resulted in a failure to provide Petitioner with a free, appropriate public education. *34 C.F.R. §§ 300.5, 300.105*.
6. Petitioner did not meet petitioner's burden of proving student needed individualized tutoring or the use of a "quiet place" in order to receive a free, appropriate public education. *Schaffer v. West, 546 U.S. 49, 62 (2005)*.

## ORDERS

Based upon the foregoing findings of fact and conclusions of law it is therefore **ORDERED** that Petitioner's requests for relief are **GRANTED IN PART AND DENIED IN PART AS FOLLOWS**:

1. The school district shall initiate and complete a Full Individual Evaluation of Student within 30 school days of the date of this Decision. It is further **ORDERED** that the FIE shall include a full academic assessment, including specifically a math assessment, as well as assessment of Student's self help, daily living skills, including age appropriate hygiene skills, a sensory/tactile evaluation to determine whether Student is sensitive to certain textures, foods and/or noises and, if so, how those sensory issues impact student's ability to function in the school environment.
2. It is further **ORDERED** that the school district shall also initiate and complete an in-home training assessment and a parent training assessment within 30 school days of the date of this Decision.
3. It is further **ORDERED** that Student's grandparents and parents shall cooperate in scheduling all aspects of the FIE, in home training, and, parent training assessments, including executing the requisite written consent for evaluations and in making both Student and themselves available to school district personnel for purposes of the evaluations.
4. It is further **ORDERED** that written reports of the FIE, the in home training and the parent training assessments shall be provided to Student's grandparents and parents at least five school days prior to an ARD meeting that shall be convened, at a mutually agreeable time and date, for the purpose of reviewing and discussing the results of the assessments and making any revisions, adjustments or changes to Student's IEP for the remainder of the 2011-2012 school year;
5. It is further **ORDERED** that Student's grandparents and parents shall cooperate with school district personnel in scheduling and participating in the ARD meeting to review the various assessment;
6. It is further **ORDERED** that the ARD meeting shall also design a plan (as a component of student's IEP) to transition and/or fade Student's grandmother's role in feeding Student lunch and in supervising student's \*\*\* at school. It is further **ORDERED** that the goal of the transition plan should be to decrease Student's resistance to eating school cafeteria food or that student bring a lunch to school that student helps prepare at home. The transition plan must also include strategies to ensure age appropriate self care, hygiene, and \*\*\* skills to the extent any of those are identified as needs by the assessments.

All other relief not specifically stated herein is **DENIED**.

**SIGNED the 23rd day of September 2011**

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Ann Vevier Lockwood  
Special Education Hearing Officer

### NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. *19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).*



**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT, bnf  
PARENT,  
Petitioner,**

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**v.**

**DOCKET NO. 200-SE-0511**

**CORPUS CHRISTI  
INDEPENDENT SCHOOL DISTRICT,  
Respondent.**

**SYNOPSIS**

**ISSUE:**

Whether school district's proposal to retain student with autism in \*\*\* grade for the 2011-2012 school year was reasonably calculated to provide student with a free, appropriate public education in the least restrictive environment.

**HELD:**

**For the school district.** Issue was moot when educational intervention assisted student in passing \*\*\* grade math and student was promoted to \*\*\* grade for the 2011-2012 school year. **34 C.F.R. § 300.114.**

**ISSUE:**

Whether student's placement in a regular \*\*\* grade inclusion classroom during the 2010-2011 school year with special education instructional support and occupational therapy as a related service provided student with a free, appropriate public education in the least restrictive environment.

**HELD:**

**For the school district.** Student received both academic and behavioral benefit from placement in \*\*\* grade inclusion class. **34 C.F.R. § 300.114.**

**ISSUE:**

Whether school district's failure to conduct sensory, in-home training, and, parent-training assessments resulted in failure to provide student with a free, appropriate public education.

**HELD:**

**For the student.** School district should have conducted assessments to address family concerns regarding student's sensory issues and development of age appropriate daily living and self care skills. Failure to conduct these assessments resulted in failure to address those needs in student's IEP resulting in a failure to provide student with FAPE. **34 C.F.R. § 300.34 (a) (c) (8); 19 Tex. Admin. Code § 89.1055 (e) (3) (6).**

**ISSUE:**

Whether student with autism who demonstrated need to work on both \*\*\* and \*\*\* grade math skills needed ESY services in the summer of 2011 in order to receive FAPE.

**HELD:**

**For the student.** Student demonstrated substantial regression and loss of acquired math skills at the beginning of \*\*\* grade and those skills could not be recouped within a reasonable period of time as defined by state regulation. Student could be expected to exhibit significant regression of math skills without providing student with ESY in math. **34 C.F.R. § 300.106; 19 Tex. Admin. Code § 89.1065.**

**ISSUE:**

Whether student needed access to certain assistive technology devices and services at home in order to receive a free, appropriate public education.

**HELD:**

**For the student.** Student met student's burden of proving use of Alpha-Smart and vibrating pen would have been of benefit at home. Failure to provide those services denied student FAPE. **34 C.F.R. §§ 300.5, 300.105.**

**ISSUE:**

Whether student needed individualized tutoring and the use of a "quiet place" at school in order to receive FAPE.

**HELD:**

**For the school district.** Petitioner did not meet petitioner's burden of proving petitioner's need for these services. **Schaffer v. Weast, 546 U.S. 49, 62 (2005).**