

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

**STUDENT,
bnf PARENTS,
 Petitioner,**

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v.

DOCKET NO. 248-SE-0611

**PASADENA INDEPENDENT
SCHOOL DISTRICT,
 Respondent.**

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, Student bnf Parents (“Petitioner” or “Student”) brings this action against the Respondent Pasadena Independent School District (“Respondent,” or “the school district”) 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

Petitioner was represented throughout this litigation by petitioner’s legal counsel Dorene Philpot of the Philpot Law Firm. Petitioner’s parents, ***, were present throughout the due process hearing. In addition, Ms. Philpot was assisted at the due process hearing by her co-counsel Barbara Hannon, Attorney at Law and legal assistant Dee Hereira.

Respondent was represented throughout this litigation by its legal counsel J. Erik Nichols with the law firm of Rogers, Morris & Grover. In addition, ***, Executive Director for Special Populations for the school district was also present during the due process hearing as its party representative. ***, the school district’s designated expert, was also present during the due process hearing.

Resolution Session and Mediation

A Resolution Session was conducted on July 14, 2011 but it was not successful in resolving the issues between the parties. The school district declined the opportunity of attempting mediation before proceeding to hearing.

Procedural History

This case was continued twice – first to resolve scheduling conflicts for both parties and their counsel with the initial hearing date; the second to allow both parties time to conduct informal settlement negotiations and for Petitioner to adequately prepare for hearing given the volume of potential exhibits identified during discovery. The due process hearing was conducted on November 1-3, 2011. The parties requested an opportunity to submit written closing arguments and legal briefs. The parties selected December 16, 2011 as a mutually agreeable date for the submission of written closing arguments and legal briefs based,

Petitioner requested an extension of the briefing deadline. Respondent did not oppose the request. The briefing deadline was extended to December 30, 2011 and the Decision of the Hearing Officer extended to February 6, 2012 in accordance with the agreement of the parties and the regulatory requirements of the IDEA.

Issues

Petitioner submitted a broad issue for decision in this case: Whether the school district failed to devise appropriate Individual Educational Plans (IEP's) for Student in the least restrictive environment within the past two years, and if so, whether that failure constitutes a denial of a free, appropriate public education (FAPE) by causing substantive educational harm within the meaning of IDEA.

Petitioner submitted the following specific issues:

1. ESY: Whether the school district failed to devise and implement an appropriate extended school year (ESY) program for Student and whether the school district used the correct criteria in making its decisions about ESY;
2. Transition Services: Whether the school district failed to devise and implement appropriate *** transition services for Student arising from the school district's alleged inadequate data collection process and inappropriate vocational assessment;
3. Related Services/AT: Whether the school district failed to timely assess and address Student's needs for in-home training, parent training, travel training, assistive technology (AT), functional vocational needs, and sex education; Petitioner specifically also alleges the school district removed AT from Student's program without conducting an AT evaluation;
4. Procedural Issue: Whether the school district provided Student's parents with the requisite notice under the IDEA; specifically, whether the school district failed to provide Student's parents with copies of Student's IEP's and when the school district failed to provide prior written notice when it denied parental requests for changes in Student's program and when it made unilateral changes in Student's program or services, including specifically a parental request for an increase in speech services and ESY services;
5. FAPE: Bullying/Harassment: Whether the school district failed to provide Student with FAPE when it failed to prohibit or protect Student from harassment and/or bullying based on student's disability;
6. FAPE: IEP: Whether the school district failed to devise appropriate and measureable goals and objectives based on Student's present levels of performance and that addressed all areas of needs and, if so, whether that constitutes a denial of FAPE;
7. Procedural Issue: Whether the school district failed to ensure that the Admission, Review & Dismissal Committee (ARD) process was conducted in a collaborative manner and met the requirements of the IDEA – specifically when the school district allegedly continued an ARD meeting after Student's mother was required to leave the meeting to address child care issues and when changes were made to Student's IEP without ARD discussion;
8. Staff Training: Whether the school district failed to provide staff with the appropriate training – specifically with regard to staff responses to parental request for a sex education program for Student and, if so, whether that constitutes a denial of FAPE;
9. FBA/BIP: Whether the school district failed to conduct an appropriate Functional Behavioral Assessment (FBA) in a timely manner and whether the school district therefore failed to develop an appropriate Behavior Intervention Plan (BIP);
10. FAPE: Whether Student needed social skills training in order to receive FAPE and whether the school district failed to provide him with that training;

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11. Other Claims: Whether the school district violated Student's rights under the following additional statutes and laws:
- § 504 of the Rehabilitation Act of 1973
 - Americans with Disabilities Act
 - Family Educational Rights and Privacy Act
 - No Child Left Behind Act
 - § 1983 and Title VI of the 1964 Civil Rights Act
 - Technology Related Assistance For Individuals with Disabilities Act
 - Civil Rights Attorneys Fee Award Act of 1976;
12. Educational Records: Whether the school district failed to appropriately respond to Petitioner's requests for educational records in a timely manner.

Respondent submitted the following issues for decision in this case:

13. Jurisdiction: Whether Petitioner's claims arising under any statute of law other than the IDEA are outside the hearing officer's jurisdiction and should therefore be dismissed;
14. Ripeness: Whether Petitioner's claims related to educational records are ripe for decision under the IDEA in this case;
15. Ripeness – Other Claims/Exhaustion of Administrative Remedies: Whether Petitioner's claims other than those arising under IDEA are ripe for adjudication, including Petitioner's request that the hearing officer declare such claims as outside the jurisdiction of the hearing officer in order to establish Petitioner's exhaustion of administrative remedies including claims for attorney's fees and litigation costs (such as the cost of expert witnesses); and,
16. Statute of Limitations: Whether Petitioner's claims should be limited to those that arose within the one year statute of limitations period applied in Texas.

Requested Relief

In addition to a request that the hearing officer make findings of fact and conclusions of law that establish petitioner's right to relief under IDEA, Petitioner also seeks the following specific items of relief:

1. Reimbursement for private services, evaluations and travel expenses related to those services and evaluations (i.e., mileage) including specifically for 2011 ESY services;
2. Prospective funding by the school district for private services including specifically private placement for the 2011-2012 school year (such as but not limited to *** located in ***, Texas); and
3. Compensatory educational services the amount and type of which is to be determined by the hearing officer as an equitable remedy.

Respondent requests that all of Petitioner's claims, other than those arising under the IDEA, be dismissed as outside the jurisdiction of a special education hearing officer in Texas and that petitioner's IDEA claims be confined to those that arose within the one year statute of limitations applied in Texas. Respondent also seeks a ruling that it has provided Student with a free, appropriate public education and therefore deny Petitioner's requests for relief under the IDEA.

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Jurisdictional Issues

The jurisdiction of a special education hearing officer is limited to issues involving matters related to the identification, evaluation, educational placement or the provision of FAPE under the IDEA. *34 C.F.R. § 300.507 (a); 19 Tex. Admin. Code §§ 89.1151 (a)(b); 89.1170 (a)*. Therefore, to the extent that any of Petitioner's claims arise under any law other than the IDEA those claims are outside the hearing officer's jurisdiction and will be dismissed. This includes Petitioner's claims arising under § 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act (ADA), the Family Educational Rights and Privacy Act (FERPA), the No Child Left Behind Act (NCLB), § 1983 and Title VI of the 1964 Civil Rights Act, the Technology Related Assistance for Individuals with Disabilities Act, and the Civil Rights Attorneys Fee Award Act of 1976.

FINDINGS OF FACT

1. Student is eligible for special education services as a student with autism, mental retardation, and speech impairment. (Joint Exhibit 1-2)(referred to hereafter as "J. Ex. ____")(J-2-35)(J. Ex. 5-1). Student has a history of significant challenges in self-care, daily living, communication, socialization, sensory-motor development, atypical behaviors, and cognitive development. Various assessments over the years show significant delays in intellectual and adaptive behavior. (J. Ex. 5-14). Student has been diagnosed with Pervasive Developmental Disorder NOS (PDD) and Attention Deficit Hyperactivity Disorder (ADHD). (Respondent's Exhibit 5)(referred to hereafter as "R. Ex. ____")(R. Ex. 6-1)(R. Ex. 8-2).
2. Student's developmental disability affects verbal and non-verbal communication, social interaction, learning, independence, and educational performance. (J. Ex. 5-62). Student has difficulties in all areas of language; specifically in critical thinking skills, in the use of language for expressive purposes, and, using language appropriately in social situations and peer interactions. (J. Ex. 5-63). Student needs continuous and consistent educational programming. Research shows that students with autism will regress when skills are not maintained or continually reinforced. (Transcript Vol. I, pp. 85-86) (referred to hereafter as "Tr. Vol. ___, p. ___").
3. Student needs an educational setting that is highly structured with a low student to teacher ratio, an emphasis on the use of visual cues and a combination of small group and individualized instruction. The curriculum and learning activities need to be focused on functional, vocational, and independent living skills. (J. Ex. 5-64).
4. Student's teachers need staff support and training on issues related to autism. Data collection is also an important aspect of Student's educational program. Student needs a plan to collect data on IEP objectives and implementation of a data gathering system. (J. Ex. 5-64). Functional instruction needs to be the focus of Student's educational program. (J. Ex. 5-65).
5. Student learns best in an associative and experiential context. Student needs concrete examples, demonstrations, videos, visual representations, field trips, and hands-on activities. Computer-based instruction is also appropriate for Student. (J. Ex. 5-65). Jobsite vocational experience is also beneficial for Student. (Tr. Vol. II, p. 316).
6. Behavioral programming should include a focus on behaviors that are stigmatizing or interfering with social interaction (J. Ex. 5-65). An appropriate plan to address Student's perseverative speech is to ignore or not react to the perseverative speech and teach him a replacement behavior. (Tr. Vol. I, p. 114).
7. Student also needs a social skills training program with a set of objectives, data collection procedures,

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coordination with professional staff and parents, and an intervention. Student needs direct instruction, modeling, one to one interaction, dyad or small social groups and applied practice in social settings. Simple exposure to others is not an appropriate intervention. Student benefits from participating in a club or school activity aligned with student's strengths for effective participation. (J. Ex. 5-66)(Tr. Vol. II., pp. 294-295)

8. Student also needs to work on student's use of pragmatic language, functional communication including overall intelligibility and conversation repair with corrective feedback across settings. Student also needs to work on expressive language across settings and maintaining a conversational topic about familiar subjects. (Tr. Vol. II, pp. 588-589)(J. Ex. 5-67).
9. It is also important to teach Student safety skills and social skills that relate to strangers, and inappropriate requests made by anyone - known or unknown. Student also needs to participate in a community, work-based learning program to support career awareness, career investigation, and job skill training. Student also needs travel training to address pedestrian safety concerns in coordination with Student's parents so these skills can be practiced across home and school environments. (J. Ex. 5-68) (Tr. Vol. I., pp. 79-80) (Tr. Vol. II., pp. 323-324).
10. Student needs a schedule reflecting minimal unstructured time and activities that will be engaging on a systematic basis linked to IEP goals and objectives. (J. Ex. 5-70). Student is not able to follow the student code of conduct although Student has shown the ability to follow most school rules. A behavior feedback check system was used in *** grade and was very effective in monitoring and recording Student's behavior. (Petitioner's Exhibit 14, p. 47)(referred to hereafter as "P. Ex. ___-___") (Tr. Vol. II, pp. 473-476).
11. Student needs specific instruction in human sexuality because students with autism are very rule governed and lack the ability to identify social nuances. Student has been taught to be polite and compliant so Student is at risk for responding in a compliant manner if touched inappropriately. (Tr. Vol. I., p. 61)(Tr. Vol. II, pp. 305, 352-353). ***. However, Student is capable of learning the rules of human sexuality and appropriate social boundaries. (Tr. Vol. I., pp. 69, 71).
12. It is appropriate to begin sexuality instruction ***. Appropriate sex education for students with autism takes a great deal of time to address. (Tr. Vol. II, p. 359).
13. Information regarding human sexuality needs to be presented to students with autism very frequently and more concretely and specifically. (Tr. Vol. II, p. 356). It is also important to use proper vocabulary. (Tr. Vol. II, p. 357). Learning the parts of both female and male anatomy is an appropriate first step in a sex education program for Student. (Tr. Vol. II, pp. 320-321, 328, 358, 364).
14. ***. Student's mother attended a workshop with Dr. *** in 2009. Following the workshop and the school district's 2009 Full Individual Evaluation (FIE) Student's mother requested sex education be added to Student's educational program. (Tr. Vol. II, p. 531).
15. Student began receiving services from the school district at an early age in combination with Applied Behavior Analysis (ABA) training provided by ***-- a private school. *** is a non-profit program for children with autism and related disorders that uses the principles of ABA in a 1:1 environment. (Tr. Vol. I., p. 53). *** serves both full time and part time students – the combined number of students currently served is around 80. (Tr. Vol. I., pp. 53-54).

16. Student continued to receive services from the school district off and on over the next few years

interspersed with periods of attendance at ***. When *** became a TEA-approved non-public day school the school district agreed to fund Student's placement there for the 2004-2005 school year. (J. Ex. 5-3 to 5-5) (Tr. Vol. I, p. 54).

17. In the spring of 2005 Student was gradually transitioned back into the school district. Student received extended school year services from *** in the summer of 2005 and returned to the public school as *** grader the following school year. Student remained in the school district *** school through student's *** school. (J. Ex. 1-1) (J. Ex. 5-3 to 5-5).
18. Student returned to *** in the summer of 2011 (i.e. after *** grade) and continues to attend there through a parental unilateral placement. (P. Ex. 40-1, 40-21 to 40-30, 40-38) (Tr. Vol. I, p. 57). The summer 2011 *** IEP addressed a number of areas identified by a school district transition assessment, school district IEPs, parent interviews, and an informal assessment using the Brigance. (P. Ex. 26)(Tr. Vol. I, p. 76). Student is currently enrolled in a class at *** with five other students – both verbal and non-verbal. Student is in the middle in terms of the range in cognitive function of student's classmates. (Tr. Vol. I, p. 66).
19. In June 2011 *** conducted a Functional Behavior Assessment and then designed a Behavior Intervention Plan for Student to address student's use of perseverative speech. (Tr. Vol. I, pp. 63-64)(P. Ex. 40-94, 40-95). The BIP has been very effective in reducing Student's perseverative speech. (Tr. Vol. I, pp. 65, 88, 131-132). Student engages in daily activities with peers more often and has begun to initiate conversation with peers. (Tr. Vol. I, pp. 65-66). Student has more community outings and job site opportunities at ***. (P. Ex. 40-3, 40-4, 40-6-40-11, 40-16, 40-17, 40-28, 40-29, 40-69 to 40-71). Student is making progress at ***. (P. Ex. 26-23) (P. Ex. 41-1 to 41-39) (Tr. Vol. I, pp. 81, 89-90, 134) (Tr. Vol. II, pp. 76-77) (Tr. Vol. II, pp. 370, 372, 528-529) (Tr. Vol. II, pp. 370, 375).
20. Student's parents received Notice of Procedural Safeguards on April 22, 2010 (J. Ex. 2-123). (P. Ex. 9-7). Prior Written Notice was also provided to Student's parents on February 13, 2009. (J. Ex. 4-14 to 4-15.) Student's parents were well aware of their procedural rights under IDEA at least since May 2008 when they disagreed with a proposed change in placement and filed a request for a due process hearing. The hearing was resolved through mediation in October 2008. (J. Ex. 5-1, 5-4 to 5-5)(P. 3-1). There is some history of litigation between Student's parents and the school district. (P. Ex. 29-155)(Tr. Vol. I, pp. 155-156, 163).
21. Student's parents, particularly student's mother, were actively engaged and participated in educational planning and making educational decisions for Student. Student's mother made suggestions and requests at almost every ARD meeting and a number of those ideas were included and implemented. She asked questions and received explanations. Student's mother was provided with draft IEP goals in advance of ARD meetings and participated in pre-ARD meetings with school staff to give her input on plans, courses, and IEP goals and objectives. (P. Ex. 14-44)(P. Ex. 17-10)(P. Ex. 27-3, 27-86-87, 116-117, 121)(P. Ex. 29-172, 213, 233-239, 340-353)(P. Ex. 30-42 to 30-45)(J. Ex. 2-35-36)(J. Ex. 3-34 to 3-36)(J. 4-12 to 4-13, 4-15)(Tr. Vol. I, pp. 202-204) (Tr. Vol. III, p. 625).
22. There were frequent and on-going communication between home and school throughout Student's *** school. These communications included a daily communication/assignment notebook and frequent emails on a wide range of issues. (P. Ex. 18)(P. Ex. 27-4 to 27-6)(P. Ex. 27-37 to 27-43, 27-45-48, 27-50-51, 27-55-56, 27-63, 27-65-68, 27-70, 27-132, 138)(P. Ex. 29-142-144, 176, 197-200)(Tr. Vol. I, p. 213).
23. School staff met with Student's mother on a number of occasions to address parental concerns about Student's educational program and placement and to plan for ARD meetings. (P. Ex. 27-91 to 27-94, 121-128)(P. Ex. 29-147). She also met with the classroom teacher every six weeks for a parent-teacher

conference and discussed Student's progress. (Tr. Vol. II, p. 508)(P. Ex. 27-113). Monthly district-wide parent training was also available to Student's parents. (Tr. Vol. III, p. 667).

24. Student was in the *** grade for the 2010-2011 school year. The IEP implemented that year was designed on May 27, 2010 by an Admission, Review & Dismissal Committee (ARD). Student's parents attended the May 2010 ARD and were provided with Notice of Procedural Safeguards. The May 2010 ARD also considered items from the "Autism Supplement" in designing the IEP. (J. Ex. 2).
25. Extended school year services for the summer 2010 were also designed by the May 2010 ARD. The summer 2010 ESY IEP goal was for Student to maintain appropriate social skills as well as a behavioral objective aimed at reducing student's use of preservative speech. (J. Ex. 2-11 and 2-12). The summer 2010 ESY program was divided into two sessions of three weeks each. The entire six week program began June 21, 2010 and ended on August 12, 2010. (P. Ex. 9-4).
26. Breakfast and lunch were components of the summer 2010 ESY program. Students worked on social skills during meal times – eating neatly, having conversations, fixing their own lunch, and cleaning up. 30 minutes per day was also spent playing various games in the gym or talking a walk. The remainder of the daily program was spent in the classroom working on IEP goals and objectives. (J. Ex. 2-29)(P. Ex. 9-4).
27. IEP goals and objectives for *** grade included English/Language Arts, reading, vocational skills, functional academics (math, science and social studies), self help and social skills. (J. Ex. 2-5 to 2-10, 2-19, 2-35). Student's *** grade program also included 140 minutes per six weeks of speech therapy. Student also received transportation as a related service. (J. Ex. 2-18, 2-19, 2-33) (P. Ex. 30-17 to 30-21).
28. Transition *** plans were also components of Student's 2010-2011 IEP and the proposed IEP for 2011-2012. (J. Ex. 1-34 to 1-36, 1-38, 1-47)(J. Ex. 2-30 to 2-32, 2-34, 2-60)(J. Ex. 3-33, 3-41). The transition plans contemplated Student would ***. *** plans included a functional curriculum. (J. Ex. 2-35, 2-36)(R. Ex. 4-1, 4-2). The transition plans were designed, in part, on vocational assessment interviews with Student and responses from parent questionnaires and previous parent surveys. (R. Ex. 4-5 to 4-12).
29. Student was placed in the ***classroom for the 2009-2010 and 2010-2011 school years. (J. Ex. 2-35)(J. Ex. 3-20, 3-21)(Tr. Vol. I, p. 229) (Tr. Vol. II, p. 386) (Tr. Vol. III, 609-610). The *** classroom was staffed by a certified special education teacher and 2-4 paraprofessionals. (Tr. Vol. II, pp. 457-458). The teacher was a fairly young teacher with less than four years experience. (Tr. Vol. II, p. 498). The *** teacher received training in the use of ABA and other various topics related to teaching students with autism both before and during the two years Student was in her class. (Tr. Vol. II, pp. 469-470)(R. Ex. 7) (R. Ex. 8) (R. Ex. 9).
30. In *** grade Student spent five periods of the day in the *** classroom, one period in an inclusive regular *** class, and two periods in another self contained special education classroom in the *** program. The *** program was primarily for students with intellectual disabilities. (J. Ex. 2-35)(P. Ex. 21-3)(Tr. Vol. I, pp. 146, 148) (Tr. Vol. II, pp. 386, 433) (Tr. Vol. III. pp. 647, 651-652). The *** special education teacher also had training in teaching students with autism. (R. Ex. 10).
31. Student also participated in the *** club during the 2010-2011 school year. (Tr. Vol. III, pp. 647, 661-662). The *** teacher made accommodations for Student in instructional approach, grading, and in the scope of specific assignments according to student's needs. (Tr. Vol. III. pp. 656-659). Student benefitted socially from the inclusive ***. (Tr. Vol. III. pp. 659-660, 662)(P. Ex. 29-366).
32. The *** classroom was divided into several areas: leisure, computer, small mock grocery store shelf with a

cash register, a set of tables for students to work on, an area posted with each student's daily schedule, and an area for one on one instruction. (Tr. Vol. II, p. 485). A paraprofessional was posted at student work tables. Students worked independently on maintaining previously mastered skills while the teacher worked one on one with each student on IEP objectives. The students rotated each day to work individually with the teacher. (Tr. Vol. II., p. 486).

33. There were about 9-10 students in Student's *** classroom last year. (Tr. Vol. II, pp. 386, 389). Of that number approximately 4 were non-verbal. (Tr. Vol. II, p. 390). In terms of cognitive ability Student was in the middle between the lower functioning and higher functioning students in the *** class. There were approximately four students who had significant physical needs such as diapering and spoon-feeding. (Tr. Vol. II., p. 391).
34. Student's mother was concerned about the number of non-verbal and high needs students in Student's *** class. She concluded Student was learning maladaptive behaviors from student's lower-functioning peers. (Tr. Vol. I., pp. 157-158, 248-250)(Tr. Vol. II., p. 408). She was also concerned that Student was often given the same worksheet multiple times and that work was not properly corrected. In her view the worksheets were simply "busy work" to keep Student occupied while the staff attended to student's higher needs classmates. (P. 31-182 to P 31-187) (Tr. Vol. II, pp. 442, 554). (Tr. Vol. II, p. 553, 555). (P. Ex. 32-147, 32-162-164, 182). (Tr. Vol. II, pp. 544, 555). (Tr. Vol. II, pp. 551- 552).
35. An Autism Support Services Team (ASST) was in place at the *** school. The ASST had two functions: evaluation and support services. (Tr. Vol. III, pp. 607, 666-667, 697). Evaluations were performed by licensed school psychologists (LSSP), diagnosticians, speech therapists and a teacher. The support services included teacher training, student training and addressing specific issues in the classroom. (Tr. Vol. I., p. 195)(Tr. Vol. III, p. 606). An LSSP/behavior analyst provided training to both *** and *** classroom teachers to ensure the behavioral approach of the programs was consistently implemented in both settings. (Tr. Vol. I, pp. 240-241).
36. The *** teacher was supported and guided by the ASST including an instructional program specialist, a campus support specialist, and a licensed school psychologist/certified behavioral analyst. (Tr. Vol. I, pp. 145, 151, 153, 156, 160, 193, 234)(Tr. Vol. II., pp. 403, 470-471) (Tr. Vol. III, pp. 606, 608-609, 632). (P. Ex. 27-102, 27-105).
37. The IEP implemented during the 2010-2011 school year was developed on the basis of Student's present levels of performance, student's progress on student's IEP from the previous year, the scope and sequence of classroom subject areas (i.e. the TEKS) and the results and recommendations from the May 2009 FIE. (Tr. Vol. III, pp. 678-679, 680-681, 710). (J. Ex. 2-4)(J. Ex. 2). Many components of the ABA approach were integrated into Student's educational program as well as other research-based practices. (Tr. Vol. III, p. 706). Special education staff collaborated and conferred with one another throughout the 2010-2011 school year about Student's needs. (P. 27-106-108, 27-110-111, 27-113-114) (Tr. Vol. I. pp. 161) (Tr. Vol. III, pp. 608-609, 611-613, 614, 633).
38. On ***, 2011 Student was struck by another student in the *** class. Student was taken to the nurse and examined but did not appear to be injured. Student was able to return to the *** classroom and finish student's daily school routine. (Tr. Vol. II, p. 406). Student's mother, the *** teacher, and a special education supervisor were notified. P. Ex. 27-57 to 27-61) (Tr. Vol. I, p. 159) (Tr. Vol. II., p.407). Student's mother discussed the incident with the principal. (P. Ex. 27-63).
39. On ***, 2011 another student aggressively pushed Student coming out of the restroom. Student was again taken to the nurse and examined again with no apparent physical injury. (P. Ex. 27-71 to 27-72). The other

student was disciplined and ***. (P. Ex. 27-76 to 27-78) (Tr. Vol. II, p. 414).

40. The next day Student was waiting to help classmates with a recycling project supervised by the *** teacher. The teacher saw Student ***. The *** teacher, concerned about this self injurious behavior, counseled Student. The *** teacher, school administration and Student's mother were informed of the incident. (P. Ex. 27-74, 27-79) (Tr. Vol. II, p. 410). This was unusual behavior for Student. (Tr. Vol. II, p. 410).
41. Student's parents saw an increase in Student's anxiety level at home during the first three months of 2011. Student *** on at least one occasion and ***. Student also seemed to be perseverating about ***. They were concerned about the self injurious *** behavior. These concerns were shared with school staff. The LSSP/behavioral analyst from the ASST conducted an observation and convened a staffing. The LSSP recommended an in-home training assessment – even though school staff did not see the heightened anxiety at school that Student's parents saw at home. (Tr. Vol. I, pp. 242-246, 251-252, 253, 255)(Tr. Vol. II, pp 373-374, 467)(P. Ex. 13-4). The in home assessment was apparently never completed. (Tr. Vol. II, pp. 459, 569).
42. A parent-teacher conference was conducted on March 8, 2011 to discuss parental concerns that Student was learning maladaptive behavior and regressing behaviorally. (P. Ex. 27-79 to 27-82, 27-84) (Tr. Vol. II, pp. 416, 524-525). However, the *** teacher did not observe the maladaptive behaviors described by Student's mother in her classroom. (Tr. Vol. II, pp. 417-418). Student's psychiatrist prescribed medication to address the anxiety and behaviors that were of concern to Student's parents. Those medications have been adjusted from time to time and have been helpful. Student continues to take medication. (Tr. Vol. II, pp. 526-527).
43. Student's mother requested the school district provide Student with more opportunities to interact with appropriate peer role models. In response, by mid March 2011, the school district arranged for Student *** for the last 5-15 minutes of the school day ***. (P. 27-88-89, 27-91, 27-103) (Tr. Vol. II, pp. 421-422).
44. Student made progress during the 2010-2011 school year. (R. Ex. 2)(Tr. Vol. II, pp. 495, 497)(Tr. Vol. III, pp. 680, 712, 715-716)(P. Ex. 29-174). Student passed the TAKS-Alternative Assessment in all assessed areas in both *** and *** grades. (J. Ex. 6-1). When assessed by an independent evaluator in October 2011 Student's use of perseverative speech had declined since the May 2009 FIE. (Tr. Vol. II, pp. 311-312, 336). The IEE also found Student's behavior significantly improved since the May 2009 FIE. (Tr. Vol. II, pp. 333, 336).
45. A probe in late May 2011 established that only five objectives from Student's IEP had not been mastered at 100% -- four of those in *** and one in vocational skills. These results simply demonstrated Student was not yet able to generalize those skills to another classroom environment or teacher. (Tr. Vol. I, p. 169-170, 180) (Tr. Vol. I, pp. 257-258)(Tr. Vol. II, pp. 431-432)(Tr. Vol. III, pp. 618-619, 623-624)(P. Ex. 29-165, 29-174, 29-202) (R. Ex. 15).
46. An ARD meeting was held on May 25, 2011 to review Student's progress and to plan student's educational program for the 2011-2012 school year. (J. Ex. 1-42 to 1-43, 1-65 to 1-66). Prior to that date school staff held a "pre-ARD" meeting with Student's mother to review school district's recommendations that would be proposed at the ARD, to discuss Student's progress to date, and to secure parental input on Student's educational program for the upcoming school year. (Tr. Vol. I, pp. 202-203). School staff also conducted their own pre-ARD staffings. (Tr. Vol. III, p. 681). As a result of the pre-ARD meetings school staff drafted IEP goals and objectives that included a number of the parental requests. (Tr. Vol. I, p. 203).
47. At parental request the May 25th ARD concluded at 2 pm and reconvened, by agreement, on June 2, 2011.

(J. Ex. 1-43, 1-66 to 1-68). Student's mother had to leave the June 2nd ARD before the deliberations were completed. School staff considered completing the ARD without Student's mother but after conferring with an administrator decided to recess instead. The ARD reconvened on June 14, 2011 by agreement. (J. Ex. 1-45). The June 14th ARD ended in non-consensus. (J. Ex. 1)(P. Ex. 14-43)(Tr. Vol. I, pp. 213-214). School district attempts to reconvene after that date were not successful. (J. Ex. 1-69 to 1-70).

48. For the 2011-2012 school year the school district proposed IEP goals and objectives in English language skills, functional vocational skills, community-based instruction, person health (including learning the reproductive body parts for both gender, "stranger danger," and handling safety situations at work or in the community), vocational/technology skills (including checking and responding to email, using the internet browser and search engine, using a spreadsheet to manage personal finances, and word processing) and social skills (including appropriate speech, following learned social etiquette, using questions, appropriate self advocacy, and appropriate peer interaction skills). (J. Ex. 15 to 1-15) (P. Ex. 14-7 to 14-17). Low student to staff ratios were contemplated by the proposed IEP. (J. Ex. 1-29, 1-31). Speech services were also proposed. (J. Ex. 1-22, 1-46). Daily schedules reflecting minimal unstructured time were included. (J. Ex. 1-27). An in-home training/parent training/community training evaluation was also recommended. (J. Ex. 1-27, 1-46).
49. The ARD also addressed items in the Autism Supplement. (P. Ex. 14-28 to 14-33). Because school staff felt Student did not exhibit maladaptive behaviors that interfered with student's learning no specific behavior intervention plan was proposed for *** grade. (Tr. Vol. III, pp. 610, 725-726)(P. Ex. 14-47). Student continued to do well with the behavior checklist system. (J. Ex. 1-45). The proposed IEP objectives for 2011-2012 were appropriate in meeting Student's needs. (Tr. Vol. III. pp. 713-715).
50. In devising Student's proposed IEP for 2011-2012 the ARD relied on the progress documented by student's teacher as well as goals and objectives drafted by other teaching and support staff based on conversations with the classroom teacher. Results of the Brigance, the classroom probe, and prior evaluations were also considered in designing the proposed IEP. (J. Ex. 1-2) (Tr. Vol. I, pp. 198-199, 220-221) (Tr. Vol. II, p. 487).
51. The school district proposed continued placement in a self contained special education classroom for the 2011-2012 school year. For 2011-2012 the school district combined the *** program with the *** program. The combined programs were renamed the *** program. (Tr. Vol. I, pp. 146, 148)(Tr. Vol. II, p. 386). The needs of students in both the *** and *** classrooms were very similar in terms of skills needed ***. (Tr. Vol. I, pp. 146, 148).
52. The *** and *** staff were also combined into the *** program. (Tr. Vol. I, p. 148). There are four teachers for the *** program with a total number of approximately 30 students. (Tr. Vol. I, p. 148) (Tr. Vol. II, pp. 386-387). ABA was a methodology used by the school district in both the *** and the new *** program. (Tr. Vol. III. p. 702).
53. The number of students in an *** classroom varies depending on a student's individualized needs and how the classes are divided. The range of students in any given *** class is anywhere from 6-12 depending on the number of *** students on each *** campus. (Tr. Vol. I, pp. 146-148). The number can be even less (as low as 3-4) if there is a particular group of students that need a very low student to teacher ratio for a particular subject. (Tr. Vol. I, pp. 149-150)(Tr. Vol. II, pp. 387-388).
54. There are six practices generally considered to be "best practices" for teaching students with autism. (Tr. Vol. III, p. 704). They are: individualized services, systematic instruction, specific curriculum, family involvement, a functional approach to problem behavior, and comprehensible learning environment. (Tr.

Vol. III, p. 705). These six practices have been incorporated in the *** classrooms by the school district and were in place when Student attended *** school from 2009 through 2011. (Tr. Vol. III., p. 705).

55. The school district also proposed IEP goals and objectives for summer 2011 ESY to maintain and reinforce functional academics, social skills, and self help skills. These included: crossing the street safely, interacting appropriately with others, using a calendar, using a calculator, using money, making purchases, and measuring skills. (J. Ex. 1-47) (P. Ex. 14-12, 14-18, 14-35). The ABLE teacher recommended ESY to maintain social skills and continue work on travel training as Student had not mastered that objective by the end of the school year. (Tr. Vol. II, pp. 426-427). Speech services for 30 minutes per week for 5 weeks was also proposed for summer 2011 ESY. (J. Ex. 1-47).
56. Disagreements arose between school staff and Student's parents over a number of aspects of Student's proposed program for the 2011-2012 school year including sex education. Some school staff expressed concern that aspects of the state mandated health curriculum were not appropriate for Student given student's cognitive deficits. Some staff felt Student was not capable of comprehending ***. Student's parents felt some of the staff comments were disrespectful and showed a lack of understanding about Student's need for sex education. (P. Ex. 29-377-378)(Tr. Vol. I, pp. 210)(Tr. Vol. II, pp. 534-536). The comments reflected a focus on Student's disability rather than respect for student's needs and integrity as a person. (Tr. Vol. I, p. 72). The main focus of the parental request for sex education appeared to be ***. (Tr. Vol. I, p. 211).
57. In response to this issue, school staff proposed a set of health objectives as part of Student's proposed IEP. (J Ex. 1-7)(Tr. Vol. I, pp. 171-172, 213, 216-217)(Tr. Vol. III, pp 616-617). Student's present levels of performance for purposes of the health IEP were derived from student's responses to a set of health questions on the Brigance -- a criterion referenced assessment tool. (P. Ex. 42) (Tr. Vol. I, pp. 172-173) (Tr. Vol. III, pp. 615-616, 632-633, 636).
58. The proposed health IEP included objectives aimed at a set of prerequisite skills such as identifying the parts of the body, how to respond to strangers, and appropriate social behavior (such as respecting "personal space"). (J. Ex. 1-7) (Tr. Vol. III, pp. 719-721). The objectives were visual, concrete, and literal -- and therefore appropriate for Student. (Tr. Vol. III, p. 722).
59. Student's parents also disagreed with the proposed Vocational Skills/Technology IEP. The school district proposed Student receive some instruction in a regular education class with support from special education staff and the bulk of direct instruction in a special education setting following, as appropriate, the regular education curriculum. Student's parents requested full time placement and instruction in the regular education class. (Tr. Vol. I, p. 173) (Tr. Vol. I, pp. 207-209, 214-216). (P. Ex. 12-2, 12-3) (P. Ex. 14-47-48) (J Ex. 1).
60. Student's parents also disagreed with the student to teacher ratio and related levels of learning proposed for student's special education classes. School staff proposed a suggested ratio of implementation for IEP of 1 to 1; for IEP objectives at the acquisition level; 1 to 3 at the fluency level; 1 to 5 at the maintenance level; and 1 to 15 for generalization. (P. Ex. 12-3)(J Ex. 1).
61. Student's parents also requested an ESY 2011 summer program that included social skills training with non-disabled peers and peers with appropriate social skills. School staff proposed an ESY program that focused on critical skills (i.e., functional skills in math, social skills, history, and science) in a combination special education setting similar to the ESY program Student received in 2010. The school district's proposed ESY program was scheduled for two sessions, four hours a day, four days a week from June 15, 2011 to July 1, 2011 and July 18, 2011 through August 5, 2011 with transportation as a related service.

Student's parents disagreed with the proposed ESY program. (P. Ex. 12-3)(P. Ex. 14-48)(J. Ex. 1).

62. A copy of the May-June 2011 ARD documents (including the proposed IEPs) was provided to Student's mother via email. The school district also offered a hard copy by mail. (P. Ex. 29-401)(Tr. Vol. I, p. 177). The ARD signature page, a copy of a medicine bottle label, and the ARD deliberations were missing from the first set of documents but transmitted to Student's mother the next day. (P. Ex. 29-406)(Tr. Vol. I, pp. 178-179).
63. The school district notified Student's mother by letter that it planned to implement the proposed IEP for 2011-2012. A Notice of Refusal was included with the letter as well as a Notice of Procedural Safeguards. The Notice of Refusal included the following: a description of the action proposed/refused by the ARD, an explanation of why the action was proposed or refused, the set of alternatives considered before the ARD decisions at issue were made, a description of the evaluation procedures, tests, and records used as a basis for the proposal/refusal, and a description of other factors relevant to the refusal; i.e., the school district's offer of a ten day recess and a response to a previous parental request for an IEE. (P. Ex. 12).(Tr. Vol. I, p. 279)
64. The school district maintains both a computerized data collection system and IEP software. The data collection system is used to document student work on a daily basis. (Tr. Vol. I, pp. 179, 186). The teacher documents on paper student work on IEP objectives every day. The paper system is then input into the computerized system which analyzes the data; the teacher uses the analysis to update IEP goals and objectives every six weeks and then again before the student's next annual ARD. This computerized analysis system is known as "Review 360." (Tr. Vol. I, pp. 196-197). Student's teacher also relied on student's performance on daily worksheets and her observations to gauge student's progress and to prepare periodic progress reports. (Tr. Vol. II, pp. 441-442, 450, 454, 462-463, 477-478, 488).
65. Initially, Student's *** teacher had some difficulty using the data collection system. A member from the ASST provided additional training and guidance and she became more comfortable with it. (Tr. Vol. II, pp. 436-437)(Tr. Vol. III, pp. 628-629). However, a number of data collection sheets were either incomplete or not filled out at all. (Tr. Vol. II, pp. 434-439, 448-449).(P. Ex. 31-165, 32-166, 31-174, 31-293, 31-299, 31-300, 31-301-302, 461).
66. Student's teacher *** towards the end of the 2010-2011 school year. (Tr. Vol. III, p. 618). Student's teacher updated student's IEP goals and objectives for purposes of the annual ARD from her paper data collection system but did not input that data into Review 360 before ***. (Tr. Vol. I, pp. 188-189, 197). By mistake a portion of Student's daily data collection information was packed up with the teacher's personal materials and ***. When this was discovered, school staff directed the teacher to *** and arrangements were made to do so. (Tr. Vol. I, p. 177-178, 278-279, 456-457, 460).
67. A campus specialist took on the task of reviewing the data collected by the classroom teacher to determine Student's present levels of performance in order to update Student's IEP for the annual ARD. When the data couldn't be located, the specialist conducted a probe instead. The classroom teacher also updated the data herself ***. The results of the probe and the teacher updates were used by the ARD in planning Student's program. (Tr. Vol. III, pp. 618-621)(R. Ex. 15-1 to 15-6).

DISCUSSION

Statute of Limitations

A parent may file a due process complaint under IDEA within two years from the date the parent knew or should have known about the alleged action that forms the basis of the complaint. *20 U.S.C. § 1415 (b)(6)(f)(3)(C); 34 C.F.R. §§ 300.503 (a)(1)(2); 300.507 (a)(1)(2)*. The two year limitations period may be more or less if the state has an explicit time limitation for requesting a due process hearing under IDEA. In that case the state timelines apply. *20 U.S.C. § 1415 (f) (3) (C); 34 C.F.R. § 300.507 (a) (2)*.

Texas has an explicit statute of limitations rule. In Texas a parent must file a request for a due process hearing within one year of the date he or she knew or should have known about the alleged action that serves as the basis for the hearing request. *19 Tex. Admin. Code § 89.1151 (c)*. Petitioner filed petitioner's request for a due process hearing on June 29, 2011. Therefore, under the applicable general state rule, Petitioner is confined to claims arising no earlier than June 29, 2010. However, Petitioner has alleged claims arising within the past two years; i.e., as far back as June 2009.

Exceptions to the One Year Statute of Limitations Rule

The one year statute of limitations rule does not apply if the parent was prevented from requesting a due process hearing due to either:

- Specific misrepresentations by the school district that it had resolved the problem that forms the basis of the due process hearing request; or
- The school district withheld information from the parent that it was required to provide under IDEA.

20 U.S.C. § 1415 (f) (3) (D); 34 C.F.R. § 300.511 (f) (1) (2)

Accrual of Petitioner's Claims

Petitioner's cause of action accrued when petitioner's parents knew or had reason to know of the injury that forms the basis of petitioner's hearing request. *Doe v. Westerville City Sch. Dist., 50 IDELR, 132, pp 5-6 (D.C. Ohio 2008) (holding cause of action for failure to provide FAPE when student first diagnosed with a learning disability)*. In making the determination as to whether the exceptions should apply in this case, I must calculate the limitations period as one year from the date Student's parents knew or should have known of the complained of actions of the school districts and *not* one year from the date Student's parents learned from their attorney that school district actions were wrong. *Bell v. Bd. of Educ. Albuquerque Pub. Sch., 50 IDELER 285, pp 8-9, 15-15 (D.C. N.M. 2008)(IDEA claims that student was misidentified as MR rather than LD and thus denied FAPE were limited to two year SOL period)*.

Misrepresentation Exception

Neither the IDEA nor its related regulations clarify the scope of what constitutes a "misrepresentation" under the first exception. The United States Department of Education left it to hearing officers to decide on a case by case basis the factors that establish whether a parent knew or should have known about the action that is the basis of the hearing request. *71 Fed. Reg. 46540, 46706 (Aug. 14, 2006)*. Case law provides some guidance in making that determination.

Intentional or Flagrant

The alleged misrepresentation must be intentional or flagrant. Petitioner must establish not that the school district's provision of FAPE was objectively inappropriate but instead that the school district subjectively determined Student was not receiving FAPE and intentionally misrepresented that fact to student's parents. *Evan H. v. Unionville-Chadds Ford Sch. Dist.*, 2008 U.S. Dist. LEXIS 91442, pp. 4-5 (D.C. Pa. 2008)(school district's failure to identify student as eligible for special education did not constitute a specific misrepresentation – no evidence that school district determined student was eligible for services but specifically misled parents otherwise).

Limited Scope of the Exception

Petitioner contends petitioner's parents repeatedly expressed concerns about Student's educational needs over the years and did not know they could pursue a claim in a due process hearing. However, to read the term "misrepresentation" to include actions by a school district anytime it fails to remedy an educational problem encountered by a student is too broad. Such an interpretation would "swallow the rule established by the limitation period." *Evan H. v. Unionville-Chadds Ford Sch. Dist.*, supra at p. 3, no. 3; *Sch. Dist. of Philadelphia v. Deborah A.*, 2009 U.S. Dist. LEXIS 24505, pp. 3-4(D.C. Pa. 2009) (holding that in hindsight parents may consider the school district's assessment of a student's progress to be wrong, but that does not rise to a specific misrepresentation for statute of limitation purposes).

Conclusion on Misrepresentation Exception

I conclude that the record on file in this case does not support a finding that the school district's actions beginning in June 2009 rose to the level of flagrant, intentional misrepresentation required by the first exception to the statute of limitations rule. In order to apply this exception Petitioner had to establish that the school district knew that it was not providing Student with FAPE and intentionally misled petitioner's parents into believing otherwise. I find insufficient support for such a conclusion in the record. See, *Evan H. v. Unionville Chadds Ford Sch. Dist.*, 2008 U.S. Dist. LEXIS 91441 at p. 5 (D.C. Pa. 2008).

Withholding Information/Prior Notice

The second exception to the application of the one year statute of limitations rule requires a determination that the school district was required to provide Student's parents with prior written notice when it refused parental requests for changes in Student's program and when it allegedly made unilateral changes in Student's speech and ESY services. 20 U.S.C. § 1415 (f)(3) (D).

The information that a school district must provide to parents under IDEA for statute of limitations purposes specifically includes:

- Notice of evaluation procedures the school district proposes to use;
- Notice that the school district has determined no further evaluation is necessary and that parents may then seek an IEE;
- Notice of procedural safeguards; and,
- Prior notice any time the school district proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE or refuses to change the identification, evaluation, or educational placement of the child or the provision of FAPE.

20 U.S.C. § 1415 (b) (6) (A) (B) (c); 34 C.F.R. § 300.511 (f).

Actual or Constructive Notice

When a school district delivers a copy of IDEA procedural safeguards to parents the statute of limitations period for IDEA violations begins regardless of whether parents later examine the text to acquire actual knowledge of procedural rights – the simple act of delivering the procedural safeguards notice suffices to impute constructive knowledge of parental rights under IDEA. *El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (D.C. Tex. 2008), *aff'd in part and vacated on o.g.* 591 F. 3d 417 (5th Cir. 2009). The record on file in this case supports the conclusion that Student's parents received the requisite notice of procedural safeguards.

While Student's parents and others may have expressed concerns about student's educational needs over time, the record on file demonstrates that student's parents were provided with the requisite notice of procedural safeguards by the school district time and time again. In doing so, Student's parents had either actual or constructive knowledge of their right to file a due process hearing at any point along the way whether they knew their concerns were actionable or not. *Deborah A.*, 2009 U.S. Dist. LEXIS 24505 at pp. 4-5; 19 Tex. Admin. Code § 89.1151 (c).

Reasonable Diligence

The record on file clearly establishes that Student's parents were actively involved in and participated in student's educational programming. They participated in any number of ARD meetings and met with school district representatives about Student's educational program. They were given numerous opportunities to resolve their concerns. Therefore they knew, or should have known, of their right to a hearing. *Marc V. v. North East Ind. Sch. Dist.*, 455 F. Supp. 2d 577, 591 (W.D. Tex. 2006). The one year statute of limitations contemplates parental exercise of reasonable diligence to discover facts that give rise to an IDEA claim. The one year time frame is consistent with the legislative intent that special education disputes should be resolved in an expeditious manner.

Prevented from Filing

Furthermore, the record showed that Student's parents exercised their procedural rights and filed a request for a due process hearing in 2008. In order to fall under the exception to the one year limitations period the parents must show they were prevented from filing a request for a due process hearing by the school district's failure to provide prior written notice. Under the facts of this case, even if there was a failure to provide prior notice, the record establishes that such failure did *not* prevent Student's parents from filing a request for a due process hearing. 34 C.F.R. § 300.511 (f). They had prior experience and knowledge of how to do so.

Conclusion on Notice Exception

The allegation that the school district intentionally misled Student's parents or failed to inform them of their right to a due process hearing is simply not supported by the record on file in this case. *Fern v. Rockwood R-VI Sch. Dist.*, 48 IDELER 35, pp. 3-4(D.C. Mo. 2007)(*neither exception applied where record showed parents fully participated in IEP process, met with district representatives and were continuously advised of the status of child's program*). I conclude that the one year statute of limitations applies in this case. Therefore, only those claims that arose beginning on June 29, 2010 will be considered. Any claims arising prior to that date fall outside the one year limitations period and are dismissed. 20 U.S.C. § 1415 (b) (6) (f) (3) (C); 34 C.F.R. §§300.503 (a) (10)(2); 300.507 (a) (1) (2).

Extended School Year Services (ESY)

ESY services must be provided when an ARD determines that the student needs the ESY in order to receive a free, appropriate public education (FAPE). 34 C.F.R. § 300.106(a) (1). ESY means an individualized, instructional program of special education and related services provided to an eligible child with a disability beyond the regular Decision of the Hearing Officer

school year in accordance with the child's IEP, and that meets the standards of the state educational agency. 34 C.F.R. § 300.106 (b) (1) (2); 19 Tex. Admin. Code § 89.1065. In designing an ESY program the school district may not limit ESY services to a particular category of disability or unilaterally limit the type, amount or duration of ESY services. 34 C.F.R. § 300.106 (3) (i) (ii); 19 Tex. Admin. Code § 89.1065 (1) (A) (B).

The need for ESY must be documented from formal and/or informal evaluations provided by the district or the student's parents. The documentation must demonstrate that the student has exhibited or is reasonably expected to exhibit severe or substantial regression that cannot be recouped within a reasonable period of time in one or more critical areas addressed in the student's IEP. 19 Tex. Admin. Code § 89.1065 (2). Severe or substantial regression means the student has been or will be unable to maintain one or more acquired skills in the absence of ESY services.

The preponderance of the evidence shows that the ESY program provided to Student in the summer of 2010 and the proposed ESY program for the summer of 2011 met these legal requirements. Student's need for extended year programming was supported by both formal and informal assessment, including recommendations by student's classroom teacher that Student needed ESY in order to maintain previously acquired skills and avoid regression. The ESY programs both included speech services, social skills, functional vocational skills, independent living skills, and travel training. These features were aligned with IEP goals and objectives that met Student's needs.

The ESY services were individualized and provided Student with the extended programming Student needed to maintain skills and avoid regression. The ESY services were not unilaterally limited to a specific disability category nor unilaterally limited to a certain type, amount, or duration – the ESY services received and proposed were those Student needed to maintain skills and avoid regression. *See, North Hills Sch. Dist., 39 IDELR 254 (SEA Pa. 2003)(school district's proposed ESY of 3 hours a day, 4 days a week for 5 weeks with related services met student's needs).*

Transition Services

The preponderance of the evidence showed the school district's program in 2010-2011 and the proposed program for 2011-2012 included appropriate transition plans. The IEPs *** a transition plan as well as appropriate goals and objectives aimed at providing Student with the ***. Learning the appropriate parameters of human sexuality is also a necessary component of an appropriate transition plan for Student. The record shows the school district also addressed that need albeit somewhat belatedly. Petitioner did not meet petitioner's burden of proof on this issue. 34 C.F.R. §§ 300.43; 300.320(b) (1)(2); *Schaffer v. Weast, 546 U.S. 49, 62 (2005).*

Related Services and Assistive Technology

In Home Training

The evidence suggests that the school district contemplated the need for in home training services to address parental concerns over Student's apparent anxious and maladaptive behavior at home. However, the evidence also showed that while the need for an in home training assessment was apparently recommended at the 2011 annual ARD it was never completed and the record is unclear as to why that was so. Because there was a difference in behaviors noted at home versus school, and because Student needs to learn to generalize across environments, the school district should have followed up and initiated an in home training assessment. The record fails to confirm that the school district at least attempted to secure parental consent for an in home training assessment. *See, 19 Tex. Admin. Code § 89.1055(e) (3).*

Parent Training

Parent training means assisting parents in understanding the special needs of their child, providing parents with information about child development, and helping parents acquire the necessary skills that facilitate implementation of their child's IEP. 34 C.F.R. § 300.34 (c) (8) (i) (ii) (iii). Student's mother testified that she would have benefitted from some training in how to provide Student with appropriate sex education and travel training.

However, Student's mother was active and informed in making suggestions and proposals for various aspects of Student's educational program. The evidence demonstrated that Student's parents had a good understanding of student's special needs and were capable of supporting the implementation of student's IEP. Although a parent training assessment was discussed at the 2011 annual ARD Petitioner did not meet petitioner's burden of proving that without specific parent training Student was not provided with FAPE. *Shaffer v. Weast, supra*.

Travel Training

The record confirms Student's need for travel training as a component of student's educational program. The record also confirms the IEP for the 2010-2011 school year and the proposed IEP for the 2011-2012 school year both contained travel training goals and objectives. The classroom teacher recommended ESY for summer 2011 in part to continue working on travel training because Student was still having difficulty mastering crossing the street safely. Naturally this was a huge concern for student's parents – and Student's attentional and cognitive deficits posed challenges to school staff in providing effective travel training instruction. The mere fact that Student had not mastered the skill at the 100% mastery level does not mean the educational program failed to adequately address the need. Indeed, the evidence showed that Student continues to work on travel training in student's private placement as well. Petitioner did not meet petitioner's burden of proof on this issue. *Id.*

Assistive Technology

The record is scarce with regard to Student's need for assistive technology with the exception of a single AT consult in February 2011. (R. Ex. 3). However, there was also evidence that aspects of the proposed program for 2011-2012 included goals and objectives for the development of some technological skills including using a calculator, using an Internet search engine and browser, and responding to email. Student had access in the classroom to the assistive technology needed to work on student's IEP objectives. 34 C.F.R. §§300.6. Therefore, Petitioner did not meet petitioner's burden of proof on this issue. *Id.*

Functional/Vocational Needs

The evidence supports Student's need for an educational program that focuses on the development of functional vocational skills – the development of functional language, appropriate social behavior, specific vocational skills that can be applied in the workplace, etc. Functional and vocational skills were addressed in Student's IEPs. While the school district's program lacked the degree of community, job-site based instruction Student now receives in student's private placement, some attention was paid to the development of functional and vocational skills. This aspect of Student's program could have been better; however, the law does not require Student be provided with the best program possible – only one that is reasonably calculated to provide some meaningful benefit. *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 2d 245, 247-248 (5th Cir. 1997)*. The evidence showed that in this regard it did. *See also, K.L.A. v. Windham Southeast Supervisory Union, Dummerston Sch. Dist., 2010 U.S. App. LEXIS 6510 (2nd Cir. 2010)(IDEA does not and cannot guarantee everything that a parent might desire for his or her child in an ideal world).*

Sex Education

The evidence showed that students with autism like Student need concrete, specific instruction in ***, and what is and isn't appropriate social and sexual behavior. The evidence also showed that mastery of prerequisite skills as a threshold matter is needed before the student can move on to the more complicated aspects of human sexuality. It was not until Student's mother initiated the topic herself that the school district began to address this need. It is understandable that Student's parents ***.

Although some school staff expressed skepticism over Student's ability to understand human sexuality the school district did respond to the parental request. Appropriate IEP goals and objectives were added to Student's program in 2010-2011 and continued in the proposed program for 2011-2012. These focused on the set of prerequisite skills Student needed to address student's personal safety. Even though the school district was somewhat tardy in providing this instruction there was insufficient evidence to conclude this resulted in a substantive educational harm. Petitioner did not meet petitioner's burden of proof on this issue. *Shaffer v. Weast, supra*.

Bullying/Harassment

The evidence does not support a finding that Student was the victim of continuous bullying or harassment at school or that the school district failed to address it. Instead the evidence demonstrated that another special education student, on two occasions, was physically aggressive towards Student. Although these incidents were distressing to both Student and student's parents there was insufficient evidence to suggest this reflected a pattern of bullying or harassment.

The evidence showed the school district took appropriate steps in addressing the physical aggression of the other student, ensured Student was not physically harmed, and notified all necessary stakeholders. Petitioner attempts to argue there was a correlation between the two acts of physical aggression and student's self injurious behavior which consisted of *** incident at school and *** at home. Mere parental speculation is insufficient to prove that was so. Petitioner did not meet petitioner's burden of proof on this issue. *Id.*

IEP

Objective and Measureable Goals and Objectives

The IDEA requires an individualized education program (IEP) for each child with a disability in need of special education. 34 C.F.R. § 300.320 (a). The IEP must include a statement of measureable annual goals, including academic and functional goals, designed to meet the child's needs in order to allow the child to be involved in and make progress in the general curriculum and meet the child's other educational needs that result from the child's disability. 34 C.F.R. § 300.320(a) (2) (i) (A) (B). The IEP must also include a description of how the child's progress in meeting the annual goals will be measured. 34 C.F.R. § 300.320(a) (3) (i).

A review of the record shows that the IEPs implemented during the 2010-2011 school year and those proposed for the 2011-2012 school year met these requirements. The IEPs addressed Student's complex and significant social, behavioral, academic, functional, and vocational needs. They included measureable goals and objectives in each subject area. A description of the mastery criteria was also included. Petitioner did not meet petitioner's burden of proof on this issue. *Shaffer v. Weast, supra*.

Present Levels of Performance

The IDEA also requires that the IEP include a statement of the child's present levels of academic achievement and functional performance including how the child's disability affects the child's involvement and progress in the Decision of the Hearing Officer

general education curriculum. 34 C.F.R. § 300.320 (a) (1) (i). The record supports the conclusion that the IEPs at issue met these requirements. Petitioner did not meet petitioner's burden of proof on this issue. *Schaffer v. Weast, supra*.

Areas of Need

A review of the record supports the conclusion that the IEPs at issue addressed all areas of Student's needs. The IEP implemented in 2010-2011 included annual goals and objectives in the following areas: vocational skills, functional academics, English/Language Arts, social skills, reading, and self help skills. The IEP proposed for 2011-2012 included annual goals and objectives in the following areas: English/Language arts, functional vocational skills, health (including prerequisite skills for human sexuality education), vocational technology, and social skills. 34 C.F.R. § 300.320(a) (2) (i) (A). Petitioner did not meet petitioner's burden of proof on this issue. *Schaffer v. Weast, supra*.

Data Collection

The evidence shows data collection was a component of Student's educational program. The evidence also showed that there were some issues in the use and maintenance of that data. However, the evidence also demonstrated that the teacher received assistance in using the data collection system and that additional information, including formal and informal assessment and staff observations, were also used in gauging Student's progress and in educational program planning. Petitioner made much of the various aspects of the data collection system during the hearing. While the evidence showed some improvement in the use of data collection may be needed I cannot conclude it was so faulty as to deprive Student of the requisite educational benefit. *Id.*

Staff Training

Petitioner contends that comments made by some school staff about Student's need for instruction on human sexuality revealed a lack of understanding and thus the need for staff training. The record reflects that some school staff expressed reservations about Student's ability to comprehend and respond appropriately to the subject matter. However, a few comments by a some members at a single ARD do not lead to the conclusion that the entire staff needs training. What does suggest the need for staff training is the fact that it was the parent, and not school staff, who initiated the addition of human sexuality to Student's educational program. In that regard if staff had been trained on how to teach human sexuality to students with autism and intellectual disabilities the school district might have addressed Student's needs in this area before *** grade. School staff needed training to recognize that this subject matter is a necessary component of Student's ***. 34 C.F.R. § 300.43; 19 Tex. Admin. Code § 89.1055 (e) (10).

Functional Behavior Assessment/Behavior Intervention Plan (FBA/BIP)

The evidence showed that there was no educational need for conducting a Functional Behavior Assessment (FBA) and then developing and implementing a specific BIP for Student during the 2010-2011 school year or for the 2011-2012 school year. School staff did not see significant maladaptive behaviors that interfered with Student's ability to learn. For the most part Student was compliant, easily redirected, and not considered to be a behavior problem. Petitioner contends Student's continued use of perseverative speech called for an FBA and BIP.

The record confirms student's current private placement conducted an FBA and designed a BIP and has been effective in reducing Student's perseverative speech. However, the record also shows that school staff did not view the perseverative speech as a behavioral issue. Although it would certainly have been useful for the school district to collect specific data and analyze the behavior the failure to do so does not equate to a failure to provide Student with FAPE. The use of a behavioral checklist and redirection were effective in addressing any behavioral issues at school. Petitioner did not meet petitioner's burden of proof on this issue. *Schaffer v. Weast, supra*.

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Social Skills Training

Student needs social skills training and the record demonstrates it was a component of student's educational program during the 2010-2011 school year and of the proposed program for the 2011-2012 school year. Although Student's mother would have preferred a different methodology (i.e., greater interaction with non-disabled, socially appropriate peers) that preference does not translate into a failure to provide Student with FAPE. *Lachman v. Illinois St. Bd. of Educ.*, 852 F. 2d 290, 297 (7th Cir. 1988) (no matter how well-motivated parents do not have the right under IDEA to compel use of a specific program or methodology); *Stanley C. v. M.S.D. of Southwest Allen Cnty.*, 628 F. Supp. 2d 902, 967 (D.C. Ind. 2008) (parents mere disagreement with school's appropriate methodology insufficient to conclude school failed to provide FAPE).

Student's IEPs included specific goals and objectives addressing the development of appropriate social skills. Student practiced those skills in student's special education classes, the *** class, ***, during ESY, and during the limited time spent ***. The fact that the social skills training Student now receives in student's private placement might be qualitatively better does not mean Student failed to receive some meaningful educational benefit from the social skills training at school. The evidence showed that Student did.

Procedural Issues

ARD Meetings

Petitioner contends the school district failed to conduct ARD meetings in a collaborative manner. The evidence leads to the opposite conclusion. School staff met with Student's mother in advance of ARD meetings to gain parental input and share ideas. A number of parental requests were incorporated into Student's program. Contrary to Petitioner's contention the June 2nd ARD meeting did not continue without parental participation but instead was recessed and reconvened at a mutually agreed upon date. The school district met its obligations under IDEA to ensure parental participation in ARD meetings. 34 C.F.R. § 300.322 (a).

Educational Records

Petitioner contends the school district failed to respond to petitioner's request for educational records in a timely manner. With the exception of a copy of the Brigance Transition Skills Inventory scoring sheets (produced after the hearing and later admitted as Petitioner's Exhibit 42) there was insufficient support in the record to reach that conclusion. A voluminous set of records were produced to Petitioner by the school district during the pre-hearing phase of this case. Indeed, a continuance of the due process hearing was granted at Petitioner's request in part to allow petitioner's legal team more time to review them all.

Even if the failure to timely produce Petitioner's Exhibit 42 (the Brigance Transition Skills Inventory scoring sheets) was a procedural error I do not conclude the error resulted in a substantive educational harm. The document is related to Student's transition needs. IEP goals and objectives were developed to address those needs. The fact that Student's parents were not able to review this specific educational record did not have an effect on whether Student was provided with FAPE.

In matters alleging a procedural violation a hearing officer may find a child did not receive FAPE only if the procedural inadequacy impeded the child's right to a free, appropriate public education, significantly impeded the parent's opportunity to participate in the decision making process, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513 (a)(2)(i)(ii)(iii). I find none of those occurred from the record on file in this case.

IEP Documents

The evidence established Student's parents were provided with copies of Student's IEPs and ARD documents. Although there was some evidence that select pages were missing from a particular set of documents (and later delivered) does not mean the school district failed to fulfill procedural requirements under the IDEA. Student's mother was actively involved in all aspects of educational planning and decision-making for Student -- she knew to ask for documents (including IEPs and ARD documents) -- and did so. No substantive deprivation of FAPE occurred. 34 C.F.R. § 300.513 (a) (2). Petitioner did not meet petitioner's burden on this issue. *Shaffer v. Weast, supra*.

Requisite Notice to Parents

The record reflects that the school district met its obligations to provide Student's parents with the requisite notice under IDEA. Student's parents received notice of ARD meetings; they received Notice of Procedural Safeguards; and, they received a formal, written Notice of Refusal when the May/June 2011 ARD meetings finally ended in non-consensus. Petitioner did not meet petitioner's burden of proof on this issue. *Id.*

CONCLUSIONS OF LAW

1. All of Petitioner's claims, other than those which arise under the Individuals with Disabilities Education Act are dismissed as outside the hearing officer's jurisdiction under IDEA. 34 C.F.R. § 300.507 (a); 19 Tex. Admin. Code §§ 89.1151; 89.1170.
2. Petitioner's claims arising before June 29, 2010 are dismissed as outside the applicable one year statute of limitations rule applied in Texas. 20 U.S.C. § 1415 (b)(6); 34 C.F.R. § 300.507 (a)(1)(2).
3. The school district devised, implemented and proposed an appropriate extended school year program (ESY) for Student and used appropriate criteria in making decisions about ESY. 34 C.F.R. § 300.106 (a) (b); 19 Tex. Admin. Code § 89.1065..
4. The school district devised and implemented an appropriate transition services plan for Student using appropriate assessment data. 34 C.F.R. §§ 300.43; 300.320 (b)(1)(2); 19 Tex. Admin. Code § 89.1055 (g).
5. The school district addressed Student's need for related services in a timely and appropriate manner including student's needs for travel training, assistive technology, functional vocational needs and sex education. 34 C.F.R. § 300.34.
6. Petitioner failed to meet petitioner's burden of proving the school district removed assistive technology as a related service improperly. *Shaffer v. Weast, 549 U.S. 49, 62 (2005)*.
7. The school district failed to request parental consent for an in-home training assessment when it was recommended and discussed at the annual ARD. 34 C.F.R. § 300.34; 19 Tex. Admin. Code § 89.1065 (e) (3).
8. The school district provided Student's parents with the requisite prior written notice under IDEA. 34 C.F.R. §§ 300.503; 300.504.
9. The school district provided Student's parents with the requisite IEP documents under IDEA. 34 C.F.R. § 300.322 (f).

10. Petitioner failed to meet petitioner's burden of proving Student was a victim of bullying or harassment or that the school district failed to provide him with a free, appropriate public education. *Schaffer v. Weast, supra.*; 34 C.F.R. § 300.17.
11. The school district met its obligations under IDEA to devise appropriate and measureable IEP goals and objectives that addressed all areas of need and based on Student's present levels of performance. 34 C.F.R. § 300.320 (a).
12. The school district conducted Admission, Review & Dismissal Committee (ARD) meetings in a collaborative manner and convened ARD meetings following the required procedures under IDEA. The school district met its obligations to ensure parental participation in ARD meetings as required by IDEA. 34 C.F.R. § 300.322.
13. The school district did not provide school staff with appropriate training with regard to Student's need for instruction in human sexuality as a component of student's ***. 19 Tex. Admin. Code §89.1055 (e) (10).
14. Petitioner did not meet petitioner's burden of proving petitioner's need for a functional behavioral assessment or a Behavior Intervention Plan beyond the behavioral supports and strategies utilized by the school district in implementing petitioner's Individual Educational Plan. *Schaffer v. Weast, supra.*; 34 C.F.R. § 300.324 (a)(1)(2)(i).
15. Petitioner did not meet petitioner's burden of proving the social skills training provided and proposed did not confer the requisite educational benefit on Student under the IDEA. *Schaffer v. Weast, supra.* ; 34 C.F.R. § 300.17.
16. The school district met its obligations under IDEA to provide parental access to Student's educational records. 34 C.F.R. 300.501. To the extent that any records were not provided to Student's parents in a timely manner that procedural error did not result in a substantive educational harm. 34 C.F.R. § 300.513 (a) (2).

ORDERS

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

The school district shall submit to Student's parents in writing a request for parental consent to conduct an in-home training assessment within ten (10) school days of the date of this Decision; it is further **ORDERED** that Student's parents may consider whether they wish to pursue an in-home training assessment and must notify the school district within ten (10) school days of the date they receive the request for parental consent by signing and returning written parental consent or by declining the school district's offer in writing.

It is further **ORDERED** that should Student's parents consent to an in-home training assessment the assessment shall be conducted by mutual agreement of the parties (but no later than 30 days from the date the parents notify the school district of their consent unless the parties agree otherwise).

It is further **ORDERED** that an Admission, Review & Dismissal Committee shall be convened within ten (10) days of completion of the in-home training assessment report for the purpose of reviewing the results of the assessment and to design an in-home training program, if needed, and to be implemented on the basis of a schedule agreed upon by the parties.

As compensatory and equitable relief, it is further **ORDERED** that the school district shall provide staff training to all special education teaching staff and all high school ASST staff on the *** campus Student attended on teaching human sexuality appropriately to students with autism. It is further **ORDERED** the school district may provide this training in any format, at any time, and using any instructional materials or resources it chooses so long as the training is completed before the end of the first six weeks of the upcoming 2012-2013 school year.

It is further **ORDERED** that Respondent's request for dismissal of Petitioner's claims that arise outside the one year statute of limitations period applied to IDEA claims in Texas is **GRANTED** and those claims are hereby **DISMISSED**.

It is further **ORDERED** that Respondent's request for dismissal of Petitioner's claims that arise under any law other than the Individuals with Disabilities Education Act are **DENIED FOR WANT OF JURISDICTION**.

It is further **ORDERED** that all other claims for relief not specified herein are **DENIED**.

SIGNED the 6th day of February 2012

/s/ Ann Vevier Lockwood

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 PARENTS,
 Petitioner,**

§
§
§
§
§
§
§
§

v.

DOCKET NO. 248-SE-0611

**PASADENA INDEPENDENT
SCHOOL DISTRICT,
 Respondent.**

SYNOPSIS

ISSUE:

Whether Petitioner’s claims arising under any law other than the Individuals with Disabilities Education Act (IDEA) should be dismissed as outside the jurisdiction of a special education hearing officer in Texas.

HELD: FOR THE SCHOOL DISTRICT

Jurisdiction of special education hearing officer in Texas strictly limited to those issues specifically stated in the IDEA. All other claims dismissed for want of jurisdiction. **34 C.F.R. § 300.507 (a); 19 Tex. Admin. Code §§ 89.1151, 89.1170**

ISSUE:

Whether Petitioner’s claims arising more than one year from the date Petitioner filed the request for hearing should be dismissed as outside the statute of limitations period applied in Texas.

HELD: FOR THE SCHOOL DISTRICT

Petitioner did not prove the two exceptions to application of the one year statute of limitations period applied in Texas. All claims arising more than one year from the date Petitioner filed the request for hearing dismissed. **20 U.S.C. § 1415 (b) (6); 34 C.F.R. § 300.507(a) (1) (2)**

ISSUE:

Whether school district devised, implemented and proposed appropriate extended school year (ESY) services to *** with autism and intellectual disabilities.

HELD: FOR THE SCHOOL DISTRICT

School district provided and proposed ESY programs for student in order to maintain and avoid severe regression in critical skills aligned with student’s IEP. Petitioner failed to meet burden of proof on this issue. **34 C.F.R. § 300.106; 19 Tex. Admin. Code § 89.1065**

ISSUE:

Whether school district devised and implemented appropriate transition services plan for teen age student using appropriate data.

HELD: FOR THE SCHOOL DISTRICT

IEPs included *** plan and transition plan as well as IEP goals and objectives to address *** student's needs to develop independent and functional skills ***. Teaching human sexuality a component of student's transition needs. **34 C.F.R. §§ 300.43; 300.320 (b) (1) (2)**

ISSUE:

Whether school district met student's need for related services in a timely and appropriate manner including specifically, travel training, assistive technology, functional vocational skills and sex education.

HELD: FOR THE STUDENT IN PART AND SCHOOL DISTRICT IN PART

IEPs all reflected appropriate goals and objectives for travel training, functional vocational skills, access to assistive technology, and sex education. However, school district should have considered student's need for sex education at earlier point in time. **34 C.F.R. § 300.34**

ISSUE:

Whether school district failed to conduct in-home training assessment in a timely manner.

HELD: FOR THE STUDENT IN PART AND SCHOOL DISTRICT IN PART

Although school district recommended in-home training assessment at annual ARD evidence showed school district failed to initiate parental consent for the assessment while ARD discussions on other aspects of student's program were on-going over course of three meetings at the end of the school year that ultimately ended in non-consensus. **34 C.F.R. § 300.34; 19 Tex. Admin. Code § 89.1055 (e) (3)**

ISSUE:

Whether the school district provided student's parents with requisite prior written notice as required by IDEA.

HELD: FOR THE SCHOOL DISTRICT

School district provided parents with Notice of Procedural Rights, notice of ARD meetings and, written Notice of Refusal when series of annual ARD meetings ended in non-consensus. **34 C.F.R. § 300.503; 300.504**

ISSUE:

Whether the school district provided parents with IEP documents as required by IDEA.

HELD: FOR THE SCHOOL DISTRICT

Evidence showed school district provided parents with IEP documents, including transmitting a few additional pages that were mistakenly omitted the day after the IEP documents were transmitted. **34 C.F.R. § 300.322 (f)**

ISSUE:

Whether school district failed to provide student with FAPE by failing to protect student from bullying/harassment.

HELD: FOR THE SCHOOL DISTRICT

Evidence showed student was object of physical aggression on only two occasions by special education classmate. School district ensured student not physically injured, notified all interested stakeholders, disciplined the aggressor, and took steps to keep the two students apart. This did not constitute a pattern of bullying or harassment and school district handled the matter properly. **34 C.F.R. § 300.17**

ISSUE:

Whether school district met its obligations under IDEA to devise IEP with objective and measureable goals and objectives that addressed all areas of need and based on present levels of performance.

HELD: FOR THE SCHOOL DISTRICT

All IEPs included objective and measureable goals and objectives that met student's extensive set of educational, social, vocational, and behavioral needs and IEP designed by ARD considered student's present levels of performance. **34 C.F.R. § 300.320 (a).**

ISSUE:

Whether school district conducted ARD meetings in collaborative manner in order to ensure parental participation.

HELD: FOR THE SCHOOL DISTRICT

School district met with parent in advance of ARD meetings, took parental suggestions and requests into consideration and convened ARD meetings at mutually agreeable times. When parent left second ARD school staff initially considered whether to continue without parent but after conferring with school administrator recessed the meeting instead. ARD reconvened on mutually agreeable date. **34 C.F.R. § 300.322**

ISSUE:

Whether school district failed to provide school staff with proper training on student's need for sex education as component of student's ***.

HELD: FOR THE STUDENT IN PART AND THE SCHOOL DISTRICT IN PART

Some staff comments that questioned student's ability to comprehend human sexuality aspects of health curriculum were offensive to parent and demonstrated insensitivity to student's needs to learn appropriate social behavior and for personal safety, including sexuality. Parent, not school staff, initiated the need to include sex education as component of student's educational program. Consideration of this need should have occurred much earlier in time ***. School district ordered to provide staff training on the subject matter as equitable and compensatory relief.

ISSUE:

Whether school district failed to conduct a Functional Behavioral Assessment and then design a Behavior Intervention Plan for student with autism who displayed perseverative speech and lacked social skills.

HELD: FOR THE SCHOOL DISTRICT

Student did not display behaviors that interfered with student's learning at school. School district employed a daily behavior checklist and redirection strategies in addressing student's behavior. Student's use of perseverative speech lessened over the years. Although an FBA and analysis of the use of student's perseverative speech would have been useful student did not meet burden of proving Student did not receive FAPE without it. **34 C.F.R. § 300.324 (a) (1) (2) (i)**

ISSUE:

Whether the school district failed to provide *** with autism and intellectual disabilities with appropriate social skills training.

HELD: FOR THE SCHOOL DISTRICT

Student did not meet burden of proving the social skills training provided and proposed failed to confer the requisite educational benefit. Parent may not compel school district to employ a specific method or program simply because they prefer it. **34 C.F.R. § 300.17; 19 Tex. Admin. Code § 89.1055 (e)(9)**

ISSUE:

Whether school district met its obligations under IDEA to provide parental access to student's educational records, including documents requested in due process hearing.

HELD: FOR THE SCHOOL DISTRICT

School district produced voluminous set of educational records during prehearing phase and Petitioner received a continuance in part to provide Petitioner's legal team with more time to review them all. A single document (scoring sheets from criterion-referenced transition inventory) was not produced until after hearing concluded but before the record was closed and was admitted into evidence. No substantive educational harm for this procedural error. **34 C.F.R. § 300.501; 300.513 (a) (2).**