

**DOCKET NO. 006-SE-0913**

**STUDENT** § **BEFORE A SPECIAL EDUCATION**  
§  
§  
**VS.** § **HEARING OFFICER**  
§  
**LEANDER I.S.D.** § **FOR THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

\*\*\* (hereinafter “the student”) through student’s father and next friend, \*\*\* (Petitioner), requested a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 et. seq. The Respondent is the Leander Independent School District (LISD).

In the Request for Hearing, Petitioner alleged that LISD denied the student a Free Appropriate Public Education (FAPE) under the Individuals with Disabilities Improvement Act (hereinafter IDEIA) in the following particulars

1. Placing the student on a Minimum High School Program (MHSP) rather than a Recommended High School Program (RHSP) without parental approval and said placement is inappropriate;
2. Failing to educate the student in the least restrictive environment;
3. Failing to provide appropriate services to address the student’s dyslexia and dysgraphia;
4. Failing to provide prior written notice to the parents of its intent to place the student in the MHSP;
5. Failing to provide prior written notice to the parents that it was altering the curriculum for the student in a manner that would prevent student from being placed on the Regular High School Plan (RHSP);
6. Denying the parent’s request to have the student removed from the special education \*\*\* program;
7. Failing to move the student to the RHSP.

Petitioner requested the following relief:

1. An Order requiring placement in the Recommended High School Program;
2. An Order requiring placement in the least restrictive environment for the student with accommodations appropriate for student to receive a Free Appropriate Public Education;
3. An Order requiring the District to provide appropriate services to address the student’s Dyslexia and Dysgraphia.

4. An Order requiring placement in a private school at public expense, specifically \*\*\* School.

### PROCEDURAL HISTORY

Petitioner, the father of the student, filed this request for hearing on September 5, 2013. The hearing was conducted on December 16, 2013, following two continuances for good cause shown and following the amendment of Petitioner's complaint. The Decision due date was extended for good cause to January 13, 2013.

Prior to the hearing Respondent filed a motion to join the student's mother as a party to this matter, which was granted.<sup>1</sup> The parties appeared for hearing on December 16, 2013. Petitioner appeared pro se. The mother appeared and opposed the relief sought by the Father. Respondent appeared by and through counsel of record, Susan Graham, along with District representative. At the conclusion of the hearing, neither party requested an opportunity to submit written argument. The Decision was timely rendered and forwarded to the parties on January 13, 2013.

Based upon the evidence, I make the following findings of fact and conclusions of law. Citations to the transcript will be designated "RR" with a notation of the volume number and page number. Citations to Petitioner's Exhibits and Respondent's Exhibits will be designated with a notation of the "P" or "R" followed by the exhibit number.<sup>2</sup>

### FINDINGS OF FACT

1. The Leander Independent School District (LISD) is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing Student a free appropriate public education (FAPE) in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. § 1400, et seq., and the rules and regulations promulgated pursuant to IDEIA.

2. The student resides within the geographical boundaries of the LISD. LISD is responsible for providing the student with a FAPE.

3. The Petitioner meets eligibility criteria and presents educational needs for special education services as a student with disability classifications of Specific Learning Disability and Emotional Disturbance. R20.

4. The student has a Specific Learning Disability in the areas of Basic Reading, Reading Fluency, Reading Comprehension, Written Expression, Math Reasoning, and Math Calculation. R20.

5. LISD first identified the student's learning disabilities in basic reading, reading fluency, reading comprehension, and written expression when student was in \*\*\* grade. RR103; R1-16. At that time, the ARD Committee also determined that the student would receive social skills training and psychological services to address anxiety, attention difficulties and sensory seeking behaviors. RR102; R1-18-20.

6. During the student's \*\*\* grade year, LISD conducted an Autism evaluation at the request of

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<sup>1</sup> The students' parents \*\*\* and the student resides with student's mother. Petitioner is the father of the student. RR91. Both parents had independent rights and duties at the time of the hearing because there was no court order allocating those rights and duties. RR26

<sup>2</sup> Petitioner submitted exhibits which are portions of Respondent's exhibits. For ease of reference, citations will be made to the complete exhibits submitted by Respondent.

the student's mother. RR103. Although the multi-disciplinary team determined that the student did not meet the eligibility criteria for Autism, school personnel did note behavioral concerns in the clinically significant range in the areas of hyperactivity, anxiety, depression, attention difficulties, atypicality and a deficit in social skills. RR103; R2-6. At that time, the achievement testing confirmed the existence of a learning disability. RR-104.

7. During the student's \*\*\* grade year, LISD administered a psychological evaluation. Teachers and parents continued to observe the student exhibited hyperactivity, anxiety, depression, attention difficulties and social skills deficits. However, teachers also observed \*\*\* complaints associated with stress in the classroom. RR105-106; R3. The ARD Committee determined that the student should be eligible to receive special education and related services under the classifications of learning disability and emotional disturbance. RR106.

8. At the end of the student's \*\*\* grade year, the ARD Committee convened to develop the student's IEP, including academic and behavioral goals, for the \*\*\* grade year. The ARD Committee determined that the student would receive language arts, reading and math in a special education (resource) setting, with related services of occupational therapy, psychological services and counseling. RR107; R3-15.

9. During the spring of the student's \*\*\* grade year, the ARD Committee determined that the student was academically ready to move from resource to general education math, with accommodations. RR109; R5. However, after \*\*\* in this setting, the student began to exhibit anxiety, shut down in class and was not able to complete student's work. The ARD Committee decided to return the student to the resource setting for math. RR110; R6.

10. In planning for the student's \*\*\* grade year, the ARD Committee met and initially ended in disagreement over the student's placement for math. The school members of the ARD Committee initially recommended placement in resource math. Although the student had made some progress in math, student continued to shut down and become easily frustrated with tasks and needed the reassurance of the resource class. The student also requested to remain in resource for math. During this ARD Committee meeting, the parents expressed a desire that the student to be placed in \*\*\* so student could \*\*\*. R7-21; RR114 The ARD Committee discussed that it would be best to attempt a general education class before the student \*\*\* because modified curriculum in high school would require a different graduation plan. RR114. The ARD Committee recessed for ten days so all ARD Committee members could consider the placement options. When the ARD Committee reconvened, the Committee mutually agreed to a general education placement with support for math and special education or resource placement for language arts. RR115; R7-14.

11. During the student's \*\*\* grade year, at the request of the parents, the District obtained and considered an outside neuropsychological evaluation from Dr. \*\*\*. Dr. \*\*\* conducted an assessment of the student's cognitive, emotional and behavioral status and made recommendations for the student's programming. Dr. \*\*\* agreed with the District's evaluation that the student has an emotional disturbance as well as specific learning disabilities in reading and math. R8-9; RR175, 176. Additionally, in assessing the student's cognitive functioning, she noted that student has limited ability to process verbal and nonverbal information, deficits in working memory, and reduced ability to focus and sustain attention to tasks. R8-10, RR158-159. With regard to the student's reading deficits, she noted that although student exhibits deficits in phonological processing skills, student's phonological memory and automaticity of lexical access (rapid naming of letters and words) are also significant weaknesses for the student. R8-11. These deficits are less responsive to instruction and remediation. Dr. \*\*\* recommended that efforts shift from remediation efforts, such as those within a Dyslexia program, to assisting the student in the development of appropriate compensatory strategies. R8-11; RR178-179. According to Dr. \*\*\*, due to the student's overall cognitive

functioning, a Dyslexia program would not be appropriate for the student. RR179-180. Dr. \*\*\* agreed with the ARD Committee's decision that the student receive modified curriculum. RR188-190.

13. During the student's \*\*\* grade year, the student continued to exhibit stress in the general education setting even though student had a modified curriculum. RR10-20. According to the school counselor, the student required much reassurance during that time to work on assignments due to anxiety and would frequently refuse to do the work. The ARD Committee agreed that for the student's \*\*\* grade year, student should receive modified instruction in Math and English in a general education setting with inclusion support and \*\*\* when anxiety interfered with work completion. RR116-121; R10-29. The ARD Committee's decision was consistent with the recommendations of Dr. \*\*\*.

14. During August of 2011, the ARD Committee convened immediately before the student entered \*\*\* grade in order to confirm the student's placement in the general education math classroom with modified curriculum. RR122; R11.

15. During the student's \*\*\* grade year, student began to \*\*\* and frequently removed \*\*\*self from the general education classroom to \*\*\* for support. RR128. The student became easily overwhelmed in the classroom and depressed. When student \*\*\* for support, student would sometimes be so shut down and depressed that student would not work. RR128-129.

16. During this time, the student was passing classes with significant one-on-one support and intensive individual instruction and modifications. RR130; R12-6. The student struggled in all areas, but primarily in math. R12-6.

17. For student's \*\*\* grade year (2012-2013), the ARD Committee recommended modified curriculum in all core subjects with math and language arts in a resource setting and Basic biology and world geography. RR132; 244; R12-30. The ARD Committee also recommended placement in the \*\*\* program for academic and behavioral support. R12-31.

18. During the Fall of student's \*\*\* grade year, a special education team leader conducted a brainstorming session with the student, student's parents and other ARD Committee members to respond to parents' concerns regarding the student's placement in the \*\*\* program and the implementation of a modified curriculum. RR202-205. As a result of the meeting, the ARD Committee agreed that the student's placement would continue in the \*\*\* program and that student would receive modified curriculum in core subjects. RR205-207.

19. The student's special education counselor created a person-centered plan with the student prior to the ARD Committee meeting to help the student identify and communicate student's needs, preferences and supportive persons. The student identified student's father as not being supportive. R14; RR245-246. The student indicated that student prefers being able to access the \*\*\* classroom for academic and emotional support. RR250; R18. The student also stated that student believes student's Basic classes help reduce student's stress and anxiety. The counselor reported the student's identified needs to the ARD Committee. R17; RR255 The student met with the counselor and prepared a chart reflecting student's need for a place to calm down, obtain assistance in math, the \*\*\* classroom, supportive staff and a safe place. The student also stated that student needs for student's father to understand that student has more than dyslexia and dysgraphia. RR257-258; R17-53-57.

20. In April, 2013, the ARD Committee convened to develop the IEP for the 2013-2014 school year. R19. The father again disagreed with the student receiving a modified curriculum because it would

result in the student being placed on the MHSP. The mother, however, agreed with the school district members of the ARD Committee. R19-37. The District provided Prior Written Notice to the parents of its intent to implement the IEP as agreed upon by the remaining members of the ARD Committee on April 18, 2013. R19-37. The ARD Committee reconvened on May 20, 2013, to address the father's concerns and review existing evaluation data. R21. The father again expressed his disagreement with the student's modified curriculum and MHSP and requested a more challenging program for the student. The ARD meeting ended in disagreement. The District provided Prior Written Notice of its intent to implement the IEP developed by the ARD Committee and provided the parent with a copy of the procedural safeguards. R21-12, 17-19.

21. The student participated in student's annual ARD at the end of the 2012-2013 school year by presenting a power point presentation in which student acknowledged that learning is difficult for student and the anxiety and stress student experiences. Student identified being able to access a calm environment for assistance as an effective strategy. RR 292; R19-55.

22. According to the student's counselor, the student made progress during the 2012-2013 school year. RR260. In her professional opinion, the student would not be successful in the general education setting and requires a modified curriculum. RR265.

23. The student's language arts teacher testified that the student has made progress during the 2012-2013 and current school years with a modified curriculum. RR272. The student mastered 3 out of 5 goals during the 2012-2013 school year, with the remaining two goals being mastered with support. RR272, R19-90.

24. According to the language arts teacher, she is able to coordinate with the dyslexia teacher to address the student's reading needs and provide more intensive instruction with one-on-one attention. RR274. The student's reading instructional level is at \*\*\* grade level and student struggles at \*\*\* school level. RR279-280; R30. The student was successful in the STAAR modified assessments in English/Reading, Biology and World Geography. RR275; R23-12-14. The student made satisfactory performance on modified tests, which is an indicator that the tests and the modified curriculum are appropriate. RR276. According to the teacher, if the student was able to benefit from a non-modified curriculum, she would have seen higher scores on the modified STAAR. RR276. Although the student struggled with the modified writing assessment, student continues to make progress. RR276-277.

25. The language arts teacher testified that in her opinion, the student requires a modified curriculum to achieve success in language arts. RR277. The student has made behavioral progress this school year in that student does not leave the classroom to go to the \*\*\* classroom as frequently as student did during the prior school year. RR278.

26. The student's math teacher is also student's "tracking teacher" in the \*\*\* program. RR285. The student is able to access the \*\*\* classroom if student requires academic or behavioral support. RR286. During the 2012-2013 school year, the student accessed the \*\*\* classroom for behavioral and academic support more frequently than during the current school year. RR285-286. According to student's tracking teacher, the student is able to stay in student's classroom for the most part with support, and typically goes to the \*\*\* classroom for testing or to meet with her before or after class. RR286. The student's progress reports for the current school year also reflect behavioral progress. R29. In particular, as of October, 2013, the student was able to stay in the classroom for 60 minutes on 20 out of 20 classes per week during the first grading period. R29-3. This is a marked improvement over the previous school year.

27. The student receives one-on-one instruction in resource math but still requires a lot of re-teaching, especially when student is anxious. RR295. According to student's teacher, the student would not be successful without the \*\*\* program or modified curriculum in core subject areas. R296-297.

28. The student resides with student's mother and she is the parent primarily responsible for addressing the student's academic and emotional needs. The father acknowledged that he does not currently work with the student on homework and that his relationship with \*\*\* is strained. RR91-92. According to the mother, the student is experiencing more success this school year than in years past and she believes moving student to a different school would be detrimental to student. RR304, 306-307. The student's mother supports the District's program.

29. The father presented evidence of an available private placement, \*\*\* School. According to \*\*\* School's website, the school provides a specialized program for students with learning differences and Dyslexia. P20. The school's director testified in general terms about the components of the program with regard to addressing learning disabilities. However, he acknowledged that the school does not accept students identified with an emotional disturbance. RR48. The witness had no knowledge of the student's program and did not have an opinion as to whether the District's program is inappropriate. RR57.

30. Although the father testified that he disagreed with the student's MHSP and presented testimony of an available private placement, he offered no testimony or evidence that the District's program is not appropriate. I find based on a preponderance of the evidence that the father's disagreement with the student's program centers solely on the student's placement on the MHSP, and not student's special education needs.

31. I find, based on a preponderance of the evidence, that the student requires a modified curriculum in core academic areas, including math, in order to receive a meaningful academic benefit.

32. I find, based on a preponderance of the evidence, that the student's placement in and access to the \*\*\* classroom is appropriate for the student.

33. I find, based on a preponderance of the evidence, that the District provided appropriate reading instruction for the student based on student's assessment and performance.

34. I find, based on a preponderance of the evidence, that the District collaborated with the parents and key stakeholders in the development of the student's IEP for the 2012-2013 and 2013-2014 school years.

## **DISCUSSION**

### *Substantive Complaint*

The primary issue in this case for the parent revolves around his request that the student be placed on a Recommended High School Program pursuant to 19 Tex. Admin. Code §74.71 rather than a Minimum High School Program (MHSP). However, placement within a particular graduation program is not within the jurisdiction of the hearing officer. Rather, placement on a MHSP is mandated if a student's ARD Committee determines that a student requires a modified curriculum. 19 TAC §74.71(d). So the true issue in this case is whether the ARD Committee's determination that the student requires a modified curriculum to receive an appropriate education is the correct decision. In other words, has the District provide the student a FAPE in the least restrictive environment given the student's unique needs?

The educational program offered by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program bears the burden of proof in showing why the IEP is not appropriate. *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983). This includes the burden of proof with regard to harm or a deprivation of educational benefit. The law does not require that the student's educational potential be optimal or "maximized" but that the program enable the student to receive some educational benefit.

In determining whether an IEP is appropriate for a student, the issue is whether it is reasonably calculated to confer an educational benefit. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S. Ct. 3034 (1982). An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Rowley, supra.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000). An IEP is reasonably calculated to provide meaningful educational benefit when it is individualized based on the student's assessment and performance; administered in the least restrictive environment; provided in a coordinated and collaborative manner by the key stakeholders; and demonstrates positive academic and nonacademic benefits. *Cypress-Fairbanks Ind. Sch. Dist. V. Michael F.*, 118 F.3d 245, 253 (5<sup>th</sup> Cir. 1997). Based on application of the relevant factors in this case, I find that the student's program in LISD is appropriate at all times during the 2012-2013 and 2013-2014 school years through the date of the hearing.

The student's IEP for the 2012-2013 and 2013-2014 school years is individualized based on the student's assessment and performance. The student was first identified as a student with specific learning disabilities in the \*\*\* grade and with an emotional disturbance in the \*\*\* grade. While in \*\*\* school, the student began to receive instruction in language arts, reading and math in a resource (or special education) setting. RR107; R3-15. During the student's \*\*\* grade year, the ARD Committee and the District made efforts to move the student from resource to general education math. RR109; R5. However, the student began to exhibit anxiety, would shut down in class and would not be able to complete student's work. Consequently, the ARD Committee determined it appropriate to return the student to the resource setting for math. RR110; R6.

District personnel collaborated with both parents in planning for the student's \*\*\* grade year and involved the student in the planning. The father's central complaint was that the student should be in a general education setting for math so student could work toward \*\*\*. RR114; R7-21. The ARD Committee, after initial disagreement, decided to place the student in a general education setting for math during the \*\*\* grade year. RR109; R5. However, during the student's \*\*\* grade year, student continued to exhibit stress in the general education setting, even with a modified curriculum. RR10-20.

For the student's \*\*\* grade year, the father continued to request that the student remain in a general education setting. District staff and the outside evaluator explained that student is not able to learn Math in a group setting and requires a modified curriculum in reading, writing and math to be successful. R10-29. The ARD Committee agreed that the student would receive academic instruction in the general education setting with a modified curriculum and inclusion support. The ARD Committee also developed a BIP to address the student's need to develop coping skills when required to complete academic tasks and provided that the student would have an opportunity to go to a "safe" place to complete work away from distractions and access to a tracking teacher for one-on-one academic and behavioral support. R10-12-13.

During the student's \*\*\* grade year, the student exhibited increased academic frustrations and began to \*\*\*. Student frequently removed \*\*\*self from the general education classroom to access student's "safe" classroom for support. However, even when student went to student's "safe" room for support, student

would be so depressed that student would not complete student's work. RR128-129. During this time, the student struggled in all areas, but primarily math, and required significant one-on-one support and intensive individual instruction and modifications. RR130; R12-6.

In reviewing the student's overall performance and the completed assessments, the ARD Committee recommended modified instruction in all core academic areas for the student during student's \*\*\* grade year (2012-2013), with language arts and math instruction in the resource setting. RR12-30; RR132; 244. The ARD Committee also recommended placement in the \*\*\* behavioral support program to help the student develop coping skills for academic frustrations, provide an opportunity for student to complete work away from distractions, and receive assistance with student's work, as well as counseling and social skills instruction. R12-65-69. When the parents voiced disagreement with the placement and program following the annual ARD Committee meeting, the District reconvened an ARD meeting to address their concerns. RR134; R13. At the conclusion of the meeting, the District agreed that rather than the student earning the ability to attend student's "out classes", student would have the ability to attend those classes and use the \*\*\* classroom for as a home base for support. The ARD Committee adjourned in agreement with the student's program. R13-30.

During the 2012-2013 school year, the District convened multiple ARD meetings and engaged the assistance of a facilitator to review the student's program with the parents and the student. R16, R17, R18. An LSSP assigned to work with the student assisted the student in identifying student's concerns to the ARD Committee and student's parents. The student indicated that student prefers being able to access the \*\*\* classroom for academic and emotional support and that student needs a safe place to calm down and obtain assistance in math when stressed. The student also stated that student needs for student's father to understand student's academic needs. RR257-258; R17-53-57.

During the Spring of 2013, the ARD Committee again convened to develop the student's IEP for the 2013-2014 school year. The ARD Committee determined that the student's appropriate program for the 2013-2014 school year would continue to be modified curriculum in all core courses, with English and Math instruction to be provided in the special education setting and Social Studies and Science in the general education setting with inclusion support. R21-10. The ARD Committee determined that the student should continue to have access to the \*\*\* program for academic and behavioral support. R19.

The parent disagreed with the ARD Committee decision, and the Committee reconvened on May 20, 2013 to address the father's concerns. The father requested that the student be placed in general education classes with accommodations and on a RHSP rather than on a MHSP. It is apparent from a review of the minutes of the ARD meetings, as well as correspondence from the parent, that the parent's main concern revolved around the student being placed in academic courses that would prepare student for entrance into a four-year college upon graduation (RHSP) rather than the MHSP. However, the school stressed to the parent that the student requires modified curriculum to be successful. R19; R21. The District implemented the ARD Committee decision.

The student's teachers testified, credibly, that the student requires modified curriculum and behavioral support to obtain a meaningful educational benefit. RR277; R296-297. The student demonstrated academic and non-academic benefits from student's educational program and has made progress during the 2012-2013 and the current school years. RR272, 275, 277-278, 285-286, 295-297. The student has also demonstrated behavioral progress in that student is able to remain in student's classroom and is not currently accessing the BEST classroom for support as frequently as in the prior school year.



It is also clear from a review of the student's records that the District currently and historically collaborated with key stakeholders in developing the student's program consistent with *Michael F., supra*, and 34 CFR § 300.322 and 300.324(a)(1). The District, in response to parental requests, attempted placement in the general education setting for math prior to the student's entrance into \*\*\*. However, the student's anxiety increased due to academic frustration, student became \*\*\*, and student frequently removed \*\*\*self from the classroom to a "safe room" for support. RR128-129. In response to the student's difficulties, the ARD Committee determined that student should receive modified instruction in all core academic areas, with special education placement for language arts and math. R12. The District also sought the assistance of a facilitator to assist the parents and the school District members of the ARD Committee in reviewing the student's placement. RR202-205. The LSSP assigned to assist the student also sought input from the student so student could advocate for \*\*\*self to the ARD Committee. R17; RR255-258.

The parent's complaint that the District is failing to currently provide the student with an adequate Dyslexia and Dysgraphia program is also without merit. The student's educational needs encompass more than Dyslexia. In fact, the outside evaluator testified that the student's needs, given student's overall cognitive deficits that limit student's ability to learn and apply letter-sound relationships quickly and consistently, are best addressed by focusing on helping the student to gain compensatory strategies rather than remediation. RR179-181; R8-11. Additionally, the student's current language arts teacher, with the support of the dyslexia teacher, is able to provide intensive reading instruction on a one-to-one basis that is appropriate for the student. RR274.

In sum, the student's educational program provided by LISD is appropriate and is provided in the least restrictive environment. The student requires a modified curriculum in core academic areas to obtain a meaningful educational benefit. Therefore, the student's placement in the MHSP is mandated. 19 Tex. Admin Code § 74.71.

### *Procedural Complaint*

The parent complains that the District failed to provide prior written notice to him of its intent to place the student on a MHSP and modify the student's curriculum. The student's records consistently reflect ongoing discussion and collaboration with the parents regarding the student's need for modified curriculum. Petitioner's complaint is wholly without merit. Additionally, the evidence is that the District discussed the impact of the modified curriculum on the student's appropriate graduation plan as early as student's \*\*\* grade year. RR114, R7. The student's records reflect an ongoing effort on the part of the District to explain the need for modified curriculum and address the parent's concerns regarding the student's graduation plan. Placement on the MHSP is mandated due to the student's modified curriculum. 19 Tex. Admin. Code. § 74.71(d). To the extent Petitioner complains of the May 2013 ARD Committee decision to implement a modified curriculum for the student's program, the District provided prior written notice. *See* R21-17-19. Petitioner does not prevail on this issue.

## CONCLUSIONS OF LAW

1. The student is eligible for special education services as a student with a disability under IDEIA, 20 U.S.C. §1400 *et. seq.* and its implementing regulations. LISD is responsible for providing the student with a FAPE.

2. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983). Petitioner bears the burden of proving that it is not appropriate or that the District has not complied with the procedural requirements under the IDEIA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet petitioner's burden on all issues.

3. The student's placement in the MHSP is required because the ARD Committee determined that student requires modified curriculum. 19 Tex. Admin. Code §74.71(d)

## ORDER

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the relief requested by Petitioner is **DENIED**.

Finding that the public welfare requires the immediate effect of this Final Decision and Order, the Hearing Officer makes it effectively immediately.

**SIGNED** this 13<sup>th</sup> day of January, 2014.

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Sharon M. Ramage  
Special Education Hearing Officer

## **SYNOPSIS**

Issue No. 1: Whether the District's IEP which provides for modified curriculum in all core academic areas is appropriate for the student.

Held: For the District. The student's IEP is based on the student's assessment and performance, designed to meet the student's needs based on student's identified disabilities, and is implemented in the least restrictive environment. Additionally, the IEP incorporated appropriate behavior supports to address the student's anxiety and behavior that impedes student's learning.

Citation: 34 CFR §300.320; 34 CFR §300.324

Issue No. 2: Whether the District notified the parent of its intent to implement a modified curriculum for the student.

Held: For the District. The District collaborated with all key stakeholders in the development of the IEP, including the parents and student.

Citation: 34 CFR §300.322.