

STUDENT	§	BEFORE A SPECIAL EDUCATION
b/n/f PARENT	§	
	§	
v.	§	HEARING OFFICER FOR THE
	§	
CANYON INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF HEARING OFFICER

The parties convened for a due process hearing in the instant action on March 26, 2014. *** (“Parent”) appeared *pro se* on behalf of Petitioner, ***, (“Student”). Andrea Slater Gulley and Slater Elza, attorneys, appeared on behalf of Respondent, Canyon Independent School District (“District” or “CISD”). District Representative, ***, was present.

Procedural History

Petitioner filed the complaint on November 12, 2013. The parties were sent a First Scheduling Order and Due Process Hearing Guidelines for Attorneys, Pro Se Parents and Parent Advocates. After a finding of sufficiency of complaint, the parties participated in a prehearing conference at which the hearing was rescheduled and the decision due date was extended for good cause. Petitioner’s claims for attorney’s fees and costs were dismissed as outside the hearing officer’s jurisdiction. The parties participated in an unsuccessful resolution session on November 26, 2013.

The parties convened for a second prehearing conference on March 24, 2014. The parties acknowledged receipt of three previous orders of the hearing officer: First Scheduling Order and “Due Process Hearing Guidelines for Attorneys, Pro Se Parents, and Parent Advocates”, Order of Sufficiency of Complaint and Order to Provide Exhibits, and First Prehearing Conference Order, Order of Rescheduled Due Process Hearing and Extension of Decision Due Date.

During the second prehearing conference, the hearing officer reviewed the hearing schedule with the parties. Petitioner’s questions regarding joint exhibit binders and evaluations were answered. Petitioner acknowledged that she did not disclose any documents other than those that are jointly submitted by the parties. Petitioner requested that Respondent present its case first. The hearing officer explained the order of the hearing.

Issues for Hearing

Petitioner alleged that Respondent denied petitioner a free, appropriate public education (“FAPE”), and brought forth following issues for determination at hearing:

1. Whether, in the ***, 2013, District failed to provide Prior Written Notice before Admission, Review, and Dismissal (“ARD”) meetings and change of eligibility classification from autism to emotional disturbance (“ED”);
2. Whether at Student’s first ARD meeting, District ARD committee had predetermined Student’s services by---
 - a) having a pre-written individualized education program (“IEP”) at Student’s first ARD meeting that included recommendations of a previous district;
 - b) changing Student’s eligibility classification from autism to ED; and
 - c) failing to include an autism specialist at the meeting despite Student’s eligibility of autism from the previous *** school;
3. Whether the classification of ED is appropriate;
4. Whether District’s goals for Student are based on an inappropriate full individual evaluation (“FIE”) conducted by *** Independent School District on May ***, 2013 for the reasons that the FIE did not include educational/performance levels or a completed psychological evaluation;
5. Whether District was required to include an autism specialist in Student’s ARD meetings;
6. Whether District denied Parent an opportunity to meaningfully participate in the ARD process;
7. Whether District failed to *** for Student;
8. Whether District failed to hold the ARD meeting at a mutually agreed time and place to allow for Student’s father to attend; and
9. Whether District should require Parent to obtain a physician’s referral for occupation therapy.

Requested Relief

Petitioner requested the following relief:

1. An order directing District to fund an independent educational evaluation (“IEE”) of Student in the areas of academic and cognitive, speech and language, fine and gross motor skills including sensory needs, and visual perceptual skills;
2. An order directing District, in collaboration with a behavior analyst (“BCBA”), to conduct a functional behavior assessment (“FBA”) and develop a behavior improvement plan (“BIP”) for an educational setting that is not an isolated campus;
3. An order directing District to provide BCBAs to train District staff;
4. An order directing District to hire consultant to accurately record, monitor, and evaluate data;
5. An order directing District to hire an applied behavioral analysis (“ABA”) trained and experienced autism specialist to shadow Student throughout the school day and make assessments based on observation to be made a part of the IEE report;
6. An order determining the acceptable requirements for a determination of eligibility for special education services as a child with autism;

7. An order directing District to provide compensatory services for approximately one month due to District's refusal to enroll Student until ***, 2013;
8. An order directing District to appoint a qualified grade level general education teacher as Student's home room teacher that attends Student's ARD meetings and serves as a contact person for Parent;
9. An order directing District to include in Student' IEP a daily log that is completed by a trained, highly qualified *** grade teacher and sent home daily;
10. An order directing District to conduct staff training regarding implementation of Student's IEP;
11. An order directing District to revise Student's IEP to include positive behavioral support and strategies that can be implemented in a general education setting and that includes recommendations from a general education teacher;
12. An order directing District to assign a paraprofessional aide who is trained in sensory integration to assist Student in calming and organization;
13. An order directing District to provide community services, in-home ABA services if found consistent with the IEE, FBA, and BIP together with direct therapy, and parent training; and
14. An order that Student should take the same state-mandated assessment as general education children with support, but without modification.

Due Process Hearing

The parties offered Joint Exhibits that totaled 927 pages. CISD offered 277 pages of Respondent's Exhibits. Petitioner offered no exhibits other than the Joint Exhibits. All offered exhibits were entered into evidence. Petitioner disclosed no witnesses on or before the disclosure deadline of March 18, 2014. District objected to Petitioner's calling witnesses due to the failure to disclose a witness list. The hearing officer offered Petitioner's parent the opportunity to call herself and/or the campus diagnostician as witnesses. Parent called no witnesses. District moved for a directed verdict. The motion was denied. District called no witnesses.

Based on the evidence before me, I make the following findings of fact and conclusions of law. Citations to Joint Exhibits and Respondent's Exhibits will be designated with a notation of "J" or "R" followed by the exhibit number and/or page number. The parties offered a Joint Statement of Facts that are incorporated in the below Findings of Fact within numbers one through seven.

Findings of Fact

1. Student, born ***, is a ***-year-old, *** grade child who resides within the geographical boundaries of the District. Petitioner is eligible for special education services from the District. J-pg. 713

2. Student's mother experienced a difficult pregnancy, with hypertension in her first trimester and toxemia prior to delivery. J-pg. 713
3. It is suspected that Student was deprived of oxygen during a high-risk birth. J-713
4. Student began receiving communication therapy at *** at the age of *** months. J-pg. 655
5. In ***, Student had an EEG at ***, which showed some abnormalities ***. Student reportedly exhibits ***. J- pgs. 720 and 317
6. Student transferred to the *** special education program, where student was initially identified with Developmental Delays and received specially designed instruction in the areas of communication, adaptive behavior, fine motor skills, and social skills. J-655
7. In ***, Student was placed in a self-contained program. During this time, evaluation results indicated significant deficits in cognitive/academic functioning. J-655
8. During the past several years, Student received several diagnoses: attention deficit hyperactivity disorder, oppositional defiant disorder, separation anxiety disorder, PDD, not otherwise specified, mixed expressive/receptive language disorder, dysgraphia, and borderline intellectual functioning. J-29, 80, 98, 99
9. Student attended school in ***. In the *** school, Student was eligible for special education services as a child with an ED. Parent requested an eligibility of autism. The *** special education committee was polled. Three members believed ED was what the school called "primary exceptionality," and five members believed that autism was the primary exceptionality. Student's eligibility was changed to autism. There is no evidence that an evaluation was conducted to assess Student for autism. J-38, pgs. 515-523.
10. Student enrolled in *** Independent School District ("****") in ***, 2013. J-30
11. *** conducted a Psychological and Autism Evaluation that included a variety of assessment tools. J-33, pgs. 316-317
12. Parent completed an interview based upon the BASC-2 Structured Developmental History via the telephone. J-33, pgs 317-318
13. Parent requested that no formal achievement assessment be conducted. *** complied with Parent's request. J-33
14. The multidisciplinary team reviewed educational records from Student's *** school. J-33
15. *** multidisciplinary team conducted student and teacher interviews. Teachers reported that Student was sometimes resistant about starting or completing tasks, irritable, and

- complained about physical symptoms and feeling bad. Student's activity level increased when student found a task to be engaging. J-33, pgs. 319, 322-323
16. The team conducted classroom behavioral observations. Student reciprocated smiles and waves, worked without prompting, and completed assignments, and appeared generally agreeable during the observations. J-33, pgs. 320-322
 17. *** team reviewed a 2010 cognitive evaluation (Wechsler Intelligence Scale for Children-Fourth Edition) that showed Student's full scale standard score was 71 and consistent with previous administrations of the same assessment tool. Parent requested that no formal achievement assessment be conducted. Classroom teachers conducted informal assessments. The estimated level of Student's independent academic functioning was at a *** grade level. Basic reading skills were higher than reasoning and comprehension skills. J-33, pg. 325-326
 18. The Vineland Adaptive Behavior Scales, Second Edition, showed Student's personal and social skills levels as moderately-low to low. J-33, pgs. 326-333
 19. The Clinical Evaluation of Language Fundamentals ("CELF-4") reflected that Student had difficulty with perspective taking and appeared to be unaware of how student's behaviors impacted those around student. Expressive communication skills were below average, and receptive skills were a weakness. These difficulties could affect Student's comprehension of stories and conversations. J-33, pgs. 333-334
 20. *** multidisciplinary team administered the Behavior Assessment System for Children, Second Edition. Special education teachers completed the teacher rating scales regarding Student's behaviors. Student completed the self-report. Student also completed the self-report for the Multidimensional Anxiety Scale for Children ("MASC") and the Piers-Harris Children's Self-concept Scale, Second Edition ("Piers-Harris 2"). Student's results on the MASC were consistent with comments made to student's teachers about being shy around people. Student's separation/panic scale was severely elevated and was consistent with Parent reports. Student's Piers-Harris 2 profile indicates that student harbors serious doubts about student's self-worth and may be associated with disturbances in mood and behavior. J-33, pgs. 337-339
 21. The Autism Diagnostic Observation Schedule ("ADOS") is a standardized assessment that examines communication, social interaction, and play or imaginative use of materials for

individuals who have been referred for evaluation due to possible autism or other pervasive developmental disorders. *** conducted this assessment. Although many of Student's behaviors were not typical of children at student's same developmental level, the Total Score indicated that student did not exhibit behaviors solely characteristic of an autism spectrum disorder. J-33, pgs. 339-342

22. Based on *** evaluation, the multidisciplinary team recommended that Student's behaviors were primarily the result of an ED, and that the autism eligibility be dismissed. The *** ARD committee accepted the recommendation, and found Student eligible for special education services as a child with ED and speech impairment. J-30, 33, pg. 344
23. Student transferred to CISD and began attending on ***, 2013, ***. The temporary placement ARD accepted Student's IEP from ***. Parent disagreed with eligibility classification. Eight days after CISD's temporary ARD meeting, CISD held an ARD meeting for Student's permanent placement ("*** ARD"). Required members of the ARD committee were in attendance, as follows: Parent, a District Representative, general education teacher, two special education teachers, licensed specialist in school psychology ("LSSP"), educational diagnostician, speech pathologist, and counselor were present. J-3, 4, 5, 25; 34 C. F. R. §300.321
24. The *** ARD committee considered *** spring, 2013 evaluation. Parent provided medical reports and information that were more than three years old. District members of the ARD committee agreed that eligibility was ED and speech impairment. Parent disagreed and wanted the autism eligibility in keeping with Student's *** IEP. Parent agreed to bring an FIE from ***. All of Student's programming was agreed upon including Student's goals and objectives. After a postponement at Parent request, a reconvene ARD meeting took place on ***, 2014. J-5, 12
25. The reconvene ARD committee reviewed Parent's documentation that included a doctor's statement regarding autism, but lacked any standardized testing for autism. J-12
26. CISD offered an IEE to parent on *** and ***. Parent declined. J-6, 12
27. Student's present levels of academic achievement and functional performance ("PLAAFP") reflected student's ability to apply knowledge of letter-sound correspondences, language structure, and context to recognize words. Student read words in isolation to *** grade level. Student's Math PLAAFP included the ability to figure wages from a time sheet for up

- to two weeks, make deposits into a bank account, balance a check register, and use a calculator and cash register. J-12
28. Student's Behavior Improvement Plan ("BIP") addressed emotional outbursts that lead to refusal, confrontation and verbal aggression and difficulty with transitions and moving between tasks. J-12
 29. Student's IEP goals and objectives are in English Language Arts and Reading, Science, Social Studies, Fine Arts, Personal Social Skills, and *** and Adaptive PE (added at a December 2013 ARD meeting) J-12, 19
 30. Student's IEP includes modifications and numerous accommodations. Some of Student's accommodations were reduced assignments, extra time for completing assignments, corrections/retake tests and quizzes up to a 70, short instructions, multiple choice tests, check for understanding, directions given in a variety of ways/simplified vocabulary, sit near teacher for instruction, general education teacher support, frequent reminders of rules, positive reinforcement, private discussion about behavior, supervision during transition activities, preferential seating, cooling off period and visual schedule. J-12
 31. The ARD committee determined that Student functions at a higher level than initially predicted and recommended placement in resource classes. Student's elective class is in the general education setting. J-12
 32. At the December ARD meeting, both Parents participated by telephone. Parent asked about transition information. Parent and District committee members agreed to table the discussion until mediation. J-19
 33. *** provides occupational therapy for District. The occupational therapist is required to have a physician's prescription in order to comply with the Texas Board of Physical Therapy and Occupational Therapy Examiners rules. J-13, 25
 34. Notice of Proposal or Refusal to Provide Services on ***, 2013. J-6, 8, 9, 20
 35. District provided prior written notices on ***, ***, and ***. J-6, 8, 12, 20
 36. District conducted a *** of Student in ***, 2013. ***, and indicates that student would need ***. Student wants to ***. *** were discussed at ARD meetings in the fall, 2013. Student was invited to the reconvene ARD meeting. Parent requested that student not attend. The committee determined that Student's *** would be determined before student's next annual ARD. J-5, 12; R-3

37. Student missed *** times in every one of student's classes at CISD through March 5, 2014.

R-1

38. Student's grades ranged from 72-100 through the fourth grading period of the current school year. Overall, Student maintained consistent grades during this time period, although in two classes, Student's grades fell 5-7 points. R-1

Legal Standard

The burden of proof lies with the party that brings a request for due process hearing under the IDEA. In the instant action, that burden is upon STUDENT and Parent. *Tatro v. State of Texas*, 703 F. 2d 823 (5th Cir. 1984). In this case, Student's eligibility is at the heart of this dispute. Petitioner disagrees with CISD's eligibility determination of ED rather than autism. Petitioner believes that CISD should accept the *** school's determination of eligibility of autism, rather than relying on *** evaluation. It is Petitioner's burden to prove petitioner's allegations.

When a parent challenges the appropriateness of an IEP, two questions must be asked: whether the state has complied with the procedural requirements of the IDEA, and then, whether the IEP developed through such procedures was "reasonably calculated to enable the child to receive educational benefits." *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

The Fifth Circuit further defined a FAPE by delineating four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the child's assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated? *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

In matters alleging procedural violations, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or caused a deprivation of educational benefit. 34 C.F.R. §300.513.

***** Evaluation and CISD's Eligibility Determination**

The IDEA requires a school district to use a variety of assessment tools and strategies to gather relevant information about the child, including information provided by the parent. A district must not use any single measure or assessment as the sole criterion for determination of a disability. It must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors. The assessments must be selected and administered so as not to be discriminatory on a racial or cultural basis, administered in the child's native language, used for the purposes for which the assessments are valid and reliable, and administered by trained and knowledgeable personnel in accordance with the instructions provided by the producer of the assessments. Assessments and other evaluation materials include those tailored to assess specific areas of educational need and not merely those that are designed to provide a single general intelligence quotient. Evaluations must be sufficiently comprehensive to identify all of the child's special education and related services needs. Existing evaluation data must be reviewed including evaluations and information provided by the parents of the child, classroom-based observations, and observations by teachers. 34 C. F. R. §§300.304 and 300.305.

The *** evaluation was conducted in the Spring, 2013, and met the IDEA criteria for evaluations. Based on that evaluation, CISD determined Student's eligibility of ED and speech impairment.

The IDEA requires more than a diagnosis of a disability; it requires that a child exhibits symptoms of a qualifying disability *and exhibits them* to such a degree that they interfere with the child's ability to benefit from the general education setting. *J.M. v. Lake Travis Indep. Sch. Dist.*, No. A-07-CA-152-SS (W.D. Tex. Filed Aug. 10, 2007); *Alvin Indep. Sch. Dist. v. A.D.*, 46 IDELR 221(5th Cir. 2007) *emphasis added*.

Parent disagreed with the eligibility determination. Parent believed that diagnoses from providers that were several years old should be relied upon rather than the most recent evaluation data. Parent presented no evidence to support Petitioner's contention that *** evaluation was inadequate or that Student's eligibility of ED is inappropriate. A disagreement with a determination of eligibility, in and of itself, does not render an otherwise appropriate evaluation invalid. Based on the evaluation, CISD's determination that Student is eligible for special education services as a child with ED and speech impairment is appropriate.

Prior Written Notice

Written notice must be given to the parents of a child with a disability a reasonable time before the public agency proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. Prior written notice is also required when a public agency refuses to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. 34 C. F. R. §300.503(a).

The *** determined Student's eligibility as ED and speech impairment. Student then transferred to CISD. After reviewing Student's most recent evaluation (*** evaluation) at the *** ARD meeting, CISD staff members agreed that Student's eligibility was ED and speech impairment. After the ***, 2013 ARD, in keeping with IDEA requirements, District sent prior written notice because Parent disagreed with Student's eligibility classifications. In ***, 2013, the meeting reconvened pursuant to 19 T.A.C. §89.1050, and Parent continued to disagree with Student's eligibility. District gave prior written notice to Parent on that meeting date. Petitioner did not bring forth credible evidence that District failed to provide prior written notice before it determined Student's eligibility as a child with ED and speech impairment.

Predetermination of Services

Petitioner issues included an allegation that District predetermined services. Petitioner alleged that CISD predetermined eligibility, and changed Student's eligibility by dropping the autism classification. In reality, CISD did not change Student's eligibility. It agreed with *** determination that Student is a child with ED and speech impairment. The credible evidence is clear that eligibility was discussed at the *** ARD meeting, and then reconsidered at the reconvene meeting in ***. Petitioner failed to present any evidence that District predetermined Student's eligibility classification.

Petitioner failed to show that District predetermined services by having Student's IEP pre-written at the *** ARD meetings. Assuming that District had pre-written the IEP, for ease of an ARD meeting, a draft could be presented, then changed during the meeting. Simply having a draft does not indicate predetermination of services per se.

Petitioner alleged that CISD failed to have an autism specialist at the *** ARD meetings, thus it had predetermined Student's services. Petitioner presented no evidence to support this allegation. While it is accurate that District had no autism specialist at the meetings, District complied with the IDEA's requirements for required members at an ARD meeting.

Parent Participation, Coordination of Services and ***

In the instant matter, Parent was present, either in person or by telephone, at all ARD meetings held at CISD in ***, 2013. Both parents participated in one meeting via telephone. Although Petitioner alleged that CISD failed to hold the meetings at a mutually agreeable time and place to allow for Student's father's participation, Parent failed to carry the burden of proving the allegation.

The documentary evidence is clear that Parent participated in ARD meeting discussions, asked questions that were answered by CISD ARD members, and made requests that were honored by the ARD committee. For example, Parent wanted to postpone discussion of *** until the parties met at an upcoming mediation session, and the committee agreed. Due to Parent's disagreement with dropping the eligibility classification of autism, District offered to either conduct its own FIE or pay for an IEE. Parent declined. Student's 1:1 aide was a concern for Parent and District agreed to adjust those services. Petitioner failed to show that Parent was not allowed meaningful participation in Student's ARD meetings. The upshot is that Parent was allowed meaningful participation. Parent simply disagreed with the outcome of the ARD meetings because District failed to find Student eligible as a child with autism. The right to provide meaningful input is simply not the right to dictate an outcome and obviously cannot be measured by such." *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003).

As for a failure to ***, Petitioner brought forth no evidence to support the allegation. The record is clear that the ARD committee discussed *** at the *** ARD. By agreement, *** was to be further considered at Student's annual ARD meeting. CISD conducted *** of Student in ***, 2013.

Physician's Referral for Occupational Therapy

After the expiration of the deadline for submission of closing arguments, Parent submitted three pages of documents that were not included in disclosure. The documents related to Petitioner's allegation that District required a physician's referral for occupational therapy. Respondent filed a motion to strike/exclude those documents on the basis that they were not disclosed by the disclosure due date.

I find that Respondent's motion should be and is GRANTED IN PART, and DENIED IN PART. Respondent's motion to strike that portion of Petitioner's document that reflects a physician's referral for occupational therapy from *** is DENIED. Physician's referral was

admitted into evidence at hearing as Joint Exhibit 102. All other submitted documents are untimely and are STRICKEN from the record.

*** is a third party provider of occupational therapy to students in the CISD. *** requires a physician's referral consistent with the Texas Occupational Code. The physician's referral in evidence is undated; thus, the hearing officer cannot determine its relevance to the issue at hand. Petitioner brought forth no evidence in a timely manner to show that Petitioner made payment for the undated physician's referral. Further, Petitioner presented no evidence to support a position that a referral was unnecessary. Petitioner failed to show that District should not require a physician's referral for occupational therapy.

Did District Deny Student a FAPE?

Student's IEP was developed and individualized on the basis of the Spring 2013 FIE conducted by AISD. There was no evidence that Petitioner believed that the program was not administered in the least restrictive environment. The record is replete with evidence that the services were provided in a coordinated and collaborative manner by the key stakeholders. District staff emailed between themselves regarding Student's accommodations, opportunities for a "shoulder partner" during *** class, and missing assignments that Student needed to complete. District staff and Parent collaborated on Student's make-up work and Parent's opportunity to visit Student's classrooms. As earlier discussed, Parent and District staff collaborated during ARD meetings regarding Student's education program. Student's progress was monitored by District staff, and maintained passing grades. Petitioner brought forth no evidence that Student failed to receive academic and non-academic benefits. Based on the record, Respondent provided Petitioner with a FAPE.

Conclusions of Law

1. The Student is eligible for special education services as a student with a disability under IDEA, 20 U.S.C. §1400 et. seq. and its implementing regulations. CISD 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 th 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 IDEA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet Petitioner's burden on all issues.

Order

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

SIGNED on April 21, 2014.

/s/

BRENDA RUDD
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. §1415.

DOCKET NO. 080-SE-1113

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

SYNOPSIS

ISSUE NO. 1: Whether, in ***, 2013, District failed to provide Prior Written Notice before Admission, Review, and Dismissal (“ARD”) meetings and change of eligibility classification from autism to emotional disturbance (“ED”)

HELD: For the District

CITATION: 34 C. F. R. §300.503; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983)

ISSUE NO. 2: Whether at Student’s first ARD meeting, District ARD committee had predetermined Student’s services

HELD: For the District

CITATION: 34 C. F. R. §300.324; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983)

ISSUE NO. 3: Whether the classification of ED is appropriate

HELD: For the District

CITATION: 34 C. F. R. §§300.306 and 300.8; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983)

ISSUE NO. 4: Whether District’s goals for Student are based on an inappropriate full individual evaluation (“FIE”) conducted by *** Independent School District on May ***, 2013

HELD: For the District

CITATION: 34 C. F. R. §§300.304 and 300.305; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983)

ISSUE NO. 5: Whether District was required to include an autism specialist in Student’s ARD meetings

HELD: For the District

CITATION: 34 C. F. R. §300.321; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983)

ISSUE NO. 6: Whether District denied Parent an opportunity to meaningfully participate in the ARD process

HELD: For the District

CITATION: 34 C. F. R. §300.322; *White v. Ascension Parish School Board*, 343 F.3d 373 (5th Cir. 2003); *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983).

ISSUE NO. 7: Whether District failed to *** for Student

HELD: For the District

CITATION: 34 C. F. R. §300.321(b); *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983)

ISSUE NO. 8: Whether District failed to hold the ARD meeting at a mutually agreed time and place to allow for Student's father to attend

HELD: For the District

CITATION: 34 C. F. R. §300.501; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983);

ISSUE NO. 9: Whether District should require Parent to obtain a physician's referral for occupation therapy

HELD: For the District

CITATION: 34 C. F. R. §300.17; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Tatro v. Texas*, 703 F.2d 823 (5 th Cir. 1983); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997)