

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

**DECISION OF HEARING OFFICER**

**Procedural History**

Petitioner filed a request for due process hearing on September 5, 2013, Docket No. 008-SE-0913. The hearing in that action began on January 27, 2014. Due to inclement weather, the hearing was continued. During the interim period, Petitioner filed a second request for due process hearing on February 4, 2014, Docket No. 138-SE-0214. Petitioner subsequently requested and was granted consolidation of the two matters. The hearing on the consolidated matters was carried under Docket No. 138-SE-0214 pursuant to Texas Education Agency requirements.

The hearing resumed on April 29 and 30, 2014. For unavoidable reasons, Respondent was unable to fully present its case, and Petitioner agreed to continue the hearing. By agreement of the parties, Respondent’s final witness testified by telephone May 20, 2014 and Petitioner called a rebuttal witness. The parties submitted closing arguments June 16, 2014.

At all times, Dorene Philpot, attorney at law, represented Petitioner, \*\*\* (“Student”), by next friend, \*\*\* (“Parent”). Cynthia Buechler, attorney at law, represented Respondent, Silsbee Independent School District (“District”).

**Issues for Hearing**

In October, 2013, Petitioner withdrew an issue that disputed placement in the least restrictive environment. The consolidated issue is a denial of a free, appropriate public education (“FAPE”) with the following sub-issues:

- a.) Whether District failed to develop an appropriate individualized education program (“IEP”) for Student from September 5, 2012 through November 4, 2013 as follows:
  - 1) Whether District failed to develop objective, measurable goals and objectives in all areas of need based on present levels of performance including academics, social skills, occupational therapy (“OT”)/sensory, behavior, speech, pragmatics, communication, assistive technology (“AT”), in-home training, and parent training;
  - 2) Whether District failed to appropriately consider and incorporate all the eleven elements of the autism (“AU”) supplement;

- 3) Whether District failed to include an appropriate behavioral intervention plan (“BIP”) based on an appropriate functional behavioral assessment (“FBA”);
  - 4) Whether District failed to increase or change Student’s services when student either did not make progress or showed regression;
  - 5) Whether District failed to specify how speech and OT services would be provided; and
  - 6) Whether District failed to specify the amount of 1:1 time would be provided to Student in both the IEP and the AU supplement;
- b.) Whether District failed to implement Student’s IEP as written from September 5, 2012 through January 27, 2014, such as:
- 1) Whether District failed to complete evaluations on the timeline stated in the IEP;
  - 2) Whether District failed to conduct functional behavior, OT, assistive technology (“AT”), auditory processing/distractibility, speech/communication, achievement and IQ evaluations as promised;
  - 3) Whether District failed to implement the Creative Education Institute (“CEI”) labs;
  - 4) Whether District failed to deliver OT and speech services as specified in the IEP;
  - 5) Whether District failed to give progress reports on IEP goals and objectives on the timeline in IEP in the fall 2012, spring 2013, extended school year (“ESY”) 2013, fall 2013 and through January 27, 2014;
  - 6) Whether District failed to provide personal care assistant;
  - 7) Whether District provided an accommodation of reading materials that was not included in Student’s IEP; and
  - 8) Whether District changed IEP without input from Parent;
- c) Whether District failed to timely and appropriately evaluate Student in all suspected areas of disability and need, as follows:
- 1) Whether District failed to conduct a formal sensory evaluation;
  - 2) Whether District failed to provide an appropriate psychological evaluation;
  - 3) Whether District failed to evaluate for a learning disability;
  - 4) Whether District failed to conduct an IQ evaluation after Parent gave consent;
  - 5) Whether District failed to conduct appropriate speech assessment including evaluation for pragmatics abilities and a language sample;
  - 6) Whether District failed to conduct a formal AT evaluation;

- 7) Whether District failed to timely and appropriately conduct a functional behavior assessment (“FBA”); and
  - 8) Whether District failed to timely re-evaluate Student.
- d) Whether District allowed Student to be bullied to a degree that was a denial of FAPE; and
- e) Whether District violated Parent/Student’s procedural rights or denied Parent the right to equal participation and collaboration to such degree that Student was denied the right to FAPE.

Petitioner requests specific findings of fact and/or conclusion of law as to whether Petitioners’ due process hearing request or the case pursued by the family was frivolous, unreasonable, groundless, meritless, without foundation, done in bad faith and/or pursued for an improper purpose, or was pursued after it became obvious it was one of the above. Petitioner requests specific finding of fact concerning whether Parent or District unreasonably protracted the final resolution of the issues in controversy.

In Docket No. 008-SE-0913, Petitioner selected an independent evaluator that exceeded Respondent’s cost criteria. On October 29, 2013, Respondent filed its amended counterclaim in defense of its criteria for independent educational evaluators.

Following Petitioner’s second request for due process hearing, Respondent counterclaimed to defend the appropriateness of its full individual evaluation (“FIE”) including its FBA, in-home training and OT evaluations, and sought a determination that the evaluations were statutorily appropriate.

### **Requests for Relief**

In the consolidated actions, Petitioner requests the following relief:

1. An order that District denied Student FAPE;
2. An order directing District to provide Student with an appropriate IEP in the least restrictive environment (“LRE”);
3. Alternatively, an order directing District to reimburse Parent for placement assembled for Student to include past reimbursement for private services, evaluations and mileage, and private placement and related services funded by District;
4. An order directing District to provide compensatory educational services in the amounts and types determined by the hearing officer to be appropriate; and
5. Any relief that the hearing officer deems appropriate.

### **Findings of Fact**

Based on the evidence before this hearing officer, the following are the findings of fact in the instant action. Citations to Joint Exhibits, Petitioner's Exhibits and Respondent's Exhibits are designated with a notation of "J", "P", or "R" followed by the exhibit number and/or page number. Citations to the transcript are designated with a notation of "T" followed by the volume number and page number.

For ease of reference, Student's April, 2012 ARD meeting is referred to by date. Reference to the 2013 ARD meetings are as follows: April 4, 2013 ("ARD #1"), April 15, 2013 reconvene meeting ("ARD #2"), May 23, 2013 reconvene meeting ("ARD #3"), September 5, 2013 ("ARD #4"), and November 5, 2013 ("ARD #5").

1. By stipulation of the parties, Student is eligible for special education services as a child with autism and speech impairment.
2. At an early age, Student's signs of autism included reduced eye contact, perseveration, echolalia (both immediate and delayed), and one-word utterances. Student preferred to play alone and was easily distracted. T-4 pgs. 1246-1248
3. Student is a healthy child, with normal hearing and vision. Student is surrounded and supported by both immediate and extended family members. J-16
4. Historically, Student has struggled communicatively. Student's speech and language problems include language issues, not simply articulation or speech problems. Student exhibits expressive and receptive language weaknesses, as well as weaknesses in language comprehension and pragmatic language. Student's communicative functioning has improved over the past several years, although deficits and delays continue to be present. Student has difficulty with higher order language. Student has difficulty retrieving information on demand. Student has difficulty processing information given at a conversational rate. Student is below grade level in reading and math. J-17; J-10, 16; T-1, pgs. 269-272
5. Student enrolled in District's preschool program for children with disabilities in \*\*\* and remained enrolled in District until the hearing. Student was retained in \*\*\* grade. At the time of hearing, Student was in \*\*\* grade. P-1, 17
6. Throughout Student's years at District, Respondent used Dr. \*\*\*, a psychologist, to evaluate Student. He consistently diagnosed Student with autism and in need of specialized instruction. Dr. \*\*\* uses a play-based assessment. A play-based assessment is a specific way of collecting data by using toys, educational materials, sensory materials when working with children who are suspected to have autism spectrum disorders. T-4, pg. 1251

7. In his 2002 evaluation, Dr. \*\*\* pointed out Student's impairment in communication and social functioning and expressive and receptive language problems. His recommendations included low student to teacher ratio, minimum unstructured time during the school day, prioritized behavioral objectives, parent training, in-home training, and ESY. He recommended structured and didactic teaching arrangement for teaching social skills, and pointed out that Student would not do as well with loosely structured opportunities for social learning. Dr. \*\*\* further indicated that Student would always need a plan to help student generalize social skills. R-2
8. In 2010, Dr. \*\*\* reported that, although Student had made progress, student continued to show deficits in expressive and receptive language skills, pragmatic language skills and social skills. In addition to previous recommendations, Dr. \*\*\* recommended social skills supports and strategies based on social skills assessment/curriculum and provided across settings. He recommended a consistent educational routine along with some carefully implemented exposure to typically developing peers who could serve as role models for Student in terms of social, academic and communicative functioning. J-10
9. In Dr. \*\*\*'s April, 2013 evaluation, he reported that there existed differences of opinion between District and Parent regarding Student's cognitive abilities. Although still present, Student's communicative functioning had improved. Student used longer utterances to make spontaneous comments and statements. Student asked a minimum of questions. Semantic problems and pragmatic weakness continued to be present. Student's receptive language appeared to be more a strength than a weakness, but Student continued to have significant expressive and receptive language problems. When too much language was used, Student became confused. Student was globally delayed in terms of academic achievement expectations for student's age. Among previous recommendations, Dr. \*\*\* continued to recommend speech and language intervention, and suggested social stories if Student experienced trouble with certain types of age-appropriate behavior as student made gains in communication. He recommended that Parent begin discussing the issue of \*\*\* with student. J-16
10. From 2009 to 2013, the Naglieri Nonverbal Ability Test Second Edition was administered to Student. The test is a nonverbal measure of general ability. Student's ability index ranged from extremely low to borderline in relation to scores of other students of the same age. P-2

11. In May, 2012, Student was assessed with the use of the C-Toni, a nonverbal assessment tool. Student had a nonverbal IQ of \*\*\*. Student's Picture Nonverbal IQ was \*\*\* and student's Geometric nonverbal IQ was \*\*\*. J-16; J-17
12. At the end of student's \*\*\* grade year, Student's reading and math skills were on a \*\*\*. R-10
13. Student's Woodcock-Johnson III Achievement results at the end of \*\*\* and \*\*\* grades:

Cluster/Test	MAY, 20, 2012 W-J III Standard Score/Grade Equivalent (P-30)	APRIL 12, 2013 W-J III Standard Score/Grade Equivalent (P-4)
Total Achievement	***	***
Broad Reading	***	***
Broad Math	***	***
Broad Written Language	***	***
Basic Reading Skills	***	***
Reading Comprehension	***	***
Math Calc. Skills	***	***
Math Reasoning	***	***
Written Expression	***	***
Academic Skills	***	***
Academic Fluency	***	***
Academic Apps	***	***

14. Student's \*\*\* grade placement was a structured learning class, described as a self-contained class that provides intensive instruction to students who are lacking in communication, social skills, and academics. Social skills are embedded in the activities in the structured learning class. P-16; T-2, pgs. 654, 657; T-3, pgs. 1089-1090
15. In \*\*\* and \*\*\* grade, Student received 30 minutes of direct music therapy, OT and speech therapy once weekly. Speech services were provided in small groups. R-10, pg. 5; R-13
16. In \*\*\* grade, Student had goals and objectives in reading, math, science, social studies, speech, social skills, and OT. P-5, pg. 2, P-7; R-10
17. Student's final grades for \*\*\* grade were \*\*\* in reading, \*\*\* in language arts, \*\*\* in math, \*\*\* in science and \*\*\* in social studies. P-4; T-1, pg. 93
18. At the beginning of Student's \*\*\* grade, student read on a developmental reading assessment ("DRA") level \*\*\*, which equates to near the end of \*\*\* level. Student could do basic math facts with manipulatives and could recognize numbers to 100. Student's writing was at a \*\*\* level. Student communicated mostly with adults and did not initiate conversation. Social skills and communication pragmatics were worked on daily. At the end of \*\*\* grade, Student

- read on a DRA level \*\*\*, or mid-to end of \*\*\* grade. Student did addition and subtraction without the use of manipulatives and was beginning to memorize basic multiplication facts. Student's writing skills had increased from writing one word at a time to writing complete sentences. Student initiated conversations with adults and peers and could maintain eye contact. P-24, pg. 2; R-11, pg, 45; T-1, pg. 129; T-3, pgs. 899-901, 904-906, 920
19. In \*\*\* grade, Student performed satisfactorily on the State of Texas Assessments of Academic Readiness Alternate ("Alternate") in reading and math. P-13; T-3, pg. 916
  20. In \*\*\* grade, the speech therapist consulted with Student's teachers. Student's vocabulary increased, student's sentence structure improved, and student made more eye contact. Student's speech became smoother both when student spoke and when student read. J-17; T-3, pgs. 1118, 1119, 1136
  21. During Student's \*\*\* grade year, a speech progress report was dated March 3, 2013. Academic progress reports were provided in October, 2012, and March, May, and June, 2013. District provided no social skills progress report. R-25
  22. At ARD #1, Student's evaluations were current except for the psychological evaluation. Parent wanted to use the same psychologist that conducted Student's previous evaluations for the psychological evaluation and the committee agreed to the request and gave Parent time to arrange an appointment. The committee agreed that Student's AU eligibility would continue to be effective. The committee approved Student's goals and objectives for the following year. R-11, pg. 21; T 1-pgs. 126-127
  23. In ARD #1, Student's annual ARD meeting, District discussed placement in a Life Skills classroom or repeating \*\*\* grade. Parent disagreed, and the committee agreed to reconvene. At ARD #2 placement in a Structured Learning Class was offered. Student's ESY goals were developed in math and reading. P-25, pg. 22; P-26, pg. 22; P-27; R-11, 12
  24. A Life Skills class focuses on basic life skills, ie., how to take care of oneself. The focus in a Structured Learning class is academics, communication and social skills. T-3, pg. 1171
  25. District's psychological reevaluation was completed April 6, 2013. J-16
  26. At ARD #3, the committee reviewed Dr. \*\*\*'s psychological report and Parent agreed to placement in a structured learning class for Student's \*\*\* grade year. In-home training/parent training evaluations were requested. R-13; T-2, pgs. 880-881
  27. Student's present levels of academic achievement and functional performance in student's April, 2013 IEPs were specific as to student's strengths and weaknesses. R-11; T-1, pgs. 373-374

28. In \*\*\* grade year, Student was in a structured learning class for reading and math, and general education class for science/social studies for 30 minutes. Student went to computer labs at \*\*\* for math and reading. Student also received social skills class one time a week for 60 minutes, after school. Student attended music therapy, occupational therapy and speech therapy at one time per week for 30 minutes. P-25; R-13; T-2, pg. 596
29. Student's \*\*\* grade goals and objectives were in speech therapy, reading, language arts, mathematics, science, social studies, OT and social skills. P-5, 7, 28; R-11, 12, 14, 29
30. At the end of \*\*\* grade, Student's AU Supplement provided for staff to student ratio of 2:25 for maintenance/generalization for skills. Staff to student ratio of 1:1 was provided for learning new skills and guided practice. Student had no social skills goals and objectives. P-27; R-11, 13
31. Student's modifications and accommodations for \*\*\* grade included reduced assignments, extra time for completion of assignments, opportunity to respond orally, task analysis of assignments, and provision of correctly completed examples, short instructions, visual aids, exams of reduced length, oral exams, encouragement for classroom participation, specialized curriculum, teacher check for understanding, positive reinforcement and supervision during transition activities. Student's \*\*\* grade structured learning class teacher employs the strategies that Petitioner's independent evaluator recommended. R-13; T-2, pgs. 683-684
32. Student uses the iPad and computer successfully. Although a possible AT evaluation was discussed, the committee determined that none was necessary at ARD #4. Visual schedules are in Student's classroom. Parent agreed with the ARD determination. R-28; T-1, pg. 175; T-2, pgs. 498, 600-601
33. Early in \*\*\* grade, Student had progressed to such a degree that the ARD committee increased student's time in general education class. Parent agreed with all decisions at that meeting. P-28; T-2, pgs. 498-500, 601-602; 611
34. In the 2012-2013 school year, District attempted to conduct the Wechsler Intelligence Scale for Children-Fourth Edition ("WISC-IV") as part of the FIE, but was unsuccessful. It conducted an assessment of nonverbal intelligence, speech/language and psychological evaluations. Parent disagreed with District's evaluations and requested in writing an Independent Education Evaluation ("IEE") on August 30, 2013. The request did not delineate the areas Parent wanted to be covered in the IEE. ARD #4 document specifically states, "Parent does not agree with last psychological or academic/IQ evaluation." Parent agreed with the ARD #4 decisions. P-12, 14, 15, pg. 1; P-28, pg. 23; R-5

35. District gave Parent IEE guideline paperwork at ARD #4, and provided its cost criteria on September 30. During the next weeks, several communications occurred between District, Parent, and the independent evaluator regarding District criteria, a requested exception, and updated evaluator lists. P-15, pg. 103-109; R-14, pg. 23; R-21, pgs. 5-10
36. Parent requested an exception to District's price limit in order to use Dr. \*\*\*, a specialist in pediatric neuropsychology. On November 5, District responded that it had not conducted a neuropsychological evaluation and offered to conduct that evaluation. Parent did not agree to District's request. On November 6, District notified Dr. \*\*\* of its agreement to allow each evaluator to observe three hours each P-15, pg. 75-90; R-21, pg. 62; T-2, pg. 872
37. Due to health reasons, Dr. \*\*\* cancelled the agreed upon November observation date. Following the winter break, Dr. \*\*\* observed Student in school, and completed her report January 16, 2014. By stipulation of Petitioner's counsel, Petitioner's independent evaluator received payment from District for Student's IEE in February, 2014. P-17; T-2, pgs. 882-883
38. Student attended social skills class during student's \*\*\* and \*\*\* grade years. The class consisted of 60 minutes, one time per week and was offered to students with autism and severe ADHD. The class worked on pragmatic language, used visual aids and social stories. T-3, pgs. 1047-1048
39. Student's \*\*\* grade report cards reflect better than average grades. The structured learning class teacher reported progress in all areas including social skills. R-33; T-2, pgs. 667-673, 677
40. Following a psychological evaluation that suggested a FBA, District conducted the assessment. Teacher reports indicated that when Student is assigned independent work, student does not begin the work, stops working, and/or sighs loudly. At these times, Student requires help or reassurance. By all reports, Student is not a behavior problem in school or in the home. District and Parent determined that Student did not need a BIP. P-12, 25, pg. 3; J-20, 27, 28; T-1, pgs. 131, 166-167; T-2, pgs. 585, 675-677
41. The standard way of assessing for AU is observational. T-1, pgs. 400, 415; T-2, pgs. 459-460
42. Student did not receive speech therapy during ESY 2013. Upon discovery of the omission, District made up the services. T-2, pg. 465
43. At ARD #4, following District's in-home training evaluation, District offered in-home training for one hour, twice monthly. The committee discussed generalization of Student's program at home and vice-versa. Parent declined in-home training. It is not District's

standard practice to write specific in-home training goals and objectives. P-28; R-6; T-1, pgs. 187-188; T-2, pgs. 496-498; T-3, pgs. 1032-1033

44. At ARD #4, the committee discussed a possible AT evaluation, but determined that Student did not need one. Student was capable of using a computer and iPad. P-28; T-2, pg. 498
45. ARD #4 IEP includes parent training once per month. District's parent training consists of a monthly newsletter and any additional information that would help Parent, emails about courses available to Parent, and an opportunity to attend a conference on April 12. P-28, pg. 20; T-2, pg. 824; T-3, pg. 1174
46. Student could not read a passage without picture clues in \*\*\* grade. Student was able to do so at the time of hearing. R-32; T-3, pg. 914
47. District held ARD #5 in Parent's absence, then scheduled a reconvene meeting. R-1
48. Since age \*\*\*, Student has received OT services 30 minutes per week. District's current OT evaluation lists three areas of concern: proper social interaction with peers, following more complex sets of directives without additional prompts, and staying on a task that is unfamiliar until the task has been completed. R-8; T-3, pg. 980
49. Student's \*\*\* grade OT goals are: to improve written communication skills for greater proficiency when using writing implements and to improve work behaviors for greater task orientation in the classroom and school environment. P-6, pg. 15
50. When developing goals and objectives for a coming year, the OT puts a student's present levels of performance on the current year's goals/objectives, and carries over the previous year's goals to ESY. R-11, pg. 57; T-3, pg. 1008-1011
51. A language checklist is not a standardized test. It is used to determine how a child is able to communicate and how the child is understanding and maintaining conversation. T-3, pg. 1128-1129
52. At the time of hearing, Student did not access tutoring class that is available 7:30-8:00 a.m. T-3, pg. 1171
53. At the time of hearing, Student was reading on an emerging \*\*\* grade level. This surge in skill began around spring break, 2014. In math computation, Student performed on about a \*\*\* grade level. In other areas of math, Student was at the end of a \*\*\* grade level. Student experienced difficulty with concepts and applications. T-2, pgs. 624, 649-652
54. At the time of hearing, Student was reported to have improved in social skills and developing a sense of humor. Student had increased in vocabulary and spontaneous speech. Student had improved in who, what, where, when, why and which questions, known as W-H questions.

The use of social stories proved beneficial for Student. These are utilized in both speech therapy and the Structured Learning classrooms. T-3, pgs. 1119-1121

55. Student's three-year re-evaluation completion due date was March 1, 2013. District completed its FIE May 6, 2013. R-9, 10
56. In addition to social skills instruction throughout the day, District offers social skills class after school. Parent received information regarding the class. Student attended the class one time during the 2013-2014 school year. T-2, pgs. 678-679
57. Dr. \*\*\* found that Student has limitations across all domains cognitively and is well below expectations in some areas. T-1, pgs. 354-361
58. District uses iStation and CEI computer programs. The iStation is for reading only. The CEI program is for reading and math. Student's ARD #5 added 1 hour of CEI math and reading labs for Student. At the beginning of Student's \*\*\* grade, District's computers were not set up for the CEI lab and Student could not access CEI lab until September 17, 2013. T-3, pgs. 1079, 1112
59. Parent requested an IEE on August 30, 2013. It was completed in January, 2014. No one party was responsible for any delay in its completion. Neither party unreasonably protracted the final resolution of the issues in controversy at hearing.
60. Student's AU supplement requires personal assistance. It does not require a personal assistant. P-27; R-11

### **Discussion**

#### **Burden of Proof**

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), aff'd, 468 U.S. 883 (1984).

Two factors must be considered to determine whether a school district has provided a student with a FAPE: 1) the school district must comply with the procedural requirements of IDEA; and, 2) the school district must design and implement a program that is reasonably calculated to enable the child to receive educational benefits. *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034 (1982).

"[A] party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP." *Houston Indep. Sch Dist. v. Bobby R.*, 200 F. 3d 341, 349 (5<sup>th</sup> Cir. 2000). What provisions are significant in an IEP

should be determined in part based on "whether the IEP services that were provided actually conferred an educational benefit." *Id.* at 349 n. 2.

The Fifth Circuit has defined a free appropriate public education 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 (5<sup>th</sup> Cir. 1997). An IEP need not be the best possible one, nor one that will maximize the child's educational potential; it must only provide the child a basic floor of opportunity. *Cypress-Fairbanks*. FAPE does not demand that every element of the IEP be implemented. A child need not "improve in *every* area to obtain an educational benefit from his IEP." *Bobby R. v. Houston Indep. Sch. Dist.*, 200 F. 3d 341.

### Evaluations

In evaluating a child, a district must ensure that the child is assessed in all areas related to the suspected disability, including, if appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. The evaluation must be sufficiently comprehensive to identify all of the child's special education and related services needs, whether or not commonly linked to the disability category in which the child has been classified. 34 C.F.R. §§300.304 and 305. Petitioner alleges that District should have conducted a variety of evaluations that it has not done. Petitioner also complains that District's evaluations were inappropriately conducted.

Petitioner contends that District should have evaluated Student for AT, learning disability, and sensory issues. The evidence shows that Student has the use of an iPad and computers during the school day, and is successful with both forms of technology. While an AT evaluation may be helpful to determine other programs for Student's use, the evidence shows that the ARD committee discussed a possible evaluation and agreed that none is necessary. Parent was in agreement with the decision.

Parent testified that Student had sensory issues in the community. However, neither District staff nor Dr. \*\*\* observed sensory issues. Neither does the evidence support a need for an evaluation for a learning disability. Petitioner failed to carry the burden of proving that District should have assessed Student for AT, a learning disability, or sensory issues.

Parent disagreed with District's FIE, and District filed its counterclaim to defend the appropriateness of its FIE. As part of its FIE, District attempted to assess Student's cognitive abilities

through the use of the WISC-4. Student became agitated and could not answer the questions despite District's attempts to make student feel comfortable with the testing. District conducted a test of nonverbal intelligence called the CTONI. Student's nonverbal IQ was \*\*\*. In addition, District conducted the Adaptive Behavior Assessment Systems to evaluate Student's cognitive development. In light of the encountered difficulties, District's IQ evaluation was appropriate.

Petitioner questions District's psychological evaluation by Dr. \*\*\*, presumably because it was a play-based assessment and no formal evaluation tools were used. Play based assessments are recognized assessments especially for children who cannot take standardized test due to problems with comprehension of test instruction. The evidence is clear from both District witnesses and Petitioner's expert, Dr. \*\*\*, that, due to Student's disabilities, student has difficulty taking standardized tests.

During an unstructured time of the evaluation, Dr. \*\*\* collected language samples, samples of eye contact, play behavior, attention span, the functioning of Student. He also conducted a parent interview and reviewed documentation from District. His evaluation included consideration of social skills needs and pragmatic language weaknesses.

Petitioner's independent evaluator, Dr. \*\*\*, testified that the standard way of assessing for autism is observational. Both experts agreed that Student's needs are in the area of communication, expressive and receptive language skills, and pragmatics/social skills. Petitioner was unable to show that District's psychological evaluation was inappropriate.

There is no question that Dr. \*\*\*'s psychological evaluation was not completed timely. Even though Parent wanted him to conduct the evaluation and there were scheduling difficulties, the responsibility for timely completion of the evaluation fell to District. As a result of the late psychological evaluation, District's three-year re-evaluation was not completed timely. 34 C. F. R. §300.303. Parent and the ARD committee members were comfortable in their agreement that Dr. \*\*\*'s evaluation would affirm Student's AU eligibility. Their agreement proved to be accurate, and Dr. \*\*\* confirmed Student's eligibility. There was sufficient time after completion of Dr. \*\*\*'s evaluation for placement and program decisions to be made for Student's next year. This procedural violation did not cause Student a loss of FAPE.

The record reflects that Student's speech and language evaluation included the Goldman Fristoe 2-Test of Articulation, Receptive One-Word Picture Vocabulary Test, Expressive One-Word Picture Vocabulary Test, and a language checklist. A language checklist, similar to a language sample, is an informal observation of Student to see how student uses language, sentences, grammar, and whether student makes eye contact.

The purpose of a functional assessment of behavior is to provide the IEP team with additional information, analysis, and strategies for dealing with undesirable behavior, especially when it is interfering with a child's education. *Independent School District No. 2310*, 29 IDELR 330. After completion of Student's FBA, the ARD committee, including Parent, reviewed the results and agreed that Student has no behaviors that interfere with student's ability to access student's education program. Student had no need for a BIP. Consequently, any delay that may have occurred in conducting the FBA or the absence of a BIP caused no loss of educational opportunity.

The evidence showed that overall the school district's May 6, 2013 FIE met the requirements of the IDEA. 34 C.F.R. §§ 300.303 and 304. The FIE also included a review of existing evaluation data as required. 34 C.F.R. § 300.305. The FIE was due to be completed by March 1, 2103 and was completed May 6, 2013. 34 C.F.R. §300.303. The new evaluation results were used to develop the coming year's program. Student suffered no loss of educational opportunity as a result of the untimely completion of the FIE.

### **Development and Implementation of Student's IEPs**

The evidence shows that District considered all the items and appropriate services on the AU supplement that are required by state and federal law in designing the proposed program. 19 Tex. Admin. Code § 89.1055 (e) (1)-(11). For example, the plan proposed extended school year services, a daily schedule with a minimum of unstructured time, in-home training, positive behavior support strategies, suitable staff to student ratio, and social skills and supports. The law does not require the IEP of a student with autism to include every single item noted in the AU supplement -- only those that are appropriate for each student based on the student's individual needs. In this case, the proposed educational plan for Student properly considered the items and included several. Petitioner did not meet petitioner's burden of proof on this issue. *Schaffer v. Weast, supra*.

A child's IEP must include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and meet each of the child's other educational needs that result from the child's disability. 34 C. F. R. §300.320 (a)(2). Student's IEPs included a description of student's academic and functional strengths and weaknesses. These appear in early sections of the IEP documents and on some progress reports. Petitioner did not meet Petitioner's burden of proof on the issue of failure to include present levels of academic achievement and functional performance in Student's IEPs. *Schaffer v. Weast, supra*.

The evidence shows that Student's 2012-2013 and 2013-2014 math, reading, language arts,

social studies, science, speech goals and objectives were based on present levels of performance, and were objective and measurable. Evaluation data was considered, reviewed and utilized by the ARD committee in formulating the IEPs. With the possible exception of Student's \*\*\* grade reading goal, the evidence showed that the goals and objectives addressed Student's cognitive and social needs. That goal stated, "... [Student] is expected to read aloud grade-level stories with fluency (rate, accuracy, expression, appropriate phrasing) and comprehension." The evidence shows that beginning \*\*\* grade Student's reading level was mid-to-end of \*\*\* grade. At the time of hearing, Student was reading on an emerging \*\*\* grade level. During \*\*\* grade, the AIMS-Web program monitored Student at a \*\*\* grade level. Despite the optimism in the single reading goal, overall, Student's academic goals were appropriate.

Based on District's speech evaluation, goals and objectives were developed that focused on syntactic language structures (how sentences are structured), recognizing and using words in readers, and recognizing and using antonyms, rhyming, categories, analogies, words with multiple meanings and figurative language and metaphors. These goals are necessary for Student to learn to manage student's language skills and improve student's conversational abilities, and are appropriate to meet Student's individual needs.

Student's October, 2012 OT assessment indicted three areas of concern: 1) proper social interaction with peers 2) following more complex sets of directives without additional prompts 3) staying on a task that is unfamiliar until the task has been completed. The assessment noted that Student "has very good writing skills, all student's written work is very legible, written on the lines of the paper and well within the space allowed by the paper." The OT goals and objectives for the 2013-2014 school year were: #1) to improve written communication skills for greater proficiency when using writing implements with the objective: to demonstrate motor control necessary for writing tasks and #2) to improve work behaviors for greater task orientation in the classroom and school environment with the objective: to demonstrate the ability to cooperatively function in the class room environment. District's occupational therapist could not explain why goal and objective #1 was developed when it wasn't related to the problem areas noted in her assessment except to say that she doesn't always list all the areas of concern in the assessment. Even though the needs may have been apparent to the witness, the explanation fails to support that OT goal and objective #1 was based on the assessment results. 34 C. F. R. §300.320(a)(2)(i).

Parent-training is a related service that may be required to assist a child with a disability to benefit from special education. 34 C.F.R. 300.34. District's in-home training evaluator considers an in-home training evaluation to include parent-training evaluation. Petitioner was unable to provide

evidence that the parent-training evaluation should have been conducted separately from the in-home training evaluation. District's evaluator interviewed Parent and asked for her concerns. Parent was concerned about the \*\*\* and Student's trusting behaviors. In that light, she indicated a need for assistance in teaching Student appropriate response behaviors. District failed to develop goals for parent-training that were responsive to Parent's expressed concerns. 34 C. F. R. §300.320(a)(2)(i).

At ARD #4, the committee discussed and agreed that Student should attend CEI labs daily for reading and math, 30 minutes each. The testimony showed that the labs were not available for use until September 17, depriving Student of 8 days in the CEI labs. During the 8 day interim, Student used another computer program called the iStation. Petitioner was unable to show that the omission of 8 days the CEI labs caused a loss of educational benefit. The failure of District to provide CEI labs was *de minimus*. *Houston Indep. Sch Dist. v. Bobby R.*, supra.

Petitioner did not show that District failed to implement substantial or significant provisions of the IEP. *Houston Indep. Sch Dist. v. Bobby R.*, supra. An IEP need not be the best possible one, nor one that will maximize the child's educational potential; it must only provide the child a basic floor of opportunity. *Cypress-Fairbanks*, supra. FAPE does not demand that every element of the IEP be implemented. A child need not "improve in every area to obtain an educational benefit from his IEP." *Bobby R. v. Houston Indep. Sch. Dist.*, 200 F. 3d 341.

### **Parent's Opportunity to Participate**

Both \*\*\* and \*\*\* grade teachers testified that they sent progress reports every six weeks. However, District's documentary evidence does not support the testimony. District's evidence showed that, during Student's \*\*\* grade year, one speech progress report was given on March 3, 2013. Progress reports were generated in October, 2012, and March, May, and June, 2013. In \*\*\* grade, the evidence is that District provided no social skills progress reports. Failure to provide progress reports is a procedural violation under the IDEA. 3 C. F. R. §300.320(a)(3)(ii).

At the time of Student's annual ARD meeting in April, Parent had not been provided all the prescribed progress reports for the \*\*\* grade year. At that meeting, District proposed changing Student's placement from a structured learning class to either Life Skills or retention in \*\*\* grade. District convened two additional ARD meetings until there was agreement on an educational program for Student and placement for \*\*\* grade.

During the pending due process hearing request, Parent requested that ARD #5 be rescheduled two times, and District rescheduled. The day before the rescheduled meeting, Parent sent a written message that she could not attend, but wanted to be present. District held the meeting in her absence. In the meeting, the committee discussed Parent's request for a trained paraprofessional assigned to

Student and decline to grant the request. District scheduled a reconvene ARD meeting. There was no evidence regarding the outcome of the reconvene meeting.

A public agency must take steps to ensure that one or both of the parents of a child with a disability are present at each IEP Team meeting or are afforded the opportunity to participate. If neither parent can attend an IEP Team meeting, the public agency must use other methods to ensure parent participation, including individual or conference telephone calls. 34 C. F. R. §300.322. In the instant action, Parent wanted to attend ARD #5, and informed the District. The IDEA is clear that Parent's presence is required unless a district cannot convince parents that they should attend. Equally clear was Parent's desire to attend. Holding the meeting without Parent was a procedural error.

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, *emphasis added*.

In this action, Parent's reasons for objecting to the proposed placement were not based on a disagreement regarding Student's progress. She wanted Student's \*\*\* grade program to mirror student's \*\*\* grade program. The committee was in complete agreement that Student had made "phenomenal" progress. Further, due to the disagreement, the meeting reconvened and the parties worked collaboratively until they were able to agree on Student's entire educational program.

Texas rules allow a party who disagrees with ARD decisions to have a single opportunity for a recess and reconvene meeting. 19 T.A.C. §89.1050. Since Parent was not present, there was no disagreement at ARD #5. However, District was aware of Parent's desire to attend, and offered a reconvene meeting. After careful and deliberate consideration, I find that Parent failed to prove that District's procedural violations *significantly impeded* her opportunity to participate in the decision-making process. Further, the violations did not impede Student's right to a FAPE or cause a deprivation of educational benefit.

### **Bullying**

The only evidence of bullying was a complaint Student made to student's mother. When Parent brought attention to District, it investigated the complaint. The evidence shows that Student was supervised at all times and that teachers did not see any bullying. There was insufficient evidence in the record to support the conclusion that Student was a victim of bullying or that, if student was, it resulted in a failure to provide student with a FAPE. *T.K. v. New York City Dept. of Educ.*, 79 F. Supp. 2d 289 (D.C. N.Y. 2011). Petitioner failed to carry petitioner's burden of proof on

this issue. *Schaffer v. Weast, supra.*

### **IEE and Counterclaim**

After Parent's written request for an IEE in August, 2013, she met with District for ARD #4. The deliberations reflect that Parent disagreed with District's psychological and IQ evaluations. Parent agreed with the ARD decisions. Parent's documentary evidence show that, as she made calls to various evaluators, she noted that some did not do IQ evaluations. Petitioner emailed District on January 31, 2014, and stated that her request was intended to include all the areas that, "were evaluated...or which should have been evaluated but were not."

A parent has the right to an independent educational evaluation at public expense if the parent *disagrees* with an evaluation obtained by the public agency. 34 C. F. R. §300.502 (*emphasis added*). District's 2013 FIE included psychological, IQ, and speech/language evaluations. Parent could not expand and make retroactive her August request for an IEE to include other evaluations five months later in the midst of this due process hearing.

It took approximately five months for the completion of the IEE. The IEE was completed in January and District promptly paid Dr. \*\*\* for her services. Any delays in the completion of the IEE were neither the fault of Petitioner nor Respondent.

Petitioner argues that District counterclaimed in February, 2014 to defend certain evaluations, but did not assert its intention to defend Dr. \*\*\*'s psychological evaluation. District provided a psychological and speech IEE, thus had no need to defend those evaluations. Respondent's counterclaim in defense of its IEE cost criteria is moot.

### **Student's Procedural Rights/Prior Written Notice**

Prior written notice ("PWN") is required when District proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. 34 C. F. R. §300.503. Petitioner alleges numerous failures to provide PWN, the majority of which involve the process involved in the conduct of the IEE and Petitioner's requests for documents embedded in the request for due process hearing, neither of which involve the identification, evaluation, or educational placement or the provision of FAPE to Student.

Petitioner made broad requests for what she referred to as student records under 34 C. F. R. §300.613. A broad discovery request embedded in a hearing request is not a proper or clearly articulated document request. Discovery in a special education hearing is governed by the methods established under the Texas Administrative Procedures Act. Petitioner should have followed those rules. 19 Tex. Admin. Code § 89.1180 (g); Tex. Gov't Code § 2001.091 et seq.

If Petitioner had concerns that the school district's response to Petitioner's request was incomplete, Petitioner should have submitted the issue to the hearing officer prior to the hearing. The proper mechanism would have been to submit a Motion to Compel stating the grounds for the motion with a clearly described list of documents the school district failed to produce. Petitioner had more than ample time in which to use the legal procedures available to petitioner in regard to production of documents, but failed to do so.

On April 10, 2013, Parent requested a "full special education evaluation..." of Student. This occurred while District was completing its FIE that was presented and discussed at ARD #3. In light of the circumstances, it is unclear what Parent was requesting. Regardless, prior written notice was required if District refused to comply with Parent's request. There is no evidence that Parent discussed her April 10 request when she attended and agreed to the decisions made at ARD

#2 or #3 held five days later and again the following month. Student suffered no loss of educational opportunity for any failure to provide prior written notice. 34 C. F. R. §300.513 (a)

### **FAPE**

#### **1. Individualized based on assessment and performance**

In evaluating a child for special education services, a school must use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent that may assist in determining whether a child is eligible for special education services and the content of the IEP. A school may not use any single measure as the sole criterion for determining eligibility and the educational program. The school must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. 34 C. F. R. §300.304.

In the years that Student has been at District, there have been numerous evaluations, including several psychological evaluations, speech/language, and OT evaluations. The evaluations were conducted by qualified personnel and were recognized as valid and appropriate for assessing Student's disabilities. District collected input from Parent and reviewed existing data in its development of Student's IEP. The ARD committee reviewed the assessments and evaluations, and developed specific accommodations, services, and strategies in response to the evaluations and observations of Student. These included speech therapy and OT services, small group and individual instruction, minimal unstructured time during the day, and modifications.

District satisfied the first of four factors under *Cypress-Fairbanks*.

## **2. Least Restrictive Environment**

Petitioner withdrew the issues regarding LRE. Student's educational program was administered in the LRE.

## **3. Services Provided in a Coordinated and Collaborative Manner by Key Stakeholders**

During both \*\*\* and \*\*\* grades, Student's special education teachers communicated with Parent. Student's \*\*\* grade teacher communicated regularly through what was called her "daily news." At Parent's request, the teacher sent Student's daily work home. Parent acknowledged that emails were sent back and forth regularly. District's speech and occupational therapist consulted with Student's special education teacher regularly. District's contracted board certified behavior analyst reviewed Student's program. When Parent wanted Student to be in a self-contained classroom in \*\*\* grade, the ARD committee agreed. When Parent wanted Student to have more time in general education class in \*\*\* grade, the ARD committee agreed. District satisfied factor number three under *Cypress-Fairbanks*.

## **4. Academic and Non Academic Progress Demonstrated**

Witness testimony, including Parent, confirmed that Student benefitted, both academically and non-academically. Parent believes that in \*\*\* grade, Student's teacher "did an awesome job...and got student up very high." Student succeeded on the state-mandated STAAR test and showed progress on the DRA.

Parent was so pleased with Student's \*\*\* grade progress that she wanted the program mirrored the following year. The evidence supports that Student made progress in \*\*\* grade, as well. Student's reading skills were described as "emerging \*\*\* grade." In math computation, student is about a \*\*\* grade level, although student struggles with concepts and applications. In handwriting, Parent agrees that student does well and documentary evidence reflects student's progress. Early in \*\*\* grade, Student's progress warranted increased time in general education class.

Based on Student's individual needs, speech goals focused on management of language skills. Student improved in student's ability to maintain a conversation appropriately.

Pragmatic language is worked on during social skills class. The evidence reflects that Student made progress in this area during the relevant time frame. Likewise, Student improved in student's social skills. Student interacts with both adults and peers. In class, student tells the teacher when she is "going too fast", takes notes independently, and asks to be moved when student can't see the board. Overall, although Parent testified that she believed that Student could have made more gain in \*\*\* grade, she agreed that Student made gains in all areas in \*\*\* grade. District satisfied the fourth factor under *Cypress-Fairbanks*.

## 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. Respondent, Silsbee Independent School District is responsible for providing the student with a FAPE.
2. Petitioner's request for due process hearing was not frivolous, unreasonable, groundless, without merit or foundation, done in bad faith, or pursued for an improper purpose. Neither Petitioner nor Respondent unreasonably protracted the final resolution of the issues in controversy. 19 T.A.C. §89.1185
3. Respondent's 2013 FIE was appropriate. The untimely conclusion of the FIE caused Student no deprivation of educational benefit. 34 C.F.R. §300.303.
4. Petitioner failed to carry the burden of proving that Student was a victim of bullying. *Schaffer v. Weast*, 126 U. S. 528 (2005).
5. District failed to develop one OT goal and objective (goal and objective #1) based upon needs reflected in the OT assessment. 34 C. F. R. §300.320(a)(2)(i)(A).
6. District failed to provide progress reports as required in Petitioner's IEP. 3 C. F. R. §300.320(a)(3)(ii).
7. District failed to develop parent-training goals based on the results of its in-home training and parent-training evaluation. 34 C. F. R. §300.320(a)(2)(i).
8. District's procedural errors did not impede the child's right to a FAPE, significantly impede the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child, or cause a deprivation of educational benefit. *Schaffer v. Weast*, 126 U.S. 528 (2005); 34 C.F.R. §300.513.
9. District's IEPs were reasonably calculated to enable Student to receive educational benefits. *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034 (1982).
10. District implemented substantial provisions of Petitioner's IEPs. *Bobby R. v. Houston Indep. Sch. Dist.*, 200 F. 3d 341.
11. Petitioner bears the burden of proving that Respondent's program denied Student a FAPE under the IDEA. Petitioner failed to meet Petitioner's burden. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

## Order

The IDEA authorizes a hearing officer to order a local education agency to comply with procedural requirements. Therefore, pursuant to 34 C. F. R. §300.513(a)(3), Respondent, Silsbee

Independent School District, is ORDERED to comply with the following:

1. No later than 10 school days following the beginning of the 2014-2015 school year,

Respondent shall convene an ARD committee meeting to discuss and satisfy the following:

- a) The committee shall review Student's current Occupational Therapy Evaluation and goals and objectives for the purpose of ensuring that the goals are developed by the committee and meet the needs of Student. Respondent shall ensure that the occupational therapist that conducted the evaluation and the individual or individuals who will be conducting the therapy sessions are in attendance at that ARD meeting; and
- b) The committee shall review its parent-training evaluation and develop appropriate parent-training goals.

2. No later than 10 school days following the beginning of the 2014-2015 school year, Respondent, Silsbee Independent School District, shall arrange and conduct intensive and detailed training for all District staff and contract providers responsible for the provision of progress reports for Student, as follows: the training shall include the importance of compliance with the IDEA requirement for the provision of regular progress reports, a review of Student's goals and objectives, and appropriate ways to document progress on those goals and objectives. In addition, the training shall include a check and balance procedure for ensuring that progress reports are provided according to Student's IEP. Respondent shall invite Parent to attend the training, and provide Parent with a copy of an attendance sign-in and sign-out record no later than 3 school days following completion of the training.

All other requests for relief are DENIED.

SIGNED on June 30, 2014.

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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.

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

**SYNOPSIS TO DECISION OF HEARING OFFICER**

- ISSUE 1:** Whether District denied Student a free, appropriate, public education (“FAPE”)  
**HELD:** For Respondent  
**CITATION:** 34 C. F. R. §300.101; *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Hendrick Hudson District Board of Educ. v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.*, 200 F.3d 341(5th Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997)
- ISSUE 2:** Whether District failed to develop an appropriate individualized education program for Petitioner  
**HELD:** For Respondent, in part; for Petitioner, in part; despite procedural violations, Respondent’s program is reasonably calculated to enable the child to receive educational benefits  
**CITATION:** 34 C. F. R. §300.320; 34 C. F. R. §300.34(c)(8)(i); *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Hendrick Hudson District Board of Educ. v. Rowley*, 458 U.S. 176 (1982); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997)
- ISSUE 3:** Whether District failed to implement Petitioner’s individual education program (“IEP”)  
**HELD:** For Respondent, in part; for Petitioner, in part; despite procedural violations, Respondent implemented substantial or significant provisions of the IEP  
**CITATION:** *Schaffer v. Weast*, 126 S.Ct. 528 (2005); *Hendrick Hudson District Board of Educ. v. Rowley*, 458 U.S. 176 (1982); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); 34 C. F. R. §300.320(a)(3)(ii)
- ISSUE 4:** Whether District failed to timely and appropriately evaluate Student in all suspected areas of disability and need  
**HELD:** For Respondent  
**CITATION:** 34 C. F. R. §§300.303-305; *Schaffer v. Weast*, 126 S.Ct. 528 (2005)
- ISSUE 5:** Whether District allowed Student to be bullied to a degree that denied FAPE  
**HELD:** For Respondent  
**CITATION:** 34 C. F. R. §300.101; *Schaffer v. Weast*, 126 S.Ct. 528 (2005)
- ISSUE 6:** Whether District violated Parent/Student’s procedural rights or denied Parent the right to equal participation and collaboration to such degree that Student was denied the right to FAPE  
**HELD:** For Respondent  
**CITATION:** 34 C. F. R. §300.513; *Schaffer v. Weast*, 126 S.Ct. 528 (2005)
- ISSUE 7:** Whether District’s full, individual evaluation (“FIE”) was appropriate  
**HELD:** For Respondent  
**CITATION:** 34 C. F. R. §§300.303-305; *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034(1982); *Schaffer v. Weast*, 126 S.Ct. 528 (2005).