

**DOCKET NO. 141-SE-0214**

**STUDENT** § **BEFORE A SPECIAL EDUCATION**  
§  
**VS.** § **HEARING OFFICER**  
§  
**CARROLLTON-FARMERS** §  
**BRANCH ISD** § **FOR THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

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

The issues before the hearing officer were as follows:

1. Whether the District failed to appropriately identify the student in the area of speech eligibility prior to dismissing student from speech services, or whether the District appropriately dismissed student’s speech eligibility status.
2. Whether the District failed to provide appropriate Occupational Therapy.
3. Whether the District failed to provide \*\*\*.
4. Whether the District has failed to appropriately train staff.
5. Whether the District has failed to include the parent as a meaningful participant in the development of the student’s educational program.
6. Whether the student’s placement is the least restrictive environment for the student.
7. Whether the student requires Extended School Year services (ESY).
8. Whether the District has failed to provide appropriate related services in the areas of counseling, tutoring, a mentor, social skills training, recreational therapy, speech therapy, occupational therapy and assistive technology.

Petitioner requested the following relief:

1. Compensatory education and related services in all academic areas, as well as counseling, social skills training, speech therapy, recreational therapy, occupational therapy and assistive technology.
2. Reimbursement of out-of-pocket expenses.
3. An IEE with a certified behavior specialist.

4. An assistive technology assessment.
5. An IEE in the areas of speech, full individual evaluation, and occupational therapy.
6. An order requiring the ARD Committee to convene to consider the IEE.
7. An order requiring the District to include the IEE evaluator in the ARD Committee meeting at District expense.
8. An order requiring the District to provide the student opportunities to participate throughout the school day with non-disabled peers.
9. Social skills and/or interpersonal relations training to the student.
10. Functional vocational training for independent living.
11. Training for the staff.
12. An order requiring the District to provide an annual staffing to address the student's IEP with all staff who will be working with the student.
13. Reimbursement for costs and representation fees.

### **COUNTERCLAIM**

Respondent filed a counterclaim to defend its assessment.

### **PROCEDURAL HISTORY**

Petitioner filed this request for hearing on February 5, 2014. Respondent raised the affirmative defense of the statute of limitations and this hearing officer ruled that all claims based on alleged acts or omissions of the District occurring prior to February 5, 2013, were time barred and DISMISSED.

The Due Process Hearing was initially scheduled for February 20, 2014. Following a continuance for good cause, the hearing was held on April 24, 2014. Petitioner appeared with Non-Attorney Advocate, Debra Liva, and consented to non-attorney representation. Respondent appeared with its designated representative, \*\*\*, and attorneys, Nona Matthews and Michael Clark. At the conclusion of the hearing, both parties requested an opportunity to present written argument and an extension of the Decision due date to June 6, 2014. Petitioner subsequently requested additional extensions of the written argument and Decision deadlines due to illness. I found good cause to extend the written argument and Decision deadline to June 20, 2014. The Decision was timely rendered and forwarded to the parties.

Based upon the evidence and argument of the parties, I make the following findings of fact and conclusions of law.

### **FINDINGS OF FACT**

1. The student resides within the geographical boundaries of the Carrollton-Farmers Branch ISD. Carrollton-Farmers Branch ISD was responsible for providing the student with a FAPE during the relevant time frame. The student is eligible to receive special education and related services as a student with an Intellectual Disability. R5.

2. The student was enrolled in CFBISD at all times during the period relevant to this decision. The student is in the \*\*\* grade and is \*\*\* years of age. R7.

3. According to the student's teacher, the diagnostician, and the most recent evaluation, student functions academically on a \*\*\* level. The student's prior intellectual testing indicates that student has a full-scale IQ of approximately \*\*\*, and student's academic achievement testing indicates that student functions in a very low range with slow, laborious learning patterns. R7:3, R7:4, RR156-157, 192.

4. On October 2, 2012, the ARD Committee developed the student's IEP (2012 IEP) based on a review of current evaluation data, the student's present levels of academic achievement and functional performance (PLAAFP's), and parent input. R1. This is the IEP in effect from February 5, 2013 until the annual ARD meeting in October, 2013.

5. The 2012 IEP contained measurable goals and objectives for all academic and non-academic areas, a transition plan, transportation services, adaptive physical education, and a personal care plan. The ARD Committee determined that the student's placement would be in a self-contained special education classroom setting, with access to non-disabled peers through \*\*\* and other reverse inclusion activities. R1:33-34; RR-207, 215, 248, 251.

6. The 2012 IEP did not include a Behavior Intervention Plan (BIP). R1. However, according to the student's special education teacher and the behavior resource specialist (BRS), student's behaviors did not warrant the development of a BIP at that time. R1:46; RR212, 224, 281.

7. The ARD Committee did not recommend Extended School Year services (ESY) for the summer of 2013. R1:47.

8. Petitioner presented no evidence that the 2012 IEP was not appropriate. Petitioner presented no evidence that the student required ESY during the summer of 2013. According to the uncontroverted testimony of school personnel, the student did not experience severe or significant regression of critical skills that student was unable to recoup after a reasonable period of time following summer or school-year breaks. RR174-175.

9. Soon after the beginning of the 2013-2014 school year, the parent expressed concerns regarding new at-home and school behaviors, transportation, and the possible need for occupational therapy. R3:1; RR147-148.

10. School personnel also noticed attention seeking behaviors, such as \*\*\* episodes, outbursts, and blurting out. RR148-149, 15, 287.

11. On September 4, 2013, the ARD Committee convened to address the parent's concerns and to conduct a Review of Existing Evaluation Data (REED) in connection with the student's three-year reevaluation. R4; RR148-149. The ARD Committee determined that the student did not require an additional speech and language evaluation because student's expressive and receptive language skills were commensurate with student's cognitive functioning. R4; RR24, 30, 149-150, 197.

12. The ARD Committee also considered whether the student presented an educational need to warrant an OT evaluation and determined that student did not. R4; RR150-151, 231. The parent raised concerns that student \*\*\* when student \*\*\*. However, the teacher described this behavior as attention seeking in nature in that the student would \*\*\* to gain attention and comment from peers and staff. Additionally, this behavior ceased when a BIP was implemented. RR263.

13. The ARD Committee requested updated evaluations, including achievement testing, vision and hearing screening, an FBA to address new behaviors reported by both the teacher and the parent, and a Functional Vocational Assessment. At that time, the ARD Committee decided not to conduct further speech, OT, intellectual or assistive technology assessments. R4; RR150-154.

14. The District initiated and completed the student's three-year reevaluation and convened an ARD Committee meeting on October 1, 2013. The evidence is uncontroverted that the evaluation was appropriate.

15. The ARD Committee discussed the student's evaluation results, including the FBA, and developed an IEP including academic and non-academic goals and objectives, a BIP, behavioral support services, personal care services, a \*\*\*, transportation services, parent training, and Adaptive P.E. R7; RR160-165.

16. During this ARD Committee meeting, the parent again raised concerns that the student should receive speech services.<sup>1</sup> The ARD Committee responded to the parent's concerns by requesting a formal speech assessment. R7; RR31-32, 160.

17. The ARD Committee appeared to reach consensus when the parent requested an opportunity to discuss the IEP with her husband before signing. Following some confusion among school personnel regarding procedures to take, the District scheduled a reconvene ARD meeting, notified the parent, and subsequently sent the parent a copy of the ARD paperwork and proposed IEP, as well as written confirmation of a date on which the ARD Committee would reconvene. R7; RR165-167. Although the parent denied being present when new dates were discussed for the reconvene ARD, I found the diagnostician's testimony to be credible. Additionally, the diagnostician testified that she forwarded a copy of the student's proposed IEP to the parent the same day, along with notice of the date of the ARD meeting. RR167. The parent acknowledged that she received the proposed IEP notated with the word "Draft" and the notice of the reconvene ARD meeting. R77.

18. The ARD Committee reconvened on October 15, 2013. The parent refused to attend and notified the District of her refusal. P1:65; RR76-77, 167.

19. The ARD Committee adopted the IEP discussed at the October 1, 2013, ARD meeting and decided to reconvene at the end of the school year to consider the student's eligibility for ESY in order to track regression and recoupment data. R7; RR168. The District provided the parent with a copy of the IEP, the Procedural Safeguards and prior written notice of the ARD Committee's decision. R7; RR168.

20. The District requested consent from the parent to conduct a formal speech and language assessment. R7; R17; RR33. The parent refused to provide consent. RR31, 83-84, 160.

21. In further response to the parent's complaints regarding the District's assessment, the District provided the parent information necessary to obtain an Independent Educational Evaluation (IEE) at her own expense and informed her that it would convene an ARD Committee meeting to consider the results of such IEE. RR32-33; R17.

---

<sup>1</sup> The student was previously dismissed from Speech services in 2011. Petitioner's complaint that the District improperly dismissed the student from Speech services and eligibility is outside the statute of limitations.

22. The ARD Committee convened on April 22, 2014, to discuss the student's eligibility for ESY services. Although the District made numerous efforts to communicate with the parent regarding the meeting, she did not respond to multiple notices or appear. RR139-140, 168-170. The ARD Committee determined that the student is not eligible for ESY because student does not demonstrate a pattern of significant regression of critical skills that student is unable to recoup after a reasonable period of time following a break in instruction. RR170-172. Following the ARD meeting (which occurred prior to the beginning of the instructional day), the student's teacher discovered a note in the student's bag from the parent stating that she was not able to attend the ARD meeting. The diagnostician forwarded the parent the ARD Committee documentation and offered to schedule another meeting to obtain her input. RR171.

23. The student's placement during all relevant times has been in a special education \*\*\* classroom. R1, R5, R7; RR207. The student's most recent evaluation recommends placement in this setting as well as instruction in academics at student's current level of functioning and a life skills curriculum. RR207-221; R5. Petitioner is included with non-disabled peers in \*\*\* and through numerous reverse inclusion activities. R1, R7, RR207, 221, 248-250, 251. Petitioner presented no evidence that a less restrictive environment would be appropriate for the student. In fact, the student's parent has denied the student access to activities designed to generalize the student's skills in less restrictive environments, such as off-campus activities and vocational training activities. RR250-215.

24. The testimony is uncontroverted that the student has made progress under student's current IEP as well as the 2012 IEP.

25. The student's teacher testified that the student has made progress on student's IEP in that student is able engage in self-help skills in the area of hygiene, is now able to identify days of the week, months of the year, seasons, and student's birthday. Student is making progress in stating the city and state where student lives, student's phone number, and other calendar time activities. This school year, student is acting more appropriately with peers and has decreased inappropriate vocalizations, has improved in hands-on-tasks, and is more attentive during class. RR210-220. The student's IEP progress reports reflect progress and/or mastery of goals. R2; R6. Additionally, student's STAAR Alternate Documentation reflects progress towards student's academic goals. R8. In fact, the student's scores improved from a \*\*\* in Math, English and \*\*\* in the \*\*\* grade, to scores ranging from \*\*\* to \*\*\* in the \*\*\* grade. RR237; R8. The evidence is also uncontroverted that the student made significant progress with regard to student's BIP. RR303. The parent acknowledged that the student has made behavioral progress at school. RR90.

26. The District made numerous efforts to work collaboratively with the parent. The District responded to the parent's concerns regarding behavior by requesting an FBA. R4. When the parent raised concerns regarding speech, the District agreed to conduct a formal speech assessment. R7. The teacher collaborated with the parent in obtaining data regarding the student's vocational skills and transition plan. RR124. The teacher began sending home communication logs to the parent soon after the October, 2013 ARD meeting, and modified the communication log to provide further information once the BIP was being implemented. RR242-244; R9. Additionally, prior to the date the request for due process hearing was filed, the teacher began sending home point sheets, homework logs and reading logs to the parent at the parent's request. RR244-248. I find, based on a preponderance of the credible evidence, that Respondent worked collaboratively with the parent and did not deny her the opportunity to meaningfully participate in the development of the student's educational program.

27. The ARD Committee recommended parent training at the October, 2013, ARD meeting to address behaviors that were occurring at school and home. Although there was a delay in commencing the parent-training, the behavior resource specialist testified that it was necessary to track the student's progress on student's BIP in the school setting to see that the interventions were successful before beginning services in the home. RR298. The records also reflect that the specialist and the parent began communicating in February regarding parent training. R14.

28. Petitioner failed to produce any evidence that the student's IEP is not appropriate.

29. Petitioner failed to produce any evidence that the student's 2013 FIE was not appropriate.

30. Petitioner failed to produce any evidence that the student's BIP is not appropriate.

31. Petitioner failed to produce any evidence that the student requires OT or speech services to benefit from student's special education.

32. Petitioner failed to produce any evidence that the District failed to provide appropriate transition services.

33. Petitioner failed to produce any evidence that the District failed to appropriately train staff.

34. Petitioner failed to produce any evidence that the District failed to include the parent as a meaningful participant in the development of the student's educational program.

35. Petitioner failed to produce any evidence that the student's placement in the \*\*\* classroom is not the least restrictive environment for student.

36. Petitioner failed to produce any evidence that the student requires ESY to benefit from student's educational program.

37. Petitioner failed to produce any evidence that the student requires the related services of counseling, tutoring, a mentor, social skills training, recreation therapy, speech therapy, occupational therapy, or assistive technology to benefit from special education.

38. Petitioner failed to present any evidence that the student's FIE is not appropriate and did not rebut the testimony and evidence presented by the District that it is appropriate.

## **DISCUSSION**

### *Petitioner's Claims*

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

The United States Supreme Court established a two-prong test for determining whether a school district has provided a free appropriate public education. The first inquiry is whether the school district complied with IDEIA's procedural requirements.<sup>2</sup> The second inquiry is whether the student's IEP is reasonably calculated to confer an educational benefit. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982). An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Id.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000).

In evaluating whether an educational program is reasonably calculated to confer an educational benefit, the Fifth Circuit Court of Appeals has identified four factors to consider:

1. Is the program individualized on the basis of the student'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?
4. Are positive academic and nonacademic benefits demonstrated?

*Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir 1997); cert. denied, 522 U.S. 1047 (1998). The 5<sup>th</sup> Circuit Court of Appeals has held that the four factors do not necessarily need to be applied in a particular manner or afforded the same weight. Rather, the factors are intended as a guide in the determining whether the student received a FAPE. *Richardson ISD v. Leah Z.*, 580 F.3d 286 (5<sup>th</sup> Cir. 2009).

In applying the factors to this case, the student's program was individualized based on student's assessment and performance. The ARD Committee reviewed student's current performance and other data to determine which additional assessments were required in connection with student's three-year reevaluation. Because of behavioral concerns, the District administered an FBA which formed the basis of a behavior intervention plan and behavioral support services which the student clearly benefited from as evidenced by student's progress. R5; R7; RR303. The ARD Committee reviewed the student's current competencies prior to developing IEP goals and objectives that addressed student's academic and non-academic needs. R1; R7. The evidence regarding the student's academic and behavioral progress is uncontroverted. RR210-220, 303; R8.

While the parent complains that the District erred in failing to provide speech, OT and assistive technology assessments and/or services, there is no evidence that the student in fact requires those services to receive a Free Appropriate Public Education. Additionally, the parent failed to produce any evidence that the student requires ESY programming to receive a FAPE. The uncontroverted testimony is that the student does not demonstrate significant regression that cannot be recouped within a reasonable time following a break in instruction. RR170-172.

The student's program is administered in the least restrictive environment, the special education classroom, and participates with non-disabled peers in adaptive physical education and reverse inclusion activities. R7; RR207-221, 248-251. The student functions at a \*\*\* grade level and requires instruction in applied academics and basic life skills. R7. Petitioner failed to present any evidence that the student should be educated in a less restrictive setting.

The student has received positive academic and non-academic benefits from student's program. Specifically, the IEP progress reports and the STAAR assessment data reflect academic progress. R2, R6, R8. Additionally, the parent and the behavior specialist agree that the student has made significant

---

<sup>2</sup> Petitioner does not allege procedural violations of IDEIA.

behavioral progress at school. RR90, 303. The behavioral data also reflects the student's progress with the implementation of the BIP. R13.

Finally, it is clear that the District made efforts to include the parent as a meaningful participant in the development of the student's program by collaborating with her and responding to her concerns. The District administered an FBA in response to the parent's behavioral concerns and agreed to conduct additional speech assessments when requested. R4, R5, R7. However, the parent refused to provide consent to the speech evaluation, refused to attend the reconvene ARD meeting and refused to collaborate with school personnel. RR76-77, RR31, 83-84, 160. Additionally, the District took steps to respond to parental concerns by providing ongoing daily communication, behavioral point sheets, and a daily reading log. R9, R11, R12, RR241-248. When the parent continued to express disagreement with the District, the District offered to amend the IEP to add additional goals to address her concerns, a proposal which she rejected. RR34-35.

The District's program is presumed appropriate. The parent has the burden of proof to show why the program is not appropriate. Petitioner has wholly failed to meet her burden. In fact, the evidence presented proves that the District's program is appropriate.

### *Respondent's Counter-Claim*

When a parent requests an Independent Educational Evaluation of a student at public expense, a school district is presented with two options:

1. The District can agree to conduct the evaluation at its own expense, or
2. The District can request a due process hearing to defend its evaluation.

34 CFR §300.502(b). In this case, the parent requested an IEE at public expense. Respondent initiated a counter-claim to defend its assessment. The District bears the burden of proof with regard to the issues raised in its counterclaim. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

The District conducted a Review of Existing Evaluation Data (REED) prior to determining which additional assessments were warranted as part of the three-year reevaluation. The regulations contemplate that the ARD Committee members and other qualified professionals participate in a REED as part of its three-year reevaluation to identify what additional data is needed to determine whether the student continues to be an eligible child with a disability and the child's educational needs, student's present levels of academic achievement and related developmental needs, whether the child continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet the goals in student's IEP and to participate, as appropriate, in the general education curriculum. 34 CFR §300.305(a). Once the REED is completed, the school district must then administer such assessments and other evaluation measures as it determines necessary. 34 C.F.R. §300.305(c). Prior to administering the assessments, the school must provide the parent with prior written notice of the scope of the evaluation and seek informed consent. 34 C.F.R. §300.300(c). The prior written notice must include a description of the evaluation procedures the school proposes to conduct. 20 U.S.C. 1415(b)(3) and (c); 34 C.F.R. 300.304; 34 C.F.R. 300.503.

The ARD Committee discussed all possible areas of evaluation and determined that additional assessment data was needed in the following areas: vision and hearing, a functional behavior assessment, academic achievement, and a vocational assessment. R4:21; RR151-153. However, the ARD Committee determined that further intellectual testing was not warranted based on the student's past cognitive



testing, identification as a student with an intellectual disability and student's current level of functioning within that range. R4:3; RR152. The ARD Committee also determined that the student's expressive and receptive language skills were consistent with student's level of cognitive functioning, that student was able to communicate student's needs in the classroom, and did not recommend further speech assessment. RR24, 150, 195. In reaching this conclusion, the ARD Committee relied on current observations and previous data and informal assessment. The District's assessment process complied with the Texas Speech/Language Hearing Association (TSHA) standards for evaluation of students with intellectual disabilities. RR37-389. The ARD Committee also reviewed the student's performance in the classroom as it pertains to OT and assistive technology needs and determined that no evaluations were warranted in these areas. R4:2; RR151. Based on the evidence, I find that further cognitive, speech, assistive technology and occupational therapy assessments were not warranted.

The District administered a classroom assessment as well as the Kaufman Test of Education Achievement, Comprehensive Form, 2<sup>nd</sup> Ed. (KTEA) to determine the student's educational and developmental performance levels. R5:10. The diagnostician selected the KTEA because it is a shorter assessment and more appropriate for the student given student's level of functioning. RR157. The assessment indicated that the student has made gains in student's academic performance when compared to prior testing, but student continues to function at an extremely low level. RR157-158. The District also administered a functional vocational assessment, obtaining data from the teacher and the parent in order to determine the student's present competencies and aid in the development of student's transition plan. R5:13; RR161-162.

In response to the parent's and the teacher's concerns regarding new behaviors, the District administered a Functional Behavior Assessment. RR287. The behavior resource specialist obtained information from the teacher and the parent and personally observed the student in the a variety of school settings. RR288-289. As a result of her assessment, the evaluator concluded that the student demonstrates deficits in student's ability to self-regulate student's behavior and that the behaviors (blurring out and \*\*\* episodes) were primarily attention seeking. RR291; R5:9. The ARD Committee followed the evaluator's recommendations and developed a BIP that addressed the student's behavior and included positive behavioral supports and strategies. RR291; R7:33-35.

In conducting the three-year reevaluation, the District used a variety of assessment tools and strategies as well as information from the parent to gather relevant functional, developmental and academic information regarding the student and to assist in the development of the student's educational program. There is no dispute that the assessments were administered in a non-discriminatory manner, in the student's native language, by trained and knowledgeable personnel, in accordance with the instructions provided by the producer of the assessments, and were tailored to assess specific areas of need. R5:18. The District's REED and reevaluation process complied with the requirements of 34 CFR 300.303-311.

Petitioner's central complaint is that the District improperly denied speech services and declined a formal speech assessment.<sup>3</sup> However, the District agreed to conduct a formal speech assessment and the parent refused to provide consent. The District has the absolute right to conduct its own assessment to determine special education eligibility and educational need in the area of speech. This right includes the right to choose appropriate assessment procedures and instruments. *Andress v. Cleveland ISD*, 64 F.3d 175 (5<sup>th</sup> Cir. 1995); *Houston ISD v. \*\*\**, Dkt. No. 104-SE-1100 (Tex. Hearing Officer James Hollis, December 30, 2000); *Northside ISD v. \*\*\**, Dkt. No. 286-SE-0404 (Tex. Hearing Officer Ann Lockwood, July 6, 2004). The parent cannot now complain of a failure to conduct an evaluation for which she will not provide consent.

---

<sup>3</sup> The issue of the evaluation used in 2011 when the student was dismissed from Speech eligibility is outside the statute of limitations.

Petitioner has failed to present any controverting evidence with regard to the appropriateness of the District's evaluation. The District prevails on its counter-claim.

*Petitioner's Claim Regarding ESY Services*

A student is eligible for Extended School Year services when data demonstrates that in one or more critical areas addressed in the current IEP, student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable period of time. Severe or substantial regression means that the student has been, or will be, unable to maintain one or more acquired critical skills in the absence of ESY services. See 34 CFR §300.106; 19 Tex. Admin. Code §89.1065.

The ARD Committee appropriately convened at the end of the school year to review relevant data and determined that the student does not demonstrate a need for ESY based on the above criteria. RR170-172. Petitioner presented no evidence that the student is eligible for or requires ESY services to benefit from student's educational program. Petitioner has wholly failed to meet petitioner's burden with regard to this issue.

*Petitioner's Additional Claims*

Petitioner failed to present any evidence with regard to the appropriateness of the student's transition services, adequacy of staff training, and the need for counseling, tutoring, a mentor, additional social skills training, recreational therapy, speech therapy, occupational therapy, and assistive technology. Petitioner has wholly failed to meet petitioner's burden on all issues.

**CONCLUSIONS OF LAW**

1. The student is eligible for special education services as a student with a disability under IDEIA, 20 U.S.C. §1400 *et. seq.* and its implementing regulations.
2. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983). Petitioner bears the burden of proving that it is not appropriate or that the District has not complied with the procedural requirements under the IDEIA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet petitioner's burden with regard to all claims.
3. The District bears the burden of proving its counter-claim, i.e., that its evaluation is appropriate. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). The District has met its burden in proving that its 2013 FIE is appropriate.

**ORDER**

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

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the relief requested by Respondent is **GRANTED** and I find that the District's 2013 FIE is appropriate.

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

**SIGNED** this 20<sup>th</sup> day of June, 2014.

---

Sharon M. Ramage  
Special Education Hearing Officer

## SYNOPSIS

Issue No. 1: Whether the District's educational program is appropriate?

Held: For the District. The District's IEP is based on current evaluation data, contains measurable academic and non-academic goals, an appropriate BIP with positive behavioral supports and strategies, a \*\*\*, and is administered in the least restrictive environment. Petitioner failed to meet petitioner's burden to show why the program is not appropriate.

Citation: 34 CFR §300.320

Issue No. 2: Whether the student requires ESY services?

Held: For the District. The student does not demonstrate a significant loss of critical skills that cannot be recouped during a reasonable period of time following a break in instruction.

Citation: 34 CFR §300.106; 19 Tex. Admin. Code §89.1065.

Issue No. 3: Whether the District's 2013 FIE is appropriate?

Held: For the District. The ARD Committee appropriately conducted a REED to determine what additional data was needed to determine whether the student continued to have an eligible disability and petitioner's need for continued special education and related services. The District appropriately administered an FBA as well as additional academic achievement testing and a functional vocational assessment. The District complied with 34 CFR §300.303-311 in conducting the reevaluation.

Citation: 34 CFR 300.303; 34 CFR 300.304; 34 CFR 300.305.