

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

**DECISION OF HEARING OFFICER**

Student by Student’s parent and next of friend ( hereinafter “ Petitioner” or “ Student”, brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act ( “ IDEA” ) , 20 U.S.C. § 1400, et seq., complaining of Cedar Hill Independent School District ( hereinafter “Respondent” or( “ the District”) . Petitioner was represented by Advocate, Carolyn Morris, Gwendolyn “Gigi” Maez, attorney at law, represented Respondent, Cedar Hill Independent School District.

**PROCEDURAL HISTORY**

Petitioner’s request for Hearing was filed on June 5, 2014. Petitioner filed an Amended Petition on June 24, 2014. The Hearing was held on August 18 & 19, 2014. The Hearing was continued based on a finding of good cause to October 1, 2014 at which time the hearing was concluded. At the close of the hearing, both Petitioner and Respondent asked to extend the decision deadline to prepare written closing arguments. The Parties filed closing arguments on October 17, 2014 and agreed that this decision would be timely issued on October 31, 2014.

**ISSUES FOR HEARING AND REQUESTS FOR RELIEF**

The issues identified by Petitioner are summarized below as follows:

1. Whether the District denied student a FAPE when it failed to timely and comprehensively reevaluate the student and assess the Student in all areas related to the suspected disability Petitioner alleges the district failed to consider the OHI form completed by the physician and failed to include a nurse and LSSP in the 10/10/13 ARD meeting. Petitioner also alleges the October 10, 2013 REED indicated concerns in the area of ED/ OHI, ADHD and a BIP, counseling needs, classroom performance and positive behavioral support which the district failed to consider.

Respondent also alleges the District denied the Student a FAPE when it failed to conduct a psychological evaluation as part of its FIE of the Student.

2. Whether Respondent denied Student a FAPE by failing to develop specific goals and objectives to address student's learning disabilities and failed to review the Student's progress and services in the ARDC meetings. Petitioner alleges that the classroom teachers were not provided information regarding student's disability and did not report behaviors displayed in the classroom to the diagnostician or the special education teachers as requested by the parents. On \*\*\* there was an incident \*\*\*. Within the 2013/2014 school year there were concerns about focus, talking, turning in classwork, incomplete assignments and behavior which led to the \*\*\*. The parents did not receive notice of the \*\*\*.
  
3. Whether the District denied the parents meaningful participation in the development of the Student's IEP. Petitioner alleges the ARDC did not update or review needs/goals or services to be provided in the IEP dated December 5, 2013 and that the ARD committee completed the REED without explaining the definition or giving details of the process of evaluations. Respondent also alleges that on October 10, 2013 and December 5, 2013 the diagnostician did not clearly explain to the parent the Full Individual Evaluation (FIE) procedure or provide testing results and recommendations. The Diagnostician did not go over with the parent the gap between grade level performance from the last FIE to show success of the IEP provided during the 2/10/12 ARD.

### **FINDINGS OF FACT**

Based on the evidence presented at the hearing that pertains to the remaining issues as pled by the parties, this hearing officer makes the following findings of fact and conclusions of law. Citations to the transcript are designated as "T" followed by page number. Citations to exhibits are designated as "P" for Petitioner, "R" for Respondent, and "J" for Joint Exhibit, followed by the exhibit number and page number within the exhibit

1. Student resides with the student's parents and attends school in the Cedar Park ISD School District.  
[R1]
2. The Student received a Full and Individual Evaluation ("FIE") from the District on 04/28/2011. In the FIE the District concluded the Student was eligible for Special Education Services as a Student with a Learning Disability [R1].
3. The District convened an annual ARDC meeting for Petitioner on 12/19/12, at the beginning of the

2013/2014 school year. [R4] The ARDC noted Petitioner's passing grades in all academic areas, except one class. [R4:2] Based on Petitioner's present levels of performance, grades, observations from staff, and accommodations, the ARDC increased Petitioner's services to include support for math and support with organizational skills. [R4:3, 18].

4. The Student did not present with health/medical needs which impacted the student's education. [R4] Student's present levels continued to indicate the ability to maintain attention to task as an area of need, and strengths in social interactions and compliance with staff directives. [R4:8].
5. The minutes reflect the discussion of behavior included the same areas of need regarding attention to task, including a parental report of Petitioner's difficulty with attention. [R4:21]. The ARDC agreed to continue to address the student's difficulty with focusing and attention with positive behavioral supports in the accommodations. [R4:9, 11-12;]
6. Student's annual goal required the student demonstrate mastery of enrolled grade level instruction as evidenced by passing grades on Student's report card over the school year. [R4:6]. Petitioner's parent attended and agreed with the IEP. [R4:21-22].
7. On 10/10/13 an ARD meeting was held. The purpose of the meeting was Development of a REED. It was determined that more data was needed to determine eligibility/ services. [R5:3-4;].
8. The Special Education Case Manager shared with the ARDC information from Petitioner's general education teachers regarding their concerns with the Student's ability to maintain attention to task. [TV1:209:].
9. The Diagnostician reviewed the REED document with the ARDC. [TV1:243 &-244].
10. The ARDC determined the FIE should include an Other Health Impairment ("OHI") form completed by Petitioner's physician, a cognitive evaluation, and an achievement evaluation. [R5:3-4]. For all other areas of evaluation, the ARDC agreed to include "updated parent and teacher information." [R5:3-4; TV 1:74:10-16].
11. Petitioner's parent attended the ARDC meeting and agreed with the recommended areas of evaluation in the REED and never presented any concerns regarding Petitioner's emotional state such as anxiety. [R5:5; TV2:353:13-17; TV210:3-9]. Petitioner's parent did not report any emotional or behavioral concerns to the ARDC that would indicate Petitioner required a psychological evaluation or a BIP, nor did any of the ARDC members. [TV2:540:16-5412; TV2:355:3-9; TV2:355:10-14].
12. No one at the ARDC meeting expressed a concern regarding possible side effects of medication, including Petitioner's parent. [TV2:357:5-20].

13. Petitioner did not take mediation at school, nor did Petitioner present with any health issues that would require the involvement of a nurse in the Student's ARDC meetings. [R6:1; TV2:358:4-15]. Petitioner's parent signed consent for the evaluation and marked "yes" regarding whether she had "been fully informed and understand the evaluation process and why it has been recommended for my child/me" and had no questions for the Diagnostician regarding the evaluation. [TV2:356:14-23].
14. The Diagnostician provided Petitioner's parent the OHI form to take to Petitioner's physician. [R5:10].
15. The Other Health Impairment, form (date of report being 10/19/13) was completed by Petitioner's physician. In this report the Physician documents Petitioner's condition as Severe Anxiety. [P10:130].
16. The District completed the FIE for Petitioner on 12/02/13. Petitioner's parent reported Petitioner is generally hyperactive and has difficulty with attention and organization, has ADHD, a medical diagnosis of anxiety, and "is a typical \*\*\* year old \*\*\*; charismatic, technologically advanced, enjoys a variety of games and activities." [R7:2-3].
17. The Diagnostician followed up on the reported medical diagnosis of anxiety by reviewing Petitioner's records for any reported anxiety at school but found no such concerns. Instead, the consistent concern she found in the record was Petitioner's difficulty with maintaining attention to task. [TV2:365:10-367:4].
18. Petitioner's teacher reported Petitioner is "average when compared to peers in the area of behavior." [R7:3].
19. Regarding medication, Petitioner's parent reported that the Student takes medication at home and the side effect is drowsiness. [R7:6].
20. The FIE included a cognitive assessment as requested in the REED. [R7:5].
21. Results of the standardized achievement assessment revealed Petitioner had made academic progress in all areas when compared to the standardized achievement assessment scores and grade equivalency scores in the 04/28/11 FIE. [R7:14; TV2:375-379:23]. Based on the assessment data, the evaluator concluded Petitioner did not require content modifications in the general curriculum. [R7:10; TV2:368:12-369:20].
22. At the time of the evaluation, Petitioner failed only one class with a \*\*\* the first six weeks and passed all classes the second six weeks. [R7:9].
23. The Student was making passing grades on enrolled grade level and the full year of academic growth was demonstrated on the state assessment in reading and math. [TV1:17-198:8].
24. The completed OHI form was included in the FIE as requested in the REED. [R7:13].

25. The District provided Petitioner's parent a copy of the procedural safeguards on and convened an annual ARDC meeting to review the FIE on 12/05/13. [R8:1;P30] The ARDC agreed Petitioner met eligibility criteria as a student with an OHI based on \*\*\* ADHD. [R8:3; TV1: 248:18- 23]. The Diagnostician provided the ARDC members a copy of Petitioner's FIE as she reviewed it, and the ARDC reviewed Petitioner's progress and present levels of performance data. [R8:4-7; R8:18; TV L: 248:24-249:22; TV1:250:4-11; TV2:380:9-381:12; TV2:541:17-542:12].
26. Petitioner's parent expressed no concerns with the FIE in the meeting. Nor did Petitioner's parent express a concern regarding Petitioner's emotional behavioral support or Petitioner's emotional functioning. [TV2:542:13-23; TV1:23-250:3; TV2:382:13-18; TV2:383:5-384:12].
27. Petitioner's parent never mentioned that she believed the ARDC requested a psychological evaluation in the REED, nor did she request a psychological evaluation at this ARDC meeting. [TV2:382:19-383:4]. The Special Education Case Manager gathered present levels of performance data from all of Petitioner's teachers, including district assessment data and progress on previous goals, and presented the information to the ARDC to assist in the development of Petitioner's IEP. [TV1:250:17-251:7; TV2:385:9-386:9].
28. All of Petitioner's academic instructional needs are taught in the general education classroom through the general education curriculum. [R8:6; TV1: 251:8-19]. As in all the previous ARDC meetings, the information showed that Petitioner presented difficulties with attention to task, and strengths in social interactions, compliance with staff directives, and use of grade level materials. [R8:7; R8: 18; TV1: 251:19-252:5]. The only behavioral concerns noted were focusing and attention to classwork, which the ARDC again agreed could be appropriately addressed with positive behavioral supports in the accommodations. [R8:8; TV2:390:7-17; R8:18].
29. The IEP included numerous accommodations to address Petitioner's difficulty with attention to task and organizational skills. [R8:10-11; TV1:1756-176:10; TV2:500:2-501:19].
30. The ARDC considered the recommendations from Petitioner's physician and included several in the accommodations. [TV247:22-248:17; R7:13; R8:10-11; TV2:369:21-371:21]. The goal continued to require that Petitioner demonstrate mastery of enrolled grade level TEKS as evidenced by passing grades on the Student's report card. [R8:9; TV1:221:2-5; TV2:418:25-419:16].
31. The parent reported a concern regarding Petitioner's organizational skills, specifically with homework, and the District addressed Petitioner's difficulties with organization by providing Petitioner 10 minutes per day with the Special Education Case Manager to work on the Student's organization skills, as well as increasing the Student's inclusion support in the general education classroom. [R8:16-18; TV2:395: 17-396:11; R8:16; TVL: 254:4-21].
32. Petitioner had \*\*\* discipline referrals, as well as a \*\*\*, in the 2013/2014 school year. [R19:1-2; TV1:

185:23-186:3; TV185:23-186:9; TV2:7-544:23; P234]. Petitioner did not present with anxiety, emotional difficulties, social difficulties, or the types of behaviors at school that would give the District a reason to suspect the Student was a student with an emotional disturbance. [TV1: 211:11-12;TV1:186:20-188:24; TV1:245:15-21; TV1:259:25-260:23; TV2:403:17-22; TV2:536:7-539:9].

33. The parent in response to the question regarding what kind of problems the parent feels the child experiences at school, she responded "focus and attention issues -staying on task and organization." [P124]. The information reported by the parent did not indicate Petitioner required a psychological evaluation. [TV2:494:14-495:9].

34. The behavioral concerns reported by Petitioner's teachers consistently included difficulty maintaining attention and work completion. [TV1:205:17-23; TV1:212:11-14]. Petitioner's Special Education Case Manger described Petitioner as a happy, playful, and friendly student that presents with difficulties with attention. [TV1:247:4-12].

35. On \*\*\* Petitioner was involved in a \*\*\*. On \*\*\* Parent requested and ARD to address the \*\*\* which she described as \*\*\* school administrators. Mother also indicated the Student has suffer emotional stress as a result of the incident.[R15:2]

36. Petitioner's parent filed a grievance regarding the \*\*\* on or about \*\*\*. [R15:4; TV1:116:4-17; TV2:570:2-7].An ARD was held on \*\*\*, which mother requested to discuss her concerns regarding the \*\*\*. [R12] The District agreed to conduct a counseling evaluation for Petitioner in response to the concerns the Student's mother had regarding any emotional impact the Student may have experienced as a result of the \*\*\*. [R12:3; TV1:193:12-20; TV1:259:12-15].

37. In the \*\*\* ARD Petitioner's IEP, grades, and the state assessments were also discussed. [R12:9; TV1: 282:9-19]. The minutes reflect there were "[n]o other concerns by any member of the ARDC." [R12:9]. Petitioner's parent attended and agreed with the ARDC decision. [R12:10]. The Diagnostician provided Petitioner's parent another copy of the procedural safeguards. [TV1: 275:6-8]. Petitioner's parent completed the consent form for the counseling evaluation and marked that she had "been fully informed and understood the evaluation process and why it has been recommended for my child/me." [R12:13].

38. The Director of Administrative Services contacted Petitioner's parent and assured her the \*\*\* incident were no longer \*\*\*, sought clarification regarding the "educational solutions" she sought, and asked the parent to contact him to discuss his proposals for the counseling the parent requested in the grievance. [R15:4-6]. Petitioner's parent never responded to the Director of Administrative Services' request for clarification of the "educational solutions" she sought, or his request to discuss possible options for the counseling she requested. [R15:60; TV3:573:6-16].

## DISCUSSION

### **Standard of Review**

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. *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *add'd* 468 U.S. 883 (1984); *Schafer v. Weast*, 126 U.S. 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". The School district's plan is presumed to be appropriate. *R. H. v. Plano independent School District.*, 607 F.3d 1003 (5<sup>th</sup> Cir. 2010). The party attacking the plan bears the burden of proof, by a preponderance of the evidence, demonstrating why it does not comply with the IDEA. Id at 1010-11.

When the parent challenges the appropriateness of an IEP, two questions must be asked: whether the state has complied with the procedural requirements of the IDEA, and then, whether the IEP developed through such procedures was "reasonably calculated to enable the child to receive educational benefits. " *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 457 U.S. 176 (1982). An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000)

The fifth circuit further defined a FAPE by delineating four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the child's assessments 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).

### **ANALYSIS**

Whether the District denied Student a FAPE when it failed to timely and comprehensively reevaluate the student and assess the Student in all areas related to the suspected disability.

Procedures governing evaluations under IDEA require Respondent, in relevant part, to ensure that Student 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." 34 C.F.R. § 300.304 (c)

(4) and that “the evaluation is sufficiently comprehensive to identify all of the child’s special education and related service needs..... 34 C.F.R. § 300.304 (c) (6).

Review of the record and testimony confirms that the Student was assessed in all areas related to the suspected disability. The evidence presented showed the District included the OHI 10/19/13 form in the FIE as requested in the REED. Although there is a difference of opinion as to the severity of the Student’s condition between the District and the Parents, the physicians recommendations identified in the OHI form were implemented by the District. Moreover, accommodations in place for the child were appropriate and the benefit Petitioner received from the Petitioner’s education was evident in Petitioner’s passing grades on enrolled grade level and the full year of academic growth Petitioner demonstrated on the state assessment in reading and math. [TVI: 17-198:8]. Petitioner's progress demonstrates the appropriateness of Petitioner’s IEP and behavioral supports. Lastly, the Student did not exhibit characteristics of a student with an emotional disturbance.

Whether Respondent denied Student a FAPE by failing to develop specific goals and objectives to address student’s learning disabilities and failed to review the Student’s progress and services in the ARDC meetings.

Evidence shows the District considered the Student’s progress, evaluation data, and present levels of performance, and increased the Student’s services in response to the Student’s \*\*\* failing grades.

The evidence showed the District completed all areas of formal assessment requested in the REED. Petitioner also met the progress measure on the state assessment which shows a full year of academic growth during the 2013/2014 school year.

The student’s goals were measurable. A goal that utilizes a percentage to measure progress on the general education curriculum is not immeasurable. Petitioner's goal included a 70% mastery criteria and using the accommodations documented in the IEP, the Student was expected to demonstrate mastery of enrolled grade level TEKS as evidenced by passing grades on the Student’s report cards.

Whether the District denied the parents meaningful participation in the development of the Student’s IEP

In determining the validity of Petitioner's complaint it is important to determine if the District provided Petitioner's parents meaningful participation in the ARD Committee meeting process. In *R.P., v. Alamo Heights Indep. Sch. Dist.*, 703 F.3d 801, 811, the Fifth Circuit held the parent was provided meaningful participation in the ARD process where the father attended numerous ARD meetings for the student and had opportunities to voice his thoughts about the student's IEP. Petitioner's parent attended all of Petitioner's ARDC meetings and had full opportunity to voice her concerns. The ARDC meetings reflect the consideration of her concerns. In addition to the ARDC meetings, Petitioner's parent had numerous opportunities in parent teacher conferences, numerous phone calls with the Special Education Case Manager, and a daily communication log with the Special Education Case Manager to voice concerns. The Special Education Case Manager maintained close contact with Petitioner's parent throughout the school year, and Petitioner's parent had ongoing access via Family Access to Petitioner's grades and discipline records.

Petitioner's parent alleged in this complaint that she didn't understand the REED and the FIE. The evidence showed both were fully explained in the ARDC meetings in which she participated. The Parent signed in agreement that she had been fully informed and understood the evaluation process and why it was recommended for Petitioner on 10/10/13, as well as her signatures noting her agreement at every ARDC meeting. Parents also signed in agreement that the Procedural safeguards were explained to her.

### **Free Appropriate Public Education**

The following must be considered when determining if the student received a Free Appropriate Public Education (FAPE):

#### **Is the educational program individualized on the basis of the child's assessment and performance?**

The educational program provided by the District was individualized on the basis of the child's assessment and performance. The Student's present levels of performance were evaluated. Mastery of goals were examined and progress was made by the Student as demonstrated by passing grades. When difficulty was identified with focusing and attention, accommodations were made in the form of positive behavioral supports. The parents as well as the student's teacher provided input into the development of the Student's plan. The record contains numerous occasions where the parent provided input concerning the Student's behavior and medications. When the student was re-evaluated concerns identified by the Student's physician on the OHI form were considered and suggestions implemented. The Student's academic performance and progress continued to be monitored by the District.

Evidence show the District proposed to amend Petitioner's IEP to include an accelerated instruction plan ("AIP"), which targeted the areas the Student had difficulty on in the benchmark assessment.

The evidence supports a finding that the Student's program was reasonably calculated to enable the child to receive educational benefits, and was individualized on the basis of assessments and performance.

**Is the program administered in the least restrictive environment?**

The Evidence shows the Student's program was administered in the least restrictive manner.

**Are the services provided in a coordinated and collaborative manner by the key stakeholders?**

The Evidence shows the parents were collaborative parents with the school district. The Parent provided input both at ARD meetings and regularly communicated with teachers and other District staff. Additionally, District staff provided services to Student collaboratively with key stakeholders.

**Are positive academic and non-academic benefits demonstrated?**

Positive academic and non-academic benefits were demonstrated. Petitioner met the progress measure on the state assessment which shows a full year of academic growth during the 2013/2014 school year. The evidence shows the student also made passing grades.

**CONCLUSION**

1. Petitioner currently resides within the geographical boundaries of Cedar Hill Independent School District, a legally constituted independent school district within the State of Texas, and is entitled to special education services pursuant to the Individuals with Disabilities Education Improvement Act (IDEA), 20 U.S.C. §1400, et seq.

2. Cedar Hill Independent School District's educational program is presumed to be appropriate. As the party challenging the educational program proposed by the District, Petitioner bears the burden of proof. *R.H., v. Plano Indep. School Dist.*, 607 F.3d 1003 (5<sup>th</sup> Cir. 2010); *Schaffer v. Weast*, 126 S.Ct. 528 (2005). *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), aff'd 468 U.S. 883 (1984) An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

3. Petitioner failed to meet the burden of proving that Cedar Hill Independent School District denied Student a FAPE. *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).

**ORDER**

After due consideration of the record, the foregoing findings of fact and conclusion of law, all of Petitioner's requested relief is DENIED.

**SIGNED this 31<sup>st</sup> day of October, 2014.**

/s/Sandra Garcia Huhn

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Sandra Garcia Huhn  
Special Education Hearing Officer

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

**SYNOPSIS**

**ISSUE:** Whether Respondent denied the Student a free appropriate education by failing to timely and comprehensively re-evaluate the student in all areas related to the suspected disability.

**CITATION:** CFR: 34 C.F.R. §300.303

**HELD:** For Respondent

**ISSUE:** Whether Respondent denied Student a free appropriate public education by failing to develop specific goals and objectives to address student’s learning disabilities?

**CITATION:** 34 C.F.R. § 300.304

**HELD:** For Respondent

**ISSUE:** Whether Respondent denied the parents meaningful participation in the development of the Student’s IEP.

**CITATION:** 34 C.F.R. §300.504

**HELD:** For Respondent