

**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT,  
bnf PARENT,  
    Petitioner,**

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v.

**DOCKET NO. 260-SE-0613**

**SEASHORE CHARTER  
SCHOOLS,  
    Respondent.**

**DECISION OF THE HEARING OFFICER**

Introduction

Petitioner, \*\*\* bnf \*\*\* (“Petitioner” or “the Student”) brings this action against the Respondent Seashore Charters Schools) (“Respondent,” or “the charter school”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq. (IDEA) and its implementing state and federal regulations.

Party Representatives

Petitioner was represented by legal counsel Christopher Jonas and, at the due process hearing, by his co-counsel Mark Whitburn with the law firm of Whitburn & Pevsner. Respondent was represented by its legal counsel Cynthia Buechler with the law firm of Buechler & Associates.

Resolution Session and Mediation

The parties convened a Resolution Session on July 10, 2013 but it was not successful. The parties declined the use of mediation in this case.

Procedural History

Petitioner filed the initial request for a due process hearing on June 25, 2013. The case was initially assigned to the Honorable Deborah McElvaney as the hearing officer. The Texas Education Agency re-assigned the case to this hearing officer on August 8, 2013. This case has a long and somewhat difficult procedural history.

The case was first set for hearing on August 1, 2013 with the Decision of the Hearing Officer due September 8, 2013. On July 24, 2013 Petitioner requested a continuance of the hearing in order to Amend Petitioner’s Complaint. Petitioner filed a formal Motion to Amend and Motion for Continuance on July 30, 2013. On July 30, 2013 Respondent also filed a Motion for Continuance to resolve a scheduling conflict for its counsel. The hearing officer issued an Amended Scheduling Order on August 7, 2013 granting permission for Petitioner to amend Petitioner’s Complaint and resetting all deadlines.

### Joint Request for Continuance

On August 12, 2013 the parties waived the opportunity for a second Resolution Session in writing. Following the hearing officer re-assignment a prehearing conference was conducted on August 26, 2013. The charter school re-urged its Motion for Continuance to resolve the scheduling conflict for its counsel and to provide more time to respond to Petitioner's Amended Complaint. The parties selected mutually agreeable dates to reset the hearing and requested an extension of the decision deadline. On August 26, 2013 the hearing officer issued a new set of Orders granting the two requests for a continuance, resetting the hearing to October 29-30, 2013 and, as requested by the parties, extending the decision deadline to December 4, 2013.

### Petitioner's Second Amended Complaint

On October 15, 2013 Petitioner filed a second Motion for Leave to Amend Petitioner's Complaint and submitted an Amended Complaint. On October 17, 2014 the charter school did not oppose Petitioner's Motion to Amend and the parties requested a set of mutually agreeable dates to reset the hearing and to extend the decision deadline. The hearing officer issued a new set of Orders and Third Revised Scheduling Order on October 17, 2013 resetting the hearing as requested by the parties to January 14-15, 2014 and extending the decision deadline to February 13, 2014.

### State District Court Action Related to Recordings

On December 20, 2013 Petitioner filed another Motion for Continuance. The basis for the motion was a Temporary Restraining Order (TRO) issued by the 28<sup>th</sup> Judicial District Court of Nueces County, Texas. The TRO action was related to a set of audio recordings made by the parent of some school staff. The TRO was signed by the District Court on November 22, 2013 that prohibited disclosure of the audio recordings. Petitioner stated the use of the audio recordings were "crucial evidence" for the due process hearing. A hearing on the Temporary Injunction in the State District Court was set for January 7, 2014.

In a prehearing telephone conference with both counsel on January 6, 2014 the parties agreed to continue the due process hearing set for January 14-15, 2014 to allow an adequate amount of time to resolve the District Court action related to the audio recordings. On January 6, 2014 the hearing officer issued a set of Orders and the Fourth Revised Scheduling Order resetting the due process hearing to March 4-5, 2014 and extending the decision deadline to April 4, 2014 at the request of the parties.

On February 18, 2014 the State District Court issued an Order on Application for Temporary Injunction prohibiting the disclosure of the audio recordings by the parent but leaving the admissibility of the recordings at the due process hearing up to the hearing officer. A trial on the merits in the State District Court action was set for December 8, 2014.

### Unexpected Hospitalization Petitioner's Counsel

On February 19, 2014 Petitioner submitted another request for a continuance of the March hearing dates due to the unexpected hospitalization of Petitioner's attorney. The charter school did not oppose the request. A status conference was conducted by telephone with both attorneys while Petitioner's counsel was hospitalized. The parties selected mutually agreeable dates to reset the hearing and requested an extension of the decision deadline. The hearing officer issued a set of Orders and Fifth Revised Scheduling Order on March 4, 2014 resetting the due process hearing for April 16-17, 2014 and extending the decision deadline to May 16, 2014 at Petitioner's request.

On April 3, 2014 Petitioner requested another continuance when Petitioner's counsel was re-admitted to the hospital. Respondent did not oppose Petitioner's request. On April 7, 2014 the hearing officer issued a set of Orders resetting the hearing to May 13-14, 2014 and extending the decision deadline to June 23, 2014 as requested by the parties.

On May 9, 2014 Petitioner submitted another continuance of the May hearing dates due to continuing serious health issues for Petitioner's counsel. The charter school did not oppose the request. Phone conferences with both counsel were conducted on May 12, 2014 and May 14, 2014 – the parties selected a mutually agreeable date to continue the hearing and requested an extension of the decision deadline. The hearing officer issued a set of Orders on May 14, 2014 resetting the hearing for June 23, 2014 and extending the decision deadline to August 1, 2014 as requested by the parties.

#### Final Continuance

Unfortunately, serious health issues continued for Petitioner's counsel and Petitioner requested another continuance on June 16, 2014. The charter school opposed the request but conceded the need to reschedule the hearing in light of the circumstances. The parties discussed a number of dates to reset the case for hearing. Respondent's counsel could not be available for a due process hearing until September, 2014. The parties chose a mutually agreeable date for the hearing and Petitioner requested an extension of the decision deadline.

On June 23, 2014 the hearing officer issued a set of Orders resetting the hearing to September 9, 2014 and extending the decision deadline to October 8, 2014 as requested by Petitioner. In addition, Petitioner's counsel was ordered to enlist the assistance of co-counsel to represent Petitioner at the due process hearing if health issues continued to plague Petitioner's counsel. On August 8, 2014 Petitioner designated Mr. Whitburn as co-counsel for purposes of legal representation at the due process hearing set for September 9, 2014.

#### Stay Put

Following the June 2014 prehearing conference Student's placement for the upcoming 2014-2015 school year became an issue. Respondent filed a Memorandum of Law on June 27, 2014 arguing Student's proper placement was at \*\*\* under the IDEA's "stay put" rule. *34 C.F.R. § 300.518*. Petitioner filed a Response opposing the \*\*\* placement on July 7, 2014. An Order to Enforce Student's Status Pending Due Process Hearing was issued on August 12, 2014 ruling Student's stay put placement was at the charter school. Respondent then filed a Motion to Reconsider on August 13, 2014. Before the hearing officer could rule on the Motion to Reconsider Respondent filed an Application for Injunctive Relief in the County Court at Law of Nueces County, Texas. The Nueces County Court at Law issued a Temporary Restraining Order (TRO) on August 15, 2014 prohibiting Student from enrolling in the charter school for the upcoming 2014-2015 school year.

Petitioner filed a Response to the Motion to Reconsider on August 18, 2014. An Order on Respondent's Motion to Reconsider was issued on August 19, 2014 modifying Student's "stay put" placement to homebound services pending the outcome of the hearing set to begin a little more than three weeks from the date of the Order. The Nueces County Court issued an Amended TRO on August 20, 2014. Petitioner removed the county court at law action to the federal district court in Corpus Christi, Texas. Following an evidentiary hearing the federal district court issued a Preliminary Injunction on September 3, 2014 concluding Petitioner's proper stay put placement was at \*\*\*. The federal court set a pretrial and scheduling conference for November 14, 2014. It is the understanding of the hearing officer the federal court action remains pending at this time.

## Due Process Hearing

The hearing was conducted on September 9, 2014. Petitioner was represented by \*\*\* attorney Mark Whitburn with the law firm of Whitburn & Pevsner. Petitioner's lead counsel, Christopher Jonas, listened into the proceedings by speaker phone and conferred with Mr. Whitburn periodically throughout the hearing. Student's parents, \*\*\* and \*\*\*, also attended the due process hearing. Respondent was represented by its attorney Cynthia Buechler with the law firm of Buechler & Associates. In addition \*\*\*, Administrator for Seashore Charter Schools, attended the hearing as the charter school's party representative. The hearing was recorded and transcribed by a certified court reporter. The parties requested an opportunity to submit written closing arguments and they both did so in a timely manner. The decision of the hearing officer is due October 8, 2014.

### Issues

The following issues are to be resolved in this case:

1. Whether the charter school's proposed placement of Student into the \*\*\* grade for the 2013-2014 school year was appropriate and the least restrictive environment within the meaning of the Individuals with Disabilities Education Act (IDEA);
2. Whether the charter school failed to provide Student with a free, appropriate public education during the 2012-2013 school year; specifically whether:
  - The school district failed to implement the Individual Educational Plan (IEP) designed and agreed upon at the September 7, 2012 Admission, Review & Dismissal Committee (ARD) meeting and instead implemented the IEP developed at a subsequent ARD on September 21, 2012 (and if so whether that resulted in a substantive educational harm);
  - The ARD meeting on September 21, 2012 was improperly constituted and failed to include certain members of the ARD (and if so whether that resulted in a substantive educational harm);
  - The charter school failed to provide Student's parents with prior written notice that it decided to implement the IEP developed at the September 21<sup>st</sup> ARD rather than the IEP developed and agreed to at the September 7<sup>th</sup> ARD (and if so whether that resulted in a substantive educational harm); and,
  - The charter school implemented an IEP dated September 17, 2012 in late December 2012 or early January 2013 that was never discussed at an ARD meeting nor agreed to by Student's mother (and if so, whether that resulted in a substantive educational harm);
3. Whether the school district failed to provide Student with a free, appropriate public education during the 2012-2013 school year and during the summer 2013 Extended School Year services (ESY) by failing to provide Student with access to Student's preferred communication \*\*\*, assistive technology, and/or assistive technology services;
4. Whether the charter school failed to provide Student with a free, appropriate public education during the 2012-2013 school year and summer 2013 ESY services by failing to provide Student with the opportunity to participate in music and \*\*\* as non-academic components of Student's IEP;

5. Whether the charter school failed to provide Student with appropriate ESY services in the summer of 2013 by the failure of charter school staff to implement the ESY program appropriately;
6. Whether the charter school failed to properly implement Student's Behavior Intervention Plan (BIP) during the 2012-2013 school year and the 2013 ESY services through the inappropriate use of restraints by charter school personnel and the failure of charter school personnel to follow the BIP appropriately resulting in physical injuries to Student (both self-inflicted and those incurred during the inappropriate use of restraints); and,
7. Whether the charter school failed to provide Student's mother with prior written notice of its decision to promote Student to the \*\*\* grade and/or of its decision to implement an IEP dated September 12, 2013 (and if so, whether that resulted in a substantive educational harm).

#### Petitioner's Requested Relief

Petitioner requests the following items of requested relief:

1. An order directing the charter school to consider the short and long term impact of the \*\*\* grade promotion on Student's educational achievement and well-being; and,
2. One year of compensatory educational services.

#### Findings of Fact

1. At the time of the due process hearing Student was almost \*\*\* old. (Transcript Volume I, pp. 285, 401)(referred to hereafter as "Tr. Vol. I, p. \_\_."). During the 2012-2013 school year Student was eligible for special education services as a student with autism. Student attended the \*\*\* during the 2012-2013 school year. (Petitioner's Exhibit 1, pp. 1-2)(referred to hereafter as P. Ex. \_\_.).
2. Student is a student with "severe" autism. (Tr. Vol. I, p. 263). Student also exhibits significant cognitive and behavioral deficits and significant communication delays. (P. Ex. 9) (Tr. Vol. I, pp. 259-261, 285, 401). Student has a history of unpredictable behaviors including self-injurious, self-stimulatory, and, aggressive behaviors. (Tr. Vol. I, pp. 173, 228, 232, 285) (P. Ex 5, 6, 7, 8, 9, 10). Student can be very affectionate and interactive at times. (Tr. Vol. I, p. 285).
3. Beginning in 2008 \*\*\* (Mr. \*\*\*), a behavioral consultant based in \*\*\*, began working with Student and Student's family to address Student's challenging behaviors. (Tr. Vol. I, p. 195). Student was being educated in a \*\*\* program at the time. (Tr. Vol. I, pp. 225, 256).
4. Student attended the charter school in \*\*\* grade and was then \*\*\*. (Tr. Vol. I, p. 475). Student re-enrolled at the charter school as a \*\*\* grader. (Tr. Vol. I, p. 85). Student's behavior as a \*\*\* grader deteriorated compared to Student's \*\*\* grade year. \*\*\* grade Student was physically aggressive towards \*\*\* who required medical attention in the emergency room. Student's self injurious behaviors were also extreme. Student required isolation from other students, one to one support, and a \*\*\* due to Student's aggressive behaviors in \*\*\* grade. (Tr. Vol. I, pp. 404-405, 475-476).

5. At parental request, the charter school began consulting with Mr. \*\*\* to meet Student's needs. (Tr. Vol. pp. 211-212, 476-477). Mr. \*\*\* was supervised and monitored by Dr. \*\*\* (Dr. \*\*\*), a licensed psychologist and Ph.D. in psychology also based in \*\*\*. (Tr. Vol. pp. 268-269) (P. Ex. 35). Mr. \*\*\* is a Board Certified Assistant Behavior Analyst. (Tr. Vol. I, pp. 199-200) (P. Ex. 11, p. 1). Dr. \*\*\* is a Board Certified Behavior Analyst at the doctorate level - a higher degree of certification than Mr. \*\*\*. (Tr. Vol. I, pp. 241-243) (P. Ex. 35). A Board Certified Behavioral Analyst (BCBA) specializes in looking at the environmental components of problem behaviors and develops and implements treatments and strategies to address those behaviors. (Tr. Vol. I, pp. 281-282).
6. Student's behaviors interfered with Student's ability to pass the mandated state assessment in \*\*\* grade. An Admission, Review & Dismissal Committee (ARD) decided to retain Student in the \*\*\* grade. (Tr. Vol. I, p. 476). In November 2011 Student was re-evaluated by Dr. \*\*\* at parental request. Student was \*\*\* old at the time. Student's full scale IQ was measured to be \*\*\*. (Tr. Vol. I, pp. 258-259) (P. Ex. 9) (Respondent's Exhibit 13, referred to hereafter as "R. Ex. \_\_\_\_").
7. Student's expressive language skills measured at the \*\*\* level and receptive language skills at the \*\*\* level. (P. Ex. 9) (R. Ex. 13, pp. 4-5). Student exhibited virtually no spontaneous language at the time of the 2011 evaluation by Dr. \*\*\*. (Tr. Vol. I, p. 261). Student's achievement scores fell in the very low range, with a number of scores \*\*\*. (P. Ex. 9) (R. Ex. 13, p. 6). Student's overall functional skills were assessed at the \*\*\* level. (Tr. Vol. I, p. 260) (P. Ex. 9) (R. Ex. 13, p. 8). Dr. \*\*\* made a number of recommendations for the development of Student's language and academic skills. (R. Ex. 13, p. 11).
8. Mr. \*\*\* consulted with the charter school once in December 2011 and twice in March 2012. (P. Ex. 7, 8, 10). \*\*\*, (Ms. \*\*\*) a BCBA based in \*\*\*, was then brought on board by the charter school to serve as the behavioral specialist in supporting Student's behavioral needs at school. She was able to come to the charter school more often than Mr. \*\*\* to conduct direct observations of Student at school and consult with teachers and paraprofessionals on a weekly basis. She also visited once a month to verify the integrity of behavioral data collection and train teachers on Student's Behavior Intervention Plan (BIP). (Tr. Vol. I, pp. 224, 285-286, 294-295, 297, 299, 402-403, 477-478) (R. Ex. 31).
9. An ARD meeting convened on August 20, 2012 as an annual review prior to the beginning of Student's \*\*\* grade year at the charter school. (P. Ex. 1-1). The educational program included instruction in a self contained 1:1 arrangement provided by a special education teacher with 50 minutes of physical education (PE) daily. In addition, Student received speech services three times a week from a speech/language pathologist. (Tr. Vol. I, pp. 297, 355-356) (P. Ex. 1, p. 4). Supplementary aids and services included adaptive equipment, speech modeling, and the support of a behavior specialist. Student's opportunities to participate in nonacademic activities with non-disabled peers included lunch, PE, and attending school assemblies. (P. Ex. 1, p. 5).
10. Ms. \*\*\* also attended the August 20, 2012 ARD as the charter school's behavioral consultant. Additional members of the ARD included Student's mother, the charter school's Administrator, the speech/language pathologist, Student's special education teacher, Student's special education aide, and a general education teacher. The ARD reviewed Student's IEP goals from the previous year. (P. Ex. 1-10). The ARD discussed Student's communication and speech needs for the upcoming year. The August 20, 2012 ARD agreed on a new set of speech/language goals for Student's speech/language IEP. (Tr. Vol. I, pp. 166, 288, 355-356) (P. Ex. 1, p. 11) (R. Ex. 6, pp. 16, 23). The charter school's Administrator has been an educator for 39 years serving as assistant

principal and principal before assuming the leadership role at the charter school. (Tr. Vol. I, p. 479).

11. The August 20, 2012 ARD also conducted an in-depth discussion of Student's assistive technology needs. Student's mother had a great deal of input into the discussion. (P. 1-10-11). One of Student's assistive technology services was the use of \*\*\*. \*\*\* provided Student with a way to communicate non-verbally by making choices using \*\*\*. (Tr. Vol. I, pp. 184-185). Student's mother advocated the use of \*\*\* as Student's primary means of communication. Student used \*\*\* at home fairly independently. (Tr. Vol. I, pp. 273-274, 349-350) (P. Ex. 38). Student's mother also proposed use of \*\*\*. However, Student preferred \*\*\* -- a higher level of communication than the use of the \*\*\*. Using \*\*\* was more efficient for Student than using the \*\*\*. (Tr. Vol. I, pp. 364-369).
12. The speech/language pathologist advised a continued focus on the development of verbal expression because Student preferred verbal communication. Student needed to continue to increase and expand Student's verbal communication. (Tr. Vol. I, pp. 349-353, 409)(R. Ex. 6, pp. 22-23). In fact, Student was initially very averse to the AT \*\*\* and responded quite aggressively. (Tr. Vol. I, pp. 350, 389). It was more appropriate to use \*\*\* to facilitate Student's communication – in particular as a model for correct speech to address Student's articulation and placement errors. (Tr. Vol. I, pp. 352, 363). The speech/language pathologist provided training to the support staff in the use of \*\*\*. Student's teacher was also familiar with the use of \*\*\*. (Tr. Vol. I, pp. 363, 440, 453).
13. \*\*\* was \*\*\* and on Student's \*\*\* at school. \*\*\* was also \*\*\* used by the instructional staff. \*\*\* was available to Student at school and its use was incorporated throughout the school day. Data from \*\*\* was collected daily and provided to Student's parents on a weekly basis. (Tr. Vol. II, pp. 354-355)(R. Ex. 35). The speech/language pathologist provided direct services to Student and consulted with the instructional staff on each visit. The teachers followed through on her modeling and cross-training. (Tr. Vol. I, pp. 373-374).
14. The August 20, 2012 ARD also reviewed and discussed the behavioral goals recommended by Mr. \*\*\*. Ms. \*\*\* was given the opportunity to collect some information in order to make additional recommendations regarding Student's behavioral program. The August 20, 2012 ARD agreed to reconvene to continue the discussion regarding Student's IEP for the upcoming \*\*\* grade year. (P. Ex. 1-11). In the meantime, Student's mother and the charter school Administrator planned to meet after Student's mother had an opportunity to review the set of IEP goals proposed by Student's special education teacher. (P. Ex. 1, p. 11) (R. Ex. 6, p. 23).
15. The ARD reconvened on August 31, 2012. A set of procedural safeguards was provided to Student's mother. In attendance were Student's parents, the charter school's Administrator, Ms. \*\*\* as the behavioral consultant, Student's special education teacher, a special education aide, and a general education teacher. (P. Ex. 2, p. 1) (R. Ex. 6, p. 24). Ms. \*\*\* made a number of recommendations based on her observation of Student at school. She proposed continuing the behavioral plan recommended by Mr. \*\*\* but revised the method of tracking Student's self-injurious and aggressive behaviors. (Tr. Vol. I, p. 289) (R. Ex. 6, pp. 27-28). These features were compatible with Mr. \*\*\*'s recommendations. (Tr. Vol. I, p. 235). Ms. \*\*\* also recommended adding another feature to the data collection system. The revised BIP as proposed by Ms. \*\*\* was discussed in depth at the ARD. Student's parents asked questions, made suggestions, and actively participated in the ARD discussion regarding Student's behavior plan. (P. Ex. 2) (R. Ex. 6, pp. 24-25).

16. However, with the exception of the speech/language goals, Student's mother did not agree with the set of proposed IEP goals and objectives. At parental request the parties agreed to convene a staffing with Student's mother, Ms. \*\*\*, and Student's special education teacher to further discuss the IEP goals and objectives proposed by the charter school. The staffing was scheduled for September 7, 2012. The parties contemplated returning to ARD to finalize Student's IEP goals and objectives after the staffing. (Tr. Vol. I, pp. 289-292) (P. Ex. 2, p. 2) (R. Ex. 6, p. 25).
17. The staffing convened on September 7, 2012. The special education teacher presented a set of revised proposed IEP goals and objectives to Student's mother in response to the discussion at the August 20<sup>th</sup> ARD. (Tr. Vol. I, pp. 289-290, 315). Ms. \*\*\* participated in the September 7, 2012 staffing. Student's mother had input into the revised IEP goals discussed at the staffing. (Tr. Vol. I, p. 291). At parental request Student's mother was provided with a sample probe data sheet. (Tr. Vol. I, pp. 292, 316). The data probe sheet was a mechanism to record Student's behaviors on a regular basis, measure progress, and used to "tweak" the BIP where needed. (Tr. Vol. I, pp. 294-296).
18. The follow up ARD re-convened on September 21, 2012. (P. Ex. 4) (R. Ex. 6). Those in attendance were Student's mother, the charter school's Administrator, Ms. \*\*\* as the behavioral consultant, the special education teacher, and a general education teacher. (Tr. Vol. I, p. 292) (P. Ex. 4, p. 1). Student's mother asked questions, made suggestions and actively participated in the September 21, 2012 ARD meeting. (P. Ex.4-1). The IEP goals and objectives approved by the September 21, 2012 ARD were derived from those presented and discussed with Student's mother at the earlier staffing. (Tr. Vol. I, p. 319) (R. Ex. 6, pp. 16-21). The September 21, 2012 ARD reached a consensus on Student's remaining IEP goals and objectives as revised. (Tr. Vol. I, p. 293) (P. Ex. 4, p. 4) (R. Ex. 6, p. 26). Copies of the ARD documents were provided to Student's mother. (Tr. Vol. I, p. 470).
19. Student's mother prepared a document using the data probe sheet template provided at the staffing. (P. Ex. 3). In her view, the document she created contained all of Student's IEP goals and objectives for implementation during the 2012-2013 school year. (Tr. Vol. I, p. 125). However, the parent data probe document contained some goals and objectives that were different from those agreed upon at the September 21, 2012 ARD. (R. Ex. 18, p. 1). The charter school provided Student's mother with regular IEP progress reports that measured Student's progress in meeting IEP goals and objectives. (Tr. Vol. I, pp. 127, 129, 183-184, 308) (P. Ex. 20) (R. Ex. 12).
20. Student made significant progress academically, behaviorally and socially during the 2012-2013 school year. (Tr. Vol. I, pp. 474-475, 479-480). At the beginning of the year Student used one word verbalizations, such as "computer." By the end of the year Student could verbalize a complete sentence, such as "I want the computer please." At the beginning of the year Student did not make much eye contact when communicating with others. By the end of the year Student was able to sustain eye contact when communicating. At the beginning of the year Student did not initiate any contact with other students. By the end of the year Student was able to initiate some contact with other students such as asking them to \*\*\* with Student or \*\*\*. (Tr. Vol. I, pp. 348-349, 357-358, 409-410)(R. Ex. 37).
21. By the end of the 2012-2013 school year Student's reading comprehension skills improved from demonstrating virtually no comprehension at the beginning of the year to answering "WH" questions (i.e. who, what when, where, how) to a reading passage. At the beginning of the year Student was able to copy something in front of Student. By the end of the year Student was able to



look at a picture, answer questions about it, and then write a complete sentence with minimal prompting. (Tr. Vol. I., pp. 424-427).

22. Student also made progress in math. At the beginning of the year Student could add and subtract without borrowing – by the end of the year Student was adding and subtracting with borrowing. Student also mastered use of the calculator to perform addition, subtraction, multiplication and division computations. At the beginning of the year Student’s response to math worksheets with mixed operations was physical aggression. By the end of the year Student was able to complete math worksheets with mixed operations without a physically aggressive response. (Tr. Vol. I., pp. 435-427). Student also passed \*\*\* state mandated assessment, alternative form. (R. Ex. 19, p. 2)(Tr. Vol. I., p. 428),
23. Student made significant behavioral progress during the 2012-2013 school year. (Tr. Vol. I, p. 299). Charter school staff followed the BIP. (Tr. Vol. I, p. 328). The duration, intensity and frequency of aggressive and self-injurious acts decreased significantly although those behaviors were not completely extinguished. (Tr. Vol. I, pp. 296-297). Student did exhibit injuries at school but there were also times Student arrived at school with new injuries – suggesting at least some injuries occurred outside the school environment. (Tr. Vol. I., pp. 414-415, 443-444, 455, 465-466)(R. Ex. 16, 29). Student had a positive relationship with the special education teacher who was effective in assisting Student to de-escalate. (Tr. Vol. I, pp. 298, 435-436).
24. Student began using language skills to verbalize wants and needs instead of resorting to disruptive or aggressive behaviors. As the year went on Student’s self-stimming behavior decreased as Student began using different strategies to communicate. (Tr. Vol. I., p. 391). For example, Student was able to request assistance verbally by presenting Student’s \*\*\* to the teacher when Student encountered a technological issue instead of being physically aggressive. Student’s behavior improved so that Student was able to participate in PE and lunch with other students. Student also was able to walk to the office to make deliveries and request and receive Student’s snack. (Tr. Vol. I., pp. 303-305, 356-363, 401-404). Student made improvements in communication, functional academic skills, and socially. (Tr. Vol. I., pp. 336-337, 340-341).
25. Although Student continued to be a very challenging student to educate, leading to insensitive and inappropriate comments by charter school staff at times, Student nevertheless demonstrated behavioral progress by the end of the 2012-2013 school year. (Tr. Vol. I., pp. 401-402) (P. Ex. 23). The charter school collected daily behavioral data that was provided to Student’s parents on a regular basis although not always on the same day it was collected. (Tr. Vol. I, pp. 183-184, 452) (R. Ex. 16). An ARD convened on January 14, 2013. A copy of procedural rights was offered to Student’s mother. The ARD discussed Student’s behavioral needs and progress in-depth. Student’s mother actively participated in the ARD. (R. Ex. 5).
26. Towards the end of the 2012-2013 school year several ARD meetings were convened to discuss, in part, Student’s promotion to \*\*\* grade for the upcoming 2013-2014 school year. (R. Ex. 2, 3, 4). Extensive discussions began between the charter school and Student’s parents about the promotion to \*\*\* grade. (R. Ex. 4). Student’s mother requested Student be retained in \*\*\* grade due to her concerns over Student’s developmental level. (Tr. Vol. I, pp. 304, 369-370). By May 2013 Student was ready for promotion to the \*\*\* grade. (Tr. Vol. I., p. 305, 480) (R. Ex. 2, 3).
27. An annual ARD was scheduled for September 12, 2013. The charter school provided the requisite five day notice. Student’s mother declined to attend or participate in the ARD upon the

advice of her legal counsel. (R. Ex. 1, p. 1) (R. Ex. 38). The annual ARD proceeded on September 12, 2013 and confirmed the decision to promote Student to \*\*\* grade. (R. Ex. 1). Student's mother was provided with a copy of the ARD documents, including notice of the decisions of the ARD regarding promotion to the \*\*\* grade and notice of procedural rights. (R. Ex. 1, p. 50). Student was ready to be promoted and needed to continue to advance with age appropriate peers. (Tr. Vol. I, pp. 335-336, 370-372, 431, 480-481) (R. Ex.4). At the time of the due process hearing, Student's chronological age peers were \*\*\*. (Tr. Vol. I, pp. 431-432).

28. The charter school provided Student with ESY services in the summer of 2013. Three ARD meetings were conducted in April-May 2013 to plan and devise the ESY program. (Tr. Vol. I, pp. 133-134) (R. Ex. 2). An ARD meeting on \*\*\*, attended by Student's mother, agreed on an ESY program of seven weeks of instruction Monday through Thursday from 8 am to 12 pm beginning on \*\*\* through \*\*\* (with a break for the Fourth of July holiday). (R. Ex. 1) (R. Ex. 4, p. 9). Student worked on Student's IEP goals and objectives during the 2013 summer ESY program. (Tr. Vol. I, pp. 375-376, 429). Ms. \*\*\* continued to serve as the behavioral consultant during the ESY program including providing direct services and classroom consultation. (Tr. Vol. I, pp. 285-286). Speech services were also provided as a component of the ESY program. (Tr. Vol. I, pp. 375-376). Student had daily access to Student's assistive technology and \*\*\* during ESY. (Tr. Vol. I, pp. 408, 453).
29. Music and \*\*\* were not formal components of Student's IEP. (P. Ex. 7, pp. 5-9) (R. Ex. 6) (Tr. Vol. I, pp. 330-331). Although the charter school staff discussed leisure activities with Student's mother there was no formal leisure goal included in Student's IEP. The charter school does not have a \*\*\* on its campus. \*\*\* is not an extracurricular activity available to any charter school student. (Tr. Vol. I, pp. 330-331).
30. However, the charter school provided Student with the opportunity to \*\*\* during the 2013 Extended School Year (ESY). Student's teacher transported Student to and from \*\*\*. (Tr. Vol. I, pp. 430). A prior TEA Complaint regarding \*\*\* and music was resolved by TEA in favor of the charter school with a finding that the failure to provide those activities did not violate the IDEA because they were not components of Student's IEP. (R. Ex. 25) (Tr. Vol. I, pp. 471-473).
31. All ARD documents generated from the meetings in August 2012 through September 2013 included notice of procedural rights, the stated purpose of each ARD, a review of the assessment data and other relevant information that were considered in making the ARD decisions, the IEP that was proposed or being implemented, the instructional settings proposed and options considered and rejected and why. ARD documents from April 2013 through September 2013 also included notice of the proposal to promote Student to \*\*\* grade, the data used as the basis for that proposal, and the options considered and rejected.

### Discussion

I will resolve the issues in a slightly different order than stated above -- the discussion of the issues is organized in chronological order with the promotion to \*\*\* grade issue last rather than first.

### Free, Appropriate Public Education

The purpose of the IDEA is to ensure that all children with disabilities have available to them a free,

appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living. 20 U.S.C. § 1400 (d). Under IDEA the charter school has a duty to provide a free appropriate public education to all children with disabilities who attend the charter school. 34 C.F.R. § 300.101 (a); *Tex. Educ. Code § 12.012 (a) (3)*.

The broad issue in this case is whether the charter school provided Student with a free, appropriate public education (FAPE) during the 2012-2013 school year, including the Extended School Year services (ESY) provided during the summer of 2013. Student alleged a number of factual, substantive, and procedural issues to support Student's FAPE claim.

A free, appropriate public education is special education, related services and specially designed personalized instruction with sufficient support services to meet the unique needs of the child in order to receive a meaningful educational benefit. The instruction and services must be provided at public expense and comport with the child's IEP. 20 U.S.C. § 1401(9); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).

While the IDEA guarantees only a "basic floor of opportunity" the IEP must nevertheless be specifically designed to meet Student's unique needs, supported by services that permit Student to benefit from the instruction. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 188-189 (1982). While the IEP need not be the best possible one nor must it be designed to maximize Student's potential the charter school must provide Student with a meaningful educational benefit – one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. VP*, 582 F. 3d 576, 583(5<sup>th</sup> Cir. 2009) cert. denied, 2010 U.S. LEXIS 2578 (2010). The basic inquiry is whether the IEP was reasonably calculated to provide the requisite meaningful educational benefit. *Rowley*, 458 U.S. at 206-207.

#### Four Factors Analysis

In this jurisdiction there are four factors to determine whether the IEP at issue and as implemented was reasonably calculated to provide Student with the requisite meaningful educational benefit under the IDEA. These factors are:

- The program is individualized on the basis of the student's assessment and performance;
- The program is administered in the least restrictive environment;
- The services are provided in a coordinated and collaborative manner by key stakeholders; and,
- There are positive academic and non-academic benefits demonstrated.

*Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245, 253 (5<sup>th</sup> Cir. 1997). There is no requirement the four factors be considered or weighed in any particular way. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F. 3d, 286, 293 (5<sup>th</sup> Cir. 2009). The evidence in this case shows the IEP in effect for the relevant time period and as implemented was reasonably calculated to provide Student with the requisite meaningful educational benefit. *Rowley*, *supra*; *Michael F.*, *supra*.

The IEP and BIP implemented during the 2012-2013 school year was individualized on the basis of student's assessment and performance – not only from formal assessment from prior evaluations conducted by Dr. \*\*\* but also observational assessments by Mr. \*\*\* and Ms. \*\*\* – the two behavioral consultants. The IEP and BIP were provided to Student with the instructional support Student needed and then, as Student began to make behavioral progress, Student was able to begin interacting with other students in a PE class and at lunch.

The IEP and BIP were delivered in a coordinated, collaborative manner by key stakeholders. For example, the speech pathologist provided direct speech therapy services to Student at the charter school and consulted and provided training to Student's instructional staff. Ms. \*\*\*, the behavioral consultant, provided extensive and frequent services to Student and the teaching staff as well as regular, on-going monitoring of behavioral data and staff training. The recommendations made by Mr. \*\*\* and Dr. \*\*\* were considered in designing Student's IEP and BIP. Student's parents were provided opportunities at every ARD meeting, at the September 7<sup>th</sup> staffing, and through regular and frequent communications with the staff and charter school's Administrator to express concerns, make suggestions, and coordinate with staff on the use of Student's assistive technology.

Finally, the evidence shows Student received both positive academic and non-academic benefits during the 2012-2013 school year. Under these facts, the charter school met its obligation under the IDEA to provide Student with a free, appropriate public education. *Rowley, supra; Michael F., supra.*

### IEP Implementation

Petitioner alleges the charter school failed to provide Student with a FAPE during the 2012-2013 school year because it implemented the wrong IEP. Petitioner contends the charter school should have implemented the IEP that was developed at a September 7, 2012 meeting but instead implemented an IEP developed at a subsequent ARD on September 21, 2012. Petitioner contends the implementation of the September 21<sup>st</sup> IEP denied Student a FAPE.

The evidence shows that Student's mother met with Student's teacher and the charter school's behavioral consultant to discuss a set of revised proposed IEP goals and objectives at a staffing *not* in an ARD meeting. The proposed IEP, as discussed and revised during the September 7<sup>th</sup> staffing, was presented and approved at a subsequent ARD meeting on September 21, 2014. At the September 7<sup>th</sup> staffing Student's mother asked for and received a behavioral probe data sheet template. She used that template to fashion her own version of Student's IEP.

Student's mother was under the mistaken impression that the document she created from the data probe template reflected the set of IEP goals and objectives to be implemented in the 2012-2013 school year. However, the ARD is the group of persons responsible for developing the Student's IEP – no single member has that authority under the IDEA. *34 C.F.R. §§ 300.320; 300.321; 19 Tex. Admin. Code §89.1050.* Under these facts there were no procedural errors or substantive educational harm in implementing the IEP adopted by the September 21, 2012 ARD.

### Members of September 21, 2012 ARD

The IDEA requires that an IEP be developed by a specific group of persons. This group must include, under federal and state law, the parents, a regular education teacher, a special education teacher, and, a representative of the school who is qualified to provide or supervise the provision of specially designed instruction and is knowledgeable about the general education curriculum and the availability of school resources. In addition, the group of persons may also include an individual who can interpret the instructional implications of evaluation results. Other individuals who have knowledge or special expertise regarding the student, including related service personnel, may also be members of the group at the discretion of the parent or the school. *34 C.F.R. §§ 300.320; 300.321; 19 Tex. Admin. Code §89.1050.* The evidence showed that all the requisite members of the ARD were in attendance at all ARD meetings.

### Prior Written Notice of IEP Implementation

The IDEA requires the charter school provide prior written notice to the parent before the charter school proposes (or refuses) to initiate or change the identification, evaluation, or educational placement of the student or the provision of a free, appropriate public education. *34 C.F.R. § 300.503 (a)*. The notice must include a description of the action proposed or refused, an explanation of why the charter school proposes or refuses to take the action, a description of each evaluation procedure, assessment, record or report the charter school used as the basis for the proposed or refused action, a statement that the parents have procedural rights under the IDEA [and the means by which a copy of the procedural safeguards can be obtained], sources for parents to contact to obtain assistance in understanding the notice, a description of the options considered and reasons why they were rejected, and, a description of other facts relevant to the proposal or refusal. *34 C.F.R. § 300.503 (b) (1)-(7)*.

The IDEA does not require the notice be provided in any particular manner or format. The Student's IEP may be used as a component in meeting the prior written notice requirements so long as it meets the regulatory criteria. *Comment, 71 Fed. Reg. 466691; Letter to Leiberan, 52 IDELR 18 (OSEP 2008); Texas Education Agency, Q&A, Prior Written Notice*. The evidence established Student's annual ARD was held on August 20, 2012, continued on August 31, 2012 and completed on September 21, 2012. The minutes of those three ARD meetings, including the final IEP, were provided to Student's parents. The IEP and ARD documents advised the parent that the charter school intended to implement the IEP that was finalized at the September 21, 2012 ARD and why.

The ARD documents and IEP included references to the sources of data, including evaluations and other assessments, relied on by the charter school in making its determination to implement the IEP as written. The evidence showed the charter school provided Student's parents with notice of their procedural rights. The ARD documents also noted other options considered and why they were rejected. The charter school met its obligation to provide Student's parents with the requisite prior written notice when it proposed to implement the IEP developed at the series of ARD meetings in August through September 2012. *34 C.F.R. § 300.503 (a)*.

### Was IEP Implemented Discussed at an ARD Meeting?

The evidence showed the IEP discussed at the September 21, 2012 ARD was indeed implemented during the 2012-2013 school year. Student's mother mistakenly believed the document she created from the data probe template following the September 7, 2012 staffing reflected Student's IEP. The IDEA does not provide for implementation of an IEP designed by a single ARD Committee member. Instead, the IDEA requires the members of the ARD to reach consensus in the design and implementation of a student's IEP. *34 C.F.R. §§ 300.320; 300.321; 300.324; 19 Tex. Admin. Code § 89.1050 (h)*.

The evidence showed that the IEP adopted at the September 21, 2012 ARD was the appropriate IEP for the charter school to implement. *34 C.F.R. §§ 300.320; 300.321; 19 Tex. Admin. Code § 89.1050*. The evidence showed the charter school provided Student's mother with progress reports every six weeks on Student's IEP goals and objectives – therefore she was well aware of the set of IEP goals and objectives being implemented. There was no procedural or substantive violation of the IDEA in this regard. *Id.*

### Communication \*\*\* – Assistive Technology

There was a bona fide dispute between the parties on whether the use of \*\*\*, the special \*\*\* available to

Student on \*\*\*, should have been used as Student's sole method of communication. The evidence supports the position of the charter school in continuing to focus on Student's development of verbal communication and using \*\*\* to facilitate and model speech. Student's communication and language needs were appropriately addressed through the speech services with the focus on continued development of verbal expression and reinforcement of verbal skills in the classroom. *Rowley, supra.* Student did not meet Student's burden of proof on this issue. *Schaffer v. Weast, 546 U.S. 49, 62 (2005).*

### 2013 ESY – \*\*\* and Music

Student's mother proposed \*\*\* as an extracurricular activity for Student. The evidence showed there were no \*\*\* at the charter school and \*\*\* is not available as an extracurricular activity for any charter school student. Nevertheless, the charter school made arrangements for Student to participate in \*\*\* during the 2013 ESY \*\*\*. Student did not meet Student's burden of proving that the lack of \*\*\* and/or music during the school year deprived Student of a free, appropriate public education. *Rowley, supra.; Schaffer v. Weast, supra.*

### Implementation of ESY Services 2013

Extended school year services (ESY) are individualized instructional programs provided beyond the regular school year for eligible students with disabilities. *34 C.F.R. § 300.106; 19 Tex. Admin. Code § 89.1065.* The need for ESY must be determined on an individual basis by the ARD Committee. *19 Tex. Admin. Code § 89.1065 (1).* There is no dispute that Student needed ESY services. The evidence showed those services were provided in the summer of 2013 and provided Student with the requisite educational benefit. Student did not meet Student's burden of proof on this issue. *Rowley, supra.; Schaffer v. Weast, supra.*

### Implementation of Student's BIP

The evidence showed Ms. \*\*\*, the charter school's behavioral consultant for the 2012-2013 school year, assisted the parties in revising Student's BIP and its data collection system to better meet Student's behavioral needs. The evidence also showed Ms. \*\*\* provided training to staff and direct services in modeling effective behavioral techniques. She also provided regular consultation to the staff and conducted observations each month to ensure the integrity of the behavioral data. The evidence showed that as a result Student's behavior significantly improved by the end of the year. The duration, intensity, and frequency of Student's aggressive, self-stimulatory, and self-injurious behaviors decreased.

The photographic evidence submitted by both parties of Student's injuries is certainly troubling and of concern. Although aggressive and self injurious behaviors were not completely extinguished the evidence showed there was an overall marked improvement. It is reasonable to infer from the evidence that Student's BIP was therefore implemented properly. The evidence did show that Student exhibited physical injuries but it was equally likely those injuries were self inflicted or occurred at home as well as at school. The preponderance of the evidence did not establish Students' injuries were inflicted by charter school personnel. While there is some evidence injuries did occur at school Student did not meet Student's burden proving they were a result of the use of improper restraint techniques or failure to properly implement Student's BIP. *Schaffer v. Weast, supra.*

### Promotion Issue and Prior Written Notice

The evidence established the school district proposed to initiate Student's promotion to \*\*\* grade for the

2013-2014 school year and provided Student's parents with the requisite prior written notice of that decision. At the end of the 2012-2013 school year Student needed to continue to move along the instructional continuum. The evidence showed Student made academic, behavioral, and social progress by the end of the year. Student needed to continue the development of functional skills towards independence and integration into Student's community.

While Student would continue to need to work on academic, behavioral and social skills at Student's developmental level, there was no credible evidence to show that could not be accomplished with promotion to the \*\*\* grade where Student could interact with age appropriate peers. If Student was not promoted Student's opportunities to interact with non-disabled peers would have been with significantly younger students which would not have been appropriate. Student did not meet Student's burden of proof on this issue. *Schaffer v. Weast, supra*.

#### No Substantive Educational Harm or Impediment to Parental Participation

Even if all the elements of prior written notice were not met I also conclude the charter school provided Student with a free, appropriate public education. 34 C.F.R. § 300.513 (a) (2). There were no procedural violations that either impeded Student's right to a free, appropriate public education or caused a deprivation of educational benefit. 34 C.F.R. § 300.513 (a) (2) (i) (iii). Furthermore, there were no procedural violations that significantly impeded the parent's opportunity to participate in the decision-making process regarding the charter school's provision of a free, appropriate public education to Student. 34 C.F.R. § 300.513 (a) (2) (ii). The evidence showed Student's mother was an active participant in all relevant ARD meetings, that the charter school responded to her concerns, included some of her ideas and suggestions, and considered her input.

#### Conclusions of Law

1. Respondent provided Petitioner with a free, appropriate public education during the 2012-2013 school year. The Respondent implemented an appropriate Individual Educational Plan (IEP) developed at a duly constituted Admission, Review & Dismissal Committee (ARD) meeting on September 21, 2012. 34 C.F.R. §300.101 (a); *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Cypress-Fairbanks Ind. Sch. Dist. v. Michael F.*, 118 F. 3d 245 (5<sup>th</sup> Cir. 1997).
2. The ARD on September 21, 2012 included all requisite members under the IDEA. 34 C.F.R. §§ 300.320; 300.321; 19 Tex. Admin. Code § 89.1050.
3. Respondent provided Petitioner's parents with the requisite prior written notice of its intent to implement the IEP developed at the duly constituted ARD meeting that included a set of revised IEP goals and objectives presented to Petitioner's mother at a staffing on September 7, 2012. 34 C.F.R. § 300.503 (b).
4. Respondent provided Petitioner with an appropriate Extended School Year (ESY) program during the summer of 2013 that was implemented appropriately and included related services, access to Petitioner's assistive technology services \*\*\*, and \*\*\* as a non-academic activity (even though \*\*\* was not a formal goal in Petitioner's IEP). 34 C.F.R. § 300.106; 19 Tex. Admin. Code § 89.1065.

5. Respondent provided Petitioner with appropriate Assistive Technology \*\*\* and services that met Student's individualized needs. *34 C.F.R. §§ 300.5; 300.6; Rowley, supra.*
6. Petitioner did not meet Petitioner's burden of proof that Student needed \*\*\* and/or music as components of Student's IEP in order to receive a free, appropriate public education. *Rowley, supra; Schaffer v. Weast, 546 U.S. 49, 62 (2005).*
7. Respondent implemented Petitioner's Behavior Intervention Plan (BIP) appropriately as a component of Petitioner's educational program during the 2012-2013 school year and during summer 2013 ESY services. Petitioner did not meet Petitioner's burden of proving the charter school staff was primarily responsible for Petitioner's injuries through the use of improper restraints or by failing to follow the BIP appropriately. The preponderance of the evidence established that despite behavioral improvement over the year Petitioner continued to engage in self-injurious and aggressive behavior and physical injuries were as likely to occur at home or outside the school environment as they were to occur at school. *Schaffer v. Weast, supra.*
8. Respondent provided Petitioner's parents with the requisite prior written notice of its decision to promote Petitioner to the \*\*\* grade for the 2013-2014 school year. It was appropriate to promote Petitioner to the \*\*\* grade so that Petitioner could continue to learn at Petitioner's developmental level with more age appropriate peers. *34 C.F.R. § 300.503 (b).*
9. There were no procedural violations of the IDEA by Respondent that either impeded Petitioner's right to a free, appropriate public education or caused a deprivation of educational benefit. There were no procedural violations that significantly impeded parental opportunities to participate in the decision-making process regarding Respondent's provision of a free, appropriate public education to Petitioner. *34 C.F.R. § 300.513 (a)(2).*

### **ORDERS**

Based upon the foregoing findings of fact and conclusions it is hereby **ORDERED** that Petitioner's claims and requests for relief under the Individuals with Disabilities Education Act are hereby **DENIED**. All other relief not specifically stated herein is **DENIED**.

**SIGNED the 7th day of October 2014**

\_\_\_\_\_  
Ann Vevier Lockwood,  
Special Education Hearing Officer

### **NOTICE TO THE PARTIES**

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer 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. *34 C.F.R. § 300.516; 19 Tex. Admin. Code Sec. 89.1185 (n); Tex. Gov't Code, Sec. 2001.144(a) (b).*



**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT,  
bnf PARENT,  
    Petitioner,**

§  
§  
§  
§

**v.**

**DOCKET NO. 260-SE-0613**

**SEASHORE CHARTER  
SCHOOLS,  
    Respondent.**

§  
§  
§

**SYNOPSIS**

**ISSUE:**

Whether charter school provided a free, appropriate public education to \*\*\* grade student with severe autism, significant cognitive and communication deficits and behavioral issues, including history of unpredictable behaviors including self-injurious, self-stimulatory and aggressive behaviors.

**HELD:       FOR THE CHARTER SCHOOL**

Evidence showed student made significant progress academically, behaviorally, and socially and in developing higher level of communication skills. The duration, intensity, and frequency of aggressive, self-stimulatory, and self-injurious acts decreased significantly although not entirely extinguished.

**34 C.F.R. § 300.101; Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176 (1985); Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 188 F. 3d 245 (5<sup>th</sup> Cir. 1997).**

**ISSUE:**

Whether Admission, Review & Dismissal Committee (ARD) meeting to finalize student's Individual Educational Plan (IEP) for the \*\*\* grade included all required members under the IDEA.

**HELD:       FOR THE CHARTER SCHOOL**

ARD meeting included parent, charter school administrator (educator for 39 years and former principal and assistant principal), special education teacher, regular education teacher, and the charter school's behavioral consultant. A speech/language pathologist attended previous ARD where speech/language IEP was adopted and referenced in the final ARD meeting to finalize student's program.

**34 C.F.R. §§300.320; 300.321; 19 Tex. Admin. Code § 89.1050.**

**ISSUE:**

Whether charter school provided student's parents with requisite prior written notice of its intent to

implement the IEP developed at the duly constituted ARD meeting and of its decision to promote student to \*\*\* grade at the end of the school year.

**HELD: FOR THE CHARTER SCHOOL**

Charter school provided parents with ARD documents, that included student's IEP – ARD documents addressed all required elements of prior written notice under the IDEA; IDEA does not require prior written notice be provided in any particular format or manner. A student's IEP may be used as a component in meeting prior written notice requirements so long as it meets IDEA regulatory criteria. Evidence in this case showed that it did along with ARD documents addressing the action proposed, an explanation for the action proposed, a description of the assessments, records, and reports charter school used as basis for the proposed action, a statement regarding parental procedural rights, description of options considered and reasons why they were rejected and other facts relevant to the proposed action.

**34 C.F.R. § 300.503(a) (b) (1)-(7)**

**ISSUE:**

Whether charter school provided student with appropriate Extended School Year services (ESY) – specifically whether student was provided with access to assistive technology services and \*\*\* and with \*\*\* and music as non-academic, leisure activities.

**HELD: FOR THE CHARTER SCHOOL**

Charter school provided appropriate ESY to student – IEP and Behavior Intervention Plan implemented, related services continued to be provided including both direct service to student and consultative services to staff, and student had access to assistive technology \*\*\*; charter school also provided student with \*\*\* even though neither \*\*\* nor music were formal IEP goals. Student did not meet burden of proof that student needed \*\*\* and/or music to derive requisite educational benefit from Student's educational program.

**34 C.F.R. §§ 300.34; 300.106; 19 Tex. Admin. Code § 89.1065; Schaffer v. Weast, 546 U.S. 49, 62 (2005)**

**ISSUE:**

Whether charter school provided student with significant communication deficits appropriate assistive technology services \*\*\*.

**HELD: FOR THE CHARTER SCHOOL**

Evidence showed charter school made \*\*\* at school and \*\*\* used by instructional staff; charter school used assistive technology services \*\*\* appropriately to support speech/language therapy focus on continued development of verbal expression; student preferred use of \*\*\* and preferred verbal expression as primary means of communication; verbal expression a higher developmental means of

communicating than use of \*\*\*.

**34 C.F.R. §§ 300.5; 300.6; Rowley, supra.**

**ISSUE:**

Whether student denied a free, appropriate public education by charter school's alleged failure to implement student's BIP appropriately.

**HELD:           FOR THE CHARTER SCHOOL**

Student did not meet burden of proof that charter school staff were primarily responsible for student's injuries through the use of improper restraints or by failing to follow the BIP properly. Behavioral consultant consistently monitored staff implementation of BIP and provided modeling and consultation to staff in doing so. Student did exhibit injuries and despite behavioral improvement continued to engage in self-injurious and aggressive behavior during relevant school year. However, those behaviors decreased in frequency, duration, and intensity over time and injuries were as likely to occur at home or outside school environment as they were to occur at school.

**34 C.F.R. §§ 300.17; 300.34 (c) (10); 300.323 (d) (1) (2) (i) (ii)**