

DOCKET NO. 117-SE-1214

STUDENT,	§	BEFORE A SPECIAL EDUCATION
bnf PARENT	§	
Petitioner	§	
V	§	HEARING OFFICER FOR
DALLAS INDEPENDENT SCHOOL DISTRICT	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF HEARING OFFICER

STUDENT (Student) through best next friend, PARENT (collectively, Petitioner), requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 et. seq. Respondent is the Dallas Independent School District (District or DISD).

In the Request for Hearing, Petitioner alleged that the District denied Student a free appropriate public education (FAPE). Attempts were made to clarify the issues prior to the hearing but they were generally unsuccessful.¹ For this reason, the Hearing Officer designated the issues in controversy from the initial petition, the explanation of issues filed by Petitioner, the District’s counterclaims, the evidence provided at hearing, and the closing briefs.

I. ISSUES ADDRESSED AT HEARING

A. Petitioner

1. Whether the District failed to identify that Student had learning disabilities other than those included in Student’s determination of eligibility for special education?
2. FAPE Substantive: Whether the District failed to provide Student with an Individualized Education Program (IEP) that was reasonably calculated to confer an educational benefit addressing Student’s individualized special education needs?
3. FAPE Procedural: Whether the District failed to comply with IDEA procedural requirements by failing to provide Student’s parents (Parents) with notice of Admission, Review, and Dismissal (ARD) meeting and failing to help Parents understand their role in the IDEA program.

¹ Petitioner initially filed a list of issues that was unclear, confusing, and addressed issues beyond the statute of limitations. The Hearing Officer struck the issues outside the statute of limitations and requested Petitioner provide additional information or explanations about the issues for hearing. Petitioner filed an amended petition, which the Hearing Officer allowed because it did not include new issues. During the hearing, the Hearing Officer explained the statute of limitations and attempted to guide the Petitioner towards only relevant matters.

As relief, Petitioner requested the Hearing Officer order the following:

1. The District return Petitioner to *** School (***) and allow Student to remain there.
2. The District inform Parents of their rights under IDEA.
3. Consideration of a one-to-one assistant in the general education classrooms for all core subjects.
4. Provision of counseling and social skills services at school.
5. Inform Parents who is responsible for providing Student with special education services throughout the school day and at all times.
6. A full independent education evaluation (IEE) with psych-evaluation be performed at the District's expense.
7. Private tutoring for Student for all classes at the District's expense.
8. Consideration given to other educational settings at the District's expense if the District is unable to comply with any of the above.

B. District

The District filed two counterclaims and requested the following findings:

1. That during the time in question, Petitioner was not entitled to an IEE at the District's expense as an appropriate full individual evaluation (FIE) was conducted by the District.
2. That Student requires a more restrictive educational placement in a self-contained behavior stabilization class (stabilization class).²

II. PROCEDURAL HISTORY

Petitioner filed this request for hearing on December 19, 2014. DISD filed its amended counterclaim on February 6, 2015. The hearing was held on February 16-17, 2015. Parent Advocate Carolyn Ann Morris represented Petitioner. Attorney Nona Matthews represented the District. At the conclusion of the hearing, the decision due date was extended to March 31, 2015, to allow both parties an opportunity to submit written

² This counterclaim was ruled on at the end of the hearing with a written decision, Order No. 6, memorializing the decision announced on the record. The decision was that the District met its burden of proof and Student was moved to a stabilization class for not more than 45 school days.

argument. The Decision was timely issued. Based upon the evidence and argument of the parties, the Hearing Officer issues the following findings of fact and conclusions of law.

III. FINDINGS OF FACT

1. DISD is a political subdivision of the State of Texas and a duly incorporated independent school district responsible for providing Student a FAPE in accordance with IDEA, 20 U.S.C.A. § 1400, et seq., and the rules and regulations promulgated thereto.
2. Student is school aged and resides within the geographical boundaries of DISD, and the District is responsible for providing Student with a FAPE.
3. In March 2012, a private psychological assessment was performed by *** (***) Assessment).
4. The *** Assessment determined that Student had severe emotional and behavior needs. Very high levels of structure and supervision were recommended. A Woodcock-Johnson Test of Achievement revealed Student's comprehension abilities were excellent, at or above age level.³
5. Procedural safeguards regarding the *** Assessment were discussed with Parents at the appropriate times.⁴
6. The District completed its FIE for Student on May 24, 2013. This included an emotional/psychological evaluation, a Functional Behavioral Assessment (FBA), and a review of Student's academic achievement and intellect.⁵
7. Student's academic achievement level was high-average to average in May 2013.⁶
8. Student's cognitive abilities were within the average range, low average, when compared to the norms for Student's age group in May 2013.⁷
9. Student's emotional and behavior assessment of May 2013 demonstrated an inability to build and maintain satisfactory interpersonal relationships with peers or teachers and inappropriate types of behavior or feelings under normal circumstances.⁸
10. The May 2013 FIE indicated that Student met the qualifications for special education based on the disability condition of "emotional disturbance."⁹

³ Ex. R-1.

⁴ Tr. at 194-197. The document in discussion is the *** Assessment.

⁵ Ex. R-4.

⁶ Ex. R-4 at 16. Tr. at 197.

⁷ Ex. R-4 at 18.

⁸ Ex. R-4 at 12-13.

⁹ Ex. R-4 at 20.

11. On June 11, 2013, the ARD Committee reviewed the FIE and determined that the student met eligibility criteria for special education and related services as a student with an emotional disturbance.¹⁰
12. The purpose and details of the June 2013 ARD meeting were reviewed with Parents.¹¹
13. The June 2013 ARD found that Student performed at the appropriate age/grade level for all academic subject matters.¹²
14. The June 2013 ARD determined that Student's behavior impeded Student's learning, as well as that of other students, and that Student needed behavior accommodation.¹³
15. Annual goals and short-term instructional objectives for IEP were set by the June 2013 ARD.¹⁴
16. Consideration of least restrictive environments were made with a determination that at this time that all services would be provided at *** School (***), not Student's home district school of ***, in the general education classroom with inclusive behavior support as coordinated between general and special education teachers.¹⁵
17. The June 2013 ARD established a Behavioral Intervention Plan (BIP).¹⁶
18. Parents agreed with the June 2013 ARD decisions and implementations and were provided a copy of the ARD/IEP Committee Report.¹⁷
19. An ARD was held on August 28, 2013, to address Parents' change in decision and new request to keep Student at *** for the services. Notice was received by the Parents and at least one parent attended. In accordance with the Parents' desire, Student's placement was returned to ***.¹⁸
20. On February 4, 2014, *** (***) responded to a call from Mother requesting an assessment as *** staff wanted student to be admitted to a psychiatric hospital or to an alternative school and Mother was not comfortable with these options.¹⁹ Student had run away from school and was having behavior issues, such as throwing *** (this refers to different incidents than ***). The *** clinician found Student to be at a moderate risk of *** or danger to self.

¹⁰ Ex. R-5 at 2.

¹¹ Tr. at 239.

¹² Ex. R-5 at 4-9.

¹³ Ex. R-5 at 5.

¹⁴ Ex. R-5 at 14.

¹⁵ Ex. R-5 at 21.

¹⁶ Ex. R-5 at 25-26.

¹⁷ Ex. R-5 at 29-36.

¹⁸ Ex. R-6.

¹⁹ Ex. R-7.

21. The *** clinician found that Mother attempted to minimize Student's behavior by stating that she thinks Student only dropped *** and was not throwing them.²⁰
22. An ARD was convened on February 18, 2014, to review and possibly revise Student's BIP.²¹ Parents received notice on February 18, 2014. Student's behaviors discussed at the ARD included cursing, kicking, throwing temper tantrums, *** and ***.²² Additional strategies were added to the BIP to address these behaviors.
23. An ARD convened on March ***, 2014, as an annual review, for evaluation, and to discuss a lack of expected progress. Parents were provided notice on March ***, 2014, and waived the 5-day notice requirement. Student was performing at age level in the following areas of academic achievement:²³
 - a. Language/Communication;
 - b. English/Language Arts/Reading;
 - c. Math;
 - d. Science; and
 - e. Social Studies/History.
24. The March ***, 2014 ARD discussed that student was not performing at appropriate level in behavior, social, and emotional areas. Student demonstrated problematic behaviors of impulsivity, frequent inattentiveness, a need for attention, and frustration. Student showed verbal and physical aggression towards peers and teachers.²⁴
25. The March ***, 2014 ARD implemented a change in placement for Student to a behavior adjustment class (BAC) at ***. Parents were in agreement.²⁵
26. The purpose of the BAC was to include Student in the general education setting, while providing support when needed.²⁶
27. Beginning on August 27, 2014, a behavior-tracking plan was kept with daily anecdotal notes, teacher's notes, and incident reports.²⁷
28. IEP progress notes from September record that Student was taunting others, acting like Student was ***, ***, calling students, "****" and directing racial epithets at African American and Hispanic students.²⁸ Student was also yelling at students, "****."

²⁰ Ex. R-7 at 7.

²¹ Ex. R-8.

²² Ex. R-8 at 16.

²³ Ex. R-9.

²⁴ Ex. R-9 at 5.

²⁵ Ex. R-9 at 27-28.

²⁶ Tr. at 89.

²⁷ Ex. R-11.

²⁸ Ex. R-11.

29. IEP progress reports from October 2014 to January 2015 reveal Student was often times either overmedicated and drowsy or regressing with provoking, taunting, and verbally bullying of Student's classmates.²⁹ Student's behavior did improve in mid-October to December 2014.³⁰
30. Student's grades continued to be good. Student made A's and B's with an occasional C.³¹
31. Student was removed from general education classes when Student yelled, cursed, and threatened staff and students. Student was transitioned back into general education classes when Student demonstrated good behavior.³²
32. When in general education classes, a teaching assistant or the school counselor accompanied Student and provided assistance.³³
33. On September ***, 2014, Student provoked, taunted and was defiant and antisocial. Student bullied students and said things such as, "****." Student also used racial epithets.³⁴
34. On October ***, 2014, Student threw *** at ***, threatened students, threatened to harm ***self, threatened staff, and lost control of Student's actions. Student yelled at the coach who was also in the room that, "****." ³⁵
35. Student's father said Student acted the same at home as on October ***, 2014, at school. Student's Mother said Student only acted this way at school.³⁶
36. On October ***, 2014, Student's behavior turned to *** as Student told two teachers and the vice-principal that, "****." Student described ***. Student *** at Student's teacher.³⁷
37. Student's *** were evaluated by the school counselor and determined to be a medium risk.
38. On December 1, 2014, Student was again evaluated by ***. Student reported that ***. Student was identified at a high risk for *** or danger to ***self in the *** Evaluation. ³⁸
39. The clinician from the *** Evaluation noted that Mother heavily minimized Student's behavior at school.³⁹ This is the second similar finding by *** clinicians.

²⁹ Ex. R-12; Tr. at 118.

³⁰ Ex. R-11 at 44-76.

³¹ Ex. R-13.

³² Ex. R-15.

³³ Tr. at 264 and 271.

³⁴ Ex. R-11 at 29.

³⁵ Ex. R-11 at 28; Tr. at 120-121.

³⁶ Ex. R-11 at 39.

³⁷ Ex. R-11 at 41; Tr. at 122.

³⁸ Ex. P-15 at 000206-207; Tr. at 123-124.

³⁹ Ex. P-15 at 000209.

40. On December ***, 2014, Student *** and was followed by a behavior specialist to ensure Student's safety. Student turned on the specialist and threw a ***.⁴⁰
41. On December 18, 2014, an ARD meeting was convened with Parents in attendance but it was recessed at the principal's recommendation. Parents had not read the *** Evaluation, even though it was performed in their home. Parents were not in agreement with the recess and wanted to discuss Student's attendance, grades, and BIP. The District's employees wanted to discuss Student's behavior and placement, but not until after Parents had read the *** Evaluation.
42. The December 2014 ARD was not reconvened, as the request for a due process hearing was filed.⁴¹
43. After the *** Evaluation, *** was removed from the BAC in order to protect Student and classmates.⁴² *** for all students. The District implemented a crises management plan and escorted Student wherever Student needed to go. Other students were denied the use of these items due to Student's behavior.
44. On January ***, 2015, Student suddenly tried to attack the students closest to Student with an outburst of screaming and swinging. There was no precipitating event.⁴³
45. On February ***, 2015, Student had an uncontrollable, violent, and unpredictable outburst. Student threw *** at ***, hitting *** in the face. Student then *** and began ***, calling students "****," "****," and ***. Student threatened to ***. Student yelled at Student's teacher, "****" and ***. Student tried to ***. ***, BAC teacher, used proximity control to protect Student from the other students. That is when Student *** Mr. ***. The police were called and the incident reported.⁴⁴
46. Student's behavior in the classroom was at times traumatic for other students, disrupted the classroom environment, and significantly impaired the education of other students.⁴⁵ Student's classroom behavior was volatile, explosive, and unpredictable.⁴⁶
47. Learning ceased for other students in the classroom during Student's outbursts and the main goal was to keep everyone safe.⁴⁷
48. It is necessary for Student to be removed from the BAC and placed in a Stabilization Class in order to allow other students to learn. Student's actions have disrupted the class and caused other students to sob as they tried to control their emotions.⁴⁸

⁴⁰ Ex. R-11 at 76a.

⁴¹ Tr. at 286-287.

⁴² Tr. at 126 and 285.

⁴³ Ex. R-11 at 84-87.

⁴⁴ Ex. R-11 at 105-106; Tr. at 135.

⁴⁵ Tr. at 126.

⁴⁶ Tr. at 81.

⁴⁷ Tr. at 127.

⁴⁸ Ex. R-11 at 26.

49. Student's behavior made Student's placement in BAC or general education dangerous to ***self, other students, and District staff.⁴⁹
50. The ARD committees appropriately set behavioral goals, accommodations, and BIPs to address Student's disability, education, and behavior.⁵⁰
51. The District adjusted Student's IEP in the least restrictive environment, depending upon Student's behavior and as appropriate for Student's needs.
52. Student was not subjected to a disciplinary change of placement.
53. At no time was Student considered a "transfer student," meaning Student was not transferred out of district.
54. The Student's IEP was reasonably calculated to provide educational benefit, as Student's good grades demonstrated.
55. Changes in placement for Student, away from the general education population, were only made when necessary and appropriate, because Student's behavioral needs required a more restrictive environment.⁵¹
56. Student was educated with children who were not disabled to the full extent possible.
57. The District took meaningful steps to accommodate Student in regular education classes.
58. At all times, the District provided Student with a FAPE.
59. Parents were appropriately provided notice for all meetings, including ARD meetings, and of all actions taken by the District staff and ARD committees.
60. Parents attended all ARD meetings and agreed with all decisions made by the ARD committees at the time the decisions were made. The ARD committees appropriately addressed Student's behavior and academic progress, or lack thereof, at each ARD meeting.⁵²
61. A second potential eligibility for special educational services for Student related to "other health impairment," but it was not proven necessary.⁵³
62. *** was a licensed specialist in school psychology at ***. Her expert testimony was credible and convincing.

⁴⁹ Tr. at 81.

⁵⁰ Ex. R-5 at 14, 15, and 25; Ex. R-6 at 14, 15, and 23; Ex. R-8 at 4, 13, and 16; and R-9 at 14, 15, and 24.

⁵¹ Ex. R-11 and 12; Tr. at 165.

⁵² Ex. R-8 at 16; R-9 at 4; R-10 at 1.

⁵³ Tr. at 229, 481-482.

63. Ms. *** has a B.A. in Psychology, a B.A. in Sociology, a Master's in Special Education, a Masters in Psychology, and a Teaching Certificate. She is certified as an educational diagnostician, and she is a licensed specialist in school psychology.⁵⁴
64. Student's behaviors were not primarily related to the diagnosis of ADHD.⁵⁵
65. Ms. *** took the unusual action of giving Parents her cell phone number, and she was one of many resources provided to Parents to help them navigate the educational system.⁵⁶
66. Parents called Ms. *** when they changed their mind on Student's placement, and Ms. *** explained to them that another ARD would be called to address their concerns.
67. An ARD committee was reconvened in August 2013 and Student's placement was changed in accordance with Parents' changed decision and new request.
68. FAPE procedures were followed for all ARD meetings.⁵⁷
69. On December 18, 2014, Carolyn Ann Morris, Parent Advocate, interrupted the District's ARD agenda concerning placement of Student and asked a question not related to placement. District personnel attempted to provide Ms. Morris with the information and documentation she wanted, but they were then interrupted with other questions not related to Student's placement.⁵⁸
70. *** is a licensed professional counseling intern, a certified teacher and a certified school counselor. He was the District's BAC teacher at *** where Student started in *** of 2014.⁵⁹
71. Mr. *** was a credible and knowledgeable witness.
72. Mr. *** spoke with Parents frequently, more than 20 times in September 2014.
73. During one incident, Student tried to ***, while saying "****".⁶⁰
74. Nurse *** advised parents that Student needed to be treated at a psychiatric hospital and Nurse *** made calls in order to get Student admitted immediately after the October ***, 2014 incident.⁶¹
75. Nurse *** is particularly qualified as an expert in the field of child psychiatry and works ***.⁶²

⁵⁴ Tr. at 195-196.

⁵⁵ Tr. at 224-225; 229.

⁵⁶ Tr. at 530.

⁵⁷ Tr. at 248, 527, 528.

⁵⁸ Tr. at 704-706.

⁵⁹ Tr. at 78-79.

⁶⁰ Tr. at 284.

⁶¹ Tr. at 692-697.

⁶² Tr. at 687-688.

76. The testimony of Nurse *** is credible and convincing.
77. Despite having an ARD placement decision completely reversed at her request, Mother testified that she had to do whatever others at the ARD said.⁶³
78. Mother denied that anyone ever talked to her about Student's testing.⁶⁴
79. Mother stated that she did not understand Student was in special education until Student was transferred to ***.⁶⁵
80. Even after listening to the hearing, Mother did not understand what a behavior intervention plan was.
81. Mother testified that while looking at the ARD documents at the end of the hearing, she still did not understand what they were about.⁶⁶
82. Mother denied that anyone explained to her that Student's behavior interfered with Student's academics.
83. Mother testified at hearing that school personnel did not talk to her about the various documents and that she would not have understood them unless they were explained.⁶⁷
84. Mother, at the time of the hearing, did not know what an IEE was.⁶⁸
85. Mother objected to the IEE because she understood the school nurse relied on the *** assessment.
86. Mother either didn't read or didn't understand documents presented to her, and she did not ask questions nor ask for help.⁶⁹
87. At the time of the hearing, mother did not understand when a meeting was an ARD.⁷⁰
88. Mother thought the June 11, 2014 ARD was just a meeting, because no one told her it was an ARD.
89. Mother did not disagree with anything in Ms. ***'s evaluation.⁷¹
90. Mother filed the due process hearing because Student was not getting the services Student needs. She believes the District has not been doing anything for Student from the time Student started going to school.⁷²

⁶³ Tr. at 753.

⁶⁴ Tr. at 755.

⁶⁵ Tr. at 756.

⁶⁶ Tr. at 758.

⁶⁷ Tr. at 764.

⁶⁸ Tr. at 766.

⁶⁹ Tr. at 770 and 772.

⁷⁰ Tr. at 772.

⁷¹ Tr. at 780-781.

91. Mother continues to believe Student is “slow,” despite all the testing and evidence to the contrary.⁷³
92. Mother admitted to not reading the notices sent home; she forgot about them.⁷⁴
93. Mother testified that only very little of Student’s poor behavior, as described by the District personnel, is really happening.⁷⁵
94. During the first day of hearing, while Mr. *** was away and at the hearing, Student ***. The teacher had to go to the nurse.⁷⁶
95. Despite the Student’s volatile and dangerous behavior at school, Mother has denied repeatedly that Student has significant behavioral problems and that the incidents as described have occurred.⁷⁷
96. Mother did not believe that Student threw ***.⁷⁸
97. Mother believed that Student’s bad behavior was in response to others “messing” with Student, pushing Student, or talking about Student.⁷⁹
98. Student’s behavior is dangerous to ***self, other students, and District staff. Student suffers from emotional disturbance that requires treatment beyond the requirements of IDEA and beyond the District’s abilities to provide care.

IV. DISCUSSION

A. Petitioners’ Issues

1. Did the District fail to identify that Student had learning disabilities other than those included in Student’s determination of eligibility for special education?

An underlying issue throughout this proceeding was whether Student has academic issues not addressed by the District. Parents urged that academic goals were not included in the ARD meetings and that this violated

⁷² Tr. at 782.

⁷³ Tr. at 784 and 786.

⁷⁴ Tr. at 790.

⁷⁵ Tr. at 768.

⁷⁶ Tr. at 284.

⁷⁷ Tr. at 303.

⁷⁸ Tr. at 750.

⁷⁹ Tr. at 751.

FAPE. Parents want Student to have a one-on-one aid to attend general education classes with Student and help Student academically.⁸⁰ Mother testified that she wanted Student returned to Student's home school of ***. She further stated when asked what she wanted for her Student:

“ . . . I want [Student] to be where [Student] can learn. I wanted someone to sit down and you know, and help [Student] and be patient with [Student] and not scold at [Student] and help [Student] with [Student's] homework because (Student) is slow.”⁸¹

Here we have the fundamental disagreement in this case. Petitioner argues that Student needs additional academic support but minimizes Student's behavior issues. The District asserts that Student is doing well academically, but needs psychiatric care and must be limited in Student's access to general education for Student's own protection and for the protection of the other students and District staff. If there are academic weaknesses, urges the District, they are caused by behavior and not cognitive issues.

The evidence on this issue is overwhelmingly convincing in the District's favor. Mother described her Student as “slow.” The evidence in this hearing—classroom testing, the testimony of Student's teachers, and the results of several intelligence assessments—establish that Student is not slow. Student can perform academic work on par with Student's age group in all subject matters. However, Student's behavior negatively impacts Student's academic performance. Student's behavioral issues were verified by emotional and psychological evaluations as well as the testimony of Student's teachers. Student has a special education need related to a significant emotional disturbance.⁸² This is what the ARD committee determined, and all evidence presented during the hearing, absent Mother's testimony, supports this conclusion.

The *** psychological assessment was performed in March 2012. As a part of this assessment, information from two previous assessments was reviewed and summarized. Student first performed a developmental assessment at age *** in 2009 (2009 assessment). This assessment diagnosed Student with a depressive disorder, anxiety disorder, oppositional defiant disorder, and ***.⁸³ At age *** in 2011, another evaluation was performed. It found Student experienced ADHD and oppositional defiant disorder.

⁸⁰ Tr. at 785.

⁸¹ Tr. at 784.

⁸² It is agreed by both parties that student also suffers from Attention Deficit Hyperactivity Disorder (ADHD).

⁸³ Ex. R-1 at 2.

The *** Assessment essentially continued findings along the same line as the initial two evaluations. Student is a child with “severe emotional and behavioral needs.”⁸⁴ Due to concerns expressed by Parents about Student’s comprehension skills, the *** Assessment included a specific test of Student’s comprehension abilities. The findings indicated that Student’s comprehension was excellent, at or above the level expected for Student’s age, grade, and intelligence. The *** Assessment concluded that Student’s difficulties with comprehension are more behavior related than intellect related.⁸⁵ This is the foundational fact related to Student’s special education qualifications and to the District’s educational plan for Student.

In May 2013, ***, LSSP, conducted a fourth evaluation with Student to determine whether Student was eligible for special education services (***) Evaluation).⁸⁶ In her psychological assessment, Ms. *** found Student to be at grade level in all academics. Upon observation of Student in class, however, she noted that Student yelled out answers, wanted the teacher’s attention, and complained, “***” whenever Student was not called upon.⁸⁷ The *** Evaluation concluded that Student has “emotional disturbance” and that Student qualified for special education.⁸⁸ It noted that Student had an inability to build or maintain relationships with peers and teachers. Student was found to be verbally and physically aggressive with both teachers and peers. The *** Evaluation found no support for a determination that Student qualified for special education due to intellect. Student was performing above grade level in reading, math, and writing skills.

During the hearing, Ms. *** testified that she found nothing to indicate that Student suffered from cognitive delays.⁸⁹ She explained that while Student demonstrated no cognitive weaknesses, Student still had a very difficult time functioning in a general education classroom due to Student’s behavioral needs. Student’s weaknesses, Ms. *** continued, included physical and verbal aggression, tantrums, and *** while in the classroom. She determined that these were best described as caused by emotional disturbance. For this reason, she and the ARD found Student qualified for special education support related to emotional disturbance.

Despite the ARD’s implementation of an educational plan, Student’s in-classroom behavior declined such that Student eventually became a danger to ***self, other students, and Student’s teachers. Contrary to what Petitioner argues, the evidence does not indicate that this decline resulted from any failure of the District

⁸⁴ Ex. R-1 at 7.

⁸⁵ Ex. R-1 at 6.

⁸⁶ *** is a highly qualified professional who gave credible and convincing testimony as a witness.

⁸⁷ Ex. R-4 at 4.

⁸⁸ Ex. R-4 at 12-13.

⁸⁹ Tr. at 480.

or from the ARD committees in particular. Rather, the evidence indicates that Student's poor behavior has been similar in nature, even since the first assessment performed at age ***. As Student grows older, Student's behavior is becoming more difficult to control. But, Student's fundamental weaknesses remain related to psychological issues, not cognitive functioning. There is no reason for another FBA to be performed as a part of another IEE. Student's qualifying special need for special education remains the same: emotional disturbance.⁹⁰

Instead of additional assessments, the evidence in this hearing established that Student needs additional psychiatric intervention. Parental delay in providing psychiatric intervention for Student has exacerbated the Student's weaknesses and decreased Student's ability to be placed in a general education classroom. Ms. ***, a psychiatric nurse, testified that Student's poor behavior escalated to the point that on October ***, 2014, she encouraged Mother to seek in-patient care for Student at a psychiatric hospital.⁹¹ Ms. *** made phone calls to assist Mother in getting Student admitted that day as Student was in a crisis situation. However, upon arriving at the hospital, it took longer than expected to get Student admitted into the hospital. When the hospital initiated the intake, Mother reported that Student's behavior issues only occurred at school. For this reason, Student was not admitted to the hospital. Nurse *** testified that Mother had previously discussed with her that Student's behavioral problems were elevated at home as well. Mother had indicated that Student was becoming angrier and more agitated at home ***, and talking back to Parents more frequently.⁹² The record is absent information as to why Mother would provide the hospital with inaccurate information, other than Mother has a history of minimizing Student's negative and dangerous behavior.

The evidence in this hearing suggests that parental concerns for Student are well-founded. However, their efforts are misdirected at faulting the District. The evidence indicates that the District's personnel are well qualified, engaged with the best interest of Student in mind, and at all times attempting to work with Parents. *** is a licensed specialist in school psychology. She gave Mother her cell number and helped walk Parents through the process, including reversing an ARD when Mother changed her mind.

Nurse *** is a psychiatric nurse *** in addition to her work for the District. She made calls and smoothed the process for Mother to get Student into inpatient treatment, only to be thwarted in her efforts by

⁹⁰ Tr. at 516 and 518.

⁹¹ Tr. at 693-698. Nurse *** is a qualified medical expert in the area of child psychology. Her testimony was credible and given great weight.

⁹² Tr. at 697-698.

Mother giving inaccurate information to the hospital. Nurse *** explained that, at a minimum, student needed inpatient observation for Student's medication to determine what is most effective and what has unacceptable side effects.⁹³ She testified that this type of evaluation is not performed by a school district and that is why she made calls for over an hour, telling hospitals that the Student was in a crisis and needed immediate care.

Teacher *** is a certified teacher, a certified counselor, and is ***. He has been Student's teacher in the BAC and a primary contact for Parents, on the phone with them as much as 20 times in September 2014 alone. He has felt the brunt of Student's outburst and has protected the Student and other Students. All of these professionals agree on the special needs of Student and have worked to help Student overcome them. They have been available and helpful to Parents, and they want the same thing as Parents for Student: that Student be the best person Student can be and that Student learns. However, Student's psychiatric disability is beyond the District's responsibilities and capabilities to provide the medical diagnosis, the medications, and the overall care necessary.

Yet mother testified that the District was doing nothing.⁹⁴ She faulted the District for not being patient, not helping Student with homework, and for restricting Student's activities. She objected that pens and pencils were taken away from Student and that Student's participation in the general education classrooms had been curtailed.⁹⁵ Mother wants her Student to be just like the other kids. However, the evidence establishes this is not possible until Parents seek out qualified medical care to address Student's emotional issues.

2. *Did the District fail to provide student with an IEP that was reasonably calculated to confer an educational benefit addressing the student's individualized special education needs?*

Petitioner alleges that there was no attempt to ensure that Student was given every opportunity in the public education setting; that there were no goals set for Student to return to the general educational classroom; and that the ARD committee did not provide documentation to show any progress on the goals and recommendations in the 2013 FIE. Accordingly, Petitioner urges that there is no way to know whether any progress was made.

⁹³ Tr. at 725-728.

⁹⁴ Tr. at 782.

⁹⁵ Tr. at 786.

Petitioner understands that no ARD was requested to address behavioral concerns with the IEP failing then to provide teachers with the necessary classroom strategies. Petitioner argues that a FAPE has not been provided because inclusion in general education with support was never considered before a change in placement was recommended. Thus, Petitioner urges that Student has not been educated in the least restrictive environment (LRE). Petitioner also objects that Student has been in the special education program for *** years with no expectation of placing Student back into general education. Finally, Petitioner asked three specific questions to the Hearing Officer. The questions and answers from the Hearing Officer are immediately presented, followed by a general discussion of this issue.

Q1: Was an ARD held to review or recommend adjustments or to review goals in all areas, including behavioral?

A1: *The ARDs are listed below and all reviewed or recommended adjustments or reviewed goals in several areas, including behavioral.*

Q2: At any time was there consideration given to opt out of placement for a child with a disability for more than 45 days under IDEA?

A2. *The Hearing Officer does not understand this question but presumes it concerns 20 U.S.C. § 1415 (k)(1)(G)(i)-(iii). There is no evidence the Hearing Officer was directed to or otherwise found in the record to indicate this procedure was implemented or contemplated in this case.*

Q3: Did an ARD committee make the determination that (Student's) behavior could be controlled with inclusion in the regular classroom?

A3. *Yes, up until the March ***, 2014 ARD meeting, the decision was to keep Student in the general education classroom with assistance. It was tried but failed as it put Student, other students, and District staff in physical danger.*

The evidence in the hearing leads the Hearing Officer to find that the ARD Committees considered and provided every reasonable opportunity for Student to remain in the general education setting. Petitioner is mistaken when arguing that inclusion in general education with support was not attempted prior to a change in placement. From June 2013 to March 2014 at ***, inclusion in general education classrooms with support was Student's placement. The amount of support was increased following the February 2014 ARD. Even after the change in placement to ***, Student remained in the general education classrooms to the extent that Student's behavior allowed. The BAC was essentially inclusion with strong support.

To be clear, even at ***, if Student's behavior was satisfactory, Student would have been included in general education. But Student's behavior became worse, not better. For this reason, Student began spending less time in the general education classroom. Student's poor behavior began to endanger ***self and others, even when a second District staff member was included in Student's classroom for support. From the initiation of special education until the hearing date, Student remained in either general education or general education with support in the classroom, to the extent Student's behavior allowed.

Turning to the concern about documentation of progress, the ARD did not provide such documentation on the goals and recommendations in the 2013 FIE, because there was no progress to document. The evidence establishes that Student's behavior became worse in the general education classrooms, and Student needed to be moved to a more restrictive placement. Had Student been making progress, goals would have been set to allow Student to remain in the general education classrooms.

The evidence further establishes that, contrary to Petitioner's assertions, ARD meetings were requested to address behavioral concerns, and they resulted in a range of strategies recommended to teachers for Student. At all times, Student was educated in the LRE. The very point of the BAC was to include student in general education to the full extent possible.⁹⁶ So long as Student's behavior allowed for it, Student was attending general education classes with Student's peers. However, rather than Student's behavior getting better, it got worse. Student's behavior is what resulted in Student's removal from general education classes to the point that at the time of the hearing, Student was spending 95% of Student's time in the special education classroom.⁹⁷

A review of the ARD committee meetings addressing Petitioner's concerns are summarized:

- June 11, 2013 ARD⁹⁸

This was the initial ARD where Student was found to qualify for special education for a condition classified as emotional disturbance. An FIE performed on May 24, 2013, was considered as was an FBA. A BIP and an IEP were implemented. The BIP identified interventions and strategies for the teachers to implement. The IEP included annual goals and short-term objectives. Had Student met this goals and

⁹⁶ Tr. at 89. "The goal of the behavioral adjustment class is inclusion. The goal is to include the student in the general ed setting, providing support when needed."

⁹⁷ Tr. at 90.

⁹⁸ Ex. R-5.

objectives, Student could have been considered for return to full general education without BAC. However, Student did not. Parents agreed with the determinations made in this ARD, including Student's placement in a BAC at ***. This ARD stated that another ARD meeting would be held within 12 weeks to review progress.

- August 28, 2013 ARD⁹⁹

This ARD meeting was within 12 weeks of the initial ARD, as recommended, and was set to review student's progress and placement. Parents had changed their minds and decided that they wanted Student to remain at Student's home district ***, ***. Rather than referring student to a BAC, this ARD agreed to allow Student to stay at *** with a behavior support team. The BIP and goals and objectives were revised in accordance with Student's most recent performances in general education classrooms.

- February 18, 2014 ARD¹⁰⁰

This ARD was called to revise the BIP. Student's behaviors had not gotten better and Student had added ***. Prior to the ARD, Student was referred to *** where a risk assessment was conducted. The *** findings were considered and the ARD committee explored various strategies to encourage Student's success in the general education classroom. Strategies were added and additional support (including personnel) was provided to assist Student and Student's teachers. Parents were in agreement with the actions taken.

- March ***, 2014 ARD¹⁰¹

Student's verbal and physical aggression had increased after the last ARD meeting. The strategies implemented after the last ARD were not working. Student's placement was changed to a BAC at ***, where it was hoped Student would learn appropriate behaviors so as to be included in general education. At ***, Student would be in general education with support to the full extent possible, as Student's behavior allowed.

- December 18, 2014 ARD¹⁰²

⁹⁹ Ex. R-6.

¹⁰⁰ Ex. R-8.

¹⁰¹ Ex. R-9.

¹⁰² Ex. R-10.

This ARD was continued and the request for a due process hearing was filed, resulting in this proceeding. The ARD did not complete its work as the provisions of “stay put”¹⁰³ were implemented by the filing.

The above-listed ARD meetings were all requested to address behavioral concerns so as to provide teachers with the necessary classroom strategies to address Student’s behavioral needs. At all times, a FAPE as detailed in Student’s IEP was appropriately provided and in the LRE. Student’s IEPs were at all times individualized in accordance with the Student’s assessment and performance, and all IEPs were reasonably calculated to confer a meaningful educational benefit to Student.

Unfortunately, and despite the District’s best efforts, Student’s behavior became more physical, eventually resulting in several physical assaults on teachers and peers. The threats became more specific and included ***. Student reached a point by the time of the evidentiary hearing that Student was a serious threat to ***self and to others. Student’s aggressive behavior had a significant negative impact on the education of other students in the general education classroom and in the BAC. Accordingly, the Hearing Officer ordered Student’s placement changed to a Stabilization Class, so that the education of other students could once again begin and in order to protect Student, District personnel, and other students.¹⁰⁴

3. *Did the District fail to comply with IDEA procedural requirements by failing to provide the parents with notice of ARD meetings and failing to help parents understand their role in the IDEA program?*

Petitioner asserts that no administrator informed or explained to Parents that additional assessments or evaluations were available to help the ARD committee develop classroom strategies. Petitioner further argues there were no notices of ARD meetings concerning behaviors that led to changes.

IDEA establishes certain procedural requirements for informing parents regarding formulating and implementing IEP. However, procedural flaws do not automatically require a finding of a denial of a FAPE. Only procedural inadequacies that impede the child’s right to a FAPE, that result in the loss of educational

¹⁰³ 20 U.S.C. §1415(j); 34 C.F.R. § 300.518(a).

¹⁰⁴ Order No. 6.

opportunity, or that seriously infringe the parents' opportunity to participate in the development of the IEP result in the denial of a FAPE.¹⁰⁵

In this case, it was not shown that the District committed any procedural errors. The Hearing Officer does not find any evidence to support that any assessment or evaluation (performed or that could have been performed) was withheld by the District from Parents. Moreover, for arguments sake only, had any procedural errors been committed, it was not shown that the Student's right to FAPE was denied in any way. Contrary to assertions made by Petitioner, notice was provided and signed by Parents for every meeting. Explanations were given to Parents, including the "Explanation of Procedural Safeguards."

On March 25, 2013, Mother signed that she received and understood the contents of the "Explanation of Procedural Safeguards" and "A Guide to the Admission Review and Dismissal Process."¹⁰⁶ If Parents did not understand their rights and the processes, it was because of their own negligence. Mother testified that she was unsure if she read documents before she signed them.¹⁰⁷ When asked if she read the "Guide to the Admission Review and Dismissal Process," Mother stated that if she read it, she did not understand it.¹⁰⁸ She was advised that her rights included the right to receive answers from school personnel to questions she might have.¹⁰⁹ She did not ask any questions.

Moreover, the facts support a finding that the District was receptive to Petitioner's input and concerns. District personnel gave Mother their personal cell phone numbers and answered her questions. In particular, when Mother changed her mind about a placement, an additional ARD meeting was called and the ARD changed their previous placement to one that complied with Mother's new request. Mother was on the phone with school personnel when some of the most traumatic behavior occurred, like Student's ***. Yet still, Mother testified that she did not believe Student *** but that Student ***. When asked if she believed that Student is dangerous to ***self and others, Mother stated: "[B]ut that is just their opinion."¹¹⁰ She added that she believed very few of the things that District personnel reported as actually happening.

¹⁰⁵ 20 U.S.C. §1415(f)(3)(E); *Adam J. v. Keller ISD*, 328 F. 3d 804 (5th Cir. 2003).

¹⁰⁶ Ex. R-3.

¹⁰⁷ Tr. at 790.

¹⁰⁸ Tr. at 792.

¹⁰⁹ Ex. R-3 at 1.

¹¹⁰ Tr. at 786.

The District's nurse spent a great deal of time with Mother attempting to get student into in-patient treatment. The facts show a receptive and cooperating District, trying to obtain the best for student, while Parents failed to accept and acknowledge the extent of the problem and simply wanted their child returned to a general education setting, despite the Student's high risk ***.

B. District's Counterclaims

- 1. Whether the District performed an appropriate IEE as found in 34 C.F.R. § 300.502(b)(2)(i).**
- 2. Whether Student requires a more restrictive educational placement in a Stabilization Class.**

The Hearing Officer has addressed both of these issues in the affirmative.

V. CONCLUSION

In accordance with the evidence presented during this hearing and the above findings, the Hearing Officer finds against Petitioner on all issues. Thus, no remedies are awarded. Further, the Hearing Officer finds that District met its burden of proving that Petitioner was not entitled to an IEE at the District's expense as an appropriate FIE was conducted within the necessary time frame. Finally, an ARD should be convened to address Student's current placement before the end of the 45-school-day placement of Student into a Stabilization Class, as detailed in Order No. 6. The initial order was issued on February 17, 2015, at the end of the hearing and on the record.

VI. CONCLUSIONS OF LAW

1. The Student currently resides within the geographical boundaries of Dallas ISD, a legally constituted independent school district within the State of Texas, and is entitled to special education services pursuant to IDEA, 20 U.S.C. §1400, et seq., as amended.
2. The District is required to provide each disabled child in its jurisdiction with a FAPE, pursuant to 20 U.S.C. §1400, et seq., as amended. The student is eligible for IDEA services with the specific learning disability of emotional disturbance.

3. As the party challenging the educational program proposed by the District, Petitioner bears the burden of proof on issues it brought before the Hearing Officer. *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).
4. District provided FAPE and there were no substantive or procedural violations. *Cypress-Fairbanks Indep. Sch. Dist. V Michael F.*, 118 F.3d 245 (5th Cir. 1997).
5. The District met its burden of proving that Petitioner is not entitled to an IEE at the District's expense, because an appropriate FIE was conducted by the District. 34 C.F.R. § 300.502(b).

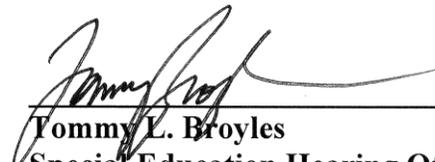
VII. ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, the Hearing Officer hereby **ORDER** that the relief sought by the Petitioner is **DENIED** in its entirety. Further, Petitioner is not entitled to an IEE at the District's expense.

VIII. NOTICE TO THE PARTIES

This Decision is final and is appealable to state or federal district court. Any party aggrieved by the findings and decision 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. 19 Texas Administrative Code § 89.1186(n).

SIGNED this 31st day of March, 2015.



Tommy L. Broyles
Special Education Hearing Officer
For the State of Texas

DOCKET NO. 117-SE-1214

STUDENT,	§	BEFORE A SPECIAL EDUCATION
bnf PARENT	§	
Petitioner	§	
V	§	HEARING OFFICER FOR
	§	
DALLAS INDEPENDENT SCHOOL DISTRICT	§	THE STATE OF TEXAS
Respondent	§	

SYNOPSIS

Issue No. 1: Whether the District failed to identify that Student had learning disabilities other than those included in Student’s determination of eligibility for special education?

Held: For the District. The evidence on this issue is overwhelmingly convincing in the District’s favor. Mother described her Student as “slow.” The evidence in this hearing—classroom testing, the testimony of Student’s teachers, and the results of several intelligence assessments—establish that Student is not slow. Student can perform academic work on par with Student’s age group in all subject matters. However, Student’s behavior negatively impacts Student’s academic performance. Student’s behavioral issues were verified by emotional and psychological evaluations as well as the testimony of Student’s teachers. Student has a special education need related to a significant emotional disturbance. This is what the ARD committee determined, and all evidence presented during the hearing, absent Mother’s testimony, supports this conclusion.

Citation: 34 C.F.R. § 300.309.

Issue No. 2: FAPE Substantive: Whether the District failed to provide Student with an Individualized Education Program (IEP) that was reasonably calculated to confer an educational benefit addressing Student’s individualized special education needs?

Held: For the District. ARD meetings were requested to address behavioral concerns, and they resulted in a range of strategies recommended to teachers for Student. At all times, Student was educated in the LRE. The very point of the BAC was to include student in general education to the full extent possible. So long as Student’s behavior allowed for it, Student was attending general education classes with Student’s peers. However, rather than Student’s behavior getting better, it got worse. Student’s behavior is what resulted in Student’s removal from general education classes to the point that at the time of the hearing, Student was spending 95% of Student’s time in the special education classroom.

Citation: 34 C.F.R. § 300.320.

Issue No. 3: FAPE Procedural: Whether the District failed to comply with IDEA procedural requirements by failing to provide Student’s parents (Parents) with notice of Admission, Review, and Dismissal (ARD) meeting and failing to help Parents understand their role in the IDEA program.

Citation: 34 C.F.R. §§ 300.32 and 300.504.

Held: For the District. The Hearing Officer does not find any evidence to support that any assessment or evaluation (performed or that could have been performed) was withheld by the District from Parents. Moreover, for arguments sake only, had any procedural errors been committed, it was not shown that the Student’s right to FAPE was denied in any way. Contrary to assertions made by Petitioner, notice was provided and signed by Parents for every meeting. Explanations were given to Parents, including the “Explanation of Procedural Safeguards.”