

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

DECISION OF HEARING OFFICER

Petitioner filed a request for due process hearing in Docket No. 168-SE-0215. An unsuccessful resolution session was held February 14, 2015. On July 24, 2015, Petitioner filed a second request for due process hearing, Docket No. 346-SE-0715. On August 15, 2015, the requests were consolidated by this hearing officer and subsequently carried under Docket No. 346-SE-0715. On September 1-3, 2015, a due process hearing was held in the instant action. James Holtz, attorney, appeared on behalf of \*\*\*, Petitioner (“Student”). \*\*\* (“Parent”) was present. Jeff Rogers and Amy Tucker, attorneys, appeared on behalf of Respondent, Spring Branch Independent School District (“District” or “Respondent”). \*\*\*, Director of Special Education was present.

Issues for Hearing

Petitioner alleges that District failed to provide Student a free appropriate public education (“FAPE”) both during the 2014-2015 school year and since \*\*\* 2015, and brings forth the following issues:

1. Whether District failed to develop and implement appropriate academic, functional, social and behavioral goals and objectives for Student;
2. Whether District failed to identify the nature, type, and frequency of the related services of occupational therapy (“OT”) and speech therapy (whether direct or consult, individual or group);
3. Whether District failed to convene an admission, review, and dismissal (“ARD”) committee meeting to address Student’s \*\*\* and educational needs prior to unilaterally changing Student’s educational placement from a life skills class at \*\*\* school to a \*\*\* life skills class at a different \*\*\* school;
4. Whether District failed to include in-class support when Student attended general education curriculum and failed to include provisions for aide support or individual education program (“IEP”) regarding Student’s \*\*\*;
5. Whether District procedurally impeded Student’s right to a FAPE and significantly impeded Parent’s opportunity to participate in the decision-making process when it failed to hold a promised meeting prior to determining a transfer of Student from \*\*\* school to another;

6. Whether District impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process when it failed to follow up on decision made by the \*\*\* \*\*\*, 2014 ARD committee to address Parent's concerns regarding Student's educational program and \*\*\*;
7. Whether District failed to consider Student's \*\*\* when it assigned Student to a classroom located \*\*\*;
8. Whether District failed to ensure that its staff was properly trained to meet Student's \*\*\*, including having an updated, appropriate \*\*\* with appropriate \*\*\* readily available to all school staff responsible for Student's education;
9. Whether Respondent failed to propose an individual education program ("IEP") or educational placement for Student since \*\*\* 2015 through the end of the 2014-2015 school year or for the 2015-2016 school year through \*\*\* 2016 in violation of 34 C.F.R. § 300.323; and
10. Whether Respondent failed to comply with the requirements of the IDEA by its failure to convene an admission, review, and dismissal ("ARD") committee meeting on or before \*\*\* 2015 for purposes of developing and proposing an IEP and educational placement for Student for the remainder of the current school year and to have a proposed IEP in place including a proposed educational placement in the least restrictive environment for Student for the 2015-2016 school year.

Petitioner requests the following relief:

1. An order finding a denial of FAPE during the 2014-2015 school year and that the private school, \*\*\* ("\*\*\*\*") is an appropriate placement for Student even if it does not meet the State standards;
2. An order that requires District to pay Petitioner the full costs of enrollment for Student to attend the \*\*\*, including costs of any related services, including transportation costs;
3. A finding that Respondent denied a FAPE to Student since \*\*\* 2015 through the end of the 2014-2015 school year;
4. A finding that Student was denied a FAPE for the 2015-2016 school year through \*\*\* 2016 for Respondent's failure to have in place an IEP and placement for Student to access;
5. A finding that \*\*\* is an appropriate placement for Student since \*\*\* 2015 and continuing through \*\*\* 2016 even if it does not meet State standards;
6. An order requiring Respondent to pay Petitioner the full costs of enrollment for Student to \*\*\*/\*\*\*, including costs of any related services, including transportation costs from \*\*\* 2015 to \*\*\* 2016;
7. An order directing Respondent to pay Petitioner's reasonable attorney's fees; and
8. Alternatively, all relief deemed appropriate by the hearing officer or by a court of competent jurisdiction.

Findings of Fact

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

1. Student resides within the geographical boundaries of District. Student is eligible for special education services as a child with other health impairment and speech/language impairment. JX-4
2. Student has \*\*\* and \*\*\*. Student has \*\*\*. Student has cognitive deficits, including an overall IQ of \*\*\*. Student is diagnosed with attention deficit hyperactivity disorder (“ADHD”). Student \*\*\*. JX-5; P-17; T-23, 27, 46, 257-258
3. At times, Student \*\*\*. When Student resists doing Student’s class work \*\*\*, Student is easily redirected. T-670
4. Student has \*\*\*, \*\*\*, \*\*\*, \*\*\*, \*\*\*, \*\*\*, \*\*\*. P-17; T-29-35
5. \*\*\*, \*\*\*. P-17
6. At the end of \*\*\* grade, Student was \*\*\* grade or comprehend grade level materials. The ARD committee determined that Student needed positive behavioral interventions, strategies and supports. A behavior intervention plan (“BIP”) was developed. Goals and objectives for Student’s \*\*\* and \*\*\* grade were developed in speech therapy, PE, all core subjects, behavior, and activities of daily living. Student had \*\*\* minutes per week in general education \*\*\*. P-32
7. At Student’s annual ARD meeting at the \*\*\* grade, Student’s needs were as follows: (P-32)

Subject	Needs
Reading and Written Language	***
Math	***
Social Studies	***
Science	***
P.E.	***
Communication	***

8. In \*\*\* grade, Student was in a Life Skills class (“LS”) at \*\*\* (“\*\*\*”). Student’s classroom was \*\*\*. T-92
9. At Student’s annual ARD in \*\*\* 2014, a review of existing evaluation data (“REED”) was conducted. The ARD committee reviewed various evaluations and information provided by Parent, Student’s performance on curriculum-based assessments, and classroom observations by teachers and related service providers. The committee determined that Student had one or more conditions that directly affected Student’s ability to benefit from the educational process, and detailed Student’s \*\*\*, and the need for \*\*\*. Student’s academic achievement and functional

performance was reviewed. Student made good progress on Student’s IEP goals/objectives, and had passing grades in core academic subjects. The committee determined that no additional data was needed. Medically, the committee determined that Student has cognitive limitations related to Student’s disability that affect activities of daily living. Student required verbal reminders in order to perform personal tasks, and needed a program that provided constant supervision throughout the day. The committee that Student required \*\*\* throughout the school day, totaling \*\*\*. JX-4

10. At the end of \*\*\* grade, the ARD committee prepared Student’s present levels of academic achievement and functional performance (“PLAAFP”), as follows:

<b>PLAAFP JX-4</b>	<b>STRENGTHS</b>	<b>NEEDS</b>
Reading	***	***
Speech Related Services/Language	***	***
Math	***	***
Functional	***	***
Science	***	***
Social Studies	***	***
Motor	***	***

11. The \*\*\* 2014 PLAAFP does not contain a statement that says how Student’s disability affects Student’s involvement and progress in the general education curriculum. JX-4; T-363

12. The \*\*\* ARD committee developed the following goals and objectives:

<b>Areas of Need- (JX-4; T-555)</b>	<b>Goals/Objectives</b>
Language Arts	***
Math	***
Science	***
Social Studies	***
Functional	***
Motor	***
Speech	***

13. Modifications/accommodations to enable Student to be involved in fine arts program were included in the \*\*\* 2014 IEP, such as extra time to complete assignments, use of visual aids, frequent feed back, \*\*\* and positive reinforcement, among others. JX-4

14. The \*\*\* 2014 ARD committee determined that Student was eligible to take the STAAR Alternate test during the 2014-2015 school year (Student’s \*\*\* grade year). As justification, the committee found that Student falls in the very low range of cognitive ability. Student required supervision to \*\*\*. Student required repeated review to retain information and needed practice to transfer it to other situations when needed. Student required access to the Texas Essentials and Knowledge Skills (“TEKS”) through prerequisite skills that are linked to grade-level curriculum. Examples

of such prerequisite skills included \*\*\* among others. Student was working on goals and objectives that were on an alternate curriculum. JX-4

15. The \*\*\* 2014 annual ARD Schedule of Services indicated the duration of services was from \*\*\* 2014 to \*\*\* 2015. Student received \*\*\* minutes per week in the general education classroom, \*\*\* minutes, \*\*\* times per \*\*\* weeks of OT, \*\*\* minutes per day of \*\*\*, \*\*\*, \*\*\* minutes \*\*\* weekly of adapted health fitness, and \*\*\* minute sessions per \*\*\* weeks of speech and language services. \*\*\* in the amount of \*\*\* minutes per day were included as a related/other service. The IEP has no explanation of what those services entailed. Student's current (\*\*\*) grade) and next (\*\*\*) grade) year enrollment campus was to be \*\*\*. Student would no longer receive support from the resource teacher although the teacher would check at regular intervals to help assess if progress was made sufficiently for Student to benefit from the resource program. No BIP was included. The deliberations indicated that the REED was conducted. The new full individual evaluation ("FIE") date was shown to be \*\*\* 2014, obviously a typographical error. JX-4
16. Both Parents signed in agreement to the \*\*\* 2014 ARD decisions. Prior written notice was given to Parent. JX-4
17. At the end of \*\*\* grade, the ARD committee determined that Student was working on prerequisite skills related to grade level TEKS such as \*\*\*. Due to Student's significant cognitive disability, and the need for specialized supports and intensive individualized instruction, the ARD committee determined that in \*\*\* grade, Student would take the STAAR Alternate \*\*\* test in \*\*\*. JX-4
18. In \*\*\*, District made changes regarding the location of centralized services for the 2015-2016 school year. District made the decision to \*\*\* ("\*\*\*"). T-521
19. By \*\*\* 2014, District determined that Student would be transferred to \*\*\*. \*\*\* is \*\*\* Student's home campus. No ARD meeting was held. The class had \*\*\* children including Student and \*\*\* teachers. P-5; T-84-88, 94, 102, 222, 522
20. On \*\*\* 2014, District informed Parent that a trained para-professional ("Para #1") would accompany Student to \*\*\*. Para #1 was trained in Student's \*\*\*. P-11, 12; R-2; T-512
21. The \*\*\* LS classroom had a second para-professional ("Para #2). Para #2, \*\*\*, has a bachelor's degree in psychology, and is an experienced substitute teacher. In addition, \*\*\* has provided early intervention to developmentally disabled children. R-6; T-477, 578
22. When Student entered \*\*\* grade at \*\*\*, the LS children \*\*\*. Parent had concerns about the arrangement. On \*\*\* children in the LS room was revised. The \*\*\* Principal ("Principal") arranged a meeting with Parent. P-13; T-101-102
23. The \*\*\* reviewed Student's \*\*\* ("\*\*\*") at the beginning of the 2014-2015 school year although she dated the \*\*\* \*\*\* 2014. She also confirmed that Para #1 was familiar with the \*\*\* and the

- \*\*\* for Student before school started. The \*\*\* trained Student's LS teacher, Para #1, Para #2, \*\*\* resource teachers \*\*\* room, and the speech therapist 15 days after the first day of school. The \*\*\* gave no other training while Student was enrolled at \*\*\*. T- 622-625, 630, 636-637
24. Student's \*\*\* ("\*\*\*\*") required the \*\*\* \*\*\* ("\*\*\*\*") for substitutes at the "beginning of school year." The \*\*\* required the teacher to make classroom modifications as necessary, keep documentation regarding \*\*\*. It required the \*\*\* and Life Skills personnel to \*\*\*, \*\*\*, \*\*\* "\*\*\*\*" and to notify Parent if it was given. The \*\*\* was required to \*\*\*. P-17
  25. The Student \*\*\* throughout the school day. T-625
  26. The procedure for \*\*\* is to receive training in \*\*\*, and monitored every nine weeks. Student's \*\*\* required the \*\*\* to instruct classroom teachers to monitor Student for \*\*\* and the procedure to follow when \*\*\* the beginning of the school year and as necessary. JX-6; T-650-651
  27. The \*\*\* LS classroom was located \*\*\* from \*\*\* office. The \*\*\* conducted drills to the LS classroom to see how long it took to get there. \*\*\*. T-262, 459, 584-585
  28. At the beginning of the 2014-2015 school year, Parent spoke with Student's teacher and \*\*\* \*\*\* regarding Student's \*\*\* issues. T-95
  29. Parent and District agreed to an IEP Amendment dated \*\*\* 2014 to require in-class support for Student's time at special subjects in general education classes, for a total of \*\*\* minutes per week. Student's LS teacher recognized the need for such in-class support from the beginning of the school year and ensured that Student received it prior to the Amendment. JX-3
  30. Student's \*\*\* grade LS teacher is certified in special education for all grade levels and has special education experience. R-5; T-577-578
  31. Student's \*\*\* LS teacher began a trial and error method along with assessments to determine if Student had some knowledge of or had mastered Student's IEP goals. The teacher determined that the goals were appropriate for Student. T-465, 478
  32. In \*\*\* 2014, the LS teacher began trying to set up a meeting with Parent to share the data that she accumulated on Student. The teacher sent Student's IEP progress report and report card with Student on \*\*\*, and informed Parent that she would show him Student's work samples when they met. The meeting did not occur. She gave Parent the data at the \*\*\* ARD meeting. JX-8; P-6; R-1 and 7; T-472-473;
  33. \*\*\*, Student's LS teacher \*\*\* began to have absences. Parent received emails when the teacher would be absent. When absent, the teacher prepared Student's work for a substitute teacher to use. R-4; T-111, 587
  34. \*\*\*, when the LS teacher was absent, a certified special education substitute was hired or an instructional specialist or a resource teacher would teach the LS children. T-603, 654

35. On \*\*\* 2014, Parent emailed the LS teacher expressing his preference of Para #1 over Para #2. The teacher told Parent that from that day forward, if Para #1 was unable to accompany Student to activities outside the classroom, she would either adjust Student’s schedule or keep Student in the classroom if necessary. R-1; T-593-594
36. In \*\*\*, Student complained that Student’s \*\*\*. Although a substitute \*\*\* wanted to observe Student, the LS teacher preferred to call Parent, and did so. Afterward, the teacher learned that Student’s \*\*\*. T-112, 460
37. On \*\*\*, Parent met with District’s Coordinator for Special Education (“Coordinator”) regarding concerns with the LS class at \*\*\*. As a result, District held a meeting with the parents of the LS children. The campus principal and District’s Coordinator attended. The parents questioned the reason for moving their children from their previous setting to \*\*\*. In \*\*\*, Coordinator called Parent and told him that services would continue at \*\*\*. P-33; T-116-122
38. During the \*\*\*, 2014, Para #1 reported to Parent daily. T-211
39. On \*\*\* 2014, Parent turned in an application to \*\*\* (“\*\*\*”), a private school. Student visited the school on \*\*\*. P-64
40. In \*\*\* 2014, the LS Teacher prepared a PLAAFP update for a review ARD that Parent requested for the purpose of discussing Student’s progress.

Subject	*** 2014 Update/ R-7	Additional evidence/T-466-468, 541
Reading	***	***
Math	***	***
Science	***	***T-497
Social Studies	***	
Functional	***	

41. Parent requested an ARD meeting on \*\*\* 2014. The meeting was held on \*\*\* \*\*\*, 2014. At the meeting, Parent discussed concerns regarding Student’s transfer to \*\*\*, staffing issues, classroom location, and progress reporting. He did not discuss Student’s progress. At the end of the meeting, it was understood that District would get back with Parent. No decisions were made. JX-2; P-6; R-2, 8; T-127-130
42. In \*\*\*, Student’s \*\*\*. T-495
43. Following \*\*\*, Student attended \*\*\*. On \*\*\* 2015, Parent sent notice that Student would not return to class and enrolled Student in \*\*\*. Student began \*\*\*. P-16, 64; T-132
44. On \*\*\* 2015, Parent gave 10-day written notice of intent to place Student in private school. P-1
45. On \*\*\* 2015, Parent completed \*\*\*’s student re-enrollment contract with for the 2015-2016 school year. Parent requested speech/language therapy services. P-27; R-11
46. On \*\*\* 2015, Parent gave 10-day written notice of intent to place Student in \*\*\* in \*\*\* for the 2015-2016 school year. P-2

47. On \*\*\* 2015, District sent a letter to Parent that it understood that Parent expressed intent to reject public services in favor of private education and that no attempt was made to re-enroll Student or request an ARD meeting. District broadly interpreted the 2<sup>nd</sup> request for due process hearing as an interest in convening an ARD meeting to develop an IEP for Student, and District scheduled it for \*\*\* or \*\*\*. Parent and his attorney attended the meeting. An IEP was proposed for the coming year and rejected by Parent. R-10
48. August 25, 2014 was the first school day of the 2014-2015 school year. \*\*\*, 2014 was the last school day before the winter holiday. School resumed January 6, 2015. August 24, 2015 was the first school day of the 2015-2016 school year. P-8, 9
49. The TEKS are the state standards in Texas. There are different components, called strands, in the TEKS. In English language arts and reading, for example, there are five strands: reading, writing, research, listening and speaking, and oral and written conventions. Student's \*\*\* 2014 IEPs did not cover all strands in English/language arts, math, science and social studies. P-23; T-374, 405, 557, 569
50. \*\*\* is a private school \*\*\*: \*\*\*. Student is \*\*\*. It offers speech therapy services, but does not offer occupational therapy or physical therapy. Student receives \*\*\* minutes of speech therapy \*\*\* weekly. This year, the school uses \*\*\* which is "tied back" to the TEKS. The \*\*\* goals for Student do not cover all strands of the TEKS. There are no general education children at \*\*\*. The \*\*\* teacher had two conferences with Parent during the \*\*\*, 2015. P-29; T-151, 168, 175, 186, 193, 537-539
51. Student's current classroom at \*\*\* is made up of \*\*\*, each with significant disabilities. There is an uncertified teacher and two para-professionals in the classroom. T-147, 149, 166,176
52. The \*\*\* teacher breaks Student's work into small portions, uses prompts with Student and gives reinforcers such as time on the computer when Student finishes Student's work. Student is currently on \*\*\* grade level in reading. All the students \*\*\*. When Student \*\*\*, Student will be on \*\*\* grade level. Student \*\*\*. Student cannot \*\*\*. All of Student's goals at \*\*\* in the \*\*\*, 2015, had the same mastery level-80% of the time P-28; T-156-164, 536
53. During the \*\*\*, 2015, Student's mother trained the \*\*\* teacher and her aide regarding Student's \*\*\*. During the current year, the \*\*\* teacher trained the aides. T-178-179
54. Parent paid \*\*\* in tuition, speech, and related services for the \*\*\*, 2015. Parent is obligated to pay \*\*\* per month from August, 2015 through May, 2016 in tuition and \*\*\* per month from September, 2015 through May, 2016 for speech services for the current school year. P-27
55. One-way mileage to \*\*\* is \*\*\* miles. T-143

### Discussion

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005). This includes the burden of proof with regard to harm or a deprivation of educational benefit. The law does not require that the student's educational potential be optimal or "maximized."

#### Did District fail to develop and implement appropriate academic, functional, social and behavioral goals and objectives for Student

Petitioner's case focused on the appropriateness of Student's goals and objectives rather than a failure to implement those goals. Petitioner argued that Student's goals and objectives were not tied to Student's grade level TEKS. Respondent argued that Student is learning prerequisite skills that are in the vertical alignment to the grade level TEKS.

Petitioner's expert conducted a forensic review of Student's \*\*\* 2014 IEPs. She testified that she felt that Student's objectives in Student's IEPs should have been more specific. She opined that they were not tied as clearly as they could have been to the TEKS and any evaluation or data collection. She agreed with District witnesses that IEPs are not required to address all the strands of the TEKS. The expert witness testified that an IEP needs only to include the most critical student expectations within a specific content domain. She believed that Student's critical areas of need are in content area vocabulary, to be able to read appropriately on grade level and use different contextual cues. In math, she testified that Student's critical area of need is problem solving. She concluded that the critical areas of need are driven by the way the PLAAFPS are written. For academic critical areas of need, she testified that the state standards would be the TEKS and the curriculum of the class that the teacher is teaching.

Petitioner's expert described the process for writing goals. The ARD committee starts with the grade level standard for a child's enrolled grade. From there, one tries to close the gap by teaching the child at \*\*\* instructional target level and build \*\*\* to the grade level standard by writing goals and objectives to address the missing pieces and working toward closing the gap. Student's enrolled grade level is not Student's instructional level. Student is at a prerequisite skill level. Petitioner's expert witness conceded that prerequisite skills for the \*\*\* and \*\*\* grade have some differences and some strands that cross over.

District's independent consultant described how goals and objectives are written and aligned with grade level TEKS. She stated that the prerequisite skills from pre-K to twelfth grade are scaffolded. They are not specifically aligned with one particular grade level and are often repeated at other grade levels. For example, a prerequisite for a reading comprehension goal might be listed in the vertical alignment or the curriculum framework as \*\*\* grade, \*\*\* grade and \*\*\* grade.

District's independent consultant testified that when writing goals and objectives, one looks to the curriculum framework and the vertical alignment documents on the TEA website in aligning goals with grade level TEKS. She testified that when a goal is a critical element of the TEKS, as was Student's, it is often repeated throughout, \*\*\* school. She stated that the TEA Question and Answer Document states that the number of goals for a student should be based on the individual student, and there's no requirement that every category (strand) be addressed in the IEP.

The LS teacher testified that she kept a binder for Student that contained Student's IEPs and the TEKS. TEA lists every TEK from kindergarten to 12<sup>th</sup> grade that are related in a strand; thus she had the prerequisite skills as a guide. She kept notes on the dates that material was covered. She made notations in the binder in order to know when Student had mastered a skill in the vertical alignment, and to determine what skill was needed next. As an example of her process, she explained that addition, subtraction, and place value are prerequisites for counting money. Even though Student did not have a place value goal, the teacher knew that Student couldn't understand addition and subtraction until Student understood ones, tens, and hundreds. This was her process for closing the gaps to which Petitioner's expert referred.

Student's LS teacher testified that the class worked on \*\*\*. She testified that a daily exercise was to work toward understanding of \*\*\*, a prerequisite skills for \*\*\*. This practice overlapped with English/language arts. The teacher used \*\*\* daily to teach \*\*\*, \*\*\*, \*\*\*.

In \*\*\*, 2014, Parent questioned Student's progress. In response, District brought in an independent educational consultant to see if progress was being made. The consultant compared work samples with the progress report, and looked to see if there was evidence to back up what was reported, as well as the data on the number of trials per the criterion in the IEP. The consultant found that Student had mastered Student's second benchmark objective on all of the goals. According to the consultant, in \*\*\*, 2014, Student was well on Student's way to mastering all of Student's annual goals. This testimony supported the LS teacher's evidence.

The IDEA defines FAPE as special education and related services that are provided at public expense, meet the standards of the state education agency, include an appropriate preschool, \*\*\* school, or secondary school education in the State involved, and are provided in conformity with an IEP that meets the requirements of 34 C.F.R. §§ 300.320 through 300.324. 34 C.F.R. §300.17.

The requirements for an IEP include a child's PLAAFP, and a statement of how the child's disability affects the child's involvement and progress in the general education curriculum. This statement was omitted in Student's IEP, and constitutes a procedural error on the part of District. 34 C.F.R. §300.320 (a)(1)(i).

The IEP must include measurable academic and functional goals and objectives designed to meet a child's needs. Student's IEP contained the necessary goals and objectives designed to meet Student's needs except for a math goal for \*\*\*. As required by the IDEA, Student's IEP contained how progress

toward the goals would be measured and when periodic progress reports would be provided, i.e., “concurrent with the issuance of report cards.”

A child’s IEP must include the projected date for the beginning of related services and modifications and the anticipated frequency, location, and duration of those services and modifications. 34 C.F.R. §300.20(a)(7). Student’s IEP includes the frequency and duration of both OT and speech therapy services. It also states the location for each service. It does not include whether the services were direct or consult, individual or group. Such information could have been included, but is not required under the IDEA. District satisfied the requirements of the IDEA regarding provision of related services of OT and speech therapy.

The school district’s plan is presumed to be appropriate. *R. H. v. Plano Indep. School Dist.*, 607 F.3d 1003 (5<sup>th</sup> Cir. 2010). The party attacking the plan bears the burden of proof, by a preponderance of the evidence, of demonstrating why it does not comply with the IDEA. *Id.* at 1010-11.

When a parent challenges the appropriateness of an IEP, two questions must be asked: whether the state has complied with the procedural requirements of the IDEA, and then, whether the IEP developed through such procedures was “reasonably calculated to enable the child to receive educational benefits.” *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000). Based on the evidence, I find that despite the procedural deficiencies, District’s educational program was reasonably calculated to produce progress.

Should District have held an ARD meeting prior to its unilateral transfer of Student?

This issue is at the heart of the instant action. In \*\*\* 2014, District made changes regarding the location of centralized services for the 2014-2015 school year including the LS programs. District made the decision to \*\*\*. \*\*\* is Student’s home school \*\*\*. Parent \*\*\* asked whether Student would be moved at the \*\*\* ARD meeting. At that time, the committee did not know of a decision to transfer Student. In \*\*\*, Parent wrote the Special Education Director and the Coordinator expressing concern about the possibility of moving Student to a new class because of Student’s \*\*\*. Parent wanted to determine whether Student should \*\*\*. Subsequently, District made the decision to transfer Student to \*\*\* and notified Parent.

Having learned of the transfer, Parent wanted someone to go with Student \*\*\* that was familiar with Student’s \*\*\*. District responded to Parent’s request and moved Para #1 from \*\*\* to \*\*\* with Student. Parent testified he accepted the decision since he had complete faith in Para #1. However, Parent continued in his attempt to have Student moved back to \*\*\*. As the basis for his position, Parent testified that Student’s \*\*\* are such that Student needs to be in a school where \*\*\*. Specifically, Parent testified that it is important that a person is familiar with Student’s \*\*\*. He discussed the transfer at the \*\*\*

meeting with the Coordinator and campus principal. He brought up the change of schools again at the \*\*\* ARD meeting. District's attorney attended the ARD meeting and indicated that the requested transfer had been taken as far as it could go.

Petitioner argued that an IEP that fails to identify a particular school is not reasonably calculated to enable a student to receive educational benefits. *A. K. v. Alexandria City Sch. Bd.*, 484 F. 3d. 672 (4<sup>th</sup> Cir. 2007). Thus, Petitioner claimed that the ARD committee should have met and discussed the transfer to \*\*\* so that Parent could have had input in the \*\*\* decision.

“In determining the educational placement of a child with a disability, including a preschool child with a disability, each public agency must ensure that ...[t]he placement decision...[i]s made by a group of persons, including the parents, and other persons knowledgeable about the child...and...[i]s as close as possible to the child's home. 34 C.F.R. §300.116.

" [E]ducational placement, as used in the IDEA, means educational program -- not the particular institution where that program is implemented.” *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 379, 2003 U.S. App. LEXIS 16611, (5th Cir. 2003). When a school district transfers a child from one school to another, the transfer does not constitute a change in educational placement. *Weil v. Board of Elem. & Secondary Educ.*, 931 F.2d 1069 (5th Cir. 1991). Respondent was not required to hold an ARD meeting when it changed Student from \*\*\* to \*\*\*. Student's educational placement was unchanged.

Did District provide in-class support for Student when in general education?

Upon receipt of Student's "paperwork," the LS teacher at \*\*\* realized that it did not include a one-to-one aide. LS teacher called \*\*\* and confirmed that it should have been in the documents. LS teacher ensured that Student had in-class support from the first day that Student came into her class. When LS teacher was absent and a substitute teacher was in the classroom, LS teacher realized that the substitute would not know of Parent's preference for Para #1 to work with Student. Thus, in order to comply with that request, LS teacher would contact Parent for input. As a result, Student missed some inclusion time at Parent's instructions. The \*\*\* 2014 ARD documents were amended to reflect in-class support in the general education classroom on \*\*\* 2014.

Student had no safety IEP; however, Petitioner presented no evidence of a need for such an IEP. Petitioner failed to carry the its burden of proof that District failed to include in-class support, provisions for aide support or a safety IEP.

Did District impede Student's right to a FAPE and Parent's opportunity to participate in the decision-making process when it failed to hold a promised meeting prior to its transfer of Student?

Parent expected a meeting of some kind during the summer to discuss the pending transfer. In May, the Coordinator told Parent that \*\*\* planned a \*\*\* for all the parents whose children were entering the LS program. \*\*\* in conjunction with \*\*\*. Parent was invited, but was unable to attend. This was the only "meeting" that District told Parent would occur. Parent did not request an ARD meeting until the

\*\*\* \*\* ARD meeting. Parent failed to present sufficient, credible evidence that District failed to hold a promised meeting prior to Student's transfer.

Did District impede Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process when it failed to follow up with Parent after the \*\*\* ARD meeting?

During the \*\*\* \*\* ARD meeting, the campus principal heard for the first time that Parent was concerned about the location of the LS classroom at \*\*\*. The principal offered to change its location to a classroom \*\*\*. She got no response from Parent. At the conclusion of the meeting, District agreed that it would get back with Parent regarding the things that were discussed. There was no agreed-upon date for District's response.

Following the \*\*\* \*\* meeting, school was in session for \*\*\* before \*\*\*. When \*\*\*, Student attended the first week and then \*\*\*. There was no evidence presented by Petitioner to support that Parent's right to participate in the decision-making process were significantly impeded because District had not contacted him by the time he removed Student from District.

The evidence is clear that Parent was making plans to withdraw Student from District. Parent made application to \*\*\* \*\*, introduced Student to \*\*\* on \*\*\* and reported his hope to become part of the \*\*. On \*\*\*, \*\*\* informed Parent that it expected Student to begin on the following Monday.

Respondent failed to carry the burden of proving that District's failure to get back with him prior impeded his right to participate in the decision-making process.

Did District fail to consider Student's \*\*\* when it assigned Student to a classroom located \*\*\*?

Petitioner presented no evidence that supported a finding that District did not consider Student's \*\*\* when it located the LS classroom at the \*\*\* from the \*\*. Parent believed that if Student \*\*\*, \*\*\* would not be able to get to Student's classroom within time. However, the \*\*\* indicates that the LS *personnel or* \*\*\* would \*\*\*. At the \*\*\*, the LS staff was to \*\*\*. The \*\*\* made practice-runs to see how long it took her to get to Student's classroom and had made it in \*\*\*. \*\*\* is \*\*\* minutes from Student's present classroom in the private school. The location of the LS classroom did not present a risk of harm to Student.

Did District fail to ensure that its staff was properly trained to meet Student's \*\*\*, including having an \*\*\* to all school staff responsible for Student's education?

At the \*\*\* ARD meeting, the \*\*\* provided updated \*\*\*. Student's \*\*\* was revised in \*\*\*. The \*\*\* \*\* testified that she reviewed the \*\*\* at the beginning of the school year even though she dated the review on \*\*\*. Included with the \*\*\* was Student's \*\*\* information.

Although the LS Teacher was not trained until \*\*\*, she testified that she had prior experience with similar \*\*\*. She also spoke with Parent prior to the beginning of school about Student's \*\*\*. Para

#1 was trained from the first day of school. Para #2 and other staff personnel within close proximity of the LS classroom were also trained on \*\*\*.

Student \*\*\* to school daily. The \*\*\* and Student \*\*\* throughout the school day. The LS Teacher promptly contacted Parent on an occasion when she could not \*\*\*. Within a very few minutes, \*\*\*.

While some of District staff was not trained at the beginning of school, the delay did not cause harm to Student who was \*\*\* a trained person \*\*\*.

Did Respondent fail to provide Student a FAPE?

The Fifth Circuit defined a FAPE by delineating four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the child's assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated? *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997).

The record supports a finding that Student's educational program was individualized on the basis of assessments and performance. Student's program included related services as needed pursuant to District's assessments. Student's IEPs were developed based on Student's strengths and needs. Student's LS teacher had data that confirmed Student's progress. District's independent consultant reviewed the data to ensure that Student's reported progress was accurate. Petitioner made no argument that Student's program was not administered in the LRE.

The record is replete with evidence of communications between the LS teacher and Parent, both through emails, phone calls, and \*\*\*. Although Parent complained of the absence of open communication, the record does not support the complaint. When Parent requested Para #1 to provide services to Student instead of Para #2, the LS teacher ensured that Parent's request was honored. District provided staff to support Student's teacher. When Parent complained about progress, District promptly arranged for a review of the teacher's methods, and found nothing amiss. Services were provided Student in a coordinated and collaborative manner.

Although the \*\*\* teacher's testimony that Student was on a \*\*\* reading level when Student enrolled, District's evidence supported a \*\*\* grade reading level as reflected in DRA assessments. After District's independent consultant's review of the LS teacher's documentation and data, she credibly testified that Student was making progress toward all of Student's IEP goals in the \*\*\*. The record shows that Student showed responsibility for Student's \*\*\* of the time. Student made positive academic and non-academic progress that was more than *de minimus*.

A denial of a FAPE can be procedural if the procedural inadequacies impeded Student's right to a FAPE, significantly impeded Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student or if it caused a deprivation of educational benefit. 34 C.F.R. § 30.513. Petitioner failed to carry the burden of proving that Parent's opportunity to participate in the decision-making process was significantly impeded. To the contrary, Parent fully participated in the ARD meetings. He requested an ARD meeting at which he presided. His input outside ARD meetings was considered and often, his requests were implemented. Participating in the decision-making process does not equate to controlling the process. Petitioner failed to prove that District denied Student a FAPE either substantively or procedurally.

### Petitioner's Second Request for Due Process Hearing

#### Did Respondent fail to convene an ARD meeting and develop an IEP for Student from \*\*\* through \*\*\*?

After Student was unilaterally placed in \*\*\*, Petitioner filed the first request for due process hearing and requested reimbursement for the \*\*\* 2015. Three months later and while that matter was pending, Petitioner filed a second request for due process hearing. Petitioner complained that Respondent had a duty to hold an annual ARD meeting and propose an IEP or educational placement for Student by \*\*\* 2015 for the remainder of that year through \*\*\* 2016. After the second filing, Respondent interpreted it to be an interest in re-enrolling in District and held an ARD meeting in \*\*\*. District proposed an IEP for Student and Parent rejected the program.

Petitioner relies on a 1<sup>st</sup> Circuit decision in support of the claim that while a due process hearing is pending, District has an obligation to propose an IEP for Student. *Burlington v. Department of Education*, 736 F. 2d 773 (1<sup>st</sup> Cir. 1984). In *Burlington*, the court held that IEPs should be reviewed and revised during the pendency of review. To accept *Burlington* in the current fact situation would be to ignore the IDEA regulations regarding unilaterally placed children in private schools.

Petitioner also relies on a 2<sup>nd</sup> Circuit decision that District should have held an ARD meeting and developed an IEP in \*\*\*, 2015. *Doe v. East Lyme Bd. of Educ.*, Dkt. No. 14-1261-cv(L), 2015 U.S. App. LEXIS 10851 (2<sup>nd</sup> Cir. June 26, 2015). However, in *Doe*, the parent had requested an IEP team meeting and District refused. In the instant action, Parent never requested an ARD meeting in \*\*\*.

IDEA regulations set out the duties of school districts when parents place their children in private schools, as opposed to a private placement by public agencies. Each Local Education Agency ("LEA") is charged with the duty to locate, identify, and evaluate all children with disabilities who are enrolled by their parents in a private school. 34 C.F.R. §§300.130-300.144.

Once a child is parentally-placed in a private school, the duties of the LEA change, depending on whether the private school is within or outside the jurisdiction of the LEA. Children that are parentally-placed in private schools located in the school district served by the LEA are entitled to equitable special

education and related services. If Student's private school is within District's jurisdiction, District was obligated to develop a service plan. However, in Petitioner's response to District's Motion to Dismiss, Petitioner states that it "has not sought and does not seek any equitable participation in services offered by Respondent pursuant to 34 C.F.R. §§300." No parentally-placed private school child with a disability has an individual right to receive some or all of the services that the child would receive if enrolled in a public school. 34 C.F.R. §300.137.

If Student is enrolled in a private school outside the boundaries of District, the LEA in which the school is located has the duty to locate, identify, and evaluate all children with disabilities who are enrolled by their parents in private schools located in the school district served by the LEA. 34 C.F.R. §300.131. District relies on *D. C. v. Klein Indep. Sch. Dist.*, 711 F. Supp. 2d 739, 749-51 (S. D. Tex. 2010) in support of its position that Student attends a private school outside District's jurisdictional boundaries, thus it has no duty to hold an ARD meeting. Since there is insufficient evidence to support District's assertion that \*\*\* is outside its boundaries, a finding cannot be made to that effect. However, if \*\*\* is outside District's boundaries, *Klein* would control and no ARD meeting would be required.

For children with disabilities who been placed by their parents directly in a private school and are referred to the local school district, the local district shall convene an ARD committee meeting to determine whether the district can offer the student a FAPE. If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 C.F.R. §§300.130-300.144, until such time as the parents choose to enroll the student in public school full time. 89 T.A.C. §1096. There was no referral in the instant action.

Regardless of the location of \*\*\*, whether it is located within or outside the jurisdictional boundaries of District, Respondent has a duty to make a FAPE available to all children with disabilities residing within its jurisdictional boundaries between the ages of 3 and 21. 34 C.F.R. § 300.101(a). It is clear that Student resides in District. Thus, Student was entitled to an offer of FAPE from District at the beginning of the school year. 34 C.F.R. §300.101(a). The offer was made in \*\*\* at which time District held an ARD meeting and proposed an IEP for Student. District satisfied its duty to make a FAPE available to Student at the beginning of the 2015-2016 school year.

Parent withdrew Student from District in \*\*. District held a Resolution Session ("RS") after Petitioner filed the first request for due process hearing. The purpose of a RS is to give a school district the opportunity to resolve the issues in dispute in the complaint. 34 C.F.R. § 300.510. Parent gave no indication of his intent to return Student to District. The \*\*\* campus principal testified that at the RS, Parent assured her that Student would not return to District. Parent disagreed with the principal's testimony and stated in the hearing, "Whereas this district has never responded to anything they said they were going to respond to, how could you ever expect me to return my \*\*\* to the school?" It is reasonable to interpret that statement to mean that Parent did not intend to return Student to District.

In \*\*\*, Parent made application with \*\*\* for the 2015-2016 school year. Parent made no attempt to request an ARD meeting either before or after the annual ARD date of \*\*. Once Parent withdrew Student from District in \*\*\* and never contacted District, District no longer had a duty to provide special education and related services to Student until such time that Student re-enrolled in District. 89 T.A.C. §89.1096. This includes convening an ARD meeting while Student was enrolled in a private school and not enrolled in District. To decide otherwise would be inconsistent with the IDEA regulations concerning schools' obligations when a child is parentally-placed in a private school. *Student v. McKinney ISD*, 107-SE-0110.

Is \*\*\* an appropriate private placement?

Petitioner requested a finding that \*\*\* is an appropriate private placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, \*\*\* school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs. 34 C.F.R. §300.148.

Private schools are not required to meet the state standards or educate a student via an IEP. *Florence County Sch. Dist. Four v. Carter*, 20 IDELR 532 (U.S.1993). \*\*\* is a private school for children with disabilities. Student attends \*\*\* that is designed for children with significant cognitive and developmental disabilities such as Student. When Student enrolled, Student was in a classroom with \*\*\* other developmentally delayed children, a teacher and one aide. Currently, Student's class totals \*\*\* children and \*\*\* aides. The teacher has some experience with children with disabilities. \*\*\* offers speech therapy and Student accesses those services. It does not offer OT as recommended in Student's evaluation.

Although the \*\*\* teacher believed that when Student enrolled, Student was reading on \*\*\* level, the LS teacher's testimony showed Student began that year on \*\*\* level, but was on \*\*\* grade level when Student left District. According to \*\*\* teacher's testimony, Student is still on a \*\*\* grade reading level. Student's work samples from \*\*\* reflect that Student \*\*\*, while Student had been \*\*\* Student left District. \*\*\*'s level of instruction for Student in reading and math are below the level at which Student performed while at District.

\*\*\*. Once a child finishes the program, he or she will be at a \*\*\* grade reading level. \*\*\* starts everyone \*\*\* of the program.. This approach does not constitute an individualized program for Student.

Each of Student's goals at \*\*\* has the same mastery level-80% of the time. This is another indication that Student's program is not individualized to Student's needs.

When Student began at \*\*\*, Parent trained Student's \*\*\* teacher and aide on \*\*\* and the use of \*\*\*. During the current school year, the teacher trained the new aide. At hearing, Parent stressed the importance of the \*\*\*. A missed opportunity could result in \*\*\*. Parent's major concern for Student is that Student \*\*\* and that those people around Student are prepared to \*\*\*. \*\*\* teacher testified that she thought \*\*\* should be \*\*\*. \*\*\* has \*\*\* minutes from Student's classroom, no closer than \*\*\*'s \*\*\*.

After careful review of \*\*\*'s program, I find that Student's program is not individualized to meet Student's needs and that it is at a lower level than where Student was performing when Student left District. Further, it appears that \*\*\* Student could be in question in light of the ever-present possibility of \*\*\* that requires prompt \*\*\*. Petitioner failed to prove that \*\*\* is an appropriate placement for Student.

Is Petitioner entitled to receive reimbursement for the \*\*\*, 2015 and 2015-2016 school year?

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, \*\*\* school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the State Education Agency and LEAs. 34 C.F.R. §300.148.

Having determined that District provided a FAPE in a timely manner prior to Student's enrollment in the private school, Petitioner is not entitled to any relief.

Having determined that District had no obligation to hold an ARD meeting in \*\*\* 2015, or propose an IEP for the remainder of the \*\*\* 2015, Petitioner is not entitled to any relief. Having determined that District held an ARD meeting in \*\*\* and proposed an IEP for the 2015-2016 school year, Petitioner is not entitled to any relief.

Conclusions of Law

1. Student is a child with a disability in need of special education and related services. Student resides within the geographical boundaries of Spring Branch Independent School District.
2. Student's 2014-2015 IEP was appropriate. *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).
3. Procedurally, District did not significantly impede Parent's opportunity to participate in the decision-making process. 34 C.F.R. § 300.513.

4. Respondent provided Student a FAPE. 34 C.F.R. § 300.17; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
5. District had no duty to conduct an annual ARD meeting or propose an IEP or educational placement for Student from \*\*\* 2015 through the \*\*\* 2014-2015 school year. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
6. District complied with its duty to offer a FAPE to Student at the beginning of the 2015-2016 school year. 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
7. Petitioner is not entitled to reimbursement for private placement. *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

Order

All requests for relief are DENIED.

\_\_\_\_\_  
/s/  
BRENDA RUDD  
Special Education Hearing Officer  
For the State of Texas

**NOTICE TO THE PARTIES**

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. A civil action brought in state or federal court must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 20 U.S.C. § 1415(i)(2).

DOCKET NO. 346-SE-0715

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

Synopsis

- Issue Number 1:** Whether District failed to develop and implement appropriate academic, Functional, social and behavioral goals and objectives for Student  
**Held:** For the School District  
**Citation:** 34 C.F.R. §300.320; *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997); *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.* 200 F.3d 341 (5<sup>th</sup> Cir. 2000)
- Issue Number 2:** Whether District failed to identify the nature, type, and frequency of the related services of occupational therapy and speech therapy (whether direct or consult, individual or group)  
**Held:** For the School District  
**Citation:** 34 C.F.R. §300.20(a)(7); *Tatro v. State of Texas*, 703 F. 2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U.S. 528 (2005)
- Issue Number 3:** Whether District failed to convene an ARD committee meeting to address Petitioner’s \*\*\* and educational needs prior to unilaterally changing Petitioner’s educational placement from an LS class at \*\*\* school to a \*\*\* class at a different \*\*\* school  
**Held:** For the School District  
**Citation:** 34 C.F.R. §300.116; *Weil v. Board of Elem. & Secondary Educ.*, 931 F.2d 1069 (5<sup>th</sup> Cir. 1991)
- Issue Number 4:** Whether District failed to include in-class support when Student attended general education curriculum and failed to include provisions for aide support or IEP regarding Student’s \*\*\*  
**Held:** For the School District  
**Citation:** 34 C.F.R. §300.320; *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000)
- Issue Number 5:** Whether District procedurally impeded Petitioner’s right to a FAPE and Significantly impeded Parent’s opportunity to participate in the decision-making process when it failed to hold a promised meeting prior to determining a transfer of Petitioner from \*\*\* school to another  
**Held:** For the School District

- Citation:** 34 C.F.R. §300.513; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U.S. 528 (2005)
- Issue Number 6:** Whether District impeded Student's right to a FAPE and significantly impeded Parent's opportunity to participate in the decision-making process when it failed to follow up on decision made by the \*\*\* \*\*\*, 2014 ARD committee to address Parent's concerns regarding Student's educational program and \*\*\*
- Held:** For the School District
- Citation:** 34 C.F.R. § 300.513; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U.S. 528 (2005)
- Issue Number 7:** Whether District failed to consider Student's \*\*\* when it assigned Student to a classroom located \*\*\*
- Held:** For the School District
- Citation:** 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U.S. 528 (2005)
- Issue Number 8:** Whether District failed to ensure that its staff was properly trained to \*\*\*, including having an updated, appropriate \*\*\* with appropriate \*\*\* readily available to all school staff responsible for Student's education
- Held:** For the School District
- Citation:** 34 C.F.R. § 300.101; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U.S. 528 (2005)
- Issue Number 9:** Whether District failed to propose an IEP or educational placement for Petitioner since \*\*\* 2015 through \*\*\* 2014-2015 school year or for the 2015-2017 school year through \*\*\* 2016 in violation of 34 C.F.R. §300.323
- Held:** For the School District
- Citation:** 34 C.F.R. §300.323; *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- Issue Number 10:** Whether District failed to comply with the requirements of the IDEA by its failure to convene a ARD committee meeting on or before \*\*\* 2015 for purposes of developing and proposing an IEP and educational placement for Petitioner for the remainder of the current school year and to have a proposed IEP in place including a proposed educational placement in the LRE for Petitioner for the 2015-2016 school year
- Held:** For the School District
- Citation:** 34 C.F.R. §300.324(b); 34 C.F.R. § 300.323(a); 89 T.A.C. §89.1096 *Tatro v. State of Texas*, 703 F.2d 832 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); *Student v. McKinney ISD*, 107-SE-0110