

(Consolidated with DOCKET NO. 013-SE-0915)

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|---------------------------|---|----------------------------|
| STUDENT | § | BEFORE A SPECIAL EDUCATION |
| b/n/f PARENT | § | |
| | § | |
| v. | § | HEARING OFFICER FOR THE |
| | § | |
| ALAMO HEIGHTS INDEPENDENT | § | |
| SCHOOL DISTRICT | § | STATE OF TEXAS |

DECISION OF HEARING OFFICER

On October 19-20, 2015, the parties convened for hearing in the instant action. At all times, Petitioner was represented by Karen Dalglish Seal, attorney. Petitioner’s next friend, *** (“Parent”) was present throughout the hearing. Robert Schulman and Christopher Schulz, attorneys, represented Respondent, Alamo Heights Independent School District (“District”). *** was present as party representative for District. Ms. ***, ***, was a special education teacher, ***, and case manager for Student during the relevant time period in the instant action.

Procedural History

Petitioner filed Docket No. 287-SE-0515 May 21, 2015. (“Request #1”). After several amendments to the complaint, Petitioner filed what was incorrectly designated as Petitioner’s **Second Amended Request for Special Education Due Process Hearing and Required Notice** on July 8, 2015. (*emphasis added*). On September 18, 2015, Petitioner filed a second request for due process hearing, Docket No. 013-SE-0915 (“Request #2”). The two matters were consolidated by order dated October 5.

Issues for Hearing

The following issues were brought forward:

1. Whether Respondent failed to identify Student as a child with a disability in need of special education;
2. Whether Respondent made an appropriate education placement of Student in special education or related services under the IDEA;
3. Whether Student was denied a free appropriate public education (“FAPE”);
4. Whether District failed to evaluate Student in all areas of suspected disability, specifically whether District failed to conduct a functional behavior assessment (“FBA”), occupational therapy evaluation and ***;
5. Whether District failed to have an individualized education program (“IEP”) in place for Student at the beginning of the 2015-2016 school year; and

6. Whether District has refused to provide appropriate supports and services to assist Student in the classroom.

Requested Relief

Following a partial dismissal order of Petitioner's request for attorney's fees, Petitioner requested the following relief:

1. An order directing Respondent to pay the cost of private education services at ***, San Antonio, TX;
2. An order directing Respondent to provide transportation to and from the public school;
3. An order directing Respondent to pay for an independent educational evaluation that provides appropriate recommendations for services;

Alternatively, Petitioner requests the following relief:

1. An order directing Respondent to take specific actions required by the IDEA;
2. An order directing Respondent to pay for an independent educational evaluation that provides appropriate recommendations for services;
3. An order directing Respondent to provide compensatory special education or related services;
4. An order directing Respondent to devise measurable goals and objectives;
5. An order directing Respondent to draft a behavior improvement plan based on data collected over a period of time that is reviewed periodically and is measurable, to include a specific system to reward positive behavior;
6. An order directing Respondent to provide appropriate assessments and comply with the recommendations from its own assessments;
7. An order directing Respondent to begin developing a plan that will reduce or eliminate undesirable behaviors;
8. An order directing Respondent to provide a free, appropriate public education;
9. An order directing Respondent to reimburse Parent for all out of pocket expenses;
10. An order directing Respondent to teach Student academic, organizational, behavioral, and *** skills;
11. An order directing Respondent to develop a plan that teaches Student by the most effective means;
12. An order directing Respondent to develop a realistic ***; and
13. An order directing Respondent to develop specific, measurable, attainable, realistic and time-limited goals and objectives; and
14. An order directing District to provide intense training on staff-parent interactions and professionalism.

Stipulations of Fact

The parties made the following stipulations of fact:

1. Parent requested special educational testing on October ***, 2014.
2. District's licensed specialist in school psychology ("LSSP"), ***, contacted Parent on October ***, 2014, notifying that the Student Intervention Team ("SIT") was considering the request and sought consent to observe Student in the classroom.
3. Parent responded that she would return the consent, but was not waiving the timelines for an evaluation.
4. LSSP emailed Parent on November ***, 2014, and stated that SIT-2 team agreed that an evaluation was appropriate. LSSP wanted to meet with Parent on November *** to obtain signed consent. LSSP and Parent agreed to meet at *** p.m. on November ***.
5. LSSP completed the evaluation on March ***, 2015. The evaluation recommended special education eligibility.
6. The initial admission review, and dismissal ("ARD") was held April ***, 2015. The ARD committee admitted Student into special education under the categories of other health impairment ("OHI") and learning disability ("LD").
7. The ARD committee determined Student's educational placement was in the mainstream setting.
8. The ARD committee developed goals in areas described as "self-advocacy," "task prioritization," and "study skills."
9. Student's listed accommodations included, among others, extended time for assignments, ***, access to ***, handwritten notes, and reading assistance upon Student's request.
10. In *** grade, Student passed all of Student's classes. The grades are as follows:
 - a. *** ***
 - b. *** ***
 - c. *** ***
 - d. *** ***
 - e. *** ***
 - f. *** ***
 - g. *** ***
11. Student passed the STAAR, ***, exam in ***.
12. Student's schedule in the *** grade includes:
 - a. ***
 - b. ***
 - c. ***

- d. ***
- e. ***
- f. ***
- g. ***

Findings of Fact

Based on the evidence before this hearing officer, the following are 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. JX-1-A
2. Student had a Section 504 accommodation plan since *** grade due to dyslexia, *** and ADHD. Student ***. R-2;
JX-3
3. In *** grades on the State of Texas State Assessment of Academic Readiness ("STAAR"), Student scored "satisfactory" in all subjects assessed with the exception of *** grade *** and *** on which Student scored "advanced." The STAAR is the State of Texas' measure for determining if a child understood the Texas Essential Knowledge and Skills ("TEKS") for that grade level. JX-3; R-30; T-281
4. In *** grade, Student passed all Student's classes including *** classes. T-56
5. Student completed *** grade with a GPA of *** and ***. P-8; T-255-256
6. Student's academic education is in the general education setting. Student participates in ***, *** and ***. Student is enrolled in the *** class that supports students with study skill needs. The class is open to all students. R-1; T-47-48, 103, 232, 276-280
7. At a November ***, 2014 meeting with LSSP, Parent chose to take the consent for evaluation form to review. LSSP emailed Parent on November *** and received no response. On November ***, LSSP called Parent regarding the status of the consent form and got no response. On December ***, Parent emailed her disagreement with the language in the consent form. On January ***, 2015, LSSP called and spoke with Parent regarding a meeting to review the consent form. Parent wanted to meet only with her Advocate present. LSSP gave three dates/times for the meeting and Parent was to contact him. On January ***, LSSP emailed Parent about her availability for the meeting. LSSP, Parent and Advocate met on January ***, 2015 and Parent signed the consent form. The full and individual initial evaluation ("FIE") was completed March ***, 2015, the 45th school day from the date Parent gave written consent for the evaluation.

- Parent, Advocate and LSSP reviewed the results on April ***, 2015 and the initial ARD meeting was held April ***, 2015, within 30 days of the date of the report. P-10, 20; R-1, 3; T-298-303
8. During the interim, the SIT committee put in place a structured tutoring schedule for Student, and recommended assigning Student a class period of *** to assist Student with organization. R-7
 9. In mid-February 2015, Student's 504 Plan was amended to provide shortened assignments. The plan assigned *** as Student's "case manager." Ms. *** was to meet weekly with Student and work on organization skills and setting appropriate priorities. Student's case manager also served as ***. In that capacity, she contacted Parent to inform her that she wanted to develop a study plan to help Student navigate and track work as well as provide information about *** and supports. R-10
 10. Student struggled in ***. Parent did not agree that Student be taught regular ***, stating that Student needed to excel, not be "dumbed" down. Parent stated that Student should receive effective teaching and re-teaching. If Student's grades remained below 70 following re-teach, Parent attributed that result to ineffective re-teaching. Student was changed to regular *** during the spring semester. R-10, 21
 11. Throughout the 2015 spring semester, Student's teachers and case manager communicated regularly with each other, Student, and Parent regarding Student's tutoring schedule, assignments, and grades. R-14, 15, 16, 17, 18, 19, 20
 12. District' FIE included a variety of assessment tools and strategies that were used to gather functional and developmental information about Student. Data was gathered from Parent, classroom teachers, observations as well as evaluations validated for the specific purpose for which they were used. Examples of the tests administered are Wechsler Intelligence Scale for Children-4th edition, Woodcock Johnson Tests of Cognitive Abilities-3rd edition, Wechsler Individual Achievement Test-3rd edition, Test of Written Expression-4th edition, Achenbach Child Behavior Checklist (parent form) as well as teacher and student report forms, among others. JX-3; T-279-286
 13. All individuals who completed the Achenbach checklists indicated concerns with Student's short attention span, difficulty concentrating, difficulty staying organized and completing/turning in assignments on time. JX-3
 14. Student was administer the Thematic Apperception Test ("TAT"), a projective instrument in which an individual is presented with ambiguous pictures of people and asked to make up stories about the scenes. Student's common theme in the stories was "how to pursue one's own dreams/wishes while dealing with high-achieving parents' expectations." JX-3

15. On the Wechsler Intelligence Scale for Children-4th edition (“WISC-IV”), Student rated average to above average in all scales. Student’s full-scale intelligence quotient is in the high average range. A cross-battery assessment approach was used to analyze Student’s cognitive assessment results. Student was average to well above average in all areas except long-term retrieval, called the Glr. Student’s standard scores in this area ranged from below average to extremely below average, indicating that Student “may absorb, store and retrieve new information in an inconsistent and inefficient manner.” JX-3
16. Results of the Wechsler Individual Achievement Test-3rd edition (“WIAT-III”) reflected average and above average skills except in word reading and oral reading fluency. Those scores were below average. JX-3
17. Student’s writing skills are average to well above average with the exception of below average punctuation skills. The Test of Written Expression-4th edition (“TOWL-4”) overall writing composite score was classified as high average. JX-3
18. Using a research-based method to determine a specific learning disability, LSSP found that Student met the definition of a learning disability in basic reading skills and reading fluency. JX-3
19. In addressing how attention deficit hyperactivity disorder (“ADHD”) impacts Student’s educational performance, Student’s physician noted that Student needed several accommodations including ***, use of *** for writing assignments, extra time for test taking, extra time on class and homework and reduced class/homework. District provides these accommodations. JX-3; P-23
20. Student’s ADHD affect Student’s ability to organize and complete assignments on time. Student’s comprehension and vocabulary help Student compensate for Student’s mild deficits in reading fluency and decoding. Student has difficulty with long-term retrieval that impacts the ability to demonstrate knowledge. Student’s weaknesses are in the areas of spelling and punctuation. Student has strong communication skills. Student’s math skills are within the average range. JX-1A, 1B, 3; T-270-273, 283
21. At Student’s initial ARD meeting, present levels of academic achievement and functional performance cited Student’s needs. The committee adopted goals in the areas of self advocacy, task prioritization, task management, and study skills for a duration of April ***-June ***, 2015, the remainder of the school year. P-11, 14, 26
22. Student completed Student’s *** through a program called *** on April ***, 2015. The program contains different assessments *** that students can take. It is designed to help students with ***. It exposes them to ***. R-32; T-339-340, 356

23. The April ARD committee wrote Student's present levels of academic achievement and functional performance ("PLAAFP") and developed goals based on Student's needs. It adopted the following accommodations for Student: place markers, ***, ***, visual cues, notes, outlines, and instructions, short instructions, repeated review and drill, reading assistance upon student request, emphasis on major points, assignment notebook, reduced assignments and/or paper & pencil tasks, spelling assistance, supplemental aids, mnemonic devices, blank graphic organizers, math charts, basic transcribing, word processor, speech to text, spelling and grammar devices, respond orally, study sheets, small group setting, reduced distractions, proximity control, extended time for tests, extended time for assignments ***, visual, verbal, or tactile reminders to stay on task, positive reinforcement, immediate feedback, and encouraged participation. If Student was making progress but needed more time for completion, a new amount of extended time for assignments would be arranged between the case manager and Student. They would then inform the teacher in whose class the extended time was needed. JX-1A; P-11
24. Counseling was offered as support for Student. JE-1A
25. Student's progress on Student's goals was reported weekly for the six instructional weeks that remained in the 2014-2015 school year and mailed to Parent. P-11; R-36
26. Parent and Student provided input regarding Student's future goals. Student's *** needs included additional support in order to complete assignments such as tutoring and extra time for completion. JX-1A; R-4, 5
27. Parent wanted more accommodations for Student, but agreed to the IEP. JX-1A
28. District began to attempt to schedule a second ARD meeting on May ***, 2015. Student's case manager emailed Parent regarding scheduling the ARD meeting. The case manager called Parent. On May ***, the case manager emailed Parent and attached a notice of the ARD meeting for May ***. On the next day, Parent emailed that Advocate needed to be present and offered two different days at *** p.m. On May ***, Advocate emailed the case manager suggested that the ARD be held that day at *** or late afternoon May ***. The case manager emailed Parent about Advocate's direct email to her and asked if Parent was aware of the dates given. District offered several dates for the meeting. Advocate was unable to attend. On May ***, 2015, District emailed Parent and Advocate with three suggested alternate dates and various times during those dates. On May ***, Advocate emailed that they had not heard from District. On May ***, Petitioner filed the request for due process hearing. The ARD meeting was held in August. P-5; R-23; T-258-259

29. Following the August 2015 ARD meeting, the parties agreed to reconvene on September ***, with a scheduled pre-ARD to occur prior to that meeting. Parent and Advocate requested that the reconvene ARD meeting be a second pre-ARD meeting. T-196
30. Prior written notice was sent to Parent August ***, 2015. The notice states, “[Student’s] IEP will be implemented, and Student will receive special education services, as well as accommodations from Student’s classroom teachers.” P-19; R-42
31. On September ***, 2015, Student’s August *** IEP was amended to add two accommodations to those already in place. The accommodations added were to have Student ***. The duration of services were August ***, 2015 to June ***, 2016. JX-1C
32. Another ARD was held September ***, 2015. Parent and Advocate participated by telephone. The purpose for that ARD meeting was to modify the April ***, 2015 ARD report to include agreement to conduct an assistive technology evaluation due to the increase in technology-related supports in Student’s accommodations. Parent agreed to the ARD decisions. JX-1C
33. District allows teachers to drop or exclude assignments. The practice varies from teacher to teacher, or department to department. In *** grade, Student’s teachers dropped/excluded assignments. R-33
34. In *** grade, on a Student Diagnostic Report, Student’s test performance in math and reading was comparable to an average *** student. R-43
35. In October 2015, Student’s interim grades were: ***: ***, ***: ***, ***: ***, ***: ***, ***, and ***: **. R-46
36. In October 2015, Student *** and add ***. R-47
37. Neither party unreasonably protracted the final resolution of the issues in controversy in the hearing. 19 Tex. Admin. Code §89.1185(m)

Discussion

Child Find

District is obligated to identify, locate, and evaluate children whom are suspect of having a disability in need of special education services. 34 C. F. R. §300.111; *El Paso Indep. Sch. Dist. V. R. R.*, 567 F.Supp. 2d 918 (W.D. Tex. 2008); *rev’d on other grounds*, 591 F. 3d 417 (5th Cir. 2009). There is a two-pronged inquiry to determine whether District complied with its Child Find duty. First, did District have reason to suspect that Student had a disability and whether it had reason to suspect that Student needed special education services? Second, did District evaluate Student within a reasonable time after suspecting that Student had a disability requiring special education services? *El Paso, supra*, at 949-951.

District allows a student to elect to enroll in *** and *** classes. Student and Parent chose a heavier workload in the form of *** and *** classes. The evidence indicates that the more stringent

classes may create more stress for Student due to the extra work that is required. Further, the additional work can exacerbate Student's problems with completing assignments, thus causing Student's grades to be lower. The evidence shows that District staff was concerned with the selection of the classes due to Student's difficulties with organization, prioritization of tasks, and completion of assignments.

Despite Student's struggles, in *** grade under Student's §504 Plan, Student passed all of Student's classes, some of which were advanced courses. Student passed Student's STAAR examinations. There is no question that Student is a capable young *** who wishes to do well. On a universal assessment given to all students in District, Student scored a grade equivalency of *** in math and reading. Student participated in ***. Student got along well with *** peers, and exhibited no disciplinary problems.

Student had a §504 plan for several years. District was aware that Student had a disability. However, Petitioner brought forth no credible evidence that District had reason to suspect that Student was in need of special education services. When Parent requested an evaluation in the fall of Student's *** grade year, District began its process, and timely began and completed the evaluation following Parent's written consent. The evidence is clear that District complied with its Child Find duty.

Evaluations

District's FIE met the requirements under the IDEA. It was timely conducted following Parent's consent for evaluation. LSSP used a variety of assessment tools and strategies to determine whether Student is a child with a disability. Student and LSSP discussed the manner in which LSSP would evaluate Student. They devised an evaluation schedule that accommodated Student's concern about missing class time and falling behind with class work. LSSP made numerous recommendations to enable Student to be involved in and progress in the general education curriculum. No single measure was used as the sole criterion for determining a disability. LSSP used technically sound instruments to assess Student; the instruments were not discriminatory on a racial or cultural basis and they were administered in Student's native language. LSSP evaluated Student in all areas of need. 34 C.F.R. §§ 300.301, 300.304, 300.305.

The only requirement for a FBA in the IDEA appears in the discipline procedures. 34 C. F. R. §300.530. If a child with a disability is given a change in placement because of a violation of a code of student conduct, under certain circumstances, a FBA must be conducted.

In the instant action, there was no behavior that resulted in a change of placement under the discipline procedures. District witnesses testified that Student is a likeable individual who is not a discipline problem. While there was some testimony that Student's organizational skill needs and difficulties turning in assignments are behaviors, such are not behaviors that rise to the level of a required FBA.

Regarding an occupational therapy assessment, Student's doctor did not recommend such an assessment. District did not determine a need for an occupation therapy assessment. Petitioner failed to bring evidence to show that Student needed an occupational therapy assessment.

***. ***, *** services are based on a child's individual needs, ***. Petitioner did not allege a failure to provide appropriate *** services. Advocate testified that she normally asks for a ***, but there is no evidence that she requested one for Student.

The evidence reflects that Student gets along with Student's classmates, participates in extra-curricular activities, performs chores at home, is very enthusiastic in *** class, and is working toward ***. Student has ***, and is expected to ***. Student is capable of functioning independently in the community. Student participates in ***. Student's goals are designed to assist Student with task completion, a factor that could complicate Student's ***. Student receives academic support to promote progress toward Student's academic achievement and ***. Petitioner failed to show that *** is needed.

Student's Educational Program

Student was determined eligible for special education under the IDEA at the April 2014 ARD meeting. The parties are in agreement that Student needs assistance with task management and organizational skills. Parent believed that Student needed more accommodations than what were included in Student's IEP. At some point prior to Student's initial ARD meeting, Student received unlimited time to complete assignment through Student's §504 plan. The ARD committee did not adopt that accommodation. District's argument against unlimited time for completion was that it exacerbated Student's difficulties with task management. In other words, without time limitations, Student became more and more behind in Student's work. As delineated in the above Findings of Fact, it is clear that Student receives numerous supports and services based on the results of the FIE. Parent agreed to Student's April 2015 IEP.

An IEP is a written statement for each child with a disability that must include a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum and meet each of the child's other educational needs that result from the child's disability. 34 C.F.R. §300.320 (a) (2)(i).

As part of a child's IEP, the IDEA requires a statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum. 34 C.F.R. §300.324(a). The statement of a child's PLAAFP helps to describe the problems that interfere with the child's education so that annual goals can be developed. The statement of PLAAFP informs those that work with the child about Student's functioning level. *Bakersfield City Sch. Dist.*, 51 IDELR 142 (SEA CA 2008).

In the instant action, when Student was determined eligible for special education and related services, four instructional goals were developed: self advocacy, task prioritization, task management, and study skills. Student's self advocacy PLAAFP indicated that Student did not communicate with teachers unless prompted. From there, the goal was developed: within the *** weeks left of school, Student was to ***.

Student's task prioritization PLAAFP indicated that Student lacked the skills needed to identify and create a task prioritization list to address high priority assignments. Student recognized Student's need to learn to manage multiple tasks. From that, Student's goal was to view Student's weekly agenda that contained all of Student's assignments and create a priority plan of implementation for the weekly work. This was to be accomplished within the *** instructional weeks left of school.

Student's task management PLAAFP indicated that Student had to be prompted to write work down to help Student remember and recall the task Student needed to accomplish. The goal required Student to take all calendars that Student researched and identified and transfer them to Student's personal agenda to provide for a central location of work that needed to be accomplished.

Student's study skill PLAAFP indicated that Student lacked knowledge of teachers' websites and location of weekly calendars to view the work at a glance. The goal was for Student to ***.

The duration of services in the April IEP was for the remaining *** instructional weeks. Illogically, the IEP indicates that the goals were to be measured in *** weeks. However, Student's progress was reported for each of the *** weeks that remained in the school year and sent to Parent.

IEP at the beginning of the 2015-2016 school year

Petitioner alleged that District had no IEP in place at the beginning of the 2015-2016 school year, a procedural violation of the IDEA. At the beginning of each school year, each public agency must have an IEP in effect for each child with a disability within its jurisdiction. 34 C. F. R. §300. 323(a).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies —

- (i) Impeded the child's right to a FAPE;
- (ii) Significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or
- (iii) Caused a deprivation of educational benefit. 34 C.F.R. §300.513(a)(2).

At the end of the 2014-2015 school year, Parent requested an ARD meeting. District sent emails and made phone calls in unsuccessful attempts to schedule the meeting in May or early June. There is no evidence that Parent communicated with District regarding an ARD meeting during the summer months after filing the request for due process hearing.

By mutual agreement, an ARD committee convened on August ***, 2015. Parent and Advocate attended. Parent disagreed with District's proposed IEP. However, Parent, Student, and Advocate agreed that Student should enroll in *** class. The parties agreed to the addition of the accommodation: re-teach concepts if mastery is not demonstrated.

Regarding the disagreed ARD meeting, the *** school principal testified, "We came to a consensus to move forward because school was about to start." He further testified that they wanted to have some things in place, but continue meeting to develop the best plan for Student.

After the disagreed ARD meeting of August ***, 2014, District sent Prior Written Notice ("PWN") on August ***. The notice indicated that Student's IEP would be implemented. Both LSSP and Ms. *** testified that the August IEP was implemented.

Prior to the recess of the ARD meeting, the parties agreed to a 10-day recess and to reconvene on September ***, 2015 as allowed under Texas rules. 19 Tex. Admin. Code §89.1050. Also, the ARD committee agreed to hold what the parties called a "Pre-ARD" conference on August *** to discuss goals and PLAAFPS.

All members of the ARD committee must have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the ARD committee concerning required elements of the IEP must be made by mutual agreement if possible. The ARD committee may agree to an annual IEP or an IEP of shorter duration. When mutual agreement about all required elements of the IEP is not achieved, the parent who disagrees must be offered a *single* opportunity to recess and reconvene the ARD committee meeting. The period of time for reconvening the ARD committee meeting must not exceed ten school days, unless the parties mutually agree otherwise. 19 Tex. Admin. Code §89. 1050 (*emphasis added*).

At some point after the August ARD meeting, Parent and Advocate asked that the September *** reconvene ARD meeting be another Pre-ARD meeting and District agreed. The parties continued to meet in an attempt to reach agreement regarding portions of Student's IEP.

During this time, Parent agreed to an IEP Amendment to the August ***, 2015 IEP. On September ***, the parties agreed to add two accommodations: ***. Parties may agree not to convene an IEP Team meeting for the purposes of making changes, and instead may develop a written document to *amend or modify the child's current IEP*. 34 C.F.R. §300.324(a)(4) (*emphasis added*).

The evidence supports a finding that Parent was a participant in all proceedings. She continually had the assistance of Advocate. District continued to work with both individuals in an effort to develop an appropriate program for Student. Parent and Advocate participated by telephone in a September *** ARD meeting and agreed to an assistive technology assessment.

The evidence shows that District had an IEP for Student at the beginning of the 2015-2016 school year, and that Parent had notice of its implementation. Parent received Prior Written Notice. Further, Parent agreed to the subsequent amendment to the August *** ARD.

Assuming, *arguendo*, that District committed a procedural violation, the evidence is clear that Parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to Student was not significantly impeded. The evidence supports that Student did not suffer a deprivation of educational benefit. Nor was Student's right to a FAPE impeded.

FAPE

The United States Supreme Court, in *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982), established a two-part test for determining whether a school district has provided a student FAPE: 1) the school district must comply with the procedural requirements of IDEA, and 2) the school district must design and implement a program "... reasonably calculated to enable the child to receive educational benefits." An educational benefit must be meaningful and provide the "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 200-01. Although the school district need only provide "some educational benefit," the educational program must be meaningful. *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). The educational benefit cannot be a mere modicum or *de minimis*. It must be likely to produce progress, not regression or trivial educational advancement. *Houston Independent School District v. Bobby R. and Caius R.*, 200 F.3d 341, 347 (5th Cir. 2000).

In *Cypress Fairbanks*, 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?

The evidence supports a conclusion that Student's education program was individualized on the basis of Student's assessment and performance. In Petitioner's post-hearing brief, Petitioner acknowledges that District's assessments were appropriate. District staff and Student agreed that Student needed assistance with organization and task completion. The results of District's FIE confirmed these needs, and based on those results, goals were developed. Student's reading needs were addressed through accommodations, and Petitioner made no argument that Student's reading needs were not met. As above stated, numerous accommodations were implemented. Counseling was offered.

Student ***. The *** allowed Student to access Student's ***. Student's doctor, Dr. ***, recommended the use of a ***. The ARD committee accepted the recommendation. Student had the use of *** that was replaced by ***. Student had the constant assistance of Student's case manager. The *** class provided assistance with Student's task completion and organization.

Student is in all general education classes, the least restrictive environment.

The record shows regular communications between District staff and Parent regarding Student's assignments. Student's case manager consistently communicated with Student's teachers, Student, and Parent. The case manager emailed Student's weekly schedule of assignments to Parent and Student. District sent a progress report to Parent after six instructional weeks of school. District staff communicated with each other frequently regarding concern for Student, Student's heavy work load, Student's progress, stress level, tutoring, and completion of work.

As above noted, District consistently worked with Parent and Advocate in an effort to develop goals that met with their satisfaction. The evidence reflects that the parties continued to work toward Student's goals after Petitioner's second request for due process hearing. The evidence is clear that District worked collaboratively with Parent and that services were provided in a coordinated and collaborative manner by the key stakeholders.

There is no question that Student received positive academic and non-academic benefits. Despite the heavy workload, Student passed Student's classes in *** grade. Parent testified that Student's stress level decreased after Student began working with the case manager. District witnesses confirmed that Student felt that the help Student received from Student's case manager was helpful, and hoped to (and does) have the same support in the current school year. The number of missing assignments decreased. Student *** and wrote down assignments, quizzes and tests.

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 (5th 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." Petitioner failed to carry the burden of proving that Student was denied a FAPE.

Conclusions of Law

1. Student is eligible for special education and related services under the IDEA, and the Alamo Heights Independent School District is the local education agency responsible for providing those services to Student. 20 U.S.C. § 1400 *et seq.* and its implementing regulations.
2. Alamo Heights Independent School District's educational program is entitled to a legal presumption of appropriateness. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468

U.S. 883 (1984). The Petitioner has the burden of proving that Petitioner's special education program was not appropriate, or that the District did not comply with the procedural requirements of the IDEA and denied Student FAPE. Petitioner did not carry Petitioner's burden of proof. *Schaffer v. Weast*, 126 U. S. 528 (2005).

3. Alamo Heights Independent School District provided Student with a free, appropriate public education. *Schaffer v. Weast*, 126 U. S. 528 (2005).

All requests for relief are DENIED.

SIGNED on the 29th day of December, 2015.

/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. 287-SE-0515
(Consolidated with DOCKET NO. 013-SE-0915)

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|---------------------------|---|----------------------------|
| STUDENT | § | BEFORE A SPECIAL EDUCATION |
| b/n/f PARENT | § | |
| | § | |
| v. | § | HEARING OFFICER FOR THE |
| | § | |
| ALAMO HEIGHTS INDEPENDENT | § | |
| SCHOOL DISTRICT | § | STATE OF TEXAS |

SYNOPSIS

- ISSUE NO. 1: Whether Respondent failed to identify Student as a child with a disability in need of special education
HELD: For Respondent District
CITATION: 34 C. F. R. §300.311; *El Paso Indep. Sch. Dist. V. R. R.*, 567 F.Supp. 2d 918 (W.D. Tex. 2008); *rev'd on other grounds*, 591 F. 3d 417 (5th Cir. 2009). *Schaffer v. Weast*, 126 U. S. 528 (2005)
- ISSUE NO. 2: Whether Respondent made an appropriate education placement of Student in special education or related services under the IDEA
HELD: For Respondent District
CITATION: 34 C.F.R. §300.116; *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- ISSUE NO. 3: Whether Student was denied a free appropriate public education (“FAPE”)
HELD: For Respondent District
CITATION: 34 C.F.R. §300.101; *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982); *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- ISSUE NO. 4: Whether District failed to evaluate Student in all areas of suspected disability, specifically whether District failed to conduct a functional behavior assessment, occupational therapy evaluation and ***
HELD: For Respondent District
CITATION: 34 C.F.R. §§300.530(f), 300.304, 300.34, 300.43(a)(2)(v); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- ISSUE NO. 5: Whether District failed to have an individualized education program (“IEP”) in place for Student at the beginning of the 2015-2016 school year
HELD: For Respondent District
CITATION: 34 C. F. R. §300. 323(a); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- ISSUE NO. 6: Whether District has refused to provide appropriate supports and services to assist Student in the classroom
HELD: For Respondent District
CITATION: 34 C.F.R. 300.320(a)(4); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)