

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

**STUDENT,
bnf PARENT,
Petitioner,**

v.

**SPRING HILL INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

§
§
§
§
§
§
§
§

DOCKET NO. 012-SE-0913

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, STUDENT bnf PARENT (“Petitioner” or “the Student”) brings this action against the Respondent Spring Hill Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq. (IDEA) and its implementing state and federal regulations.

Party Representatives

Petitioner was represented by Chris Schulz and later on in the litigation by Daniel Garza, both attorneys with the law firm of Cirkiel & Associates. Respondent was represented by its legal counsel Nona Matthews with the law firm of Walsh, Anderson, Gallegos, Green & Trevino.

Resolution Session and Mediation

The parties waived the Resolution Session in writing on September 20, 2013 and agreed to attempt mediation instead. The parties met in mediation on November 4, 2013. Although the parties reached a tentative agreement in mediation the Board of Trustees for the school district was required to approve the proposed settlement. On November 19, 2013 the school district’s counsel confirmed the Board of Trustees did not approve the proposed mediation settlement.

Procedural History

Petitioner filed the initial request for a due process hearing on September 9, 2013. Petitioner was initially represented by Chris Schulz, an attorney with the law firm of Cirkiel & Associates. Daniel Garza, another attorney with Cirkiel & Associates, substituted in as Petitioner’s counsel on January 17, 2014. The case was first set for hearing on November 1, 2014 with the Decision of the Hearing Officer due November 24, 2013. The initial prehearing telephone conference was conducted in this case on October 18, 2014. The parties submitted a joint request for a continuance of the November hearing date and an extension of the statutory decision deadline in order to attempt mediation before proceeding to hearing. The case was reset for hearing on December 10-11, 2013 with the Decision of the Hearing Officer extended to January 13, 2014. An Order was issued on November 3, 2014 that resolved a number of preliminary issues – including dismissal of Petitioner’s requests for monetary damages and attorney’s fees.

Continuances and Extensions of Decision Due Date

The due process hearing was continued and the decision due date extended a number of times either at joint request of the parties or as unopposed motions. Scheduling conflicts for Petitioner's counsel, the unavailability of a key witness for both parties, renewed settlement efforts, and a scheduling conflict with mandatory state-wide assessments were the basis for resetting the hearing and extending the decision deadline. When it was clear settlement negotiations were not successful the parties agreed to proceed with the due process hearing. An order was issued on March 31, 2014 resetting the due process hearing for May 19-20, 2014 and extending the decision of the hearing officer to July 11, 2014.

Due Process Hearing

The hearing was conducted on May 19-20, 2014. Petitioner was represented by Student's attorney Daniel Garza with Cirkiel & Associates assisted by Stephanie Dawson, Special Education Advocate. In addition, Student and Student's parents also attended the due process hearing. Respondent was represented by its attorney Nona Matthews and her co-counsel Kelly Shook with Walsh, Anderson, Gallegos, Green & Trevino. The hearing was recorded and transcribed by a certified court reporter. The due process hearing was an open hearing at Petitioner's request. The parties submitted their written closing arguments in a timely manner. The decision of the hearing officer is due July 11, 2014.

Issues

The issues for decision in this case are:

1. Whether the school district failed to provide STUDENT with a free, appropriate public education (FAPE) within the meaning of the Individuals with Disabilities Education Act (IDEA) when it failed to design an appropriate Individual Education Plan (IEP) that protected STUDENT from bullying and harassment during the 2012-2013 school year;
2. Whether the school district failed to provide STUDENT with a FAPE when it failed to provide Student's with a meaningful transition plan that complied with the requirements under the IDEA as a component of Student's IEP during the 2012-2013 school year;
3. Whether the school district failed to provide STUDENT with a FAPE when the school district failed to provide Student with appropriate related services, such as counseling and social work services, during the 2012-2013 school year; and,
4. Whether the school district failed to provide STUDENT's parents with the requisite prior written notice during the 2012-2013 school year; specifically when it failed to provide prior written notice that complied with IDEA requirements following Admission, Review & Dismissal Committee meetings (ARD) in January 2013 and May 2013 when the school district made certain proposals or refusals with regard to STUDENT's IEP.

Requested Relief

Petitioner requests the following items of relief:

1. Reimbursement for transportation to and from Student's new school district (***) ISD) and to and from long-term psychological therapy Student received and continues to receive from a Licensed Professional Counselor (LPC) and prospective payment for continuing transportation costs to and from *** ISD and to and from private psychological counseling;

2. Reimbursement for out of pocket expenses for the cost of outside assessments.

Petitioner's requests that the school district reimburse Student's parents for *** costs and for parental lost wages were previously dismissed as monetary damages not available under the IDEA. (*Order on Respondent's Plea to the Jurisdiction and Partial Motion to Dismiss*)(November 3, 2013). See, *Walker v. Dist. of Columbia*, 969 F. Supp. 794 (D.C. D.C. 1997) (*IDEA only allows equitable remedies not monetary damages where 16 year old with intellectual disabilities was denied a FAPE*). Petitioner also requests attorney's fees and litigation costs that may be available to a prevailing party by a court of competent jurisdiction under the IDEA. However, these items are not forms of relief within the hearing officer's authority. See, 34 C.F.R. § 300.517.

Findings of Fact

1. Student is eligible for special education services as a student with a speech impairment. Student has a *** – specifically a ***. Student needs direct speech therapy services. (Respondent's Exhibit 1, pp. 1-5, 7, 10)(referred to hereafter as "R. Ex. ____")(R. Ex. 4, p. 2). At the time of the due process hearing Student was *** old and attending *** school as a *** grader in *** ISD, *** school district. (Petitioner's Exhibit 22)(referred to hereafter as "P. Ex. ____")(Transcript, Volume I, pp. 71-72)(referred to hereafter at "Tr. Vol. __, p. ____").
2. Student's *** adversely affects Student's attitudes and feelings about participating in the classroom (specifically reading aloud and being called on to answer questions) and Student's willingness to communicate with authority figures and strangers. Student needs to learn specific strategies to assist Student in *** as well as activities geared towards attitudes, emotions, acceptance, fears, and anxieties. (R. Ex. 1, p. 5). Student's *** decreases when Student is frustrated and at times Student's *** when Student ***. (P. Ex. 3, p. 14). Student's emotional state can trigger *** issues. (Tr. Vol. I., pp. 123, 266).
3. Student has been *** since age ***. Student is more *** at home than at school and expresses anxiety at home about speaking in the school environment. Student began attending Spring Hill ISD in kindergarten and has received speech services since then. (R. Ex. 1, p. 4) (Tr. Vol. I., p. 73). Student has friends at school and has no difficulty making or keeping friends. Student enjoys ***. (P. Ex. 9, p. 1) (R. Ex. 20, p.1). Student is able to communicate effectively with Student's family and peers most of the time. (Tr. Vol. I., pp. 134-135).
4. Student began having trouble with peers and being "picked on" in *** grade. Student was mocked and teased about ***. The teasing worsened in grades ***. (Tr. Vol. I., pp. 74, 81-82). Student's mother was aware Student was having minor peer issues here and there but was not overly concerned at first. However, as Student continued to report Student was the target of teasing the level of parental concern rose. (Tr. Vol. I, pp. 74, 117-118).
5. Student attempted to deal with the bullying by ignoring it, reporting it to Student's family, to teachers, Student's ***, the school counselor and, to school administrators. At times -- when Student felt picked on "over and over" -- Student would verbally explode and attempted to stand up for Student's self by talking back to the bullies. This was only temporarily effective. (Tr. Vol. I., pp. 95, 98-99, 101).
6. During *** Student's mother observed that Student was socially withdrawn -- Student stopped visiting or spending the night with Student's friends, used text messages instead of talking on the phone, and stayed in close proximity to Student's family while attending sporting events. (Tr. Vol. I., pp. 143-144). Student's appetite also changed -- Student either ate too much or not enough -- and was irritable and snappish. (Tr. Vol. I., p. 146).

7. An ARD was conducted on August 17, 2011 prior to Student's entry onto the *** school campus for *** grade (the 2011-2012 school year). Student's mother requested the ARD to inform the *** staff of the teasing Student experienced in *** grade. (P. Ex. 3) (Tr. Vol. I, pp. 120-121). Student and Student's mother were concerned that Student's *** might result in teasing from teachers and peers. Student's mother was also concerned that teachers might avoid calling on Student in class. (P. Ex. 4, p. 1). Student's mother requested teachers be on the lookout for any teasing and intervene to prohibit it. Teachers were also requested not to punish Student because of Student's ***. (P. Ex. 4, p. 1).
8. The *** school principal communicated with Student's teachers to address the parental concerns. (P. Ex. 4, p. 1) (Tr. Vol. I, p. 124). The principal advised the teachers that Student had problems with some classmates. (Tr. Vol. I, pp. 97-98). The teachers were receptive to the information, agreed to heighten their awareness, be sensitive to the concerns, and agreed to assist Student so Student's *** would not be an issue at school. (P. Ex. 4, p. 1).
9. Student has a history of some difficulty with ***. (P. Ex. 19, pp. 87-100). Student was reprimanded in *** grade for Student's part in ***. (P. Ex. 19, pp. 13, 131-132, 136-137, 139-143). In *** grade Student was disciplined for ***. *** is a violation of school district policy. (P. Ex. 6, p. 1) (Tr. Vol. I, pp. 77, 125-126) (Tr. Vol. II, pp. 363, 377, 380).
10. The assistant principal ***. Instead, Student was disciplined with an in-school suspension for ***. (P. Ex. 19, pp. 87-100). (Tr. Vol. I, pp. 127-128)(Tr. Vol. II, pp. 346-48, 363) Student's parents removed Student from school because they were displeased with the administrator's actions. Student's mother was warned the school district would file truancy charges if Student did not return to school to serve Student's ISS. (Tr. Vol. I, p. 128).
11. Student was seen by a physician shortly after the incident ***. (Tr. Vol. I, p. 128). Student's physician prepared a letter confirming Student was under his care and needed to be excused from attending school due to "severe anxiety and stress reaction." The physician recommended counseling for Student and that Student needed to be excused from school beginning on *** until such time as Student could be seen by a counselor for evaluation and a treatment plan was initiated. (P. Ex. 7, p. 1) (Tr. Vol. I, p. 128).
12. An ARD meeting convened on November 18, 2011. (P. Ex. 8) (Tr. Vol. I, p. 128). Student's mother and a parent advocate expressed concerns that the school district was not adequately addressing the persistent teasing by peers and issues with ***. Student's mother requested Student be supported with some additional services. (Tr. Vol. I, p. 129).
13. The school district characterized Student's complaints about being teased and mocked as "difficulties" or "misunderstandings" while Student's mother viewed the conduct as bullying and harassment. (Tr. Vol. I, pp. 139, 141)(Tr. Vol. II, p. 399). Student's mother requested a counseling evaluation over concerns that Student was becoming depressed and anxious. At home Student spoke of the bullying with some anger but mostly with tears. (Tr. Vol. I, pp. 137-138). The November 2011 ARD agreed on the need for speech, counseling, and Assistive Technology assessments. (P. Ex. 8, pp.14, 17) (Tr. Vol. I, p. 129). The ARD also agreed to provide special instructions to inform substitute teachers regarding Student's IEP accommodations and modifications. Student's speech therapy services were also increased. (P. Ex. 8, pp. 14, 17).

anxiety, depression and somatization) fell within the clinically significant range. (P. Ex. 1, p. 2) (R. Ex. 2, p. 2) (Tr. Vol. I., p. 199). Parent ratings in the depression and somatization subscales also fell within the clinically significant range. Student was “at risk” for anxiety. (P. Ex. 9, p. 2) (R. Ex. 2, p. 2) (Tr. Vol. I., p. 199).

24. The *** grade counseling assessment also included information from Student’s *** grade science and English teachers. The teacher responses were reliable and valid. The science teacher’s ratings did not indicate any area of concern on composite scores but ratings in the social skills and leadership subscales fell within the “at risk” range. The English teacher’s ratings indicated a concern with “internalizing problems.” Anxiety, depression, and somatization ratings fell within the “at risk” range. (P. Ex. 9, p. 2) (R. Ex. 2, p. 2) (Tr. Vol. I., pp. 178, 199-200). Student was often absent from school around the period of time Student was being evaluated – frequently complaining of headaches and stomach aches. (Tr. Vol. I., p. 140). The responses from the teachers and from Student’s mother were remarkably similar. (Tr. Vol. I., pp. 138, 179).
25. The *** grade counseling assessment also included a review of Student’s educational records. The counseling assessment concluded Student exhibited anxiety and worry over school problems that demonstrated a need for counseling. (R. Ex. 2) (Tr. Vol. I., p. 200). Student’s responses confirmed anxiety, nervousness and problems relating to peers. Student verbally expressed a need for counseling and a desire to talk to someone regarding Student’s difficulties with peers at school. Areas of concern included Student’s attitude towards school and teachers and difficulties in the school setting that could affect academic performance. The counseling assessment recommended direct counseling to address Student’s attitude towards teacher/school, anxiety, depression, somatization, social skills, and peer relationships. (P. Ex. 9, pp. 3-4) (R. Ex. 2, pp. 3-4) (Tr. Vol. I., p. 180).
26. Student was also assessed by the SSA for assistive technology (AT). The AT assessment concluded Student did not need assistive technology because Student was able to communicate effectively in Student’s four core academic classes. Although teachers acknowledged Student’s *** it was not a major impediment in completing work. Student made academic progress in Student’s *** grade classes and was able to communicate with friends. Absences from school rather than Student’s *** posed the difficulty in keeping up with school work. (R. Ex. 3) (Tr. Vol. I., p. 202).
27. An annual ARD convened in January 2012 following the assessments. The ARD confirmed direct speech therapy two times every six weeks for 28 minutes per session and direct counseling services one time every 3 weeks for 25 minutes per session. (R. Ex. 4, pp. 9, 16) (Tr. Vol. I., pp. 202-203).
28. An Individual Educational Plan (IEP) was developed for both speech therapy and counseling in January 2012. (P. Ex. 10, pp. 5-7) (R. Ex. 4, pp. 5-7). The counseling IEP included goals related to Student’s somatic complaints, Student’s attitudes towards peers, peer relationships, social skills, anxiety, and depression. (R. Ex. 4, p. 7). (Tr. Vol. I., pp. 11, 140-141, 193-194)). The speech therapy goal addressed Student’s need to develop ***. (P. Ex.10, p. 6) (R. Ex. 4, p. 5).
29. A set of accommodations were included in Student’s IEP including small group for testing situations, extra time for answering questions, written expression for communication when needed, and being excused from oral reading at Student’s choice. Substitute teachers were to be informed of Student’s modifications and accommodations in a folder. (R. Ex. 4, pp. 10, 16) (Tr. Vol. I., p. 204).
30. Counseling services at school began in the spring of *** grade. (R. Ex. 10) (Tr. Vol. I., p. 205). The LSSP and Student discussed victim, aggressor, and bystander roles, Student’s attitudes towards teachers and peers, ways to seek adult assistance, and --- on at least one occasion --- being picked on by another student. (Tr. Vol. I., pp. 206-210). Student had difficulty taking responsibility for Student’s own actions. (Tr. Vol. I., p. 210).
31. Student also began private therapy December 2011 of *** grade. (P. Ex. 20, pp. 1-2B, 20) (Tr. Vol.

- I., pp. 25, 38). The primary focus of the therapy was learning strategies to cope with being bullied. Other typical issues for *** were also topics of discussion in therapy sessions including conflicts with Student's mother over school performance and the importance of making more than the minimum effort. There were some parental concerns Student was not putting forth Student's best efforts academically. (Tr. Vol. I., pp. 39-40, 46-48).
32. Student was diagnosed with an adjustment disorder w/ mixed anxiety and depressed mood. (P. Ex. 20, p. 2B) (Tr. Vol. I., pp. 30-31, 58-59). An adjustment disorder is when a person is having difficulty coping with changes in their life. An adjustment disorder is a mental/emotional/psychological disorder as opposed to an organic or chemical problem. (Tr. Vol. I, p. 59). A person with an adjustment disorder can overcome the disorder with appropriate treatment. (Tr. Vol. I., pp. 59-60). Student met the criteria for adjustment disorder with mixed anxiety and depressed mood. (Tr. Vol. I., pp. 58, 65, 67-68).
 33. In treating Student the private therapist used "cognitive behavioral therapy." The focus of this kind of therapy is on reframing thoughts and working with the patient's thinking to learn new behaviors. The use of cognitive therapy was appropriate for Student. (Tr. Vol. I, pp. 35, 51). The LSSP also used cognitive therapy in the school counseling sessions. (Tr. Vol. I., pp. 239-240).
 34. Student and the private therapist processed Student's feelings about being bullied and discussed various strategies to cope with it. It was difficult for Student to reframe Student's thoughts because Student continued to be in situations where Student was teased. (Tr. Vol. I., pp. 36, 51-52, 54-56.). The therapist found no reason to believe that Student was not being truthful in the therapy sessions. Student admitted that Student mouthed off and got in trouble with Student's mother at times – typical *** behavior. (Tr. Vol. I., pp. 52-53).
 35. Student exhibited a low self concept during private therapy. (P. Ex. 20, p. 2A). Student's mood was often sad, angry, and anxious. Student was tearful and had somatic complaints, fearful of some of Student's classmates, and, upset at what Student felt was a lack of help or support from teachers and school staff. (P. Ex. 20, p. 20) (Tr. Vol. I., pp. 26, 31). Student's *** worsened when Student described being teased about Student's *** at school. (Tr. Vol. I., pp. 28-29). As private counseling progressed Student reported things were somewhat better as Student began to attempt to use coping strategies. (P. Ex. 20, pp. 3-9) (Tr. Vol. I., pp. 46-47, 48).
 36. The private therapist did not confer with any of the *** staff nor did she observe Student at school. (Tr. Vol. I., pp. 44, 50-51). Although the private therapist reviewed some of Student's grade reports she did not review any disciplinary records or investigations of bullying made by the school. (Tr. Vol. I. p. 45). While it would have been helpful to confer with school staff it was the therapist's policy not to do so given the confidential nature of therapy and to preserve trust in the therapeutic relationship. (Tr. Vol. I., pp 61-64).
 37. On April 2, 2012 Student and Student's mother complained to a *** administrator that Student was being harassed by a student in Student's *** class who made inappropriate gestures towards Student. At parental request Student was ***. (P. Ex. 19, p. 83) (Tr. Vol. II, pp. 364-365). The administrator also investigated a complaint that the same student made unwanted physical contact with Student in the hallway. The administrator was unable to confirm the incident when he reviewed video from hallway cameras. (Tr. Vol. II, p. 366).
 38. By the end of *** grade Student reported to the private therapist that things were "up and down" – that Student had been bullied about Student's *** and didn't know what to do about it, that the principal seemed unresponsive, and that Student's mother's involvement only created anger towards Student by classmates. (P. Ex. 20, p. 10) (Tr. Vol. I., pp. 27-28, 40).

39. On August 27, 2012 the parties agreed to amend the ARD conducted on January 26, 2012 prior to the beginning of Student's *** grade year (the 2012-2013 school year). The purpose of the amendment was to correct the counseling schedule. (P. Ex. 11, pp. 1-2, 4, 8) (R. Ex. 5, pp. 1-2, 4, 8). Direct counseling services were scheduled for one 25 minute session every 3 weeks. (P. Ex. 11, p. 3) (R. Ex. 5, p. 3) (Tr. Vol. I., pp. 242-243). Counseling services were not provided until October 2012 of *** grade due to delays in securing the requisite parental consent. (Tr. Vol. I., pp. 211-214)(Tr. Vol. II, pp. 445-446, 453-454). Student demonstrated some improvement in conflict resolution with peers but peer relations continued to be an issue addressed in school counseling. (Tr. Vol. I., pp. 214-217).
40. The school district implemented the Olweus Program as agreed. (R. Ex. 15, 16, 17, 18) (Tr. Vol. II., p. 356, 408). The Olweus anti-bullying training for school staff was conducted on August 23, 2012. Some follow up training was incorporated into staff development meetings. (Tr. Vol. II, pp. 358, 397). Each campus formed a bullying committee to implement the training. (Tr. Vol. II, pp. 357-358, 393). The school district developed a protocol to follow after receiving a bullying report that included identifying the type of bullying, an investigation component, a set of interventions for the victim, and disciplinary action. (Tr. Vol. II, pp. 411-413). Bullying complaints are handled through the school district's administrative hierarchy as a component of the school district's overall discipline program. (Tr. Vol. II, pp. 349-350, 356-357).
41. Topics in the staff training included the definition of bullying, the bullying circle, school rules, interventions, a questionnaire and discussion of the results, the use of classroom meetings, and an opportunity for questions and answers. A set of weekly meetings in each *** activity classroom was implemented that addressed various issues following the Olweus anti-bullying curriculum. The anti-bullying program was also explained to parents at a parent open house in early September 2012. (P. Ex. 19, pp. 22-79) (Tr. Vol. I., pp. 290-291) (Tr. Vol. II, pp. 396-398). Although Student's mother did not attend the Open House the principal met with Student and explained how the *** was using the Olweus program. (Tr. Vol. II, p. 397).
42. Student was the target of persistent teasing by a group of four students in *** grade most often by two *** students in Student's *** class -- one of whom was the primary instigator (Student X). (Tr. Vol. I., pp. 88, 101, 104-106, 111). The two *** dropped by Student's *** one day and *** Student. On another occasion the same ***. Another time Student X *** in the hallway causing some physical discomfort. (Tr. Vol. I., pp. 107-110, 112). The other *** often joined in after Student X initiated the teasing. (Tr. Vol. I., p. 111).
43. Student was assigned to the same *** teacher for *** and *** grades. (Tr. Vol. I., p. 281). One day Student and Student X got into a verbal confrontation in the *** class. The *** teacher conferenced with the students out in the hall, imposed appropriate disciplinary consequences on both, and conferred with the Assistant Principal who contacted Student X's parent. The teacher also changed Student X's seat. (R. Ex. 8, p. 11) (Tr. Vol. I. pp. 92, 97, 287-288, 313-314, 316-317).
44. Student's mother, Student, the *** teacher, and the principal met later to discuss the incident. (P. Ex. 19, pp. 13-14, 285-286, 313-314). The *** teacher claimed Student did not hear the *** student make fun of Student but agreed to pay closer attention in the future. The *** teacher described the students in the class as feeding off one another with each one wanting to have the last word. (P. Ex. 19, pp. 13-14, 145) (Tr. Vol. I., pp. 285-286, 289).
45. During the meeting the principal advised Student that administrators may not know Student was being bullied unless Student reports it. The principal encouraged Student to come to him when Student felt Student was being bullied so that he could immediately address it. The *** administrators did not receive any reports from Student that Student was being bullied during *** grade. (P. Ex.19, p. 13) (R. Ex. 11, pp. 1, 2-7) (Tr. Vol. I., pp. 314-315) (Tr. Vol II, pp. 375, 403).

46. Student was involved in an altercation with a *** in October 2012. *** traded insults and rude remarks. The principal counseled ***, directed them to steer clear of one another, and warned them of stiffer consequences if they continued negative interactions. (P. Ex. 19, pp. 102-107) (R. Ex. 11, pp. 1, 2-7) (Tr. Vol. II, pp. 367-368).
47. Student's annual *** grade ARD was conducted on January 24, 2013. (P. Ex. 12, p. 1) (R. Ex. 6, p. 1). Student's mother participated by phone. Student also attended this ARD. (P. Ex. 12, pp. 20, 26) (R. Ex. 6, pp. 21, 26) (Tr. Vol. I., p. 222). Student continued to meet eligibility criteria as a student with a speech impairment and need for special education services. (P. Ex. 12, p. 2). The Notice of Procedural Safeguards was provided to the parent. (R. Ex. 6, p. 2).
48. The January 13, 2013 ARD documents provided notice to Student's mother of Student's eligibility classification, the services proposed and agreed to, the options considered, and the assessments and other educational information that formed the basis for the proposed and agreed upon set of services. The Prior Written Notice inviting Student's mother to the ARD (ARD Notice) included a statement regarding parental procedural rights and the name and phone number of someone to contact for assistance in understanding the ARD Notice or the procedural rights. A full explanation of parental procedural rights was transmitted to the parent with the ARD Notice. The ARD paperwork was transmitted to the parent on January 28, 2013 by the LSSP. (Tr. Vol. II, pp. 450-451)(R. Ex. 6) (R. Ex. 19).
49. Graduation with a regular high school diploma will terminate Student's eligibility for special education services. Student plans to attend a four year university with the goal of ***. (Tr. Vol. I., pp. 142-143)(P. Ex. 12 p. 12(R. Ex. 6, p. 7). A Transition Supplement was completed as part of the January 2013 ARD meeting. (P. Ex. 12, pp. 5-6) (R. Ex. 6, pp. 5-6) (Tr. Vol. I., p. 222). Student was *** years old at the time. (Tr. Vol. II., p. 455). The Transition Supplement noted Student was successfully integrated into the community, able to transfer skills beyond the classroom, and did not need specific instruction in adult living skills because Student demonstrated independent living and employability skills. (P. Ex. 12, p. 5) (R. Ex. 6, p. 5).
50. Student's prevocational/vocational competencies were assessed through teacher reports compiled by the LSSP and identified in the Transition Supplement ARD documents. (P. Ex. 12, p. 4) (R. Ex. 6, p. 4)(Tr. Vol. I., pp. 222-223). The competencies were listed under the following topics: General Learning Skills; Socialization Skills; Choice Making Skills; Pre-Employment Skills; Employment Skills; Self-Advocacy Skills; and Daily Living Skills. (P. Ex. 12, p. 4) (R. Ex. 6, p. 4) (Tr. Vol. I., p. 223). Student was graduating under the "Recommended High School Program" with an expected graduation date of May ***. (P. Ex. 12, pp. 18, 21) (R. Ex. 6, pp. 7, 22).
51. Both Student and Student's mother participated in the transition plan portion of the ARD and in identifying Student's transition needs. Student was to meet with the school district's Transition Specialist in Spring 2013. The transfer of rights was provided to Student and Student's mother at the January 2013 meeting as well. (P. Ex. 12, pp. 6, 21) (R. Ex. 6, pp. 6, 21) (Tr. Vol. II, p. 450).
52. Student's *** grade teachers reported Student was motivated, inquisitive, pleasant to have in class, and got along with Student's peers. Student's teachers reported Student put forth Student's best effort and was passing all Student's classes. In school counseling sessions Student was no longer exhibiting physiological symptoms of anxiety or depression. Student was able to identify coping skills when feeling anxious or depressed although not always able to generalize those skills outside of counseling sessions. (P. Ex. 12, p. 20(R. Ex. 6, p. 21) (Tr. Vol I., pp. 223-225).
53. An IEP for Independent Study Skills was added to Student's educational program at the January 2013 ARD. The short term objectives in meeting the study skills goal were that Student would pass all Student's core academic classes with a 90% attendance in all core subjects. (P. Ex. 12, p. 11) (R. Ex. 6, p. 11). Student continued placement in all regular education classes with the same set of

modifications and accommodations as before. (P. Ex. 12, pp. 20-21) (R. Ex. 6, pp. 21-22). IEP's for speech and counseling were updated at the January 2013 ARD with appropriate short terms goals. (P. Ex. 12, pp. 8-9, 12) (R. Ex. 6, pp. 12-14) (Tr. Vol. I., p. 274).

54. The LSSP reported Student seemed happier this year than last, was able to identify many positive traits about Student's self, and was getting along better with peers and teachers. Student expressed a desire to continue counseling – Student needed a support system and someone to vent to. The counseling IEP was adjusted to add objectives to address Student's current needs. (P. Ex. 12, pp. 13-15, 20) (R. Ex. 6, pp. 13-14, 17, 21) (Tr. Vol. I., pp. 219-220, 225, 230).
55. Although Student and the LSSP often discussed Student as the object of teasing or being picked on the word “bullying” was not specifically used in counseling sessions. The LSSP felt Student was capable of standing up for Student's self and therefore saw no imbalance of power in Student's peer relationships so Student did not identify Student as a bullying victim. (Tr. Vol. I., pp. 185-186, 188-189, 200-201). Student engaged in inappropriate verbal attacks towards teachers and peers at times. The LSSP discussed this issue with Student's mother who took the position that Student was merely defending Student's self. (Tr. Vol. I., pp. 225-226). Student expressed feelings about injustice and fairness at school. Student often over generalized and over exaggerated small issues. (Tr. Vol. I., pp. 227, 239-240).
56. The January 2013 ARD agreed Student continued to need direct counseling once a week for three weeks at 25 minutes per session with a focus on generalization of coping skills in the school environment. The revised counseling IEP included Student's ability to discuss and/or demonstrate how the words and behaviors of others affect Student's mood/disposition; identifying effective coping skills when feeling anxious or depressed; discussing and identifying attitudes towards teachers, school and peers that may affect academic outcomes; and, identifying adults who can support, help, or assist when Student is experiencing stress due to peer/teacher conflicts, academics, or family stress. (P. Ex. 12, pp. 13-14) (R. Ex. 6, pp. 13-14).
57. In ***, at Student and parent request, Student was placed in another *** class with a new teacher (P. Ex. 19, pp. 84-86) (R. Ex. 8, p. 11) (Tr. Vol. I., pp. 89-90, 93, 95) (Tr. Vol. II, pp. 390-392). The LSSP supported the request. (Tr. Vol. I., pp. 191-192)(Tr. Vol., II., p. 446). The daily teasing ceased as a result of the change in *** classrooms. (Tr. Vol. I., p. 90). Student's *** grades improved from an *** to a *** after the switch. (R. Ex. 13, p. 3) (Tr. Vol. I., pp. 102-103).
58. The new *** teacher reported Student got along with Student's peers and was performing academically. The new *** teacher reported that Student *** when Student was not supposed to, talked too much, and, responded negatively when classmates said something to make Student mad. (R. Ex. 8, p. 11). Student received two office referrals in the new *** class; one for making inappropriate noises and second for a provocative outburst. (P. Ex. 19, pp. 108-110).
59. Student violated the school policy against *** on campus twice in *** grade. Student's *** and returned at the end of the day. Student also incurred a fine for the second violation. However, when Student's mother *** from the office Student did not pay the fine. (Tr. Vol. II, pp. 368-370)(R. Ex. 11).
60. During parent pick up on *** Student's mother became upset when Student received a negative text message from Student X using another student's phone. Student's mother approached the student about the text message on *** cell phone. A teacher intervened to avoid a confrontation between the parent and student. The teacher advised the parent to bring her concerns to the office and suggested Student should be allowed to handle Student's own problems. Student's mother reacted angrily to the teacher's comments. The text message was not reported by Student or Student's mother to the administration as bullying. The owner of the cell phone later apologized to Student. (P. Ex. 13, p. 1) (P. Ex. 18) (P. Ex. 19, pp. 13, 126-130) (Tr. Vol. I. pp. 147-148). The teacher encouraged Student's

mother to support Student but also to allow Student to solve Student's own problems *** which the parent found upsetting. (P. Ex. 19, pp. 9-10) (Tr. Vol. I, p. 84).

61. School administrators and the school's resource officer investigated the confrontation between the parent and the student. The resource officer advised Student's parent to refrain from further confrontations with students on campus or face possible trespassing charges. (P. Ex. 19, p. 13). Student's mother felt this was a threat by the school district. (Tr. Vol. I, p. 148).
62. Student described Student's *** grade year as "really bumpy" and "up and down." Student felt it was more negative overall than positive. (Tr. Vol. I., pp. 87-88). In counseling sessions with the LSSP during *** grade Student regularly discussed difficulties with peers and the counseling IEP targeted peer interactions. Finally, in a May 7, 2013 counseling session Student admitted refraining from talking about peer difficulties to avoid having to deal with the issue. Student also admitted Student acts tough "... because if I don't I will cry." Student was deeply distressed during this counseling session and "cried pretty much the entire session." (P. Ex. 13, pp. 4-5, 7) (Tr. Vol. I., pp. 181, 231-232, 242-243). The LSSP consulted campus staff but no one could identify a specific incident that might have triggered the outburst in the counseling session. However, in conferences with the parent, Student's mother continued to contend Student was a bullying target. (Tr. Vol. I., pp. 232-233).
63. On May 20, 2013 Student's physician advised the school district that Student needed *** and psychological/psychiatric therapy due to a stress disorder. The physician stated Student could *** teacher and was permitted to participate in activities ***. (P. Ex. 16, p. 1) (R. Ex. 7, pp. 7-12). Private therapy resumed on May 28, 2013. (Tr. Vol. I., pp. 49-50, 57).
64. An ARD was conducted on May 22, 2013 to discuss Student's need for *** and parental concerns that Student was being bullied and that the school district was not responding appropriately. Student's problems in the *** class were discussed at the ARD. Student's *** teacher for the fall semester was called into the ARD. (R. Ex. 8) (Tr. Vol. I., p. 294). The *** teacher admitted the class was a stressful environment for Student. (R. Ex. 8, p. 11) (Tr. Vol. I., pp. 151, 296). The ARD was uncomfortable and intimidating for school staff. Student's mother confronted school staff in an accusatory manner. (Tr. Vol. I., pp. 234-236, 243-244, 247, 252-253, 255, 296).
65. The May 2013 ARD documents included notice of Student's eligibility classification, the services proposed and agreed to, the options considered, and the assessments and other educational information that formed the basis for the proposed and agreed upon set of services. The Prior Written Notice inviting Student's mother to the ARD (ARD Notice) included a statement regarding parental procedural rights and the name and phone number of someone to contact for assistance in understanding the ARD Notice or the procedural rights. An explanation of procedural rights was included with the ARD Notice. The parent attended the ARD. (R. Ex. 8) (R. 19).
66. The LSSP provided Student with the requisite *** for the remainder of the *** grade year. (Tr. Vol. I., pp. 149-150, 238-239). An IEP for the *** consisted primarily of ***. (R. Ex. 8, pp. 5, 11). Counseling services were a component of the ***. (R. Ex. 8, p. 11) (R. Ex. 10, p. 1) (Tr. Vol. I., pp. 232-233).
67. Student's *** grade year end grades were very good: ***, ***, ***, ***, ***, ***, and ***. Student made academic progress in *** grade – Student passed Student's classes, passed the STARR test (the state mandated assessments) and Student's *** improved. (P. Ex. 19, p. 111). (Tr. Vol. I., p. 99, 258)(Tr. Vol. II, pp. 429-430, 449). Student was able to communicate in class and at times even volunteered to read aloud. (Tr. Vol. I., p. 308)(Tr. Vol. II, p. 429).
68. On May 24, 2013 Student's mother filed a Level One Grievance against several administrators and teachers. (P. Ex. 19). Student's mother contended the school district failed to utilize the Olweus bullying prevention program effectively and that the school district failed to adequately investigate

Student's complaints of bullying. (Tr. Vol. I., pp. 152-153). Student's mother discussed the Level One Grievance with the principal on June 10, 2013. The principal was unable to substantiate the parent's claims, found parental behavior was problematic, and denied the parental requests for relief. (P. Ex. 19, pp. 157, 159) (Tr. Vol. I., p. 154).

69. Student's mother appealed the Level One decision in a Level Two Grievance. (P. Ex. 19, p. 152). Student's mother alleged Student experienced constant harassment and bullying and that the school district failed to fully implement the Olweus bullying prevention program. In particular, Student's mother complained that the Olweus program required the school to investigate each and every claim of suspected bullying and that the school district failed to do so. Student's mother included the text messaging incident, the confrontation with the teacher, and the teacher's *** in the Level Two Grievance. (Tr. Vol. I., pp. 155-156).
70. Student's parents met with the Superintendent to resolve the Level Two Grievance on July 20, 2013. The Superintendent took corrective action in response to the Level Two Grievance. (P. Ex. 19, pp. 170-172) (Tr. Vol. I., p. 156). He ordered all principals to review school district policies regarding the ***. He acknowledged one of the substitutes was ineffective, had poor classroom management and was no longer employed in that role. The Superintendent planned to meet with all campus principals to ensure substitutes were properly trained and to review the importance of conflict resolution for all staff, including substitutes. He also ordered additional training for the *** staff on the Olweus program. (P. Ex. 19, pp. 170-172). The Superintendent concluded the school district took appropriate steps to address the issues in the grievance. (Tr. Vol. I., pp. 156-157). Student's mother then filed a Level Three Grievance to the school board. (P. Ex. 18) (Tr. Vol. I., pp. 157-158).
71. By the end of *** grade the family decided Student should transfer to *** ISD after Student *** if Student returned to Spring Hill ISD for ***. (Tr. Vol. I., pp. 95-96, 113). Student previously mentioned plans to transfer to *** ISD in both *** and *** grades in order to ***. (R. Ex. 10, p. 8) (Tr. Vol. II, pp. 229, 325). Student has not attended Spring Hill ISD since May 2013. (Tr. Vol. I., p. 152).
72. By June 2013 the transfer to *** School was approved and Student was *** program. In July 2013 Student reported things were going well. Student enjoyed *** and made new goals for school and for making friends. (P. Ex. 20, pp. 16) (Tr. Vol. I., p. 160-162). By November 2013 Student reported things were going "really good." Student viewed teachers and classmates were "much nicer" at the new school. (P. Ex. 20, p. 19). Student was excited about school, Student's classmates and school activities. The new school employed a "zero tolerance" rule and Student felt the overall school environment was more positive. (P. Ex. 20, p. 20) (Tr. Vol. I., p. 26). Student adjusted well in Student's new school and had no negative issues with peers. (P. Ex. 22).
73. On *** Student's mother contacted the Longview Police Department to report Student X continued to harass Student by sending a negative text message. The police investigated the complaint. Student X admitted making fun of Student due to *** and *** at Student. (P. Ex. 17). The police report confirmed the two students did not get along well in *** class. At the time of the police report Student was no longer attending the school district. (P. Ex. 17). The matter was referred to the Gregg County District Attorney's Office for prosecution as a Class B misdemeanor of harassment. The school board did not review the police report as a component of the Level Three Grievance hearing. (Tr. Vol. I., p. 160).
74. Bullying occurs when a stronger or more powerful child hurts, threatens or torments a more vulnerable child. Bullying is purposeful, usually repeated with a marked imbalance of power between the bully and the target. Bullying can occur face to face or behind one's back. Bullying can be short-term or last a long time. Bullying can be done by a single student or by a group. Bullies are more likely to be male. Bullying can be verbal, psychological, and/or physical. (R. Ex. 16, p. 13) (R.

Ex. 17, p. 16). Children with disabilities are at higher risk of being bullied. (R. Ex. 17, p. 5). Bullying may be physical (causing harm to another's body or property); emotional (causing harm to another's self-esteem), or social (causing harm to another's group acceptance.) (R. Ex. 16, pp. 13-14) (R. Ex. 17, pp. 4, 16).

75. Verbal forms of bullying include taunting, making insulting remarks, name calling, teasing about possessions or clothes, insulting family, gossiping, starting or spreading rumors, or verbal interference with friendships. Verbal bullying can escalate into threatening physical harm, verbal harassment, insulting the target's intelligence, athletic ability, race, or gender, spreading gossip or rumors, or undermining other relationships. (R. Ex. 16, p. 14).
76. Non-verbal forms of bullying include making threatening gestures, defacing property, taking small items, staring or mugging, pushing, shoving, giving dirty looks, making insulting gestures, or playing mean tricks. Non-verbal bullying can escalate into more serious forms of physical harm or property damage. (R. Ex. 16, p. 14). The effects on the bullying target can include lower self esteem, depression and anxiety, absenteeism, lowered school achievement, and/or thoughts of suicide or illness. (R. Ex. 17, pp. 4-5).

Discussion

Bullying as a Denial of FAPE

Bullying is the unwanted, aggressive behavior among school aged children that involves a real or perceived power imbalance. The behavior must be repeated, or have the potential to be repeated, over time. Bullying includes actions such as making threats, spreading rumors, attacking someone physically or verbally and excluding someone from a group on purpose. *Government Accountability Office, Report on Bullying (June 2012)* (<http://www.gao.gov/assets/600/591202.pdf>).

A school district's failure to stop bullying may constitute a denial of a FAPE. *Shore Regional High Sch. Bd. of Educ. v. P.S.*, 381 F. 3d 194 (3d Cir. 2004) (*unabated harassment and bullying of high school student made it impossible for student to receive FAPE where student became depressed, harassment continued, and student attempted suicide*); *Letter to Dear Colleague*, 113 LRP 33753 (OSERS Aug. 20, 2013) (*bullying that results in the student not receiving meaningful educational benefit constitutes a denial of a FAPE under the IDEA and must be remedied*).

Bullying may constitute a denial of a FAPE if school personnel were deliberately indifferent to, or failed to take reasonable steps, to prevent bullying that adversely affects or results in the regression of educational benefit or substantially restricts the student with a disability from accessing educational opportunities. *T.K. and S.K. ex rel K.K. v. New York City Dept. of Educ.*, 779 F. Supp. 2d 289, 316 (S.D. N.Y. 2011) (*school district's motion to dismiss denied where allegations that 12 year old with learning disabilities was denied a FAPE due to persistent bullying by peers – student was ostracized, pushed, peers refused to touch items student touched, and student was ridiculed daily*).

The bullying need not be outrageous but it must be sufficiently severe, persistent, or pervasive that it creates a hostile environment for the student with a disability. It is not necessary that Petitioner show the bullying prevented all opportunity for an appropriate education but only that it is likely to affect the opportunity of the student for an appropriate education. *T.K. v. New York City Dept. of Ed.*, 779 F. Supp. 2d at 317.

Student Was a Victim of Bullying

The facts in this case support the conclusion that Student was the victim of persistent bullying during the 2012-2013 *** grade year primarily from a *** student who made fun of Student's *** and engaged in some physical acts such as *** at Student, ***, and, ***. The primary bully was supported by 3 other *** students who either joined in or were bystanders and did nothing or little to stop the behavior. While these acts were not necessarily "outrageous" they were sufficiently persistent to create a hostile environment for Student – especially in the *** grade *** class. The teasing was unwanted, somewhat aggressive, occurred repeatedly, and had the potential to continue over time.

School district staff did not see an imbalance in power between Student and Student's peers and so did not identify Student as a bullying victim. In their view Student was able to "stand up for Student's self." However, the evidence established that Student was sensitive about Student's *** and prone to over exaggerate and react to minor incidents. The evidence showed that by the middle of *** grade (following the counseling evaluation) the school district was well aware that Student was anxious and worried about school. While it is also true that Student could react angrily and engage in verbal attacks the evidence showed that this behavior was a coping mechanism Student used when Student felt insulted or teased. *** is also a factor that supports Student's perceived imbalance of power. In addition, Student had a *** disability – the *** students did not.

The imbalance in power can be either real or perceived. The record shows Student perceived an imbalance of power between Student's self and Student X (in particular) and *** friends. Therefore, Student proved Student was a victim of bullying. *See, Shore Regional High Sch. Bd. of Educ. v. P.S., 381 F. 3d at 195-196 (Appellate Court affirmed District Court's finding student was bullied when peers used insulting names, threw rocks, hit student with a padlock, moved away when student sat at the lunch table, and told other students not to socialize with student); GAO, Report on Bullying (June 2012), supra.*

Were School Staff Deliberately Indifferent to or Fail to Take Reasonable Steps?

The *** teacher where some of the teasing took place mis-read the interactions between Student and the primary bully and *** friends. The *** teacher minimized and disregarded the seriousness of the behavior. Instead, the teacher viewed the interactions as typical "back and forth" bantering between ***. The *** teacher did not understand that Student's loud verbal interactions with the *** student were Student's attempts to stop the teasing. However, the evidence also shows that the daily teasing ceased once Student was placed into another *** class at parental request.

The school counselor was apparently unaware of the persistent nature of the bullying until Student finally broke down in tears in the counselor's office at the end of the *** grade year. Although Student did not use the word "bullying" in Student's counseling sessions the LSSP knew that peer relations were an issue for Student. The evidence also shows that Student's own maladaptive thinking contributed to these problems. Using cognitive therapy the LSSP worked with Student to understand how the emotions and behavior of others affected Student's own behavior. They worked on strategies for coping with interpersonal conflicts in counseling sessions.

A school district must take prompt and appropriate action in responding to bullying. It must investigate when the bullying is reported and take appropriate steps to prevent it in the future. This duty exists even if the complained of conduct is covered by an anti-bullying policy and regardless of whether the student victim complained, asked the school district to take action, or identified the bullying as a form of discrimination. *T.K. v. New York City Dept. of Ed., 779 F. Supp. 2d at 317.*

The preponderance of the evidence showed the school district was on notice that Student felt picked on and teased and had some issues with peer relations as far back as *** grade and certainly through *** and ***

grades. Previous litigation resulted in a settlement agreement under which the school district implemented an anti-bullying program. The school district's efforts in that regard are to be commended and should continue.

Unfortunately, some school district staff were somewhat condescending and dismissive in addressing parental concerns that Student was a victim of bullying. Parental demands and conflicts contributed to a lack of understanding and effective communication between the parties. The law, and the school district's own anti-bullying program, do not require a student to use the word "bullying" in order to trigger the school district's duty where, as here, the student has been subjected to teasing and harassment.

However, I do not find that the school district was deliberately indifferent or failed to take reasonable steps to prevent the bullying. The school district may not have characterized Student's issues as "bullying" but the evidence shows that it was responsive to Student's needs and complaints. Student's *** class was changed and the benefits were noticeable. Student was provided with appropriate counseling services aimed at assisting Student to reframe and rethink the way Student viewed interactions with others and learn new ways to cope with Student's feelings. The campus administration encouraged Student to report any bullying so that they could investigate and follow up.

The counseling IEP was adjusted mid-year to address Student's need to generalize the coping skills learned in counseling. The school district met its obligation under the *** grade Resolution Agreement and implemented the Olweus anti-bullying program in *** grade. School district administrators conferenced with Student and Student's mother in response to their complaints and concerns. Finally, the Superintendent took appropriate corrective action in resolving the parental grievance by making staff changes and implementing additional training for all staff, (including substitute teachers), in the use of ***, conflict resolution, and on the school district's bullying program.

Did the Bullying Adversely Affect Student's Educational Benefit or Substantially Restrict Student's Access to Educational Opportunity?

The evidence establishes that Student made academic progress and improved Student's *** in *** grade. Student also made progress in counseling by identifying coping strategies but continued to need to generalize those skills beyond the counseling sessions. There is some evidence that Student planned all along to transfer to the *** school district in order ***. The evidence shows Student's ability to interact with peers improved – there's no dispute that Student had friends at school and participated in the classroom.

The evidence showed that Student was unable to finish ***, required ***, *** if Student was required to return to the school district, and ultimately transferred to *** school district. The record is unclear as to whether a specific incident contributed to Student's meltdown in the counselor's office late in the *** grade year or whether it was simply the accumulation of stress (by trying to "act tough" and avoid talking about being teased). Therefore, the preponderance of the evidence supports the reasonable inference that Student made progress but also continued to struggle emotionally and behaviorally in *** grade.

Conclusion as the Bullying Issue

Although Student met Student's burden of proving Student was indeed a victim of bullying Student did not meet Student's burden of proving that the school district was deliberately indifferent or failed to take reasonable steps in response to Student's problems or that the bullying adversely affected Student's ability to gain an educational benefit or substantially restricted Student's access to educational opportunity. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *T.K. v. New York City Dept. of Ed.*, *supra*. I agree with the school district's argument that much of Student's proof related to complaints that arose during *** and *** grades – outside the limitations period and resolved by the prior litigation. 34 C.F.R. §§ 300.507 (a) (2); 300.510 (ad) (d); 19 Tex.

Admin. Code § 89.1151 (c).

While there is some evidence Student continued to exhibit emotional, social and/or behavioral needs in *** grade the preponderance of the evidence established that Student received the requisite meaningful educational benefit from Student’s educational program. Student made academic progress. Student improved Student’s *** and made progress on Student’s counseling IEP with regard to peer relations and conflict resolution. The fact that Student continued to demonstrate some counseling needs does not lead to the conclusion that Student received no meaningful educational benefit – the evidence showed that the benefit was more than merely trivial. *Bd. of Ed. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 201-203(1982); Polk v. Cent. Susquehanna Int. Unit 16, 853 F. 2d 171, 180(3d Cir. 1988).*

Transition Plan

Beginning no later than when a student with a disability turns age 16 (or younger if appropriate) the student’s IEP must be updated annually and include appropriate measureable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and (where appropriate) independent living skills. The IEP must also include the transition services needed to assist the student in reaching those goals. *34 C.F.R. § 300.320 (b)(1)(2).*

Transition services are a coordinated set of activities designed within a results-oriented process, focused on improving the academic and functional achievement of the student to facilitate the student’s movement from school to post-school activities, including post-secondary education and independent living. *34 C.F.R. § 300.43 (a)(1).*

Transition services must be based on the student’s individual needs, taking into account the student’s strengths, preferences, and interests, and include instruction, related services, community experiences, development of employment and other post-school adult living objectives, and, if appropriate, acquisition of daily living skills and a functional vocational evaluation. *34 C.F.R. § 300.43 (a)(2).* Transition services may be special education as specially designed instruction or related services. *34 C.F.R. § 300.43 (b).*

Under Texas law the ARD Committee must consider transition needs and/or services in the development of the IEP for each student with a disability prior to the date the student turns age 16 (or earlier if the ARD Committee determines the need to do so). This duty includes: consideration of student involvement in transition to life outside the public school system, parental involvement in the student’s transition, postsecondary education options, a functional vocational evaluation, employment goals and objectives, age-appropriate instructional environments, independent living goals and objectives, and, referral to a governmental agency for services. *19. Tex. Admin. Code § 89.1055 (g)(1)-(9).*

The evidence showed the ARD Committee considered Student’s transition needs and/or services in developing Student’s IEP at Student’s annual ARD in January 2013 of Student’s *** grade year. At the time of the ARD Student was *** years old but it made sense to consider Student’s transition needs in anticipation of Student’s ***.

Student expressed an interest in a *** career and attending a four year college or university. Student’s competencies were assessed by the LSSP based upon teacher reports. This information was noted in the Transition Supplement -- a component of Student’s IEP. The assessment showed Student was successfully integrated into Student’s community, able to transfer skills beyond the classroom and demonstrated independent living and employability skills. The Transition Supplement noted Student would graduate high school under the “Recommended High School Program,” Student was also scheduled to meet with a Transition Specialist in Spring 2013 although the record is not clear on whether Student did so. These facts, taken

together, demonstrate the school district met its responsibilities in considering Student's transition needs as a component of Student's IEP. *34 C.F.R. § 300.320 (b)(1)(2); 19. Tex. Admin. Code § 89.1055 (g)*. Student did not meet Student's burden of proof on this issue. *Schaffer v. Weast, supra*.

Related Services

A related service is a supportive service that assists the student with a disability to benefit from special education. This includes speech therapy and counseling services. It may also include social work services. *34 C.F.R. § 300.34 (a)*.

The record conclusively demonstrates that Student was provided with appropriate counseling as a related service during the 2012-2013 school year. The counseling IEP addressed Student's self esteem, understanding how the moods and behaviors of others affected Student's own behavior, and coping skills to manage anxiety and stress. The counseling goals specifically targeted peer interactions even though the use of the term "bullying" was not specifically included. The record shows that the counseling services supported Student in managing Student's self in the *** school environment so that Student could attend class, do the work, and continue to develop more effective ways of interacting with peers and resolving conflicts. Student had friends and participated in the classroom and in athletics.

In addition, there is insufficient evidence in the record to show that Student needed social work services in order to benefit from Student's educational program. Student did not meet Student's burden of proof on this issue. *Schaffer v. Weast, supra*.

Prior Written Notice

Prior written notice is required before the school district proposes, or refuses to initiate or change, a student's identification, evaluation or placement or the provision of a FAPE. The notice must include the following:

- A description of the action proposed or refused
- An explanation of why the school district proposes or refused to take the action
- A description of each evaluation procedure, assessment, record, or report the school district used as the basis for the proposed or refused action
- A statement that the parents have protection under IDEA procedural safeguards
- Sources for parents to contact to obtain assistance in understanding IDEA notice provisions
- A description of other options the ARD Committee considered and the reasons why those options were rejected and,
- A description of other factors relevant to the school district's proposal or refusal.

34 C.F.R. § 300.503.

However, the IDEA does not require the Prior Written Notice be provided in any particular format or in a separate document. Prior Written Notice is required if the ARD Committee agrees to or refuses a parental proposal for a change in the student's services. Providing such notice following the ARD meeting where the change is proposed (or refused) allows the parent time to fully consider the change and determine whether the parent has additional suggestions, concerns or questions. *Letter to Lieberman, 52 IDELR 18 (OSEP 2008)*.

The Prior Written Notice must be provided within a reasonable amount of time before the proposed or refused change is implemented. *Ohio Dept. of Educ., 62 IDELR 250 (SEA Ohio 2013); Letter to Atkins-Lieberman, 56 IDELR 141 (OSEP 2010); See also, Letter to Chandler, 59 IDELR 110 (OSEP 2012) (maintaining student's placement in an educational program that is substantially and materially similar to the former placement is not*

a change in placement that triggered prior written notice.)

The evidence showed that whenever the school district proposed to initiate or change an aspect of Student's IEP (and thus the provision of a FAPE) all the elements required for Prior Written Notice were included in the ARD documents. The IDEA does not prohibit a school district from using the IEP as a component of Prior Written Notice as long as the document the parent receives meets the required regulatory elements. 34 C.F.R. § 300.503; *Letter to Lieberman*, 52 IDELR 18 (OSEP 2008); 71 Fed. Reg. 46691. Notice of Procedural Rights, ARD meeting minutes, educational records, and, copies of the IEP may meet Prior Written Notice requirements. *K.A. v. Fulton Cnty. Sch. Dist.*, 2012 U.S. Dist. LEXIS 136327, 59 IDELR 248 (N.D. Ga. 2012), *aff'd* *K.A. v. Fulton Cnty. Sch. Dist.*, 2013 U.S. App. LEXIS 25327, 62 IDELR 161 (11th Cir. 2013). See also, *Ohio Educ. Dept.*, 62 IDELR 250 (SEA Ohio 2013)(when IEP form did not include all required elements of prior written notice parent signature on the form indicating agreement was not sufficient).

A copy of the January 24, 2013 ARD documents was sent to Student's mother on January 28, 2013 – four days later. This is certainly a reasonable amount of time under the law. Student's mother personally attended the May 22, 2013 ARD but the record is silent as to whether those documents were provided to the parent at the conclusion of the meeting, sometime later, or not at all. In that regard Petitioner did not meet Petitioner's burden of proof on this element of the prior written notice claim. *Shaffer v. Weast*, *supra*.

Even if all the elements of Prior Written Notice were not met the evidence showed Student's mother was an active, vocal member of ARD meetings and was an advocate for her child. The parent made proposals that were often agreed to. Therefore, any procedural errors related to prior written notice did not significantly impede the parent's opportunity to participate in educational decision-making. 34 C.F.R. § 300.513 (a) (2) (ii).

Conclusions of Law

1. Although Petitioner was bullied during the 2012-2013 school year the Respondent school district took reasonable steps and was not deliberately indifferent in addressing Petitioner's needs. The bullying did not adversely affect Petitioner's access to or substantially restrict Petitioner's educational opportunity; Petitioner derived a meaningful educational benefit from the educational program and therefore the Respondent school district provided Petitioner with a free, appropriate public education within the meaning of the IDEA. *T.K. and S.K. v. New York City Dept. of Educ.*, 779 F. Supp 2d 289 (S.D. N.Y. 2011); *Government Accountability Officer Report on Bullying* (June 2012); 34 C.F.R. § 300.34.
2. Petitioner did not meet the burden of proof that the school district failed to provide Petitioner with a meaningful transition plan as a component of Petitioner's Individual Education Plan for 2012-2013 school year. A Transition Plan Supplement as a component of Petitioner's IEP and the discussion of transition needs during an ARD meeting met IDEA requirements. *Shaffer v. Weast*, 546 U.S. 49, 62 (2005); 34 C.F.R. §§ 300.43; 300.320 (a) (b).
3. Petitioner did not meet the burden of proof that the school district failed to provide Petitioner with appropriate related services such as counseling and social work services. The Respondent school district did provide appropriate counseling services during 2012-2013 school year. Petitioner did not meet the burden of proving Student needed social work services in order to receive a free, appropriate public education. *Shaffer v. Weast*, *supra*; 34 C.F.R. § 300.34.

4. The Respondent school district provided Petitioner's parent with the requisite Prior Written Notice in a reasonable amount of time following ARD meetings in January and May 2013 of Petitioner's *** grade year. Even if the school district made a procedural error in failing to meet all required regulatory elements for Prior Written Notice Petitioner did not meet the burden of proving the procedural error significantly impeded parental opportunity to participate in educational decision-making regarding a FAPE for Petitioner. *Shaffer v. Weast, supra; K.A. v. Fulton Cnty. Sch. Dist., 2012 U.S. Dist. LEXIS 136327, 59 IDELR 248 (N.D. Ga. 2012), aff'd K.A. v. Fulton Cnty. Sch. Dist., 2013 U.S. App. LEXIS 25327, 62 IDELR 161 (11th Cir.2013); 34 C.F.R. §§ 300.503; 300.513(a) (2) (ii).*

ORDERS

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

SIGNED the 10th day of July 2014

Ann Vevier Lockwood
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. *34 C.F.R. § 300.516; 19 Tex. Admin. Code Sec. 89.1185 (n); Tex. Gov't Code, Sec. 2001.144(a) (b).*