

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
ALAMO HEIGHTS	§	
INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner brings this appeal, pursuant to the Individuals with Disabilities Education Improvement Act 20 U.S.C. § 1400 et seq., (hereinafter referred to as "IDEIA"), against Respondent (hereinafter referred to as "Respondent" or "School District"). Petitioner (hereinafter referred to as "Petitioner" or "Student") filed a written request for a due process hearing which was received by the Texas Education Agency on November 24, 2009. Petitioner was represented by Attorney Yvonnilda Muniz of Austin, Texas; Attorney Susan Feller Heiligenthal of Austin, Texas; and Parents ***. Respondent was represented by Attorney Robert A. Schulman, Attorney Joseph E. Hoffer, and Attorney Julie Cuplin of San Antonio, Texas. Also present for Respondent was Special Education Director Ms. Kris Holliday. A due process hearing was held on Monday and Tuesday, March 8 and 9, 2010, in San Antonio, Texas. The parties agreed to file post-hearing briefs on or before April 6, 2010.

Petitioner alleges that Student is a ***-year old attending *** Grade in School District. Petitioner has been receiving special education services as a student who has Autism, Mental Retardation, and Speech Impairment.

1. Petitioner claims that Respondent failed to include Student in Student's general education setting as determined by the ARD Committee.
2. Petitioner states that Respondent failed to assess Student in all areas of suspected disabilities, specifically any vision issues.
3. Petitioner asserts that Respondent predetermined decisions prior to convening Admissions, Review, and Dismissal ("ARD") meetings, denying Petitioner's rights to parental participation in educational decisions made regarding Student.
4. Petitioner contends that Respondent denied Petitioner's rights to have their concerns about Student's education addressed at several ARD Committee meetings.

5. Petitioner claims Respondent created obstacles for Student's parents to bring their concerns about Student's education to ARD Committee meetings, refusing to address their parental concerns on a consistent basis.
6. Petitioner states that Respondent adopted paper work for Individualized Education Program ("IEP") goals and objectives and progress reports that is confusing to Parent to ascertain whether Student is making progress or not.
7. Petitioner contends that Respondent failed to appropriately address Student's *** on a timely basis resulting in regression.
8. Petitioner asserts that Respondent limited ARD meetings to 1 hour to limit Parents' right to participate in making educational decisions on Student's behalf.
9. Petitioner claims that Respondent failed to collaborate with Parents at ARD Committee meetings.
10. Petitioner contends that Respondent failed to develop an appropriate Individual Education Plan, including IEP goals and objectives and a Behavior Intervention Plan that are measurable and include mastery criteria levels, that was uniquely tailored to meet Petitioner's individual needs.
11. Petitioner maintains that Respondent failed to conduct a functional behavioral assessment prior to drafting a Behavior Intervention Plan.
12. Petitioner states that Respondent inappropriately determined that Student was able to follow the Student Code of Conduct and failed to provide Student's parents with prior written notice when denying their request for additional speech and OT services during the 2009 Extended School Year ("ESY").
13. Petitioner claims that Respondent failed to timely consider Parent's request for Independent Educational Evaluations ("IEE") and for a Full Individual Evaluation ("FIE").
14. Petitioner states that Respondent failed to timely consider the OT evaluation.
15. Petitioner states that Respondent failed to timely consider an AT evaluation.
16. Petitioner contends that Respondent failed to timely provide Parents with IEP progress reports.
17. Petitioner maintains that Respondent used vague terms such as "remainder of the school day" on the schedule of services in the ARD documentation to

indicate how much time Student spends in a general education setting and the special education setting.

18. Petitioner states that Respondent requested that Parent's buy the *** system to address Student's *** issues instead of supplying the recommended supplementary aids.
19. Petitioner contends that Respondent destroyed educational records, including electronic mail, pertaining to Student.
20. Petitioner states that Respondent required Parents to sign the School District ISD Technological Device Lending Agreement before allowing Student to access the recommended device, despite an ARD committee determining the device was necessary for Student to receive a Free and Appropriate Education ("FAPE").
21. Petitioner claims that Respondent failed to provide Student's teachers, staff, related service providers and paraprofessional aides with appropriate training regarding Student's disability.
21. Petitioner states that Respondent failed to provide Parents copies of Student's IEP progress reports for the 2009-2010 school year on a timely basis.
22. Petitioner states that Respondent failed to discuss the Autism supplement at the ARD committees held to discuss Student's annual ARD.

As relief in this due process hearing, Petitioner requests that Respondent be ordered to do the following:

1. Provide Independent Educational Evaluations in FIE, Speech, OT, and AT.
2. Provide training for parents and teachers, staff, related providers, and paraprofessional aide on Student's AT device.
3. Provide training in Autism for District staff that work with Student this school year and next.
4. Provide training on parental rights at ARD meetings for District staff.
5. Provide independent consultation with an OT to develop a program to address Student's *** issues and monitor Student's program until Student is successful.
6. Provide compensatory services for time Student was denied participation in the regular education setting.

7. Provide compensatory services for time Student was denied access to the DynaVox because the AT evaluation was not completed.
8. Provide compensatory OT and Speech Therapy services for services denied during the 2009 summer ESY program.
9. Revise the IEP format in the ARD document to an understandable format that indicates whether a student has made progress or not.
10. Provide a certified ABA specialist to work with Student at school and at home on an extended school day.
11. Provide a vision evaluation.
12. Provide an Independent Behavioral Specialist to conduct a functional behavioral assessment and complete a Behavior Intervention Plan.
13. Require the Independent Behavior Specialist to implement the Behavior Intervention Plan in both the school and home setting.
14. Provide follow-up consultations every grading period from the Independent Behavior Specialist to both school staff and home for the remainder of the 2009-2010 and 2010-2011 school years.
15. Provide parent training.
16. Provide In Home Training on the AT device.
17. Provide In Home Training on speech strategies used at school.
18. Provide In Home Training for Student's ***.
19. Provide a summer educational program for 4 weeks, 4 days a week, to address Student's academic speech, and if needed, OT deficits during the 2010 summer. Such program will be in addition to any ESY services determined necessary by Student's ARD committee.
20. Void the School Districts ISD Technological Device Lending Agreement that Parents were forced to sign so Student could have access to DynaVox.
21. Provide any other compensation the Hearing Officer sees fit to award.

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law.

II. Findings of Fact

1. Student is a *** year old student who resides within the School District.
2. The School District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing Student a free appropriate public education in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. § 1400, *et seq.*, and the rules and regulations promulgated pursuant to IDEIA.
3. Student is eligible for special education placement, programs and services as a student who has Autism (“AI”), Mental Retardation (“MR”) and a Speech Impairment (“SI”).
4. An Individual Education Plan was developed in March, 2007. The IEP included new Annual Measurable Goals for Student progressing into the *** Grade. Student as given the goals to “demonstrate improved language skills by mastering 7 out of 9 benchmarks,” including:
 - Attending to the speaker.
 - Using gestures or vocalization to gain attention.
 - Responding to “no” by stopping or withdrawing from an activity.
 - Participating in simple games (***, etc.)
 - Imitating vocalizations or non-speech sounds produced by others through oral motor activities (noted: this skill is inconsistent and requires queuing at the time of this IEP).
 - Showing interest in looking at pictures.
 - Recognizing familiar objects by pointing or reaching upon request.
 - Indicating wants/needs with vocalizations, gestures, signs, or by pointing/reaching/looking at objects/pictures.
 - Producing the names of familiar objects and/or activities.

Student’s teacher noted that in working to “demonstrate improved language skills,” Student was exhibiting very good progress but was still experiencing difficulty in the areas of imitation of vocalizations and producing the names of familiar objects.

5. In the March, 2007 IEP, Student’s teacher noted that in working to “demonstrate improved speech intelligibility (Articulation) skills,” Student was making very limited progress, and was not responding to the attempts to get Student to produce bilabial sounds. Student was not receptive to practicing or producing the same syllables in a one-on-one setting. Teacher noted that Student “does not seem ready to work on these objectives and the sounds and syllables have no meaning to [Student].”

6. The March, 2007 IEP Annual Measurable Goal for Reading included Expanding Vocabulary. The criteria for vocabulary expansion were:

1. Student will look at the new vocabulary word when it is first presented and vocalize an approximation of the word.

2. Student will touch and vocalize the new vocabulary word when it is presented as a choice of the two.
3. Student will touch and vocalize the new vocabulary word 2 of 3 opportunities during the story.

It was noted in the IEP that satisfactory progress was being made towards these goals.

7. The March, 2007 IEP included an Annual Measurable Goal for Writing. Benchmarks included Spelling Words and Applying Conventions of Spelling, with criteria involving:

- Student putting letters in the correct order to spell the word.
- Student will write the word.
- Student will spell the word correctly.
- Student will copy the capital letters in the boxes provided to spell the word using the model given.
- Student will write the letters as the teacher dictates them.
- Student will write 70% of the letters correct.

It was noted in the IEP that Student requires improvement in order to meet these goals at the time of the IEP.

8. In the March, 2007 IEP, Student's Teacher notes that that Student continues to be eligible for services as a student has as visual impairment that interferes with Student's educational progress. Teacher noted that a current report from an eyes specialist has been requested.

9. The March, 2007 IEP included an Annual Measurable Goal to "improve Self Help skills by master 4 out of 5 benchmarks [...] utilizing functional age appropriate activities designed to promote normalization and participation in the general curriculum and/or classroom." One of the benchmarks was for Student to "****." Student's teacher noted that Student had no issues at school, that Student *** without adult supervision, but came to school with ***.

10. The March, 2007 IEP included an Annual Measurable Goal to "improve Self Help skills by master 4 out of 5 benchmarks [...] utilizing functional age appropriate activities designed to promote normalization and participation in the general curriculum and/or classroom." Benchmarks included were ***. Student demonstrated progress in all benchmarks.

11. An IEP was developed during a February, 2008 ARD meeting. The IEP included an Annual Measurable Goal for Improved Language Skills that included the following benchmarks:

- Student will develop language/communication skills by using a combination of pictures, gestures, words, word approximations to:
 - Initiate requests for desired food, drink, activity, toy, etc. in a variety of settings.

- Make requests using a simple sentence structure.
- Expand sentence structure to include attributes of color, number, and size.
- Participate in age appropriate songs and vocal play using pictures, words, gestures.
- Increase vocabulary to include a variety of nouns, verbs, and adjectives, using objects and pictures.

Student exhibited progress in all goals except to “expand sentence structure to include attributes of ***,” in which no skill was observed.

12. A Full and Individual Evaluation (“FIE”) was administered to Student on September 20, 2007. The FIE included observations in a medical evaluation by Student’s Doctor, a developmental pediatrician. Doctor noted that Student ***. A report from a physical therapist (PT) from [School District] (2-08-05) indicated that [Student] received a diagnosis from [Student’s Doctor], developmental pediatrician, of global developmental delays, mental retardation with secondary problems of aphasia and developmental coordination disorder.

13. A Functional Vision Evaluation was administered to Student on March 28, 2008. In the evaluation, the evaluator noted that Student does not meet eligibility criteria for Visually Impaired students as defined by the Texas State Board of Education. (Resp. Ex. 16, Pg. 1)

14. An IEP was developed during an ARD meeting convened in April, 2008. The IEP the Research Based Classroom Interventions/Accommodations that identified the following learning deficits: cognitive ability/intelligence; nonverbal (visual/motor); developmental (pre-academic); reading; writing; skills/behavior; health/physical needs; verbal (listening, speaking); processing speed (slow); and functional (self-help) math.

15. The April, 2008 IEP included an Annual Measurable Goal for Math that included the following benchmarks:

- Match numbers ***.
- Select numbers ***.
- Name numbers ***.
- Write numbers as dictated ***.
- Count objects to ***.
- Create additional problems with concrete objects.
- Identify, extend, and create simple patterns of concrete objects.
- Match an object in a specified position: over, under, above, below.
- Select an object in a specified position: over, under, above, below.
- Name an object in a specified position: over, under, above, below.

The IEP noted that Student either exhibited no skills in the above referenced goals (noted by a “-2” marking) or skill was partially or rarely observed (noted by a “-1” marking) on all listed goals.

16. The April, 2008 IEP included an IEP Supplement for Students with Autism. The Supplement determined that the following services were needed: extended educational

programming, daily schedules reflecting minimal unstructured time and active engagement in learning activities; in-home and community-based training; positive behavior support strategies; futures planning; parent/family training and support provided by qualified personnel with experience in Autism Spectrum Disorder; suitable staff to student ratio; communications interventions; social skills supports and strategies; and professional educator/staff support(training).

17. An IEP was developed during an ARD meeting that was convened in May, 2008. The IEP included Annual Measurable Goals for Student in Self Help, Math, Reading, and Writing Skills. Under the Self-Help Annual Measurable Goal, it was noted that Student ***.

18. The May, 2008 IEP included the Annual Measurable Goals for Reading. Under the benchmarks, it was noted that in Matching, Selecting, and Naming lower case letters, Student had not been able to say the names of the letters.

19. According the May, 2008 ARD documents under the Annual Measurable Goals for Reading, Student has been using a voice output device. The IEP stated that Student is using a sight word program, and Student has acquired the skill of following the printed word as the teacher reads sentences in the sight word program. Further, using a voice output device, Student can read phrases and sentences and match them to the picture. Under the benchmarks, Student is also now able to receptively identify nouns and action pictures, and has acquired the skill to match a picture to the noun or verb.

20. According to the May, 2008 IEP, under the Annual Measurable Goals for Writing, Student has acquired the skills of writing lower case letters, is gaining good progress with legibility in gaining increasing control of penmanship, is making good progress in writing messages that move (left-to-right, top-to-bottom), is making good progress on using capital letters, has acquired the skill of identifying specific words in sentences, and is doing well with copying and identifying familiar words.

21. According to the May, 2008 IEP, under the Annual Measurable Goals for Math, Student is now capable of matching all numbers from 1 to 50 using the voice output device. However student needs improvement in writing the numbers 14 to 50 as dictated. Student as also acquired the skill of counting pennies up to 14 using the token board, Velcro strip, and voice output device. Rote counting is a perquisite in creating addition problems with concrete objects.

22. According to the May, 2008 IEP, under the Annual Measurable Goals for Math, Student was given the benchmark to match, select, and name shapes. It was only noted that Student could match picture to word for a circle.

23. In the May, 2008 IEP, Student was provided with an Annual Measurable Goal to demonstrate oral motor awareness, strength, and movement for improved speech sound production. Student was given the following Educational Benchmarks to improve oral motor functions:

-Imitate 5 oral motor actions given a model and instructions, 3/5 times per session (skill is partially or rarely observed).

- Sequence 2 oral motor actions given a model and instructions, 3/5 times per session (skill is partially or rarely observed).
- Imitate 5 CV and VC syllables with 70% accuracy for 8 consecutive sessions (skill is inconsistent and requires cueing).

24. An ARD meeting was convened on the Student's behalf on December 11, 2008. The purpose of the ARD was to meet to discuss disagreement to the Amendment in Student's goals and benchmarks discussed at an ARD held on October 24, 2008. Participating in the ARD was Special Education Teacher, Administrator/Designee, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, and Parent.

25. At the December 11, 2008 ARD, the ARDC recommended that Student receive the following Supplementary Aids and Services: Modifications in General Education classroom; Special Education Consultation/Co-teacher; Related Services in General Education classroom; and Assistive Technology Device. The ARDC also recommended the following Special Education Services: Supplementary Aids and Services; Resource Classroom; and Self-contained Classroom. All services had previously been tried and provided and found to be successful by the ARDC. The ARDC also recommended that the Student be educated in the General Education classroom for part of the day, as this education setting had also been found to be successful.

26. The December 11, 2008 ARDC determined that Student would receive the following Schedule of Services: *** in the General Education with Accommodations and Special Education Support; Speech Therapy for language and oral motor for a minimum of 25 sessions for 30 minutes each; Student Support Team/ACE in language arts, mathematics, STAR training, and self help for 240 minutes daily, and Occupational Therapy in Special Education for 10 units, 15 minutes each. All services will be provided from December 11, 2008 till June, 2009.

27. At the December 11, 2008 ARD, all committee members except Parent agreed that a minimum of 40 sessions with speech/language per school year is still appropriate for Student. Parent noted that Parent does not agree with the minimum of 40 sessions recommended and Parent feels that 60 sessions is appropriate. Parent agreed to implement the proposed speech IEP goals that were discussed at the Amendment ARD on 10/24/08.

28. The December 11, 2008 ARDC discussed the opportunity for Parent to observe Speech Therapy Teacher and the speech strategies Teacher uses with Student at school. This opportunity was offered to Parent. Parent expressed at the ARD that Parent would like the parent training in the exercise to occur in home. Parent also expressed unhappiness with speech goals at the time of the ARD and with how the speech goals were written.

29. At the December 11, 2008 ARD, Parent provided a list of topics to discuss. Parent stated that Parent believed that it was inappropriate that said topics were not addressed. Parent provided these following topics for discussion:

- Review current schedule.
- Speech concerns.
- Parent training.

- Reason for 1 hour time limitation at meetings.
- Reason for inaction on requested meeting with social skills instructor.
- Basis of Student's placement in the STAR program.
- ***.
- Deteriorating conditions in Student's classroom.
- Status of the Alternative Augmentative Communications Needs Assessment done in October 2008.
- Student's boredom.
- Autism Supplement issues.
- Issues with the full evaluations made by LSSP/School Psychologist.
- Assistance with lost records.

30. Due to disagreement, Parent would not sign the December 11, 2008 ARD documents.

31. An ARD meeting was convened on the Student's behalf on May 20, 2009. The purpose of the ARD was to conduct an Annual Review of Student's special education placement. Participating in the ARD were the Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, Occupational Therapist, and Behavior Teacher.

32. The May 20, 2009 the Admissions Review Dismissal Committee ("ARDC") determined that Student would receive the following Schedule of Services: Consultation for expressive, receptive, and spontaneous issues for a minimum of 20 sessions, 1 time per week, at 15 minutes per session; Speech Therapy for expressive, receptive, and spontaneous language at a minimum of 60 sessions, 3 times per week, at 30 minutes per session; Resource Room for social skills 3 times per week, 30 minutes per session; and Student Support Team/ACE for fine motor/self help, STAR, reading, writing, and mathematics for 240 minutes daily. The ARDC also recommended use of an Assistive Technology Device.

33. At the May 20, 2009 ARD, Student's Occupational Therapist expressed concern about Student's ***. Parent requested *** and the ARDC recommended that *** should be ordered by May 29, 2009.

34. At the May 20, 2009 ARD, Student's Speech Language Pathologist noted that Student has made gains, using 3 word phrases, and is learning and building vocabulary. Student has been working on taking words and breaking them down by sounds. Student's SST Teacher reported that Student is able to match and select, copy letters, numbers, and words. Teacher also stated that Student is able to identify upper and lowercase letters, and comprehends some sight words.

35. At the May 20, 2009 ARD, Parent questioned Student's placement in the STAR program and its appropriateness, and requested updates on the *** for Student's ***. Parent also expressed concern about Student's boredom in classroom. Parent noted concern about how the STAR program could affect Student's IEPs through the 2009 year and noted extreme concern

and alarm about toileting issues at school. Parent also expressed concern with what was expressed as “deteriorating conditions” in Student’s classroom.

36. The May 20, 2009 ARD included a RED/ARD Supplement to ARD Record, for the ARD meeting which reconvened on June 4, 2009. In this record supplement, Student’s Speech Therapist reported that although Student is using the DynaVox device for academics, Teacher feels that there is value in investigating the use of several different devices for the use of spontaneous communication, beyond the DynaVox. The supplement also noted that at the May 20, 2009 ARD, Parent requested an independent speech evaluation and was given the procedures for the evaluation.

37. In the RED/ARD Supplement to the May 20, 2009 ARD, Student’s Speech Therapist reported that Student has mastered 6 out of 9 benchmarks on Student’s IEP; however Parent reported a reduction of speech skills at home.

38. In the RED/ARD Supplement to the May 20, 2009 ARD, it was reported regarding Student’s Behavior Intervention Plan (“BIP”) that Student’s interpersonal relationships are not age-appropriate, that there is some involvement in solitary pursuits if not directly supervised, that there is frustration when change is introduced to Student’s routine, and that most of Student’s autism characteristics are absence behaviors. Student’s perseveration occurs when Student is tired, bored, or confused. Positive behavior strategies used include developing replacement behaviors, coaching in appropriate social behavior, and using physical contact to make Student aware of Student’s environment.

39. The RED/ARD Supplement reported that on the OLSAT (*** Grade) Test, Student received a *** on Verbal and *** on Nonverbal, for a Total of ***. Parent expressed concern with the included FIE completed by Student’s Doctor.

40. The RED/ARD Supplement reported that on the Stanford Achievement Test administered on May 28, 2009, Student scored in the *** percentile in Word Study Skills, Word Reading, and Reading Comprehension. Student also scored in the *** percentile in Math Problem Solving and Math Procedures. Student scored in the *** percentile in Language and Spelling.

41. An ARD meeting was convened on the Student’s behalf on May 28, 2009. The purpose of the ARD was to conduct an Annual Review of Student’s special education placement and a Re-evaluation/Review of Existing Data. Participating in the ARD were Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, Occupational Therapist, and Behavior Support Therapist.

42. At the May 28, 2009 ARD, the only change made to Student’s Schedule of Services was in Student’s Support Team/ACE, which now includes fine motor/self-help, STAR reading, writing, mathematics, and pre-academics concepts at 2 hours and 50 minutes, daily. Schedule of Services will be implemented from August 24, 2009 to June, 2010.

43. At the May 28, 2009 ARD, Parent expressed some concerns about Student's Behavior Intervention Plan and requested some changes. Parent also brought up concerns about the voice output device for Student. Parent further requested a DynaVox for home use for Student throughout the summer for communication purposes and requested training on the device. Parent also requested time in the general education setting for Student, feeling that conditions in Student's classroom have deteriorated and feels that Student should have more time in the general education setting.

44. At the May 28, 2009 ARD, Student's Speech Therapist reviewed alternative augmentative communication needs assessments with the ARDC. Student's Speech Therapist reviewed voice output devices and discussed some of the trials with voice output devices with DynaVox and Tango. The ARDC requested an assistive technology evaluation.

45. An ARD meeting was convened on the Student's behalf on June 4, 2009. The purpose of the ARD was to conduct an Annual Review of Student's special education placement and a Re-evaluation/Review of Existing Data. Participating in the ARD were Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, Occupational Therapist, and Behavior Support Therapist.

46. At the June 4, 2009 ARD meeting the ARDC discussed Student's *** vision concerns, asserting that School would need an outside eye report to trigger an eye assessment. Further, the ARDC completed all agenda items and Parent wished to address further concerns. The following concerns were expressed by Parent: the one hour time limit implemented at meetings, not meeting with teacher early in the school year, Student's placement in the STAR program, the *** device and implementation, and remaining concerns about conditions in Student's classroom.

47. The June 4, 2009 ARD documents included an IEP supplement dated May 20, 2009. The supplement determined that the following services were needed: Extended Educational Programming; daily schedules reflecting minimal unstructured time; In-home and community-based training; positive behavior support strategies; futures planning; parent/family training and support; suitable staff to student ratio; communications interventions; social skills supports and strategies; professional educator/ staff support (training), specifically a General Education Teacher and Paraprofessional trained in Autism 101, as well as a Special Education Teacher and Support Teacher for consultation; and teaching strategies based on peer reviewed, research-based practices for students with Autism.

48. The June 4, 2009 IEP Supplement included the Research Based Classroom Interventions/Accommodations that identified the following learning deficits: cognitive ability/intelligence; nonverbal (visual/motor); developmental (pre-academic); reading; writing; skills/behavior; health/physical needs; verbal (listening, speaking); processing speed (slow); and functional (self-help) math.

49. The June 4, 2009 ARDC determined that the teaching strategies needed for Student would include Discrete Trial, Naturalistic Teaching, and Grouping. Structure in the

classroom would include First/Then procedure, Waiting, Finishing, Visual Schedules and Visual Supports, Augmentative Communication, and Positive Reinforcement

50. The June 4, 2009 ARD ended in disagreement between Parent and School District. Parent did not agree with Student attending Extended School Year (“ESY”), but would like more OT at ESY. Parent also expressed that Student should use a voice output device and received speech therapy at ESY.

51. The IEP developed during the June 4, 2009 ARD included an Annual Measurable Goal to improve Receptive Language. This goal included the following benchmarks to demonstrate receptive language:

- Student will put three pictures in the correct order that show a simple sequence.
- Student will point to named actions, specific people doing an action, and an adjective + noun in a simple picture book.

52. The IEP developed during the June 4, 2009 ARD included an Annual Measurable Goal to improved Expressive Language. The goal included the following benchmarks:

- Student will learn to say four new nouns per week using a voice output device, gestures, signs, and/or word approximations.
- Student will identify different action pictures using a voice output device, gestures, signs, and/or approximations.
- Student will say an action when asked “what is this person doing?” using a voice output device, gestures, signs, and/or word approximations.
- Student will tell the story of a simple sequence when give three pictures using a voice output device, gestures, signs, and/or word approximations.
- Student will say how a person feels using a voice output device, gestures, signs, and/or word approximations.
- Student will answer social questions while engaged in other activities using a voice output device, gestures, assigns, and/or word approximations.

53. The IEP developed during the June 4, 2009 ARD included an Annual Measurable Goal to improve Spontaneous Language. The goal contained the following benchmark:

- Student will label nouns, actions, noun and action word, and noun and descriptor using a voice output device, gestures, signs, and/or word approximations.

54. The IEP developed during the June 4, 2009 ARD included an Annual Measurable Goal to improve Functional Routines. Educational Benchmarks for this goal included:

- Student will adjust clothes, put on shoes, and eliminate in toilet for Restroom Use (Skill is consistent by not generalized).
- Student will follow work schedule and complete tasks independently.
- Student will follow job schedule, complete steps of the job, request or comment, and answer questions.

- Student will attend to an adult, respond to questions or directors, complete project steps, and request and respond to requests.
- Student will brush hair and brush teeth.

55. The IEP developed during the June 4, 2009 ARD included an Annual Measurable Goal to improve Pre-academic Concepts. Benchmarks included:

- Rote counting to 30 using a voice output device.
- Counting 1-15 objects using a voice output device.
- Receptive Identification of Numbers to 100.
- Expressive Identification of Numbers to 100 using a voice output device.
- Receptive Counting of Sets of Objects using a voice output device.
- Sight Word Reading and Match to Picture using a voice output device.
- Receptive Identification of Sounds.
- Reading a Simple Book.
- Coloring within Lines and Attention to Task.
- Cutting and Gluing.
- Writing from Dictation.
- Writing each letter of the alphabet when dictating.
- Gain increasing control of penmanship.
- Write messages that move.
- Use capital letters at the beginning of the sentence.
- Identify specific words in sentences.
- Form and Copy Sentences.
- Demonstrate that written words are separated by spaces.

56. An ARD meeting was convened on the Student's behalf on September 15, 2009. The purpose of the ARD was to conduct a meeting after Parent disagreed with the determinations of the June 4, 2009 ARD. Participating in the ARD were Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, Occupational Therapist, and Behavior Support Therapist.

57. At the September 15, 2009 ARD, Parent disagreed with the conclusion of the ARDC and stated that the IEPs presented for Student were appropriate.

58. The September 15, 2009 ARD report included an Occupational Therapy Progress Report regarding Student's ***. The Summary of Data stated that "there was no signification pattern of frequency in Student's ***, nor was there sustainable evidence to support a consistent period of ***. The data did indicate a consistency in being ***, averaging a total of 12 from 21 *** during the 2-week observation period. Of concern to [Therapist] is the possibility that [Student] may not be ***."

59. An ARD meeting was convened on the Student's behalf on November 13, 2009. The purpose of the ARD was to conduct a Special Review of Student's special education placement, as well as to discuss the Assistive Technology Evaluation completed since the previous ARD. Participating in the ARD were Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech

Therapist, Occupational Therapist, Behavior Support Therapist, Assistive Technology Consultant, and Parent Liaison.

60. At the November 13, 2009 ARD, Parent disagreed with several of Student's IEPs, but was willing to agree to add AT to the IEPs at the time. The ARD ended with Parent signing the lending agreement to take AT device home and have Student begin using the DynaVox device at home.

61. An IEP was administered on Student's behalf and included with the November 13, 2009 ARD. The IEP included an Annual Measurable Goal for Preacademic Concepts. The goal included the following benchmarks:

- Rote counting to 30 using a voice output device.
- Counting 1-15 objects using a voice output device.
- Receptive Identification of Numbers to 100.
- Expressive Identification of Numbers to 100 using a voice output device.
- Receptive Counting of Sets of Objects using a voice output device.
- Sight Word Reading and Match to Picture using a voice output device.
- Receptive Identification of Sounds (Student will give the correct letter when the letter sound is spoken).
- Reading a Simple Book.
- Coloring within Lines and Attention to Task.
- Cutting and Gluing.
- Writing from Dictation.
- Writing each letter of the alphabet when dictating.
- Gain increasing control of penmanship.
- Write messages that move.
- Use capital letters at the beginning of the sentence.
- Identify specific words in sentences.
- Form and Copy Sentences.
- Demonstrate that written words are separated by spaces.

It was observed that Student has acquired the lower case consonants through 'g,' and is making satisfactory progress on most benchmarks.

62. The November 13, 2009 IEP included an Annual Measurable Goal for Receptive Language that included the following Educational Benchmarks:

- Student will do two-step command after listening to teacher.
- Student will go to a location in the classroom and out of the classroom to get items.
- Student will put three pictures in the correct order to show a simple sequence.
- Student will give correct emotional picture.

- Student will point to named actions, specific people doing an action, and an adjective + noun in a simple picture book.

It was observed that Student is able to put 2 pictures in a sequence, and is making satisfactory progress on all other benchmarks.

63. The November 13, 2009 IEP included an Annual Measurable Goal for Expressive Language that included the following Educational Benchmarks:

- Student will learn to say four new nouns per week using a voice output device, gestures, signs, and/or word approximations.
- Student will identify different action pictures using a voice output device, gestures, signs, and/or approximations.
- Student will say an action when asked “what is this person doing?” using a voice output device, gestures, signs, and/or word approximations.
- Student will tell the story of a simple sequence when give three pictures using a voice output device, gestures, signs, and/or word approximations.
- Student will say how a person feels using a voice output device, gestures, signs, and/or word approximations.
- Student will answer social questions while engaged in other activities using a voice output device, gestures, assigns, and/or word approximations.

It was observed that Student is making satisfactory progress on all benchmarks.

64. The November 13, 2009 IEP included an Annual Measurable Goal for Spontaneous Language that included the following Educational Benchmark:

- Student will label nouns, actions, noun and action word, and noun and descriptor using a voice output device, gestures, signs, and/or word approximation.

65. An ARD meeting was convened on the Student’s behalf on February 5, 2010. The purpose of the ARD was to discuss issues of a Summer OT program, clarification of the PVL, and behavioral analysis. Participating in the ARD were Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, Occupational Therapist, Behavior Support Therapist, Assistive Technology Consultant, and Parent Liaison.

66. At the February 5, 2010 ARD, Parent shared some *** used for Student it the home setting. Parent requested that family have access to the *** for the upcoming summer so that Student could work on ***. Parent was disappointed that the *** was not available for home use, and indicated that Student *** difficulties could be behavioral.

67. At the February 5, 2010 ARD, Parent indicated disagreement with the current Occupational Training IEP regarding ***. Parent would prefer the *** to take a more behavioral approach, and does not believe that the *** goals are measurable.

68. A February 10, 2010 Progress Report produced on behalf of Student recorded that Student is receiving passing and/or satisfactory marks in all recorded subjects.

69. An ARD meeting was convened on the Student's behalf on February 11, 2010. The purpose of the ARD was to conduct a Special Review and meet prior to an agreement at the previous ARD in which all members were not in agreement and agreed to meet within 10 school days. Participating in the ARD were Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, Occupational Therapist, Behavior Support Therapist, Assistive Technology Consultant, and Parent Liaison. The ARD determined that Student has a primary Disability of Autism, with secondary disabilities of Mental Retardation and Speech Impairment.

70. The February 11, 2010 ARD included an IEP that had an Annual Measurable Goal for Functional Routines. The goal had the following benchmarks for Restroom Use:

- Student will adjust clothes- ***.
- Student will put on shoes.
- ***.

It was observed that Student needs physical guidance to adjust clothes, can put on adapted shoes, and sometimes ***. Student needs verbal prompt to go to the mirror to adjust clothes.

71. At the February 11, 2010 ARD, Parent expressed that OT regarding *** is still not adequate. Parent expressed that Parent would like to see measurable goals in order to assess how Student's *** IEPs are progressing.

72. The February 11, 2010 ARD ended in disagreement between Parent and the ARDC. Parent did not agree with the current IEP goals and procedures.

73. Parent testified that since Student has been using the DynaVox under Assistive Technology, Student now knows more words, is working quickly, is able to navigate through the device very well, is reading books, and that Parent is very pleased with the voice output device.

74. Student has been making progress in Student's IEPs, is learning new vocabulary on a daily basis, including nouns and verbs.

75. Under the STAR Program using the DynaVox, Student was able to count using the token board very well. However, without the DynaVox, Student's abilities in this area diminished significantly. Teacher also testified that Student is fluent with matching words, reading sentences, and comprehending sentences.

76. At the onset of enrollment in Teacher's class, Student was unable to duplicate the ability to generalize and recognize shapes and letters of the alphabet as demonstrated in Exhibit 27. Teacher stated that Student had to "acquire the skill here at school first, and once [Student] acquired that, then [Student] was able to generalize it." Teacher stated that Student was able to remaster the skills demonstrated in the video in about one or two weeks, and the need to relearn was due to Student's Autism.

77. The ARD meetings convened on behalf of the Student were conducted in a professional and appropriate manner by District personnel. To the extent that some ARD meetings became acrimonious or inefficient, they did so through no fault of Respondent.

78. Respondent advised Student's parents of their right to challenge the decision of the Student's ARDC with which they disagreed, orally at ARD meetings and in writing by providing the parents with multiple copies of their procedural rights.

79. The Student has made little, consistent progress in the *** objective of the Student's IEP. The Student has been unable to ***.

80. Student's parents never requested an independent educational evaluation ("IEE") from the District in writing, as required by District's policy.

III. Discussion

Generally

In any due process hearing, the ultimate question before a special education hearing officer is whether the student in question received a FAPE. Due process hearings typically involve many disputed fact issues and allegations of procedural violations of IDEIA, or its many implementing regulations. However, the question of whether the student received a FAPE is always the central issue in the case. The alleged procedural violations are evaluated to determine if they, individually or collectively, amounted to a denial of FAPE. IDEIA, itself, requires a procedural violation to rise to the level of a substantive violation of a FAPE. [20 U.S.C. §1415(f)(3)(E)(ii)].

The limits of special education and a FAPE have been defined by the courts. The United States Supreme Court and the Fifth Circuit Court of Appeals decisions in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982) and *Cypress Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997) read together, define a FAPE as an individualized educational intervention that provides an impaired student with a basic educational floor on which the student can make meaningful educational progress. The Fifth Circuit decision of *Houston ISD v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000) followed the holdings announced in *Michael F.* and, as particularly relevant to this case, held that a failure to receive a FAPE is not shown by a *de minimis* failure to implement *all* aspects of a student's IEP. The court concluded:

Therefore, we conclude that to prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. This approach affords local agencies some flexibility in implementing IEP's, but it still holds those agencies accountable for material failure and for providing the disabled child a

meaningful educational benefit.
supra, at. P. 349)

(See, Bobby R.,

The issues in this case will be discussed, individually following each allegation, but the bases of this decision are ultimately informed by the foregoing caselaw. This record contains many allegations and emotionally charged accusations. To the extent that each allegation raises a separate issue of FAPE it will be discussed. Certain exhibits, such as Petitioner's Exhibit 28, the recordings of the Student's ARD meetings, provide a revealing picture of the nature and legitimacy of some of the allegations. The Student's ARD meetings were adversely impacted by a failure of a key stakeholder to remain productive and consistently participate in a process that demands cooperation and consensus. The recordings of the meetings show that this was not always observed. However, the recordings also provide persuasive evidence of the most important issue: during the statutory period in question the Student's ARDC reported to each other and discussed the Student's educational progress in most of the important areas of the Student's IEP. (I listened to all 10 hours and 34 minutes of the ARD meetings.) The Student continues to struggle with ***. This is an important objective that will require continued work by the Student and the ARDC. However, I conclude that the record, as a whole, shows that the student has received a FAPE from the educational program that has been developed and implemented by the District.

Petitioner's Allegations

1. *Respondent failed to include Student in Student's general education setting as determined by the ARD Committee.*

The record does not support this allegation. The Student was education in a general education setting various portions of each school day. Because of the Student's need for intensive specialized educational techniques and curriculum, education solely in a general education setting would not provide the Student a FAPE in the least restrictive environment. The Student's ARDC developed an IEP for the Student that would allow for some variability from one school day to the next depending on the instructional needs of the Student on a given day. There was no evidence presented by Petitioner which proved that the School District's approach to the Student's education program vis-à-vis general educational inclusion was inappropriate or denied the Student a FAPE.

2. *Respondent failed to assess Student in all areas of suspected disabilities, specifically any vision issues.*

There record does not support this allegation. Respondent initially accepted the Student's Doctor's diagnosis of *** vision impairment before a subsequent District evaluation on March 28, 2008 ruled it out. Respondent performed a timely assessment of the Student and determined that the Student does not have eligible vision impairment. Respondent advised Student's parents of their right to request another assessment and even reminded the Petitioner's parents that another assessment might cause Respondent to re-visit its determination. Student's parents

declined to do so. There is no competent evidence of record that Respondent's determination about Student's eligible educational disability is inappropriate.

3. *Respondent predetermined decisions prior to convening Admissions, Review, and Dismissal ("ARD") meetings, denying Petitioner's rights to parental participation in educational decisions made regarding Student.*

The record does not support this allegation. Respondent held staffings and pre-ARD meetings before some of Student's ARD meetings. Such meetings do not violate any provision of IDEIA or its implementing regulations. [See: CFR § 300.501(b)(3) which provides, in part, "...A meeting also does not include preparatory activities that public agency personnel engage in to develop a proposal that will be discussed at a later meeting." ; and *T.P. v Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247,254 (2nd Cir. 2009)]. Moreover, Respondent discussed Student's ARD's pre-meetings on some occasions with Student's parents. Nevertheless, Student's ARD meetings appeared to be active exchanges between ARD members, including Student's parent indicative of parental participation in Student's ARD process.

4. *Respondent denied Petitioner's rights to have their concerns about Student's education addressed at several ARD Committee meetings.*

The record completely contradicts this allegation. Student's parent was a prominent member in all of Student's ARD meetings. Student's parent was allowed to raise multiple issues in all ARD meetings that were either subjected to lengthy discussion or sometimes debate, or rescheduled for a subsequent meeting. On multiple occasions the ARDC returned to issues that had been resolved, at Student's parent's urging.

5. *Respondent created obstacles for Student's parents to bring their concerns about Student's education to ARD Committee meetings, refusing to address their parental concerns on a consistent basis.*

The record does not support this allegation. Because of lengthy and sometimes acrimonious ARD meetings, Respondent began structuring subjects and issues to be discussed during ARD meetings that were convened on the Student's behalf. Moreover, the record shows that Respondent implemented a system designed to schedule parental concerns prior to each ARD meeting. However, Respondent never prohibited the raising or discussion of new issues during an ARD meeting during subsequently scheduled ARD meetings. The Respondent's practice of leaving no issue raised by the Student's parent unaddressed was the very reason for the unusually large number of ARD meetings for a given period.

6. *Respondent adopted paper work for Individualized Education Program ("IEP") goals and objectives and progress reports that is confusing to Parent to ascertain whether Student is making progress or not.*

While the clarity of Respondent's specific ARD documents formatting could be improved, it certainly allows the reader to determine the Student's educational progress. Some of the goals and objectives could be improved by a quantified element of success. However,

Respondent has provided Student's parents with ample information about the Student's educational progress in the numerous ARD meetings, REDARD meetings, information teach/parent conferences and email communications.

7. *Respondent failed to appropriately address Student's *** on timely basis resulting in regression.*

The record shows that the Student has had inconsistent success in *** at school, but not because the Respondent has failed to apply appropriate interventions. Since the Student first started in the School District, *** has been included in the Student's IEP. Student's classroom teachers have attempted to address the issues of the Student's *** during the school day and the Student's inability to communicate the need ***. Based on the Student's Parent's testimony, the Student's efforts at *** remain a challenge, even at home. While it would be inaccurate to say that the Student has made significant progress on the IEP item, I do not conclude that the failure is due to Respondent's failure to develop or implement an appropriate *** IEP. Respondent is correct in asserting that the goal of IDEIA has never been to "cure" and educational disability or guarantee a student a particular level of education or outcome. *Board of Education v. Rowley*, 458 U.S. 176, 192 (1982); *Daniel R.R. v. St. Bd. of Educ.*, 874 F.2d 1036, 1047 (5th Cir. 1989). Respondent also correctly cites *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349-50 (5th Cir. 2000) and *Clear Creek Indep. Sch. Dist. v. D.K.*, 400 F. Supp. 2d 911, 996 (S.D. Tex. 2005) for the proposition that a Student's lack of progress on a single objective in an overall IEP with multiple goals and objectives is not a denial of a FAPE.

8. *Respondent limited ARD meetings to 1 hour to limit Parents' right to participate in making educational decisions on Student's behalf.*

Based on my review of the taped ARD meetings admitted to the record in this hearing, I find this allegation to be without merit. Student's Parent has too frequently used ARD meetings, meant to address the Student's IEP, as a forum to be needlessly combative, insulting, and unproductive. Moreover, Student's Parent's practice of delaying a decision to agree or disagree following a meeting and then raising new issues at subsequently reconvened meetings, has interfered with the effectiveness and efficiency of the Student's ARD process. This practice by the Student's parent has specifically delayed ARDC action on educational decisions and multiplied the number of ARD meeting. Respondent's attempts to organize, focus, and direct the important issues of Student's educational program seem to be a warranted step, meant to address the need for productive ARD decision-making.

9. *Respondent failed to collaborate with Parents at ARD Committee meetings.*

As addressed in previous discussion, I find this allegation to be without merit. Recordings of the ARD meetings indicate that Respondent ARDC members have always attempted to collaborate with the Student's Parent during the Student's ARD meetings.

10. *Respondent failed to develop an appropriate Individual Education Plan, including IEP goals and objectives and a Behavior Intervention Plan that are measurable and include mastery criteria levels, that was uniquely tailored to meet Petitioner's individual needs.*

The Student's IEP goals and objective do appear to be tailored to meet the Student's individual needs. The goals and objectives are in need of refinement so that Student's failure to progress can be quantified. However, this deficiency in the goals and objectives has not prevented the Student from making significant educational progress.

The Student's classroom behavior does not appear to warrant the development of a BIP *per se*. To the extent that the Respondent should incorporate behavioral interventions into the Student's IEP to maximize the Student's engagement in the classroom activities, the record shows that Respondent has developed and implemented such appropriate positive behavioral interventions and behavioral strategies. [See 19 TAC §§ 89.1040 (c) (1); 89.1055 (e) (4) (A)-(B)]

11. *Respondent failed to conduct a functional behavioral assessment prior to drafting a Behavior Intervention Plan.*

Because the Student's behavior does not warrant a formal BIP, the conduct of a functional behavioral assessment is unnecessary.

12. *Respondent inappropriately determined that Student was able to follow the Student Code of Conduct and failed to provide Student's parents with prior written notice when denying their request for additional speech and OT services during the 2009 Extended School Year ("ESY").*

Respondent inappropriately determined that the Student was able to follow the Student's Code of Conduct. The probative evidence of record indicates that the Student either does not understand the Student Code of Conduct, or is indifferent to it. Even considering the foregoing, this error in Respondent's determination has not resulted in a denial of a FAPE to the Student.

13. *Respondent failed to timely consider Parent's request for Independent Educational Evaluations ("IEE") and for a Full Individual Evaluation ("FIE").*

The record shows that there was significant confusion about the facts surrounding Student's parent's request for an IEE. Student's parent generally challenged the "legality" of the District's September 28, 2007 FIE of the Student. The District attempted to determine the specifics of Student's parent's objects, but Student's parent was not forthcoming. When Student's parent reprised general concerns with the FIE at subsequent ARD meetings (December 11, 2008; May 20, 2009; and May 28; 2009) the Respondent advised the Parent that a request for an IEE must be in writing. No such written request was ever made to the District. Therefore, there was no specific trigger to ensure that the parents received an IEE.

14. *Respondent failed to timely consider the OT evaluation.*

The record does not support this allegation. An OT report was prepared during the summer of 2009 during the Student's ESY. The Student's ARDC reviewed the report during

the September 15, 2009 ARD and incorporated the OT report's findings in the Student's educational program for the fall of the current school year.

15. *Respondent failed to timely consider an AT evaluation.*

The record in this case was confused by the semantical differenced between an "Assistive Technology Evaluation" and an "Augmentative Communication Evaluation." Obviously, assistive technology may be applied to address disabled student's educational needs. An augmentative communication device or technology is assistive technology *for communication*. Because the Student only needs assistive technology for communication, the two terms are functionally synonymous, for this case.

The record shows that Respondent performed an AT Evaluation for communication timely, in October, 2008 and following the May 20, 2009 ARD meeting. During that time period the issue of Student's access to the various AT devices "GoTalk" or "DynaVox" seems to be as much a function of the Student's growth in communication skills and need for different level AT devices at different times in the Student's development, as much as the lack of ready access to the more advanced device. Whatever delay or dubious releases that the Respondent may have sought from Student's parents before the Student was allowed to use the DynaVox, the Student has made substantial educational progress in communication. Of this, the parties seem to be in agreement. In fact, the very fact that the Student went from using the GoTalk device to the DynaVox is evidence of educational progress. Therefore, the Student has received a FAPE from the appropriate AT initiative.

16. *Respondent failed to timely provide Parents with IEP progress reports.*

The record does not support this allegation in any relevant way. There may or may not have been a failure of one or more of the Student's teachers to provide a particular progress report document to the Student's parents. However, 22 ARD meetings, multiple pre-ARD conferences, and nearly continual conflict about some aspect of the Student's educational program or another make this allegation seem superfluous.

17. *Respondent used vague terms such as "remainder of the school day" on the schedule of services in the ARD documentation to indicate how much time Student spends in a general education setting and the special education setting.*

Respondent's use of "remainder of the school day" is vague and should be amended so that the Student's instructional time in general education can be determined as accurately as possible. The record provides some justification for the vagueness, in view of the variability of the Student's needs on any given school day. Nevertheless, this limitation in the Student's IEP does not constitute a denial of a FAPE.

18. *Respondent requested that Parent's buy the *** system to address Student's *** issues instead of supplying the recommended supplementary aids.*

This allegation is more of a statement than a clearly enunciated IDEIA issue. However, the implication is that the District failed to provide an appropriate AT device as is its obligation. The record is not so clear on this point. Apparently the *** system or its successor device is one of several methodologies to assist the Respondent in implementing the Student's *** IEP. There is some confusion about when or if such a system was ever incorporated into the Student's IEP. However, this allegation, even if true, does not constitute a denial of FAPE.

19. *Respondent destroyed educational records, including electronic mail, pertaining to Student.*

This allegation is not stated as a violation of the Student's rights under IDEIA. As such, it is not an appropriate matter for a special education hearing officer to verify or address.

20. *Respondent required Parents to sign the School District ISD Technological Device Lending Agreement before allowing Student to access the recommended device, despite an ARD committee determining the device was necessary for Student to receive a Free and Appropriate Education ("FAPE").*

This issue was addressed in allegation number 15. However inappropriate it may have been for the District to shift the risk of loss/costs of a necessary educational device to the Student's parents; the attempt alone, did not result in a denial of FAPE for the Student.

21. *Respondent failed to provide Student's teachers, staff, related service providers and paraprofessional aides with appropriate training regarding Student's disability.*

The record does not show that the District's training of Student's teachers, staff and service providers resulted in a denial of FAPE for the Student.

22. *Respondent failed to provide Parents copies of Student's IEP progress reports for the 2009-2010 school year on a timely basis.*

This issue is addressed in allegation number 16.

23. *Respondent failed to discuss the Autism supplement at the ARD committees held to discuss Student's annual ARD.*

The record does not support this allegation. The Autism supplement was specifically discussed at the Student's May 28, 2009 ARD meeting.

IV. Conclusions of Law

1. Petitioner is a student in School District who is eligible for special education services as a Student who has Autism, Mental Retardation and Speech Impairment. 20 U.S.C. §1401; 34 CFR §300.8; 19 TAC §89.1040.

2. Respondent has a responsibility to provide Student with a free appropriate public education. 20 U.S.C. §1412; 34 CFR §300.17; 19 TAC § 89.1001.

3. Student made educational progress and obtained a meaningful educational benefit from the IEP which was implemented by the Respondent. *Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 US 176 (1982); *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

4. Petitioner failed to demonstrate, through a preponderance of the evidence that Respondent failed to provide Petitioner with a free appropriate public education. *Michael F. supra.* p. 252.

V. Order

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is DENIED.

SIGNED in Austin, Texas this 12th day of April, 2010.

Stephen P. Webb
Special Education Hearing Officer

DOCKET NO. 070-SE-1109

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER FOR THE
	§	
INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether the School District failed to provide autistic student with appropriate behavioral interventions and support services, denying Student a FAPE.

Federal Citation: 20 U.S.C.A. § 1414; *Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Daniel R.R. v. State Board of Education*, 874 F.2d 1036 (5th Cir. 1989); *Cypress-Fairbanks Indep. School Dist. v. Michael F.*, 118 F.3d 245, 258 (5th Cir.-1997); 34 CFR §§ 300.324; 300.305.

Texas Citation: 19 TAC §§ 89.1050, 89.1055; *Tatro v. State of Texas*, 625 F.2d 557 (5th Cir. -1980).

Held: For the Respondent. School has provided ample information and evidence on the Student's educational progress in the numerous ARD meetings, REDARD meetings, information on teacher/parent conferences and email communications, demonstrating proper utilization of IEP goals and benchmarks in providing Student with a FAPE.

Issue: Whether the School District predetermined decisions prior to convening Admission, Review, and Dismissal ("ARD") meetings, deny Petitioner's rights to parental participation in educational decisions made regarding Student.

Federal Citation: CFR § 300.501(b)(3); *T.P. v Mamaroneck Union Free Sch. Dist.*, 554 F.3d 247,254 (2nd Cir. 2009)].

Held: For the Respondent. While School District often did hold meetings prior to scheduled ARD meetings, such meetings do not violate any provision of IDEIA or its implementing regulations. Moreover, Student's ARD meetings appeared to be active exchanges between ARD members, including Student's parent indicative of parental participation in Student's ARD process

Issue: Whether the School District failed to adopt clear and easily understood paperwork for the Individualized Education Program ("IEP") goals about whether Student is making progress or not.

Texas Citation: 19 TAC §§ 89.1040 (c)(1); 89.1055 (e)(4) (A)-(B)

Held: For the Respondent. While the clarity of Respondent's specific ARD documents formatting could be improved, it is certainly allows the reader to determine the Student's educational progress

Issue: Whether School District failed to appropriately address Student's *** on a timely basis in order to avoid regression.

Federal Citation: *Board of Education v. Rowley* 458 U.S. 176, 192 (1982); *Daniel R.R. v. St. Bd. Of Educ.*, 874 F.2d 1036, 10 47 (5th Cir. 1989); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349-50 (5th Cir. 2000);

Texas Citation: *Clear Creek Indep. Sch. Dist. v. D.K.*, 400 F. Supp. 2d 911,996 (S.D. Tex. 2005).

Held: For the Respondent. The record shows that the Student has had inconsistent success in *** at school, but not because the Respondent has failed to apply appropriate interventions. Moreover, the goal of IDEIA has never been to "cure" and educational disability or guarantee a student a particular level of education or outcome.

Issue: Whether School District failed to develop an appropriate IEP uniquely tailored to meet Student's individual needs.

Federal Citation: 34 CFR §§ 300.22, 300.34, *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 73L.Ed.2d 690, 102 S.Ct. 3034(1982), *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d.245 (5th Cir. 1997), *Loren F. v. Atlanta Indep. School Sys.*, 349 F.3d 1309 (11th Cir. 2003).

Texas Citation: 19 TAC §§ 89.1040 (c)(1); 89.1055 (e)(4) (A)-(B).

Held: For the Respondent. The Student's IEP goals and objective do appear to be tailored to meet the Student's individual needs. The goals and objectives are in need of refinement so that Student's failure to progress can be quantified. However, this deficiency in the goals and objectives has not prevented the Student from making significant educational progress.