BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS

STUDENT, bnf PARENT,	**§**	
Petitioner,	**§**	
	§	
v.	**§**	**DOCKET NO. 098-SE-1212**
	§	
HOUSTON CAN ACADEMY CHARTER SCHOOL and HOUSTON INDEPENDENT SCHOOL DISTRICT, Respondents.	**§**	

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, Student bnf Parent ("Petitioner" or "Student") brings this action against the Respondent Houston Can Academy Charter School) ("Respondent," or "the charter school") 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 throughout this litigation pro se by student's mother *** Respondent was represented throughout this litigation by its legal counsel Cynthia Buechler with the law firm of Buechler & Associates.

Resolution Session and Mediation

A Resolution Session was conducted on January 11, 2013 but it was not successful in resolving the issues between the parties. The parties did not attempt mediation.

Procedural History

Student filed student's request for a due process hearing (Petitioner's Complaint) on December 27, 2012. The charter school filed its Response to Petitioner's Complaint on January 4, 2013 and a Motion to Dismiss for Lack of Jurisdiction on March 11, 2013 (charter's school's motion). An evidentiary hearing on the charter school's motion was conducted on March 26, 2013 (Motion Hearing). A set of exhibits were submitted into evidence by both parties for the Motion Hearing (Petitioner's Exhibits 1, 2, 5-11) (Respondent's Exhibits 1-5, 7, 8, 12-16). An order was issued on May 10, 2013 which denied the charter school's motion.

The due process hearing was rescheduled and the date for the Decision of the Hearing Officer

extended for good cause several times at the request of one or both parties. Ultimately the parties agreed to conduct the due process hearing on September 11, 2013 and the hearing proceeded on that date. The parties agreed to incorporate the set of exhibits submitted at the Motion Hearing as well as the Motion Hearing transcript for purposes of the due process hearing. Petitioner submitted into evidence a second set of exhibits (Petitioner's Exhibits A-L). Respondent submitted two more documents that were marked and entered into evidence (Respondent's Exhibits 17-18).

At the conclusion of the hearing the parties requested another extension of the Decision due date in order to allow submission and consideration of written closing arguments and legal briefs. An order was issued on September 13, 2013 granting those requests with the due date for the Decision of the Hearing Officer extended to November 2, 2013. Both parties timely filed their written closing arguments and legal briefs by the stated due date.

Issues

Petitioner raises the following issues under the Individuals with Disabilities Education Act (IDEA) with regard to the charter school:

1. Whether the charter school failed to provide Student with a free, appropriate public education (FAPE) while enrolled in the charter school and within the meaning of the Individuals with Disabilities Education Act (IDEA); specifically, Student's mother contends the charter school awarded Student improper academic credits and provided an Individual Educational Plan (IEP) that was not appropriate;

2. Whether the charter school failed to conduct an appropriate evaluation of Student and failed to identify Student as a student with a disability in need of special education within the meaning of the IDEA; and,

3. Whether the charter school failed to provide Student's mother with the requisite prior written notice with regard to the charter school's refusal to conduct an evaluation and with prior written notice requirements related to actions and/or decisions taken by the charter school at the most recent Admission, Review & Dismissal Committee (ARD) meeting conducted this past school year.

Findings of Fact

1. Student enrolled in Houston Can Academy Charter School (Houston Can or the charter school) in early November 2011. (Respondent's Exhibit 5) (referred to hereafter as "R. Ex. ___")(Motion Hearing Transcript, Volume I., p. 182) (referred to hereafter as "Mtn. Hrg. Tr. Vol. I, p. ___") (Transcript Due Process Hearing Volume I, p. 127) (referred to hereafter as "Tr. Vol. I., p. __"). Student previously attended school within the Houston Independent School. (HISD or the public school district). (R. Ex. 5).

2. A "transfer" Admission, Review and Dismissal Committee (ARD) met on November 9, 2011 to place Student at the charter school, confirm student's eligibility for special education based on existing evaluation data, and to adopt an interim Individual Educational Plan (IEP). (Petitioner's Exhibit F, referred to hereafter as "P. Ex. ___")(R. Ex. 5). Student's mother attended the November 9, 2011 ARD. Educational records from HISD were requested and reviewed by school personnel. An HISD evaluation dated March 10, 2010 was reviewed by the November 9, 2011 ARD. (P. Ex. 10) (P. Ex. D) (R. Ex. 1) (R. Ex. 5). Student's mother signed a consent form for an evaluation on November 9, 2011 in keeping with charter school practice for all special education students transferring in. (P. Ex.6) (Tr. Vol. I, p. 72).

3. At the November 9, 2011 ARD the charter school confirmed Student's eligibility for special education as a student with a learning disability and placed student's into the *** grade The IEP adopted from HISD included a set of accommodations to be implemented in Student's classes. The interim IEP also included tutorials to assist Student in performing satisfactorily on the Texas Assessments of Academic Knowledge and Skills (TAKS). A class schedule of English/Language Arts, an elective, Social Studies and Science was agreed upon at the ARD. (P. Ex. F) (R. Ex. 5).

4. The March 10, 2010 HISD evaluation was a Review of Existing Evaluation Data (REED). It utilized previous testing and information from Student's mother, classroom teacher and previous educational records. (P. Ex. D) (R. Ex. 1) (Mtn. Hrg. Tr. Vol. I, pp. 54-55). No additional tests or evaluations were conducted by HISD as a component of the March 10, 2010 evaluation. (P. Ex. D) (R. Ex. 1).

5. Student's annual ARD was conducted on January 17, 2012. (Tr. Vol. I., p. 72). Student's eligibility for special education as a student with a learning disability and an emotional disturbance was confirmed. (R. 4). The January 17, 2012 ARD updated student's IEP with measureable goals and objectives in student's general education academic classes including social studies, science, and math and included an extensive set of instructional accommodations to be implemented in all student's classes. (R. Ex. 4). Although Student had a BIP in student's previous public school placement the ARD agreed student no longer needed a behavior contract because student was "a model student and has no behavior issues." (R. Ex. 4).

6. The January 2012 ARD also discussed Student's need for a re-evaluation by March 10, 2013. (Tr. Vol. I., p. 73)(R. Ex. 4) (Mtn. Hrg. Tr. Vol. I, pp. 79, 90). Student's mother agreed with the ARD decisions but noted that conducting a re-evaluation would be "beneficial." The charter school's assessment specialist proposed the re-evaluation could be conducted in December 2012 instead of waiting until the following March. The parties agreed to this plan. (Tr. Vol. I., pp. 73-74, 88, 92, 113-114)(R. Ex. 4).

7. A third ARD meeting was held on May 2, 2012. (Tr. Vol. II, p. 74)(R. Ex. 3). Although

Student's mother was pleased with student's progress she was concerned about the full day schedule proposed for the 2012-2013 school year. (R. Ex. 3) (Mtn. Hrg. Tr. Vol. I., pp. 80, 186). The full day schedule would have accelerated Student's *** and student's mother felt student was not mature enough to ***. There was no discussion at the May 2012 ARD about the need for the re-evaluation or for the contemplated December 2012 date to be adjusted. The ARD addressed the parental concern and revised Student's schedule to a half-day. Student's mother agreed with the decisions of the May 2012 ARD. (R. Ex. 3) (Tr. Vol. I., pp. 74-75, 111-112).

8. Student performed well in student's classes, met all class requirements, passed all student's classes and earned every credit. Student was capable of doing assigned work. Student was very social, well liked by both peers and staff, and overall was an active participant at the charter school. Student's behavior overall was satisfactory. (R. Ex. 3) (R. Ex. 13) (Tr. Vol. I., pp. 25, 35-36, 75-76) (Mtn. Hr. Tr. Vol. I., pp. 80, 127). Student was a happy student who did not appear to demonstrate a need for a behavior plan or counseling. (Tr. Vol. I., pp. 25, 33, 54-55, 75, 84-85, 90). Student showed ***self to be a hard worker with goals and aspirations – an "all around best student." (Tr. Vol. I., pp. 70-71).

9. At the end of the 2011-2012 school year Student earned *** academic credits to be classified as a ***. Student was only ½ a credit short of earning *** status. Student was able to earn the ½ credit through a credit recovery *** class. Student was then re-classified as ***. (Tr. Vol. I., pp. 79-81, 139). Student was able to earn the ½ credit in *** because the credit recovery program is an accelerated method of instruction and learning. Students work at their own pace through the lessons. Therefore, progress in working through the course does not depend on a student attending class for an entire semester to earn the credit. (Tr. Vol. I., pp. 40, 52-53,114, 123-124, 129).

10. At the beginning of the next school year (2012-2013) Student's mother contacted the charter school's special education assessment specialist to request a copy of Student's transcript for another legal matter. (Tr. Vol. I., p.78). The transcript sent to Student's mother classified Student as *** not ***. This was a function of the software used by the charter school. The software classifies all students on the first day of the new school year based on their class status from the previous year. After the first day of school the software re-classifies the students to their updated class status based on the credits earned the previous year. (Tr. Vol. I., pp. 27-28, 70, 79)(P. Ex. K). The software properly classified Student as *** after the first day of school. (Tr. Vol. I, pp. 28, 80-81).

11. Following her review of the transcript Student's mother raised concerns about the number of academic credits and Student's class status. Student's mother felt the transcript was inaccurate. (Tr. Vol. I., pp. 66, 78-79)(Mtn. Hrg. Tr. Vol. I, pp. 83, 194). Student's mother communicated with the charter school's special education assessment specialist in August and September 2012 about those concerns. (Mtn. Hrg. Tr. Vol. I., pp. 77, 83-84, 114-115, 116).

12. The charter school principal attempted to contact Student's mother to explain the way the software worked and the impact on Student's class status on the transcript. The principal sent Student's mother a letter explaining the way the credits and class status were reported. Student's mother did not respond to the principal's phone calls or emails. (Tr. Vol. I., pp. 29, 42, 81-82, 126-127)(R. Ex. 10). By that time Student completed the credit recovery *** class, earned the additional ½ credit and was re-classified as a *** with *** credits. (Tr. Vol. I, pp. 28, 43-44, 80-81, 125-126) (P. Ex. L) (R. Ex. 13).

13. Student's mother removed Student from the charter school on September 21, 2012 although student refused to complete the formal withdrawal paperwork. (Tr. Vol. I., pp. 29, 39) (Mtn. Hrg. Tr. Vol. I., pp. 43, 68, 82, 84-85, 195) (R. Ex. 9). As required under Texas compulsory attendance laws the charter school filed truancy charges against Student and student's mother. (Tr. Vol. I., pp. 29, 82) (Mtn. Hrg. Tr. Vol. I, pp. 196-197) (P. Ex. 9) (P. Ex. 11). The charter school formally withdrew Student from school on or about November 6, 2012. (Mtn. Hrg. Tr. Vol. I., pp. 44, 68-70, 85).

14. Student's mother filed a Complaint with the Texas Education Agency (TEA) in response to the truancy charges and her continued unhappiness with the charter school. (P. Ex. 2) (R. Ex. 16). (Tr. Vol. I., p. 83). TEA investigated the complaint and concluded that it had no jurisdiction to determine the parent's fraud claims but did find the charter school did not provide the parent with proper prior written notice with regard to the re-evaluation. (Tr. Vol. I., p. 83)(R. 16). The charter school attempted to schedule an ARD meeting three times in order to comply with TEA's corrective action. (Tr. Vol. I., pp. 83, 129)(R. Ex. 2). The charter school made attempts to hand deliver and mail the ARD Notices and parental consent to Student's mother. (R. Ex. 10) (Tr. Vol. I., pp. 31-32).

15. An ARD was conducted on December 12, 2012 in compliance with the TEA corrective action. Student's mother did not attend. The ARD confirmed the decision to conduct the three-year re-evaluation before the March 10, 2013 deadline. The corrective action included a requirement that the charter school secure parental consent again after providing the parent with the requisite prior written notice. (Tr. Vol. I., pp. 30, 83, 127-128)(P. Ex. 2) (R. Ex. 2). The corrective action suggested the need for a Behavior Intervention Plan to address a few behavioral issues that arose at the beginning of the year. (Tr. Vol. I., pp. 37-38, 84)(P. Ex. 2). The ARD paperwork, including prior written notice, a set of procedural safeguards and a blank parental consent form were sent to Student's mother by certified mail. (R. Ex. 15). TEA accepted the charter school's corrective actions. (Tr. Vol. I., p. 129).

16. In response, Student's mother filed the request for a due process hearing. At the Resolution Session the charter school offered counseling and other related services and to conduct the re-evaluation. Student's mother refused the offer. (Tr. Vol. pp. 129-130). Although Student was no longer enrolled the charter school again offered to conduct the re-evaluation and to provide counseling services in a letter to Student's mother on March 8, 2013. The

letter also offered parent training at the Education Service Center and tutoring three times a week. Student's mother did not respond to the letter or make Student available for the re-evaluation. (R. Ex. 14) (R. Ex. 15) (Tr. Vol. I, pp. 130, 132-133, 137-138).

17. In preparation for the upcoming 2013-2014 school year the Director sent Student's mother a second letter on July 29, 2013. The Director again offered to conduct a Full Individual Evaluation (FIE) and included the Notice of Proposal to Evaluate and a blank parental consent form. The Director sent a third letter in August 2013 re-urging the offer to conduct the FIE and re-transmitting the Notice of Proposal to Evaluate and another blank parental consent form. (R. Ex. 18).

18. Until the dispute that arose in early fall of the 2012-2013 school year Student's mother was an active participant in all previous ARD meetings. (R. Ex. 3) (R. Ex. 4) (R. Ex. 5) (Tr. Vol. I., p. 109-110) (Mtn. Hrg. Tr. Vol. I., pp. 82, 90). Since the fall of 2012 Student has not returned to the charter school to re-enroll or to be tested. (Tr. Vol. I., pp. 32, 116)(Mtn. Hrg. Tr. Vol. I., pp. 205, 208-209). The charter school continues to invite Student to re-enroll and to offer a re-evaluation when and if student does so. (Tr. Vol. I., pp. 132-133)(Mtn. Hrg. Tr. Vol. I., p. 109). Student is currently enrolled in the Houston Independent School District. (Tr. Vol. I., pp. 109, 116).

Discussion

FAPE Claim

The credible evidence demonstrates that the charter school provided Student with a free, appropriate public education during student's period of enrollment. Student performed well academically, socially and behaviorally. The evidence shows student made progress and earned academic credits towards ***. While student may have had student's issues from time to time the preponderance of the evidence shows Student was provided with the requisite meaningful educational benefit within the meaning of the IDEA. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 202, 203(1982) ("Basic floor of opportunity provided by IDEA consists of specialized instruction and related services individually designed to provide educational benefit to the student with a disability – grading and advancement are important factors in determining educational benefit); Adam J. v. Keller Ind. Sch. Dist., 328 F. 3d 804, 808 (5th Cir. 2003).*

Once Student withdrew from the charter school it no longer had a responsibility to continue to provide student's with a free, appropriate public education. Resolution of the TEA Complaint required the charter school to acquire update parental consent to conduct Student's re-evaluation. Student's mother declined to provide the updated consent because she felt the consent signed in November 2011 should suffice. TEA had that information available to it in resolving the Complaint but nevertheless referred to the need to secure signed parental consent for the proposed December 2012 re-evaluation.

A lack of parental consent to proceed with the three year re-evaluation excuses the charter school from its responsibility to provide Student with a free, appropriate public education. *See, Shelby S. v. Conroe Ind. Sch. Dist., 454 F. 3d 450, 545-455 (5th Cir. 2006), cert. denied, 549 U.S.1111 (2007); Ron J. v. McKinney Ind. Sch. Dist., 2006 U.S. Dist. LEXIS 76455, 78759 (E.D. Tex. 2006) (school district cannot be compelled to provide services to a child whose parents refuse to have him evaluated).* Petitioner did not meet petitioner's burden of proving the educational program provided by the charter school while student was enrolled was not appropriate under the IDEA. *Schaffer v. Weast, 546 U.S. 49, 62 (2005).*

Failure to Identify and Untimely Evaluation Claims

Petitioner did not meet petitioner's burden of proving the charter school failed to properly identify petitioner as a student with a disability or that it should have conducted an FIE in November 2011 or early 2012. Instead, the evidence showed student's three year re-evaluation was not due until March 2013. *Schaffer v. Weast, 546 U.S. 49, 62(2005); 34 C.F.R. §300.303.*

The IDEA permits the use of a review of existing evaluation data (REED) to confirm a student's continued eligibility for special education without the need for further evaluations. *34 C.F.R. § 300.305.* Therefore, upon student's initial enrollment the charter school could adopt the previous IEP and rely on the REED conducted by the previous public school district. The evidence shows this is precisely what occurred. *34 C.F.R. § 300.323 (a) (e); 19 Tex. Admin. Code § 89.1050 (f) (2).* The credible evidence showed that Student was doing well at the charter school --- there were no new unique set of needs or circumstances that arose that warranted an evaluation before student's three year re-evaluation was due in March 2013. *34 C.F.R. §300.303 (a) (1).*

Even so, the evidence showed that in response to a parental request the charter school agreed to conduct the re-evaluation ahead of time (in December 2012) and that the parties in fact agreed to this plan. The credible evidence showed the charter school attempted to conduct the requested re-evaluation in a timely manner but was stymied in its efforts to do so by parental refusal to provide the necessary written consent or to otherwise cooperate in making Student available for the evaluation. Petitioner did not meet petitioner's burden of proof on this issue. *Schaffer v. Weast, 546 U.S. 49, 62 (2005).*

Prior Written Notice Claim

Petitioner claims the charter school failed to provide Student's mother with the requisite prior written notice when it declined to conduct an FIE following the January 2012 ARD. Resolution of a TEA Complaint on this issue led to a finding by TEA that the school district failed to provide Student's mother with the requisite prior written notice of its refusal to conduct the re-evaluation in January and its proposal to conduct it the following December 2012 instead.

The credible evidence shows that in response to the TEA Complaint the charter school took the corrective action required by TEA and provided the proper prior written notice including Notice of the Proposed Evaluation and a blank parental consent form for signature. Therefore, this issue was

previously resolved through the TEA complaint process. *See, 34 C.F.R. §§ 300.151 – 300.153.* In that sense there really was no longer a live controversy between the parties and thus this issue is moot. A case is moot when a claim involving a procedural violation is unlikely to be repeated and subsequently corrected. *Bd. of Educ. for Montgomery Cnty. v. Khan, 44 IDELR 132 (D.C. Md. 2005).*

However, even if the charter school's failure to provide Student's mother with the requisite prior written notice was a procedural error it did not impede Student's right to a free, appropriate public education, cause a deprivation of educational benefit or significantly impede student's mother's opportunity to participate in the decision-making process. *34 C.F.R. § 300.513 (a) (1) (2); Adam J. v. Keller Ind. Sch. Dist. 328 F. 3d at 811-812.*

The evidence showed Student made academic and behavioral progress at the charter school and that student's mother was an active participant in all meetings she chose to attend. The evidence also showed the charter school was responsive to parental concerns and questions and made reasonable attempts to provide student's mother with opportunities to communicate with charter school staff, attend ARD meetings to resolve parental concerns, and to provide the re-evaluation student's mother requested.

Petitioner's Motion to Reopen

Following conclusion of the hearing Petitioner filed a Motion to Reopen Pursuant to Rule 270, Texas Rules of Civil Procedure (Motion to Reopen) on October 7, 2013. Respondent opposed the Motion in an email from its legal counsel on October 8, 2013. In student's Motion to Reopen Student requests the addition into the record the following three exhibits:

1. (Exhibit A): An email from the parent to the charter school's principal related to the events surrounding Student's withdrawal from school;
2. (Exhibit B): a disciplinary report concerning a behavioral incident on May 22, 2012 reporting Student *** which resulted in a conference with an administrator; and,
3. (Exhibit C): A January 26, 2012 letter from the parent to the charter school's assessment specialist summarizing parental concerns discussed during the ARD meeting on January 12, 2012.

While these documents appear to be relevant to the issues in this case the submission of the exhibits is untimely. The disclosure deadline in this case was August 30, 2013. Both parties submitted disclosure by that date. This case has been pending since December 2012. The hearing and thus the disclosure deadline were reset a number of times at the request of one or both parties. Petitioner had plenty of time to prepare and submit the set of exhibits she needed in order to support petitioner's legal claims --- including the three documents tendered in petitioner's Motion to Reopen.

Respondent objects to Petitioner's request to introduce the three additional exhibits into evidence. Under the IDEA the charter school has the right to prohibit the introduction of any evidence that has

not been disclosed at least five business days prior to the hearing. *34 C.F.R. § 300.512 (a) (3).* There is no question these proffered exhibits were not timely disclosed.

Petitioner requests inclusion of these exhibits under Texas Rule of Civil Procedure 270. That rule allows a court to permit additional testimony as evidence when "… it clearly appears necessary to the due administration of justice …" *Tex. R. Civ. P. 270.* My review of the three exhibits lead me to conclude that they do not meet the standard of necessity for the due administration of justice. While the documents would have been helpful to the hearing officer's understanding of the sequence of events and some evidence in support of Petitioner's claims none of the exhibits, either individually or collectively, would be of such probative value as to change the outcome of this case.

The email from the parent does confirm there was a disagreement about whether the parent should have completed a set of withdrawal forms. The May 2012 disciplinary report is some evidence of Student's behavioral needs. The January 2012 letter from the parent to the assessment specialist confirms the parent's view that a re-evaluation would be "beneficial" and that she had some concerns about a full day schedule. However, none of these exhibits tip the preponderance of the evidence in the other direction in support of Petitioner's legal claims. Therefore I conclude they are not necessary to the administration of justice in this case. *Tex. R. Civ. P. 270.*

Conclusions of Law

1. Petitioner did not meet petitioner's burden of proving Respondent failed to provide petitioner's with a free, appropriate public education within the meaning of the IDEA. Instead, the credible evidence supports the conclusion that Petitioner received a meaningful, educational benefit from the educational program provided during petitioner's period of enrollment. *Schaffer v. Weast, 546 U.S. 49, 62(2005) Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 202, 203(1982).*

2. Petitioner did not meet petitioner's burden of proving Respondent failed to properly identify student as a student with a disability or to conduct a timely evaluation. *Schaffer v. Weast, 546 U.S. 49, 62(2005).* Respondent was justified in relying on a review of existing evaluation data in order to confirm Petitioner's eligibility for special education services under the IDEA. *34 C.F.R. § 300.305.* Furthermore, Petitioner's re-evaluation was not due until March 10, 2013 – three years from the date of the last evaluation. Petitioner's academic achievement and functional performance did not warrant a re-evaluation at any earlier point in time. *34 C.F.R. § 300.303 (a) (b).*

3. The issue as to whether Respondent failed to provide Petitioner's mother with the requisite prior written notice of its refusal to conduct a full re-evaluation by January 2012 is moot. That issue was previously resolved through a TEA Complaint resulting in corrective action by the charter school that was accepted by the state agency. A case is moot when a claim involving a procedural violation is unlikely to be repeated and has been corrected. *34 C.F.R. §§ 300.151 – 300.153; Bd. of Educ. for Montgomery Cnty. v. Khan, 44 IDELR 132*

(D.C. Md. 2005)

4. Even if the failure to provide Petitioner's mother with the required prior written notice of its proposal to conduct the re-evaluation in December 2012 rather than in January 2012 was a procedural error under the IDEA it did not impede Petitioner's right to a free, appropriate public education, result in deprivation of an educational benefit, nor significantly impede the parent's opportunity to participate in the decision-making process. *34 C.F.R. § 300.513 (a) (2); Adam J. v. Keller Ind. Sch. Dist., 328 F. 3d 804, 811-812 (5th Cir. 2003).*

5. Petitioner did not meet petitioner's burden of proving the additional evidence proffered in petitioner's Motion to Reopen met the standard of necessity for the due administration of justice. *Tex. R. Civ. P. 270.*

ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is therefore **ORDERED** that Petitioner's Motion to Reopen Pursuant to Texas Rule of Civil Procedure 270 is **DENIED** and it is further **ORDERED** that Petitioner's requests for relief under the Individuals with Disabilities Act are hereby **DENIED**. All other relief not specifically stated herein is **DENIED**.

SIGNED the 25th day of October 2013

/s/ Ann Vevier Lockwood
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. *19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).*

BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS

STUDENT,		
bnf PARENT,	**§**	
Petitioner,	**§**	
	§	
v.	**§**	**DOCKET NO. 098-SE-1212**
	§	
HOUSTON CAN ACADEMY	**§**	
CHARTER SCHOOL,	**§**	
Respondent.	**§**	

SYNOPSIS

ISSUE 1:

Whether the charter school failed to provide student with a free, appropriate public education within the meaning of the IDEA; specifically whether the charter school awarded the student improper academic credits and failed to provide student with an appropriate IEP.

HELD:

For the charter school.

Student did not meet burden of proving charter school failed to provide student with FAPE. Credible evidence showed student received a meaningful, educational benefit from the educational program provided – student earned credits and was making progress towards ***; student performed well in all classes, was well-liked by staff and peers with only minor behavior issues.

Schaffer v. Weast, 546 U.S. 49, 62 (2005); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 202-203 (1982); 34 C.F.R. § 300.101

ISSUE 2:

Whether the charter school failed to properly identify student with a disability or conduct a timely evaluation.

HELD:

For the charter school.

Charter school could rely on review of existing evaluation data (REED) from previous public school district upon student's transfer into the charter school. Charter school confirmed student's eligibility for special education services at initial transfer ARD and again at follow up annual ARD. Student's re-evaluation was not due until March 2013 – three years from the date of the REED.

Student's academic achievement and functional performance did not warrant re-evaluation at any earlier point in time.

34 C.F.R. §§ 300.303 (a) (b); 300.305.

ISSUE 3:

Whether the charter school failed to provide parent with requisite prior written notice of its refusal to conduct a Full Individual Evaluation (FIE) in January 2012 or its proposal to conduct the FIE in December 2012 instead.

HELD:

For the charter school.

This issue was moot. Prior written notice issue was previously resolved through a TEA Complaint resulting in corrective action implemented by charter school and accepted by TEA. Charter School provided parent with the requisite prior written notice with regard to the refusal to conduct the FIE in January 2012 and the proposal to conduct the FIE in December 2012. Charter school also sent parent new consent form for signature which parent declined to provide. Issue moot where the claim involving a procedural violation is unlikely to be repeated and has been corrected.

34 C.F.R. §§ 300.151-300.153; 300.503; Bd. of Educ. for Montgomery Cnty. v. Khan, 44 IDELR 132 (D.C. Md. 2005)

ISSUE 4:

Whether the charter school's failure to provide parent with requisite prior written notice impeded student's right to FAPE, resulted in deprivation of educational benefit or significantly impeded parent's opportunity to participate in decision-making process.

HELD:

For the charter school

Even if failure to provide the requisite prior written notice was a procedural error under IDEA it did not impede student's right to FAPE, result in deprivation of educational benefit or significantly impede parent's opportunity to participate in decision-making progress. Credible evidence showed student did well academically, behaviorally and socially throughout student's enrollment at the charter school. Evidence also showed parent active participant in ARD meetings up until dispute arose in fall 2012 and that charter school was responsive to parental concerns and questions.

34 C.F.R. § 300.513 (a) (2); Adam J. v. Keller Ind. Sch. Dist., 328 F. 3d 804, 811-812 (5th Cir. 2003)
ISSUE 5:

Whether student should be allowed to reopen the evidence after the hearing was concluded and submit three additional exhibits into the record over charter school's objection.

HELD:

For the charter school.

Student did not prove the additional exhibits tendered met the standard of necessity for the due administration of justice. Student had plenty of time to compile and prepare exhibits for the due process hearing and they were not disclosed in a timely manner. Charter school had right to prohibit introduction of such evidence.

34 C.F.R. § 300.512(a) (3); Tex. R. Civ. P. 270