

DOCKET NO. 308-SE-0813

STUDENT § **BEFORE A SPECIAL EDUCATION**
§
V § **HEARING OFFICER FOR**
§
BROWNSVILLE I.S.D. § **THE STATE OF TEXAS**

DECISION OF HEARING OFFICER

*** (hereinafter “the student”) through student’s next friend, *** (Petitioner), requested a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 et. seq. The Respondent is the Brownsville Independent School District.

On August 1, 2013, in Docket No. 188-SE-0413, this Hearing Officer issued a Decision (hereinafter “prior order”) involving the student and BISD ordering BISD to convene an ARD Committee Meeting to develop specific goals and objectives to address the student’s deficits in reading and math, to develop and implement goals and objectives for compensatory reading services, and to invite the IEE evaluator to the ARD Committee meeting and implement her recommendations. Petitioner alleges that the IEP developed at the ARD Committee meeting following the Decision was not reasonably calculated to provide the student with a FAPE.

Petitioner identified the following issues for hearing:

1. Whether the District failed to develop appropriate IEP goals and objectives for math;
2. Whether the District failed to develop appropriate IEP goals and objectives for reading;
3. Whether the District failed to develop appropriate IEP goals and objectives for compensatory reading; and
4. Whether the District failed to invite the IEE evaluator to the ARD Committee as ordered by the Hearing Officer.

As relief, Petitioner requested:

1. Private reading services;
2. Compensatory education services; and
3. An Order requiring the District to convene an ARD Committee meeting to develop an appropriate educational program to meet the student’s individual needs.

PROCEDURAL HISTORY

Petitioner filed this request for hearing on August 29, 2013. The District failed to convene a Resolution Session in this matter. However, the parent did not request an acceleration of the due process hearing timelines. The parties appeared for hearing on October 10, 2013. Petitioner was represented by attorney Christopher Jonas. The Brownsville Independent School District was represented by attorney Baltazar Salazar. The Decision was timely rendered and forwarded to the parties on November 13, 2013.

Based upon the evidence and argument of the parties, I make the following findings of fact and conclusions of law. Citations to the transcript will be designated “RR” with a notation of the page number. Citations to Exhibits will be designated with a notation of the “P” followed by the exhibit number.¹

¹ Respondent failed to make timely disclosure of documents pursuant to 34 CFR 300.512(a)(3) and did not offer any exhibits into evidence.

FINDINGS OF FACT

1. The Brownsville Independent ISD 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 (FAPE) 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.

2. The student resides within the geographical boundaries of the Brownsville Independent School District and is eligible to receive special education and related services as a student with a Specific Learning Disability. BISD is responsible for providing the student with a FAPE.

3. The District convened an ARD Committee meeting on August 15, 2013, to implement the Hearing Officer's Decision in Docket No. 188-SE-0413.

4. The District invited the IEE evaluator to the ARD Committee meeting that occurred on August 15, 2013, and compensated her for her appearance. RR42-43, 82.

5. According to the evaluator, District personnel did not appear to be prepared for the August 15, 2013, ARD Committee meeting in that they were not prepared to draft IEP goals and objectives or revise the student's Present Levels of Achievement and Academic Functioning (PLAAFP). District members of the ARD Committee stated that they did not believe they were sufficiently familiar with the student to address student's current functioning or student's goals. RR43-44, 46.

6. At the request of the IEE Evaluator, the ARD Committee revised the student's PLAAFP's.

7. The ARD Committee identified the following reading weaknesses: decoding skills, comprehension, recalling facts after reading passages, difficulty in blending words, sounds, and identifying basic sight words. Additionally, the student makes whole word errors, reversal of the letters "****" and "****", and attempts to sound out every letter in a word. According to the PLAAFP, student's reading comprehension is a weakness due to student's weak decoding skills. P1-3.

8. In the area of written expression, the ARD Committee concluded that the student is able to use correct grammar, but struggles with spelling. P1-3.

9. The student's weaknesses in math include multiplying 2 or 3 digit numbers and words problems containing more than one step. P1-3.

10. The ARD Committee developed 3 reading goals (including 1 reading comprehension goal), 1 writing goal, and 1 math goal (in addition to existing science and social studies goals), which were of an approximate 6-week duration. P1-7-10. The District's reasoning was that the student's annual ARD would be held on October 15, 2013, and the goals and objectives could be addressed at that time. RR76, 80.

11. The IEE evaluator testified that she provided input for each goal and objective contained in the August 15, 2013 IEP. RR4-47.

12. According to the IEE evaluator, the District ARD Committee members initially proposed general, vague goals and objectives, which she requested to be more specific.

13. The ARD Committee continued an existing math goal from May 31, 2013, which did not address the student's weaknesses in multiplication of 2 or 3 digit numbers or solving word problems involving more than one step, weaknesses identified in the PLAAFP's. P1-8.

14. The reading goals generally address phonological awareness, reading comprehension, and basic reading skills. P1-7-8.

15. The District uses the Neuhaus dyslexia program and the SRA reading program. RR50-51. Both programs contain goals and objectives that could have been used in drafting the student's IEP. The IEP does not contain goals or objectives from either program. RR50-51.

16. According to the IEE evaluator, the reading goals as developed were to be used in three different settings – the dyslexia program, reading, and compensatory services. RR85. According to the evaluator, modalities for teaching may be different for basic reading instruction and the dyslexia program, so different goals should have been developed for each area. RR86.

17. According to the IEE evaluator, the student's reading goal contains objectives that address phonological awareness and the blending of sounds. However, the goal is used in all three settings when the student could have made progress on additional goals in a six-week period. RR87-88.

18. According to the IEE evaluator, although the student's reading goal addresses decoding skills, the objectives do not specify how student will decode words or use phonological awareness or which consonants and vowels will be decoded. These are the types of objectives that would be used in a dyslexia program. RR89. Additionally, the PLAAFP's do not contain any specific benchmarks regarding decoding skills. Rather, the PLAAFP's state generally that the student is working on decoding skills with slight improvement and that student substitutes or omits sounds or letters when decoding words. P1-3.

19. At the conclusion of the ARD Committee meeting, the parent, the IEE evaluator and the parent's attorney conferred. According to the evaluator, she did not believe the goals and objectives were specific enough for the student and she believed student needed additional goals. The evaluator and the parent communicated this to the District. RR52, 101. The District did not propose additional goals and objectives at that time. The school's attorney told the evaluator he believed the goals were appropriate. RR48.

20. The IEE evaluator testified that the District made changes to the proposed goals as concerns were raised during the ARD Committee meeting. However, she felt the District was not prepared to write the goals, did not have sufficient data with them at the meeting to do so, and relied on her to write the goals for them "on the spot." RR52, 93, 95.

21. The IEE evaluator acknowledged that the District responded to her requests for changes during the ARD Committee meeting and included her suggestions for changes in the proposed goals. RR73. 95-97, 101, 105.

22. The ARD ended in disagreement. P1-22. The ARD form appears to have been pre-filled because the document reflects mutual agreement. However, the parent's signature line clearly reflects a disagreement. P22. The minutes state that the parent was in disagreement and did not request a recess. P1-19. On the following day, the District sent the parent a Prior Written Notice reflecting its intent to convene a 10-day recess ARD meeting. P23.

23. On August 22, 2013, the District provided a Notice of ARD Committee meeting to the parent. The parent participated in a reconvened ARD Committee meeting on August 29, 2013. P2-20. According to the parent, the school informed her that she had to attend the ARD Committee meeting. RR18. The parent had

not previously requested a recessed or continued ARD. RR18.

24. The District did not invite the IEE evaluator to the reconvened ARD Committee meeting, although it invited her to the first meeting. RR20, 43. The parent testified that she did not understand the reason for the second ARD meeting. RR33.

25. The District did not invite the parent's attorney to the reconvened ARD Committee, although the parent contacted him after she had notice and conferred with him during the meeting. RR31, 38-39.

26. The parent testified that she believed the District would invite the IEE evaluator to the reconvened ARD Committee meeting. RR31. The school's attorney informed the parent at the meeting that it was her responsibility to invite the IEE evaluator. RR20.

27. The District members of the ARD Committee agreed to adopt the goals and objectives developed during the August 15, 2013 ARD Committee meeting. The parent disagreed with the decision and the school began implementation of the IEP as written. P2-44-45.²

28. During the hearing, the IEE evaluator testified that the District implemented her suggestions in writing the goals and objectives. However, she testified that she did not feel comfortable writing them "on the spot," and that she believed the District was not adequately prepared.

29. The ARD Committee adopted the same goals for basic reading instruction, dyslexia instruction and compensatory education.

30. The ARD Committee adopted goals which would be in effect for 6 weeks until the student's annual ARD Committee meeting on October 15, 2013.

31. The IEE evaluator testified that she believed the student could have mastered more objectives in a 6 week period than what was provided in the student's IEP.

32. The District presented no evidence in the form of testimony or exhibits during the hearing. In fact, the District wholly failed to disclose documents and/or a witness list prior to the hearing pursuant to 34 CFR §300.512(a)(3); 19 Tex. Admin. Code §89.1180(h).

33. The IEE evaluator's testimony that the goals and objectives as contained in the August 29, 2013, IEP are not appropriate is uncontroverted. Therefore, I find that the goals and objectives for reading, reading comprehension, compensatory reading and math are not appropriate.

34. I find based on a preponderance of the evidence that the District was not prepared at the August 15, 2013 ARD Committee meeting to develop meaningful goals and objectives for the student.

35. I find based on a preponderance of the evidence that the IEE evaluator in part contributed to the deficiency in the IEP on August 15, 2013. However, it was not the sole responsibility of the IEE evaluator to draft the goals and objectives for the District. Rather, the role of the evaluator was to provide direction and input for the ARD Committee so the ARD Committee could collaboratively adopt goals and objectives based on her recommendations regarding the student's needs.

² It is important to note that the pre-printed form appears to have been completed in advance of the meeting in that the box indicating mutual agreement of all ARD Committee members is checked, but the parent indicated in writing on the face of the document that she was in disagreement. It is undisputed that the parent did not agree to the IEP and that she requested private placement.

36. I find based on a preponderance that the District failed to use the recess period prior to the August 29, 2013, ARD meeting to gather additional data, prepare further documentation, and/or obtain additional resource persons to assist the ARD Committee in reaching mutual agreement.

37. I find based on a preponderance of the evidence that the IEE evaluator did use the time following the first ARD committee meeting to gather additional data, prepare further documentation and/or obtain additional resources to assist the ARD Committee, but the District failed to invite her to the August 29, 2013 ARD Committee meeting, and therefore, did not seek her input in the development of the IEP.

DISCUSSION

The educational program offered by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program bears the burden of proof in showing why the IEP is not appropriate. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). *Schaffer v. Weast*, 126 S.Ct. 528 (2005). This includes the burden of proof with regard to harm or a deprivation of educational benefit. The law does not require that the student's educational potential be optimal or "maximized" but that the program enable the student to receive some educational benefit from student's program. Petitioner's testimony and evidence are uncontroverted as Respondent produced no evidence at all.

A legal presumption is a rule of law requiring the trier of fact to reach a particular conclusion in the absence of evidence to the contrary. *Sudduth v. Commonwealth County Mutual Ins. Co.*, 454 S.W.2d 196, 198 (Tex. 1970); *Temple ISD v. English*, 896 S.W.2d 167 (Tex. 1995). The presumption disappears when evidence to the contrary is introduced. *Id.* In this case, the District's IEP was presumed to be appropriate. However, Petitioner presented evidence that the IEP was inappropriate, so the presumption disappeared. Respondent failed to present any testimonial or documentary evidence that controverted the IEE evaluator's testimony that the IEP goals drafted at the ARD Committee meeting on August 15, 2013 and August 29, 2013, were inappropriate. Therefore, Petitioner has met petitioner's burden.

Did the District Fail to Develop and Provide an Appropriate IEP?

The United States Supreme Court established a two-prong test for determining whether a school district has provided a free appropriate public education. The first inquiry is whether the school district complied with IDEIA's procedural requirements. The second inquiry is whether the student's IEP is reasonably calculated to confer an educational benefit. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982). An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Id.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

I. Procedural Sufficiency

IDEIA establishes certain procedural requirements in formulating and implementing a child's IEP. Procedural flaws do not automatically require a finding of a denial of a free appropriate public education. However, procedural inadequacies that impede the child's right to a FAPE, result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the development of the IEP result in the denial of a free appropriate public education." 20 USC 1415 (f)(3)(E); 34 CFR §300.513(a)(2)(ii); *Adam J. v. Keller ISD*, 328 F. 3d 804 (5th Cir. 2003). In this case, the District and the ARD Committee committed several procedural error in failing to properly provide notice of the reconvened ARD meeting prior to recessing that impeded the parent's right to meaningfully participate in the development of her child's program.

The ARD Committee initially convened on August 15, 2013. The District invited the IEE evaluator as

ordered in Docket No. 188-SE-0413. However, according to the IEE evaluator, District personnel were unprepared for the meeting and had not even prepared draft PLAAFP's for the ARD Committee to review, so she assisted them in writing them as well as the IEP goals. The District asserts that there must be a finding that the goals are appropriate because the evaluator participated in the development of the goals. However, the evaluator testified that at the conclusion of the ARD Committee meeting she did not believe the goals were appropriate and did not feel that the District had been prepared from the outset of the meeting to develop appropriate goals. Rather, she felt that the District had relied upon her to actually write the goals for them, rather than provide recommendations regarding the student's needs as previously ordered, and that she did not feel prepared to do so "on the spot." RR43-46. The ARD Committee meeting ended in disagreement.

The District convened a recessed ARD Committee meeting, although the parent did not request such a recess. P1-19; P2-20. The District failed to document the written basis for the disagreement in the IEP on August 15, 2013 and failed to schedule the recessed ARD at that time in compliance with 19 TAC §89.1050(h). P1-19. Additionally, the District indicated that all committee members agreed with the IEP as developed, even though the minutes and the signature page reflects disagreement by the parent. P1-19, 22. On August 22, 2013, the District notified the parent of its intent to convene a recessed ARD Committee meeting on August 29, 2013. The parent testified that District personnel informed her that she had to attend the ARD Committee meeting and that she believed they would be inviting the IEE Evaluator. RR20. The District did not invite the IEE Evaluator to the recessed ARD Committee meeting. RR31, 43. Had the District complied with the applicable regulations by scheduling the recessed ARD Committee meeting on August 15, 2013, the evaluator would have been informed and could have participated. See 19 TAC 89.1050(h)(3) (the date, time and place for continuing the ARD Committee meeting shall be determined by mutual agreement prior to the recess). It was reasonable for the parent to presume that the District would invite the evaluator to the continued ARD meeting as it had invited her to the initial meeting and paid for her attendance. The District's procedural error in failing to schedule the continued ARD Committee meeting prior to the recess, thereby informing the evaluator of the date and time, and its subsequent failure to invite the IEE evaluator to the meeting, impeded the parent's opportunity to participate in the decision making process. 34 CFR 300.513(a)(2)(ii).

When the ARD Committee reconvened on August 29, 2013, it does not appear there was any discussion on the part of the school personnel that anyone had considered alternatives, gathered additional data, prepared further documentation, and/or obtained additional resource persons to assist the ARD Committee in reaching mutual agreement, which is the purpose of a recess. 19 TAC 89.1050(h)(2). The District merely presented the identical goals and objectives to the parent and told her they believed they were appropriate when she did not have the assistance of the IEE evaluator. The IEE evaluator, however, engaged in additional research by reviewing goals and objectives that related to the District's reading and dyslexia programs to determine ways to make them more appropriate following the initial ARD Committee meeting. RR-94. District's counsel, on cross-examination, criticized the IEE evaluator for conducting research after the ARD recessed, but this is exactly what ARD Committee members should do during a recess. Had the District invited the IEE evaluator to the ARD Committee meeting on August 29, 2013, it would have had the benefit of the additional information.

2. *Substantive Sufficiency*

Petitioner complains that the student's IEP is not appropriate. The school's program is appropriate if it is reasonably calculated to confer a meaningful educational benefit. *Board of Education of Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982). An educational program is meaningful if it is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Id.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

In evaluating whether an educational program is reasonably calculated to confer an educational benefit, the Fifth Circuit Court of Appeals has identified four factors to consider:

1. Is the program individualized on the basis of the student's assessment and performance?
2. Is the program administered in the least restrictive environment?
3. Are the services provided in a coordinated and collaborative manner by the key stakeholders?
4. Are positive academic and nonacademic benefits demonstrated?

Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (5th Cir 1997); cert. denied, 522 U.S. 1047 (1998). LEAH Z

The 5th Circuit Court of Appeals has held that the four factors do not necessarily need to be applied in a particular manner or afforded the same weight. Rather, the factors are intended as a guide in the determining whether the student received a FAPE. *Richardson ISD v. Leah Z*, 580 F.3d 286 (5th Cir. 2009). In applying the *Michael F.* factors to this case, the critical issues are whether student's IEP was based on student's assessment and performance, individualized to meet student's unique needs, and whether the IEP was developed in coordinated and collaborative manner by the key stakeholders. In applying the relevant factors to the facts of this case, and based on the uncontroverted testimony, I find that the student's IEP adopted on August 29, 2013, did not contain specific goals to address the student's deficits in reading, math and compensatory reading instruction, was not individualized based on student's assessment and performance, and not developed in a coordinated and collaborative manner by the key stakeholders. As stated above, the IEE evaluator identified specific deficiencies in the IEP goals and objectives. According to the evaluator, the District should have implemented reading goals that contained specific objectives for decoding specific consonants and vowels due to the student's dyslexia and decoding deficits. These types of objectives can be found in the dyslexia program used by the District. RR89. Additionally, the ARD Committee did not identify specific benchmarks regarding the student's decoding skills from which to develop the student's IEP goals. P1-3; P2-4. The ARD Committee adopted the same goals for basic reading instruction, dyslexia instruction and compensatory education to be in effect for 6 weeks until the student's annual ARD Committee meeting. P2. According to the evaluator, she believes the student could have mastered more objectives in a 6 week period, and the goals were therefore not appropriate. She additionally testified that the ARD Committee should have developed separate goals for reading, the compensatory services, and the student's dyslexia program. Additionally, the student's math goals did not address deficiencies identified in the PLAAFP's.

By failing to schedule the recessed ARD meeting at the time of the disagreement ARD, the District missed the opportunity to secure the independent evaluator's participation in the ongoing development of the student's program. Additionally, the District failed to use the recess as an opportunity to gather additional data, prepare further documentation, and/or obtain additional resource persons to assist the ARD Committee in reaching mutual agreement. Rather, the District, by failing to invite the independent evaluator to return following the recess, did not attempt to develop the program in a collaborative manner by key stakeholders. The District's contention that it was the parent's responsibility to invite the independent evaluator to the recess ARD meeting ignores the fact that the evaluator was determined to be a necessary ARD Committee member by prior Order of the hearing officer,³ and the fact that her attendance required payment for her time, which the District had previously committed to do. It was reasonable for the parent to expect the District to invite the evaluator to the August 29, 2013 ARD Committee meeting. In any event, had the District properly scheduled the meeting prior to the recess, it would have been able to secure and confirm the evaluator's ongoing participation. The District's failure to include the evaluator, seek additional information or resources during the recess, and failure to develop appropriate goals is a denial of a FAPE.

RELIEF

³ This Hearing Officer notes that enforcing compliance with a due process hearing decision is a function of TEA's Division of Federal and State Education Policy. However, the IEE evaluator was deemed to be a necessary participant in the ARD Committee meeting under the prior decision, so her participation was essential to the District providing the student with a FAPE.

For relief, Petitioner requests prospective relief, compensatory reading services, and a private reading program at public expense. Compensatory relief is available under IDEA as an equitable device to remedy substantive violations. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). IDEA requires that relief be designed to ensure that the student is appropriately educated within the meaning of IDEA. *Parents of Student W. v. Puyallup School District No. 3*, 21 IDELR 723 (9th Cir. 1994).

Based on the circumstances in this case, I do not find that private placement or compensatory services should be ordered. The ARD Committee convened prior to the beginning of the school year, and the due process hearing occurred within the first six weeks of the school year. Therefore, any denial of FAPE based on the substantively inappropriate IEP is *de minimis*. However, I do find that it is appropriate to order prospective relief to remedy the procedural and substantive violations of IDEA. The appropriate remedy is for the District to reconvene the ARD Committee meeting, invite the independent evaluator, and complete the development of the student's IEP with the input of the independent evaluator. The purpose of the ARD Committee meeting should be to develop specific goals and objectives specific to the student's dyslexia-related deficits. The ARD Committee should develop separate goals in basic reading, reading comprehension, math, writing and compensatory reading services. The ARD committee should also develop specific, measurable goals appropriate for the reading and dyslexia programs provided to the student.

Predetermination of IEP goals is never acceptable. However, reviewing the student's progress and formulating draft IEP goals is essential to preparation for an ARD meeting. The District would be well-advised to prepare and provide draft goals and objectives to the parent and the IEE evaluator prior to convening the ARD Committee meeting. Additionally, the District shall invite the student's dyslexia and reading program teachers to the ARD meeting. It is the District's responsibility to secure the IEE evaluator's attendance at the ARD meeting.

CONCLUSIONS OF LAW

1. The student currently resides within the geographical boundaries of Brownsville ISD, a legally constituted independent school district within the State of Texas, and is entitled to special education services pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400, et seq., as amended. BISD has a duty to provide a Free Appropriate Public Education for the student.

2. The District's educational program is presumed to be appropriate. As the party challenging the educational program proposed by the district, Petitioner bears the burden of proof. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), aff'd 468 U.S. 883 (1984) and must show more than a *de minimis* deprivation of educational benefit. *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000). Petitioner presented uncontroverted evidence that rebuts the presumption and has met petitioner's burden.

3. Petitioner is not entitled to compensatory education services or private reading services at public expense. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985).

4. Petitioner is entitled to prospective relief designed to ensure that the student is appropriately educated within the meaning of IDEA. *Parents of Student W. v. Puyallup School District No. 3*, 21 IDELR 723 (9th Cir. 1994).

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, I hereby **ORDER** that the relief sought by the Petitioner is hereby **GRANTED, in part**, as follows:

1. The District shall convene an ARD Committee meeting to develop specific, measurable goals and objectives for the student in the areas of basic reading, reading comprehension, and writing to address the student's individualized needs and dyslexia related deficits. The ARD Committee shall also develop specific goals and objectives to address the student's math deficits and specific goals and objectives to be addressed in the student's compensatory reading services ordered in the prior decision.

2. The District shall invite the student's dyslexia and reading teachers to the ARD Committee meeting to assist the ARD Committee in identifying goals and objectives from the District's dyslexia and reading programs that are appropriate for the student.

3. The District, at its sole expense, shall invite the IEE evaluator to the ARD Committee meeting and obtain input from her regarding the student's deficits and student's individualized needs. However, it is the ARD Committee's responsibility, in collaboration with all ARD Committee members, to develop the goals and objectives and implement the evaluator's recommendations regarding the student's needs.

4. The ARD Committee shall meet within ten (10) school days of receipt of this decision to begin implementation of the relief ordered herein.

All other relief not specifically granted herein is hereby **DENIED**.

SIGNED THIS 13th day of November, 2013.

Sharon M. Ramage
Special Education Hearing Officer

NOTICE TO THE PARTIES

This Decision is final and is appealable to state or federal district court.

The District shall timely implement this Decision within 10 school days in accordance with 19 T.A.C. §89.1185(p). The following must be provided to the Division of Federal and State Education Policy of the Texas Education Agency and copied to the Petitioner within 15 school days from the date of this Decision: 1.) Documentation demonstrating that the Decision has been implemented; or 2.) If the timeline set by the Hearing Officer for implementing certain aspects of the Decision is longer than 10 school days, the district's plan for implementing the Decision within the prescribed timeline, and a signed assurance from the superintendent that the Decision will be implemented.

SYNOPSIS

Issue No. 1: Whether the District failed to develop appropriate IEP with goals and objectives in the areas of math, reading, and compensatory reading?

Held: For the Petitioner. The District failed to develop measurable annual goals designed to meet the student's Dyslexia-related deficiencies and student's specific learning disabilities in basic reading, reading comprehension, math and written expression. The District also failed to develop appropriate IEP goals for the student's compensatory reading program.

Citation: 34 CFR.320(a)(2)(ii).

Issue No. 2: Whether the District's failure to invite the IEE evaluator to the recessed ARD Committee meeting resulted in a denial of FAPE?

Held: For the Petitioner. By prior order of the hearing officer, the District was required to include the IEE evaluator in the development of the student's IEP. The District failed to properly schedule the recessed ARD at the time of the initial ARD meeting when the parties were in disagreement. 19 TAC §89.1050(h). Had the District properly noticed the recessed ARD Committee meeting, the District would have informed the IEE evaluator of the date and time to secure her attendance. Failure to invite the IEE evaluator significantly impeded the parent's opportunity to participate in the decision making process regarding the provision of FAPE.

Citation: 19 TAC §89.1050(h); 34 CFR § 300.513(a)(2)(ii).