

DOCKET NO. 048-SE-1010

STUDENT bnf PARENT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER
	§	
BANQUETTE I.S.D.	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Student (hereinafter “the student”) through student’s next friend, Parent (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 Banquette Independent School District (BISD).

In the Request for Hearing, Petitioner alleged that BISD denied the student a Free Appropriate Public Education (FAPE). In particular Petitioner alleges that BISD:

1. Inappropriately removed the student’s classification as a student with Autism.
2. Inappropriately conducted an additional evaluation.
3. Failed to provide appropriate behavior interventions specific to behaviors related to autism.
4. Failed to provide in-home training.
5. Failed to provide appropriate speech therapy services.

As relief, Petitioner requested:

1. An order requiring the District to change the student’s eligibility classification to Autism.
2. One year of compensatory education in all academic areas, or an amount deemed appropriate by the Hearing Officer.

PROCEDURAL HISTORY

Petitioner filed this request for hearing on October 27, 2010. A hearing was held on January 18, 2011. Petitioner was represented by attorney Christopher Jonas. The Banquette Independent School District was represented by attorneys William Bednar and Jennifer Engdale. At the conclusion of the hearing, both parties requested an opportunity to submit written argument and proposed findings of fact and conclusions of law. The decision due date was extended for good cause to allow an opportunity to submit written argument. The decision due date was extended to March 8, 2011. The Decision was timely rendered and forwarded to the parties on that date.

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 volume number and page number. Citations to Joint Exhibits and Respondent’s Exhibits will be designated with a notation of the “J” or “R” followed by the exhibit number.

FINDINGS OF FACT

1. The Banquette 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 Banquette Independent School District. BISD is responsible for providing the student with a FAPE.

3. The Petitioner meets eligibility criteria and presents educational needs for special education services as a student with disability classifications of Speech Impairment and Specific Learning Disabilities in Reading Comprehension, Mathematics Problem Solving, and Oral Expression. (J3). Petitioner does not allege that the student does not have Specific Learning Disabilities; rather Petitioner's only complaint with regard to the evaluation is the removal of the Autism classification.

4. The District conducted an FIE in April 2010, including a psychological evaluation. The psychologist (supervising the LSSP administering the assessment) had previously diagnosed the student with *** in 2007 when the student attended school in another District. In 2007, the psychologist also diagnosed the student with ADHD, and noted that the *** symptoms were in the mild range. (J2). In 2007, the ARD Committee from the student's previous district determined the student was eligible for special education and related services under the categories of Autism and Speech Impairment. (J2)

5. The same psychologist administered the psychological as part of the reevaluation in April 2010 and concluded that the student did not meet the criteria for ***. Rather, he diagnosed the student with ADHD, Developmental Coordination Disorder-by History, and Specific Learning Disabilities in Reading, Math Reasoning and Written Language. Dr. *** noted that the student was not exhibiting significant characteristics of autism in the school setting. (J3-0062). Based on the District's evaluation, including an assessment of student's school performance, the ARD Committee reasonably concluded that the student continued to be eligible for special education and related services as a student with Speech Impairment and Specific Learning Disabilities. (J3). The District's evaluation in April 2010 was appropriate and complied with the requirements under 34 CFR §300.303-300.311. The evaluator relied on a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child to determine whether the child is eligible for special education and related services and to determine the content of the student's IEP.¹ (J3)

6. The parent disagreed with the District's evaluation and requested an IEE at public expense. The parent's private evaluator diagnosed the student with ***, relying primarily on parent information, and recommended an eligibility classification of Autism. (J4).

7. The parent refused to provide consent for her private evaluator to obtain data from the school regarding the student's prior assessment and academic performance. (RR24; RR78)

8. The private evaluator obtained information from one teacher and visited the classroom on the last day of school when the student population and routine were atypical. (J13-00377).

9. The evaluator conducted one of assessment tools, the ADOS (Autism Diagnostic Observation Schedule) with the parent present in the room during the administration of the test. Although not ideal, this practice is authorized by the publisher of the test. (RR34)

¹ Petitioner alleged that the District's evaluator administered an outdated version of the Vineland Adaptive Behavior Scales, based on the failure of his report to indicate that the Vineland-II was administered. Petitioner's expert acknowledged that she could not definitively say that the outdated assessment was used without seeing the actual report. (RR246) Additionally, the FIE reflects that the Vineland-II was administered by school personnel and the psychologist testified that he interpreted data obtained by school personnel. (J3-0084) In any event, she noted that both the parent and the teacher reported adaptive behavior deficits, with improvement noted since the prior evaluation. (RR-240). The independent evaluator's testimony does not undermine the validity of Dr. *** evaluation as a whole, given the actual administration of the Vineland II, his testimony that he reviewed data provided by the school, and his reliance on more than one instrument.

10. The ARD Committee considered the private evaluation on September 23, 30 and October 4, 2010. However, the school members of the ARD Committee and the parent continued to disagree as to the student's particular eligibility classification. (J13-00377).

11. When the student entered BISD during the 2009-2010 school year, student had previously received services as a student with Autism and Speech Impairment in a neighboring district. (J10).

12. According to bench mark tests administered at the beginning of the 2009-2010 school year, when the student entered *** grade, student performed at *** level in all academic areas. (J22; RR197-199).

13. By the beginning of the 2010-2011 school year, or the beginning of the *** grade, the student was performing at a *** grade level in reading, writing and math. (RR199-202; J23; J24).

14. Petitioner does not allege that the student's IEP goals and objectives in core academic areas are inappropriate for the student. Petitioner failed to produce any evidence that the student's academic goals and objectives in either the 2009-2010 or the 2010-2011 school year are inappropriate.

15. Petitioner alleges that the IEP is deficient in that it does not adequately address the student's needs in the areas of speech, behavior interventions and in-home training.

16. The student received minimum in-home training at student's previous district when student was classified as a student with Autism. The student's IEP from the previous district states that although the parent reported transition difficulties following school breaks, these issues were not noted in the classroom. (J9-00176) The previous district provided in-home training that consisted of 45 minutes during Christmas break and 45 minutes during Spring Break to assist in transitioning the student back to school following the break. (J8-00134).

17. BISD continued to provide in-home training for the student over two intersession breaks during the 2009-2010 school year. (J15; J10-00229; RR185-186)

18. The ARD Committee did not recommend in-home training for the 2010-2011 school year. The student's teachers testified that the student did not exhibit transitional difficulties that were out of the ordinary following the Thanksgiving and Christmas break. (RR212, 226) This is consistent with the previous district's observations. Petitioner presented no credible evidence that the student requires in-home training to meet the goals and objectives of student's IEP.

19. The student's behaviors do not interfere with student's learning or that of others. The student responds well to the teacher's classroom structure and engages socially with other children. (RR195-196). The student's teacher reported that when student first entered her class, student did not interact much with other children until student became acclimated to the classroom environment. She observed that the student became more independent, confident and engaging over the year. (RR195-196). While the student has engaged in some behaviors, such as placing student's head on student's desk and acting out and not following rules, the teacher described these as not being persistent and said the student is easily redirected. (RR210). The teacher denied that it was typical behavior for the student to put student's fingers in student's mouth or pull on student's shirt collar. (RR213) Although some of these behaviors were reported by another teacher in reports to the parent, Petitioner presented no testimony that the student's behavior was persistent at school or interfered with student's educational performance.

20. The student qualifies for Speech Therapy services. According to the current speech evaluation, the student has no concerns in the area of general language skills. (RR147). The student's previous evaluation did reflect general language deficits. However, the student's IEP goals and objectives for language were mastered

in the previous district. (RR145) At the time the student entered Banquette ISD, the student's IEP speech goals only addressed articulation deficits and phonological processing. (RR145). The current evaluation did not reflect deficits in the area of pragmatic language. According to the current evaluation, the student qualified for speech therapy services in the area of articulation and phonological processing. (RR149).

21. Following the 2010 FIE, the ARD Committee developed IEP goals and objectives for the student that addressed student's specific needs in the areas of articulation and phonological processing. (J13-356-359). The ARD Committee recommended and the District implemented speech services in an amount of 100 minutes every two weeks. (J13-360).

22. Petitioner presented no evidence that the student required additional speech services in the area of language. Petitioner presented no evidence that the student's current speech goals are inappropriate for student.

23. Petitioner presented no evidence that the student's behaviors impede student's learning or that student requires additional behavioral interventions to enable student to be successful in the classroom. In fact, the teachers testified, without rebuttal, that the student responded well to the existing classroom structure and that student's behavior did not adversely impact student's educational performance.

DISCUSSION

Issue No. 1 – Did the District Inappropriately Remove the Child's Eligibility Classification of Autism?

The central issue in this case, according to Petitioner, is whether the student's eligibility classification, standing alone, determines whether the student has received a Free Appropriate Public Education. Petitioner presented no evidence that the student's IEP was inappropriate. Petitioner's position is inconsistent with IDEIA and the underlying purposes of the Act - the provision of appropriate educational services, *individualized to address the student's educational needs*. IDEIA provides as follows

“Nothing in this chapter requires that children be classified by their disability so long as each child who has disability listed in section 1401 of this title and who, by reason of that disability needs special education and related services is regarded as a child with a disability under this subchapter.”

20 U.S.C. §1412(a)(3)(B).

Schools are charged with the responsibility of developing and providing an eligible student with an appropriate program. The United States Supreme Court established a two-prong test for determining whether a school's program provides a free appropriate public education. The first inquiry is whether the school district complied with IDEA 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).

If the inquiry into a student's educational program begins and ends with the eligibility “label” then the mandates of the Act are not being met. IDEIA requires that a student's educational plan be individualized for the student, based on student's needs, not the student's eligibility classification. A bright line statement that special education must somehow look different for a student based solely on the student's eligibility classification is just as incorrect a premise as the statement that all children with a particular eligibility must require the same educational program. Both statements ignore the individual needs of the child and the reality of the school's mandate – to provide an education that is individualized to meet the student's needs.

So, then, the analysis in this case begins with determining the nature of eligibility classification under IDEIA. Is the process of “labeling” the student for eligibility purposes a procedural requirement or is it substantive? As stated above, the focus of IDEA is the provision of appropriate educational services to *eligible* students. Nothing in IDEA requires a particular disability classification so long as the student who is eligible for special education and related services receives those services. 20 USC 1412(A)(3)(B).

The case is similar to *Pohorecki v. Anthony Wayne Local School District*, 637 F.Supp.2d 547 (N.D. Ohio 2009). In that case, a parent argued that the school improperly characterized the student as eligible for services under the category of emotional disturbance rather than autism. The student had multiple diagnoses, including ADD, ADHD and seizures. The IEP team determined on the basis of its evaluation that the student was eligible to receive services under the eligibility category of emotional disturbance rather than Autism and developed an IEP for the student specific to the needs identified in the parent’s and the school’s evaluations. At the due process hearing level, although the hearing officer held that the district correctly classified the student, he concluded that the classification of a particular disability is not critical in evaluating a FAPE. Rather, the important issue is whether the goals and objectives are appropriate for the student. *Id.* The Court agreed and recognized that the student’s disability was not easily categorized and that reasonable minds could differ as to what student’s disability should be called. The Court affirmed the hearing officer’s decision that the student received a FAPE. In addressing the eligibility issue, the Court reasoned that “[t]he very purpose of categorizing disabled students is to try to meet their educational needs; it is not an end to itself.” *Id.* In other words, the focus is ultimately on whether the student received appropriate individualized educational services, not the definition of student’s disability.

The U.S. District Court for the Western District of Texas has also held that eligibility classification is a procedural component of the development of the student’s IEP. In *Eric H. v. Judson ISD*, 2002 U.S. Dist. Lexis 20646 (W. Dist. Tex. 2002), a parent complained of a district’s removal of the student’s Autism disability classification, even though the District continued to provide services to the student under another disability category. As in this case, there was conflicting evidence regarding the nature of the student’s disability and evidence that the student did not exhibit characteristics of autism at school. The Court noted that the District’s eligibility classification of the student was based on his assessment and review of data from a variety of sources, where the student’s physician’s testimony did not take into consideration the student’s educational performance, and held that the District’s evaluation was appropriate. Moreover, the Court characterized the parent’s dispute over the student’s eligibility label given the fact the District continued to provide special education and related services as a procedural matter, and held that it was the parent’s burden to prove that the change in eligibility status resulted in cognizable harm to the student. The parent did not contest the issue of whether the IEP provided a FAPE to the student. Rather, the parent’s position, as in this case, was that the removal of the disability category in and of itself amounted to a denial of FAPE. The Court disagreed and held that the change in disability classification did not deny the student a FAPE.

In this case, reasonable minds may differ with regard to the Student’s precise disability. In ***, the student at the age of *** enrolled in a neighboring district. The District conducted an FIE, including a psychological evaluation administered by a Licensed Specialist in School Psychology supervised by Dr. ***. The evaluator used a variety of assessment tools in diagnosing the student with “mild” *** but also noted a diagnosis of ADHD. (RR122) According to the evaluation, the student’s adaptive behavior was described as being in the extremely low range, with the student’s mother noting slightly more significant deficits than student’s teacher. (J2) On the Childhood Autism Rating Scale (CARS), the mother reported behaviors in the “non-autistic range,” while the teacher reported behavior just inside the “Mild-Moderate Autism” range, resulting in a scaled score of ***, with a score of *** being in the non-autistic range. (J2) On the Gilliam Autism Rating Scale-2nd Edition (GARS-II), the index indicated a “very likely probability of autism. (J2-00024). The student’s speech evaluation indicated a *** disorder in receptive language skills, and a *** disorder in expressive language skills. (J2-00015). The ARD Committee determined that the student met the

eligibility criteria for Autism and Speech Impairment. (J2-00016).

At the end of the 2008-2009 school year, the previous school district developed an IEP for the student which would have been in effect for the 2009-2010 school year (the student's *** grade year). The IEP provided that the student was to receive all academic instruction in a general education setting, with monitoring by the special education teacher two times per reporting period, continuation of speech therapy 360 minutes per 6 weeks, and occupational therapy 90 minutes per 6 weeks. (J9-00184). The ARD Committee determined that the student did not manifest behaviors at school that necessitated the development of a Behavior Intervention Plan. Additionally, the ARD Committee determined that the student's transitional issues over breaks were not so great that ESY was needed. (J10-00190) In August of 2009, the parent enrolled the student in BISD, and informed the school that she was satisfied with the IEP developed at the previous school. (J9-00194).

Soon after the beginning of the 2009-2010 school year at BISD, the ARD Committee convened to conduct a transfer ARD. At that time, it was determined that the student was still functioning *** level even though student was in *** grade. The ARD Committee recommended and the District implemented an IEP which provided special education instruction in ***, with all remaining academic instruction in the general education classroom. The student's fine motor skills and life skills objectives were provided in the special education setting 30 minutes per day. The student's life skills objectives included development of fine motor skills, study skills, classroom independence, and ***. (J10) In January 2010, the ARD Committee once again convened to review an Occupational Therapy evaluation and to add OT services. (J11) BISD provide in-home services over the Christmas and Spring break as had been provided in the previous district. Teachers reported that the student exhibited no behaviors that interfered with learning. (J10)

In April of 2010, BISD conducted a Full Individual Evaluation, including a psychological evaluation by Dr. ***, the same psychologist who supervised the previous evaluation. Dr. *** administered a variety of testing instruments, including the CARS, in which both the teacher and the parent rated the student in the "non-Autistic" range. (J3-0057). The parent reported more significant deficits in adaptive behavior and more *** characteristics than school personnel. (J3-00059-61). The parent reported significant ADHD difficulties, while the same behaviors were not noted at school.

In addition to the psychological testing, the District conducted cognitive and academic testing. Dr. *** concluded that the student's educational needs were most attributable to ADHD and Specific Learning Disabilities in Reading, Written Expression and Math Reasoning. (J3) The ARD Committee in reviewing the data concluded that the student continued to be eligible for special education and related services under the categories of Speech Impairment and Specific Learning Disabilities. (J12-00321).

It is important to note that Dr. *** concluded that both the 2007 and 2010 evaluations yielded valid results based on the information available to the examiner. However, according to Dr. ***, the difference in eligibility criteria between the two evaluations is largely attributable to increased information available to the examiner. In 2007, the student *** when evaluated, so there was limited information and limited time to see how the student responded to the school environment. However, over the course of three years, the student experienced increased environmental stimulation and neurological maturation, which in turn led to a different presentation at the three-year reevaluation. (R133-134) Dr. *** in conducting the 2010 evaluation interviewed the parent and the student, obtained information from teachers regarding the student's academic performance, reviewed educational testing completed by BISD, and data from the 2007 evaluation. (J3) Additionally, he interpreted data derived from additional testing instruments administered by the educational diagnostician. (RR127; J3). In sum, Dr. *** relied on data from a variety of sources to arrive at his conclusions.

The parent's independent evaluator, on the other hand, did not review data from other assessments or obtain information on the child's educational performance due to the mother's prior restrictions and refusal to provide consent. The parent's limitations on the evaluator undermine confidence in her report. A school district

is obligated to augment parentally provided information to determine the student's eligibility and to develop an appropriate IEP which would meet student's unique educational needs. *Conroe ISD v. Shelby S.*, 454 F.3d 450 (5th Cir. 2006). The parent may not prospectively limit the scope of the District's chosen assessment strategies as a predicate to granting consent to the evaluation she requested. Similarly, the parent may not prospectively limit the scope of an independent evaluator's assessment and then rely on that report to support a given diagnosis. Such a limitation undermines confidence in the evaluation.

It is important to distinguish between a diagnosis of an autism spectrum disorder and an eligibility classification under IDEIA. A child classified with a disability of autism means a child evaluated as having autism and who, by reason thereof, needs special education and related services. Autism means a developmental disability significantly affecting verbal *and* nonverbal communication *and* social interaction that adversely affects a child's *educational* performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences. *emphasis added* 34 C.F.R. § 300.8. Although students with *** are included under the category of AU under applicable Texas regulations, there is still a requirement that the student meet the criteria under 34 CFR §300.8(c)(1), i.e., adverse impact on the child's educational performance. 19 TAC § 89.1040.

The evidence is undisputed that the student made academic gains and behavior improvements during the 2009-2010 and 2010-2011 school years as of the date of hearing. The teachers, testified, credibly, that the student's behavior did not interfere with student's learning or that of others and that student engaged socially with other students. There was no evidence that the student experienced significant difficulties *at school* over breaks from school following a schedule change. The testimony of the teachers regarding the student's behavior was consistent with ARD Committee findings from the student's previous district. There was some testimony from the parent's evaluator and the parent, as well as notations in the exhibits, that the student exhibits some characteristics of autism. However, Petitioner presented no credible testimony or evidence that these characteristics had an adverse impact on the student's educational performance. The evaluator's failure (due to the mother's lack of consent) to consider the student's educational records and other assessments prevented her from adequately evaluating the child for IDEIA purposes. Accordingly, I assign little weight to the independent evaluation and find the District's evaluation to be more persuasive, even though this is a close call and reasonable minds could in all likelihood disagree on the exact definition of the child's eligibility.

Therefore, I find, based on a preponderance of the credible evidence, that the District's decision to change the student's eligibility from Autism to Speech Impaired and Specific Learning Disabilities was appropriate. Further, even assuming, *arguendo*, that the student's appropriate classification is Autism, the District's removal of that classification is a procedural error that resulted in cognizant harm to the student because the District has continued to provide special education and related services to the student that are appropriate for student. *See Eric H. v. Judson ISD*, 2002 U.S. Dist. Lexis 20646 (W. Dist. Tex. 2002). Procedural flaws do not automatically require a finding of a denial of a free appropriate public education. It is only procedural inadequacies that result in the loss of educational opportunity, or seriously infringe the parents' opportunity to participate in the development of the IEP that result in the denial of a free appropriate public education." *Adam J. v. Keller ISD*, 328 F. 3d 804 (5th Cir. 2003); 20 USC §1415(f)(3)(E). Petitioner presented no evidence of such in this case. In fact, the evidence is undisputed that the student made academic and behavioral progress and that the parent fully participated in the development of the student's IEP. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). Petitioner bears the burden of proving that it is not appropriate or that the District has not complied with the procedural requirements under the IDEA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet petitioner's burden with regard to whether the student was inappropriately classified for IDEIA purposes and whether such classification denied student a FAPE.

Issue No. 2 – Whether the District inappropriately conducted an evaluation.

Following the consideration of the independent evaluation, the District proposed, and the parent agreed, to another independent evaluation, given the limitations of Dr. *** evaluation. (J13-0037). However, there was no evidence that the second independent evaluation was ever conducted. Additionally, such an additional evaluation is permissible with the parent agreement. 34 CFR §300.303(b)(1). Petitioner wholly failed to meet petitioner's burden of proof regarding this issue.

Issue No. 3 – Whether the District failed to provide appropriate behavior interventions specific to behaviors related to autism.

As set forth in the discussion above, the teachers testified, credibly, that the student's behaviors did not adversely impact student's educational performance. The testimony of the teachers is consistent with the observations of the teachers from the student's previous school district. (J00190). Although some autistic behaviors such as sucking on student's shirt and fingers and repetitive behaviors were noted in both districts, and the parent observed transitional difficulties and other autistic behaviors at home, there was no evidence that the behaviors were so persistent at school that they interfered with student's learning or adversely impacted student's education as required under IDEA. When a child's in-home behaviors do not impede student's education, there is no obligation to address them in an IEP. *Student v. Clear Creek ISD*, (SEA Tex. September 29 2009). Petitioner wholly failed to meet petitioner's burden of proof with regard to this issue.

Issue No. 4 – Whether the District failed to provide in-home training.

Although the student previously received in-home training services, the services were minimal and occurred only during two inter-sessions per school year, to assist in a transition back to school following the break. However, the teachers testified, and the ARD Committee notes from the previous district reflected, that the student in fact had no significant difficulties when compared to student's peers with these transitions. Petitioner failed to meet petitioner's burden that the student requires in-home training to receive a FAPE.

Issue No. 5 – Whether the District failed to provide appropriate speech therapy services.

The student's evaluation reflected that student has deficits in articulation and phonological processing. The student's IEP addresses those deficits. (J13) The evaluator concluded that the student did not currently have deficits in the area of general language skills, and this testimony was uncontroverted. Petitioner failed to meet petitioner's burden of proof with regard to this issue.

CONCLUSIONS OF LAW

1. The student is eligible for special education services as a student with a disability under IDEIA, 20 U.S.C. §1400 *et. seq.* and its implementing regulations. BISD is responsible for providing the student with a FAPE.

2. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). Petitioner bears the burden of proving that it is not appropriate or that the District has not complied with the procedural requirements under the IDEIA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet petitioner's burden on all issues.

ORDER

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the relief requested by Petitioner is **DENIED**.

Finding that the public welfare requires the immediate effect of this Final Decision and Order, the Hearing Officer makes it effectively immediately.

SIGNED this 8th day of March, 2011.

Sharon M. Ramage
Special Education Hearing Officer

SYNOPSIS

Issue No. 1: Did the District Inappropriately Remove the Child's Eligibility Classification of Autism?

Held: For the District. The ARD Committee had a reasonable basis for changing the student's classification because to the extent the student exhibited some characteristics of ***, those characteristics did not adversely impact the student's educational performance. Additionally, the process of classification is a procedural matter. If any procedural error occurred, it did not result in a loss of educational opportunity.

Citation: 34 C.F.R. § 300.8(c)(1); 19 Tex. Admin. Code § 89.1040; 20 U.S.C. §1415(f)(3)(E).

Issue No. 2: Whether the District inappropriately conducted an evaluation?

Held: For the District. The parent alleged that the District inappropriately conducted an additional evaluation within the same school year (with the parent's consent). The parent failed to prove that such an evaluation in fact occurred. Additionally, to the extent the parent and district agreed to an additional evaluation, such an evaluation is permissible with mutual consent.

Citation: 34 CFR § 300.303(b)(1).

Issue No. 3 Whether the District failed to provide appropriate behavior interventions specific to autism?

Held: For the District. The student's behaviors did not adversely affect student's educational performance.

Citation: 34 C.F.R. §300.8(c)(1); 300.324(a)(3); *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

Issue No. 4: Whether the District failed to provide appropriate in-home training?

Held: For the District. The parent failed to produce sufficient evidence that the student requires in-home training as a related service to benefit from special education.

Citation: 34 CFR § 300.34(a); *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

Issue No. 5: Whether the District failed to provide appropriate speech therapy services.

Held: For the District. The student's speech therapy goals addressed the student's identified articulation and phonological processing deficits. Petitioner did not meet petitioner's burden of proof.

Citation: 34 CFR § 300.320(a)(2); *Schaffer v. Weast*, 126 S.Ct. 528 (2005).