

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

**STUDENT, bnf  
PARENTS  
Petitioner,**

v.

**NORTHSIDE INDEPENDENT  
SCHOOL DISTRICT,  
Respondent.**

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**DOCKET NO. 140-SE-0105**

**DECISION OF THE HEARING OFFICER**

**Statement of the Case**

Petitioner Student, bnf \*\*\* & \*\*\* (“Petitioner” or “\*\*\*\*”) brings this action against the Respondent Northside Independent School District (“Respondent” or the “school district” or “NISD”) under the Individuals with Disabilities Education Act , 20 U.S.C. Sec. 1400 et. seq, (“IDEA”) and its implementing state and federal regulations. See, 34 C.F.R. Sec. 300.1 et. seq and 19 Tex. Admin. Code Sec. 89.001 et. seq.

Petitioner has at all times in this litigation been represented by his legal counsel, Karen Dalglish Seal, Attorney at Law, San Antonio, Texas. The Respondent has at all times in this litigation been represented by its legal counsel, Craig Wood of Langley & Banack, San Antonio, Texas. Dr. \*\*, Director of Special Education for Secondary Schools, has been the school district’s party representative in this case.

**Procedural History**

Petitioner filed his request for hearing on January 20, 2005. A prehearing telephone conference with both counsel was conducted on February 1, 2005. The conference was recorded and transcribed by a certified court reporter. The issues and relief requested were identified during that conference and confirmed by written order entitled “First Amended Notice of Hearing and Scheduling Order” issued on February 4, 2005. During the conference the parties agreed to a short continuance of the initial due process hearing to allow Petitioner an opportunity to review Student’s educational records upon receipt from the school district. In addition, the parties agreed to attempt informal settlement negotiations. The hearing was reset for February 17, 2005.

On February 10, 2005 Petitioner requested another continuance of the hearing date because his counsel had not had an adequate opportunity to review all of the educational records produced by the school district. In addition, Petitioner’s counsel had some questions about some of the documents produced. Petitioner’s counsel misunderstood the disclosure deadline. The parties

agreed to reset the hearing for March 1, 2005. Petitioner's counsel requested another continuance to resolve pending disclosure and discovery issues. The parties agreed to reset the hearing for one week later.

The due process hearing was finally conducted on March 7, 2005. Both parties were represented by legal counsel. Student's parents, \*\*\* & \*\*\* were present throughout the hearing as was Dr. \*\*\*. In addition, Ms. Seal was assisted, for a portion of the hearing, by Alex Garver, Attorney at Law. \*\*\* for NISD, Respondent's expert, was present and assisted the school district's counsel specifically during the testimony of \*\*\*, Petitioner's expert witness.

### **Issues**

The issues in this case are:

1. Whether the school district provided Student's parents with sufficient information in order to keep them informed as to Student's progress in meeting Individual Educational Plan ("IEP") goals and objectives within the meaning of IDEA and its implementing state and federal regulations;
2. Whether the school district failed to reconvene the Admission, Review & Dismissal Committee ("ARD") meeting of August 27, 2004 in a timely manner within the meaning of IDEA;
3. Whether the ARD convened in December 2004 was properly constituted within the meaning of IDEA;
4. Whether the school district amended, modified, and/or revised Student's IEP outside the context of the ARD process and, if so, whether that constitutes a violation of IDEA;
5. Whether the instructional materials used to implement Student's current IEP are age appropriate and, if not, whether that constitutes a violation of IDEA; and,
6. Whether Student's placement in an Economics class provides him with a free, appropriate public education in the least restrictive environment within the meaning of IDEA.

During the due process hearing it became apparent that the parties also dispute whether Student should be classified as a student with autism for purposes of special education under IDEA and, therefore, whether his IEP includes appropriate goals and objectives to meet his needs as a student with PDD/autism. However, those issues were not timely raised by the Petitioner in this case.

Petitioner filed two subsequent hearing requests on March 17, 2005 that were consolidated by order of the Hearing Officer and are now pending at this time. The two subsequent consolidated cases include the issue of whether to add PDD/autism as an eligibility classification for Student and, whether his IEP meets his needs as a student with PDD. However, this Decision will not include any findings or conclusions of law to specifically address those issues.

### **Requested Relief**

As relief, Petitioner requested the following:

1. The school district change Student's placement in the Economics class to a regular history class;
2. The school district add, as a component to Student's IEP report card, a glossary and/or set of definitions of the educational terms and jargon used in the report card to assist \*\*\* parents in understanding the meaning of the report card; and,
3. The school district provide Student with compensatory educational services; the scope and schedule of which shall be determined by an ARD.

### **Findings of Fact**

1. \*\*\* is a student with a disability eligible for special education services from the Northside ISD. There is no dispute about Student's eligibility for special education from the school district. Student is currently a \*\*\* at \*\*\* School. He is \*\*\* years old and is eligible for special education as a student with Mental Retardation (MR), Other Health Impairment (OHI) arising from a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) and Speech Impairment (SI).
2. Student's overall IQ is \*\*\* with a number of skills higher and others lower. Student has also been recently diagnosed with Pervasive Developmental Disorder, (PDD), which is on the spectrum of autism disorders. At the time of the due process hearing Student's class schedule consisted of two periods in "local curriculum" classes for social studies and math, a special education program known as "ALE" for additional classes, a PE class and an elective. Student's instruction in the ALE classroom is based upon the special education curriculum for math, reading, applications of science, and, social studies – these subjects are presented academically and functionally.
3. The local curriculum is a specially designed curriculum for students who are performing at the \*\*\* through \*\*\* grade level. It is a life oriented, every day curriculum covering what students will need to learn to be independent: how to buy a car, how to maintain homeowner's insurance, how to rent an apartment, write a check, use coupons, how to fill

out a job application, reading captions, reading the newspaper, finding information in a newspaper article and so on.

4. Student needs a lot of concrete, manipulative instructional materials in order to learn. Manipulatives have been especially effective in mathematics. He also needs to continue to work on age appropriate social skills particularly in the areas of personal grooming, hygiene and appropriate public behavior. Student exhibits learning and memory deficits. Both parents and teachers have recognized that he does not always maintain mastery of skills previously learned.
5. Student is very sweet and the \*\*\* school staff likes him a lot. He has friends at school, eats lunch with them, and, his teachers enjoy him. Student likes to play Connect 4 in school and plays a lot of other math games in the ALE classroom. He likes puzzles and crafts. Student's teachers have found that he responds best to instruction that he enjoys. His teachers use manipulatives and games across a number of subjects.
6. Student requires constant parental guidance and presence in order to do his homework. In addition, his mother has found it necessary to lay out his clothes each day and to monitor and guide him through the steps of personal hygiene each day in order to get ready for school. He is kind and loving to animals. He has a gentle nature, is helpful, and, enjoys cooking and other hands-on activities. He plays chess and knows the rules and often wins.
7. The ultimate goal for Student's parents is that Student become a productive citizen and not a ward of the State. They believe that he needs an educational program that will bring his skills up to the \*\*\* grade level. They believe that a \*\*\* grade skill level is necessary for independence. They are anxious about his future and want to do everything they can at home to assist him in reaching this goal.
8. On February 25, 2004 an ARD meeting was held to plan for and design an IEP for the transition to \*\*\* school. \*\*\* teacher and \*\*\* at \*\*\* School. She attended the February 2004 ARD in order to provide information about the \*\*\* school and answer parental questions. She was also there to learn about Student. She has thirteen years teaching experience. She first met Student when he came to the \*\*\* school this past fall. She is also one of Student's teachers in the ALE special education program
9. Early on in the fall semester Ms. \*\*\* discovered, as she began to work with Student, that some of his IEP goals were not appropriate – they were too broadly worded and not generalized for real life. She felt his IEP needed to be revised. During the same period of time, Student's parents also felt the need for another ARD because they wanted to add a Behavior Intervention Plan (BIP) as a component of Student's IEP for \*\*\* school. No BIP had been added at the February transition ARD.

10. An ARD was held on August 27, 2004. It was scheduled for one hour. Student's parents were surprised to learn that Ms. \*\*\* wanted to discuss revising \*\*\* IEP. They thought the sole purpose of the August ARD was to discuss adding a BIP. In addition, a transportation issue also arose that needed to be addressed as well. All three issues were discussed. Ms. \*\*\* was under the impression that there was consensus on the proposed revisions to Student's IEP. School personnel gave Student's parents some information they would need to follow up in order to resolve the transportation issue. School personnel did not perceive Student to exhibit any behavioral issues that interfered with learning so did not share his parents' perspective on the need for a BIP.
11. Student's parents had only budgeted one hour for the ARD and were unable to stay any longer. Therefore, they declined to sign their agreement. Ms. \*\*\* thought that they didn't sign agreement on the ARD document only because the transportation issue was still in limbo and not because they disagreed with the IEP revisions. The parties agreed to reconvene the ARD.
12. However, there were a number of problems in re-scheduling the ARD and it was not reconvened within ten days. The school district made a number of attempts to reschedule the ARD in September and then again in October. However, there were scheduling conflicts for Student's parents and for school personnel that interfered with the parties' ability to reconvene in a timely manner as originally planned. In addition, as time passed, the relationship between the parties became somewhat strained. Student's parents had many questions and concerns about the educational program and Student's progress. They submitted numerous requests for information, explanations, and clarifications on a number of issues.
13. In response, the school district set out some ground rules for the ARD meeting. Student's parents were offended by this and also declined to proceed to an ARD until their questions and concerns were addressed beforehand. This led to a stalemate in getting back to ARD. Finally, with the assistance of legal counsel for both parties, the ARD reconvened on December 14, 2004.
14. The December ARD turned into Student's annual review. Members of the ARD included his parents, a regular education teacher, a special education teacher, a person with supervisory responsibility, his speech therapist, the campus principal, and, a representative from assessment. A 2003 independent evaluation report funded by the school district, written by Dr.\*\*\*, and, provided by Student's parents, was shared with the ARD Committee. Dr. \*\*\* report raised the issue of whether Student should be classified as a student with PDD and included a set of instructional recommendations based upon his assessment findings.

15. The ARD also addressed and resolved a tardiness issue, addressed parental concerns about health care services, provided Student's parents with information on how to contact school district staff after hours, and, agreed with Student's parents on the need for a BIP as a component of his IEP. By that point, school staff felt that Student was not capable of following or understanding the disciplinary rules and consequences as applied to the general student population. In addition, the ARD placed Student in a social studies class for the spring semester. This was in response to a parental request to address Student's needs to practice his reading and writing skills and to provide him with more interaction with non-disabled peers.
16. Student's parents first received an IEP Report Card in November. It was a confusing document because it appeared to be compiled from a combination of documents in a "cut and paste" format. The objectives were not in the same order as those set out in the February 2004 IEP. In addition, there was a handwritten notation that suggested there was an attachment or second page to the IEP Report Card when in fact there was none.
17. \*\*\* admitted that the IEP Report Card was a "cut-and-paste" document because she had not been able to retrieve Student's IEP from the school district's computer data base for some reason. \*\*\* also believed the August 27<sup>th</sup> ARD had approved the revisions to Student's IEP so she modified the IEP template to include those changes. The handwritten notation was a mistake and should not have been included in the copy provided to Student's parents. There was nothing significant about the handwritten note.
18. At the February 2004 transition ARD the parties agreed that individual teachers would add their own comments to Student's IEP Report Card. Instead, the November IEP Report Card did not contain comments from all of Student's teachers. Student's parents were told, upon inquiry, that the software template simply did not allow enough room to add teacher comments beyond those included by \*\*\*. Student's parents received a second IEP Report Card but it did not contain additional teacher comments either. Student's parents also received reports from his speech therapist and special education data collection records.
19. Student's parents were concerned about the accuracy and trustworthiness of the first IEP Report Card and communicated their concerns in writing to the school district. School district attempts to explain the IEP Report Card did not satisfy Student's parents. Student's father has worked in the computer industry for many years. He knew that the data was stored in some format and became frustrated and suspicious when his request to simply view the school district's computer database to locate Student's IEP was denied. The school district invited Student's parents to meet with Dr. \*\*\*, Ms. \*\*\*, and, the campus \*\*\* to resolve this and other issues. For reasons that were not clear from the record, that meeting never took place.
20. From the beginning of the current school year, Student's parents have requested that school

district personnel provide them with information about his daily educational program so that they can reinforce that same instruction at home and gauge his progress. Student's parents complain that the information provided by school personnel has not been sufficient to meet this request.

21. Student's parents admit that there have been extensive discussions in a number of ARD meetings about Student's skill level, how to measure his level of functioning, and, his educational progress. Student's parents prefer the use of grade level equivalents – this is a measure they are comfortable using. However, the use of baseline data collected by the classroom teacher and other forms of informal and formal assessment have also been designated as measurement tools in Student's IEP. These measurement tools are more difficult for Student's parents to understand and use for purposes of reinforcing instruction at home.
22. Ms. \*\*\* designed a spiral communication notebook to facilitate communication between home and school to address the concerns and questions raised by Student's parents. Student's teachers make entries into the notebook and his parents can respond. Student's parents have participated in three ARD meetings this year and received copies of the ARD documents. They have had access to Student's evaluation and assessment reports. They have discussed statewide assessment scores and appropriate statewide assessment instruments at ARD meetings.
23. The school district has attempted to address and respond to parental requests for information and explanation. A wide variety and extensive number of communications consisting of phone calls, messages, emails, letters, notes, and communication notebook entries have been exchanged and submitted between the parties. Lawyers for both parties have attended ARD meetings and provided information and advice to their respective clients. There were over 700 pages in the record that comprise a wide variety of documents reflecting the communications between the parties in this case.
24. Student's father is a trained and experienced computer programmer. He acknowledges receipt of the influx of written communication to and from the school district but stated that he has difficulty interpreting it. Student's father is asking for a process, a protocol, or, a "technical manual" to assist him in interpreting and evaluating Student's progress on his IEP goals and objectives.
25. Another issue arose as a result of the December ARD decision to place Student into a social studies class for the spring semester. Student's parents learned that he had been placed in what they understood was an "Economics" class – a class they perceived to require a level of critical thinking and academic skill far beyond \*\*\* appropriate instructional level.
26. In fact, Student's social studies class is a Community Citizen Class (Com-Cit) – not a \*\*\* level Economics class – even though the textbook used in the class is entitled "Economics."

The Com-Cit class is based upon a “local curriculum” – i.e., the course is geared towards real life situations and the reading materials are in the \*\*\*- \*\*\* grade level range. The “local curriculum” is a specially designed curriculum for students like Student who are functioning in the \*\*\* – \*\*\* grade range. Student is doing well in his Com-Cit class.

27. Student’s father has requested vocabulary lists from the Com-Cit class so that Student can work with him at home. Student entered the class at mid-year so Student’s father feels Student is behind. Student’s father is disappointed in the Com-Cit class because it does not focus on discussions of current events which he feels is a more appropriate instructional focus and within Student’s capability of understanding.
28. Student’s father has worked with Student at home using the Economics book in the Com-Cit social studies class. Student’s father has observed that Student does not seem to be able to grasp the economic concepts presented in the textbook. Student’s father has re-tested Student at home and Student did not perform well – he was able to parrot the appropriate response but did not appear to have a deeper understanding of the material.
29. Student’s IEP goals and objectives were criticized as “too general” and could be “confusing to parents” by Petitioner’s testifying expert \*\*\*. Ms. \*\*\* has been an educator for \*\*\* years as a regular classroom teacher, a special education teacher, an educational diagnostician, and, a program coordinator and supervisor. She has worked with a wide variety of measurement instruments and with a wide variety of students with disabilities.
30. Ms. \*\*\* concluded that IEP references to the use of the statewide assessment tool was not sufficient for purposes of determining Student’s current level of performance. She also concluded that his IEP should have included goals and objectives for the ALE program, self-help, daily living, and/or vocational skills. Ms. \*\*\* found a number of the IEP goals and objectives were not sufficiently measurable since they were not specific as to source or level.
31. For example, Student’s current baseline measure of performance in reading was noted to be “BR”. Ms. \*\*\* admitted that, as a teacher, she knew that “BR” meant “Basic Reading” but thought this notation would be confusing for a parent. She also criticized a reading objective because it did not identify the criteria for choosing reading material. However, Ms. \*\*\* agreed that a number of other IEP goals and objectives were measurable and gave both parents and teachers adequate information.
32. Ms. \*\*\* also admitted that there is no requirement in the IDEA that parents must understand every teaching mechanism used or the various instructional methodologies. Instead, she acknowledged that it’s the school district’s responsibility to provide the student with a free, appropriate public education regardless of whether the parents understand the teaching mechanisms and methodologies used or not.

33. Ms. \*\*\* is frustrated working with Student's parents. The school district has attempted to establish a collaborative relationship but has not been successful in doing so. Teachers and administrative staff feel Student's parents are very hostile and the poor relationship between the parties has caused stress – teachers are required to take time each day to respond to parental demands and thus time is taken away from other students. Student's parents don't seem to appreciate staff attempts to communicate or accept that the teaching staff cares about Student and is working with him. It has been difficult to fulfill parental demands and it never seems to be enough; each response generates a new set of questions. The staff is tense and on-edge communicating with Student's parents. Parental demands for information have been distracting and time consuming for the teaching and administrative staff.
34. Student's parents feel as if they are being “managed” and that all communications with the school district are “filtered” through \*\*\*. Student's parents objective is to gain information from the school they can use to reinforce instructional lessons and concepts at home. For example, Student's parents would like Student's teachers to share some lesson plans so that they can follow up at home.
35. Things have improved somewhat for Student's parents since January 2005 and recently, one of the teachers has begun to share some lesson plans with them. However, overall, Student's parents feel frustrated with the nature of the school communications, that “ the door is shut” and thus his parents cannot help him at home. Student's father expressed the desire that \*\*\* school function like the \*\*\* school; \*\*\* parents were satisfied with the approach taken in \*\*\* school.
36. Student's parents have filed a prior due process hearing request in the past that resulted in a settlement. Student's father has made an Open Records Request to clarify the cut and paste IEP issue. Student's parents feel that the school district is fearful of them because of these actions, and they, in turn, are distrustful of the school district.

## **DISCUSSION**

### Information to Parents Regarding Progress Towards IEP Goals and Objectives

Although this issue appears to be focused on the legal sufficiency of the information provided to Student's parents, it became apparent during the hearing that Petitioner's real complaint was that Student's IEP goals and objectives were not sufficiently “measurable” within the meaning of IDEA. Student's parents also questioned the accuracy of statements of current levels of educational performance.

The evidence clearly established that the school district has made an extraordinary effort to communicate with Student's parents and provide responses and information to address parental

concerns and questions. Although IDEA requires parental participation and involvement, the statute does not specify the extent, nature, or scope of information to be provided to parents in an individual case. Instead, the statute requires the provision of notice of specified educational decisions (such as changes in placement, consent for assessment, etc.), and for parental participation in ARD meetings. *See for eg., 34 C.F.R. Secs. 300.500, 300.501, 300.503.* However, there is no legal authority to support the proposition that a school district is required to provide parents with information ad infinitum to the extent provided in this case.

Certainly the statutory preference for a collaborative relationship between home and school is well served by the efforts made by the school district in this case. The findings in this case and conclusions of law should in no way be interpreted to relieve any school district of the duty to respond to reasonable parental requests for information and clarification in other cases. It is only here, under the unique and special circumstances of this case, that I conclude that the nature, scope, and, form of the information provided by the school district *in this case* has been legally sufficient under the law. *Id.*

#### Present Levels of Performance

The ARD Committee is charged with the responsibility for developing and designing an IEP. *34 C.F.R. Sec. 300.347; 19 Tex. Admin. Code Sec. 89.1055.* The legal sufficiency of Student's IEP goals and objectives is determined by the school district's compliance with the regulatory components of the IEP. First, IDEA requires the IEP include a statement of the student's present levels of educational performance. *34 C.F.R. Sec. 300.347 (a)(1).* This requirement has been specifically explained to contemplate a "... variety of assessment techniques to determine the extent to which [the student] can be involved in and progress in the general curriculum such as criterion-referenced tests, standard achievement tests, diagnostic tests, other tests, or any combination of the above." *Appendix A to Part 300 – Notice of Interpretation.* Therefore, the regulation clearly contemplates the use of both formal and informal measures to assess a student's present educational performance.

Student's IEP included statements of present levels of competency. Although the IEP contained acronyms and test scores that are not, on their face, explained or defined, there is not enough evidence in this case to suggest that Student's parents could not understand those measures or how they were being used by school personnel. It is not enough that Student's parents simply prefer some other form of measurement. Therefore, this IEP requirement has been met. *34 C.F.R. Sec. 300.347 (a)(1)*

#### "Measurable" Goals and Objectives.

IDEA also requires "measurable" IEP goals and objectives. However, the statute does not define measurability – and for good reason. The educational plan must be uniquely tailored to the specific needs of a specific student; thus, in order to provide schools and parents with the flexibility needed in order to respond to the unique needs of individual children, the statute leaves the interpretation

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and application of the phrase “measurable” goals and objectives to the discretion of the IEP team. *See, 34 C.F.R. Secs. 300.346, 300.347 (a)(2).*

Student’s parents complain that the goals and objectives in Student’s IEP are not “measurable.” There is some evidence that some (but not all) of Student’s goals and objectives could be vague and confusing to his parents. However, this was not true for each and every goal and objective – only a selected few. Even if, the goals and objectives could have been more artfully drafted I cannot conclude from the evidence presented that the criticisms of a few goals and objectives constitute a violation of IDEA.

#### Methodological Dispute

Instead, the dispute over “measurable” goals and objectives is, in fact, a dispute over methodology. Student’s parents simply prefer the use of grade level equivalents as measures of performance because that is the measure they prefer in tracking Student’s progress towards independence – i.e., attaining mastery at the Student’s grade level. The use of such a measure may or may not be appropriate for Student in some, all, or none of the areas of instruction contemplated by his IEP.

It is well settled, that school personnel have the expertise and responsibility to choose the forms of assessment and instruction that are appropriate for a given student. The law recognizes and supports that discretion and responsibility so long as the school district complies with the procedural requirements of IDEA. Parental preference, although a factor to be considered, does not and cannot dictate the choice of methodology – whether it be the form of assessment or instruction. *See, Lachman v. State Bd. Of Educ., 852 F. 2d 290, 297 (7<sup>th</sup> Cir. 1988)(parents, no matter how well-motivated, do not have a right to compel a school district to provide a specific program or employ a specific methodology), cert. denied 488 U.S. 925 (1988); Flour Bluff Ind. Sch. Dist. v. Katherine M., 91 F. 3d 689, 693 (5<sup>th</sup> Cir. 1996), cert denied 117 S. Ct. 948 (1997).* Therefore, the IDEA requirement that IEP goals and objectives be “measurable” has also been met in this case. *Id.*

#### Periodic Reports

The third IEP requirement is that parents be provided with periodic reports of how their child is progressing towards meeting IEP goals and objectives. *34 C.F.R. Sec. 300.347 (a)(7).* The evidence in this case showed that the school district met this requirement as well. Although there was some confusion and misunderstanding about the format of the first IEP Report Card, the school district provided a credible explanation and offered clarification on this issue in a number of ways, including an invitation to meet with \*\*\* level administrators. Despite the omission of teacher comments in the IEP Report Card, this fact alone does not mean the school district failed in its duty to provide Student’s parents with periodic reports of his progress under IDEA.

Indeed, the district has made a genuine effort to address parental concerns and questions and provide ongoing information about Student’s progress and activity. Just because a parent does not agree or care for the answer given does not render the answer itself insufficient under IDEA. IDEA

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merely requires parents be kept informed and be included as part of the educational planning and decision-making team. The evidence supports the conclusion that they were. The statute establishes a set of procedural requirements that contemplate parental involvement. But the statute does *not* require school districts to frame IEP goals and objectives in a particular way or use a specific methodology or format that a parent may prefer. *34 C.F.R. Sec. 300.347; See, Lachman, 852 F. 2d at 297.*

Even if, the school district did not meet the procedural requirements for the IEP components, there was not enough evidence to show that such a violation caused a substantive harm. Plaintiff failed to demonstrate that any procedural errors in the formulation, measurement, or reporting of progress of IEP goals or objectives, resulted in a substantive denial of a free, appropriate public education. Procedural errors alone, do not constitute a per se violation of IDEA. Instead, the Plaintiff must show that the procedural violation caused a substantive harm to the student's education. There was no such showing here. *W.G. v. Bd. of Trustees, 960 F. 2d 1479, 1484 (9<sup>th</sup> Cir. 1992); Tyler v. Northwest Ind. Sch. Dist., 36 IDELR 236 (N.D. Tex. 2002).*

#### Failure to Reconvene August 27, 2005 ARD in a Timely Manner

The law requires that if an ARD meeting ends without consensus, the school district must offer a *single opportunity* to reconvene the ARD within ten school days. During the recess the parties are to consider alternatives, gather additional data, prepare further documents, and/or obtain additional resource persons who may be of assistance in reaching consensus. *19 Tex. Admin. Code Sec. 89.1050 (h)(1)(2).* In this case, the school district made more than one attempt to reconvene but the parties had difficulty rescheduling the ARD. At that point, Student's parents had the right to file a complaint, request mediation, or, request a due process hearing. *19 Tex.Admin. Code Sec. 80.1050 (h)(7).* I conclude that the school district made sufficient attempts under the law to reconvene the August 27<sup>th</sup> ARD. *Id.*

The development of a communication chain that became dysfunctional and excessive along with the hostility that arose over time between the parties contributed to the failure of both parties in resetting the ARD in a more timely manner. However, to the credit of both parties, these issues were ultimately overcome and the parties did convene an ARD on December 14, 2004. Therefore, even if the ARD was not reconvened in a timely manner there was no substantive harm under these circumstances. *See, W.G. v. Bd. of Trustees, 960 F.2d at 1484.*

#### December 14, 2004 ARD – Properly Constituted

The school district had a responsibility to ensure that the ARD Committee included the requisite participants under the law: Student's parents, at least one regular education teacher, at least one special teacher, a representative from the school district qualified to supervise specially designed instruction, knowledgeable about the general curriculum, and, knowledgeable about the availability of school district resources; and, an individual who can interpret the instructional implications of

evaluation results. 34 C.F.R. Sec. 300.344 (a)(1)- (5); 19 Tex. Admin. Code Sec. 89.1050.. In addition, the student may also participate if appropriate and, at the discretion of either parent or school, other individuals who have knowledge or special expertise regarding the child, including related services personnel. 34 C.F.R. Sec. 300.344 (a)(6)(7).

In this case, the members of the December 14<sup>th</sup> ARD included: Student's parents, the campus principal, a regular education teacher, a special education teacher, Student's speech therapist, a case manager, and, a representative from assessment. There was no controverting evidence that the persons in attendance did not meet the requisite criteria stated in the law. *Id.*

#### Modification/Revision of IEP Outside of ARD

It was not entirely clear from the record the specific factual allegations that support this claim. I infer that Ms. \*\*\* revisions to Student's IEP at or following the August 27<sup>th</sup> ARD are the acts in question. If so, I find the evidence inconclusive at best. The evidence showed that the parties discussed the need to revise some of \*\*\* goals and objectives to better meet his needs and instructional level. The law requires that revisions to an IEP be made in an ARD meeting. *See, 34 C.F.R. Sec. 300.343 (a).*

Ms. \*\*\* was under the impression that there was ARD agreement on the instructional issues related to revisions of Student's IEP. She thought Student's parents simply didn't sign their agreement on the ARD document because the transportation issue was not resolved. She apparently "revised" Student's IEP when she pieced together the IEP for purposes of the initial IEP Report Card issued in November. If this is the act that Plaintiff complains of, the revisions were done under the genuine belief that the ARD Committee approved them. Significantly, Plaintiff did not prove that making the revisions to Student's IEP resulted in a substantive harm to his educational program. Instead, the revised IEP goals and objectives better met his needs. I find no harm under these circumstances and therefore no violation of IDEA on this issue. *See for eg., Tyler v. Northwest Ind. Sch. Dist., supra.*

#### Age Appropriate Instructional Materials

The evidence showed that Student learns best with the use of manipulatives and enjoys hands on activities. The teachers have found that Student does best when he enjoys the instructional activity. Therefore, the use of games and real life manipulatives are appropriate instructional approaches to meet Student's needs. The evidence also showed that the material covered in his social studies textbook is age appropriate with a focus on real world concepts and real life economic situations presented at an appropriate reading level. Plaintiffs did not meet their burden of proof to show otherwise. *See for eg., White v. Ascension Sch. Bd., 343 F. 3d 373, 377 (5<sup>th</sup> Cir. 2003); Teague Ind. Sch. Dist. v. Todd L., 999 F. 2d 127, 132 (5<sup>th</sup> Cir. 1993)(burden of proof is on party challenging the school district's educational program).*

### Economics Class

The evidence showed that the dispute over Student's placement into an "Economics" class was largely the result of miscommunication between the parties. Student's parents jumped to conclusions about the class without directly conferring with the teacher or clarifying the issue with administrators who were available to do so. They apparently did not understand that the "Economics" class was a Community Citizen class using a local curriculum – a specialized, real world oriented curriculum aimed at providing Student an understanding of economic principles at a level that he could understand and retain.

Student is *not* in a class that is at an instructional level that is too challenging for him. Although he does have problems maintaining mastery of the material, this is a result of his memory deficits and not because the placement is per se inappropriate. I conclude that Student's placement in the Community Citizen class, with the textbook entitled "Economics" that uses reading, language and writing skills at an appropriate instructional level, meets Student's needs in the least restrictive environment. *34 C.F.R. Secs. 300.550, 300.551, 300.552.*

### **CONCLUSIONS OF LAW**

1. The school district provided Student's parents with sufficient information in order to keep them informed as to Student's progress in meeting IEP goals and objectives within the meaning of IDEA. *34 C.F.R. Sec. 300.347.*
2. The school district provided Student's parents with the opportunity to reconvene the ARD meeting of August 27, 2004 in a timely manner. *19 Tex. Admin. Code Sec 1050. (h).*
3. The ARD meeting in December 2004 included the requisite personnel required by law. *34 C.F.R. Sec. 300.344.*
4. The school district did not violate IDEA by revising some IEP goals and objectives following an ARD meeting where such revisions were discussed and the school district had reason to believe that parents agreed to those revisions. The school district fulfilled its duty in revising Student's IEP to address his needs and instructional level. *34 C.F.R. Sec. 300.343.*
5. The instructional materials used to implement Student's current IEP are age appropriate and therefore support the provision of a free, appropriate public education. *34 C.F.R. Sec. 300.1(a).*
6. Student's placement in a Community Citizen class, using a local curriculum and a textbook entitled "Economics", is appropriate and the least restrictive environment under the law. *34 C.F.R. Secs. 300-550-552.*

## ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Plaintiff's claims are hereby **DENIED**. It is further **ORDERED** that Plaintiff's requests for relief are hereby **DENIED**. All other relief not specifically stated herein is **DENIED**.

**SIGNED the 5th day of April 2005**

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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).