

Student bnf Parent	§	BEFORE A SPECIAL
Petitioner	§	EDUCATION
	§	
v.	§	
	§	HEARING OFFICER FOR THE
LAKE TRAVIS	§	
INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

Petitioner, Student, by his next friends, Parent (hereinafter referred to as Petitioner or Student) brings this action against Respondent Lake Travis Independent School District (hereinafter Respondent or LTISD) under the Individuals With Disabilities Education Act (hereinafter IDEA), 20 U.S.C. § 1400 *et. seq.*

Petitioner alleges that Respondent denied him a free appropriate public education during the period from January 12, 2005 to the present¹ based on the following:

1. **Respondent failed to provide an appropriate Behavioral Intervention Plan (BIP) and behavioral strategies for Student in the following particulars:** failed to consider the neuropsychologist’s evaluation and recommendations for Student in devising his BIP; failed to implement Student’s BIP as written; inappropriately included restraint as an option in Student’s BIP; and inappropriately provided in Student’s BIP that he can and is required to follow Respondent’s Student Code of Conduct.
2. **Respondent failed to provide appropriate educational services for Student in the following particulars:** failed to provide Student adequate opportunities and exposure in the area of language arts; failed to provide adequate and required time in CMC for Student; and failed to provide Student with a writing curriculum on the appropriate instructional level.

¹ Petitioner and Respondent entered into an agreement, as a result of a mediation in a previous due process proceeding, in which Petitioner released Respondent from any and all IDEA claims arising prior to January 12, 2005. As such, by agreement of the parties, Petitioner’s claims are limited to the period from January 12, 2005 to the present.

3. **Respondent failed to provide staff with adequate training to provide Student with a free appropriate public education in the following particulars:** failed to provide necessary training in all aspects of Student's disabilities and failed to provide necessary training in the proper documentation following a restraint.
4. **Respondent created a hostile environment for Student in the following particulars:** engaged in unprofessional conduct toward Student by restraining him for behaviors related to his disability, and toward his parents by denying them full and meaningful participation in the educational process.
5. **Respondent violated Petitioners' procedural rights under the IDEA in the following particulars:** failed to have consistent participation by the proper members during the ARD committee process; failed to include parental concerns and perspectives in the ARD documents; failed to provide written documentation as required of a restraint that occurred on August 25, 2004; and failed to present evaluation data concerning Student either before or during the ARD process; and
6. **Respondent failed to maintain educational records in violation of FERPA and the IDEA in the following particulars:** failed to maintain copies of Student's answer sheets for CLASS testing and a complete copy of the DIEBLES test answer sheet, both of which are educational records.

For relief, Petitioner seeks compensatory academic services, including reimbursement for privately obtained reading services; training of Respondent's personnel in the areas of Student's disabilities, and in the proper implementation of Student's BIP and IEP; removal of the restraint portion of Student's BIP; removal from Student's BIP of the provision requiring him to follow the Student Code of Conduct; training and monitoring of Respondent in the provision of a free appropriate public education to Student, and such other relief to which the Petitioner may be entitled.

Petitioner appeared *pro se* through his next friends Parents throughout this proceeding. Denise Hays and Susan Graham of Austin, Texas represented Respondent throughout the proceeding.

PROCEDURAL HISTORY

Petitioner filed his initial request for hearing on May 30, 2005. Following one continuance granted for good cause to ensure the participation of necessary witnesses, the matter ultimately came on for hearing on July 7-8 and August 29-31, 2005. At the request of the parties, the Hearing Officer granted leave to file post-hearing briefs on or before October 12, 2005. This decision of the Hearing Officer is due on or before November 2, 2005.

FINDINGS OF FACT

1. At all relevant times, Student lived within and attended school at LTISD. There is no dispute as to Respondent's duty to provide Student with educational services under the IDEA as his resident district.
2. During the 2004-2005 school year, Student attended the *** grade at *** in Lake Travis ISD. Student meets eligibility criteria for special education services under the following categories: Autism, Speech Impairment, and Other Health Impairment (for ADHD). Student has also been diagnosed with coordination disorder; sleep disorder; and obsessive-compulsive disorder.
3. Student began at Lake Travis ISD in November 2003 at his home campus,***. In January 2004, Student transferred to *** to participate in the district's PASS program (Positive Academic Student Support), a special education service for students with behavioral, emotional, and interpersonal challenges.
4. During Fall 2004, Student was served in the general education classroom with a full time assistant for inclusion support, except for 45 minutes per day of resource time in Language Arts to address reading deficits. Student also received social skills training in a small group in the general education setting.
5. In addition, Student's IEPs during Fall 2004 included numerous components designed to address his behavioral needs. Student had an IEP with social/behavioral goals and objectives and an extensive Behavior Intervention Plan (BIP) to address his behavioral needs and allow him access to the PASS classroom for cool down time when necessary. The BIP was designed to address behaviors of concern: distractibility and short attention span, lack of awareness of social cues and tendency to blurt out in class, refusal to stop assignments and tendency to become obsessive, inability to transition between activities or handle any changes in routine, physical and/or aggression, disruptive behavior in class, poor relationships with peers and authority figures, and "melt downs" such as lying or standing in hallways, doorways, or stairwells while kicking, screaming, and resisting. Student's BIP provided that he would be subject to the student code of conduct (SCC), but that the BIP would be utilized first and Student's parents would be contacted before any SCC consequences were used other than conferences with staff.
6. Student also had a BIP for Physical Restraint that allowed for physical intervention in situations perceived as imminently dangerous to him or others. During the 2003-2004 school year, Student had 18 restraints. Between the beginning of the 2004-2005 school year and November 17, 2004, 8 restraints occurred.

7. Several areas of disagreement arose between Student's parents and LTISD during Fall 2004. Those areas, as reflected in the district's notice of proposal/refusal to provide services dated 11/17/04, were: continued use of the BIP for physical restraint, proposed additional special education time for language arts and social skills, and the continued requirement that Student be subject to the regular SCC. As a result of these disagreements, Student's parents filed a request for due process, which was ultimately dismissed as a result of a mediated settlement agreement.
8. In relevant part, the settlement agreement specified that LTISD would retain a neuropsychologist, Dr. ***, to conduct a comprehensive evaluation of Student and a program review of the district's program for Student, including the additional time for language arts and social skills training proposed by the district.
9. The settlement agreement provided that Petitioner released Respondent from all claims arising under the IDEA prior to January 12, 2005. In the instant proceeding, Petitioner asserts only claims arising after January 12, 2005 because of the terms of the settlement agreement.²
10. An Admission, Review, and Dismissal Committee (ARDC) meeting was held on January 21, 2005, in part to implement the terms of the settlement agreement. The ARDC reached the following agreements concerning changes in Student's program: increase Student's special education time by 30 minutes per day for direct 1:1 instruction in social skills to take place in the PASS classroom, increase Student's special education time by 30 minutes per day for language arts instruction in the resource setting, and decrease the time that the BIP provided for Student to remain in the PASS classroom from 9 days to 2 days.
11. In addition, the ARDC continued Student's placement in the general education setting with the support of a full time 1:1 assistant and access to PASS and resource services. The ARDC also continued the BIP for Physical Restraint, the social and behavioral IEP with 14 objectives related to the goal of increased social skills and self-control, and the BIP which addressed the same behaviors of concern described in Fact Finding No. 5 and provided consequences such as removal to the PASS classroom. The BIP continued to provide that Student was subject to the SCC, but that the BIP would be used first and the parents would be contacted prior to SCC consequences being implemented beyond conferences with staff. Student's IEP also provided that he could **not** be placed in an Alternative Education Program (AEP) for disciplinary reasons.
12. Student's behavioral program during Spring 2005 was reasonably calculated to confer, and did confer, benefit to him in the area of non-academic behavioral

² Petitioner initially raised an issue about failure to document a restraint in August 2004, but testified at hearing that the issue was barred by the terms of the settlement agreement.

- benefits. Students's behaviors improved substantially, with fewer outbursts and "melt downs" and increased evidence of self control, internalized behavior management strategies, improved social skills and ability to verbalize feelings, and improved ability to function smoothly in the general education setting.
13. Between January 12, 2005 and the conclusion of this hearing, Student was restrained 4 times, the last of which occurred on February 16, 2005. At least two of the situations that resulted in restraints occurred while Student was taking antibiotics, which were known to cause increased aggression. The significant decrease in the number of incidents leading to restraint illustrates the success of Student's behavioral program, both in terms of his progress toward self-control and the staff's improved ability to work with Student and de-escalate his behaviors at an earlier point in the cycle.
 14. Student's BIP for Physical Restraint, as written and implemented, was appropriate to his needs.
 15. Throughout the Spring 2005, LTISD staff worked together on a collaborative basis, meeting regularly and exchanging data about Student's behaviors, to ensure consistent implementation of Student's BIP, including the use of pre-teaching and social stories, reviewing Student's day and any unexpected changes with him to prepare him for transitions, and accessing the PASS classroom for behavioral support.
 16. Despite Student's significant improvement in the area of behavior and social skills, he mastered only *** of the 14 objectives on his social skills IEP and continued to demonstrate inconsistent self-control skills, even with the assistance of full time adult support. His progress reports and teachers' testimony demonstrate that he has not yet mastered the strategies necessary to function in a less restrictive setting.
 17. Student has not yet mastered the ability to fully understand or comply with all aspects of the SCC; however, he is continuing to work toward that ultimate goal.
 18. During Spring 2005, Student spent 45 minutes of his language arts time each day in the general education setting working on the *** grade language arts curriculum with the support of his 1:1 aide. He spent an additional 75 minutes per day in the resource room, working on his Language Arts Individual Education Plan (IEP) with the special education teacher. In the resource room, Study worked on completion of assignments from the general education classroom and, more often, on assignments from the special education teacher related to his IEP goals and objectives. Student's language arts grade reflected his work in both the general education classroom and the resource room.

19. Student's language arts and reading IEPs were appropriate and designed to confer Student with reasonable educational benefit. Student, in fact, made demonstrable academic progress in language arts/reading with final semester grades of *** and *** respectively, attainment of his IEP annual goal and objectives, and a passing score on the *** grade Reading TAKS test. Further, Student's scores on the DIBELS reading assessment showed more than minimal progress in accuracy and word use fluency from September 2004 to April 2005.
20. In May 2005, the ARDC discussed the greater challenges posed to Student by the increasingly difficult aspects of reading and agreed to provide Student with a laptop with reading software to assist with these more challenging reading skills.
21. Student's writing IEPs for 2004-2005 were appropriate to his needs and reflect his mastery of all objectives as of May 2005.
22. As per the parties' agreement, Respondent retained Dr. *** to conduct a review of Student's program, as well as a comprehensive evaluation of Student. Dr. *** conducted an extensive review, completed a written report, met with both staff and Student's parents to review her report and answer questions, and attended one of the three May ARDC meetings that comprised Student's annual ARDC. Dr. *** recommendations are reflected in the BIP and social skills IEP proposed by the district at the May 2005 ARDC meetings. Dr. *** subsequently facilitated a staffing with over 20 LTISD personnel who work with Student in August 2005 to review Student's BIP and program.
23. Dr. Goulding concluded, based on her program review, that Student's program was appropriate to his needs, balanced as to concerns for least restrictive environment, developed and implemented collaboratively with all staff working with Student and with his parents, and implemented as written by staff sensitive to Student's needs. Specifically, Dr. *** found that the PASS program, Student's BIP, and his BIP for Physical Constraint were appropriate, and that the use of the SAMA program for restraints was especially appropriate for his needs.
24. Dr. *** was aware that one issue of concern to the parents was whether Student would be subject to the SCC; however, this issue was not specifically addressed in Dr. ***'s report.
25. The ARDC convened in May 2005 over three separate dates (May 9, 17, and 20) for Student's annual ARD and to review the results of Dr. ***'s evaluation and program review. Prior to the ARDC meetings, the special education director provided Student's parents with draft IEPs and met with them to prepare for the meeting. Initially, the director provided the parents with a draft BIP on May 5, 2005, indicating that, as in previous BIPs, Student would follow the SCC and could be physically restrained. When Student's parents met with the director on May 6, 2005, they explained their understanding, based on their meeting with Dr.

- ***, that Student could not follow the SCC. The parents also reiterated their view that physical restraint should not be an available option. The director agreed to contact Dr. *** for clarification on the SCC issue.
26. Later on May 6, 2005, the director supplied Student's parents with revised drafts of the ARD documents reflecting that Student would **not** be subject to the SCC. In addition, an email also sent on May 6, 2005 from the director to LTISD staff concerning Student indicates that, "according to Dr. ***, we should mark 'does not' follow reg code of conduct but rather BIP." The director's opinion, as offered in the email, "I feel we can change this. It does not really change how we approach Student's behavior issues as we always follow the BIP, but want to hear back from *** on this one."
 27. The director subsequently heard from Student's building principal and the incoming special education director, who was to assume the position in June 2005. that they believed Student should be subject to the SCC as he had been in the past. When the ARD convened on May 9, Student's parents were unaware of the ongoing disagreement and that some district personnel did not agree with the draft BIP they had reviewed. The issue of the SCC was discussed very briefly at the end of the May 9 ARDC meeting, and the discussion resumed on May 20. Dr. Goulding was present only on May 9.
 28. At the conclusion of the May ARDC meetings, the district proposed a BIP for Student that includes the following notations: "checked YES" to "The student will follow the district's Student Code of Conduct. The BIP states, "if NO is marked, administrators and staff should refer to the Behavior Intervention Plan when disciplinary action is necessary." The following additional notations are written on the BIP: "BIP supercedes Code of Conduct; all BIP strategies to be provided in order to ensure success;" and "ARD to meet prior to use of actions in Student Code of Conduct that would change Student's placement."
 29. Two other changes in the May BIP from the prior BIP were made: there is no mention of contacting the parents before using consequences from the SCC and Student's IEP does not specify that he could not be removed to an AEP.
 30. Although school district members of Student's ARDC agreed that Student should be subject to the SCC, at least four of them testified that Student could not currently follow all portions of the SCC, either in terms of understanding all of it or having the self control to comply with it, but that it was a goal to work toward and a good teaching tool for Student. These personnel testified to the belief that all students with sufficient cognitive ability to understand right from wrong should be subject to the SCC.

31. Dr. Goulding believes that Student is not currently able to understand the SCC without specific instruction to assist him and that he is only able to fully comply with parts of the Code.
32. The meaning of the BIP and its relationship to the SCC is unclear, even to LTISD administrators and staff and Dr. ***. Although the BIP states on its face Student's building principal expressed the opinion that it dovetailed with the SCC and would allow Student to be removed to a disciplinary alternative education placement under the appropriate circumstances (after the BIP had been applied.) In contrast, when asked if removal to an AEP would be allowed under the BIP, r (Student's special education teacher) and Dr. *** testified that removal could not occur because the BIP supercedes the SCC. Dr. *** attempted to explain how the BIP and SCC work together, but concluded that she couldn't really answer whether it allowed removal to an AEP or not.
33. All witnesses were clear that removal to an AEP would most likely not be appropriate for Student.
34. The May 2005 BIP, as currently written, is vague and ambiguous, with conflicting provisions on the face of the document. The BIP does not adequately address Student's behaviors that could violate the SCC and explain what types of disciplinary measures can result from particular infractions of school rules.
35. Blanket application of the entire SCC to Student is inappropriate given that the skills needed to both understand and comply with all portions of the SCC are emerging for Student at this time and are not yet mastered.
36. Teachers, paraprofessionals, and other staff working with Student received sufficient training on all aspects of Student's disabilities to provide him with a free appropriate public education. In particular, Respondent retained six different outside consultants and evaluators in the areas of autism, reading, and neuropsychology to work with and train district personnel on various aspects of Student's needs and competencies.
37. Student's parents have been afforded full and meaningful participation in the educational process. The record is replete with evidence of almost daily emails and telephone calls between Student's mother and various school personnel about all aspects of Student's educational experiences, performance, and needs. Numerous formal and informal meetings occurred, including pre-ARDs and ARDs to discuss Student's educational program.
38. Student's parents' lack of access to test answer sheets for CLASS and DIBELS testing and to behavioral data maintained by Student's aide prior to the May ARDs did not deny meaningful participation in Student's education, particularly

in light of the extensive information available concerning Student's assessment and performance.

39. Although disagreements existed between the parents and district officials, the evidence demonstrates that school officials were also responsive to parental concerns: Respondent agreed to partial payment for a reading evaluation and consultation with Petitioner's reading expert; Respondent agreed to reduce the number of days for removal to PASS from 9 to 2 in response to parental concerns; Respondent added language to Petitioner's BIP about the infrequency of Student's behaviors in response to parental concerns; Respondent purchased reading comprehension software for Student's use over the summer in response to parental concerns; Respondent agreed, in September 2004, to conduct parent conferences every two weeks to review Student's progress; and both the parents and Respondent participated in numerous ARD meetings to address Student's educational needs throughout his tenure in LTISD.
40. The January, March and May 2005 ARDC meetings held for Student were duly constituted with the necessary members present. All evaluation data was presented and reviewed either before or during the ARD process.

DISCUSSION

Petitioner alleges numerous procedural and substantive violations of the IDEA during Spring 2005 resulting from Student's program and proposed IEPs for the 2005-2006 school year. Each of these will be addressed below.

General Standard of Review

IDEA requires LTISD to provide Student with a free appropriate public education that consists of "personalized instruction with sufficient services to permit the child to benefit educationally from that instruction." *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982). In *Rowley*, the court developed a two prong analysis to determine if a school district has met its obligation to provide a free appropriate public education: 1) whether the district complied with the procedural requirements of IDEA, and 2) whether the district offered a program to the student that was reasonably calculated to provide educational benefit. *Id.* at 206-207.

In examining the appropriateness of LTISD's program, a presumption exists in favor of the school district's plan for educating Student. As such, Petitioner bears the burden of proving that his program and placement were not appropriate. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd* 468 U.S. 883 (1984).

Procedural Violations Of IDEA

Petitioner alleges that Respondent violated the procedural guarantees of IDEA pertaining to the IEP team members required at ARD meetings, parental participation at ARD meetings, the presentation of evaluation data at ARD meetings, and parental access to educational records.

Under IDEA, procedural violations warrant a finding that a school has failed to provide a free appropriate public education only when they result in the loss of educational opportunity, i.e. result in substantive harm, or seriously infringe on a parent's opportunity to participate in the ARDC process. *Adam J. v. Keller ISD*, 328 F.3d 804 (5th Cir. 2003). Thus, Petitioner must establish not only the existence of a procedural violation, but some substantive harm flowing from that violation.

Petitioner failed to produce evidence sufficient to meet his burden of proof with regard to the procedural violations alleged. With respect to the ARD process, the evidence establishes that the participants required by 34 C.F.R. § 300.344 were present at every ARD meeting for Student during Spring 2005. P's objection that certain ARDC members were not available for the entirety of the meeting, while understandable in terms of continuity and flow of discussion, does not establish a violation of IDEA or its regulations.

Similarly, the evidence is clear that Student's parents participated fully in the ARD process, both at the meetings and before the meetings through pre-ARDs and review and discussion of draft documents. Both Student's parents and school personnel had access to extensive documentation and evaluation concerning Student prior to and at the ARD and had the opportunity to review Student's most recent evaluation both before and during the May ARDs with Dr. ***, the author of the evaluation.

With regard to Petitioner's concerns regarding his access to educational records, this Hearing Officer has jurisdiction over Petitioner's claims arising under the Family Educational Rights and Privacy Act of 1974 (FERPA) only if those claims constitute a denial of a free appropriate public education. *Ledyard Board of Education*, 103 LRP 57654 (CT SEA 2003). Petitioner has failed to show that his inability to access the CLASS or DIBELS answers sheets denied him a free appropriate public education given the clear evidence of educational progress Student made in these academic areas.

Substantive Violations Of IDEA

The essence of determining whether a substantive violation of IDEA has occurred is whether the school's program has provided the student with the requisite educational benefit. IDEA does not require an education that maximizes a student's potential; rather, the school must provide an education that is reasonably calculated to enable the child to achieve *some* benefit. *Some* benefit means an educational program that is meaningful and offers more than a *de minimus* educational benefit; it must be "likely to produce progress, not regression or trivial educational advancement." *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245 (5th Cir. 1997).

Although courts have not adopted a specific substantive standard to determine when a free appropriate public education has been provided, the Fifth Circuit in *Michael F.* identified four factors to consider in analyzing a school's program:

1. Is the program individualized and based on 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; and
4. Are there demonstrated positive benefits both academically and non-academically to the student.

Applying these legal standards and indicia of a free appropriate public education to the issues raised by Petitioner and the evidence adduced, the Hearing Officer concludes as follows.

1. Whether Respondent Failed To Provide An Appropriate Behavioral Intervention Plan (BIP) and Behavioral Strategies For Student

Petitioner argues that Respondent failed to implement Student's BIP by restraining him prior to using BIP strategies, and that Student's BIP is inappropriate because it includes restraint as an option for Student and requires that Student follow the SCC.

The evidence establishes that Respondent consistently implemented Student's BIP as written. Respondent utilized the positive behavior interventions and supports, as well as the consequences of removal to the PASS classroom on a consistent basis with success, as demonstrated by Student's improved behavior and increased self-control.

With regard to Student's parents understandable concern and objection to the use of restraint, the Hearing Officer finds no evidence that Student's BIP for Physical Restraint, either as written or implemented, is inappropriate to his needs. Petitioner's objection to the BIP for Physical Restraint is premised on the view that restraint is punishment that should not be applied for behaviors related to Student's disability, and that restraint would not be necessary if school personnel could more effectively de-escalate Student's behaviors. Respondent's use of restraint, in the four incidents that occurred prior to February 16, 2005, was not however a consequence for Student, but rather a response to behavior deemed to be dangerous to Student or to others. Based on a review of the four restraints at issue, the Hearing Officer cannot conclude that they were necessitated by failures on the part of school personnel. Dr. *** testified that Respondent's method and plan of restraint for Student was appropriate and the Hearing Officer finds no evidence to conclude otherwise.

The Hearing Officer does, however, agree with Petitioner that the BIP's provision that Student will follow the SCC is inappropriate and fails to provide him with an IEP that is individualized and based on his performance and assessment.

First, the Hearing Officer finds that the BIP, as written, is vague, ambiguous, and not subject to clear and consistent application by school personnel. Most significantly, even the witnesses who testified at hearing could not agree on whether the BIP allows Student to be removed to an AEP for disciplinary reasons. Two witnesses (one of whom was Dr. ***) testified that the BIP's statement that it **supercedes** the SCC means that the regular disciplinary consequence of removal to an AEP cannot be applied to Student. Other witnesses believed that Student could be removed after the BIP is applied to the behaviors identified on the plan. The confusion is understandable because the BIP is contradictory on its face: it asks if the student will follow the district's SCC and indicates that if "NO" is marked, then school personnel should refer to the BIP when disciplinary action is necessary. Even though Student's BIP is marked "YES," indicating that he will follow the SCC and school personnel do not need to refer to the BIP when disciplinary action is necessary, the BIP also states that it supercedes the SCC and the ARD must meet before any change of placement. What is ARDC's intent with this BIP? Exactly when is the SCC applicable to Student and when is it not? Which behavioral expectations are in effect and which consequences are appropriate? The BIP simply does not address Student's behaviors and possible consequences with sufficient clarity to constitute an appropriate IEP. 34 C.F.R. §300.346; *See*, Appendix A to Part 300, Q. 38.

Second, the Hearing Officer finds, based on the testimony and documentary evidence, that Student cannot currently comply with the totality of the SCC, either in terms of understanding its content or conforming his behavior to its expectations. Numerous witnesses, including Dr. ***, testified that Student may be able to understand and conform to **portions** of the SCC, but he has not yet mastered the skills to be fully subject to the SCC. Student's special education teacher testified that the SCC **will be** appropriate for Student when he masters the interventions and strategies on his behavior IEP and BIP, but that he is simply not there yet. ***, educational diagnostician and Student's case manager, testified that she doesn't know if Student **can** follow the SCC, but believes that ideally he should- a goal to work toward for Student. Student's 1:1 aide testified that his self-control skills are inconsistent, even with her constant presence and support. In addition to testimonial evidence, Student's progress reports and evaluated IEPs demonstrate that he mastered only *** of 14 objectives on his social skills IEP and failed to attain mastery of his annual behavioral goal. As written, Student's BIP seems to allow a blanket application of the SCC to him, even though his assessment and performance data conclusively demonstrate that his skills in this area are just emerging.

2. Whether Respondent Failed To Provide Appropriate Educational Services

Petitioner argues that Respondent failed to provide Student with an appropriate program in language arts, both by not providing adequate access to the general language

arts curriculum, by not serving him properly in the resource setting, and by not providing an appropriate writing program.

Petitioner failed to meet his burden of proof on this aspect of Student's program. The evidence is clear that Student's IEPs in both Reading and Writing were reasonably calculated to confer benefit and did, in fact, confer benefit. Not only did Student pass the TAKS test in Reading, his grades and IEP progress reports both indicate mastery of IEP objectives, as well as the general curriculum. The Hearing Officer concludes that Student's progress during his *** grade year in these academic areas was meaningful and not simply trivial advancement, thus satisfying the standard required by the IDEA.

3. Whether Respondent Failed To Provide Staff With Adequate Training

Petitioner argues that Respondent failed to provide staff with necessary and adequate training in all aspects of Student's disabilities; however, the record conclusively demonstrates that Respondent provided numerous training and consultation opportunities to its staff, specifically about Student's disabilities, needs, and educational program. Petitioner failed to meet his burden of proof on this issue.

4. Whether Respondent Created A Hostile Environment Toward Student Or His Parents

Petitioner argues that Respondent created a hostile environment toward Student by restraining him for behaviors related to his disability and toward his parents by denying them full and meaningful participation in the educational process.

The Hearing Officer has previously addressed the issue of Student's restraints. The evidence does not support the conclusion that Respondent's restraints of Student were hostile, either in intent or in practice.

The Hearing Officer further finds that Respondent did not create a hostile environment toward Student's parents. Although the Hearing Officer recognizes that the parties had ongoing disagreements about important issues related to Student's education, and that Student's parents felt unable to impact Student's education in ways they strongly believed were necessary for his best interests, the Hearing Officer finds that Respondent made consistent attempts to include Student's parents in the educational process in meaningful ways and allowed them the opportunity to fully participate in Student's education. Despite disagreements in many areas, the evidence reflects that the school was also willing to compromise and work with Student's parents on issues as well.

ML is fortunate to have **both** parents and school personnel who are committed to his education, growth, and development. The evidence establishes that Student has achieved much success as a result of the significant efforts on the part of both his parents and the school; the Hearing Officer is hopeful that the parties can begin to work together more effectively to provide Student with even greater success.

CONCLUSIONS OF LAW

1. At all times relevant to this proceeding, Student was a student residing in the LTISD who was eligible for special education services under the provisions of IDEA and its implementing regulations as a student with autism, speech impairment, and other health impairment.

2. Respondent LTISD is an independent school district duly constituted in and by the state of Texas, and subject to the requirements of the IDEA and its implementing regulations. LTSD is Student's resident district and has the responsibility to provide him with a free appropriate public education under the IDEA. 20 U.S.C. § 1401 (a)(18).

3. The IEP developed for Student by LTISD in January 2005 was properly developed by an ARD committee and implemented by LTISD staff to provide Student with an educational placement and related services reasonably calculated to enable him to receive educational benefit. *Board of Education of the Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245 (5th Cir. 1997); 34 CFR 300.300 and 19 T.A.C. §89.1055.

4. Petitioner failed to meet his burden of establishing procedural violations of IDEA that resulted in substantive harm to Petitioner or denied Student's parents full and meaningful participation in the educational process. *Adam J. v. Keller ISD*, 328 F.3d 804 (5th Cir. 2003).

5. The BIP developed for Student by LTISD in May 2005, by providing that Student will follow the SCC, fails to provide him with a free appropriate public education as it cannot be clearly applied and is not individualized to Student based on his assessment and performance. *Board of Education of the Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F. 3d 245 (5th Cir. 1997)

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, this Hearing Officer hereby **ORDERS** that the relief sought by Petitioner is hereby **GRANTED IN PART AND DENIED IN PART**.

Respondent is ordered to convene an ARDC as soon as practical, but no later than ten school days from the date of this decision, to revise Student's Behavior Intervention Plan to reflect that he will not follow the district's Student Code of Conduct. To the extent that the ARDC determines that Student can follow portions of the Code of Conduct, the ARDC must revise the Behavior Intervention Plan to more specifically address which behavioral expectations and consequences from the Code apply to Student.

All other and further relief not expressly granted herein is hereby **DENIED**.

Respondent shall timely implement this decision within 10 school days in accordance with 19 TAC §89.1185(q) and 34 CFR §300.514. The following must be provided to the Division of Complaints Management at 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.

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

SIGNED and **ENTERED** this 2nd of November 2005.

/s/ Lynn E. Rubinett

Lynn E. Rubinett

Special Education Hearing Officer

TEA DOCKET NO. 332-SE-0505

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	§	
v.	§	
	§	HEARING OFFICER FOR THE
LAKE TRAVIS	§	
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Respondent	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether Respondent Failed To Provide An Appropriate Behavioral Intervention Plan (BIP) and Behavioral Strategies For Student?

Held: For Petitioner in part, Respondent in part. In stating that Student will follow the Student Code of Conduct, Respondent's May 2005 BIP was not individualized to Student and based on assessment and performance data, which established that he is not currently capable of understanding or conforming to all aspects of the Code of Conduct. Further, the BIP was contradictory, ambiguous and not subject to clear and consistent application. Respondent's BIP for Physical Restraint was, however, appropriate to Student's needs and was properly implemented.

Cite: 34 C.F.R. §§ 300.346.

Issue: Whether Respondent Failed To Provide Appropriate Educational Services to Student in the areas of Reading, Writing, and Resource support?

Held: For Respondent. Respondent provided Petitioner with educational services commensurate with his needs and provided him with a free appropriate public education.

Cite: 34 C.F.R. §§ 300.121& 300.300; *Board of Education of the Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982); *Daniel R. R. v. State Board of Education, et. al.*, 847 F.2nd 1036 (5th Cir. 1989).

Issue: Whether Respondent failed to allow Student's parents full and meaningful participation in the educational process?

Held: For Respondent. Respondent allowed Student's parents meaningful participation by including them in all decision making concerning Student, meeting with them in

advance of ARD meetings to review drafts of his IEPs, and considering their positions on educational issues.

Cite: 34 C.F.R. §§ 300.345, 300.501

Issue: Whether Respondent violated the procedural guarantees of IDEA by not having proper personnel attend ARDC meetings?

Held: For Respondent. All necessary personnel attended Student's ARDC meetings.

Cite: 34 C.F.R. §§ 300.344

Issue: Whether Respondent failed to maintain educational records that denied Student's parents a meaningful opportunity to participate in Student's educational process.

Held: For Respondent. Student's parents' lack of access to test answer sheets for two reading tests did not deny them meaningful participation in Student's educational process.

Cite: 34 C.F.R. §§ 300.345, 300.501

Issue: Whether Respondent failed to provide adequate training to staff on all areas of Student's disabilities?

Held: For Respondent. Respondent provided ample training and consultation opportunities to its staff on all aspects of Student's disabilities and program. Respondent's staff met all personnel and qualification standards.

Cite: 34 C.F.R. §§ 300.23; 300.136