
DOCKET NO. 027-SE-1005

B/N/F***&***

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER

McALLEN INDEPENDENT FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

DECISION OF THE HEARING OFFICER

Procedural History

The above-captioned Request for Impartial Due Process Hearing pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq. ("IDEA"), was received by Texas Education Agency on October 12, 2005, with a decision deadline of December 16, 2005. The case was assigned to the undersigned Impartial Hearing Officer, and set for hearing on November 11, 2006. The parties conducted a resolution session on October 25, 2005, in which the parties reached a tentative agreement that was subsequently revoked on October 28, 2005.

Scheduling difficulties of counsel necessitated a continuance of the trial setting for good cause to January 11-12, 2006. Counsel entered a Rule 11 agreement to conduct the hearing on January 12, 2006, and limit the evidence presentation to one day. The hearing convened as scheduled however the parties were unable to complete the presentation of evidence in one day. The hearing re-convened by agreement of counsel on March 1, 2006, and April 4, 2006. Counsel requested

leave to submit closing argument in writing and it was agreed that argument would be filed on April 28, 2006. However the parties agreed to postpone the due date for filing of argument to May 5, 2006. Respondent requested thereafter additional time to file Respondent's argument, which request met with no objection. Petitioner filed his closing argument on May 5, 2006, and Respondent on May 9, 2006. Because of the requested delay for filing I extended for the decision deadline for good cause shown to June 13, 2006.

Petitioner's Complaint and Relief Request

Petitioner's Request for Special Education Due Process Hearing, as set out without objection in Petitioner's initial complaint, alleged the following IDEA violations against McAllen I.S.D.

1. Failure to timely identify for Special Education Services: Respondent failed to timely identify Petitioner as a student with autism. Petitioner was not tested and labeled AU until Spring 2005. Petitioner was not tested in a timely manner for receiving Special Education Services despite his Obsessive Compulsive Disorder, Attention Deficit Hyper Activity Disorder, and his diagnosis of AU in earlier years.
2. Failure to provide appropriate evaluation: Respondent failed to provide appropriate academic testing to determine appropriate placement and support services. During the 2004-2005 school year, Petitioner was not placed in his LRE.
3. Failure to provide appropriate support services: Respondent failed to implement appropriate behavior intervention and/or BIP and/or counseling. Respondent failed to provide in-home training.
4. Failure to provide Free Appropriate Public Education: Respondent failed to follow Petitioner's Individualized Education Program ("IEP"). Petitioner struggled academically and Respondent failed to provide appropriate remedial and support services. Respondent failed to conduct/ complete a scheduled ARD meeting and failed to provide the parent a copy of what should have been the ARD document.

Petitioner requested the following relief against McAllen I.S.D. for the aforementioned alleged violations:

1. An order directing the Respondent to provide an appropriate evaluation.
2. An order directing the Respondent to conduct an FBA and implement an appropriate BIP.
3. An order directing the Respondent to provide in-home parent training.

4. An order directing the Respondent to appropriately conduct agreed upon scheduled ARD meetings.
5. An order directing the Respondent to provide one year of compensatory educational services for the Petitioner.
6. An order for Respondent to provide additional compensatory services as necessary to provide Petitioner with a free, appropriate public education.

Findings of Fact

Background

1. Petitioner has resided within McAllen I.S.D. (“the District”) at all times relevant to the facts in contention in this hearing. He currently is enrolled in *** grade at ***. Due Process Hearing Transcript Pages (“Tr.”) 16-17.
2. Student’s parent referred him for psychological evaluation in ***, during ***. Parent concerns included immaturity, and odd behaviors including arm-rubbing, smelling objects, head-banging, distractibility, and preoccupation with objects. Behaviors reported by his teacher included social withdrawal, insecurity, being easily upset, restlessness, difficulty completing assigned work, repeating phrases, talking to himself. Evaluation was done in October 1993. Petitioner’s Hearing Exhibit (“P.”) 4.
3. The 1993 evaluator reported some symptoms of Autism, but based on scores from an Autism checklist found that student. did not show enough symptoms for the diagnosis. P. 4.
4. McAllen I.S.D. evaluated student in September 1994 during *** after his teacher referred him. Although functioning well academically, student. had difficulty completing work, initiating activities, working with others cooperatively, and complying with requests. His intellectual ability and development tested in the normal range, and no special education eligibility was recommended. P. 3.
5. The District referred student for an outside evaluation in 1996. By that time, student had fallen significantly behind grade level in reading and math. He was distractible, talked excessively, showed immaturity and lack of organization, could not work independently, and had difficulty with peer relationships. P. 1.
6. Student’s 1996 evaluation did not diagnose Autism or other Pervasive Developmental Disorder (“PDD”) primarily because student did not show severe qualitative impairments in language or social responsiveness for his age. However, he continued displaying odd behaviors. P. 1.
7. Student’s 1996 evaluator recommended special education eligibility of Other Health Impaired because of developmental delays, odd behaviors, and distractibility. Emotional difficulties were noted due to poor achievement and neurologically-related difficulty understanding aspects of his environment. The District did not confer IDEA eligibility on student based on the *** evaluation, but addressed student’s needs with modifications under Section 504. P. 1, P. 16.
8. McAllen I.S.D. evaluated student in November 2001, at which point he was having difficulty with peer relationships, ***, talking to himself, and becoming

- distracted easily. The evaluator recommended maintaining student with services under Section 504. P. 18.
9. McAllen I.S.D. evaluated student again in October 2002 because his teachers were reporting poor attention and concentration, noncompliance, extreme difficulty focusing on tasks, compulsive repetitive behaviors ***, difficulty with peer relationships, talking to himself, distractibility. Behavior difficulties also were evident at home, including refusal to do chores, talking to himself, and making noises. P. 17.
 10. Student's October 2002 assessment included a psychological evaluation that noted regression in some areas. Student had failed two subjects during the first six weeks of fall 2002. Odd behaviors and *** mannerisms affected his social interactions. Student had never had satisfactory peer relationships, indeed apparently never had a friend, but by the time of this 2002 evaluation he was being actively taunted and ridiculed by his peers. Behavior oddities persisted, including ***, playing with his hands, talking to himself, talking to a picture on his desk, exhibiting *** speech patterns and mannerisms, and obsessing about objects on his desk. Student made efforts to establish relationships with adults, but in immature and childish affectionate ways. P. 17.
 11. Student's 2002 evaluation noted conflicts among the assessment findings, and ultimately diagnosed student with ADHD, and a personality disorder with ***, compulsive, and immature features. Recommendations for school included content mastery support, modifications for ADHD symptoms, and counseling to address social skills. A behavior intervention program ("BIP") also was recommended. P. 17.
 12. McAllen I.S.D.'s IEP Team (hereinafter Admission, Review, and Dismissal Committee or "ARDC") admitted student to special education under IDEA with the classification of *** at a meeting on November 26, 2002. The ARDC based its determination of eligibility on the 2002 evaluation results. P. 16.

Evidence Concerning Petitioner's Claims

13. Students' ARDC met on November 1, 2004 to develop his IEP. The IEP addressed one goal in the area of study skills and one goal in the area of follow classroom rules. The IEP included a BIP with approximately ten positive behavior goals and four target behaviors to decrease. Student was mainstreamed with access to content mastery support and modifications to help reduce stress. Counseling was scheduled for three thirty-minute sessions every six weeks. P. 13.
14. The November 1, 2004 ARDC recommended a "**** Prevent day" at that time. "**** prevent" was an optional BIP consequence for student with parent permission. Student had accumulated two discipline referrals recently, and ARD documentation indicated "discipline increasing." Student also had made a threat toward another student ***. P. 13.
15. *** discipline program the District used, with parent permission, as a behavior consequence. Students run and do other exercises. The program included a "**** prevent" component, that being a one-half day short-term consequence. Student's BIP in effect at the time of the November 1, 2004 meeting included "**** prevent," and on approximately two dates in fall *** student was assigned to the

- “*** prevent” program. Student was never assigned to a *** full-day program. Tr. 30-31, 148-151, 175-176.
16. Student had difficulty with the “*** prevent” program. He has poor coordination, difficulty running, and he ** and appears awkward when he runs. *** was very upsetting for him. “*** prevent” ultimately was deleted from student’s BIP in April ***. Tr. 30-31, 179; P. 8.
 17. Student’s November 1, 2004 counseling IEP included five objectives: remain in seat, listen attentively, complete assignments, ignore irrelevant stimuli, interact positively with peers. Student. was scheduled to get three thirty-minute counseling sessions every six weeks. Further psychological assessment was added to the plan of services. All members of the Committee including student’s parent agreed with the IEP. Tr. 129-130, 325-327; P. 13.
 18. Student was utilizing a great deal more counseling throughout the 2004-05 school year, student’s *** grade year, than what the November 1, 2004 IEP scheduled. Tr. 129-130.
 19. Student’s ARDC met on December 6, 2004 to conduct a manifestation determination after student pushed or hit a teacher. The ARDC was unable to determine whether student’s disability caused the behavior, and deferred to the pending psychological evaluation. BIP goals were added to address hitting and other inappropriate touching, and two days of *** prevent were recommended. P. 12.
 20. Student’s evaluation pursuant to the November 2004 IEP took place in February 2005 and was reported on February 7, 2005. Teachers described student. as socially defensive or intrusive, prone to make inappropriate comments and noises, easily distractible, never completes tasks on time, occasionally initiates activities independently, and occasionally retains instruction from week to week. At home, student’s problems included compulsive behaviors, described as worsening, increasing arguments with his sister, and absence of any social life. Student was exhibiting more serious behaviors in school. In response to teasing, he had made *** against peers. Other manifestations of his poor social skills were present, that posed a risk of serious consequences. Tr. 202-203; P. 10, P. 14.
 21. Student’s February 2005 evaluation, in light of student’s long history of obsessive-compulsive behaviors, distractibility, ***, and impaired social interaction, diagnosed Asperger’s Disorder, which is a type of PDD, primarily because student’s impaired social interaction had become more prominent among his symptoms since the last evaluation. Recommendations included special education, opportunities for social interactions where peer taunting could be minimized, counseling for social skills, a behavior plan emphasizing positive interventions, coordination of behavior interventions with home and school, parent education and in-home parent training, and medication monitoring. Disciplinary programs such as *** were considered inappropriate. P. 10.
 22. Student’s ARDC met on February 18, 2005 to review evaluation results. The Committee modified student’s previous November 2004 IEP by adding objectives to provide support for student. to pass the state proficiency test, add more specific social skills objectives, and address improving student’s ability to attend to tasks.

- Adjustments were made to general education modifications and supports. Student's BIP was not modified. P. 9.
23. Student's February 18, 2005 ARDC addressed the IEP supplement for students with PDD. Extended programming was rejected because "[student] retains information over an extended period of time." In-home training was rejected because "[student's] behaviors are consistently displayed at the home and at school." Parent training was included in the form of local workshops, accessing materials from the school special ed. office, and observing interventions in student's classroom. Objectives were developed for parent training, those being to learn more about Asperger's syndrome including recognizing symptoms and different methods of interventions. All members of the February 18, 2005 ARDC including student's parent checked to indicate understanding of and agreement with the discussions. P. 9.
 24. Student's February 2005 ARDC deliberated concerning appropriate placement for student. His teachers uniformly recommended a resource class placement because of student's need for extreme structure and modifications suitable for small-group instruction – to address disability-related behaviors rather than academics. The District's school psychologist did not recommend instituting a self-contained placement until student's transition to ***. Deliberations note that the PDD supplement was discussed and completed. P. 9.
 25. Student's ARDC met again on April 11, 2005, to address apparent escalation of in-school behavior problems. The ARDC received parent complaints about not being informed concerning student's behaviors in school and about disciplinary referrals. Student had accumulated *** disciplinary referrals for unacceptable behavior including *** for assault, and *** days of suspension. One of the behavior incidents in question involved student pushing or hitting a teacher - the second occurrence of such behavior. Also, student had not been carrying his behavior tracking sheets used to monitor behavior objectives as required by his BIP, and in fact had been ripping them up, since spring break or possibly earlier. Student also continued to approach other students in intrusive, potentially risky ways. Tr. 136, 141, 188-197, 236, 336; P. 8.
 26. Student's ARDC determined in the April 11, 2005, meeting to revise student's BIP, and to confine him in the resource classroom on a self-contained basis for the remainder of the school year. He would receive assignments from general education classes. Tracking sheets were to be maintained by the teacher. The IEP reflected that student could complete regular curriculum objectives in the resource room. Student's parent agreed with student's need for additional behavioral structure in the resource room self-contained. And all members of the ARDC including student's were in agreement. Tr. 136-138; P. 8.
 27. During his self-contained placement in spring ***, student continued to show problematic behaviors particularly not being able to focus, arguing with the teacher, and engaging in some compulsive behaviors such as ***. His regular teachers came to the resource room to provide assignments and some direct instruction, and direct instruction was provided by the special education teacher. Tr. 240-243.

28. Student's ARDC met on May 11, 2005, to plan student's schedule for the upcoming year in ***. He had shown improvement in his behaviors, and so was scheduled back in general education settings just for electives and lunch, with an individual "shadow" to monitor his behaviors and assist with transition. ARDC members including student's parent agreed. Tr. 138, 212-213; P. 7.
29. Student's transition to the high school was fairly successful, and so the District, on or about October 1, 2005, attempted to schedule an ARDC meeting to add more mainstream classes to student's schedule. Student's parent attended the meeting, but no decision was reached. The group decided to discuss the placement question informally, and defer on holding an ARDC meeting. Tr. 212-215; Respondent's Hearing Exhibit ("R.") 4.
30. Student's ARDC met on October 13, 2005, and scheduled student in mainstream classes for all subjects except English and Math, with modifications that included a tracking sheet to monitor behaviors and send home. Student's parent attended, and signed agreement. Teacher reports in the IEP documentation indicated that student was generally behaving appropriately since the schedule change, although he remained very distractible in some classes. While peer relationships had improved, some students still were picking on him, and he would fight back. Student thereafter continued to show good adjustment to the October 2005 schedule change, and made *** grades in the fall 2005 semester. Tr. 218, 224; P. 6.
31. Student's October 2005 IEP contained approximately 12 objectives for counseling, related to following directions, coping with distractions, recognizing consequences, remaining on task, maintaining eye contact, focusing on the teacher, and responding to various social stresses. Counseling was scheduled for three thirty-minute sessions every six weeks. Tr. 218, 224; P. 6.
32. In the current school year, student's BIP so far has been followed. Student has not experienced major discipline problems. His transition to the high school was smooth. Tr. 212-213.
33. Student has always had difficulty developing and maintaining friendships in school despite the fact that he says he wants to make friends. Because of his unusual behaviors other students call him insulting names and have defaced his school materials by writing derogatory statements. Tr. 28-29, 159.
34. Student's contact teacher during *** through *** grades was familiar with student's school performance, communicated with student's other teachers about three times weekly, and monitored problems that were occurring with student in school. The contact teacher provided monitoring service only for student in *** and *** grades, and some direct instruction for student in his *** grade year. Despite student's school difficulties, he was passing his classes during *** through *** grades. He had somewhat more difficulty in *** grade than in previous years. Consequently staff requested further assessment, which the District provided. The District did not follow student's IEP counseling schedule during those grades; student spent far more time with the counselor than was scheduled in his IEP. Student's contact teacher did not believe that, during the grade intervals in question, student ever came back to school after summer recess

- having regressed markedly in the summer, or requiring any particular services to get back into the school routine. Tr. 126-135, 146, 184, 326.
35. Student's contact teacher during *** through *** grades brought up and explained to the ARDC the option of summer extended school year ("ESY") services for student, at all of his ARDC meetings. ESY was discussed at student's October 13, 2005, ARDC meeting. District representatives on the ARDC never thought student required extended year services, and student's parent always expressed agreement and indicated agreement on IEP documentation. Additionally, the option of in-home training was presented and discussed at the February 2005 meeting to address student's PDD eligibility. The parent did not then request in-home training and it was not recommended. Tr. 133-135, 238, 274-276; R. 6.

Discussion

IDEA entitles every child with a disability to receive individualized instruction along with sufficient related and supportive services to permit the child to benefit from the instruction. 20 U.S.C. 1412(a)(1); Board of Education v. Rowley, 458 U.S. 176 (1982). IDEA also mandates procedural safeguards to ensure that parents can participate meaningfully in development of an individualized education plan (IEP) for the child. 20 U.S.C. 1414(d); Rowley, supra; Honig v. Doe, 484 U.S. 305 (1988). Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, 247-48 (5th Cir. 1997), interprets guidelines for school district compliance with IDEA's requirement of free, appropriate public education. The child's IEP must be designed specifically for the child's unique needs, individualized based on assessment and performance, and supported by services that will permit the child to receive meaningful benefit from instruction. The IEP must be administered in the least restrictive environment (LRE), must be delivered in a collaborative and coordinated manner by the key "stakeholders," and must ultimately produce positive academic and non-academic benefits. A school district's proposed IEP is presumed to be appropriate, and so a parent who challenges the IEP must prove by a preponderance of evidence that the IEP was not developed according to the procedural safeguards, or that the IEP failed or would fail to afford the student a free and appropriate public education in the

least restrictive environment. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983).

The IDEA issues raised in Petitioner's request for hearing will be discussed in the order presented in the complaint.

Petitioner complains first about the District's alleged failure to timely identify student as a student qualified for the eligibility classification of Autism or PDD. Under Texas law, that classification entitles a student to special consideration of several program services and options. 19 T.A.C. §89.1055(e). School districts are obligated to evaluate students in all areas of suspected disability. 20 U.S.C. 1414(b). Petitioner claims that student was not timely assessed for PDD eligibility despite the presence of a several suspicious symptoms. The District answers that it referred student for evaluation each time problems came up that seemed to require further evaluation, and accepted the evaluation findings that resulted from those referrals.

I find Petitioner's first claim is not supported by the preponderance of evidence. The psychologists who evaluated student for PDD symptoms at crucial junctures were members of an independent practice group, at times working in collaboration with the District. Student's 1993 evaluation, when he was *** years old, did not find support for a PDD spectrum diagnosis. That evaluation resulted from a parent referral. The 1996 evaluation, obtained from the same private-practice group based on a District referral, took place when *** was *** years old. That evaluation resulted in a diagnosis, but not of a PDD spectrum disorder. The 2005 evaluation, when student was an adolescent, was performed per District referral by the same private practitioner who evaluated student in 1996. In that 2005 eligibility report, which first diagnosed a PDD-spectrum disorder, the evaluating psychologist explained at length and persuasively why the 2005 analysis of student's symptoms resulted in different diagnoses. Student was evaluated in 1993, 1994, 1996, 2001, 2002, and 2005. Lack of evaluation was not student's problem. Petitioner brought no evidence to show that any particular

evaluation performed on student by or at the instigation of the District failed to meet regulatory requirements.

Petitioner also complained that the District failed to provide appropriate academic testing to determine appropriate placement and support services for student. Specifically, during the 2004-2005 school year, Petitioner objects that student was not placed in his LRE. Petitioner did not offer or elicit at hearing any particular evidence concerning academic testing of student as such, other than to note he had failed some statewide testing in 2004. Regarding LRE, student was mainstreamed in November 2004 with content mastery support. Documented behaviors were problematic, but there was no assessment and no professional recommendation to justify a more restrictive placement then. Student's parent did not propose to place student in a more restrictive arrangement.

But student subsequently had several behavior referrals, and when he got involved in an altercation with a teacher, his ARDC in December 2004 decided to rely on results of a pending evaluation to determine appropriate consequences. That evaluation was produced and considered by the ARDC in February 2005, and was the evaluation that supported student's PDD eligibility. The February 2005 ARDC added social skills objectives and made other changes to the IEP but rejected more intensive special education to address behavior problems that seemed to be escalating. The ARDC discussed teachers' affirmative opinions concerning student's need for a more structured, restrictive placement. Despite those opinions, student continued to be maintained in all general education classes with modifications, no content mastery scheduled in the IEP, and 30 minutes of counseling every other week.

In April 2005, however, the ARDC did respond to the growing seriousness of student's behaviors, and the failure of student's BIP to control his behaviors. The April 2005 ARDC placed student in a resource setting full time, with the endorsement of his parent, principally to achieve behavior control. Student's parent believed this should have been done earlier. Testimony and documentary evidence concerning the results of this intervention for student establish that,

given the severity of his difficulties then, the intervention was appropriate and successful. The ARDC's decision to postpone until April student's placement in a more contained setting to achieve behavior control was, in retrospect, probably a mistake. But the evidence, when viewed in perspective, fails to establish that significant academic or behavioral detriments resulted.

Petitioner complained that McAllen I.S.D failed to provide appropriate support services for student, including an appropriate BIP, appropriate counseling, and in-home training. With respect to student's BIP, there is not a preponderance of evidence that the BIP itself was inappropriate. Evidence did tend to show that some time in spring 2005 student began destroying his BIP tracking sheets, and this interfered substantially with implementation and monitoring of his BIP. The greater weight of evidence, however, shows that this became a problem after spring break, and student was soon thereafter scheduled in the resource room self-contained where implementation of his BIP and tracking sheets could be ensured.

With respect to in-home training, the February 2005 ARDC did not approve in-home training for the reason that "[student's] behaviors are consistently displayed at home and at school." This odd statement, combined with the lack of notations in ARDC minutes concerning discussion of in home services, lends some credence to the testimony of student's parent, that in-home training was not really discussed by District representatives. However, more than one District witness testified to their recollection that in-home training was discussed at ARDC meetings, that District representatives did not recommend in-home training, and that student's parent did not want in-home training. That testimony was credible, and so the preponderance of evidence establishes that in-home training was considered by the ARDC and, at least at times relevant to Petitioner's claims, rejected both by student's parent and District representatives. With respect to counseling services, the District has consistently set significant and ambitious goals for counseling, but always maintained the same schedule of three thirty-minute counseling sessions every six weeks. After student's

behaviors began to escalate last year, and his eligibility changed, significant objectives for behavior improvement were continued in student's February 2005 counseling IEP, but the ARDC committed the District to provide the same, limited counseling. Student's counselor, however, took it upon herself to go well beyond the IEP and commit considerable time, including frequent if not daily contacts, to support student. The counselor did so on her own initiative and at her own personal expense, but not because student's ARDC understood that student required additional counseling support to help address his behavior problems. Testimony was persuasive for the inference that the efforts of student's counselor's were very significant in helping student cope, as best he could, with particular stresses confronting him at that time during his *** grade year. That testimony concerning the counselor's efforts, as well as efforts of student's teachers, contribute significantly to my conclusion that student was not deprived of educational benefit. So, despite IEP deficiencies, student received de facto appropriate counseling.

But the amount of counseling that student's ARDC scheduled in his IEP was plainly inappropriate, because it reflected neither cognizance about the reality of time and effort actually devoted to student by his counselor, nor student's individual needs as reflected in the extent of his counselor's commitment. There is no evidence at all to suggest that the counselor's professional appraisal regarding student's needs was off base.

Finally Petitioner complained that the District failed to follow student's IEP, failed to provide appropriate remedial and support services, and failed to conduct a scheduled ARD meeting or to provide the parent a copy of what should have been the ARD documents. Other than the issue of the BIP tracking sheets, which I have already discussed, I find there is not a preponderance of evidence to support Petitioner's contention that IEPs were not implemented. And IDEA does not prohibit parties from recessing an ARDC meeting, nor does it appear to prohibit parties from canceling a meeting, certainly when the parties are present and agree. There is not a preponderance of evidence that the parent was denied

copies of ARDC and IEP documentation. As for remedial and support services, I find for reasons already stated that student's IEP drafted and accepted in February 2005 was not appropriate with respect student's counseling services. I find further that this IEP did not provide student with a placement in the least restrictive environment appropriate to his more intensive need for services at that time.

Addressing the question of appropriate relief, Petitioner asked for several items of relief including compensatory services. I do not find that the preponderance of evidence supports Petitioner's entitlement to compensatory services or other compensatory relief. The District took steps to address most of the issues that arose with student, mainly in his *** grade year, and to implement pragmatic solutions even where the IEP was deficient. But the deficiencies substantively were not substantial, in the sense that that the evidence does not preponderate to show that significant academic or behavioral detriment resulted. Overall, student has shown meaningful benefit from his instruction, academically and behaviorally, during the actionable time period in this case.

What is troublesome is the evident failure of student's ARDC to undertake serious discussion about student's need for counseling services. Apparently, it was known to student's counselor and teacher last year that he was receiving counseling services far in excess of the services scheduled in his IEP, where his ARDC also had included several ambitious counseling objectives. The record shows that counseling was an important service for student, and had a big influence both on the successes he experienced and on his capacity, such as it was, to maintain during more difficult times. But student's counseling IEP schedule of services was left the same in his October 2005 IEP as it had been in the IEP of November 2004, despite all that transpired in the interim. Where there is no discussion, there is no effective participation by the parent, nor indeed by any of the stakeholders.

I will order the District to undertake further consideration of student's counseling needs; the issue is too serious to overlook. Otherwise, generally speaking, the

District's approach in dealing with student during the relevant time frame was appropriate, and reflected, as an equitable matter, good faith efforts to address his needs as they arose.

Conclusions of Law

1. McAllen I.S.D., as a local education agency and political subdivision of the State of Texas, is subject to requirements of IDEA, 20 U.S.C. §1400 et seq., and its implementing federal and state regulations.
2. Student is an IDEA-eligible student enrolled in McAllen I.S.D. and entitled to a free, appropriate public education provided by McAllen I.S.D. in the least restrictive environment.
3. McAllen I.S.D. provided student with sufficient timely services and placement to afford him a free, appropriate public education. 20 U.S.C. §1415(f)(3)(E)(ii)(I).
4. McAllen I.S.D. did not undertake appropriate consideration of student's needs particularly in the area of counseling. As a result, participation of the parent and other stakeholders in the IEP process was significantly impeded, and IEP related services were facially inappropriate. 20 U.S.C. §1415(f)(3)(E)(ii)(II).

Orders

In consideration of the foregoing,

IT IS ORDERED that McAllen I.S.D. convene an ARD Committee within 10 school days to plan assessment sufficient to determine student's appropriate counseling needs, and thereafter consider appropriate counseling to address those needs.

IT IS FURTHER ORDERED that any and all other or additional relief requested by Petitioner herein is DENIED.

SIGNED this 10th day of June 2006.

Finding that the public welfare requires immediate effect of this Decision, this Hearing Officer makes it effective immediately, pursuant to 19 Tex. Admin. Code §157.5(n).

JAMES N. HOLLIS
SPECIAL EDUCATION HEARING OFFICER
FOR THE STATE OF TEXAS

DOCKET NO. 027-SE-1005

B/N/F***&***

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vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS
McALLEN INDEPENDENT
SCHOOL DISTRICT
RESPONDENT

SYNOPSIS OF DECISION

ISSUE: Whether McAllen I.S.D. failed to timely identify student for appropriate Special Education Services.

CITATION: 20 U.S.C. §1414(b)

For the District. Petitioner claimed that student's identification as a student with Pervasive Developmental Disorder was delayed unreasonably, but

HELD: there was no evidence but that the psychologist who evaluated and re-evaluated student utilized appropriate procedures, and that student presented complex and confusing symptoms over the years in question.

ISSUE: Whether McAllen I.S.D. failed to provide student with appropriate academic testing to determine appropriate placement and support services.

CITATION: 20 U.S.C. §1414(c)

For the District. Petitioner brought no evidence to satisfy his burden to prove that the District failed to provide appropriate academic testing for student.

ISSUE: Whether McAllen I.S.D. failed to provide student with appropriate placement in his LRE.

CITATION: 20 U.S.C. §1412(a)(5)

For the District. Student was placed in mainstream classes during most of the time relevant to Petitioner's claim. The evidence suggested a brief period during which the District had failed to provide a more restrictive placement as appropriate for behavior control, but student's progress

overall did not indicate that the delay deprived student of meaningful educational benefit.

ISSUE: Whether McAllen I.S.D. failed to provide student with appropriate support services including implementation of an appropriate behavior intervention plan, appropriate counseling, and appropriate in-home training.

CITATION: 20 U.S.C. §1412(a)(5); 20 U.S.C. 1401(22); 34 C.F.R 300.104.33(b)

HELD: For the District, in part. The District's behavior intervention plan was appropriate, however when student's behavior escalated certain parts of the plan could not be implemented. The District took reasonable steps to correct this problem. The District discussed in-home training with the parent, however the parent did not want in-home training at relevant times. The District did not schedule appropriate counseling for student nor did the District's IEP team undertake meaningful discussion of student's need for counseling and the importance of counseling for his adjustment in school.

ISSUE: Whether McAllen I.S.D. failed to conduct/ complete a scheduled ARD meeting and failed to provide the parent a copy of what should have been the ARD document.

CITATION: 20 U.S.C. 1414(d); 34 C.F.R 300.345

HELD: For the District. There was not a preponderance of evidence that the District failed to provide ARD Committee and IEP documentation to student's parent. The District on one occasion attempted to convene an ARD Committee and the parent was present, however the participants decided to recess the ARD meeting and confer informally. An ARDC meeting was convened and completed shortly thereafter. These events did not, under the circumstances of this case, violate requirements concerning IEP meetings as alleged.