
DOCKET NO. 028-SE-0906

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER

DALLAS INDEPENDENT SCHOOL DISTRICT
FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

*** (Petitioner or **), *through his next friends *** and ***, filed a complaint requesting a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA or IDEA 2004), 20 U.S.C. §1400, et seq., as amended. The primary issues for hearing were as follows:

1. Did the student receive a free appropriate public education (FAPE) while enrolled in Dallas Independent School District (DISD or the district) during the 2005-2006 school year?
2. Did the parent provide proper 10-day notice of intent to place the student in various private placements?
3. Did the district err in failing to convene a meeting of the Admission, Review, and Dismissal Committee (ARDC) and finalize an IEP and placement prior to the beginning of the 2006-2007 school year?
4. Is the parent entitled to reimbursement for one or more private placements attended since the student withdrew from DISD in February 2006?

As relief, Petitioner requested compensation for his three-month residential placement in Spring 2006; for the Lindamood-Bell tutoring program he attended

in Summer 2006; and for his private school placement from September 2006 until such time as the district offers an appropriate placement. In the request for due process hearing, Petitioner requested reimbursement for his February 2006 psychiatric placement in Children's Medical Center (CMC) pediatric hospital, but withdrew that request prior to hearing.

Held, for Petitioner in part, and Respondent in part.

PROCEDURAL HISTORY

Petitioner's request for hearing was received by the Texas Commissioner of Education on September 29, 2006, and received by the district and the Hearing Officer on the same date. Petitioner's Complaint included a detailed set of factual allegations concerning ***'s education in DISD. The district timely filed a Response to Petitioner's Complaint. A Resolution Meeting was held in October, 2006, in which the parties were unable to negotiate a settlement agreement. Petitioner was represented by Myrna Silver, attorney at law. Respondent was represented by Joni Jalloh, DISD in-house counsel.

A telephonic prehearing conference was held on October 16, 2006, and was transcribed by a court reporter. The hearing was set for November 14 and 15, 2006. A continuance was granted for good cause and the hearing was reset to November 28 and 29, 2006, and was held on those dates. The Decision due date was extended accordingly.

The Decision due date was further extended to February 2, 2006, to allow time for thorough review of a voluminous record, and the Decision was issued on that date.

FINDINGS OF FACT

Background

1. *** resides at home with his parents within DISD's geographical boundaries. He attends *** grade at St. Anthony School, a private school in Carrollton, Texas, for

- students with disabilities. He is eligible for special education as a student with emotional disturbance, pervasive developmental disorder, and a learning disability in written expression. His ability to express himself in writing is in the *** grade range, and he also has dysgraphia. He has been diagnosed with bipolar disorder, Asperger's disorder, and attention deficit hyperactivity disorder (ADHD).
2. *** first entered DISD in 1998 as a *** grader, after being asked to leave a private school due to disruptive behavior. He has taken medications to address his mood disorder since age ***. His first psychiatric inpatient placement was in *** grade, followed by many such admissions throughout his academic career due to medication and behavioral issues, usually for no more than six weeks. In *** grade he was placed in a DISD behavioral class, and continued in behavioral placements until *** grade, when he was partially mainstreamed with access to a behavioral class as a cooling-off place when needed.
 3. In Fall 2003, *** began *** grade in DISD, but was removed by his parents, on medical advice, for a one-week hospital stay for medication management. He transferred in Spring 2004 to the Vanguard School, a private school for children with learning and behavior issues. He attended Vanguard until April 2005, in *** grade, when he was again hospitalized for medication management.
 4. *** began *** grade in Vanguard private school in Fall 2005, but early in the semester was admitted for six weeks of psychiatric day treatment at Children's Medical Center pediatric hospital in Dallas. When he was released the private school requested that he not return due to behavioral issues. He enrolled in DISD in October 2005.

Children's Medical Center Psychological Evaluations, Spring 2005

5. In April 2005, *** was admitted to psychiatric day treatment due to behavior problems, anger, irritability, and depressed mood. At the request of his treating psychiatrist, a psychological evaluation was performed by a CMC psychologist, Dr.***, Ph.D. She found that ***'s history and current presentation, including dysgraphia, social interaction problems, anxiety, and a recent drop in IQ scores, were consistent with Asperger's disorder, a form of pervasive development disorder.
6. Dr. ***'s report made numerous recommendations for helping *** cope at school, including assessing triggers for behavior problems at school. She noted that students with Asperger's disorder "have difficulty with changes, are susceptible to sensory overload, and can become overwhelmed when too much information or work is presented at one time." She noted that he might need to change classes a few minutes early to avoid noisy hallways and that "he will do better with fewer changes and fewer teachers throughout the day." Her other recommendations included, but were not limited to, training in social skills and social communication, training and assistance in organization of school materials and assignments, keyboard training, reduced requirements for handwritten school work and homework, and supervision of social interactions to prevent bullying by other students. Students with Asperger's disorder are at high risk for being bullied because they may not always recognize when they are being scapegoated or

teased.

P.Ex. 16.

7. ***, Ph.D., a CMC pediatric neuropsychologist, performed a neuropsychological evaluation in June and July 2005. He attributed the decline in IQ scores to ***'s psychiatric illness and medications, as well as ongoing attention problems, very slow information processing speed, difficulty with pragmatic language skills and executive function, and difficulty with certain aspects of abstract thinking and reasoning. His report recommended seeking ways to improve attention and focus, teaching *** with a concrete rather than abstract approach, and providing interactive learning experiences. P.5.

October 10, 2005 ARDC Meeting

8. *** re-enrolled in DISD in October 2005 as an eighth-grader at *** School. Prior to the ARDC meeting, the parents provided the district with numerous documents, including *** and *** grade report cards from Vanguard private school which showed *** grades in all classes; CMC teaching strategies and instructional recommendations, class rules, daily classroom goals, ***'s list of self-care strategies and coping plan for interactions with other students; CMC level system information and day treatment point sheet; CMC discharge orders, and the evaluation reports of Dr. *** and Dr.***.
9. A "temporary" ARDC meeting was held on October 10, 2005, in which the committee agreed that *** would be placed in a special education resource classroom for language arts and reading, math, and social studies; and a regular education science class with support from a paraprofessional teaching assistant. He also had regular education electives in art and PE. His instructional accommodations included reduced writing assignments and an assignment notebook to be used daily by teachers.
10. In fact, *** did not have social studies instruction in Fall 2005. Instead, to address his need for a "safe place" to cool off and obtain respite from the stress of large groups, he had one free period per day supervised by a special education teacher, Ms. ***, and one class period per day in her Total Communication (TC) classroom, a self-contained classroom for students with severe autism who were mostly nonverbal. He also ate lunch with the TC class. Ms. *** informally provided *** some keyboarding instruction. Ms. *** was ***'s caseworker teacher in both Fall 2005 and Spring 2006. She collected a daily behavior log each day from his teachers and emailed the information to his mother on a daily basis.
11. The October 10, 2005, ARDC agreed that the district would perform a full individual evaluation (FIE), and that the committee would meet again in 30 days to review the new evaluation data. However, the FIE was not completed until late November, 2005, and the ARDC did not meet again until approximately two months later, on December 13, 2005.

DISD Full Individual Evaluation, November 2005

12. The District's FIE was completed on November 28, 2005. The report noted deficits in writing, dysgraphia, pervasive developmental delays with disruptions in social communication and social skills, a learning disability in written expression, and depression. *** qualified for special education as a student with emotional disturbance and a learning disability. In addition, he now qualified as a student with a pervasive developmental disorder (PDD), based on an eligibility report provided by Dr. **. The eligibility report reiterated the recommendations from Dr. **'s psychological evaluation: district staff should be experienced in working with students with Asperger's; staff should assess the environment for triggers that could make *** feel overwhelmed and change the environment to avoid the triggers or work with *** individually on a coping plan; dysgraphia should be accommodated and computer work emphasized; a printed daily schedule and a way to prepare *** for changes should be provided; his social interactions should be supervised to prevent him from being bullied. P-11.
13. The CMC evaluation reports by Drs. ** and ** were attached to the district's FIE, and the FIE stated that all staff working with *** should read "the very thorough reports from Children's Medical Center. Included are strategies for classroom management as well as behavior interventions." P-11.
14. The FIE stated that **'s "programming in school needs to address depressive symptoms... His anxiety may escalate quickly if he feels overwhelmed," and that he may need additional time for assignments or shortened assignments. "Teachers will need to check frequently for understanding, as *** may not let teacher know his discomfort." The DISD evaluator noted that in her interview with ***, he had flat affect, subscribed to both homicidal and suicidal ideation, told her heard voices, and "appeared very depressed." P-11.
15. As part of the FIE, an occupational therapy (OT) evaluation was performed to address **'s problems with handwriting. The occupational therapist recommended OT services "on a monitor level" but no direct services. She recommended that *** not write for long periods of time, and that he use a portable word processor for long assignments and for class notes, unless class notes were provided. An assistive technology evaluation recommended that *** be provided with an Alphasmart portable word processor, and this was provided.
16. The academic testing portion of the FIE indicated oral reading scores at the *** grade level; reading comprehension at the *** grade level; written language at the *** grade level; and math problem-solving at the *** grade level.

Fall 2005 Behaviors

17. **'s behavior and classroom performance were fair the first month after returning to DISD in Fall 2005, but declined throughout November and December 2005. Problems with sleeping in class and work refusal were especially prominent in his regular education science class. He displayed disruptive behaviors in all or most classes, such as hitting other students and teachers, crawling under furniture, trying to leave the classroom and school building, throwing scissors at the wall and throwing other objects in the classroom. His behaviors resulted in *** removals to the assistant principal's office and campus police were called to assist at least once in the fall semester.

December 2005 ARDC Meeting

18. On December 5, 2005, the assistant principal requested that an ARDC be held due to concerns about behavior. The ARDC met on December 13, 2005 and reviewed the FIE; developed IEPs for behavior/social skills, English language arts, and math and behavior, performed a functional behavioral assessment (FBA); and drafted a behavior intervention plan (BIP). The ARDC added autism as an eligibility category based on ***'s Asperger's diagnosis. A district staff member designated as an autism expert attended the meeting and made programming recommendations, including that *** would be better off with a structured class rather than the cooling off period in the autism class.
19. The December 2005 ARDC significantly increased ***'s regular education programming: his previous class period in the self-contained classroom for students with severe autism was replaced by regular education history/social studies; his previous free class period was replaced by a regular computer class. His resource math class was replaced by a regular education math class because his parents felt the resource class was not sufficiently rigorous. In addition, he continued to attend regular education science, PE, and art, and to attend the resource classroom for language arts. An inclusion teacher or aide was present in the science and social studies classes. The committee discussed placement in a behavioral class on another campus, but the parents were not interested in that option because they believed such classes would not provide grade-level academic instruction.
20. At parent request, information from the Association for Neurologically Impaired Children, including detailed information about behavior and suggested strategies, was attached to the ARDC report. The parents requested an opportunity to review the ARDC documents before signing their agreement, and eventually signed their agreement at some point after the meeting.

Functional Behavioral Assessment

21. The December 2005 FBA indicated that areas of concern were verbal aggression, physical aggression, non-compliance, withdrawal, impulsivity, fighting, running from the building, kicking, throwing objects, name calling, hitting, work refusal, hitting a book on his own head, picking on scabs, and "inappropriate perceptions," apparently in reference to ***'s propensity to believe he was being picked on. These behaviors were noted to take place in classrooms, hallways, and playground, and during both instruction and transition times. The FBA noted that such behaviors had antecedents of directives from adults, being redirected from an inappropriate activity, and provocation by peers. P-10.

Behavior/Social Skills IEP

22. ***'s Behavior/Social Skills IEP was rudimentary. The annual goal was "The student will complete the behavior/social skills goals." The short-term objectives were the three target behavior from the BIP form: "demonstrate appro. reactions; comply with directives within five minutes; gain attention through socially

acceptable means such as speech, touch, or eye contact, instead of hitting, kicking, etc." P-10.

Behavior Intervention Plan

23. ***'s BIP goals were to reduce inappropriate reactions; gain attention through socially acceptable means; and comply with directives. The Interventions/Strategies were positive reinforcement; provide choices; delay compliance when possible, use positive language; revisit incidents to determine/explore reasons for behaviors and alternative actions. The Positive Consequences were positive notes home; additional computer time or desired privilege; allow to assist teacher (i.e. messenger, pass out papers, etc.); gain a tangible (snack, drink) or time with an identified adult. The Negative Consequences were to call or conference with the parent or call the assistant principal. P-10.

Lindamood-Bell Program/Reading Comprehension Issue

24. In the December 13, 2005, ARDC meeting, ***'s mother contended that he had deficits in reading comprehension that needed to be addressed. The parents provided the ARDC with materials from the Lindamood-Bell reading program and requested that the program be provided. District staff took the materials for review, but the district ultimately declined to provide the program. *** attended the Lindamood-Bell reading tutoring program in Summer 2006, at parent expense.
25. The FIE found ***'s reading comprehension to be on grade-level. In Spring 2006, ***'s charter school administered the Measures of Academic Performance test, which indicated his reading comprehension was at the*** grade level and he could decode words at the *** grade level. The charter school considered reading comprehension to be an area of strength for *** P-5.

Spring 2006 Behaviors

26. ***'s new IEPs and placement were implemented for the first time when school resumed in January 2006. The number of disruptive, defiant, and explosive behavior problems increased immediately and dramatically. It was rare for *** to get through a school day without a behavioral incident, resulting in numerous discipline referrals and placements in in-school suspension. Behaviors included lying in the middle of the hallway or classroom and refusing to move, and attempting to leave class and using threats or aggression toward teachers who tried to stop him. *** also had escalating behaviors at home during January 2006, including running away from home, using profanity, and hitting his mother, as well as getting into a fight with another teenager at a church function. P-21.
27. On February 2, 2006, ***'s mother requested an ARDC meeting to review the December 2005 ARDC decisions and discuss parental concerns that the IEPs were not being implemented; handling of failure notices; tutors for all subjects he was failing; review of his BIP; provision of a safe place for stress relief; revision of his class schedule to include a free period; safeguards to assure implementation

- of the IEP; rewording of ambiguous language in the previous IEP; and review of further input from ***'s doctors. R-29.
28. In a letter dated February 8, 2006, ***'s father complained to the principal that *** had been incorrectly cited for truancy and that procedures agreed to in the December 2005 ARDC meeting were not being followed. He repeated the parental request for an ARDC meeting. R-10.
 29. The district scheduled an ARDC meeting for February 14, 2006, but after ***'s admission to CMC on approximately February 8, 2006, the parent requested that the meeting be canceled for the time being.

February 2006 Private Placements

30. On February 8, 2006, *** was placed by his psychiatrist in CMC day treatment to address medication issues. On or about February 8 or 9, 2006, *** became angry after being corrected by his mother, kicked her and the family dog, and picked up a knife, which he put down without incident. His doctors at CMC recommended residential treatment to give him time to transition off one of his medications and start a new medication, and also because of his history of multiple hospitalizations, multiple day treatment admissions, and multiple problems with behavior at school and at home. Dr. ***, day treatment director and psychiatrist, did not believe it was safe for *** to return home, so *** was temporarily admitted to CMC hospital as an inpatient while awaiting admission to Meridell residential treatment facility.
31. *** was admitted to Meridell on February 16, 2006, and remained there until May 15, 2006. According to Dr. ***, Meridell psychiatrist, the residential placement was targeted mainly to addressing physical aggression and danger to himself and others. The treatment included medication management; individual, group, family, and recreational therapy; and a general structured setting. When admitted he was very irritable, easily agitated, and physically aggressive, requiring holds and seclusion on the unit with his peers and in therapy. He improved significantly during the six weeks preceding his discharge.
32. The Meridell population is served by the University of Texas Charter School (UTCS or charter school), where *** attended a full day of school, five days a week. At the request of the charter school, ***'s mother withdrew him from DISD on February 17, 2006, so that he could be enrolled in the charter school. At the time of his withdrawal from DISD, he was failing all subjects except art.

Charter School Program

33. *** attended the charter school until May 15, 2006, and completed his *** grade coursework there. The charter school held two ARDC meetings and provided *** with IEPs in social skills and English/language arts. *** was instructed in a small-group setting with a student-teacher ratio of approximately 4:1, with accommodations including: tasks broken into small increments; extra time to complete assignments; allowed to subvocalize reading assignments; copies of class notes provided; written assignments reduced by 25%; access to word processor for all written assignments; opportunity to respond verbally; check for

- understanding; frequent breaks; calculator for math and science; opportunity to take a self-time out when needed; student allowed to work in quieter area with supervision when frustrated or distracted. P-5, R-1.
34. *** did well in the charter school, both academically and behaviorally, although he still needed encouragement to finish his work and he sometimes felt provoked by other students. He was allowed to go across the hall to work in a smaller, quieter classroom when needed, and he seldom if ever displayed extreme behaviors requiring him to be removed from the classroom.

April 2006 Meeting to Discuss Placement

35. In April 2006, ***'s parents requested a meeting to discuss placement alternatives in DISD. On April 10, 2006, a meeting was held between the parents and DISD staff, with telephone participation by a Meridell RTF psychiatrist, ***'s therapist, a recreational therapist, a nurse, and the charter school classroom teacher and diagnostician. DISD staff present included a special education teacher, the special education area operations director, the campus principal, an educational diagnostician, and other staff. The parents were told that this was not an ARDC meeting and no placement would be offered until *** was enrolled. Prior to the meeting, the parents provided DISD with Meridell and charter school records. The parents requested a written placement plan from DISD so that they could review it with Meridell staff prior to his release.

DISD Informal Proposed Plan of Action

36. On April 18, 2006, a DISD special education area operations director gave the parents a written Proposed Plan of Action suggesting placement in a small, structured classroom at a DISD Crisis Stabilization Center. The parents asked to visit the Crisis Center, but on or about May 8, 2006, the area operations director informed them that she had visited the unit herself and determined that it was not appropriate for ***. P-26.
37. District staff were aware of the kind of placement desired by the parents. On May 5, 2006, the area operations director wrote to a higher-level DISD administrator that she believed the ***'s wanted the district "to pay for residential treatment or to provide him with a general education setting of less than 12 students with a teacher and teacher assistant trained to deal with autism [and] trained in the Lindamood-Bell Learning Process." R-16.
38. On May 11, 2006, the area operations director wrote the parents that *** would "enroll back in Dallas on a temporary ARD..." Enrollment in DISD requires physically bringing the child to attend classes. The parent can fill out enrollment paperwork but the registrars in most buildings don't actually enroll the student until the student attends on the first day. He would have attended his home campus high school and received temporary services based on the charter school IEP. It would have been impossible to provide a mainstreamed temporary placement with the 4:1 student teacher ratio he had at the charter school. However, he could have been placed in a resource classroom. R-14; Testimony of area operations director.

39. On May 23, 2006, ***'s parents sent the district a detailed letter in which they stated, inter alia, that they considered a temporary, transitional placement unacceptable because of the known disruptive effect on ***'s education of transitions and changes, and therefore they requested a "permanent" placement. The parents also stated that they considered behavioral unit placements inappropriate for students with Asperger's disorder, and that *** should be provided a 4:1 student-teacher ratio; grade-level instruction; an aide to help with transitions and organizational skills, teachers and aides trained in working with students with Asperger's disorder and other neurological disorders; tutoring and other services to address his severely delayed writing skills; and keyboarding instruction. The letter further noted that the parents had previously provided the district with numerous documents and reports, including diagnostic testing results and therapeutic and educational recommendations from experts in education, psychology, and psychiatry. The parents requested "an appropriate placement solution" prior to June 23, 2006. R-12.
40. In late May or early June, 2006, ***'s mother requested an ARDC meeting be held during the week of June 12, 2006, to discuss placement options in DISD. In a letter dated June 2, 2006, the area operations director replied: "Your request for an ARD Committee meeting for *** can be scheduled no sooner than August 14, 2006 [the first day of school] since the 2005-2006 school year has ended... Before the ARD can be scheduled, please advise if you intend to enroll *** in a Dallas ISD school." P-26.
41. In a letter dated June 12, 2006, Petitioner's attorney contacted the school district and protested the refusal to hold an ARDC prior to the first day of school, stating: "Given ***'s history of mental fragility, any uncertainty or confusion at the beginning of this important time when he will be starting high school will not support a successful transition back to DISD," and requesting that an appropriate placement within DISD be predetermined and already in place on the first day of school. P-26.

Notice of Intent to Seek Reimbursement for Private School Placement

42. In a letter dated July 6, 2006, Petitioner's attorney informed the district that she had received no response to her letter of June 12, 2006, and notified the district that the parents had decided to seek reimbursement for a private placement: "Please regard this as your notice, pursuant to 20 U.S.C. 1412(a)(10)(C)(iii)(I)(bb) that Mr. and Mrs. *** intend to enroll *** in a private school for the 2006-2007 school year, and to seek reimbursement for this placement from Dallas ISD." P-26.
43. On July 7, 2006, Petitioner's counsel faxed the following UT Charter School documents to the DISD special education area operations director: ***'s final report card, his IEP for writing skills, his behavioral IEP, and his Spring 2006 test results for the Texas Assessment of Knowledge and Skills (TAKS). P-17.
44. In a letter to DISD counsel dated August 15, 2006, Petitioner's attorney again complained that no ARDC meeting had been scheduled, and reiterated that because the district had made no offer of placement or program, the parents were

left with no choice but to enroll *** in private school. P-26.

Outside Recommendations for Program and Placement

45. Dr. ***, child psychiatrist and director of the CMC day treatment program, has treated *** several times in recent years. ***'s mood issues and social skills deficits due to Asperger's disorder cause difficulty at school, especially in large classrooms. He would function best in a small, self-contained classroom with students with similar deficits. He is a bright student and academic work should continue to be emphasized in his program, despite his behavioral difficulties. A behavioral classroom with little emphasis on academics would not be appropriate. If he is mainstreamed into regular classes, staff should be trained to recognize the symptoms of bipolar disorder and pervasive developmental disorder, and to coach him to prevent escalation. He should have a specific behavior program in place. He should be provided an aide or be able to go to a smaller classroom when he is overwhelmed, to receive support from staff and calm down before returning to the regular classroom. He needs a structured placement and routine because he does not transition well. He needs social skills training and supervision of his social interactions due to his lack of social skills and tendency to misread social cues and to be teased. In a regular education class with 25 or 35 students, he would need much more support from staff than in a smaller class. Testimony of Dr. Norcross; P-25.
46. In April 2006, in anticipation of ***'s re-enrollment in the district, the parent provided DISD staff with detailed recommendations from Meridell staff for accommodating ***'s disabilities at school. The information included, but was not limited to, the following recommendation by Dr. ***, Meridell psychologist:
- Asperger's Disorder: Teach appropriate social behavior and pragmatic skills through demonstration, role play, and daily practice; provide practice in understanding and responding to social cues and the needs and desires of others; address difficulties in interpreting humor, nuance, and subtle nonverbal cues from others; teach how to anticipate probable consequences of his behavior and its effect on others.
- Bipolar Disorder: He will likely continue to benefit from medical interventions and medications for mood stabilization, with monitoring of effectiveness by family and mental health professionals "particularly in light of ***'s notable rage and impulsivity;" "When he appears angry and aggressive with little or no provocation, confronting him will likely result in an escalation of these behaviors in light of his electrophysiological abnormalities," and redirecting him will be more effective; reward positive coping, mood regulation, and completion of school work; identify triggers for mood swings and angry outbursts; provide clear, and consistent rules and structure to reduce oppositional behavior.
- Attention Difficulties: "*** is likely to function best in a smaller classroom with more one on one attention and fewer distractions. Minimizing his exposure to situations where divided attention is required for success will also be important (e.g., avoiding noisy gatherings)"; preferential seating to minimize distractions; short and specific instructions and verification that he understands the instructions; clear and structured daily routine at home and school; consider self-

monitoring sheets to check off completed behaviors such as homework; encouragement to check over work; simplified tasks broken down into small increments; consider tracking system to monitor completed assignments and reward completion; frequent breaks to allow movement and light exercise. Processing Speed and Motor Difficulties: Extra time to complete assignments; keyboarding skills to compensate for handwriting difficulties; limited note taking requirements. P-27.

47. In an addendum dated April 9, 2006, Dr. *** added the following recommendations: Teachers and staff need experience working with students with Asperger's disorder, but also should carefully individualize their approach to ***'s needs; capitalize on areas of personal interest to improve his attention; try to provide concrete instructions, simplify abstract language and concepts and avoid language he may misunderstand such as sarcasm, confusing figurative speech, and idioms; provide explicit, didactic training in social skills, organization, and study skills; consider providing a carefully selected non-disabled peer buddy; provide close monitoring of social interactions to prevent *** from being bullied; and assist classmates in understanding ***'s condition to promote greater tolerance and acceptance. *** is "likely to continue to function best in a smaller classroom with no greater than a 4:1 student-teacher ratio." P-28.

Notice of Intent to Seek Reimbursement for Residential Placement

48. The parents first notified the district of their intent to seek reimbursement for ***'s residential placement when they filed the request for due process on September 29, 2006, approximately 7.5 months after the residential placement began in February 2006, and 4.5 months after it ended in May 2006.

Current Private School Placement

49. In Fall 2006, *** briefly attended a private school for which the parents do not seek tuition reimbursement, then transferred to St. Anthony School in mid-September 2006. It is a small school with approximately 60 students total in grades one through 12. He has a student-teacher ratio of approximately 6:1. The school's approach to students with Asperger's disorder is to place them initially in a class at their individual developmental and social skills level until they assimilate to the school. At the time of the hearing in late November 2006, with the exception of attending the "upper school" for English, *** was temporarily performing his coursework in a *** grade classroom to address his social skills, in a class with 18 students, two teachers, and an aide, and with the class divided into groups of nine. *** was working independently and at his own pace on *** grade academic work, except that his math instruction was at the *** grade level to further prepare him for algebra. He was to move to the upper school in January 2007.
50. At the time of the hearing ***'s grades were ***'s and***'s, and he had had only one disciplinary incident which involved another student new to the school, and for which both students received equal discipline by losing points on their behavior point sheets. The next day *** earned *** points, which is the maximum a student can earn. The school has a counselor and two psychologists on staff and

physically in the building. All students have a behavior plan but the school does not use IEPs.

DISD Recommendations for Program and Placement

51. No ARDC meeting was held and no formal offer of placement was made after ***'s discharge from residential treatment in May 2006. After May, 2006, when the district withdrew its informal offer of placement in the Crisis Stabilization Unit, no further informal placement was discussed until the Resolution Meeting held in October 2006.

DISCUSSION

Factual Background

*** is a bright student whose education is severely affected by bipolar disorder, Asperger's disorder, ADHD, a learning disability in written expression, and dysgraphia. Due to disruptive and at times aggressive behaviors at school and at home, ***'s medications have been changed many times, which has triggered numerous temporary hospitalizations for medication stabilization, beginning at least as early as *** grade.

*** resides at home with his parents in DISD's geographical jurisdiction, and has been a resident of DISD at all times pertinent to this case due to his parents' continuing residence in the district. *** attends *** grade at St. Anthony School, a private day school for students with disabilities that is located in the greater Dallas area.

*** has attended DISD for most of his academic career, beginning in *** grade. He was placed in DISD behavioral classrooms throughout most of his elementary school years. In *** grade he began the school year in DISD, but after a one-week hospital admission for medication management, his parents moved him to Vanguard private school in Spring 2004 due to dissatisfaction with his DISD placement. He remained at Vanguard until April 2005, when he was again hospitalized for medication management. He returned to Vanguard in Fall 2005, but after a six-week program of psychiatric day treatment at CMC hospital, the private school requested that he not return due to behavioral issues.

*** re-enrolled in DISD on October 10, 2005, as an *** grader, and a "temporary" ARDC meeting was held on that date. The ARDC determined *** would receive temporary services in resource classes for language arts, math, and social studies; science instruction in regular education with the assistance of a paraprofessional teaching assistant; and two class periods in the Total Communications classroom for students with severe autism. The TC classroom teacher was also his caseworker teacher, and she monitored his performance in all classes and collected the information in a daily log which she emailed to his mother at the end of each day. *** was placed in her class as a safe place and cooling off area to give him respite from the anxiety and stress of larger classrooms.

The ARDC explicitly agreed that *** would be evaluated by the district and the Committee would meet again in 30 days, pursuant to 19 T.A.C. 89.1050 regarding transfer students (see further discussion below). However, the Committee did not meet until more than two months later, on December 13, 2005. At the December meeting, the ARDC drafted IEPs to take effect when school resumed in January 2006, after the winter break. Therefore *** had no IEP in effect the entire Fall 2005 semester.

***'s new educational program increased his mainstreaming by placing him in regular education math, history, and computer classes, and removing his free period with the autism teacher and his class period with her self-contained autism students. It is undisputed that ***'s behavior at school took a drastic turn for the worse immediately following the implementation of the new program in January 2006, resulting in numerous discipline referrals and removals from class. The parents requested an ARDC meeting on February 2, 2006, and a meeting was scheduled for February 14, 2006. However, a few days prior to the scheduled ARDC meeting *** entered day treatment at CMC and the meeting was canceled at parent request. Subsequently, *** was admitted as an inpatient to CMC, after displaying aggressive behaviors at home, and then placed in Meridell residential treatment facility on February 16, 2006. He remained at Meridell until mid-May

2006, during which time he attended a public charter school five days a week and completed his *** grade coursework there.

Reimbursement

Petitioner requests reimbursement for the expenses of the three-month residential placement in Spring 2006; private school tuition for the 2006-2007 school year; and continued private school placement at public expense until such time as DISD offers an appropriate placement. In addition, Petitioner requests reimbursement for a privately obtained reading tutoring program during Summer 2006.

Consistent with the U.S. Supreme Court ruling in *School Comm. of Burlington v. Dept. of Ed. Mass.*, 105 S.Ct. 1996 (1985), IDEA 2004 provides that a school district is not required to pay for the cost of education in a private school or facility chosen by a parent if the district made a FAPE available to the child. However, reimbursement for private school placement may be granted, in the discretion of a court or hearing officer, if the district's program did not offer a FAPE, in a timely manner prior to the private placement. 20 U.S.C. 1412(a)(10)(C)(ii).

A party seeking relief through a special education due process hearing has the legal burden of proving that the placement recommended by the ARDC is not appropriate. *Schaffer v. Weast*, 156 S.Ct. 528, 44 IDELR 150 (2005). An appropriate placement under IDEA is one that enables a student to obtain "some benefit" from his education. The law does not require that a student's educational potential be optimal or "maximized," and no particular educational outcome is guaranteed. *Hendrick Hudson District Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). Schools are not required to provide all services from which a child might benefit. Instead, the district must provide personalized instruction with sufficient support services to permit the student to receive an "educational benefit," i.e., a program that is meaningful and is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Rowley, id.*; *Houston*

ISD v. Bobby R., 200 F.3d 341 (5th Cir. 2000); Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245 (5th Cir. 1997).

I. 2005-2006 school year: Did the district provide a FAPE?

Respondent does not dispute that the program drafted in December 2005 was immediately followed by an increase in disruptive behavior, but argues that it would have made any necessary changes to ***'s program in the ARDC meeting that was pending at the time he left the district to begin psychiatric treatment. However, the program developed in December 2005 was so clearly inappropriate as to be a denial of FAPE from the outset, because it was not individually tailored to his specific needs.

IEP requirements

The IEP is the centerpiece of the educational program. *Honig v. Doe*, 484 U.S. 305 (1988). IDEA 2004 provides that several factors must be considered by the ARDC:

In developing each child's IEP, the IEP team . . . shall consider (i) the strengths of the child; (ii) the concerns of the parents for enhancing the education of their child; (iii) the results of the initial evaluation or the most recent evaluation of the child; and (iv) the academic, developmental, and functional needs of the child. 20 U.S.C. 1414(d)(3)(A).

At a minimum, ***'s IEPs were not tailored to address his strengths (and weaknesses); his recent FIE and private evaluations, both of which were reviewed in the meeting in which the IEPs were drafted; and his known academic, developmental, and functional needs as a child with bipolar disorder and Asperger's disorder, which were discussed at length in his FIE and other evaluations and were demonstrated in his behavior in Fall 2005.

Parental participation

In defending its 2005-2006 program for ***, DISD argues that the parents signed their agreement in both Fall 2005 ARDC meetings, and they wanted further mainstreaming in December 2005. Parents are not entitled to dictate placement or programming, and parental agreement alone does not immunize the district against liability for failure to provide FAPE. It is true that the parents requested that *** be moved from resource math instruction to regular math because they thought he needed more challenge in math. The parents favored mainstreaming over behavioral classes, because they believed, along with ***'s psychiatrist, that a DISD behavioral class would not provide modeling of appropriate behavior needed to address Asperger's disorder social skills deficits, and would not address the involuntary nature of some of his Asperger's disorder and bipolar symptoms, with the risk that due to behaviors related to his disabilities he would be unable to

progress out of the behavioral unit and into grade-level academic instruction.

The parents signed their agreement to both ARDC reports, although in December 2005 they hesitated to do so for several days after the meeting. The mother testified persuasively that she reluctantly agreed to the December 2005 ARDC proceedings, in part due to her reliance on the input of a district autism expert at the meeting. In any case, by February 2, 2006, ***'s parents had already requested another ARDC meeting to challenge his new placement and voice their concerns that the IEP was not being implemented.

While encouraging parental participation is a fundamental goal of the IDEA, addressing parental concerns is only one of several factors in developing an appropriate program (see 20 U.S.C. 1414(d)(3)(A), supra). It was not proven that parental wishes were the driving force behind the December 2005 ARDC decisions, but even if they had been, the law does not mandate that parental wishes be followed to the detriment of the child's education, and districts remain liable for the provision of FAPE. Here, the district had clear notice of ***'s needs from his recent evaluation data and classroom performance, but did not provide a program individualized to those needs.

Consistent with §1412(a)(5) of the Act, the district is required to provide a continuum of services, including one-on-one instruction or small-group instruction for students whose disabilities make that appropriate. 34 C.F.R. §300.115. The continuum of alternative placements is intended to ensure that the student is served in the least restrictive environment appropriate. Students' needs must be considered on an individual basis, rather than "shoehorning" them into already existing placements, as the parents contend DISD attempted to do. The record is devoid of evidence that the Fall 2005 ARDC meetings considered anything other than a behavioral unit on another campus, the resource classroom, and mainstreaming at the middle school campus he was attending.

IEPs must be individualized based on assessment.

DISD's November 2005 FIE noted ***'s "pervasive developmental delays with disruptions in social communication and social skills," and "depressive symptoms . . . His anxiety may escalate quickly if he feels overwhelmed." In the DISD evaluator's interview with ***, he had subscribed to both homicidal and suicidal ideation, told the examiner he had "heard voices," and "appeared very depressed." P-11. In addition to its own findings, the district's FIE stated that all staff working with *** should read "the very thorough" psychological reports from CMC, which included "strategies for classroom management as well as behavior interventions." P-11. The CMC psychological evaluation reports were attached to the FIE, including Dr. ***'s report which noted that students with Asperger's disorder "have difficulty with changes, are susceptible to sensory overload, and can become overwhelmed when too much information or work is presented at one time." Her recommendations included ongoing training in social skills and social communication; supervision of social interactions; and assessing triggers for

behavior problems at school, to be followed by removing the triggers or teaching *** strategies for coping with them. Her report stated that "he will do better with fewer changes and fewer teachers throughout the day." P-11. ***, and his behavior/social skills IEP was likewise inadequate. The IEP's annual goal was "The student will complete the behavior/social skills goals." The short-term objectives were the same vague target behaviors listed in the BIP: "demonstrate appro. reactions; comply with directives within five minutes; gain attention through socially acceptable means such as speech, touch, or eye contact, instead of hitting, kicking, etc." No provision was made for formal training in social skills and social communication to address ***'s severe and well-known deficits in these areas.

IEPs must be individualized based on classroom performance and behavior.

The December 2005 ARDC was not lacking in information about ***'s classroom behaviors, specifically his performance in large mainstream classes. His behavior had declined steadily from November forward, especially in his mainstream science class, and was disruptive to his own education and that of other students, even in the self-contained autism classroom which was supposed to function as a safe place and cooling-off area. His teachers and assistant principal did their best to accommodate him, but he was frequently removed from class and at times the other students in his classrooms had to be removed for their safety. He went regularly to the assistant principal's office and at least once in Fall 2005, a campus policeman was called to assist. *** frequently complained that he was picked on by other students, and probably was at times, but school staff noted that this perception often seemed to be due to his misunderstanding of social interactions.

Based on all the above, it is difficult to understand how the December 2005 ARDC could have expected *** to cope with increased mainstreaming unless it was accompanied by increased special education support, such as a one-on-one aide, and a safe place for cooling off. Given that *** is fully verbal, has at least *** intelligence, and performs academically mostly on grade-level, I cannot find that his Fall 2005 placement for one class period a day in a self-contained class for students with severe autism provided education in the least restrictive environment appropriate. However, that class period and his free period with the autism teacher did provide desperately needed respite from the stress of regular education classes.

After his time in the autism classroom was removed, *** was still in theory allowed to go there to cool off, but in fact he seldom did. He spent so much time in January and February with the assistant principal that he was reported absent by various teachers who were unaware of his whereabouts, triggering notice of truancy proceedings. Although the assistant principal worked hard to support *** by talking with him in his office, and sometimes sending him on errands until he was calm enough to return to class, this was not an appropriate accommodation because it precluded academic instruction. At the time of ***'s withdrawal from DISD, he was failing all subjects except art and he was unable to access

instruction due to his behaviors.

The ARDC decision in December 2005 to increase ****'s attendance in mainstream classes and simultaneously remove his opportunity to cool off in a small-group setting, without providing an appropriate, alternative means of addressing his disabilities was inappropriate and a denial of FAPE.

Did the parents provide the requisite notice to the district for reimbursement for the private residential placement in Spring 2006?

IDEA 2004 provides that reimbursement may be reduced or denied, if:

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or
(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa). 20 U.S.C. 1412(a)(10)(C)(iii)(I).

It is undisputed that the parents had been apprised of the notice requirement for reimbursement through their receipt of written procedural safeguards. Although the parents did provide prior written notice in July 2006 of their intent to request private school reimbursement for the 2006-2007 school year, they failed to notify the district of their intent to request reimbursement for the residential treatment placement until they filed the request for due process hearing on September 29, 2006, more than seven months after his admission to Meridell and more than four months after he left Meridell. In the interim, they had met with and corresponded with district staff, discussed the residential program at length with staff in April 2006, arranged for consultation between district staff and Meridell and charter school staff, and provided the district with extensive Meridell and charter school records, all without requesting reimbursement for the residential placement.

While the statute allows exceptions to the notice requirements when a child must be immediately placed to ensure his physical or mental safety, that exception cannot excuse a delay of this magnitude on these facts. Therefore, I find that reimbursement for the residential placement is barred by lack of timely notice to the district, and I do not reach the issues of whether the residential placement was mainly a medical placement, or whether its educational component was an appropriate placement for purposes of reimbursement under the Act.

II. 2006-2007 school year: Did the district timely offer an appropriate placement?

*** did not officially re-enroll in DISD upon leaving his residential placement in May 2006, and has never re-enrolled in DISD. But even if he had done so, the district made it clear in June 2006 that *** would not be provided an ARDC meeting or a finalized program and placement prior to the first day of school in Fall 2006. ***'s parents made repeated attempts to discuss placement options with DISD staff beginning in April, 2006. On April 10, 2006, the parents and DISD staff met to discuss possible placements in the district. Meridell and charter school staff participated by telephone in the meeting, and the district was provided with psychological and psychiatric evaluations, medical records, and charter school educational records. At that time, the parties anticipated *** would return to DISD within a couple of weeks, but in fact he stayed at Meridell until mid-May and finished his *** grade coursework at the charter school.

Later in April 2006, DISD staff provided a written Proposed Plan of Action, which informally proposed a placement in a DISD Crisis Stabilization Unit. The parents made appointments to visit the unit but before they could visit, DISD staff informed them, in early May 2006, that it would not be an appropriate placement for ***.

On May 11, 2006, DISD staff wrote the parents that *** would "enroll back in Dallas on a temporary ARD." R-14. On or about May 23, 2006, ***'s parents sent the district a detailed letter in which they stated, inter alia, that they considered a temporary, transitional placement unacceptable because of the known disruptive effect on ***'s education of transitions and changes, and therefore they requested a finalized placement. The parents also stated their belief that "behavioral unit" placements were inappropriate for students with Asperger's disorder, and that *** should be provided a 4:1 student-teacher ratio; grade-level instruction; an aide to help with transitions and organizational skills, teachers and aides trained in working with students with Asperger's disorder and other neurological disorders; tutoring and other services to address his severely delayed writing skills; and keyboarding instruction. The parents requested "an appropriate placement solution" be provided prior to June 23, 2006.

In late May or early June, 2006, ***'s mother requested that an ARDC meeting be held in June to discuss educational services for ***. In a letter dated June 2, 2006, DISD administrative staff replied: "Your request for an ARD Committee meeting for *** can be scheduled no sooner than August 14, 2006 [the first day of school] since the 2005-2006 school year has ended...Before the ARD can be scheduled, please advise if you intend to enroll *** in a Dallas ISD school." The district's enrollment policy, as described at hearing by DISD administrative staff, is that the student must be physically present and attending in the district to be officially enrolled. The evidence preponderates that the parents chose not to enroll *** precisely because of the district's insistence it would provide nothing more than an unknown temporary placement until sometime after the beginning of the school year.

The family hired an attorney to assist them in their attempts to arrange for an ARDC meeting and obtain information about placement options from

DISD prior to the beginning of school. On June 12, 2006, Petitioner's attorney protested the refusal to hold an ARDC prior to the first day of school, citing ***'s fragile emotional state and problems with transitions, and repeated the request that an appropriate placement be finalized before the first day of school.

Finally, in a letter dated July 6, 2006, Petitioner's attorney notified DISD that Petitioner intended to place *** in private school and request reimbursement from the district. This notice, in conjunction with Petitioner's previous correspondence detailing parental concerns, satisfied the 10-day notice requirement in 20 U.S.C. 1412(a)(10)(C)(iii)(I)(bb). Respondent argues that this notice was insufficient because it was not made prior to ***'s emergency removal from DISD in February 2006. I find that the notice was sufficient, as it was provided more than 10 days prior to ***'s enrollment in private school, and after months of attempting in vain to find out what kind of program and placement the district would offer in Fall 2006.

Even after receiving notice of intent to request reimbursement, DISD continued to offer no ARDC meeting and no formal or informal placement options until discussions in the Resolution Meeting in October 2006, which was approximately two months after the beginning of the school year on August 14, 2006, and well after *** had enrolled in private school. At hearing, DISD staff gave varying testimony as to what might constitute an appropriate placement for *** in the district, with a general consensus among most district witnesses that *** should be placed in a behavioral classroom.

The parents' request that a finalized educational program and placement, as opposed to temporary services, be determined by the ARDC before the first day of school was reasonable under the circumstances of this case.

*** was beginning high school for the first time, at a new campus, and had a well-known propensity for severe anxiety and explosive behaviors triggered by transitions. Further, the parents' experience with the DISD "temporary" placement in Fall 2005 was that the ARDC did not meet again within 30 days of the temporary ARDC meeting to draft IEPs, but in fact waited more than two months to draft IEPs that were not implemented until the following semester, and which were not appropriate to his needs.

One of ***'s psychiatrists testified that the Spring 2006 educational program was a contributing factor in the escalation of negative behaviors and severe psychiatric symptoms that ultimately led to the residential placement. While Petitioner did not prove such causation by a preponderance of the evidence, Petitioner certainly had reason to fear a repeat of the previous year's inappropriate educational program in DISD. Under these circumstances, it simply was not reasonable to expect the parents to enroll their son and physically present him on the first day of class just to see what the district might offer.

Transfer student issues

Respondent argues that it had no obligation to *** until he formally enrolled, and that when he did re-enroll, he would be a transfer student under 19 T.A.C. 89.1050(f), and therefore the district's obligation for the first 30 days was limited to providing temporary services in *** grade based on his *** grade IEP from the charter school. Ironically, the district had violated the 30-day rule the preceding year, but now sought to use the same 30-day rule to postpone development of an educational program specifically tailored to the student's needs.

*** was not "a student who is new to the district" in the manner that 89.1050 contemplates. The primary purpose of 89.1050 is to allow the district to immediately serve a new student while collecting information

about him from his previous placement, including evaluation data, and if necessary performing its own evaluation. The district had already performed an evaluation less than a year before. Far from being a stranger to the district, *** was a recent DISD student who had been forced to withdraw from the district temporarily due to a residential placement. The district had recent experience with his classroom performance in its schools, extensive knowledge of his disabilities from its own recent FIE, outside evaluations it had previously reviewed and accepted, and a great deal of information and recommendations already in hand from the charter school and ***'s outside psychologists and psychiatrists.

DISD's plan to simply rely on the charter school *** grade IEP was inadequate to address the parental request for a specific program and placement for their emotionally fragile child. The charter school IEP was implemented in a small classroom with a student-teacher ratio of approximately 4:1, using grade-level curriculum. There was no showing that the charter school IEP could be implemented in any placement available in DISD, and one DISD staff member confirmed under questioning that nothing similar was available at the high school campus where *** was expected to enroll and attend on the first day of school. Another staff member testified that academics can be addressed in DISD behavior classes, but a behavior unit may not be appropriate because students with Asperger's disorder needs peers who model appropriate behavior. This is consistent with the recommendations of the outside evaluators, including Dr. ***, one of ***'s psychiatrists.

The district's stance placed the parents in the position that the right to reimbursement is specifically designed to address: They were in effect given the choice of enrolling their child on an experimental basis to see if the ARDC would offer an appropriate program and placement, to be

implemented at some point in the future, or they could seek an appropriate program elsewhere.

The district's argument that state regulation 89.1050, concerning transfer students, precluded the convening of an ARDC meeting prior to formal enrollment is without merit. Nowhere does this regulation or other law or regulation prohibit convening an ARDC meeting prior to enrollment. Further, another state regulation requires convening ARDC meetings for private school children who are not enrolled in public school, specifically to determine if the district can provide FAPE:

When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.450-300.462 or subsection (d) of this section, until such time as the parents choose to enroll the student in public school full-time. 19 T.A.C. §89.1096. [Emphasis added.]

More importantly, state regulations cannot trump IDEA statutory requirements:

At the beginning of each school year, each [school district] shall have in effect, for each child with a disability in the agency's jurisdiction, an individualized education program. 20 U.S.C. §1414(d)(2)(A). [Emphasis added.]

The fact that convening an ARDC meeting during summer break might create some administrative inconvenience did not justify postponing the

ARDC meeting until the first day of school under the circumstances of this case. The express purpose of the IDEA is to ensure that a FAPE is available to all children with disabilities, and administrative convenience does not remove federal IDEA obligations. The refusal to convene an ARDC meeting prior to the first day of school precluded the possibility of compliance with the requirement to have an IEP in place on the first day of school.

Further, IDEA 2004 provides that reimbursement for private school may be granted unless the district's program offers a FAPE and offers it in a timely manner prior to the private enrollment:

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. 20 U.S.C. 1412(a)(10)(C)(ii). [Emphasis added.]

Given districts' federal child-find obligations and duty to promote parental participation, lack of enrollment does not justify the failure to at least provide detailed, meaningful information about program and placement options in the district, and to do so well prior to the beginning of school so that the parent can make an informed decision about whether to enroll the student in public school. But under the circumstances of this particular case, given the previous denial of FAPE and the student's known disability-related predisposition to problems with transition, the district should have convened an ARDC meeting prior to the first day of school so

that it could offer an appropriate program and placement on the first day of school.

Is the current private school placement an appropriate educational program?

Private schools selected by parents are not held to the same standards as those required for private placements made by school districts. Rather, to determine the appropriateness of a private placement chosen by a parent, courts must apply the *Rowley* standard, that is, whether the private placement is "reasonably calculated to enable the child to receive educational benefit." *Florence County Sch. Dist v. Carter*, 114 S.Ct. 361 (1993).

The *Burlington* rule is not so narrow that it allows reimbursement only when the placement chosen by the parent is found to be the exact proper placement under IDEA. *Alamo Heights Indep. Sch. Dist. v. State Board of Educ.*, 790 F.2d 1153 (5th Cir. 1986). Factors that can be considered in determining whether full or partial reimbursement should be awarded include the existence of other, possibly more suitable, placements, the efforts expended by the parent in securing alternative placements, and "the general cooperative or uncooperative position of the School District itself." *Alamo Heights*, supra.

Petitioner gave undisputed testimony at hearing indicating that ***'s private school placement is appropriate and that he is making educational progress there. At the time of the hearing, in late November 2006, ***'s grades were *** and ***. He was working independently and at his own pace on *** grade academic work, except that his math instruction was on the *** grade level to further prepare him for algebra. He had had only one minor disciplinary incident several weeks before, in which he and another new student both received an equal loss of points on their daily behavior

sheets. The next day he had a perfect score for classroom behavior. The school's approach to students with Asperger's disorder is to place them initially in a class at their individual developmental and social skills level, while they assimilate to the school. At the time of the hearing, with the exception of attending the "upper school" for English, *** was temporarily performing his coursework in a *** grade classroom to address his social skills, in a class with 18 students, two teachers, and an aide. He was doing well, both academically and socially, and was slated to move to the upper school with older students in January 2007.

*** is receiving an educational benefit and an appropriate educational program at St. Anthony School.

Lindamood-Bell Reading Program

At the December 13, 2005 ARDC meeting, ***'s mother requested that the Lindamood-Bell reading program be provided. *** attended the Lindamood-Bell reading tutoring program in Summer 2006, where he made progress in reading novels. However, Petitioner did not meet the burden to show that *** had a deficit in reading comprehension that would justify reimbursement for the privately obtained Lindamood-Bell reading program. His FIE found his reading comprehension to be on grade-level, and academic testing at the charter school in Spring 2006 found his reading comprehension to be above grade level, i.e., at the *** grade level while he was in *** grade.

Conclusion:

The Fifth Circuit has designated four factors to determine whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA: (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and

collaborative manner by the key "stakeholders"; and (4) positive academic and non-academic benefits are demonstrated. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). For the reasons discussed above, DISD did not meet this standard in the 2005-2006 school year or the current school year.

Petitioner is entitled to reimbursement for private school tuition for the current (2006-2007) school year, and for private placement at public expense until such time as *** graduates from high school or the district makes available an appropriate educational placement.

CONCLUSIONS OF LAW

1. *** resides in DISD, a legally constituted independent school district within the State of Texas, and is entitled to special education services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., as amended. *** is eligible for special education as a student with an emotional disturbance, a pervasive developmental disorder (Aperger's disorder), and a learning disability in written expression.
2. As the party challenging the educational program proposed by the district, Petitioner bears the burden of proof.
3. In Fall 2005, the ARDC failed to reconvene within 30 days of the temporary ARDC meeting to finalize ***'s educational program, despite increasing behaviors that disrupted the education of both *** and other students.
4. In Fall 2005, ***'s placement for one period a day in a classroom for students with severe autism working at approximately the *** grade level was not appropriate to his academic or social skills needs, and did not provide education in the least restrictive environment appropriate.
5. The December 2005 ARDC decision to increase ***'s attendance in mainstream classes without also providing an adequate increase in special education support, addressing his need for small-group instruction, providing specific social skills training, and providing an appropriate place and method for cooling off, was inappropriate and was not individualized based on ***'s evaluation data and classroom performance. These omissions were not excused by parental agreement to the ARDC proceedings.
6. *** was denied a FAPE for the 2005-2006 school year. His IEPs were not individualized on the basis of assessment and performance; he did not receive an educational benefit in the least restrictive environment; and he demonstrated no positive academic or non-academic benefits from his education in DISD. His educational program was not reasonably calculated to confer an educational

- benefit or to produce progress rather than regression or trivial educational advancement.
7. Petitioner waived any claims for reimbursement of expenses associated with his residential treatment placement in Spring 2006, by failure to provide notice of intent to seek reimbursement until more than seven months after he entered the placement. Petitioner provided timely and appropriate notice in July 2006 of intent to place *** in private school in Fall 2006, and to seek reimbursement for private school expenses from DISD.
 8. The district's actions effectively denied *** a FAPE for the 2006-2007 school year. Although *** had not formally re-enrolled in the district, Respondent was not prohibited by 19 T.A.C. 89.1050(f) or any other provision of state or federal law from holding an ARDC meeting and developing an IEP prior to the beginning of the school year. Under the circumstances of this case, including a previous denial of FAPE by the district, a recent residential placement, and a student with well-known disability-related problems with transition, the district should have convened an ARDC meeting prior to the first day of school to make available an appropriate program and placement on the first day of school. The fact that school was out for the summer did not justify postponing the ARDC meeting to the first day of school.
 9. *** has received an educational benefit and an appropriate education in his current private school placement. His parents are entitled to reimbursement for his private school tuition at St. Anthony School for the 2006-2007 school year, and for private placement at public expense until such time as *** graduates from high school or the district makes available an appropriate educational placement.
 10. Petitioner did not demonstrate that *** had deficits in reading comprehension sufficient to create an educational need for the privately obtained reading tutoring program in Summer 2006. Therefore, Petitioner is not entitled to reimbursement for the expenses of the Lindamood-Bell program.

ORDER

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby ORDERED that DISD reimburse A.'s parents for the expenses of ***'s private school education at St. Anthony School for the 2006-2007 school year, and provide private placement at public expense until such time as *** graduates from high school or the district makes available an appropriate educational placement.

All other relief not expressly granted herein is DENIED.

SIGNED this 2nd day of February, 2006.

Janis Herd
Special Education Hearing Officer

DOCKET NO. 028-SE-0906

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER

DALLAS INDEPENDENT FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

SYNOPSIS OF DECISION

ISSUE: Did the student receive a free appropriate public education (FAPE) while enrolled in the district) during the 2005-2006 school year?

CITATION: 20 U.S.C. 1414(d)(3)(A) and (B); 1412(a)(5); 19 T.A.C. 89.1050(f)
For Petitioner.

HELD: The student was denied a FAPE for the 2005-2006 school year. His IEPs were not individualized on the basis of assessment and performance and did not adequately address behavior and social skills; he did not receive an educational benefit in the least restrictive environment; he demonstrated no positive academic or non-academic benefits from his education in the district; and his temporary services in Fall 2005 were not timely updated within 30 days following the initial transfer ARDC meeting, despite increasingly disruptive behaviors beginning in November 2005.

ISSUE: Did the parent provide proper 10-day notice of intent to place the student in various private placements?

CITATION: 20 U.S.C. 1412(a)(10)(C)

For Petitioner in part, and Respondent in part.
a) Petitioner waived any claims for reimbursement of expenses associated with his residential treatment placement in Spring 2006 by failure to provide notice of intent to seek reimbursement until filing the request for due process in late September 2006, more than seven months after he

entered the placement.

b) Petitioner provided timely and appropriate notice in July 2006 of intent to place the student in private school in Fall 2006 and seek reimbursement from the district.

ISSUE: Did the district err in a) failing to convene a meeting of the Admission, Review, and Dismissal Committee (ARDC) prior to the beginning of the 2006-2007 school year, and b) failing to finalize an educational program prior to the beginning of the school year?

CITATION: 20 U.S.C. 1414(d)(2)(A); 1412(a)(3); 1412(a)(10)(ii); 1412(a)(10)(C)(ii)
For Petitioner.

HELD: The district's actions effectively denied the student a FAPE for the 2006-2007 school year. Although the student had not formally re-enrolled in the district, Respondent was not prohibited by 19 T.A.C. 89.1050(f) or other provision of state or federal law from holding an ARDC meeting and developing an IEP prior to the beginning of the school year. Under the circumstances of this case, including a recent previous denial of FAPE by the district, a recent residential placement, and a student with well-known disability-related problems with transition, the district should have: a) honored the parents' repeated requests for an ARDC meeting prior to the first day of school, and b) made available an appropriate program and placement that was ready to implement on the first day of school. The fact that school was out for the summer did not justify the district's refusal to hold an ARDC meeting prior to the first day of school. That refusal precluded provision of FAPE in a timely manner as required by the Act, and triggered the parental decision to enroll the child in private school rather than in the district.

ISSUE: Is the parent entitled to reimbursement for one or more private placements attended since the student withdrew from the district in February 2006?

CITATION: Citation: 20 U.S.C. 1412(a)(10)(C)

For Petitioner in part, and Respondent in part.

a) The student has received an educational benefit and an appropriate education in his current private school placement. His parents are entitled to reimbursement for his private school tuition for the 2006-2007 school year, and for private placement at public expense until such time as he graduates from high school or the district makes available an appropriate educational placement.

HELD: b) Petitioner is not entitled to reimbursement for his residential placement due to lack of proper notice to the district.
c) Petitioner did not demonstrate deficits in reading comprehension sufficient to create an educational need for a privately obtained reading tutoring program in Summer 2006, and is not entitled to reimbursement for that program.