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# DOCKET NO. 171-SE-0406

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

PETITIONER

vs.

MESQUITE INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

BEFORE A SPECIAL EDUCATION  
HEARING OFFICER  
FOR THE STATE OF TEXAS

## DECISION OF THE HEARING OFFICER

### Procedural History

Petitioner, \*\*\* (“Petitioner,” “Student” or “\*\*\*\*.”) brings this action against the Mesquite Independent School District (“Respondent,” “the school district,” or, “Mesquite ISD”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEIA) and its implementing state and federal regulations.

Student has been represented pro se by his parents, \*\*\* and \*\*\* assisted by Carolyn Morris, parent advocate from Parent to Parent Connection Advocacy, Inc. (“Parent to Parent”). Respondent has been represented at all times in this case by its legal counsel Gary Grimes of Schuereberg & Grimes, P.C.

Respondent filed a Motion to Dismiss on May 1, 2006. The motion was resolved by the Hearing Officer’s Order on May 4, 2006. A prehearing telephone conference was first conducted in this case on May 9, 2006. A continuance of the initial hearing date was granted in order to conduct an agreed upon Full

Individual Evaluation (“FIE”) and to provide the parties with an opportunity to review and discuss the results of the evaluation.

The hearing was reset for June 22-23, 2006 by agreement. While the hearing was pending, the parties convened an Admission, Review & Dismissal Committee meeting (“ARD”) on June 5, 2006 to discuss the results of the FIE. Petitioner requested an Independent Educational Evaluation (“IEE”) at that meeting and the school district agreed to provide the IEE. Respondent submitted a request for a continuance of the June 22-23 hearing dates to provide more time to conduct the IEE. Respondent also requested another prehearing conference to discuss the hearing schedule. Petitioner objected to another continuance and wished to proceed with the hearing set in June.

The Hearing Officer issued an order that denied Respondent’s requests for a prehearing conference and for a continuance. In the order, the Hearing Officer also clarified and confirmed the issues and items of requested relief.

The due process hearing was conducted in this case on June 22-23, 2006. Petitioner’s mother, \*\*\* and father, \*\*\* attended the hearing, assisted by Carolyn Morris from Parent to Parent. Nina Morris, Ms. Morris’ daughter, assisted Petitioner’s team on the first day of hearing. Respondent was represented by its legal counsel, Gary Grimes of Schuerenberg & Grimes. \*\*\*, Director of Special Education, and \*\*\*, Special Education Coordinator, attended the hearing as the school district’s party representatives. The school district’s objection to Ms. Morris’ participation in the hearing was overruled. The hearing officer’s Decision is due June 19, 2006.

## **Issues**

The issues in this case are:

1. Whether the school district should have identified the student. as a student with a disability in need of special education within the meaning of the Individuals with Disabilities Education Improvement Act (IDEIA) at the beginning of the 2005-2006 school year;

2. Whether student's placement in the school district's Alternative Placement program for disciplinary reasons was appropriate and the least restrictive environment following a behavioral incident in April 2006; and,
3. Whether the school district provided student with a free, appropriate public education within the meaning of IDEIA during the 2005-2006 school year.

### **Relief Requested**

Petitioner requests the following items of relief:

1. An Admission, Review & Dismissal Committee (ARD) convene for the purpose of formally identifying student as a student with a disability in need of special education under the IDEIA;
2. Reimbursement for the cost of private educational services; and,
3. Provide student with compensatory services in the form of private tutoring, counseling services, and transition support.

### **Petitioner's Request for an IEE**

Petitioner withdrew his request for the IEE just prior to the hearing so that the hearing would not be further delayed by the time required to conduct the IEE.

Petitioner confirmed his withdrawal of this item of requested relief on the record on the first day of hearing.

### **Findings of Fact**

1. Student is \*\*\* years old and was in the \*\*\* grade during the 2005-2006 school year in the Mesquite ISD. Student has attended school in four different school districts in the Dallas metropolitan area. He began in the Dallas Independent School District (DISD) in pre-kindergarten through first grade. Student first attended Mesquite ISD in 2nd grade and was retained at the end of the year. He returned to DISD to repeat second grade and then for 3rd grade. Student attended the Duncanville Independent School District for \*\*\*-\*\*\* grades and for the first semester of \*\*\* grade. Student returned to Mesquite ISD for the spring semester of \*\*\* grade through November of his \*\*\* grade year. Student attended Richardson Independent School District for the remainder of \*\*\* grade and was retained at the end of the year. Student returned again to Mesquite to repeat \*\*\* grade and remained a student in the Mesquite ISD through 12th grade.
2. For the past three years student has lived with his mother and two brothers in Oak Cliff, Texas. Oak Cliff is not in the Mesquite ISD. Instead, residents in the Oak Cliff community are served by the Dallas Independent School District. However, in August 2003 (at the beginning of \*\*\* grade), shortly after student's mother moved to Oak Cliff, student re-enrolled in the Mesquite ISD. Student's mother \*\*\*, executed the necessary documentation for student's enrollment in the

Mesquite ISD, including a Transfer of Legal Responsibility - Forms A and B. In those documents, \*\*\* stated her agreement that student was to reside with a friend who lived within the boundaries of the Mesquite ISD. \*\*\* stated her reasons for seeking the transfer were because student's friends attended Mesquite ISD schools, she liked the way the school district taught its students, and, that school personnel "helped my son the years he has attended [Mesquite ISD]." \*\*\* also provided the school district with her address in Oak Cliff. There was no evidence submitted as to whether student's father lives within the boundaries of the Mesquite ISD.

3. The Texas Assessment of Knowledge and Skills ("TAKS") is the state mandated assessment test to ensure school accountability for student achievement. Students may take the exit level TAKS in the 11th grade but have opportunities in 12th grade to re-take the TAKS if they do not meet the state mandated minimum scores for passing. Passing all portions of the exit level TAKS is a state requirement for high school graduation.
4. The Texas Assessment of Academic Skills ("TAAS") was the predecessor state mandated assessment instrument to the TAKS. The TAAS was administered to student in 3rd, 5th, 6th, 7th, and 8th grades. In \*\*\* grade student did not pass either portion of the TAAS. In the \*\*\* grade he passed all three portions: reading writing and math. In the \*\*\* and \*\*\* grades student failed both the reading and math portions of the TAAS. In \*\*\* grade he passed the reading portion of the TAAS but not the math. In \*\*\* grade he passed all five portions of the TAAS.
5. On April 4, 2006 student was involved in an altercation with a fellow student in response to a racial slur. Student was a regular education student at the time of the behavioral incident and was disciplined under the \*\*\* school's Student Code of Conduct. For the type of offense student. committed, the Code of Conduct required a three day suspension from school and then placement for the remainder of the school year in the school district's alternative placement program (AEP) known as the Challenge program. He also lost the privilege of attending the \*\*\*.
6. The disciplinary placement to the Challenge program occurred during the final six weeks of the second semester of student's \*\*\* grade year. Student's high school discipline record up until this time was relatively good with the exception of a few dress code violations and some attendance issues. In the Challenge program, student received books, materials and some instruction in his basic core academic subjects. He also participated in physical education but was unable to continue participation in an elective American Sign Language class.
7. The TAKS was administered to student in 9th, 10th, 11th and 12th grades. In \*\*\* grade student passed the reading portion but failed the math. In \*\*\* grade student passed the Social Studies and English/Language Arts portions but failed the math and science portions. In \*\*\* grade student passed the exit level Social Studies and English/Language Arts portions but failed the math and science portions. In July 2005, student retook the science and math TAKS and was able to pass the science but failed the math.
8. By \*\*\* grade, the only portion of the TAKS that student needed to take for graduation purposes was math. Student retook the math portion of the TAKS three more times in \*\*\* grade: in October 2005, December 2005 and February

2006. He failed all three times. By the end of \*\*\* grade, although student passed all his classes and received the requisite number of course credits for graduation, he could not formally graduate from high school because he had not been able to pass the math portion of the TAKS. Student was not eligible to participate in graduation ceremonies or receive a high school diploma without passing all exit levels of the TAKS.
9. Mesquite \*\*\* school offers TAKS tutoring and special classes to students who have not been able to successfully pass. In order to prepare for the February 2006 TAKS test, student signed a “\*\*\* TAKS Contract”. In that contract student agreed to attend TAKS tutoring at least once a week until the date of the test. TAKS tutoring in math was offered Monday through Thursday after school, and on Tuesday through Thursday before school. An on-line practice test was available on December 3, 2005. student’s use of the before and after school TAKS tutoring was minimal but he did participate in the on-line test session in December.
  10. During the second semester, student was enrolled in the special TAKS preparation class (“TAKS prep”). The TAKS prep class had a student to teacher ratio of approximately 14 to 1. Each student worked individually on their own plan that targeted the math objectives the student needed to master in order to pass. The class period was 90 minutes long. The teacher taught a group lesson based upon an objective that the majority of students needed to master. Student’s willingness to work varied with the overall mood of the class: student could work hard when the class was focused but tended to get caught up in socializing when the class became particularly talkative. Student had difficulty arriving on time for the TAKS prep classes and was able to maintain a focused effort for 60 minutes out of the total 90 minute period.
  11. Mesquite ISD offered a summer TAKS prep class from June 6-July 10, 2006. There were three separate time options available. The notice and an application for the summer TAKS prep classes were mailed to student at the Mesquite address on file with the district. The math exit level TAKS test was scheduled for July 12th. Student did not sign up for the summer TAKS tutoring or for the summer math TAKS test. Student denied receiving the notice and application. Student is discouraged by his repeated failures on the math portion of the TAKS and feels he cannot get on with his life until he overcomes this obstacle. Student and his mother both reported that he struggled with his schoolwork throughout his education and often required the assistance of friends and family to understand and complete it. Student’s goal is to become an \*\*\*.
  12. Student. has a history of \*\*\*. Some of student’s teachers noted an increase in irritability in mood when student doesn’t feel well but they did not specifically point to his \*\*\* in making those observations. Student has a variety of \*\*\* medications that he has used over the years that have been effective in addressing his \*\*\* symptoms.
  13. Following the behavioral incident in April, student was seen by Dr. \*\*\* and diagnosed with \*\*\*. Dr. \*\*\* prescribed medication for student to address the symptoms of \*\*\*. Student states that the medication has been helpful to him in terms of being able to maintain \*\*\*. Prior to this time, student had never been referred for a special education evaluation or diagnosed with a disability.

14. Dr. \*\*\* completed an Other Health Impairment (OHI) eligibility form for the school district confirming that student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that results in limited alertness, with respect to the educational environment due to his\*\*\*. Dr. \*\*\* also noted that student's \*\*\* adversely affects student's educational performance creating a need for special education (i.e. specially designed instruction) and related services.
15. As a component of this litigation, the school district conducted a Full Individual Evaluation ("FIE"), by agreement, to assess all areas of suspected disability for student including learning disabilities, other health impairment, and emotional disturbance. Sources of information for the final report of the FIE included information from classroom teachers, information from student's mother, health information, information from student's physician, and a review of student's cumulative educational record. Formal and informal evaluation measures were also utilized in conducting the evaluation.
16. According to teacher information, student's expressive language skills are average although the English teacher noted that student's ability to retain information just heard is below average. His receptive language skills were nevertheless average for instructional purposes. The FIE noted student's \*\*\* and \*\*\* and that he takes medications for both conditions. There were not significant cultural, linguistic or experiential background factors stated in the FIE.
17. Feedback from student's English, Algebra and the TAKS prep class teachers were included in the FIE. All three teachers noted that student has difficulty adapting to new situations without getting upset. The English teacher felt that "maintaining an even, usually happy disposition" was a weakness. The Algebra teacher felt that "responding appropriately to praise and correction" was a weakness, although the TAKS teacher felt that was strength. While the TAKS teacher noted that "resisting becoming discouraged by difficulties" was a weakness, both the English and Algebra teachers noted that as a strength.
18. All three teachers agreed that student exhibited the following strengths: "generally cooperates or complies with teacher requests," "accepts responsibility for his actions," "makes and keeps friends at school," "works cooperatively with others," "is pleased with good work," "initiates activities independently," and, "maintains attention to task."
19. A licensed school specialist in psychology ("LSSP") conducted a psychological evaluation as a component of the FIE. The psychologist used teacher, parent, and self report rating scales, teacher, parent, and student interviews, a classroom observation, a review of the referral information, and the administration of two formal measures to assess student's psychological status. The psychologist concluded that student was experiencing situational stress related to his assignment to the Challenge program and concerns about passing the math portion of the TAKS for graduation. The evaluation results showed that student did not exhibit significant problems with inattention, hyperactivity and impulsivity in the school setting.
20. The LSSP found that student's feelings of alienation, hostility and dissatisfaction for school and teachers were not surprising given his discontent with placement in

- the Challenge program. His perception that he has not been successful in school, unable to achieve his goals, and, feelings of inadequacy were “not unexpected reactions to failing the TAKS Math test five times.”
21. The LSSP also found it likely that student’s concentration had been adversely affected by his anxiety about graduation. In sum, the psychological data showed that student’s emotional response appeared to be a temporary reaction to marked increases in psycho-social stress that had not existed for a long period of time, and did not rise to the level of a serious emotional disturbance.
  22. Student’s academic and intellectual achievement and potential were also evaluated by an educational diagnostician. The Wechsler Adult Intelligence Scale – 3rd Edition (“the Wechsler”) compared student’s verbal scores to a set of performance scores Student attained a verbal score of \*\*\*, a performance score of \*\*\* and a full scale score of \*\*\* on the Wechsler. His full scale score fell within the low average range of intelligence. Test scores only tell part of the story and other factors such as attitude, health, motivation, and, opportunity are also relevant to gauge a person’s ability to deal successfully with school, a job, or a training program.
  23. The educational diagnostician identified basic reading as an area where student demonstrated a severe discrepancy between performance and intellectual functioning based upon the scores of the pseudo-word decoding subtest. The pseudo-word decoding subtest measures a student’s ability to phonetically decode words and whether those skills are developing in an age-appropriate manner. The pseudo-word test is more typically used to assess younger students rather than high school students where the instructional focus is on comprehension. Student substituted real words with similar spellings to the nonsense words in a number of items in the subtest. The diagnostician concluded that this demonstrated that student relies on rote memory of words rather than on his decoding skills for basic reading - that he is a sight word reader; i.e., that he reads words based on his memorization of whole words rather than attempting to decode words based on the phonetic sounds of the letters.
  24. The FIE included a number of recommendations for accommodations and adaptations that would be relevant for student in the areas of attention to task and basic reading, specifically, pseudo-word decoding. These included close monitoring to assure understanding, exam modifications such as reducing length, using objective terms, giving exam orally or individual administration, preferential seating, reduce distractions, give concrete instruction, and allow for physical limitations.
  25. Student’s grades have been somewhat scattered throughout high school. In \*\*\* grade student’s year end final grades were widely diverse: with a \*\*\* in World Geography and a \*\*\* in Geometry to an \*\*\* in Biology, a \*\*\* in Reading and a \*\*\* in English. Student failed both Geometry and World Geography in all six of the grading periods, and in English failed three out of the six grading periods. Student retook World Geography in summer school and earned a \*\*\* and credit for the class.
  26. In \*\*\* grade student’s year end final grades fell in the \*\*\* a \*\*\* in English, a \*\*\* in Integrated Physics/Chemistry, a \*\*\* in World History, and, a \*\*\* in English.

- Student repeated Geometry again in \*\*\* grade, had failing grades for two out of the six grading periods, but managed to pass with a final year end grade of \*\*\*. Student also had failing grades in English for three out of the six grading periods that year.
27. In \*\*\* grade his semester grades in the core academic classes of English, Algebra I, and Chemistry, were primarily in the low to mid \*\*\*, with final year end grades of \*\*\* for English, \*\*\* for Algebra I, and \*\*\* for Chemistry. He did somewhat better in U.S. History with semester grades of \*\*\* and \*\*\* and a final year end grade of \*\*\*.
  28. In \*\*\* grade student's grades were all over the map: his final year end grades for English and Algebra II were \*\*\* and \*\*, respectively. He had \*\*\* grades in English for two out of the six grading periods. In Communication Applications, student made a final grade of \*\*\*. In American Sign Language, despite the fact that he failed the final exam and did not receive any grades for the final grading period due to placement in the Challenge program, his year end grade was a \*\*\*. Student also made a \*\*\* as a final year end grade for Family and Career Management. Student performed very well in his physical education class with a final grade of \*\*\*. He also earned a final year end grade of \*\*\* (but no course credit) for his participation in the TAKS prep class during the second semester of \*\*\* grade.
  29. An ARD Committee met on May 17, 2006 to discuss Dr. \*\*\* diagnosis and comments on the OHI form. The parties disagreed on whether student exhibited an "educational need" for special education based upon the OHI disability arising from the\*\*\*. The ARD also discussed student's \*\*\*. The school district agreed to contact student's physician to secure information about student's \*\*\* medications and their functional implications. After doing so, Dr. \*\*\* refused to send any information to the school district regarding student's \*\*\* unless and until student was seen in his office for an appointment.
  30. A second ARD meeting was conducted on June 5, 2006 to review and discuss the results of the FIE. The parties agreed that student. was a student with OHI (based upon his asthma and ADD), and, a specific learning disability in basic reading (based upon the pseudo-word decoding subtest scores). However, the parties disagreed on whether student needed special education services. None of student's \*\*\* grade teachers felt he needed special education. The TAKS summer prep class was briefly discussed by the high school principal at the conclusion of the ARD.

## **DISCUSSION**

### **Identification Issue – Child Find Provisions under IDEIA**

The Individuals with Disabilities Education Improvement Act (IDEIA) requires that:

All children with disabilities residing in the State ... regardless of the severity of their disabilities and *who are in need of special education and related services*, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

20 U.S.C. § 1412 (a) (3) (A) (emphasis added).

The threshold dispute in this case is whether the school district should have identified student. as a student with a disability in need of special education. By the time student reached the \*\*\* grade there was certainly enough evidence to suggest that student was a student who warranted some review. He'd failed all portions of the state mandated assessment in \*\*\*, \*\*\* and \*\*\* grades, failed the math portion of the state assessment in \*\*\* and \*\*\* grades, failed the math and science portions of the state assessment in \*\*\* and \*\*\* grades, and, by the end of the fall semester of \*\*\* grade failed the exit level math portion of the state assessment two more times.

In addition, a review of student's class performance in high school, measured by his semester grades in the core academic classes, show that he was not a particularly competent student. Most of his grades in the core subjects fell in the low \*\*\* with a few in the mid \*\*\*, with only one in the \*\*\* ( a U.S. History class). As an underclassman, student failed two core academic classes and had to repeat both. He also failed a number of courses during certain grading periods throughout \*\*\* school. He had been retained twice, once in elementary school, and once in middle school. All of this information was available to the school district and indeed maintained in his cumulative record.

These facts, taken together, suggest a student who struggled somewhat in school and by the beginning of \*\*\* grade, should have been identified as a student who was at risk for not graduating before the fifth school year following his enrollment in \*\*\* grade. See, Tex. Educ. Code §§ 28.0212 (a) (1) (2).

Therefore, the school district should have conducted an evaluation of student by the end of the fall semester of \*\*\* grade to determine whether he was a student with a disability in need of special education services. 20 U.S.C. § 1412 (a) (3) (A).

Because the school district agreed to and did conduct an FIE, including assessment in all areas of suspected disability, and because the outcome of the evaluation was that student did not need special education, any harm that may have occurred by the school district's failure to conduct the evaluation earlier was minimal and the harm cured when it conducted the FIE as a result of this litigation. Therefore, the issue of whether the school district should have evaluated student at the beginning of the 2005-2006 school year is moot. See, Sch. Bd. Of Osceola Co. v. M.L., 30 IDELR 655 (M.D. Fla. 1999)(school board's objection to neuropsychological testing for student with Tourette's, ADHD and other diagnoses was moot on appeal where testing was completed following administrative hearing).

### **Need for Special Education**

The inquiry as to whether a student is eligible for special education and related services under the IDEA requires, not only the identification of a student with a disability but also a determination as to whether the student is in need of special education. See, 20 U.S.C. § 1412 (a) (3) (A). In this particular case, although the evidence showed that student struggled somewhat in school, the evidence also showed that he was able to pass most of his classes, receive the requisite credits for graduation, and, had few behavioral issues in school. The results of the FIE demonstrated that student's achievement in school was commensurate with his intellectual, performance, and verbal skills. Despite the single area of identified learning disability in decoding reading, student's ability to learn and pass his English and language arts classes, and to pass the exit level English/Language Arts portion of the TAKS, show that he was not a student in need of special education as a result of that disability.

It was unfortunate that student's last semester of high school was marred by a disciplinary incident that landed him in the AEP for the last six weeks of school. Even though student was later diagnosed with \*\*\*, there was insufficient evidence to establish that student's behavior in responding to the provocation by a peer, was a manifestation of his \*\*\*. Therefore, student was not eligible for special education within the meaning of the IDEIA. See, *Flour Bluff Ind. Sch. Dist.*, 41 IDELR 109 (SEA Tex. 2004)(high school student with ADD and low average IQ not eligible for special education where ADD symptoms were not exhibited to significant degree in classes and student made adequate progress when she devoted sufficient effort).

### **Relevancy of the TAKS Test**

It is important to note for purposes of this decision that student's TAKS test scores is relevant evidence in making the determination of whether student was a student in need of special education. In 1992 the Texas Education Agency issued a letter to public school district administrators in Texas regarding special education as a remedy for seniors who failed the state mandated assessment (at that time it was the TAAS, precursor to the present day TAKS). In that letter, the Texas Education Agency stated, in pertinent part:

While possible, it is highly unlikely that a student would progress with passing grades to the senior level and have a [disability] that meets the criteria for receiving special education services ... To be eligible for special education services, an admission, review and dismissal (ARD) committee must determine that the student meets the eligibility criteria for one of the [disability classifications stated in the Texas Administrative Code] and has a need for special education services. Failing the TAAS does not constitute an educational need for special education services...

Letter to the Administrator Addressed, J.R. Cummings, Executive Deputy Commissioner for Programs and Instruction, Texas Education Agency, (May 6, 1992).

I do not interpret Dr. Cummings' letter to mean that a high school senior can never be identified as a student eligible for special education but instead only that a student's failure of the exit level state mandated assessment cannot be the only reason for qualifying a student for special education in Texas. A student's repeated failure of any or all portions of the state mandated assessment is a factor in making the determination of whether the student is in need of special education. In that sense, a student's performance on the state mandated assessment is similar to the student's classroom performance, behavior, emotional well-being, and data from other formal and informal measures. In student's case, the evidence showed that he certainly has struggled in the area of mathematics, that passing the exit level math portion of the TAKS has now become a significant psychological issue for him, and that his repeated failure to pass the test is an obstacle for student in moving ahead with implementing his future goal of becoming an aircraft mechanic. These facts, while relevant, were not enough, when taken together with the totality of student's educational record and recent evaluation data, to show by a preponderance of the evidence that student needs special education. *Schaffer v. Weast*, 126 S. Ct. 528, 537, 74 U.S.L.W. 4009 (2005).

#### **Other Potentially Relevant Provisions**

The jurisdiction of a special education hearing officer in Texas is limited to resolving issues arising under the IDEIA. See, 19 Tex. Admin. §§ 89.1150 (c) (6), 89.1151. Therefore, I have no authority to make any findings or conclusions concerning whether the school district has met its responsibilities to student under other provisions of state law. However, and by way of guidance only, several state law provisions appear to be relevant in this case. For example, a school district is required to develop and administer a personal graduation plan for each student enrolled in junior high, middle school, or high school who does

not perform satisfactorily on the state mandated assessment. Tex. Educ. Code § 28.012.

The personal graduation plan must identify educational goals for the student, include diagnostic information, appropriate monitoring and intervention and other evaluation strategies, include an intensive instructional program, address parental participation, and, provide innovative methods to promote the student's advancement. Tex. Educ. Code §§ 28.0212 (a) (1)-(5), 28.0213 (a). In addition, a school district may issue a certificate of coursework completion to a student who successfully completes the curriculum requirements identified by the State Board of Education but has failed the state mandated assessment. In so doing, the school district may also allow that student to participate in a graduation ceremony. Tex. Educ. Code §§ 28.025 (d).

Finally, there was some evidence that student was not a resident of the Mesquite ISD for the past three years of school. Although his mother executed the proper paperwork for a transfer to Mesquite ISD, by his own admission, student stated that he resided with his mother in Oak Cliff, a community outside the jurisdictional boundaries of Mesquite ISD. He does not appear to have resided with the family friend at the Mesquite residence named in the transfer documents. There was no evidence submitted about the residency of student's father. A school district is only responsible for the education of students who reside within its jurisdictional boundaries or for those students who meet specifically proscribed exceptions. See, Tex. Educ. Code § 25.001. However, the school district did not seek dismissal of Petitioner's claims on the basis of residency and thus waived any defense or objection on those grounds for purposes of this hearing. See, 19 Tex. Admin. Code §§ 89.1170(b) and 89.1180(c).

### **FAPE and Disciplinary Issues**

Student is entitled to a free, appropriate public education (FAPE) under the IDEIA only if he is a student who is eligible for special education services under that statute. Because Petitioner did not meet his burden of proving eligibility under the IDEIA, the school district is not legally required under the IDEIA to provide

student with FAPE. Furthermore, the procedural safeguards and disciplinary placement provisions under IDEIA do not apply to students in regular education programs. This conclusion does not, of course, mean that the school district was not legally required to provide student with an education that comports with other federal or state laws that might apply. See for e.g., The Rehabilitation Act of 1974, 29 U.S.C. § 701; Tex. Educ. Code §§4.002, 28.0212, 28.0213.

## **Conclusions of Law**

1. The school district should have evaluated student for special education services by the end of the fall semester of the 2005-2006 school year. 20 U.S.C. §§ 1412 (a) (3) (A), 1414 (a) (b) (4) (A).
2. Any harm that arose from the school district's failure to evaluate student for special education in a timely manner was harmless and cured when the school district conducted a full, individual educational evaluation. The issue of whether the school district's failure to identify student. in a timely manner is therefore moot. 20 U.S.C. §§ 1414 (a) (b) (4) (A) (B) (c); *Osceola Co. v. M.L.*, 30 IDELR 655 (M.D. Fla. 1999).
3. Student is not eligible as a student with a disability within the meaning of the Individuals with Disabilities Education Improvement Act. 20 U.S.C. § 1414 (a) (b) (4) (A) (B) (c).
4. The school district was not required to provide student with a free, appropriate public education under the Individuals with Disabilities Education Improvement Act (IDEIA) because student is not a student with a disability in need of special education under the IDEIA. 20 U.S.C. § 1412 (a) (3) (A).
5. The procedural safeguards related to disciplinary placements under IDEIA do not apply to student because he is not a student with a disability in need of special education under the IDEIA. 20 U.S.C. § 1415 k).

## **ORDERS**

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

SIGNED ON THE 19th day of July 2006

Ann Vevier Lockwood  
Special Education Hearing Officer

## **Notice to the Parties**

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).