
DOCKET NO. 189-SE-0406

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER

CONROE INDEPENDENT FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

Petitioner, acting through his parents as next friends, requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., as amended. The issues for hearing were as follows:

1. Did the district provide appropriate evaluations?
2. Did the district provide an appropriate individual educational program (IEP)?
3. Are the district's proposed instructional modifications appropriate?
4. Did the district fail to implement an IEP?
5. Did the district provide proper notice of Admission, Review, and Dismissal Committee (ARDC) meetings?
6. Did Petitioner receive a free appropriate public education (FAPE)?

As relief, Petitioner requested speech/language services, including compensatory services; IEPs that are appropriate and based on accurate evaluations; and continuation of an instructional modification that reduces his assignments and classroom test questions by 50%.

Held, for Respondent.

PROCEDURAL HISTORY

Petitioner's Complaint was received by CISD on April 19, 2006, and received by the Texas Commissioner of Education and the Hearing Officer on April 20, 2006. CISD filed a Response to Petitioner's Complaint on April 26, 2006. Petitioner was represented by C. Michael Black. Respondent was represented by Jeffrey Rogers.

A telephonic prehearing conference was held on May 9, 2006, and transcribed by a court reporter. Both parties received copies of the transcript.

The hearing was set for June 23, 2006. Petitioner requested a continuance for good cause, which was granted. The hearing was reset to July 27 and 28, 2006, and the Decision due date was extended accordingly. Subsequently, the parties jointly requested a continuance for good cause, which was granted. The hearing was reset to August 30 and 31, 2006, and the Decision due date was extended accordingly.

The hearing was held on August 30 and 31, 2006. The Decision due date was extended by agreement of the parties to October 26, 2006, and the Decision was issued on that date.

Petitioner previously filed this matter December 12, 2005, in Docket No. 080-SE-1205, which was assigned to this Hearing Officer. The Complaint in the first filing contained substantially the same claims and request for relief as in the instant case. Pursuant to the one-year statute of limitations in 19 T.A.C. §89.1151(c), the relevant time period for which relief could be granted in the first filing began on December 12, 2004. Petitioner requested dismissal without prejudice of the Complaint, with Respondent's agreement that if Petitioner refiled the Complaint at a later date, the one-year statute of limitations applicable to the first filing would also apply to the second filing. The case was dismissed without prejudice on March 30, 2006. In accordance with the parties' agreement upon dismissal of the first filing, the relevant time period for granting relief in the instant case begins on December 12, 2004.

FINDINGS OF FACT

Background

1. Petitioner receives special education as a student with a learning disability in basic reading skills and written expression. He demonstrates characteristics of dyslexia and has significant deficits in working memory and auditory processing speed. He attends regular *** grade classes with instructional modifications and supports, including use of an FM system for instruction. His only special education class is his reading class. He has IEPs in Reading and Written Language.

Grades

2. Petitioner consistently makes straight-*** report cards. During the 2003-2004 school year, his final grades ranged from *** -- ***. During the 2004-2005 and 2005-2006 school years, his final grades ranged from *** -- ***.

TAKS Scores

3. On the Spring 2006 Texas Assessment of Knowledge and Skills (TAKS) test, Petitioner scored in the Commended Performance range in Math, Social Studies, and Science, and passed Reading with a score well above the standard score required to pass. He received the accommodation of oral administration in all tests but Reading. TAKS tests are untimed. Petitioner took somewhat longer than average to complete them in Spring 2006, but no longer than some regular education students.
4. On the Spring 2005 TAKS test, Petitioner scored well above the standard scores required to pass in all areas tested, which included Reading, Math, and Writing. He received the accommodation of oral administration in Math.
5. On the Spring 2004 TAKS test, Petitioner scored in the Commended Performance range in all areas tested, which included Reading and Math. He received the accommodation of oral administration in Math.

IEPS and Modifications

6. In *** and *** grades Petitioner had IEPs for Language Arts and Oral Expression; Written Language; Reading; and Extended Reading. Since approximately 2004, Petitioner's instructional modifications have provided that the items or questions on his assignments and classroom tests be reduced by 50%. In addition, he was allowed extra time to complete assignments and allowed to take his tests in the Content Mastery classroom, which has fewer distractions than the regular classroom.
7. In his annual review Admission, Review, and Dismissal Committee (ARDC) meeting held on March 27, 2006 and April 4, 2006, the parent disagreed with the committee's recommendation to eliminate the 50% reduction to assignments and classroom tests. Petitioner has continued to receive the 50% reduction, pending final resolution of the dispute by this Decision.

8. With the exception of eliminating of the 50% reduction, Petitioner's proposed *** grade instructional modifications are substantially similar to those provided in junior high, and include: extra time for completion of class assignments; chunk major projects into smaller segments and check progress weekly; hard copy of lecture outline; preferential seating; check for understanding; use of FM system for instruction; extra set of textbooks at home; textbooks on tape/CD and novels on tape; allow student to write on tests; test in a small group environment; no penalty for spelling except on spelling tests and final drafts; and, when giving directions, ensure that teacher has student's attention.

Reading Program

9. Petitioner's reading teacher for *** and *** grades administered a dyslexia reading program called the Read Naturally Program, designed to help students become more fluent in reading and word recognition, and read orally with good expression. She also used other programs and assignments to improve basic reading skills and comprehension. Petitioner's reading abilities improved significantly during his time in her classroom, and he is able to read the *** grade curriculum, although he reads more slowly than most of his classmates.
10. In the Read Naturally Program, when a student reads a new story or passage for the first time, his word-count-per-minute is measured and the result is a "cold" timing score. As he works through the lesson, his word-count-per-minute is measured periodically, resulting in a "warm" timing score. The student must achieve a certain warm score to pass and move on to the next lesson. The reading teacher, who was trained in the use of the reading program, used warm timings to measure progress and to draft IEP goals. Petitioner's parent disputed this methodology for measuring progress.

Speech/Language Services

11. Based on his evaluation data, the ARDC determined that Petitioner does not meet eligibility criteria for speech impairment, and therefore is not eligible for direct speech/language services. In March 2004, the ARDC adopted a Language Arts and Oral Expression IEP to address his auditory perception skills, with the intent that a speech/language assistant would collaborate with his reading teacher to implement the IEP. The speech/language assistant misunderstood her intended role and worked directly with the student for several months in Fall 2004. She was informed by the speech therapist in January 2005 that she should provide only consultative services. At that time she ceased providing direct services to the student and began providing only consultative services to the reading teacher.

Evaluations

12. At the request of the parent, the Gray Oral Reading Test - 4th Ed. (GORT-4) was given to Petitioner in September 2003 as a supplement to evaluations performed by the district. A year or more later, Petitioner's mother noticed an error in the 2003 Gort-4 scores. District staff agreed that an error had occurred and rescored the test.

13. On his May 2002 Full Individual Evaluation (FIE), Petitioner's full scale IQ score was 104, in the average range, on the Wechsler Intelligence Scale for Children-III (WISC-III). The FIE report indicated significant developmental/educational deficits in basic reading skills, written expression, and listening comprehension.
14. In Summer and Fall 2003, Petitioner was tested by the district in the areas of speech, dyslexia, dysgraphia, written language, and auditory processing. The testing indicated poor overall writing skills and characteristics of dyslexia. The testing did not indicate that he had dysgraphia, an auditory processing disorder, or a speech impairment.
15. In December 2003, at parental request, Petitioner was further assessed in the area of auditory processing by a private audiologist. The evaluator found poor tolerance to less than perfect auditory environments and difficulties with auditory memory and auditory attention. The ARDC reviewed the audiologist's recommendations and provided all or most of them, including preferential seating; an FM system for instruction; auditory training; language therapy; clear, concise directions; and visual aids. The district also provided and continues to provide a dyslexia reading program.
16. In February 2005, the district completed Petitioner's most recent FIE, which included the WISC-IV; Wechsler Individual Achievement Test II (WIAT-II); Woodcock-Johnson III Tests of Achievement (WJ-III-Ach); Woodcock-Johnson III Tests of Cognitive Abilities (WJ-III-Cog); and Test of Written Language 3 (TOWL-3). In addition, a speech/language evaluation was performed, including of a Photo Articulation Test; Test of Auditory-Perceptual Skills; and Clinical Evaluation of Language Fundamentals-4th Ed. (CELF-4). The speech/language evaluation indicated that Petitioner's listening comprehension and oral expression were in the *** range. When using his FM system, his auditory discrimination evaluation score was in the *** range. The CELF-4 placed him in the *** range in receptive/expressive language. He did not meet eligibility criteria for a speech impairment or communication disorder that would entitle him to direct speech services.
17. On the WISC-4 portion of the 2005 FIE, Petitioner's full scale IQ score was ***, which is in the low *** range. This score is significantly lower than his full scale IQ score on the earlier version of the test, the WISC-III, which he took in 2002. The 2005 full scale score was deemed by the examiner to be an unreliable measure of his cognitive ability due to the extreme variability in his scores on four indexes that make up the full scale IQ score. The underlying scores were Verbal Comprehension Index: ***; Perceptual Reasoning Index:***; Working Memory Index (a measure of short-term memory):***; and Processing Speed Index: ***. Because the WISC-4 full scale IQ score was not considered reliable, the examiner used an alternate method of scoring which combined the Verbal Comprehension Index and Perceptual Reasoning Index scores to obtain a General Ability Index (GAI) of ***, which classifies Petitioner in the *** range of intelligence, consistent with his previous IQ tests.
18. The 2005 FIE report summary noted that Petitioner "displays a pattern of related cognitive and academic weaknesses within an otherwise normal ability profile." He appears to have a disorder in working memory and processing speed, which

causes difficulties with letter and word identification, reading fluency, and written language. Possible academic implications of his low processing speed score include: "difficulty processing information rapidly, completing assignments on time, taking timed tests, making rapid comparisons between and among bits of information and copying." Possible academic implications of his low working memory score include: "following directions, remembering information long enough to process it for understanding, recalling sequences, memorizing factual information, listening to and comprehending lengthy discourse, and taking notes." Respondent's Exhibit 12.

19. At the request of the parents, the district paid for an independent neuropsychological evaluation performed by the University of Texas (UT) Health Science Center on August 3, 2005. The examining psychologist found that Petitioner has a reading disorder and written language disorder, consistent with the learning disability identified by the ARDC. In addition, the examiner found that Petitioner has attention deficit hyperactivity disorder/inattentive type. The examiner re-administered the WISC-IV. The examiner did not attempt to state a full scale IQ score. He noted that his WISC-IV results were generally consistent with those of the district's FIE, with the exception of the Verbal Comprehension score, which was lower (***) compared to (***) when the district gave the test). He stated that the lower score when he gave the test may have been due to Petitioner's fluctuating attention.
20. At parent request, an independent evaluator administered the GORT-4 again in August 2005, along with the Test of Written Language-3 and Test of Auditory-Perceptual Skills-Extended.

ARDC Meetings

21. One or both parents have attended and actively participated in all of Petitioner's ARDC meetings. On October 24, 2005, the ARDC met and considered the UT Health Center independent neuropsychological evaluation and the speech and language evaluations. The parent requested that all recommendations from outside evaluators be adopted, but the committee declined to change Petitioner's IEP based on the new data. On November 8, 2005, the parent requested that the ARDC committee meet to discuss her disagreement with the draft IEPs, and specifically requested the meeting date of November 21, 2005. On November 11, 2005, the school secretary emailed the parent that the ARDC meeting was scheduled for November 21, 2005, as requested. On November 16, 2005, the secretary asked the parent if the official ARDC notice could be faxed to her or sent home with the student. The parent declined. She attended the ARDC meeting on November 21, 2005, and signed a waiver of the five-day notice as to the issue of parental disagreement with the draft IEP, which was the only issue discussed at the meeting.

DISCUSSION

Background

Petitioner is a *** grade student who has a learning disability in basic reading skills and written expression, and has IEPs for reading and written language. He receives his instruction in regular education classes, with the exception of a special education reading class with a program designed to address symptoms of dyslexia. He has low test scores in working memory and auditory processing speed, especially in recent years. Despite these challenges, he works hard and is an excellent student.

It is undisputed that Petitioner's disability causes him to read and write significantly more slowly than his peers. However, he has maintained an *** average in all classes in recent years. His mother testified that she could recall only one grade of *** his entire academic career. He has consistently performed very well on state-mandated proficiency tests. His Spring 2006 TAKS scores were in the Commended Performance range in Math, Social Studies, and Science. Even his score in Reading, an area of disability, was well above the standard score required to pass.

Petitioner alleged that the student's educational program was not uniquely tailored to his educational needs; was not based on competent and accurate assessments; did not provide IEPs with measurable long-term goals and short term-objectives; and led to regression rather than academic progress. These allegations are not supported by the evidence.

Educational Benefit

An appropriate placement under IDEA is one that enables a student to obtain "some benefit" from his education. The main thrust of IDEA is to provide equal access to education, and no particular outcome is guaranteed. The law does not require that a student's educational potential be optimal or "maximized." *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).

A presumption exists in favor of the educational program proposed by the district. *Tatro v. Texas*, 703 F.2d 823, 830 (5th Cir.1983), *aff'd in part, rev'd in part on other grounds* 468 U.S. 883, (1984). A party attacking the appropriateness of an IEP established by a school district bears the legal burden of showing why the IEP and resulting placements were not appropriate under IDEA. *Schaffer v. Weast*, 156 S.Ct. 528, 44 IDELR 150 (2005); *Cypress- Fairbanks, Id.* Petitioner did not meet that burden.

While grades and proficiency tests are not the only factor in determining FAPE, Petitioner's consistently *** grades and consistently *** TAKS scores are persuasive evidence that he is functioning adequately at his academic grade level, making educational progress, and receiving an academic benefit. Petitioner has had numerous evaluations in recent years, including several independent educational evaluations (IEEs) requested by the parents. His scores on cognitive and achievement tests have not been entirely consistent across these myriad tests, but a common thread across all the evaluations is that he has significant deficits in processing information and in working memory. While his low scores in these areas are not welcome news, such weaknesses are a facet of Petitioner's disability, and they are addressed in IEPs and instructional modifications and supports which have allowed him to be academically successful.

The parent alleged but did not prove that the junior high reading teacher improperly administered and scored the Read Naturally dyslexia program, and that Petitioner actually regressed in reading fluency. The reading teacher testified persuasively that Petitioner has made progress in reading in her class and is able

to read the *** grade curriculum, albeit at a slower rate than his peers due to his learning disability. His academic record supports this. In any case, a school district is not required to remediate all the symptoms of a student's disability, and it is not appropriate to measure educational benefit strictly by comparing a disabled student's achievement scores to those of his age peers. *El Paso ISD v. Robert W.*, 22 IDELR 1129 (W.D. Tex. 1995); *Bobby R., Id.* According to the Fifth Circuit in *Bobby R.*, "the argument that [a student] should not experience declining percentile scores may be an unrealistic goal, and it is a goal not mandated by IDEA." Even where a student is not performing at grade level, a denial of FAPE is not indicated as long as he is making progress commensurate with his abilities. *Walczak v. Florida Union Free Sch. Dist.*, 27 IDELR 1135 (2d Cir. 1998).

Evaluations

At parental request, CISD gave Petitioner a GORT-4 oral reading test in 2003 as a supplement to the district's assessment data. The ARDC relied on numerous evaluations and other sources of data to plan the student's program. A year or more after the fact, Petitioner's mother pointed out an error in the 2003 GORT-4 scores. District staff agreed that an error had been made and rescored the test. An independent evaluator re-administered the GORT-4 in August 2005, again at parent request. Petitioner's scores on both GORT-4 tests are significantly *** than on other reading tests, including other standardized tests. A former CISD lead diagnostician testified that the GORT-4 is more difficult for Petitioner than other standardized tests, because, unlike the Weschler and Woodcock-Johnson achievement tests, the GORT-4 requires that the passage read by the student be removed while he answers comprehension questions. Therefore, Petitioner's scores on the GORT-4 are directly affected by his difficulties with processing speed and working memory.

Petitioner did not demonstrate that the scoring error on the GORT-4 test harmed the student's educational program or impaired the parent's right to participate, or that the GORT-4 scores should trump the district's chosen assessment

instruments, classroom tests, and staff observations in determining whether the student has made progress in reading.

Recommendations by Independent Evaluators

Petitioner alleged that the district erred in not implementing all recommendations by various independent evaluators. While the ARDC must review and consider all outside evaluations and data, it is not required to automatically adopt their recommendations. The committee is entitled to rely on input from its own evaluators and staff, and to reach its own judgment regarding the provision of a FAPE, even when outside experts have different opinions. This is true even where, as in this case, the district has requested and/or paid for the outside evaluations. See, *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 17 IDELR 990 (5th Cir. 1991), declining to create a presumption in favor of the testimony of the child's treating physician. The court noted that the input of school staff was based on "daily and continuing observation within the classroom." *Id.* The Fifth Circuit again emphasized the importance of the opinions of school staff in *Cypress-Fairbanks, Id.*

Instructional Modifications

Petitioner informed the ARDC that he hopes to attend college, possibly to study engineering. A central issue in contention is the committee's proposal to remove an instructional modification, in place since 2004, which reduces the length of Petitioner's assignments and classroom tests by 50%. Respondent contends that Petitioner does not display an educational need to continue the 50% reduction, and that removing it will increase his participation in the general curriculum and enhance his preparation for college. Petitioner did not demonstrate that the ARDC erred in making this determination.

The instructional modifications currently proposed by the ARDC provide extra time for completion of class assignments, the opportunity to take tests in a quiet environment, use of an FM system for instruction, and numerous other accommodations and supports (see Finding of Fact 8). The proposed

modifications do not provide extra time for taking classroom tests. The special education monitoring teacher stated that in the past two school years he was informed of only two instances where Petitioner actually needed extra time to complete classroom tests. Given this testimony and the student's current academic performance, it is not unreasonable to allow him to continue to take classroom tests in the same amount of time as his peers. However, the ARDC should monitor his test performance and consider adding a modification for extra time on tests if it appears warranted after removing the 50% reduction, because of increasing complexity of course materials in higher grades, or other reasons.

IEP Issues

IDEA requires that a student's IEPs be individualized based on his assessment and performance. 34 C.F.R. §300.346. Petitioner's allegation that his IEPs were not individualized and did not contain measurable goals and short-term objectives is without merit.

Petitioner alleged that the Language Arts and Oral Expression IEP for the 2004-2005 school year was not fully implemented because speech/language staff ceased providing direct speech/language services in January 2005. Petitioner has not been determined eligible for direct speech/language services and does not have a speech/language IEP. The apparent intent of the ARDC was that a speech/language assistant would provide consultative services to the reading teacher to help her implement the Language Arts and Oral Expression IEP, which was designed to improve Petitioner's auditory perception skills. The assistant testified that she misunderstood her intended role and worked directly with the student during Fall 2004, but switched to consultative services in January 2005 after the speech therapist informed her of the mistake. Cessation of direct speech/language services that were never intended to be provided was not a failure to implement the IEP. Providing the direct speech/language services at all was an error, but it was rectified and was not shown to cause educational harm to Petitioner.

Parent Participation

The parents have been active participants in the development of Petitioner's educational program. One or both parents attended all ARDC meetings during the time period relevant for this hearing. When they disagreed they were provided an opportunity to add written supplements to ARDC reports, and they exercised that opportunity. The district provided a number of additional evaluations at their request, including several independent evaluations. In short, although the ARDC did not comply with their wishes in every respect, they were provided an opportunity for meaningful input as required by IDEA. The right to meaningful input is not a right to dictate educational methodology or the details of the educational program. *Cypress-Fairbanks, Id.*; *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5th Cir. 2003); *Lachman v. Illinois State Bd. of Educ.*, 852 F.2d 290 (7th Cir.1988), cert. denied, 488 U.S. 925 (1988).

ARD Notice

On one occasion the district failed to mail formal written notice of an ARDC meeting five days prior to the meeting. The ARDC meeting was scheduled at the mother's request, on the day she requested, and she received ten days' actual notice, by email, of the schedule. She also had actual notice of the topic to be discussed because she chose it. She waived the five-day notice requirement on the only topic actually addressed by the ARDC, and was offered a reconvened ARDC meeting to discuss any other issues. Under these circumstances the district's procedural error did not impede the parents' opportunity to participate in the decision-making process or deny Petitioner educational benefits, and was not a denial of FAPE. 20 U.S.C. §1415(f)(3)(E)(ii); *Bobby R., Id.*; *Cypress-Fairbanks, Id.*

CONCLUSIONS OF LAW

1. Petitioner resides in CISD, 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. Petitioner is eligible for special education as a student with a learning

- disability in basic reading and written expression. *Hendrick Hudson District Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982).
2. As the party challenging the educational program proposed by the district, Petitioner bears the burden of proof. Petitioner did not meet the burden of proving that the educational program offered by the district was inappropriate. *Tatro v. Texas*, 703 F.2d 823, 830 (5th Cir.1983), *aff'd in part, rev'd in part on other grounds* 468 U.S. 883, (1984); *Schaffer v. Weast*, 156 S.Ct. 528, 44 IDELR 150 (2005); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
 3. Petitioner's IEPs are tailored to his individual needs and are reasonably calculated to provide an educational benefit. He has made academic progress and received an educational benefit, as demonstrated by the fact that he made excellent grades, passed normally from grade to grade, and consistently made *** scores on TAKS tests in all subjects. *Rowley, Id.*
 4. Petitioner's educational services were provided in a coordinated and collaborative manner by the key stakeholders; his IEPs were individualized on the basis of his assessment and performance; he received an educational benefit in the least restrictive environment; and he made progress both academically and non-academically. CISD has provided Petitioner a FAPE. *Cypress-Fairbanks, Id.*
 5. Petitioner did not demonstrate an educational need to continue the instructional modification of a 50% reduction in assignments and test questions. His *** grades and TAKS scores support the ARDC determination that he is capable of completing all classroom assignments and test questions. *Tatro, Id.*
 6. The ARDC properly relied on a variety of assessment tools and strategies to develop the educational program. The committee fulfilled its obligation to consider input from outside evaluators, but was not required to adopt all their recommendations. Petitioner did not prove that in determining Petitioner's educational programming, the district erred in relying on its own formal and informal assessment data and staff observations of academic and behavioral performance. *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 17 IDELR 990 (5th Cir. 1991); *Cypress-Fairbanks, Id.*
 7. Petitioner did not prove that the district failed to provide timely and appropriate evaluations; or that the ARDC failed to individualize his IEPs based on said evaluations; or that the IEPs lacked measurable goals and short-term objectives. *Tatro, Id.*
 8. Petitioner's parents were active participants in the development of his educational program and were provided numerous opportunities for meaningful input. A scoring error which occurred on a supplemental reading test requested by the parent was later corrected, and did not cause educational harm or significantly impede the parents' opportunity to participate in developing the educational program. 20 U.S.C. § 1415(f)(3)(E)(ii); *Cypress-Fairbanks, Id.*; *Adam J. v. Keller ISD*, 328 F.3d 804 (5th Cir. 2003).
 9. The district's failure in one instance to provide formal, written notice five days prior to an ARDC meeting had no detrimental effect on the student's education or the parent's right to participate, and did not constitute a denial of FAPE. The meeting was scheduled at the mother's request, on the date she requested, and she

had ten days' actual notice of the schedule. Further, she had actual notice of the topic to be discussed, and she waived the five-day notice requirement as to the only topic addressed at the meeting. *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000); *Cypress-Fairbanks, Id.*

10. The ARDC found that Petitioner does not meet eligibility criteria for speech impairment or the receipt of direct speech/language services, and Petitioner did not challenge that determination. The cessation of direct speech/language services, which were temporarily provided by a speech/language therapist due to a misunderstanding, did not constitute a failure to implement the Language Arts IEP or a denial of FAPE. *Bobby R., Id.*; *Cypress-Fairbanks, Id.*

ORDER

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the relief requested by Petitioner is DENIED.

SIGNED this 26th day of October, 2006.

Janis Herd

Special Education Hearing Officer

DOCKET NO. 189-SE-0406

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER

CONROE INDEPENDENT FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

SYNOPSIS OF DECISION

ISSUE: Did the district provide appropriate evaluations?

CITATION: 34 C.F.R. §§300.321; 300.530 -- 300.536

HELD: For Respondent. The district provided appropriate evaluations. A scoring error on a supplemental reading test requested by the mother was corrected, and was not shown to harm the student's educational program or impair the parents' right to participate in developing the IEP.

ISSUE: Did the district provide an appropriate, individualized educational program?

CITATION: 34 C.F.R. §§300.346; 300.347

HELD: For Respondent. Petitioner's IEPs are tailored to his individual needs and are reasonably calculated to provide an educational benefit. He has made academic progress, as demonstrated by the fact that he made *** grades, passed normally from grade to grade, and consistently made *** scores on TAKS tests in all subjects.

ISSUE: Are the proposed instructional modifications appropriate?

CITATION: 34 C.F.R. §§300.346; 300.347

HELD: For Respondent. Petitioner did not demonstrate an educational need to continue the instructional modification of a 50% reduction in assignments and test questions. His high grades and TAKS scores support the ARDC determination that he is capable of completing all classroom assignments and test questions.

ISSUE: Did the district fail to implement an IEP?

CITATION: 34 C.F.R. §§300.350

For Respondent. Petitioner's IEPs were implemented, including his Language Arts and Oral Expression IEP. The cessation of direct

HELD: speech/language services, which were temporarily provided by a speech/language therapist due to a misunderstanding, did not constitute a failure to implement the Language Arts and Oral Expression IEP.

ISSUE: Did the district provide proper notice of ARDC meetings?

CITATION: 34 C.F.R. §300.345.

For Respondent. The district's failure in one instance to provide formal, written notice five days prior to an ARDC meeting had no detrimental effect on the student's education or the parent's right to participate, and did not constitute a denial of FAPE, where the meeting was scheduled at the

HELD: parent's request and held on the date the parent requested; the parent had ten days actual notice of the meeting schedule and more than ten days actual knowledge of the topic to be discussed; and the parent attended the meeting and waived the five-day notice requirement as to the topic discussed.

ISSUE: Did the district offer Petitioner a FAPE?

CITATION: 34 C.F.R. §§300.300, 300.345; 300.346.

For Respondent. Petitioner's educational services were provided in a coordinated and collaborative manner by the key stakeholders; his IEPs are individualized on the basis of his assessment and performance; he received an educational benefit in the least restrictive environment; and he made progress both academically and non-academically. CISD has provided Petitioner a FAPE.

HELD: