
DOCKET NO. 234-SE-0606

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

PETITIONER

vs.

LAKE TRAVIS INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

STATEMENT OF CASE

On June 2, 2006, Petitioner, ***, (“Student”), by his next friends, *** and *** (“Parents”), in the above styled and numbered matter, filed a request for due process hearing under the Individuals with Disabilities Education Improvement Act (“IDEA 04”), 20 U.S.C. § 1400 et seq., against the Respondent, Lake Travis Independent School District, (“LTISD” or “District”) and alleged that Respondent failed to provide Petitioner with a free appropriate public education (“FAPE”). Attached to this decision is Table I that details the procedural history of the case. The due process hearing began on October 18, 2006 and continued daily to its conclusion on October 20, 2006. Martin J. Cirkiel and Yvonnilda Muniz, attorneys, appeared on behalf of Petitioner, and Susan Graham, attorney, appeared on behalf of Respondent. Assisting Ms. Graham was Denise Hays, attorney.

Following the presentation of each party’s case, the parties filed written closing arguments, and by agreement, the decision due date in this matter was set for

December 5, 2006 in compliance with the forty-five day rule.

In his First Amended Complaint and Request for Special Education Due Process Hearing filed September 13, 2006, Petitioner alleged that Respondent violated his right to a free appropriate public education ("FAPE") and failed to consider his unique and individualized needs as follows:

1. Failed to adhere to "Child Find" requirements at 20 U.S.C. §1412(a)(3)(A) and (B); 34 C.F.R. §300.125 and §300.300, and 19 Tex. Admin. Code §89.1035;
2. Failed to complete a full individual evaluation ("FIE") within a timely manner or alternatively within the required sixty (60) days; 34 C.F.R. §300.320; Tex. Educ. Code §29.004;
3. Failed to hold the required Admission, Discharge and Review ("ARD") meeting within a timely manner or alternatively thirty (30) days thereafter; 34 C.F.R. §300.345; 19 Tex. Admin. Code §89.1050;
4. Failed to give due weight and consideration to private assessments and evaluations;
5. Failed to effectively gather information regarding Petitioner's developmental history;
6. Failed to collaborate with private assessors and evaluators;
7. Failed to observe Petitioner with peers prior to making a determination of ineligibility at the screening;
8. Failed to observe Petitioner with peers on more than one occasion prior to making a determination of ineligibility at the evaluation stage;
9. Provided undue weight to Petitioner's cognitive abilities;
10. Failed to provide correct weight to Petitioner's social inadequacies;
11. Failed to provide informed consent relative to the screening;
12. Failed to consider private assessments and evaluations in a timely manner prior to the initial screening;
13. Failed to permit Petitioner's parents to fully participate in the screening process;
14. Failed to provide informed consent relative to the evaluation;
15. Failed to effectively distinguish between a screening and an evaluation on the Respondent's consent form and as applied to the Petitioner's parents;
16. Failed to provide a transition plan from private school to public school;
17. Failed to provide qualified personnel;
18. Failed to offer or provide sufficient structure in a classroom setting for Petitioner to receive educational benefit;
19. Failed to offer or provide any specific and/or individualized programming that would address Petitioner's behaviors;
20. Failed to offer and/or address necessary non-academic and related services;
21. Failed to invite Petitioner's current teacher to the ARD;
22. As applied to Petitioner, failed to sufficiently individualize the screening process to adequately assess and evaluate his academic and non-academic needs;
23. As applied to Petitioner, failed to sufficiently individualize the evaluation form;

24. Failed to provide prior written notice in regard to both the Child Find Assessment Team Cumulative Summary Form of March 1, 2006, and the August/September 2006 ARDs; and
25. Failed to find Petitioner eligible for special education and related services under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA04”).

Petitioner requested a finding against Respondent in the above listed allegations and that the hearing officer grant the following relief:

1. Order Respondent to make necessary corrections regarding a failure to adhere to child find requirements;
2. Order Respondent to correct its consent form to effectively distinguish between a screening and an evaluation and to correct its policies and procedures thereto;
3. Order Respondent to craft a transition plan for Petitioner to transition from his current private school placement to Lake Travis Independent School District (“LTISD”);
4. Order Respondent to provide training to necessary personnel;
5. Order Respondent to provide a program addressing its failure to offer or provide specific and/or individualized programming to address Petitioner’s behaviors;
6. Order Respondent to develop policies and procedures to assure a screening process that is sufficiently individualized as applied to Petitioner;
7. Order Respondent to develop policies and procedures to assure an evaluation form that is sufficiently individualized as applied to Petitioner;
8. Make a finding that Petitioner is eligible for special education services from March or early April, 2005;
9. Make a finding that Respondent’s failures, jointly and severally, violate Petitioner’s right to FAPE during the periods claimed;
10. Order Respondent to reimburse Petitioner’s parents for all their private evaluations;
11. Order Respondent to reimburse Petitioner’s parents for all private educational services they provided and paid for during the periods in question;
12. Order Respondent to provide compensatory services for Petitioner;
13. Order Respondent to devise a comparable program of services based on Petitioner’s needs;
14. Order Respondent to provide necessary non-academic and related services during the transition period;
15. Make a finding that the one-year statute of limitations period in the Texas Administrative Code is inapplicable to Petitioner; and
16. Such other and further relief as the hearing officer deemed just and proper.

FINDINGS OF FACT

Based upon the evidence and argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law:

1. The Student is a *** year-old child, and resides with his parents within the geographical boundaries of the District.
2. The District has Child Find policies and procedures in place including a system of notification that includes training its staff regarding the Child Find responsibilities to locate, identify, and assess children. The District places posters throughout the town and advertises Child Find information in the newspaper. It sends notices to all preschools and physicians in the area. [Respondent's Exhibit 19; Transcript Page 196-197]
3. As part of Child Find, the District has a practice of screening children to see if they are age appropriate and whether or not additional evaluation is necessary. [Respondent's Exhibit 19; Transcript Page 212]
4. The Parent reported that, as an infant and toddler, the Student displayed sensory over reactions to loud noises, was on the late end of "normal" in physical development, walked at approximately 16-17 months, avoided eye contact, displayed perseverating behaviors, repeated Thomas the Tank videos verbatim, experienced screaming episodes during which he was unreachable, and would hit other children. [Petitioner's Exhibit 19; Transcript Pages 29-35]
5. The Student was diagnosed as having a moderate speech delay at approximately *** years of age and began speech therapy. [Transcript Pages 34-35]
6. At the end of March or early in April, 2005, after a private provider diagnosed the Student with sensory integration dysfunction, the Parent contacted the District regarding services. During the phone call, after the Parent answered questions about the Student's strengths and weaknesses, the District representative indicated that the Student didn't sound severe enough to qualify. A screening appointment for the Student was made for May 6, 2005. A Child Find packet was mailed to the Parent. The Parent later cancelled the appointment. [Petitioner Exhibit 6, Transcript Pages 38-39, 42]
7. On December 19, 2005, a child neurologist that treated the Student wrote a memo that said the Student had neurologic dysfunction with speech delay and apraxia, difficulty with central auditory processing, sensory integration disorder, Asperger tendencies. On June 6, 2005, after seeing the Student, he reported, "Good eye contact. Interactive. Engages. Answers Questions and follows directions. He has mild difficulty with articulation. He would initiate. Tracked bilaterally." He reported "mild decreased tone over trunk." [Petitioner's Exhibits 3 and 5]
8. In September, 2005, a private speech therapist re-assessed the Student who was then *** years old. In all portions of the Clinical Evaluation of Language Fundamentals-Preschool ("CELF-P"), the Student fell within the *** range. On the Clinical Assessment of Articulation and Phonology ("CAAP"), the Student produced the following errors within words: initial position-/r/, /s/, /g/, /j/ and final position-/r/, /m/, /s/, /g/, /j/. In the Assessment of Literacy and Language ("ALL"), the Student was *** average in phonological awareness, and within *** range in overall measure of emergent literacy skills and receptive and expressive

- language ability. The Kaufman Speech Praxis Test for Children results reflected that the Student's intelligibility decreased as word/utterance length increases. With one exception, the Student met all his short term goals within a six month period. [Petitioner Exhibit 4]
9. The Student's private occupational therapist re-evaluated him in September, 2005, indicated he had made strong progress toward his long term occupational therapy ("OT") goals, and made gains in his ability in transitions, peer interaction and coping with new or different therapy activities. The Student continued to have difficulty with self-regulation and anxiety when playing around or with others. [Petitioner's Exhibit 4]
 10. The Student was enrolled in a private *** school in the fall, 2005, and had no problem separating from his Parent. Following an incident with a family member who tickled and poked the Student consistently over approximately a two day period, the Parent reported separation difficulties and guarded, anxious behavior in the Student. [Transcript Pages 44-45]
 11. The Parents obtained a psychological evaluation of the Student. The report, dated January 17, 2006, states that the Student "appears to meet eligibility criteria for the DSM-IV diagnosis of Pervasive Development Disorder ("PDD"). The evidence for Asperger's Disorder is inconclusive at this time due to the discrepancy of score across settings. The psychologist determined that the Student was not diagnosed with Separation Anxiety (Severe) because it appeared that his "anxiety is due to PDD NOS." [Petitioner's Exhibit, Page 38-42]
 12. In November, 2005, the Parent contacted the District and made an appointment for January 20, 2006. The Parent cancelled this appointment and rescheduled it for February 17. The parent received the District's Child Find documents on January 4, 2006. [Transcript Pages 49-55; 58-59]
 13. The District does not conduct Child Find screening in the month of December because of the holiday season. [Transcript Page 52]
 14. The Parent signed a document entitled "Lake Travis Independent School District: Special Education Notice and Consent for Full Individual Evaluation or Screening" ("Consent Form"). Although the first page of the document reflects that the Parent signed on January 14, 2006, there is no signature on that page. The Consent Form states, "Screening of the student is recommended at this time to determine if a more comprehensive evaluation is needed. Parent signature on this form indicates consent for both the screening and/or the full individual evaluation." [Petitioner's Exhibit 7, page 55; Respondent's Exhibit 2, Page 2]
 15. The second page of the Consent Form required the Parent to acknowledge that she was giving consent for the recommended testing, that she had been fully informed and understood the evaluation process, and that she was waiving the required five school day waiting period. The Parent signed and dated that page "2/15/06." [Petitioner's Exhibit 7, page 057; Respondent's Exhibit 2, Page 3 and Exhibit 3, Page 1]
 16. On February 17, 2006, as the District's representative reviewed the Consent Form with the Parent, he crossed through the word, "evaluation," and replaced it with the word, "screening." [Transcript Pages 61, 245-247; Petitioner's Exhibit 7]

17. The Parent brought an audiological evaluation, the Student's most recent speech evaluation, occupational therapy report, a diagnosis of PDD, Not Otherwise Specified ("NOS") from the Student's private psychologist, medical information form, and a letter from a neurologist, to the screening appointment. [Transcript Pages 59-60; 65]
18. After the screening on February 17, 2006, the Child Find Assessment Team met to review the information and screening results for the Student.
19. The District's Child Find Assessment Team determined that cognitively, the Student scored in the *** range and demonstrated *** cognitive abilities. It further determined that the Student entered the room willingly, engaged in appropriate conversation about a toy and needed frequent redirection. The team determined that overall, the Student was within typical age limits in his motor skills, was very active with difficulty attending for more than brief periods of time, demonstrated good speech sound development, was able to follow multi-step directions, answer questions appropriately, used age appropriate grammar, presented age appropriately, and that no further testing was needed at that time. The Parents received the Child Find Assessment Team Cumulative Summary Form March 1, 2006. [Transcript Page 66-67, Petitioner's Exhibits 7, 8 and 19, Respondent's Exhibit 4]
20. The District prepared, but did not send, a Notice of Decision In Regard to Identification, Evaluation, Placement, or Free Appropriate Public Education dated March 1, 2006. [Respondent's Exhibit 9]
21. At the Parent's request dated March 1, 2006 and hand delivered to the District on March 2, the District agreed to conduct a Full Individual Evaluation ("FIE") of the Student. [Petitioner's Exhibits 8 and 19; Transcript Page 636]
22. The Parent gave written consent for the evaluation on March 24, 2006, and waived the required five school day waiting period between notice of evaluation and initiation of the evaluation. The Consent Form states, "Reports indicate the student may be delayed in the area(s) of: speech/language; pervasive developmental disorder." [Petitioner's Exhibit 8, Respondent's Exhibit 12]
23. The FIE examiners used the following assessment tools to gather relevant functional and developmental information about the Student:
 - a. Psychoeducational Profile-3rd Edition ("PEP-3") dated 3/25/06, 4/18/06 and 5/3/06
 - b. Parent Information, dated 2/17/06
 - c. c. Vision Screening, dated 8/29/05
 - d. Audiological Evaluation, dated 9/12/06
 - e. Home Language Survey, dated 1/16/06
 - f. Testing Observations, dated 4/18/06 and 5/3/06
 - g. Gilliam Autism Rating Scale, dated 3/2006 and 4/25/06
 - h. Childhood Autism Rating Scale ("CARS"), dated 4/20/06
 - i. Sensory Profile, dated 4/5/06
 - j. Autism checklist, dated 3/24/06 and 4/25/06
 - k. Behavioral Assessment Scale for Children-Teacher form, dated 5/5/06
 - l. Behavioral Assessment Scale for Children-Parent form, dated 5/5/06

- m. Classroom Observation, dated 4/20/06
 - n. Parent Interview, dated 5/3/06
 - o. Teacher Interview, dated 4/20/06
 - p. Goldman-Fristoe Test of Articulation-2 (“G-FTA-2”), dated 5/5/06
 - q. Observation of Articulation, dated 5/3/06 and 5/5/06
 - r. Preschool Language Scale-Fourth Edition, dated 5/5/06
 - s. Language Sample, dated 5/3/0 and 5/5/06
 - t. Observation of Speech Mechanism, dated 5/5/06
 - u. Observation of Voice Quality, dated 5/5/06
25. The FIE examiners reviewed the following data:
- a. Child Find Assessment Team Cumulative Summary Form dated 2/17/06
 - b. Occupational Therapy Reevaluation, Language and Movement, dated 3/21/06
 - c. Occupational Therapy Initial Evaluation, Language and Movement, dated 9/20/05
 - d. Speech and Language Therapy Reevaluation, Language and Movement, dated 9/26/06
 - e. Psychological Evaluation, Alice Lottes, Ph. D., dated 1/17/06
 - f. Letter to Ezam Ghodsi, M.D. from Dr. Alice Lottes, undated
 - g. Information from Bryan Jepson, M.D., Medical Center at Thoughtful House, dated 5/11/06
 - h. Speech and Language Evaluation, KidVentures Therapy Services, dated 3/24/06
26. The FIE team consisted of two speech/language pathologists, an educational diagnostician, an occupational therapist, and a licensed specialist in school psychology who made assurances that the evaluation used a variety of tools, was non-discriminatory, and was administered appropriately by trained personnel. [Respondent’s Exhibit 16]
27. During the PEP-3, the Student displayed visual-motor imitation, appropriate transition from one activity to another, age-appropriate nonverbal communication skills, appropriate joint attention skills and verbal communication, and played imaginatively. He giggled, laughed, made eye contact and moved closer to the evaluator as an activity progressed. [Transcript Pages 505-508]
28. The PEP-3 results did not support a diagnosis of autism or PDD-NOS. [Transcript Page 507]
29. The results of the CARS fell in the non-autistic category. [Transcript Page 512]
30. District staff took notes as they conducted the FIE, transferred them to the report, and shredded the notes. [Transcript Pages 474, 487, 490, 533, 602]
31. The District prepared the FIE report, dated, May 11, 2006 with a determination that the Student did not appear to meet the eligibility criteria for special education, that he did not have a communication disorder that adversely affected his educational performance, and that he did not demonstrate characteristics of autism or other PDD. The Parents received a copy of the FIE on May 24, 2006. [Petitioner’s Exhibits 12, Petitioner’s Exhibit 13, page 183 and 187, Respondent’s Exhibit 16]

32. On May 24, 2006, the Parent attended a feedback session to review the FIE results. [Petitioner's Exhibit 19]
33. On May 11, 2006, the Student's doctor at Medical Center at Thoughtful House diagnosed the Student as having "high functioning autism and should be given educational supervision appropriate for his needs relative to that disorder." [Petitioner's Exhibit 11, Page 118]
34. The Admission, Review and Dismissal ("ARD") committee met August 8, 2006 during which time Dr. Lottes participated by telephone. When the Parents disagreed with the District's recommendations, the committee recessed until August 23, 2006. The committee reviewed additional information provided by the Parents. The ARD committee determined that the Student did not meet eligibility criteria for autism or speech impairment and recommended regular ***, to which the Parents disagreed. [Respondent's Exhibit 22]
35. When the ARD committee met, the Student was not attending a school, thus, had no current teacher. A District *** teacher attended the ARD meeting.
36. The District did not mail a formal notice of the recessed ARD date to the Parents.
37. The Parents attended and participated in both the August 8 and August 23 ARD meetings. [Respondent's Exhibit 22]
38. The District mailed its Notice of Decision in Regard to Identification, Evaluation, Placement, or Free Appropriate Public Education to the Parents on August 29, 2006. [Respondent's Exhibit 24]
39. The District offered a transition plan to help the Student transition into *** at the District. [Transcript pages 91-92; Petitioners' Exhibit 12, page 201]
40. The District agreed that the FIE team's recommendations for the Student could be implemented in a general education *** classroom. [Transcript Page 619]
41. The Parent refused to consent to the District's request to communicate with the Central Texas Autism Center. [Petitioner's Exhibit 19]
42. The Parents provide a classroom aide for the Student at his current private *** school which has a classroom of 18 students. The role of the aide is solely to support the Student while at *** school. [Petitioner's Exhibit 20]
43. The classroom aide reported that, during the first few days, the Student experienced difficulty entering the classroom and would have what the aide described as "meltdowns" lasting over 25 minutes each. [Petitioner's Exhibit 20]
44. The classroom aide reported "significant progress" as of October 5, 2006. [Petitioner's Exhibit 20]
45. By report dated September 27, 2006, the Student received speech-language therapy treatment at KidVentures Therapy since January, 2006, with short-term goals in expressive/receptive language, articulation, and phonological awareness. He either met or made progress in 16 of his 18 goals. [Petitioner's Exhibit 20]

DISCUSSION

Issues at Due Process Hearing

The party requesting the due process hearing shall not be allowed to raise issues

at the due process hearing that were not raised in the notice unless the other party agrees otherwise. 20 U.S.C. § 1415(f)(3)(B). An amended pleading takes the place of that instrument for which it is substituted. Tex. R. Civ. P. 65.

Standard of Review

Public school districts must comply with the IDEA procedures for identifying children with disabilities who need special education, and delivering appropriate services as necessary to provide a free and appropriate public education (FAPE). 20 U.S.C. § 1412(a)(1); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, 189 (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

A petitioner who challenges the school district's eligibility determination or offer of services under the IDEA bears the burden to prove that the child has been denied a FAPE. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free, appropriate public education only if the procedural inadequacies impeded the child's right to FAPE, significantly impeded the parents' opportunity to participate in the decisionmaking process regarding the provision of FAPE to their child, or caused a deprivation of educational benefits. U.S.C. § 1415(f)(3)(E)(ii).

Child Find Requirements and Child Find Screening

Child Find is a process used to identify those children who are potentially in need of special education and related services. To qualify for federal funding under the IDEA04, a state must develop policies and procedures to ensure that it meets the Child Find obligation of the Act. 20 U.S.C. § 1414(a)(3). This affirmative duty is triggered at the time a school district has reason to believe that the student has a disability and suspects that special education services may be needed to address that disability. *Davonne B. v. Houston I.S.D., No. 327-SE-596* (Texas H.O. Dec'n, May 2, 1997).

Respondent has policies and procedures in place regarding its Child Find duty.

Its procedures set out the steps the District takes when it receives information about children who may be in need of special education and related services. As they pertain to Petitioner, the District followed those steps both in the spring, 2005 when the Parent chose to discontinue the process, and again in November, 2005, when the Parent contacted Respondent's office. On both occasions, the Parent received a Child Find Packet which included, among other documents, a copy and explanation of the procedural safeguards, an ARD Guide, and a notice/consent form for evaluation.

Petitioner argues that the District failed to effectively distinguish between screening and an evaluation on the consent form that the Parent signed. However, the Parent's calendar notations noted that a screening was scheduled in May, 2005. Further, the evidence reflects that the Child Find packet included a "Confirmation of Screening Appointment." The testimony confirmed that, as the District's Special Services Coordinator ("SSC") reviewed the consent form with the Parent, the SSC changed the printed word, evaluation, to his hand-written word, screening. The Parent, who is an intelligent, educated individual, signed the consent acknowledging that she was fully informed and understood the evaluation process.

The District's consent form is devised so as to obtain parental consent for screening and/or a FIE, and the District may choose to review its Child Find forms in light of possible confusion between screening and evaluation. However, I do not find a failure on the District's part to distinguish between the two as it pertains to this Student. Nor do I find that the District failed to provide informed consent relative to the screening or the FIE to the Parents in this case.

The Petitioner also complains that the screening process was not sufficiently individualized to adequately assess and evaluate his academic and non-academic needs, that the District failed to consider private assessments in a timely manner prior to the initial screening, failed to observe the Student with peers prior to making a determination of ineligibility at the screening, and that it failed to permit Petitioner's parents to fully participate in the screening process.

Petitioner would have the screening process rise to the level of a full individual evaluation. That is not the case. The screening process is conducted to see if a child is age appropriate and whether or not additional evaluation is necessary. On February 17, 2006, the Student was screened by way of a standardized test to evaluate cognitive skills and a motor component of the DIAL-III to assess sensorimotor aspects of his performance. His social-emotional and communication skills were also screened. The Parent provided input through the completion of a six-page "Parent Insight" form and the provision of private assessments. There was no determination of ineligibility at the screening. After a review of the information, the District determined that it did "not recommend evaluation for possible placement in Special Education at this time."

Full Individual Evaluation

Before the initial provision of special education and related services to a child with a disability, a local education agency ("LEA") shall conduct a FIE. The LEA shall provide notice to the parents that describes any evaluation procedures the LEA proposes to conduct. In conducting the evaluation, the LEA shall use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information including information provided by the parent that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program. The LEA shall not use any single measure or assessment as the sole criterion for determining whether the child is a child with a disability and must use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. Additionally, the LEA shall ensure that the assessments are selected and administered pursuant to the IDEA04. The ARD committee must review existing evaluation data including evaluations and information provided by the child's parents, and identify any necessary additional data to determine whether the child is a child with a

disability as defined in the IDEA 20 U.S.C. §§1414(a)(1)(A) and (C); 1414(b) and (c).

Although Petitioner argued at hearing that the District failed to give due weight to evaluations and information provided by the Parents, the testimony presented at the hearing revealed that the FIE team reviewed the information and included it in the FIE report. Petitioner's witnesses, the Student's psychologist and his classroom aide, agreed that the report meets IDEA standards for a full individual evaluation of the Student. The team simply reached a different conclusion, did not find that the Student met the criteria for autism or speech impairment, and did not recommend that the Student was eligible for special education services.

Eligibility for Special Education and Related Services Determination

From October through December, 2005, Petitioner saw his private psychologist because of difficulty separating from his mother. As part of her assessment, the psychologist observed the Student at his preschool in January, 2006, and has not seen him since that time. She diagnosed him with PDD-NOS and attributed his separation anxiety to the disorder. Her report indicated that she believed that the Student's deficit social skills, restricted patterns of behaviors, and cognitive patterns will prevent him from making adequate progress in the regular curriculum.

At hearing, the Student's private psychologist testified that in pre-kindergarten and kindergarten, socialization and behavioralization are taught and that is what the Student was "deficit in...when I saw him." She acknowledged that "districts are not supposed to refer students for special education until they have tried using interventions available in general education."

In July, 2006, the Central Texas Autism Center conducted a functional behavioral assessment and prepared an individual treatment plan for the Student. The assessment report reflected that the Student's requesting and labeling repertoire are strong although he has difficulty with more advanced labeling. He answered a wide variety of questions on varying topics, particularly "who," "what," and "where" questions, but sometimes required prompting with "how" and "why"

questions. He presented as a social boy who seeks the approval of adults and enjoys playing and interacting with others although, at times, his greetings are not always appropriate. The report indicated that the best setting for teaching social skills is in the natural environment. It discussed the Student's tendency to tantrum because he does not want to do something or because he wants something, and recommended techniques to use to correct the behaviors. The ARD committee reviewed this report along with the FIE report when it convened in August, 2006.

The record reflects that as of July 3, 2006, the Parents considered dramatic speech improvement, making friends at school, separating from his mother more easily, and sitting and playing games as highlights of the past year for the Student. After approximately three weeks in his current private pre-school, the Student began to develop some relationships with his classmates and was spontaneously interacting with them.

There are differing perceptions of the Student's characteristics and behaviors. As an example, the District video recorded the PEP-3 evaluation. At one point, someone blew a whistle and the Student asked, "What's that?" The Parent's perception of the incident was that the whistle scared the Student, and from that point on, he was unable to do what the instructor wanted him to do. The District interpreted the incident as appropriate behavior for a child the Student's age. I agree. For a very few moments following the whistle, the Student appeared to be over stimulated, but quickly resumed the testing tasks that were presented to him. He did not appear to be scared by the noise.

Under IDEA04, a child with a disability means a child with a disability, and who, by reason thereof, needs special education and related services. A child with a disability is not automatically eligible for special education and related services. Both prongs of the two-prong definition must be satisfied. 20 U.S.C. § 1401(3)(A).

Eligibility for special education and related services is at the heart of this due process matter. The Parents, who have a commendable history of attentive

support for the Student, argued at hearing that he is a child who, by reason of autism/PDD-NOS, is in need of special education and related services. The District disagreed that the Student qualifies as autistic/PDD-NOS or as speech impaired, and disagreed that he has an educational need for special education services. The Student has not attended school at the District and has not had the benefit of positive behavioral interventions and supports and early intervening services in a regular classroom. The District agreed that the interventions and supports that are recommended by the FIE team can be provided in a general education *** classroom. Those recommended interventions to assist the student with social skills, separation from his mother, transitions in routine, sensory modulation, and appropriate behavior comport with the recommendations by the Student's most current private providers. Based on the testimony at hearing, the documentation presented, and the statutory requirements for eligibility, at this time, I find that the Student is not eligible for special education services. 20 U.S.C. § 1400(c)(5)(F).

CONCLUSIONS OF LAW

1. Petitioner is a child in the geographical confines of the Lake Travis Independent School District.
2. Respondent, Lake Travis Independent School District, is an independent school district duly constituted in and by the state of Texas, and subject to the requirements of the IDEA 04. Lake Travis Independent School District is the Student's resident district and has the responsibility to provide eligible students with a free appropriate public education under the IDEA 04. 20 U.S.C. § 1401(a)(18).
3. The District adhered to the IDEA04 "Child Find" requirements. 20 U.S.C. §1412(a)(3)(A) and (B);
4. The District completed the FIE of the Student within the required sixty (60) days. 20 U.S.C. § 1414(a)(C)(i); Tex. Educ. Code §29.004.
5. The District held the ARD meeting within the statutory timeline. Tex. Admin. Code §89.1050(d).
6. The District gave due weight and consideration to private assessments and evaluations. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
7. Petitioner did not meet his burden of proof in his allegation that the District failed to effectively gather information regarding Petitioner's developmental history.

- Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
8. Petitioner did not meet his burden that the District failed to collaborate with private assessors and evaluators. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 9. Petitioner did not meet his burden that the District failed to observe Petitioner with peers prior to making a determination of ineligibility at the screening. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 10. Petitioner did not meet his burden that the District failed to observe Petitioner with peers on more than one occasion prior to making a determination of ineligibility at the evaluation stage. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 11. The District did not give undue weight to Petitioner's cognitive abilities. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 12. Petitioner did not meet his burden that the District failed to provide correct weight to Petitioner's social inadequacies. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 13. The District obtained informed consent relative to the screening. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 14. Petitioner failed to meet his burden of proof that the District failed to consider private assessments and evaluations in a timely manner prior to the initial screening. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 15. Petitioner failed to meet his burden of proof that the District failed to permit Petitioner's parents to fully participate in the screening process. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 16. The District obtained informed consent relative to the evaluation. 20 U.S.C. § 1414(a)(1)(D); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 17. Petitioner failed to meet his burden of proof that the District failed to effectively distinguish between a screening and an evaluation on the consent form and as applied to the Petitioner's parents. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 18. Petitioner failed to meet his burden of proof that the District failed to provide a transition plan from private school to public school. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 19. Petitioner failed to meet his burden of proof that the District failed to provide qualified personnel. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 20. Petitioner failed to meet his burden of proof that the District failed to offer or provide sufficient structure in a classroom setting for Petitioner to receive

- educational benefit. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
21. Petitioner failed to meet his burden of proof that the District failed to offer or provide any specific and/or individualized programming that would address Petitioner's behaviors. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 22. Petitioner failed to meet his burden of proof that the District failed to offer and/or address necessary non-academic and related services. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 23. Petitioner failed to meet his burden of proof that the District failed to invite Petitioner's current teacher to the ARD. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 24. Petitioner failed to meet his burden of proof that, as applied to Petitioner, the District failed to sufficiently individualize the screening process to adequately assess and evaluate his academic and non-academic needs. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 25. Petitioner failed to meet his burden of proof that, as applied to Petitioner, the District failed to sufficiently individualize the evaluation form. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 26. Although Petitioner proved a procedural violation that the District failed to provide prior written notice in regard to the Child Find Assessment Team Cumulative Summary Form of March 1, 2006, he failed to prove that such procedural inadequacy denied the Student FAPE. As to the August/September 2006 ARDs, Petitioner failed to carry his burden of proof as to prior written notice. U.S.C. §1415(f)(3)(E)(ii); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 27. Petitioner failed to meet his burden of proof that the District failed to find Petitioner eligible for special education and related services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA04"). *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
 28. The District did not deny Petitioner a free, appropriate public education. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

IT IS HEREBY ORDERED that all relief requested by or on behalf of the Petitioner is hereby DENIED.

Signed on the 5th day of December, 2006.

Brenda Rudd
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, 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, as provided in 20 United States Code (USC), §1415(i)(2). A civil action brought in state or federal court under 20 USC, §1415(i)(2) must be initiated not more than 90 days after the date the hearing officer issued his or her written decision in the due process hearing. 19 Tex. Admin. Code §89.1185(p).

DOCKET NO. 234-SE-0606

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

PETITIONER

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

SYNOPSIS OF DECISION

ISSUE: Whether the District denied Petitioner a free, appropriate public education
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
HELD: For the school district
ISSUE: Whether or not the District adhered to the IDEA04 “Child Find” requirements
CITATION: 20 U.S.C. §1412(a)(3)(A) and (B)
HELD: For the school district
ISSUE: Whether the District completed the FIE of the Student within the required sixty (60) days
CITATION: 20 U.S.C. § 1414(a)(C)(i); Tex. Educ. Code §29.004
HELD: For the school district
ISSUE: Whether the District held the ARD meeting within the statutory timeline
CITATION: Tex. Admin. Code §89.1050(d)
HELD: For the school district
ISSUE: Whether the District gave due weight and consideration to private assessments and evaluations
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to effectively gather information regarding Petitioner's developmental history
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to collaborate with private assessors and evaluators.
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to observe Petitioner with peers prior to making a determination of ineligibility at the screening
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to observe Petitioner with peers on more than one occasion prior to making a determination of ineligibility at the evaluation stage
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District gave undue weigh to Petitioner's cognitive abilities
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to provide correct weight to Petitioner's social inadequacies
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District obtained informed consent relative to the screening
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to consider private assessments and evaluations in a timely manner prior to the initial screening
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to permit Petitioner's parents to fully participate in the screening process
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District obtained informed consent relative to the evaluation
CITATION: *20 U.S.C. § 1414(a)(1)(D); Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to effectively distinguish between a screening and an evaluation on the Respondent's consent form and as applied to the Petitioner's parents
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to provide a transition plan from private school to public school
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to provide qualified personnel
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to offer or provide sufficient structure in a classroom setting for Petitioner to receive educational benefit
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to offer or provide any specific and/or individualized programming that would address Petitioner's behaviors
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to offer and/or address necessary non-academic and related services
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether the District failed to invite Petitioner's current teacher to the ARD
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district
ISSUE: Whether, as applied to Petitioner, the District failed to sufficiently individualize the screening process to adequately assess and evaluate his academic and non-academic needs
CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district

ISSUE: Whether, as applied to Petitioner, the District failed to sufficiently individualize the evaluation form

CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district

ISSUE: Whether the District failed to provide prior written notice in regard to both the Child Find Assessment Team Cumulative Summary Form of March 1, 2006 and the August/September 2006 ARDs

CITATION: U.S.C. §1415(f)(3)(E)(ii); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

For the Petitioner, in part, but no denial of FAPE; for the school district, in part

As to the prior written notice of the Child Find Assessment Team Cumulative Summary Form dated March 1, 2006, the District did not send this document to the Petitioner. However, Petitioner suffered no harm due to the school district's agreement to conduct a full, individual evaluation on March 2, 2006.

As to prior written notice of August/September 2006 ARD meetings, Petitioner did not carry his burden of proof.

ISSUE: Whether the District failed to find Petitioner eligible for special education and related services under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEA04")

CITATION: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)

HELD: For the school district