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# DOCKET NO. 249-SE-0606

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

PETITIONER

vs.

RICHARDSON INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

BEFORE A SPECIAL EDUCATION  
HEARING OFFICER  
FOR THE STATE OF TEXAS

## DECISION OF THE HEARING OFFICER

### Statement of the Case

The Petitioner (child)<sup>1</sup> brings this action against the Respondent (district), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq.

The Petitioner pursued four issues at the Due Process Hearing:

1. Whether the Respondent failed to perform its Child Find responsibilities toward the Petitioner;
2. Whether the Respondent failed to appropriately evaluate the Petitioner;
3. Whether the Respondent failed to identify the Petitioner as a child with a disability; and
4. Whether the Respondent failed to conduct a proper admission, review and dismissal (ARD) committee meeting on September 21, 2006.

As relief for these claims, the Petitioner requests that the Respondent: (1) identify the Petitioner as a child with a disability; and (2) develop an individualized education program for the Petitioner.

<sup>1</sup>To protect the privacy of the Petitioner, the Petitioner is referred to as “child” in this decision.

## **Procedural History**

The Texas Education Agency (TEA) received the Petitioner's request for a due process hearing/due process complaint on June 29, 2006. The TEA initially assigned this case to another Hearing Officer. During that period, the other Hearing Officer conducted two prehearing conferences with the parties and, among other things, extended the decision due date to accommodate the completion of a district evaluation of the child.

On September 13, 2006, TEA transferred this case to this Hearing Officer. Upon assuming responsibility in this matter, this Hearing Officer conducted an additional prehearing conference with the parties and, among other things, determined the hearing timetable and the issues that the Petitioner could pursue at the Due Process Hearing.

The Due Process Hearing was conducted on September 28, 2006 in Richardson, TX. During the Hearing, the Petitioner was afforded a fair opportunity to offer and solicit evidence and testimony to satisfy the burden of persuasion the Petitioner has under *Schaffer v. Weast*, 126 S. Ct. 528 (2005). This Hearing Officer extended the decision due date to allow the parties to file post-hearing written closing statements. The parties submitted their written closing arguments on October 16, 2006.

## **Findings of Fact**

Based upon the testimony and evidence taken on the record in this proceeding, I make the following findings of fact:

1. During the 2005-06 school year, the child attended a school within the district. (Resp't Ex. 1-11)
2. On or about September 2, 2005, the child's art teacher went to the child's school counselor with a concern over a picture or drawing by the child. (Hr'g Tr. at 221; Pet'r Ex. A-5; Resp't Ex. 3-5)
3. That day, the school counselor visited with the child and inquired about the child's feelings, mood and emotional state. The school counselor concluded that there was no suicide risk with the child. The school counselor has training to evaluate adolescent suicide risk. (Hr'g Tr. at 223, 227 – 28)

4. That day, the school counselor referred the child to the campus “student assistance specialist” for a consultation. (Hr’g Tr. at 224)
5. During the remainder of the 2005-06 school year, the school counselor had occasional contact with the child. The school counselor never suspected that the child might be a child with a disability warranting a special education referral. (Hr’g Tr. at 228, 230 – 31)
6. On or about September 2, 2005, the student assistance specialist visited with the child. The student assistance specialist concluded that there was no concern that the child was thinking of self-harm or suicide. The student assistance specialist did not detect any indicators warranting a special education referral. The student assistance specialist relied upon 11 years of professional experience in reaching her conclusions. The student assistance specialist contacted the child’s parents and received parental permission to continue to monitor the child. (Hr’g Tr. at 189 – 93, 204 – 05, 213 – 14; Resp’t Ex. 4-1)
7. During the remainder of the 2005-06 school year, the student assistance specialist maintained contact with the child. The student assistance specialist did not detect any severe or pervasive emotional concerns or depression on the child’s part as time passed. (Hr’g Tr. at 195, 200 – 01, 206 – 07, 209 – 10; Resp’t Ex. 4-1 – 3)
8. During the 2005-06 school year, the child’s language arts teacher never relayed any concerns nor reported any incidents involving the child to the student assistance specialist.
9. During the first semester of the 2005-06 school year, the child failed \*\*\* class: “pre-AP world geography.” (Hr’g Tr. at 115; Resp’t Ex. 1-11 – 12; Resp’t Ex. 3-4)
10. During the second semester of the 2005-06 school year, the child failed \*\*\* of seven \*\*\*: (1) “pre-AP world geography”; (2) “pre-AP math”; (3) “pre-AP biology”; and (4) “pre-AP English.” (Hr’g Tr. at 273, 280 – 84; Resp’t Ex. 1-12; Resp’t Ex. 3-4)
11. After the end of the 2005-06 school year, the school principal observed that the child was not performing up to the child’s capabilities. (Hr’g Tr. at 285; Resp’t Ex. 3-4)
12. In June, 2006, the school principal investigated the child’s academic record and attributed the failing grades to the child either not completing homework assignments or not turning in school work. The principal reported these findings to the parent. (Hr’g Tr. at 280 – 85; Resp’t Ex. 3-3 – 4)
13. During the 2006-07 school year, the child advanced a grade level and attends the same school within the district. (Resp’t Ex. 1-11)
14. At the parent’s request, the district agreed to conduct a “full and individual initial evaluation” of the child at the beginning of the 2006-07 school year. The basis for the evaluation was the parent’s concern about the child’s emotional outlook and behavior. The evaluation process began once the parent provided consent. (Hr’g Tr. at 70, 109; Resp’t Ex. 1-1, 11)
15. On September 13, 2006, the district and the child’s parent mutually agreed upon a date for an ARD committee meeting to review the initial evaluation. The district provided written notice to the parent of the ARD committee meeting planned for September 21, 2006. (Pet’r Ex. D-3; Resp’t Ex. 2-6 – 2-7)

16. On September 15, 2006, the parties participated in a prehearing conference with the Hearing Officer and, among other things, confirmed that an ARD committee meeting was planned for September 21, 2006. (Hr'g Tr. at 236; Prehearing Conference Tr. at 4 – 6, 11 (Sept. 15, 2006))
17. On September 18, 2006, the written report of the initial evaluation was completed. (Resp't Ex. 1)
18. On September 19, 2006, the parent of the child requested that the ARD committee meeting planned for September 21, 2006 be postponed until the parent could locate an attorney or advocate to accompany the parent to the ARD meeting. (Hr'g Tr. at 90 – 93; Resp't Ex. 2-8)
19. On September 20, 2006, the district acknowledged receipt of the parent's request regarding the ARD committee meeting planned for September 21, 2006 and indicated that the meeting would be held as scheduled to meet timetable needs. The district requested that the parent attend. (Hr'g Tr. at 234, 236 299; Pet'r Ex. D-6 – 7; Resp't Ex. 2-9)
20. On September 21, 2006, an ARD committee meeting was held as scheduled to review and consider the initial evaluation of the child. All ARD committee members were present except the parent. (Resp't Ex. 2)
21. The licensed specialist in school psychology (LSSP) who evaluated the child presented to the ARD committee the findings in the written report of the initial evaluation of the child. (Hr'g Tr. at 160; Resp't Ex. 2)
22. In conducting the initial evaluation, the LSSP collected a variety of information about the child and administered a variety of standardized and “projective” instruments to assess the child's eligibility as a child with a disability. (Hr'g Tr. at 106, 109 – 10, 117 – 19, 124 – 25, 133 – 36, 138 – 40, 142 – 43, 156 – 57; 178 – 79; Resp't Ex. 1-11)
23. The LSSP explored the child's condition in both the 2005-06 school year and the current 2006-07 school year. (Hr'g Tr. at 102 – 03)
24. The initial evaluation focused on the child's emotional/behavioral condition. The LSSP found that the child had “depressed feelings” during the 2005-06 school year, but that they were neither severe nor pervasive.

(Hr'g Tr. at 102, 106, 136 – 37, 141, 143, 171 – 75, 178; Resp't Ex. 1-2, 1-10 – 17)

25. Under the IDEA, a child qualifies as a child with an emotional disturbance if he or she demonstrates one or more of five characteristics over a long period of time and to a marked degree which adversely affects educational performance. The five characteristics are: (1) an inability to learn which cannot be explained by intellectual, sensory or health factors; (2) an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (3) inappropriate types of behavior or feelings under normal circumstances; (4) a general pervasive mood of unhappiness or depression; and (5) a tendency to develop physical symptoms or fears associated with personal or school problems. The LSSP found that the Petitioner did not demonstrate any of these characteristics as required. (Hr'g Tr. at 148 – 49; Resp't Ex. 1-10)

26. The initial evaluation examined the child's intellectual functioning informally through parent and teacher information and Texas Assessment of Knowledge and Skills (TAKS) testing. The LSSP determined that the child has strong cognitive skills. The LSSP determined that no academic achievement testing was needed. (Resp't Ex. 1-2 – 5)

27. The LSSP found that the child's school failures are attributable in part to the attitude and work habits of the child, specifically the child's negative views on the value of grades and homework and the child's difficulties doing homework at home. The LSSP ruled out a cognitive basis for the academic problems and determined that testing the intellectual ability of the child was not warranted. (Hr'g Tr. at 115, 122 – 23, 134 – 35, 146, 148, 158 – 59, 164, 184 – 85, 302-03; Resp't Ex. 3-4)

28. The LSSP found that although the child has attention deficits, they are only exhibited during classes that the child has lesser or little interest in. (Hr'g Tr. at 128, 157, 162)

29. The ARD committee deliberated and determined that the child is not a child with a disability under the IDEA. (Hr'g Tr. at 160, 210 – 11, 231, 296; Resp't Ex. 2)
30. The Respondent has established a regular education "individual intervention plan" for the child to address educational concerns for the child and implement general education recommendations from the initial evaluation. (Hr'g Tr. at 211, 217 – 18, 232 – 33)
31. During the 2006-07 school year thus far, there have been no indications that the child needs a special education referral. (Hr'g Tr. at 144, 234 – 35; Resp't Ex. 4-4)

## **Discussion**

### **Child Find**

In this action the Petitioner first alleges that the Respondent failed to exercise its Child Find duties toward the child. Under the IDEA, school districts have a basic duty to identify, locate and evaluate all children with disabilities who are in need of special education (referred to as "Child Find")<sup>2</sup>. Under administrative case law, school districts are obligated to initiate steps toward qualifying a child for possible IDEA eligibility when the district has reason to suspect the child has a disability and reason to suspect that special education services may be needed to address that disability<sup>3</sup>. Under TEA regulations, school districts must refer a child for an evaluation if the child continues to experience difficulty after the provision of any support services and interventions in the general classroom<sup>4</sup>.

<sup>2</sup>20 U.S.C. § 1412(a)(3).

<sup>3</sup>See, for example, *Davonne B. v. Houston Indep. Sch. Dist.*, No. 327-SE-596 (TEA May 2, 1997)

<sup>4</sup>Prior to a referral, a child experiencing difficulty in the general classroom must be considered for all available support services. 19 Tex. Admin. Code § 89.1011.

My analysis must determine when, if at all, the district should have recognized a need to evaluate the child. In other words, were there certain signals or signs that the district should have noticed and assigned significance, triggering the duty to refer for special education testing? Here, this Hearing Officer finds that there was no reason to suspect the presence of a disability and a need for special education generating a referral for the child during the 2005-06 school year<sup>5</sup>.

<sup>5</sup>At the beginning of the 2006-07 school year, the child was evaluated after the district agreed to a parental request for an initial evaluation. Thus, any failure to execute Child Find would have had to have occurred, if at all, last school year.

In this case, the most overt circumstance occurred near the beginning of the 2005-06 school year. The child's art teacher became concerned about an art project of the child. Two counselors were alerted and they visited with the child. The counselors, drawing on their training and experience, found that the child was neither suicidal nor severely depressed<sup>6</sup>. The child was not, as suggested by the parent, in "suicide crisis."<sup>7</sup> Given the findings of both counselors, the district could reasonably rule out any suspicion of an emotional disturbance. Monitoring the child through the counselors was a reasonable recourse for the district and consistent with TEA regulations.

<sup>6</sup>The LSSP who examined the child in August, 2006 also concluded that the child did not have any suicidal feelings during the fall, 2005 semester. Hr'g Tr. at 104 – 05, 143 – 44.

<sup>7</sup>Pet'r Closing Arguments at 1 (Oct. 16, 2006).

The Petitioner also points to the child's academic performance as a red flag signaling the need for special education testing<sup>5</sup>. I do not find that the child's

classroom results were any such clear signal. In the fall, 2005 semester, the child failed one class. Given that the parent believes the child is a “talented and gifted” student, any academic setback is a cause for concern<sup>5</sup>. At this juncture, however, one non-passing grade does not make special education testing advisable.

<sup>8</sup>Hr’g Tr. at 309 – 11.

<sup>9</sup>Hr’g Tr. at 64, 183.

In the spring, 2006 semester, the child failed a \*\*\* of the child’s classes. This precipitous decline in classroom results is troubling. Within a month of the end of the school year, the school principal analyzed the child’s academic record and found that the poor performance was attributable to the child not turning in enough assigned school work to pass<sup>10</sup>. Given the findings of the principal and the findings of the counselors that the child was neither suicidal nor severely depressed, the district could reasonably rule out any suspicion of an impairment as the explanation for the downward turn in grades.

Had the Respondent committed a procedural lapse by not engaging in Child Find to investigate why the child was not turning in school work, such a procedural defect would not violate the IDEA if there was no loss of educational opportunity to the child<sup>11</sup>. Here, as discussed below, the child is not entitled to special education and, thus, there was no deprivation of educational benefits under the IDEA. Further, the district did mitigate any failure to begin the Child Find process at the end of the spring, 2006 semester by expediently conducting and concluding an initial evaluation of the child within the first two months of the fall, 2006 semester.

<sup>10</sup>The LSSP who examined the child in August, 2006 also concluded that the child’s poor grades were due to the child not turning in homework.

<sup>11</sup>20 U.S.C. § 1415(f)(3)(E)(ii); *Adam J. v. Keller Indep. Sch. Dist.*,  
328 F.3d 804 (5th Cir. 2003)

In conclusion, I find that the Respondent prevails on Issue No. 1.

### **Evaluation**

The Petitioner's second allegation is that the Respondent failed to appropriately evaluate the child<sup>12</sup>. Under the IDEA, a full and individual initial evaluation determines first, whether a child is a child with a disability and second, the educational needs of the child. Every initial evaluation must assess the child in all areas related to the suspected disability<sup>13</sup>. Every initial evaluation must include a variety of assessment tools that may assist in determining whether the child is a child with a disability<sup>14</sup>. School districts must have a written report of the initial evaluation completed within 60 calendar days of receiving parental consent for the evaluation<sup>15</sup>.

<sup>12</sup>20 U.S.C. § 1414(a)(1)(C)(i).

<sup>13</sup>20 U.S.C. § 1414(b)(3)(B).

<sup>14</sup>20 U.S.C. § 1414(b)(2)(A).

<sup>15</sup>Tex. Educ. Code § 29.004(a).

Here, after weighing the testimony and evidence on the initial evaluation and how it was conducted, I am satisfied that it was appropriate and accurately reports on whether the child is disabled as defined in the IDEA. Specifically, the district's LSSP timely administered several different assessments; collected information from a variety of sources, including the parent and child; and did not use any single measure as the sole criterion for determining if the child is a child with a disability.

The Petitioner mainly criticizes the initial evaluation for lacking an intellectual assessment of the child<sup>16</sup>. An intellectual assessment would be required only if it

related to a suspected disability. In this case, the driving impetus for the initial evaluation was the parent's concern over the child's emotional outlook and behavior. The assessors reasonably determined that intellectual testing was not needed for screening for the possible presence of an emotional disturbance – the most pertinent impairment category under the IDEA that matches the area of concern. If there had been a suspected learning disability, then an intellectual assessment would have been relevant. Here, however, the district reasonably did not suspect a learning disability. The principal's probe of the child's failing grades discovered a non-cognitive explanation (discussed above). The LSSP who examined the child likewise ruled out a cognitive basis for the failing marks and determined that testing the intellectual ability of the child was not warranted<sup>17</sup>. The Petitioner failed to establish by a preponderance of the evidence that the district should have suspected a learning disability or that an intellectual assessment should have been a component of the initial evaluation.

<sup>16</sup>Hr'g Tr. at 311; Pet'r Closing Arguments at 1 (Oct. 16, 2006).

<sup>17</sup>The LSSP found that the child's intellectual capability to do homework and school projects was not the issue. Hr'g Tr. at 115, 122, 134 - 35, 146, 148, 158 - 59.

In conclusion, I find that the Respondent prevails on Issue No. 2.

### **Identification**

The Petitioner's third allegation is that the Respondent failed to identify the child as a child with a disability<sup>18</sup>. Under the IDEA, a child is so identified if the child has an impairment and, by reason thereof, needs special education and related services<sup>19</sup>. A child with an impairment of emotional disturbance is a child exhibiting one or more of five characteristics over a long period of time and to a marked degree that adversely affects the child's educational performance<sup>20</sup>. A child with an impairment of learning disability is a child with a disorder in one or more of the basic psychological processes involved in understanding or in using spoken or written language which may manifest itself in the imperfect ability to

listen, think, speak, read, write, spell, or do mathematical calculations<sup>21</sup>. A child with other impairments not specifically listed in the IDEA might still qualify under the “other health impairments” eligibility category. Under TEA regulations, a child can only qualify under the “other health impairments” category if a physician is included on the multidisciplinary team that collects or reviews evaluation data<sup>22</sup>.

<sup>18</sup>20 U.S.C. § 1401(3)(A).

<sup>19</sup>34 C.F.R. § 300.7(c)(4) (July 1, 2006); 19 Tex. Admin. Code § 89.1040(c)(4). For the five emotional disturbance characteristics, see Finding of Fact No. 25.

<sup>20</sup>20 U.S.C. § 1401(30)(A).

<sup>21</sup>34 C.F.R. § 300.7(c)(9) (July 1, 2006).

<sup>22</sup>19 Tex. Admin. Code § 89.1040(c)(8).

Here, this Hearing Officer finds that the child is not a child with a disability. The initial evaluation conducted at the beginning of this school year originated with parental concern that the child is so deeply depressed that the child qualifies as a child with emotional disturbance. The LSSP who evaluated the child did find that the child had mild feelings of depression. The LSSP reasonably concluded that this emotional state did not qualify the child as one with an emotional disturbance under the IDEA as the level of severity of the child’s condition did not meet the threshold for special education.

Now the parent primarily perceives the child as having a learning disability<sup>23</sup>. Under TEA regulations, a child has a learning disability if the child has a severe discrepancy between achievement and intellectual ability<sup>24</sup>. While the child has performed below expectations according to both the parent and educators, the Petitioner failed to establish by a preponderance of evidence that this equates at

this time to a significant discrepancy between intellectual potential and achievement because of a psychological processing disorder<sup>25</sup>.

<sup>23</sup>In its summation, the Petitioner argues: “[Child’s] likely qualification for special services due to her talented and gifted ability and the drastic difference that exists in her ability to perform on level were not fairly or properly evaluated by the Respondent or considered in the Respondent’s decision [not] to declare [child] as a student eligible for services under the IDEA.” Pet’r Closing Arguments at 1 (Oct. 16, 2006). This Hearing Officer interprets the Petitioner’s argument as alluding to the discrepancy model utilized to determine the presence of a learning disability.

<sup>24</sup>19 Tex. Admin. Code § 89.1040(c)(9).

<sup>25</sup>If the child fails to respond to the individual intervention plan the district has established for the child, the question of learning disability eligibility would be ripe for reconsideration.

The LSSP who evaluated the child did find some attention deficits but they were not so uniformly demonstrated across all the child’s classes as to merit eligibility under the IDEA “other health impaired” category – the typical category under the IDEA used to qualify children with attention deficit disorder whose education is adversely affected by the disorder. Further, there was no physician diagnosis to support a finding of attention deficit disorder.

In sum, while the child has had some academic failure and struggles over the last year which are worrisome since the child is bright, there is not a preponderance of evidence that the child exhibits emotional disturbance, learning disabilities, or other health impairment severe enough to warrant the child’s identification as a child with a disability for whom special education is a necessary intervention.

In conclusion, I find that the Respondent prevails on Issue No. 3.

### **Admission, Review and Dismissal (ARD) Committee Meeting**

The Petitioner’s fourth allegation is that the Respondent improperly conducted an ARD committee meeting on September 21, 2006. Specifically, the Petitioner

asserts that the Respondent should not have held the ARD meeting because the parent withdrew consent for the meeting<sup>26</sup>. Under TEA regulations, the child's ARD committee is charged with making the determination of whether a child is a child with a disability<sup>27</sup>. The September 21st ARD meeting reviewed the initial evaluation and decided, without the parent in attendance, that the child did not qualify as a child with a disability under the IDEA.

<sup>26</sup>Hr'g Tr. at 84 – 87, 312 – 313.

<sup>27</sup>Under the IDEA, a team of qualified professionals and the parent must decide each child's eligibility for special education. 20 U.S.C. § 1414(b)(4)(A). In Texas, that responsibility has been delegated to ARD committees. 19 Tex. Admin. Code §§ 89.1040(b), 89.1050(a).

The Petitioner's assertion that the Respondent should not have held the September 21st ARD committee meeting is based upon the Petitioner's interpretation of an IDEA regulatory provision. Specifically, the Petitioner points to § 300.500(b)(1)<sup>28</sup>. This provision defines the term "parental consent."<sup>29</sup> The term is defined because the IDEA requires parental consent for certain actions. The convening of an ARD committee meeting, however, is not one of the actions requiring parental consent. The need for parental consent is limited to the situations listed in § 300.505<sup>30</sup>. The list in § 300.505 does not include ARD committee meetings. Further, the IDEA regulatory provision, § 300.501(b), speaks of the opportunity for parents to participate in meetings but does not require parental consent for a meeting to occur as there is no cross reference with § 300.505<sup>31</sup>.

<sup>28</sup>34 C.F.R. § 300.500(b)(1) (July 1, 2006). Pet'r Closing Arguments at 3 (Oct. 16, 2006).

<sup>29</sup>Parental consent is defined as consent that is informed, voluntary, in writing, and revocable. 34 C.F.R. § 300.500(b)(1) (July 1, 2006).

<sup>30</sup>34 C.F.R. § 300.505 (July 1, 2006). Other IDEA regulatory provisions that require parental consent, such as for the release of personally identifiable information (34 C.F.R. § 300.571 (July 1, 2006)), do not apply here as they relate to noneducational matters.

<sup>31</sup>34 C.F.R. § 300.501(b)(1) (July 1, 2006).

Under the IDEA and TEA regulations, school districts must make an effort to include parents in ARD committee meetings<sup>32</sup>. Under limited circumstances, however, the IDEA regulations permit a school district to hold an ARD committee meeting without a parent participating<sup>33</sup>. Under this regulatory provision, a school district may move forward with an ARD meeting if it is unable to convince a parent to attend the meeting. Here, the district did mutually agree with the parent upon a date for the ARD committee meeting. The district provided proper notice of the ARD meeting. The parties confirmed September 21st as the date for the meeting during a prehearing teleconference with this Hearing Officer; the parent had an opportunity to raise any concerns about or objections to the ARD timing during the prehearing teleconference but did not<sup>34</sup>. The Respondent notified the parent it would not agree to defer the ARD committee meeting as requested and urged the parent to attend. This Hearing Officer finds that the district tried but was unable to convince the parent to honor the ARD committee schedule as agreed between them and accepted by the Hearing Officer in setting the Due Process Hearing. Therefore, the Respondent did not violate the IDEA when it proceeded with the ARD committee without the parent in attendance.

<sup>32</sup>34 C.F.R. § 300.345(a) (July 1, 2006); 19 Tex. Admin. Code § 89.1045(a).

<sup>33</sup>34 C.F.R. § 300.345(d) (July 1, 2006).

<sup>34</sup>Prehearing Conference of Sept. 15, 2006.

In conclusion, I find that the Respondent prevails on Issue No. 4.

## **Conclusions of Law**

After due consideration of the foregoing findings of fact, I make the following conclusions of law:

1. The Petitioner is not eligible for special education and related services as a child with a disability under the IDEA.
2. The Respondent appropriately performed its Child Find responsibilities toward the Petitioner. The Respondent's performance of these responsibilities did not impede the Petitioner's right to a free appropriate public education (FAPE), significantly impede the Petitioner's parents' opportunity to participate in the decision making process regarding the provision of a FAPE, or cause a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003).
3. The Respondent appropriately conducted a full and individual initial evaluation of the Petitioner.
4. The Respondent appropriately held an ARD committee meeting on September 21, 2006.
5. The Respondent did not deny the Petitioner a FAPE. 20 U.S.C. § 1415(f)(3)(E)(i).

## **Order**

Based upon the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED THAT:

1. All relief sought by the Petitioner shall be and is DENIED.

SIGNED this 26th day of October, 2006.

Steven R. Aleman

Special Education Hearing Officer

## **Notice**

Any party aggrieved by the findings and decision of this Hearing Officer has the right to bring a civil action seeking review in a state or federal court of competent jurisdiction. The party bringing the civil action shall have no more than 90 days from the date of the decision to file the civil action. 20 U.S.C. § 1415(i)(2).

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# DOCKET NO. 249-SE-0606

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

PETITIONER

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

## SYNOPSIS OF DECISION

- ISSUE:** Whether the Respondent failed to perform its Child Find responsibilities toward the Petitioner.
- CITATION:** 34 C.F.R. § 300.125 (July 1, 2006)
- HELD:** For the Respondent. The district was aware of and performed its Child Find responsibilities toward the child. It mitigated any shortcomings in its performance by expediently conducting and concluding an initial evaluation of the child within the first two months of the new school year. Further, there was no loss of educational opportunity to the child.
- ISSUE:** Whether the Respondent failed to appropriately evaluate the Petitioner.
- CITATION:** 34 C.F.R. § 300.531 (July 1, 2006)
- HELD:** For the Respondent. The scope and execution of the district's full and individual initial evaluation of the child was appropriate.
- ISSUE:** Whether the Respondent failed to identify the Petitioner as a child with a disability.
- CITATION:** 34 C.F.R. § 300.7 (July 1, 2006)
- HELD:** For the Respondent. The Petitioner failed to demonstrate that the child has a severe emotional disturbance, specific learning disability or other health impairment.
- ISSUE:** Whether the Respondent failed to conduct a proper ARD committee meeting on September 21, 2006.
- CITATION:** 34 C.F.R. § 300.345 (July 1, 2006)
- HELD:** For the Respondent. The district did not violate the IDEA by holding an ARD committee meeting without a parent in attendance when it was unable

to convince the parent to attend the ARD meeting that had previously been mutually agreed upon and was arranged to accommodate the due process hearing schedule.