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# DOCKET NO. 268-SE-0806

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION  
HEARING OFFICER

EL PASO INDEPENDENT SCHOOL DISTRICT

SCHOOL DISTRICT

RESPONDENT

## DECISION OF THE HEARING OFFICER

This matter was presented to this Hearing Officer after \*\*\* and\*\*\*, the parents of the child, filed for a Due Process Hearing pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 et.seq., on August 14, 2006. On the 5th day of October, 2006, the petitioners and the respondent appeared at the El Paso Independent School District Administration Building for a Due Process Hearing pursuant to IDEA04, and the hearing concluded on the 6th day of October, 2006.

\*\*\*, a parent of \*\*\*, (“the petitioners”) appeared in person and through their attorney or record, Mark Berry, and announced ready.

El Paso ISD (“the respondent”) appeared through its district representative, Carol Powell, and through its attorney, Elena M. Gallegos, and announced ready.

### Issues Raised and Relief Sought

The petitioners raised two issues/complaints about the district in the Prehearing Conference heard on September 6, 2006:

1. The district denied the child a free, appropriate public education (“FAPE”) and violated his rights by failing to properly and adequately evaluate the child; and
2. The district denied the child FAPE and violated his rights by failing to properly identify the child.

The petitioners sought the following relief from the outcome of the Due Process Hearing:

1. An order requiring the district to conduct the evaluations as outlined by the Review of Existing Evaluation Data (“REED”) Committee on November 2, 2005;
2. An order requiring the district to convene an Admissions, Review and Dismissal (“ARD”) Committee meeting to develop an Individualized Education Program (“IEP”) for the child based upon the results of the evaluations ordered by the REED Committee.

The hearing began on October 5, 2006 and concluded on October 6, 2006. After hearing the testimony of the witnesses presented, reviewing the exhibits from both parties which were admitted into evidence, and weighing such evidence in light of current law, the relief requested from the petitioners is hereby GRANTED. HELD, for the petitioners.

### **Findings of Fact**

1. The parties each agree that the child is an grade student eligible for special education services under IDEA04 based upon his diagnosis of Emotional Disturbance (“ED”), his Learning Disabilities, and Other Health Impaired – ADHD. (See, Trial Transcript, pp. 29 – 30, p. 46, Petitioner’s Exhibit #1, p. 387, Petitioner’s Exhibit #2, p. 296).
2. The child began receiving special education services in his grade year of school. (See, Respondent’s Exhibit #2 and #4).
3. The child’s primary disability was in the area of Emotional Disturbance, his secondary disability was his Learning Disabilities, and his tertiary was the OHI – ADHD. (See, Trial transcript, pp. 169, 415; Petitioner’s Exhibit #1, p. 387, Petitioner’s Exhibit #2, p. 296).
4. A comprehensive set of evaluations were performed by the district in the summer of 2002, including a Comprehensive Individual Assessment, Part I, A Diagnostic Report pertaining to reading, and a Full and Individual Evaluation (“FIE”), (See, Respondent’s Exhibits #3, 4, and 7).

5. The child's IEP was developed by the ARD Committee based upon the results of the evaluations in the summer 2002.
6. The date for the three year re-evaluation pursuant to 20 U.S.C. §1414 (a)(2)(B) was July 10, 2005. (See, Respondent's Exhibit #7, p. R7-13).
7. The district convened a REED Committee on November 2, 2005 which ordered the following evaluations/data be obtained:
  - a. Tests to determine best language for additional assessments (language proficiency testing);
  - b. Data regarding physical/health problems;
  - c. Data on the student's personal relationships at home or school;
  - d. Data on behaviors exhibited in the school setting that are impeding learning;
  - e. A psychological evaluation;
  - f. Data regarding student's home life and family experience;
  - g. Data regarding the student's cognitive abilities compared to others of the same age (Formal IQ testing); and
  - h. Additional norm-referenced evaluation in the areas of suspected disability

(See, Petitioner's Exhibit #2, pp. 325 - 334).

8. \*\*\*, a licensed specialist in school psychology for El Paso ISD, performed a psychological evaluation on the child on January 7, 2006 in response to the REED Committee's orders. (Respondent's Exhibit #15).
9. As part of his psychological evaluation, Mr. \*\*\* included testing results and data gathered in response to the REED Committee's orders, including sections (b), (c), (d), (e), and certain parts of (h) [as referenced above in Findings of Fact #7]. (See, Trial transcript, pp. 419-420, 422 - 427).
10. No data or testing was collected by the district in response to the REED Committee's orders for sections (a), (f), (g), and the Learning Disability portion of (h) [as referenced above in Findings of Fact #7]. (Trial transcript, pp. 422 - 427). The district admits that it failed to gather all the information as ordered by the REED Committee, and that such was an oversight and inadvertent. (See, Trial transcript, pp. 239-240, 246-247, 249, 469). No evidence was presented to dispute the contention that the failure to gather all the information was an oversight and inadvertent.
11. The ARD Committee met again on February 7, 2006 to review the data requested by the REED Committee and to develop an appropriate IEP for the child. (See, Petitioner's Exhibit #1). \*\*\* was present at that meeting and presented his findings as outlined in his psychological evaluation. (See, Trial transcript, p. 424). The ARD Committee relied on Mr. \*\*\*'s report and on the prior FIE conducted on July 10, 2002. (See, Petitioner's Exhibit #1, p. 386; Trial transcript, p. 469). No Speech/Language Evaluation data was presented to the ARD Committee and none was requested. (See, Petitioner's Exhibit #1, p. 386). The ARD Committee developed the child's IEP based upon this information.
12. The petitioner's filed their Due Process Complaint on August 14, 2006.

13. Almost immediately, the district began attempting to correct the problem by offering all the relief the petitioner's had requested of this hearing officer in their Due Process Complaint, but were unable to reach an agreement with the petitioners and their counsel, presumably over the issue of attorney's fees. (See, Respondent's Exhibits # 36, 38, and 39).
14. On September 26, 2006, the district sent \*\*\*, an El Paso ISD school educational diagnostician, to conduct assessments on the child in response to the REED Committee's orders of November 2, 2005. (See, Trial transcript, pp. 140 – 142). Ms. \*\*\* turned in her findings/report to the district on Monday, October 2, 2006. (See, Trial transcript, p. 144).
15. In her FIE, Ms. \*\*\* determined that the child had two new Learning Disabilities ("LD"), listening comprehension and oral expression, which had not been previously identified, and that he no longer had LD in two other areas, written expression and mathematics reasoning. (See, Petitioner's Exhibit #3, p. 114 compared to Petitioner's Exhibit #9, p. 30). The ARD Committee did not have this information in February 2006 when it developed the child's current IEP.
16. Academically, the child has been taking the State Developed Alternative Assessment ("SDAA") since the Spring 2002, as per his modifications implemented by the ARD Committee. (See, Respondent's Exhibits #24, 25, and 26). The results indicate that with respect to Reading, Mathematics, and Writing, the child scored as follows:

<b>SDAA Test</b>	<b>Date Test Taken</b>	<b>Child's Grade Level</b>	<b>Test Score</b>	<b>Met ARD Expectations?</b>
Mathematics	Spring 2002	***	1 – III	N/A
Writing	Spring 2003	***	K,1,2-II	Yes
Reading	Spring 2003	***	2 – III	Yes
Mathematics	Spring 2003	***	2 – III	N/A
Reading	Spring 2004	***	3 – III	N/A
Mathematics	Spring 2004	***	4 – III	N/A
Reading	Spring 2005	***	4 – III	Yes
Mathematics	Spring 2005	***	5 – I	No
Writing	Spring 2006	***	6/7 – II	Yes
Reading	Spring 2006	***	7 – II	Yes
Mathematics	Spring	***	7 – I	Yes

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17.

(See, Respondent's Exhibits # 24, 25, and 26).

## **DISCUSSION - APPLICATION OF FACTS AND LAW**

### **Issue Raised by District – Hearing Officer lacks jurisdiction since district offered to provide all of the relief requested by the petitioners in their Due Process Complaint**

The district asserts that this hearing officer lacks jurisdiction to hear the merits of this case since it offered to provide all of the relief requested by the petitioners in their Due Process Complaint. The district had raised this same matter previously in a Motion to Dismiss alleging all the issues associated with this case were moot because the district had offered to provide all relief requested by the petitioners. The Motion to Dismiss was denied at that time and should be denied again.

The district argues that since all relief requested was offered by the district, legal precedent mandates the case is now moot. The petitioner counters that post-litigation voluntary compliance does not render a case moot, and relies on the United States Supreme Court's holding in *Friends of the Earth v. Laidlaw*, 120 S.Ct. 693 (2000). The district distinguishes its position from the *Friends of the Earth* case by pointing out that its holding only applies when a claim for damages remains. (See, Respondent's Closing Argument, p. 6). It argues that since damages are not available under IDEA, *Friends of the Earth* does not apply. In essence, the district contends that since there is nothing further to be adjudicated, because all relief sought has been offered, the case is moot and should be dismissed. This position is incorrect.

While there is no dispute that the district readily offered the petitioners all of the relief they sought in their Due Process Complaint, this fact did not leave the petitioners without any further matters to adjudicate. The only matter left outstanding was the issue of attorney's fees, as can be readily seen in the correspondence between attorneys in this case. (See, Respondent's Exhibits #36

and 39). While attorney's fees are not a matter to be decided by this hearing officer, IDEA04 clearly makes provision for attorney's fees to be awarded to the prevailing party by a United States District Court. 20 U.S.C. §1415(i)(3). This being the case, the petitioners would have one final issue outstanding if that matter, too, was not offered by the district as requested by the petitioners. No evidence was presented to this hearing officer that the district offered the petitioners the amount of attorney's fees being sought. Had such been the case, then no further issues would have been outstanding and the case would have been rendered moot.

In *Buckhannon Board and Care Home v. West Virginia D.H.H.R.*, 121 S.Ct. 1835, 1842 (2001), the United States Supreme Court stated that "so long as the plaintiff has a cause of action for damages, a defendant's change in conduct will not moot the case." This hearing officer makes no determination as to the value of the petitioner's cause of action for attorney's fees, suffice it that such a cause of action does, indeed, continue to exist according to the provisions of IDEA04.

Thus, this case is not moot and the renewed motion to dismiss should be denied.

**Petitioner's Issue No. 1 - El Paso ISD denied the child FAPE due to the district's failure to adequately and properly evaluate the child**

The petitioners complain that the district denied the child FAPE and violated his rights by failing to adequately and properly evaluate the child. The basis for this complaint is that the district did not comply with the federal requirement of conducting a three year re-evaluation pursuant to 20 U.S.C. §1414 (a)(2)(B), and according to the directions of a REED Committee convened on November 2, 2005. The three year deadline was July 10, 2005, and no evidence was presented that the parent and the district agreed that a re-evaluation was unnecessary. (See, Respondent's Exhibit #7, p. R7-13).

The REED Committee which convened on November 2, 2005 ordered that certain evaluations be conducted and certain data be obtained regarding the child, thus satisfying the re-evaluation mandate. (See, Petitioner's Exhibit #2, pp. 325 - 334). It is undisputed that the district failed to gather all of the information

requested by the REED Committee. (See, Trial transcript, pp. 42, 54-55, 58, 239-240, 246-247, 422-427). Ultimately, the district convened an ARD Committee on February 7, 2006 to develop a new IEP for the child. This new IEP was developed based upon the new evaluation data which had been gathered as in response to the November 2, 2005 REED Committee's orders, as well as the old FIE from July 2002. (See, Petitioner's Exhibit #1, p. 386). The petitioners maintain that the child was denied FAPE because the district developed an IEP that used outdated information since the district failed to obtain all the information as ordered by the REED Committee. The district maintains that the IEP was appropriate and the child was not harmed since the new FIE conducted by Ms. \*\*\* in late September/early October 2006 did not provide any new information that would have altered the child's IEP. (See, Trial transcript, pp. 166-167, 444-448).

The district is adamant that its failure to obtain all of the information ordered by the REED Committee was inadvertent. Such claim is undisputed but is irrelevant since there is no provision in the law that excuses such failure if the conduct was inadvertent. The failure amounts to a procedural violation [See, *Bend-Lapine School Dist. v. D.W.*, 152 F.3d 923, 28 IDELR 734 (9th Cir. 1998)], and the question remains whether (1) the failure impeded the child's right to FAPE, (2) the failure significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE for the child, or (3) the failure caused a deprivation of educational benefits to the child. 20 U.S.C. §1415(f)(3)(E)(ii).

### **Parents not impeded from meaningful participation in process**

Regarding the parents' participation in the decision making process concerning the child, this hearing officer did hear any credible evidence that the parents were denied the ability and opportunity to meaningfully participate in the process. To the contrary, the evidence presented established that the parents were involved in the process. For example, the parent did not appear at the November 2, 2005 REED Committee meeting nor at the ARD Committee meeting held on the same

date. (See, Trial transcript, p. 215). \*\*\*, an Instructional Support Specialist for the district, testified that she had personally spoken with the Mrs. \*\*\*, the parent, about the November 2nd ARD prior to the date of the ARD meeting. (See, Trial transcript, p. 219). She also testified that on the morning of the ARD meeting after the parent failed to appear, she made a telephone call to the parent asking if she was coming to the meeting; the parent replied that she would not be coming but the meeting could be held without her presence. (See, Trial transcript, p. 220, 224). \*\*\*, the child's special education teacher and case manager, also testified that she spoke with Mrs. \*\*\* who indicated she would not be coming to the meeting. (See, Trial transcript, p. 268-269). The parent testified that she did not remember getting notice about the November 2, 2005 ARD/REED Committee meetings. (See, Trial transcript, p. 285). While the parent may not have remembered getting the notice, she apparently must have received the notice because the child was in attendance at the meetings. (See, Petitioner's Exhibit #2, pp. 323, 334, Trial transcript, p. 215). Furthermore, she testified that the child reminded her of the meeting prior to its occurrence. (See, Trial transcript, pp. 285-286).

\*\*\* also testified that he personally sat down with Mrs. \*\*\* and spoke with her in Spanish about the decisions of the REED Committee and the testing which would be done on the child, resulting in Mrs. \*\*\* signing the Notice of Full and Individual Evaluation on November 7, 2005. (See, Trial transcript, pp. 412-413, 422, 449-452; Respondent's Exhibit #12). The parent was also in attendance for the February 7, 2006 ARD Committee meeting and lodged no objections to the decisions of the committee at that time. (See, Petitioner's Exhibit #1). The evidence established the parent was able to participate in the decision making process regarding the provision of FAPE for the child.

**Procedural violations resulted in denial of FAPE and deprivation of education benefits to child**

The district argues that the failure to conduct all evaluations and gather all data as required by the November 2, 2005 REED Committee did not deprive the child

of educational benefits or deny him FAPE. (See, Respondent's Closing Argument, pp. 8-9). As support for this position, the district reminds this hearing officer that the February 7, 2006 ARD Committee continued all three of the child's existing eligibility classifications, that there was no interruption of his special education services and there was no delay in implementing his newly developed IEP. (See, Petitioner's Exhibit #1; Respondent's Closing Argument, p. 8). The district further argues the child was making progress at school and could not have been denied FAPE or deprived of an educational benefit. (See, Respondent's Closing Argument, p. 9).

The fact that the ARD Committee of February 7, 2006 continued all three of the child's eligibility classifications, did not interrupt his special education services, and did not delay in implementing his new IEP, does not equate to the child receiving FAPE or not being denied an educational benefit. The eligibility classifications simply list the areas which impede the child's ability to learn. The key to providing the child FAPE is the IEP developed specifically for that child based upon his/her individual needs. Pursuant to 20 U.S.C. §1414(d)(1)(A)(i), the law requires that the child's IEP include "a statement of the child's present levels of academic achievement and functional performance". "If the child has not been evaluated for a year or more, the IEP team will not have valid information about the child's present levels of academic achievement and functional performance." Peter W.D. Wright and Pamela Darr Wright, *Wrightslaw: IDEA 2004*, p. 86, fn. 99. \*\*\*, a school educational diagnostician for the district, testified that it would have been important for the ARD Committee which met on February 7, 2006 to know about the learning disabilities of the child. (See, Trial transcript, pp. 147, 157-158). \*\*\*, the Associate Superintendent for Special Education and Special Services for the district [and a speech-language pathologist herself], testified that it would be very important for an ARD Committee to know whether a child continues to have the same learning disabilities or whether there are new ones. (See, Trial transcript, pp. 49, 73-76, 80). She also testified that if an ARD Committee did not know the appropriate areas of a child's learning disability, that

it is possible the district could not provide the child with FAPE. (See, Trial transcript, pp. 74-75). She testified further that in order to give the child the proper educational placement and the proper education services, the district would need to know in what areas the child has learning disabilities. (See, Trial transcript, p. 75, 80).

In the present case, there is no dispute that the child had been diagnosed with three areas of learning disabilities in the FIE performed on July 10, 2002. (See, Respondent's Exhibit #7, p. R7-12). The purpose of new evaluation data, outside of the fact that it is mandated by law, is "to determine (a) whether the student has or continues to have a particular category of disability, (b) the present levels of performance and educational needs of the student (c) whether the student needs or continues to need special education and related services, or (d) whether any additions or modifications to the special education and related services are needed to enable the student to meet the measurable annual goals set out in the individualized education program of the student and to participate, as appropriate, in the general curriculum." (Quoted from El Paso ISD Review of Existing Evaluation Data, Petitioner's Exhibit #2, p. 325). The law recognizes, and so does the district, that students can change over time and that certain needs may cease to exist while new ones may emerge. It is only through proper re-evaluation data that this information can be ascertained, and the student's individual needs satisfied. This simply was not done in the present case. The IEP developed for the child in the February 7, 2006 ARD meeting was based, partly, upon data obtained 4 years earlier when the child was still in the \*\*\* grade. (See, Petitioner's Exhibit #1, p. 386). Of the learning disabilities identified in the summer 2002 in the child's initial FIE, two had disappeared and two new ones had emerged by the time Ms. \*\*\* conducted her evaluation in September/October 2006. (See, Trial transcript, pp. 80, 157-158; Petitioner's Exhibit #3, p. 114 compared to Petitioner's Exhibit #9, p. 30).

The district argues that even though two new LD were identified by Ms. \*\*\* during her FIE in September/October 2006, the child's IEP would not have changed if

this data had been available to the ARD Committee back on February 7, 2006. (See, Trial transcript, pp. 166-167, 444-448). This is hardly believable since each area of LD must be uniquely addressed, or the areas would have been combined a long time ago. Furthermore, both Mr. \*\*\* and Ms. \*\*\* testified that it would be appropriate to have further evaluations done by a speech pathologist based upon the new LD in oral expression. (Trial transcript, pp. 77-79, 186, 188, 197). This, too, would have to be considered by any ARD Committee in developing an IEP for the child.

The district was also late in seeking and gathering the re-evaluation data. The new evaluation data should have been ordered and gathered by the district in the summer 2005 in order to be in compliance with the 3 year re-evaluation period. (See, Petitioner's Exhibit #3, p. 99). This would have allowed the child's IEP to be developed with current information and data prior to the commencement of the Fall 2005 school year. In essence, this child has been operating under an outdated IEP for his entire \*\*\* grade school year and the Fall of his \*\*\* grade school year.

The district counters that the child's IEP was appropriate as developed and implemented since the child was performing well academically. As proof of this fact, several witnesses testified as to the academic progress displayed by the child in his SDAA testing, the results of which are listed above in the Findings of Fact section. (See, Trial transcript, pp. 156, 168, 276, 372-379). As shown in the SDAA results, it appears the child progressed well in the area of Reading. He showed mastery of the testing he was given during his \*\*\*, \*\*\*, and \*\*\* grade years. In each of those years, however, he was tested at two grade levels below his placement. For example, in the \*\*\* grade year he scored \*\*\* in Reading. According to the SDAA guidelines, the child had mastered \*\*\* grade reading. The problem with this format of testing is that the SDAA is not designed to demonstrate the child's current levels of achievement in that particular area. The child might have been reading on grade level at that time, but the SDAA testing would not show that. The child did exactly the same in his \*\*\* and \*\*\* grade

years, demonstrating mastery of the reading skills at two grade levels below his placement. In his \*\*\* grade year, the district bypassed any testing for the \*\*\* and \*\*\* grade levels since the ARD Committee had the child take the \*\*\* grade test. (See, Trial transcript, p. 372, 398). He scored a 7-II indicating he was slightly behind grade level in reading. No evidence was presented during this hearing of the child's current level of progress in reading during his previous years; maybe the child gained academically in the area of reading, maybe he did not.

Testimony was presented that the results from these tests could not accurately gauge the child's present levels in that area. (See, Trial transcript, p. 407). He did meet his ARD Committee expectations in this subject. Still, nobody disputes the child has not had a learning disability in the area of reading. (See, Trial transcript, p. 384, 389).

When looking at Mathematics, a more poignant picture emerges. In the Spring 2004, the child was in the \*\*\* grade. He took the SDAA and met the ARD expectations with a score of 4-III indicating he mastered \*\*\* grade math. The ARD Committee set a goal of 5-II for the following year, and in the Spring 2005 when the child was in the \*\*\* grade, he scored a 5-I on his SDAA indicating he had only beginning knowledge of \*\*\* grade math knowledge and skills. The child failed to meet expectations, and in fact failed to make any advancement as shown below.

The following year, knowing the child wholly failed to master anything in \*\*\* grade math, the ARD Committee set a goal for the child to take the \*\*\* grade SDAA and score a 7-I. This curriculum put the child on grade level, since he was in the \*\*\* grade at that time, even though he had shown no knowledge or skills for \*\*\* grade math and had completely bypassed \*\*\* grade math. (See, Trial transcript, p. 399). Still, the district points to the fact that when the child took the SDAA Mathematics exam in the Spring 2006, he met ARD expectations by scoring a 7-I. (See, Trial transcript, pp. 375). The problem with the contention that the child progressed by meeting his ARD expectations in scoring a 7-I, is that as \*\*\*, the assistant principal at \*\*\* School, admitted under oath, a child will score 7-I just for

taking the exam. There is no minimum number of right answers needed to achieve that 7-I level. (See, Trial transcript, p. 408). This testing score demonstrates nothing when it comes to academic achievement. The only evidence presented to this hearing officer was that the child, when in the \*\*\* grade, could not score beyond a 5-I in his SDAA in math. He could have made that same score had he taken this same exam the prior year, when he scored a 4-III. No progress in this area has been demonstrated since the child's \*\*\* grade year and his LD of oral comprehension could have been a factor in that development.

**Petitioner's Issue No. 2 - The district denied the child FAPE and violated his rights by failing to properly identify the child.**

The petitioners allege the child was denied FAPE and had his rights violated by the district's failure to properly identify the child. This allegation is without merit. The child was identified and given the protections of IDEA in the Spring 2002. He was classified as a special education student with his primary disability being Emotional Disturbance, his secondary being Learning Disabilities, and his tertiary being OHI – ADHD. (See, Trial transcript, pp. 169; Petitioner's Exhibit #2, p. 296). When the child's three year re-evaluation was ultimately completed, the child's special education eligibility continued, with no interruption in services, and his disabilities remained the same, and in the same order. (See, Trial transcript, p. 415; See, Petitioner's Exhibit #1, p. 387, 429). No evidence was presented that the district failed to properly identify the child.

**Conclusions of Law**

1. The child is a student eligible for special education and related services under the provisions of IDEA04, and its related statutes and regulations.
2. El Paso ISD is the local education agency responsible for the providing the child with the free appropriate public education pursuant to IDEA04, and is a legally constituted independent school district operating as a political subdivision of the State of Texas.
3. This hearing officer has jurisdiction over this matter since not all causes of action were resolved prior to the commencement of the due process hearing.

4. The district failed to conduct the three year evaluation pursuant to the requirements of the REED Committee, namely its failure to gather all the data requested.
5. The district convened an ARD Committee on February 7, 2006 and developed the child's IEP based partly on new data gathered by \*\*\*, and old data from July 2002.
6. The district was late in convening the REED Committee on November 2, 2005 and was also late in finally completing all of the evaluations which were ordered. As a result, the child operated under an outdated IEP during the Fall 2005, Spring 2006, and the Fall 2006.
7. The district violated the provisions of IDEA04 and denied the child FAPE by (a) failing to conduct a three year re-evaluation on or before the summer 2005 in accordance with the timeline in IDEA04, (b) failing to gather all data requested by the November 2, 2005 REED Committee, (c) developing an IEP in February 2006 which was based, in part, on old FIE data from July 2002 which was no longer an accurate portrayal of the child's disabilities, and (d) allowing the child to lose three semesters of school without an IEP in place that would address his current needs and disabilities.
8. The district's failure to timely conduct the three year re-evaluation, its failure to gather all data as required by the REED Committee, and its developing an IEP for the child in February 2006 based in part on outdated information were procedural violations of IDEA04. These procedural violations impeded the child's right to FAPE and caused a deprivation of educational benefits to the child.

## **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 the petitioners is GRANTED.

IT IS ORDERED that El Paso ISD's renewed Motion to Dismiss is hereby DENIED.

IT IS ORDERED that El Paso ISD shall have the child evaluated by a speech therapist based upon the findings of \*\*\* that the child has a learning disability in the area of oral expression. IT IS FURTHER ORDERED that the results of that evaluation shall be presented to the ARD Committee referenced immediately below for consideration in development of the child's IEP.

IT IS ORDERED that El Paso ISD, after the speech therapy evaluation ordered above has been completed, shall immediately convene an ARD Committee meeting to develop an IEP that will address the child's current needs and

disabilities, based upon the \*\*\* Psychological Evaluation, the \*\*\* FIE, and the speech therapy evaluation referenced above.

SIGNED this 25th day of October, 2006.

Tomas Ramirez III,  
Special Education Hearing Officer

**Cases Cited**

*Friends of the Earth v. Laidlaw*, 120 S.Ct. 693 (2000)

*Buckhannon Board and Care Home v. West Virginia D.H.H.R.*, 121 S.Ct. 1835, 1842 (2001)

*Bend-Lapine School Dist. v. D.W.*, 152 F.3d 923, 28 IDELR 734 (9th Cir. 1998)

**Statutes and Regulations Cited**

20 U.S.C. §1400 et.seq.

**Treatises Cited**

Peter W.D. Wright and Pamela Darr Wright, *Wrightslaw: IDEA 2004*

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# DOCKET NO. 268-SE-0806

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

PETITIONER

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

## SYNOPSIS OF DECISION

Whether district failed to provide the child with FAPE and deprived him of an **ISSUE:** educational benefit based upon the failure of the district to properly and adequately evaluate the child.

**HELD:** For Petitioner.