
DOCKET NO. 041-SE-1006

STUDENT BNF PARENT
PETITIONER

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

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner (hereafter “parent”), as next friend and on behalf of her son (hereafter “student”), brought this action against Houston Independent School District (hereafter “Houston ISD”) pursuant to the Individuals with Disabilities Education Improvement Act (hereafter “IDEA”), 20 U.S.C. §1400 et seq. The parent alleged thirteen procedural and substantive violations of the Act were committed by Houston ISD and claimed these violations resulted in the denial of a free appropriate public education to the student during the spring and summer of the 2005-2006 school year. His parent seeks, among other relief, a private school placement.

Procedural History

The parent filed this request for a due process hearing with the Texas Education Agency (hereafter “TEA”) on October 18 2006. The hearing was initially set for

December 7, 2006. At the time this due process complaint was filed, there was pending between the parties another due process hearing complaint (TEA Docket No. 015-SE-0906) brought by Houston ISD for purposes of overriding the lack of parental consent for an evaluation ordered by the Honorable Sharon Ramage in TEA Docket No. 362-SE-0605. By agreement of the parties these matters were consolidated. On November 14, 2006, the parent filed an amended complaint, which resulted in a recommencement of the timelines for these consolidated complaints. As a result, the hearing in the consolidated cases was scheduled for January 4, 2007.

The parent failed to appear for the due process hearing on January 4, 2007. Consequently, the consolidated cases were separated, Houston ISD proceeded to hearing on its due process hearing request in TEA Docket No. 015-SE-0906, and the hearing in the above matter was rescheduled for January 25, 2007.

The parent sought and obtained a continuance of the January 25, 2007 hearing date on the basis of inclement weather and the inability of the parties to complete discovery. The hearing was rescheduled for February 23, 2007. On February 1, 2007, the parent filed a Motion to Recuse this Hearing Officer, which resulted in a stay of this proceeding. A hearing on the Motion to Recuse was held by the Honorable Stephen P. Webb and a final order denying the parent's Motion to Recuse was entered on March 8, 2007. This matter was rescheduled for hearing on April 30 and May 1, 2007. On April 26, 2007, the parent filed a second Motion to Recuse, which resulted in another stay of this proceeding. On May 7, 2007, the Honorable Lucius Bunton entered an Order dismissing the Motion to Recuse with prejudice.

The hearing was rescheduled and held on June 18, 2007, and the decision due date in this matter was extended by the parties to July 14, 2007.

Based on the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law. Certain findings of fact and conclusions of law may also be contained in the discussion section of this decision:

Findings of Fact

1. The student is *** years old, in the **th grade and resides with his parent within the jurisdictional boundaries of Houston ISD.
2. Houston ISD is a duly incorporated school district under the laws of the State of Texas and is a local educational agency responsible for providing the student with a free appropriate public education.
3. The student is eligible for special education services as a student with a serious emotional disturbance. He has demonstrated over a long period of time and to a marked degree an inability to build and maintain satisfactory interpersonal relationships with peers and teachers, displays inappropriate types of behavior or feelings under normal circumstances, and has a general pervasive mood of unhappiness or depression.
4. In ****, when the student was * years old, he was hospitalized due to his severe aggressive and defiant behavior, as well as homicidal ideation. He has intellectual deficiencies in addition to being behaviorally maladjusted. He was hospitalized again in **** and was discharged with a diagnosis of Attention Deficit Hyperactivity Disorder/Conduct Disorder, and mild mental retardation.
5. In ***, a psychological evaluation of the student was completed at Intracare Hospital. This hospitalization was precipitated by the student engaging in verbal and physical aggression at school, receiving multiple criminal citations, and for running away from home. His DSM-IV diagnosis included Bipolar Disorder, not otherwise specified; Psychosis, not otherwise specified; Posttraumatic Stress Disorder (provisional); and Mild Mental Retardation.
6. The student attends ****t (*****), an out-of-district facility operated by the Harris County Department of Education. The student was initially placed in this facility in ****, and remained in this placement through the ****-**** school year. He did not return to this placement in the fall of ****. He returned to **** in January, ****.
7. *** is an alternative, non-disciplinary educational placement for children with behavioral issues. The campus uses the Boys Town Level System and provides a small student-teacher ratio with counseling and behavioral support. The goal of the program is for the student to earn points to integrate back to his home campus. There are five levels to the program, with level 5 being the highest. The student achieved level 2 and was in the process of being placed on level 3 at the end of the **** school year. Level 3 would have allowed for some transitioning of the student to his home school. However, the student's aggressive, non-compliant and disruptive behaviors coupled with his failure to return to *** in the fall of 2006, prevented this transitioning from taking place.
8. **** is a voluntary educational placement. The General Revenue Agreement between Houston ISD and the Harris County Department of Education provides for *** to operate specialized facilities for furnishing educational day placement services and counseling services for 65 students with disabilities. Under the contractual provisions, both Houston ISD and the Harris County Department of Education acknowledge that the parents of students assigned to this placement

- have “voluntarily” given their permission for students to receive the services to be provided by this Agreement. [P. Exh. #10].
9. On June 30, 2005, the parent filed a request for a due process hearing (TEA Docket No. 362-SE-0605) with the Texas Education Agency. It was assigned to the Honorable Sharon M. Ramage. The hearing was held on December 5, 2005 and a decision was rendered on January 16, 2006. Hearing Officer Ramage found the District’s educational program during the 2004-2005 school year and the 2005-2006 school year through December 5, 2005, to be deficient, both procedurally and substantively. She noted the student exhibited significant behavioral difficulties in the classroom and criticized the District for failing to timely and properly obtain evaluations and for a lack of sufficient attempts to find appropriate behavioral intervention strategies. However, Hearing Officer Ramage declined to order a change in placement stating that she was “not convinced based on the record that an appropriate educational program cannot be implemented at *** with further evaluation and better collaboration among all stakeholders in (the student’s) education.” In formulating the appropriate relief, Hearing Officer Ramage determined that additional assessment data was needed, and that additional counseling services were needed. She denied a request for compensatory educational services and, as indicated, denied a request to change the student’s educational placement. The hearing officer ordered the parties to complete a full and individual evaluation of the student, including a functional behavior assessment no later than 45 days from ***** - the date of the Order. The parent was ordered to cooperate with the District in the conduct of the full and individual evaluation and to present the student for such an evaluation. Pursuant to the Order, the full and individual evaluation was to include recommendations from the student’s psychiatrist and the staff where he had been hospitalized, including the hospital’s educational personnel, regarding the content of the student’s individualized education plan and behavior intervention plan, and educational placement. The parties were also ordered to convene an ARD Committee meeting upon completion of the evaluations to implement the recommendations of the evaluator. Also, the parties were ordered to convene an ARD Committee meeting within 10 days of the date of the Decision to begin implementation of the relief ordered.
 10. After this decision was issued, Houston ISD timely convened an ARD Committee on **** to update the student’s IEP and BIP in response to the findings of the Hearing Officer.
 11. Prior to the ***** ARD Committee meeting, a functional behavioral assessment of the student had been completed. It identified two areas of problematic behaviors, one being “noncompliance” and the other being “negative verbalizations.”
 12. The functional behavioral assessment found that the student engaged in inappropriate behaviors in the classroom to delay or avoid tasks, to seek power or control, and/or to express frustration and anger. Positive supports recognized as effective in addressing these behaviors were verbal and physical prompting or redirection, visual prompting, removing distracting materials, preferential seating, reducing the length and number of directives, teaching and establishing clear rules, providing choices, cooling off periods, development of a behavior chart,

- counseling or conferencing and the level system implemented in the classroom. Effective positive reinforcers were private and public praise, the class/school-wide reward system, the tangible reward of trading of items, earned activities or privileges, free time, and allowing the student to act as the teacher's helper. Consequences identified as effective in addressing the student's behavior included private correction, reprimand/warning, failure to earn reinforcers, escort between classes, loss of incentive or privilege, class discipline system, student-teacher conference, administrative conference, parent notice or meeting, and in-building suspension.
13. Based on this functional behavior assessment, the ARD Committee developed a Behavior Support Plan for the student. The Behavior Support Plan targeted the student's noncompliance and negative verbalizations.
 14. The **** ARD Committee also updated the student's academic and counseling IEPs and determined that his placement at the **** campus remained appropriate with the expectation that he may be able to transition back to his home campus within a couple of months if his behaviors remained under control.
 15. An ARD Committee meeting held on **** confirmed the decisions of the **** ARD Committee. It also increased the student's counseling services to 8 hours per week.
 16. The parent failed to attend either the **** ARD Committee meetings.
 17. Beginning on or about ****, Houston ISD sought informed written consent from the parent for conducting the full and individual evaluation of the student, including consent to perform psychological and counseling evaluations.
 18. Houston ISD also sought from the parent consent for the release of the student's confidential medical information maintained by his psychiatrist and hospital staff.
 19. The parent sent written informed consent for the psychoeducational component of the full and individual evaluation, which was received by Houston ISD on or about ****.
 20. The psychoeducational portion of the student's full and individual evaluation was completed by Houston ISD on ****.
 21. The parent also sent written informed consent for the psychological and counseling assessments and a signed release for access to confidential medical information of the student to Houston ISD, but for unknown reasons, Houston ISD never received them.
 22. Thereafter, the parent refused to sign any additional consent or release forms for these evaluations and medical information.
 23. The parent's refusal to provide these forms was due to her mistrust of Houston ISD. This refusal to resubmit these forms to Houston ISD constituted a lack of cooperation by the parent, resulting in a year delay in obtaining the necessary evaluations for the student.
 24. Because the parent failed to provide the consent forms, Houston ISD requested a due process hearing seeking to override the lack of parental consent for these evaluations.
 25. On ****, a decision was rendered authorizing Houston ISD to complete psychological and counseling evaluations of the student without parental consent.
 26. On ****, Houston ISD completed its psychological evaluation of the student.

27. Houston ISD acted in good faith in attempting to obtain timely consent for the evaluations and the release of medical information from the parent.
28. The student continues to have clinically significant symptoms of hyperactivity. He engages in an unusually high number of behaviors that adversely affect other children in the classroom. These include acting out-of-control; acting without thinking; calling out in class; disrupting other students, their school work and activities; not staying seated, not waiting turns, poor self-control, being overly active, and interrupting others when they are speaking.
29. The student continues to display an unusually high number of aggressive behaviors. He is argumentative, defiant and threatening to others. He often annoy others on purpose, loses his temper, teases others, defies his teachers, calls students names, often hits students, sometimes threatens to hurt others, sometimes bullies others, and sometimes seeks revenge on others.
30. The student continues to display conduct problems. He engages in rule-breaking behavior, uses foul language, deceives others, uses other student's possessions without permission, often lies and cheats in school, and sometimes sneaks around.
31. The student continues to display attention problems. He is easily distracted from class work and lectures and sometimes has a short attention span. He also engages in behaviors that are considered strange and odd and he generally seems disconnected from his surroundings. He sometimes seems out-of-touch with reality, babbles to himself, sometimes seems unaware of others and sometimes says things that make no sense. [R. Exh. #10].
32. Socially, the student has difficulty complimenting others, never tries to bring the best out in others, never congratulates others, never encourages others.
33. He demonstrates poor expressive and receptive communication skills. [R. Exh. #10].
34. In the spring of 2006, the student engaged in the following behaviors resulting in disciplinary/incident reports and consequences:

*** – student was angry for having to be searched and responded to another student's comments by cussing and threatening to kick his ass. He then hit the other student and they began fighting. This resulted in 2 days of on-campus intervention (suspension).

*** – student became very confrontational when being corrected for inappropriate behavior; got upset while playing Jeopardy and threw a desk and cursed. This resulted in 3 days of on-campus intervention.

*** – student grabbed his crotch and made comment to another student about his mother and knocked the other student to the floor. This resulted in a referral to the principal and 2 hours of detention.

*** – student refused to follow instructions to go to his home room and instead went to the gym. This resulted in 1 hour of detention.

*** – student used inappropriate language and threatened the coach. This resulted

in 2 days of on-campus intervention and notification to the student's probation officer.

*** – student ran by a teacher, refused to follow directions, and was insubordinate and discourteous. This resulted in ½ day of on-campus intervention.

*** – student refused to go to his classroom, cussed and pushed a teacher. This resulted in a letter to the parent notifying her of his difficulty transitioning in the afternoon and that he would begin going to the office at dismissal time.

*** – student had verbal confrontation with another student and then struck the student on the shoulder. This incident was referred to the police officer on campus.

35. Despite these incidents, by the end of the **** school year, the student had completed level 2 of the Boys Town Level System and was in the process of completing his community service project, a prerequisite for moving to level 3.
36. The student received passing grades and credits in all of his academic classes.
37. The *** ARD Committee designed the student's IEPs for a one year period, to be completed by **. Consequently, by **, the end of the 2005-2006 school year, the student had yet to master any goals contained in his IEP. However, he had made progress toward mastery of most of his goals. The student mastered three of eight short term objectives in the area of Secondary Math at the fourth grade functional level. In Secondary Science and Health, the student mastered four out of nine short term objectives. The student mastered three of nine short term objectives in 9th grade World Geography and 10th grade U.S. History. In his Technology Applications Program, he mastered three of five short term objectives. In his Physical Education class, he mastered all four of his short term objectives. Regarding the goal achieving Secondary English skills at the third grade functional level in writing composition and listening/viewing, the student had yet to master any of its short term objectives.
38. The student's counseling IEP contained two goals. The first goal was for the student to use developmentally appropriate language skills as needed for personal/social control, specifically in the areas of expressing feelings, complaints, ownership, anger, disapproval, and frustration. His mastery level was 75% and the student failed to reach this mastery level. The second goal was for the student to perform developmentally appropriate compliance behaviors, specifically in the areas of identifying and imitating positive peer behavior, responding to anger and intimidation without physical or verbal violence, and complying with authority requests. His mastery level was 75% and again the student failed to reach this mastery level. [R. Exh. #12].
39. Based on current assessment data, the student has made some meaningful academic progress. In comparing his standardized test scores from January, **** to those obtained in March **, he made some improvement in reading – increasing from a kindergarten level (K.5) to a third grade level (3.5); in math – increasing from a first grade level (1.1) to a fourth grade level (4.4); and written

- language – increasing from a kindergarten level (K.9) to a third grade level (3.3). Although the student’s progress has been slow, it is commensurate with his abilities taking into account the nature and severity of his emotional disturbance and his mild mental retardation.
40. The student did not return to school in the fall semester of the 2006-2007 school year. He returned to school on ***, 2007.
 41. When the student returned to school he was placed back on level 1.
 42. The parent filed this due process complaint with TEA on October 18, 2006.

Discussion

The primary issue in this proceeding is whether Houston ISD denied the student a free appropriate public education during the spring and summer of 2006. See 20 U.S.C. §1415(f)(3)(E)(i) and (ii).

In *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-48 (5th Cir. 1997), the court summarized the standard of a “free appropriate public education” as set forth in the U.S. Supreme Court decision in *Board of Education of Hendrick Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S. Ct. 3034 (1982). An IEP need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him "to benefit" from the instruction. In other words, the IDEA guarantees only a "basic floor of opportunity" for every disabled child, consisting of "specialized instruction and related services which are individually designed to provide educational benefit." Nevertheless, the educational benefit to which the Act refers and to which an IEP must be geared cannot be a mere modicum or de minimis; rather, an IEP must be "likely to produce progress, not regression or trivial educational advancement." In short, the educational benefit that an IEP is designed to achieve must be "meaningful."

In *Cypress-Fairbanks*, the court set forth four factors that serve as an indication of whether an IEP is reasonably calculated to provide a meaningful educational benefit under the IDEA. These factors are whether (1) the program is individualized on the basis of the student's assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are

provided in a coordinated and collaborative manner by the key "stakeholders"; and (4) positive academic and nonacademic benefits are demonstrated. 118 F.3d at 253.

A party attacking the appropriateness of an IEP established by a local educational agency bears the burden of showing why the IEP and resulting placements were inappropriate under the IDEA. *Id. Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005).

Significant procedural violations may also result in the denial of a free appropriate public education to a student. This occurs when the procedural inadequacies – (1) impeded the child's right to a free appropriate public education; (2) significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education; or (3) caused a deprivation of educational benefits. See 20 U.S.C. §1415(f)(3)(E)(ii).

Student's Educational Program and Placement

The first issue as formulated by the parent is whether student's proposed transition to his home campus after receiving the decision from the Honorable Sharon Ramage in TEA Docket No. 362-SE-0605 was appropriate or whether an alternative placement was appropriate and the least restrictive environment for implementation of his IEP. This issue raises the appropriateness of the student's current educational placement¹.

¹The party requesting the hearing is not allowed to raise issues at the due process hearing that are not raised in the due process complaint notice, unless the other party agrees otherwise. 20 U.S.C. §1415(f)(3)(B). In this case, the student's educational placement was at a separate facility designed for students with disabilities. The **** ARD Committees had indicated a possibility of beginning to transition the student to his home campus. This did not occur. However, it is in this vein that the parent raised the issue of the appropriateness of the student's educational placement

In TEA Docket No. 362-SE-0605, the hearing officer found the District's educational program during the 2004-2005 school year and the 2005-2006

school year through December 5, 2005, the date of the hearing, to be deficient, both procedurally and substantively. She noted the significant behavioral difficulties the student exhibited in the classroom and criticized the District for failing to timely and properly obtain evaluations and for a lack of sufficient attempts to find appropriate behavioral intervention strategies. However, the Hearing Officer declined to order a change in placement stating that she was “not convinced based on the record that an appropriate educational program cannot be implemented at *** with further evaluation and better collaboration among all stakeholders in (the student’s) education

An ARD Committee meeting was held on ****, which was not attended by the parent, wherein the Committee recommended that in approximately two months, the student be considered for transitioning back to his home school if his behavior ratings continued to be appropriate. At that time, the student was on level 2 and progressing toward level 3. [R. Exh. #12]. On ****, another ARD Committee meeting was held wherein the ARD Committee found the student to be on level 3 and decided he would begin transitioning back to his home school at the beginning of the next grading period. [R. Exh. #13]. The parent did not attend this ARD Committee meeting, apparently based on the advice of her legal counsel.

The parent claims that the placement analysis by these ARD Committees was suspect and fraught with inconsistencies. She cites to the ARD document of **** stating the student was on level 2 and then the ARD document of **** stating the student “continued” on level 3. She contended she was never notified of any change in his level and that only 8 school days had elapsed between these meetings. Additionally, she cited to a school summary prepared by the school counselor in 2007, which indicated that during the 2005-2006 school year, the student successfully completed levels one and two and was in the process of applying for merit level (level 3) and that he had started his community service project and was doing quite well. She contends that this was inconsistent with the **** ARD statement that the student had reached level 3.

The evidence presented at the hearing showed that the student's behavior had been controlled to the extent that he completed level two in ****, and had made application for level 3, which first required completion of a community service project. The student had not completed the project by the end of the 2005-2006 school year and therefore never progressed fully to level 3. Although, as noted by the parent, there is a discrepancy in the documentation regarding the level to which the student progressed during the 2005-2006 school year, this inaccuracy in the record is not material. The primary issue is whether the student's educational placement at *** remained an appropriate educational placement for the student during that time period, or whether the student should have been transitioned to a less restrictive educational environment.

The parent claims that the student should have been transitioned to a less restrictive setting and seeks as relief a private school placement at the ****. The parent objects to the *** placement and believes that its staff is incapable of developing and implementing a behavior intervention program capable of improving the student's classroom behavior. I find, however, that the parent failed to establish by a preponderance of the evidence the inappropriateness of the student's IEP or placement at **** after **** through the remainder of the 2005-2006 school year. The parent is rightfully concerned that the student has been in *** since *** and has yet to reach a level allowing his transition back to his home school or into another less restrictive placement. However, concern does not equate to evidence. There is no evidence that the student's program was not being appropriately implemented or that it was in some manner not reasonably calculated to provide the student with an educational benefit. Admittedly, after reviewing the student's counseling IEP, coupled with the incident reports for the spring semester, it does not appear that the student made any significant progress behaviorally. But, as the testimony indicated, the student's behavior did not deteriorate and he remained at a level just below that which would allow for some transitioning to his home school. The parent failed to present any controverting evidence that the student's IEP was inappropriate or that it could be

effectively implemented in a less restrictive educational environment. Instead, the parent fixated on what she termed “falsification” of documents throughout much of the hearing, and not on her concerns regarding implementation and/or the appropriateness of the student’s educational program. Additionally, the parent failed to present any substantial evidence concerning the appropriateness of the private placement she sought at the ****. There was no evidence of any educational program the **** might offer to address the academic and behavioral issues of the student. Moreover, the evidence established that the student made some educational progress during the spring semester of 2006. He mastered some of the short term goals and objectives of his IEP within 4 months of their inception. He received passing grades his classes, and although his grades and his curriculum were certainly significantly modified to comport with his abilities, this, coupled with his IEP, were the only relevant evidence presented regarding the student’s academic progress during the spring of 2006. There was also some evidence of overall academic gain. His standardized test scores indicated he made some academic progress since 1999 while at ****. Based on the foregoing evidence and the presumption in the law that a student’s educational program and placement as devised by the school district are appropriate, a presumption not overcome by the parent, I find that the student was provided a free appropriate public education in the least restrictive environment after December 5, 2005 through the end of the 2005-2006 school year. I find that his IEP was individualized on the basis of the student's assessment and performance; his educational program was administered in the least restrictive environment; the services were provided in a coordinated and collaborative manner by the key "stakeholders"; and positive academic and nonacademic benefits were demonstrated. *Cypress-Fairbanks Indep, Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-48 (5th Cir. 1997)

*** is a highly structured specialized educational placement operated by the Harris County Department of Education. The General Revenue Agreement between Houston ISD and the Harris County Department of Education provides

for *** to operate specialized facilities for furnishing educational day placement services and counseling services for 65 students with disabilities. Under the contractual provisions, both Houston ISD and the Harris County Department of Education acknowledge that the parents of students assigned to this placement have “voluntarily” given their permission for students to receive the services to be provided by this Agreement. [P. Exh. #10]. Although the parent in this case did not expressly revoke permission for her son’s services and placement at the *** campus, it is certainly inferred from her testimony that she wants her son immediately removed from this campus. Since this placement is not the student’s home campus, is not a facility operated by Houston ISD, but is apparently “voluntary” educational placement, the parent would appear to have the right to remove her son from this educational placement by notifying Houston ISD that she is revoking permission for this out-of-district placement. However, this placement was confirmed by an ARD Committee. Only an ARD Committee can determine the educational placement for the student. Accordingly, upon request of the parent, an ARD Committee would need to determine if this placement is voluntary, if parental consent for this placement has been revoked and if so, review the continuum of educational placements available and change the student’s educational placement in accordance with the least restrictive environment provision of the IDEA. See 34 C.F.R. §§300.114-300.116.

Compliance with Decision and Order of Hearing Officer

The parent claims that Houston ISD failed to comply with the Decision and Order of Hearing Officer Ramage in TEA Docket No. 362-SE-0605. Hearing Officer Ramage’s Order required Houston ISD to complete a full and individual reevaluation of the student within 45 days of the date of the Order and further required that the parent cooperate in the conduct of the full and individual reevaluation, including presenting the student for the reevaluation. The evidence confirms that the parties failed to comply with the Order since the full and individual reevaluation of the student was not completed within 45 days. The issue is therefore whether Houston ISD was the responsible party for failure to

timely implement the Order

A full and individual reevaluation of the student, including a functional behavior assessment, was to have been completed by March 2, 2006. It was to include recommendations from the student's psychiatrist and the staff where he had been hospitalized, including the hospital's educational personnel, regarding the content of the student's IEP and behavior intervention plan and educational placement.

On or about February 8, 2006, the parent provided Houston ISD with written consent for the psychoeducational portion of the student's reevaluation. The parent also sent Houston ISD signed consent forms for the psychological and counseling assessments and a signed release for access to confidential medical information of the student. However, the District claimed it did not receive them and continued to request such forms from the parent. The parent refused to sign any additional consent forms because she had developed a deep seated mistrust of the District and could not understand how they could claim they did not receive these consent forms when she had sent them in the same envelope with the form they acknowledged receiving. This stalemate lasted for several months. After exhausting its attempts to obtain these forms from the parent, Houston ISD requested a due process hearing to override the lack of parental consent for these evaluations.

I find that Houston ISD acted timely and in good faith in attempting to obtain written consent from the parent for the evaluations and the release of medical information regarding the student. I also find that the parent initially cooperated in timely signing and forwarding the necessary consent forms to Houston ISD, but unfortunately, they were either not received or were misplaced by Houston ISD. Moreover, I find that the parent thereafter failed to fully cooperate in the evaluation process as required by the Order of Hearing Officer Ramage when she refused to provide Houston ISD with another copy of the signed consent forms. Unfortunately, as a result of this lack of cooperation, the full and individual

evaluation of the student was delayed for over one year. Houston ISD is therefore absolved of any liability associated with its failure to comply with Hearing Officer Ramage's Order.

Notice of Student's Special Education Status to Law Enforcement Personnel for Criminal Complaints

The parent complains that Houston ISD failed to provide notice of the student's special education status to law enforcement personnel for criminal citations issued to the student.

The IDEA contains a rule of construction which provides that nothing in the Act prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. See 20 U.S.C. §1415(k)(6)(A). However, the IDEA also provides that an agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. 20 U.S.C. §1415(k)(6)(B).

The parent claims the student received two criminal citations, one in 2004, and the other on ****, 2005, and that in these instances, Houston ISD failed to ensure that copies of the student's special education and disciplinary records were properly and timely transmitted to the appropriate authorities. Such claims are barred by the one year statute of limitations as this due process complaint was not brought within one year of when the parent knew or with reasonable diligence should have known that student's special education and disciplinary records had not been provided to the appropriate authorities. Even assuming these claims were not barred, the parent failed to produce any evidence that such information had not been provided to law enforcement personnel. There was no testimony from any law enforcement personnel to support the allegation that such records had not been transmitted to them. Moreover, there was no evidence as to which

school personnel were responsible for transmitting such documentation or that it had not been done. Instead, the only evidence presented by the parent was testimony from the school district coordinator assigned to monitor the campus that she was not aware of the citations or whether any information was transmitted to law enforcement personnel. [T. 174-175]. However, there was no evidence to confirm it was the responsibility of this witness to provide such information. Without such evidence, I am unable to make any finding that the student's special education information had not been provided to law enforcement personnel. For the foregoing reasons, I find that the parent failed to prevail on this issue.

Falsification of Documents

The parent spent an inordinate amount of time during the hearing attempting to establish what she deemed to be a falsification of documents by Houston ISD. The parent was allowed leeway in the presentation of this evidence under the assumption that these matters might constitute either a procedural or substantive denial of a free appropriate public education. The parent presented evidence establishing that certain documents contained errors or misstatements². However, none of these errors or misstatements were material or otherwise rose to a level that would even remotely constitute a procedural or substantive denial of a free appropriate public education to the student. None of these errors impeded the child's right to a free appropriate public education; or significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education; or caused a deprivation of educational benefits. See 20 U.S.C. §1415(f)(3)(E)(ii). However, to the extent such documents contain inaccuracies or errors, the appropriate forum for correction of such documents would be the hearing process prescribed by the Family Education Rights and Privacy Act (FERPA). See 34 C.F.R. Part 99; See also, 34 C.F.R. §§300.618-300.621.

²Examples include whether messages and dates on a communication log were accurate; whether inconsistent statements were made by a witness about making an appointment with the parent ***; inconsistent dates for

the mailing of a package; whether information contained in an ARD report regarding behaviors was complete; inconsistent statements concerning the level system the student achieved in the spring 2006; and whether a misstatement of an issue in a prior due process hearing was made by District counsel.

ARD Committee Notices

The parent claims that the ARD Committee notices she received failed to include the names and titles of those who would attend the meeting. The parent argues that just listing the title of the person attending without providing the person's name puts the parent at a disadvantage. She contends she and other parents have the right to know who will be involved in reviewing educational information and making educational decisions regarding their children.

The IDEA's implementing federal regulations provide that notice to the parents must indicate the purpose, time, and location of the meeting and who will be in attendance. 34 C.F.R. §300.322 (b)(i). The regulations do not indicate whether the actual name of the individual must be provided or whether identification by title suffices. I have found no definitive case law on this issue and none was cited by the parties. I do note that 34 C.F.R. §300.321(a) identifies by title those who must be members of an ARD Committee. Clearly, the intent of the regulation is that the parent will have the opportunity to fully participate as an equal member of the ARD Committee. Practically speaking, identifying the participants by name could lead to problems when an individual identified as a participant is unable to attend. One can envision a multitude of reasons that this could occur. It is for this reason that most notices do not identify by name the participants for the meeting. Instead, they are identified by their title. I find that as long as the title of the individual to be in attendance at the meeting is contained in the notice and that person is a required member of the ARD Committee pursuant to 34 C.F.R. §300.321(a), then this constitutes sufficient notice to the parent and complies with the applicable federal regulation.

Written Notification of Eligible Programs for Student

The parent contends that she was entitled to but failed to receive from Houston ISD written notification of programs offered by the District for which the student

might be eligible. The parent does not cite any legal authority for this proposition in her due process hearing request. Houston ISD contends that the parent is referring to Section 30.004 of the Texas Education Code. This Section requires that each school district provide each parent with written information about the availability of programs offered by state institutions for which the district's students may be eligible. However, as noted by Houston ISD, this provision applies only to students with visual or auditory impairments. See 19 TEX. ADMIN. CODE §89.62(b). Accordingly, this provision is not applicable to this student.

The IDEA does not require school districts to provide parents with written notification of various programs for which the student might qualify. However, one duty of an ARD Committee is to develop an individual education program for each student. As part of that development, the ARD Committee members should be aware of the various programs and services available to children with disabilities and this information should be readily shared with members of the ARD Committee. Additionally, ARD Committees are charged with making educational placement decisions and in so doing must be aware of and consider a continuum of educational placements. 19 TEX. ADMIN. CODE §89.1050.

Based on the foregoing, I find the parent's claim to be without merit.

IEP and BIP/Positive Behavioral Supports/Bench Marks

The parent claims that Houston ISD failed to develop or establish an appropriate BIP for the student. In TEA Docket No. 362-SE-0605, Hearing Officer Ramage found that the student's IEP and BIP for the 2005-2006 school year were inappropriate. She found:

"Although a Behavior Intervention Plan was adopted for (the student), many of the behaviors complained of in the ARD Meeting were unaddressed. The BIP did provide for consequences, including positive reinforcements, and a continuum of punitive consequences for those behaviors. However, it was virtually the same BIP which had been in place the previous year, which apparently had not worked in a consistent manner. By the date of the ARD Committee meeting, the District

was on notice that (the student) had been hospitalized in September 2004 for aggressive behaviors, but did nothing to follow up on the need for further assessment. Additionally, the District was on notice that (the student) had been hospitalized on three other occasions during the relevant time frame in that HISD was the school district responsible for providing educational services at Intracare. The District did not appear to respond appropriately to (the student's) cycling behavior by requesting further assessment to determine what adjustments should be made to his program in light of his behavior. From a behavior standpoint, it does not appear that much change was made to (the student's) educational program between the 2003-2004 and the 2004-2005 school year, and on many occasions, the consequences imposed were the same consequences previously identified as being generally not effective. The IEP in place at the time of the December 2005 hearing was the 2004-2005 IEP and the annual ARD and re-evaluation were both several months overdue (compounded by the mother's refusal to participate in an ARD meeting and consent to the evaluation)." [R. Exh. #17].

After this decision, Houston ISD convened an ARD Committee on ***, 2006 to update the student's IEP and BIP in response to the findings of the Hearing Officer.

Prior to the meeting, a functional behavioral assessment of the student had been completed. It identified two areas of problematic behaviors, one being "noncompliance" and the other being "negative verbalizations." The ARD Committee developed a BIP (Behavior Support Plan) for the student which incorporated the findings of the functional behavior assessment. The BIP targeted the student's noncompliance and negative verbalizations. The ARD Committee also updated the student's academic and counseling IEPs and determined that his placement of the *** campus remained appropriate.

The parent complains that the student's BIP was inappropriate and as support cited to the numerous behavior incident reports regarding the student during the spring semester of the 2005-2006 school year. These incident reports indicate

that the student continued to display a significant amount of aggressive behavior toward school staff and other students. It is not clear nor is it explained in the record why these aggressive behaviors were not targeted or otherwise addressed in the student's functional behavioral assessment or his BIP, especially in light of the previous findings of Hearing Officer Ramage that the student's aggressive, non-compliant and disruptive behaviors were persistent and frequent, and that his aggressiveness toward peers was prevalent. The parent failed to present any expert testimony on this issue. The only expert testimony regarding the appropriateness of the student's BIP was from the school psychologist. She testified that although the student did exhibit these behavioral infractions, they were consistent with his level 2 achievement at that campus and they had not increased significantly in intensity or frequency. She opined that the student's BIP was appropriate. [T. 416-417]. Although I find serious concerns in the record regarding the efficacy of the BIP as currently developed, when viewing the totality of the evidence in this proceeding, I must conclude that the parent failed to establish by a preponderance of the evidence that the BIP was, in fact, inappropriate. Accordingly, I find that the student's BIP and IEP as developed at the *****, 2006 ARD Committee meetings and as implemented through end of the 2005-2006 school year were appropriate and reasonably calculated to provide the student with a meaningful educational benefit.

Extended Year Services

The parent claims that the student should have received extended year services during the summer of 2006. The school district claims that no such services were needed because the student had made sufficient academic and behavioral progress. As indicated, the parent has the burden to establish that the student was in need of extended year services during the summer of 2006. To do so required the parent to present evidence that the student was in danger of severely or substantially regressing absent the provision of extended year

services. See 19 TEX. ADMIN. CODE §89.1065. No such evidence was provided. Therefore, I find in favor of Houston ISD on this issue.

Monitoring the Contracted School and Bus Drivers

The parent alleges that Houston ISD failed to adequately and appropriately monitor the *** campus. In support of this claim she elicited testimony from ***, the Houston ISD campus (SOAR) coordinator to the effect that she was unaware the bus driver was not putting a harness on the student or that the student had received criminal citations at the *** campus. The parent contends this evidence confirms the lack of proper monitoring of the *** campus by Houston ISD.

As for the harness, there is no evidence that the student required a harness while riding on the school bus in the spring of 2006. The only evidence in the record shows that a harness on the bus may have been required for the student in 2004. Consequently, this evidence did not indicate a lack of monitoring of the school or transportation by Houston ISD. Moreover, I do not equate testimony from Ms. *** that she was unaware of the criminal citations issued to the student as establishing that she did not adequately monitor the school. There are no material connections between this fact and the overall issue of monitoring a school in general. To prove a lack of appropriate monitoring of the *** campus by Houston ISD, the parent would have had to show that the school district did not provide any proper oversight or monitoring of the campus and that such a lack of supervision in some manner resulted in a denial of a free appropriate public education to the student. I find no such evidence in the record. Accordingly, I find that the parent failed to establish that Houston ISD did not adequately monitor the *** campus or the school bus.

Addressing Envelopes/Failure to Submit Information/Notice of Behavioral Incidents

This issue involves whether Houston ISD made appropriate arrangements to deliver an/or provide parent with documentation, such as notices, behavioral incident reports, consents for evaluations, etc. The parent was quite adamant in her contention that Houston ISD had not provided her with notices or reports she

requested. It is clear there has been a break-down of communication between the parties. This has resulted in a lack of trust on the part of the parent and has adversely affected the ability of Houston ISD to properly educate the student. The IDEA and its implementing federal regulations set forth the school district's obligations to provide notice to the parent. School districts must provide prior written notice to parents any time they propose to initiate or change or refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. 20 U.S.C. §1415(b)(3). They must also provide parents with prior notice of ARD Committee meetings. 34 C.F.R. §300.322. This is the extent of their IDEA obligations for notice. However, parents have the right to review the educational records of their children. There are procedures in place for requesting such records and for parental access to such records. In fact, such records must be provided no later than 45 days from the request. See 34 C.F.R. §300.613. These records do not have to be provided to parents by school districts unless and until they are specifically requested. In the instant case, I find a lack of evidence that any request for records made by the parent was not timely complied with by the school district. Therefore, I find in favor of Houston ISD on these issues.

Advisory

The parent is quite concerned about her son's lack of educational progress while at ***, lack of improvement regarding his behavior, and the issuance of criminal citations or tickets to her son in response to his acts of physical aggression at school. Unfortunately, the lack of cooperation, mistrust and animosity existing between the parent and school officials significantly interfere with the ability of the student to be appropriately educated. Accordingly, it is strongly suggested that the parties put aside their differences for the benefit of the student and work towards improving communication. The Texas Education Agency mediation services may be of assistance in assisting the parties in this regard.

Conclusions of Law

1. The parent, being the party attacking the appropriateness of an IEP established by Houston ISD, bears the burden of showing why the IEP and resulting placement were inappropriate under the IDEA. *Cypress-Fairbanks Indep, Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-48 (5th Cir. 1997).
2. The student was provided a free appropriate public education in the least restrictive environment after December 5, 2005 through the end of the 2005-2006 school year. The student's IEP was individualized on the basis of the student's assessment and performance; his educational program was administered in the least restrictive environment; the services were provided in a coordinated and collaborative manner by the key "stakeholders"; and positive academic and nonacademic benefits were demonstrated. *Cypress-Fairbanks Indep, Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-48 (5th Cir. 1997).
3. The parties failed to comply with the Order of the Hearing Officer in TEA Docket No. 362-SE-0605 when a full and individual evaluation of the student was to have been completed by March 2, 2006. However, Houston ISD acted in good faith in attempting to obtain from the parent timely consent for the evaluations and the release of medical information and is therefore excused from its duty to comply. See *Student bnf Parent v. Houston Independent School District*, TEA Docket No. 362-SE-0605 (January 16, 2006).
4. The IDEA contains a rule of construction which provides that nothing in the Act prohibits an agency from reporting a crime committed by a child with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability. See 20 U.S.C. §1415(k)(6)(A). However, the IDEA also provides that an agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. 20 U.S.C. §1415(k)(6)(B). The parent failed to produce evidence that Houston ISD violated this provision when the student was issued citations in 2004 and 2005.
5. The issue of whether Houston ISD failed to transmit special education and disciplinary records of the student to the appropriate authorities when reporting a crime in 2004 and 2005 were barred by the applicable one year statute of limitations. 19 TEX. ADMIN. CODE §89.1151.
6. The errors or misstatements identified in certain documents in this proceeding were not material nor did these errors rise to a level that would even remotely constitute either a procedural or substantive denial of a free appropriate public education to the student. To the extent such documents contain inaccuracies or errors, the appropriate forum for correction of such documents would be the hearing process prescribed by the Family Education Rights and Privacy Act (FERPA). See 34 C.F.R. Part 99; See also, 34 C.F.R. §§300.618-300.621.
7. The IDEA does not require that parents be provided with written notification of various programs for which the student might qualify. However, one duty of an ARD Committee is to develop an individual education program for each student. As part of that development, the ARD Committee members should be aware of

- the various programs and services available to children with disabilities. Additionally, ARD Committees are charged with making educational placement decisions and in so doing considering various alternative educational placements. 19 TEX. ADMIN. CODE §89.1050.
8. The IDEA's implementing federal regulations provide that notice to the parents of ARD Committee meetings must indicate the purpose, time, and location of the meeting and who will be in attendance. The regulations do not indicate whether the actual name of the individual must be provided or whether identification by title suffices. 34 C.F.R. §300.321(a) identifies by title those who must be members of an ARD Committee. The intent of the regulation is that the parent will have the opportunity to fully participate as an equal member of the ARD Committee. Listing the participants by name would lead to problems when an individual intending to participate is unable to do so. Therefore, as long as the title of the individual to be in attendance at the meeting is identified and that person is a required member of the ARD Committee pursuant to 34 C.F.R. §300.321(a), then this constitutes sufficient notice to the parent and complies with the applicable federal regulation. 34 C.F.R. §300.322 (b)(i).
 9. The parent has the burden of establishing that the student was in need of extended year services during the summer of 2006. To do so required the parent to present evidence that the student was in danger of severely or substantially regressing absent the provision of extended year services. No such evidence was presented. See 19 TEX. ADMIN. CODE §89.1065.
 10. To prove a lack of appropriate monitoring by Houston ISD of the contracted educational placement of the student, the parent was required to show that the school district did not provide proper oversight or monitoring of the campus and that such a lack of supervision in some manner resulted in a denial of a free appropriate public education to the student. No such evidence was presented. Accordingly, no procedural or substantive denial of a free appropriate public education was shown. 20 U.S.C. §1415(f)(3)(E)(i) and (ii).
 11. The IDEA and its implementing federal regulations set forth the school district's obligations to provide notice to the parent. School districts must provide prior written notice to parents any time they propose to initiate or change or refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. 20 U.S.C. §1415(b)(3). They must also provide parents with prior notice of ARD Committee meetings. 34 C.F.R. §300.322. This is the extent of their IDEA obligations for notice. However, parents have the right to review the educational records of their children. There are procedures in place for requesting such records and for parental access to such records. These records do not have to be provided to parents by school districts unless and until they are specifically requested. There is no evidence that any request for records made by the parent was not timely complied with by the school district. See 34 C.F.R. §300.613.
 12. To prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a de minimis failure to implement all elements of that IEP, and instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. *Houston*

Independent School District v. Bobby R., 200 F.3d 341 (5th Cir. 2000). Significant provisions of the student's 2005-2006 IEP had been followed by Houston ISD and the student did receive some educational benefit from his instruction. Houston ISD provided the student with a free appropriate public education during the spring semester of the 2005-2006 school year.

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, I hereby ORDER that all relief sought by Petitioner is DENIED.

SIGNED this 14th day of July 2007.

James W. Holtz

Special Education Hearing Officer

NOTICE TO PARTIES

This Decision is final and is appealable to state or federal district court.

DOCKET NO. 041-SE-1006

STUDENT BNF PARENT
PETITIONER

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

SYNOPSIS OF DECISION

ISSUE: Whether student's educational program and placement in a behavior class on a separate campus under contract with another agency provided student with a free appropriate public education in the least restrictive environment.
Board of Education of Hendrick Hudson Central School District v. Rowley,
CITATION: 459 U.S. 176, 102 S. Ct. 3034 (1982) ; See also 34 C.F.R. §§300.114-300.116.

HELD: For School District. The student made some educational progress during the spring semester of 2006. He mastered some of the short term goals and objectives of his IEP within 4 months of their inception. He received passing grades in his classes, and although his grades and his curriculum were significantly modified to comport with his abilities, this, coupled with his IEP, were the only relevant evidence presented regarding any academic progress during the spring of 2006. There was also some evidence of overall long-term academic gain. His standardized test results indicated that he had made some academic progress since 1999 while at the school. There is a presumption that a student's educational program and placement as devised by the school district are appropriate, a presumption which was not overcome by the parent. The student was provided with a free appropriate public education in the least restrictive environment from December 5, 2005 through the end of the 2005-2006 school year.

ISSUE: Whether Houston ISD failed to comply with prior Order of Hearing Officer?

CITATION: *Student bnf Parent v. Houston Independent School District*, TEA Docket No. 362-SE-0605 (January 16, 2006).

HELD: For School District: The parties failed to comply with the Order of the Hearing Officer in TEA Docket No. 362-SE-0605 when a full and individual evaluation of the student was to have been completed by March 2, 2006. However, Houston ISD acted in good faith in attempting to obtain timely consent for the evaluations and the release of medical information from the parent and is therefore excused from its duty to comply.

ISSUE: Whether Houston ISD ensured that copies of special education and disciplinary records of the student were transmitted for consideration by appropriate authorities when reporting crimes?

CITATION: 20 U.S.C. §1415(k)(6)(B); 19 TEX. ADMIN. CODE §89.1151.

HELD: For School District: The IDEA also provides that an agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. The parent failed to produce evidence that Houston ISD violated this provision when the student was issued citations in 2004 and 2005. Additionally, such claims were barred by the applicable one year statute of limitations.

ISSUE: Whether errors or inaccuracies in student records resulted in a denial of a free appropriate public education to the student?

CITATION: 34 C.F.R. Part 99; See also, 34 C.F.R. §§300.618-300.621.

HELD: For School District: The errors or misstatements identified in certain documents in this proceeding were not material nor did these errors rise to a level that would even remotely constitute either a procedural or substantive denial of a free appropriate public education to the student. To the extent such documents contain inaccuracies or errors, the appropriate forum for correction of such documents would be the hearing process prescribed by the Family Education Rights and Privacy Act (FERPA).

ISSUE: Whether IDEA requires School District's to provide notice to parents of various programs for which student might qualify?

CITATION: 19 TEX. ADMIN. CODE §89.1050.

HELD: For School District: The IDEA does not require that parents be provided with written notification of various programs for which the student might qualify. However, ARD Committees must develop an individual education program for each student. As part of that development, the ARD Committee members should be aware of the various programs and services available to children with disabilities. Additionally, ARD Committees are charged with making educational placement decisions and in so doing must be aware of and consider various alternative educational placements.

ISSUE: Whether Houston ISD was required to include in Notice of ARD Committee meetings the names of the participants?

CITATION: 34 C.F.R. §300.322 (b)(i).

For School District: The IDEA's implementing federal regulations provide that notice to the parents of ARD Committee meetings must indicate the purpose, time, and location of the meeting and who will be in attendance. The regulations do not indicate whether the actual name of the individual must be provided or whether identification by title suffices. The intent of the regulation is that the parent will have the opportunity to fully participate

HELD: as an equal member of the ARD Committee. Listing the participants by name would lead to problems when an individual intending to participate is unable to do so. Therefore, as long as the title of the individual to be in attendance at the meeting is identified and that person is a required member of the ARD Committee pursuant to 34 C.F.R. §300.321(a), then this constitutes sufficient notice to the parent and complies with the applicable federal regulation.

ISSUE: Whether student required extended year services during the summer of 2006?

CITATION: 19 TEX. ADMIN. CODE §89.1065.

For School District: The parent failed to meet her burden of establishing that the student was in need of extended year services during the summer of 2006. To do so required the parent to present evidence that the student was in danger of severely or substantially regressing absent the provision of extended year services. No such evidence was presented.

HELD: 2006. To do so required the parent to present evidence that the student was in danger of severely or substantially regressing absent the provision of extended year services. No such evidence was presented.

ISSUE: Whether School District properly monitored student's contracted educational placement?

CITATION: 20 U.S.C. §1415(f)(3)(E)(i) and (ii).

For School District. To prove a lack of appropriate monitoring by Houston ISD of the contracted educational placement of the student, the parent was required to show that the school district did not provide proper oversight or monitoring of the campus and that such a lack of supervision in some manner resulted in a denial of a free appropriate public education to the student. No such evidence was presented. Accordingly, no procedural or substantive denial of a free appropriate public education was shown.

HELD: monitoring of the campus and that such a lack of supervision in some manner resulted in a denial of a free appropriate public education to the student. No such evidence was presented. Accordingly, no procedural or substantive denial of a free appropriate public education was shown.

ISSUE: What notices must a School District provide to parents and what rights do parents have to review educational records?

CITATION: 20 U.S.C. §1415(b)(3); 34 C.F.R. §300.322; 34 C.F.R. §300.613.

For School District: The IDEA and its implementing federal regulations set forth a school district's obligations to provide notice to the parent. School districts must provide prior written notice to parents any time they propose to initiate or change or refuse to initiate or change the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education. They must also provide parents with prior notice of ARD Committee meetings. Parents have the right to review the educational records of their children. There are procedures in place for requesting such records and for parental access to such records. These records do not have to be provided to parents by school districts unless and

HELD: evaluation, or educational placement of the child, or the provision of a free appropriate public education. They must also provide parents with prior notice of ARD Committee meetings. Parents have the right to review the educational records of their children. There are procedures in place for requesting such records and for parental access to such records. These records do not have to be provided to parents by school districts unless and

until they are specifically requested. There is no evidence that any request for records made by the parent was not timely complied with by the school district.