
DOCKET NO. 143-SE-0306

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

AUSTIN INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

DECISION OF THE HEARING OFFICER

STATEMENT OF CASE

On March 7, 2006, Petitioner, ***, (“Student”), by his next friend, *** (“Father”), who was subsequently joined by his Temporary Guardian, *** (“Mother”), in the above styled and numbered matter, filed a request for due process hearing under the Individuals with Disabilities Education Improvement Act (“IDEA 04”), 20 U.S.C. § 1400 et seq., against the Respondent, Austin Independent School District, (“AISD” or “District”) and alleged that Respondent failed to provide Petitioner with a free appropriate public education (“FAPE”). After several continuances, the pre-hearing conference was held June 12, 2006. Following two other continuances and mediation, this matter came to hearing on December 13, 2006 and concluded on December 14, 2006. Christopher Jonas, attorney, appeared on behalf of Petitioner, and Cynthia Buechler, attorney, appeared on behalf of Respondent.

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

February 5, 2007 in compliance with the forty-five day rule.

Petitioner alleged that since June 24, 2005, Petitioner was denied a free, appropriate public education ("FAPE") because of the following:

1. In Petitioner's November 2004-2005 Individualized Education Programs ("IEPs") for communication, activities of daily living, feeding and behavior, the District failed to provide a baseline (or present competencies) from which progress can be shown and it failed to provide assessment data in those areas;
2. All of Petitioner's November 2005 IEPs are incomplete, lack appropriate baselines, and contain more objectives than can be implemented;
3. Petitioner's current IEP is implemented by a para-professional, and Petitioner's certified teacher is out of the classroom for one-half of each day;
4. Petitioner's November 2005 IEPs in behavior and communication require five (5) hours of related services and are inappropriate in that there is an inadequate amount of time of occupational therapy, speech therapy and behavior specialist services to provide an educational benefit to Petitioner;
5. The District fails to use credible measurement tools and is unable to show that Petitioner has made progress in the areas of behavior and communication;
6. The District failed to provide appropriate training and supports for Petitioner's teacher; specifically, the occupational therapist does not sufficiently train Petitioner's teacher and para-professional regarding implementation of fine motor activities;
7. Petitioner is not in any regular education classes, thus the District's placement for Petitioner is not the least restrictive environment ("LRE");
8. The District failed to provide an appropriate extended school year ("ESY") program for Petitioner from June 24, 2005, and Petitioner showed regression in the fall, 2005;
9. The District refused to complete *** injury sheets for Petitioner during the summer session, 2005;
10. The District failed to provide Petitioner with a one-on-one trained teacher;
11. The District failed to provide Petitioner with a safe environment in that when Petitioner sits in the classroom and bangs his head, no District personnel intervenes; and
12. The District failed to provide a trained speech pathologist to instruct Petitioner in the area of feeding.

As relief, Petitioner requested the following:

1. Placement of Petitioner in the LRE;
2. A one on one teacher with ABA training and continuity for Petitioner;
3. A functional measurement system to measure Petitioner's progress;
4. Appropriate supervision of Petitioner;
5. Appropriate behavioral management of Petitioner;
6. Meaningful social inclusion integrated into Petitioner's teacher day;

7. Appropriate services by a trained speech pathologist to implement an appropriate IEP for feeding for Petitioner;
8. Compensatory occupational therapy for Petitioner; and
9. Two years of compensatory educational services for Petitioner.

FINDINGS OF FACT

Based upon the evidence and argument of counsel, and the agreement by the parties that the limitations period for this due process matter begins June 25, 2005, the Hearing Officer makes the following findings of fact and conclusions of law:

1. The Student is *** years-old, and resides with his father within the geographical boundaries of the District. His mother is his court appointed temporary guardian.
2. The Student has an impairment of severe autism and further meets the eligibility criteria as a child with mental retardation, speech impairment, and other health impairment.
3. The Student is nonverbal, vocalizes very loudly, has motor deficits, has difficulty attending and sustaining a sitting position for a long period of time, and requires assistance with feeding, dressing, toileting, teeth brushing and washing. His problem behaviors include head banging, ear pulling and pinching, flopping to the ground, finger and hand biting, biting his apron, pulling his hair, and grinding teeth together. [Tr. Pages 267, 365, 491; Petitioner’s Exhibits 7, 21, 31; Respondent’s Exhibits 1, 6, 13]
4. The Student functions at a ***, or very basic level, and is placed in a *** classroom. [Tr. Pages 605-606; Petitioner’s Exhibit 16, 21]
5. Regarding the Student’s communication, he functions at a basic fundamental level, needs 5-10 seconds to process in order to respond, and requires very concrete items, such as objects and some meaningful photographs. [Tr. Pages 350, 581-86, 675]
6. The Student’s November, 2004-2005 Individualized Education Plan (“IEP”) required frequency counts and weekly reports as measurement methods and established the following goals and accompanying mastery levels:

GOAL	MASTERY LEVEL
“...demonstrate functional vocational skills WITH specified guidance prompts *** above baseline in 5 trials per week.”	***
“...stack dishes into appropriate compartments WITH specified guidance prompts *** above baseline in 5 trials per week.”	***
“...deliver office supplies to campus staff by	***

pushing a delivery cart WITH specified guidance prompts *** above baseline in 5 trials per week.”	
“...initiate/respond to an interaction or request an object or action with an adult or peer using sign, gesture or physical action *** above baseline in 5 trials per week.”	***
“...manipulate selected musical instruments WITH specified guidance prompts *** above baseline in 5 trials per week.”	***
“...match/sort basic classroom items during functional activities WITH hand-under-hand guidance *** above baseline in 5 trials per week.”	***
“...complete self help tasks WITH specified guidance prompts *** above baseline in 5 trials per week.”	***
“...activate a switch to request a pleasurable activity/work related activities...WITH specified guidance prompts *** above baseline in 5 trials per week.”	***

7. No baselines are stated in the November 2004-2005 IEP goals above listed. [Petitioner’s Exhibit 31]
8. At the November 17, 2004 annual Admission, Review and Dismissal Committee (“ARDC”) meeting, both parents agreed to the Student’s IEP. [Petitioner’s Exhibit 31]
9. The Student’s November, 2005 goals included objectives that contained detailed steps that should be taken to perform each task. The objectives included making choices and self help skills such as brushing his teeth, combing his hair, washing his hands, toileting, refraining from head banging, communication through the use of switches, big macs, manual signs, pictures, gestures and verbal approximations, and performing various vocational tasks. With the exception of social/behavioral skill mastery level of ***, the IEPs set the mastery levels at “****” above baseline for 4 consecutive weeks.” [Respondent’s Exhibit 13]
10. Regarding the Student’s performance, the District provided progress reports and “records...data collections and graphics...” to the parents. The Student’s grades for the 2005-2006 school year were “****” in all subjects and all six week periods. [Transcript Page 48; Petitioner’s Exhibit 10, 18; Respondent’s Exhibit 26]
11. The Student’s teacher collected data during the first four weeks in February, 2005, and that data established a baseline for the Student’s goals and objectives. [Transcript Page 609, 649]
12. From September, 2005 until February, 2006, the Student had a 1:1 designated teacher assistant trained by an AISD autism program specialist. In February, 2006, his teacher was assigned, and continues to be, his primary provider. [Transcript Pages 50, 380-381; Respondent’s Exhibit 6]
13. Petitioner’s teacher has two periods of the school day that are set aside by AISD for conference and preparation time. [Transcript Pages 603-604]

14. In addition to the Student's ARDC meeting, in the 2005-2006 school year, his teacher attended ARDC meetings for 11 students, and chaired one other ARDC meeting. He served on three ARDs as a general education representative and was released from those meetings within 15 minutes. [Transcript Pages 643-645]
15. From August, 2005 to the spring semester, 2006, the teacher to student ratio in the Student's classroom was 1:10. [Transcript Pages 631-635]
16. Prior to the November, 2005 annual ARDC meeting, District personnel, the Father and his representatives attended three pre-ARD planning sessions to develop goals and objectives for the coming year. [Tr. Pages 335-339]
17. The November 30, 2005 ARD documents reflect that the Mastery Levels for the Student's November, 2005-2006 goals in all areas except Social/Behavioral Skills were, "****" above baseline for 4 consecutive weeks." The ARDC comments reflect that a discussion was held concerning baselines and changes to such as mastery of goals and objectives required. [Petitioner's Exhibit 21; Respondent's Exhibit 13]
18. The November 30, 2005 ARDC minutes state that the data, which is in the Student's audit folder, reflected up and down movement in the Student's progress with an overall progress in most areas. The least amount of progress was in communication. [Petitioner's Exhibit 21; Respondent's Exhibit 13]
19. An example of one objective in the November 30, 2005 IEP is as follows:
"Given two (2) daily opportunities to perform the task sequence, [the Student] will complete the following routine. While standing in front of a mirror, and being given a verbal, and/or visual [symbol, sign, photo], and initial shaped motor/touch prompts, [the Student] will indicate his choice of which task presented 2 at a time [brush teeth, brush hair, wash hands] to do first by taking a symbol/photo off the task board and handing it to the adult. During the task, [the Student] will indicate the action to perform [brush, wash], 'want more/stop/go' when he wants to continue. After [the Student] has completed the task, he will indicate the next task by taking another photo/symbol off the task board and handing it to the adult. Once all tasks are completed, [the Student] will communicate 'all finished' by signing 'finished' or placing a photo in the finished box with hand under hand shaping, verbal cueing, visual modeling cues provided by the adult. He will return it to the appropriate shelf in the cabinet." [Petitioner's Exhibit 21]
20. The ARDC attempted to simplify the November, 2005 goals and objectives at the February 17, 2006 ARDC meeting; however, no agreement was reached and the November, 2005 goals and objectives continued to be followed. [Transcript Pages 669-673; Petitioner's Exhibit 16; Respondent's Exhibit 8]
21. The Student showed regression in the fall following Extended School Year ("ESY") 2005, and regained those skills within three to four weeks. [Transcript Pages 325-326, 635, 667]
22. During ESY 2006, regarding the Student's performance, AISD staff collected data, summarized his daily performance, kept a notebook for the Father, and made phone calls to report the Student's successes. [Transcript Page 558]
23. In the fall semester following ESY 2006, the Student recouped his skills almost immediately. [Transcript Page 667]

24. During the 2005-2006 and the current school year, all District providers who worked with the Student were trained by autism program specialists. [Transcript Page 357]
25. The Student had *** accidents during ESY 2005, the first of which occurred on***. After the Father refused to accept the completed *** injury sheet on that day, the form was sent home with the Student on ***. The second accident occurred in the presence of the Student's mother. Both the school nurses and the mother agreed that the Student was not injured. [Transcript Pages 411-413]
26. During the relevant time period, the Student was assigned to no regular education classes, and was taken to regular education classes such as art history, geography, band, jazz band, horticulture, and choir classes as his tolerance level allowed. During the 2005-2006 school year, the Student had extensive exposure to a volunteer program for regular education students that provide service to less fortunate students including those who are cognitively disabled. During the current school year, the Student goes off campus approximately three times per week. [Transcript Pages 619-621, 645-648, 664-666]
27. In the fall, 2006, Petitioner's expert witness, ***, a board-certified behavior analyst, evaluated the Student at the Parents' request, recommended Applied Behavior Analysis ("ABA"), and recommended strategies to decrease his *** behaviors and to increase his communication skills. Her recommended teaching procedures include pairing, errorless teaching, variable ration, easy/hard demands, fast paced instruction, and most-to-least prompts. She recommended sign language as a communication system. [Petitioner's Exhibit 7]
28. In a letter date July 15, 2006, from the Father to ***, principal of special education summer programs, he indicated that the Student's behavior progressed during the 2005-2006 school year in the areas of "independent ambulation, reductions in flopping to the floor, head banging, and self-stimulatory behaviors such as pulling on his ears and simultaneously emitting loud verbalizations"...and feeding "while seated in a chair and at a table." [Petitioner's Exhibit 8]
29. In his Psychological Consultation report, Dr. *** reflected that though the Father believes that the Student is more capable of learning than is acknowledged by AISD, both parents believe that the Student has been able to make progress with his current teacher. [Petitioner's Exhibit 5]
30. During the 2005-2006 school year, the Student accepted small amounts of food at different times during the day. [Transcript Pages 353, 510]
31. In April, 2006, Petitioner's teacher observed that the Student "resisted and continues to resist voluntarily accepting food from school staff without regard to source-i.e. home or cafeteria. This refusal is not absolute. However, the resistance is consistently high." A November, 2005 feeding protocol generated by AISD personnel was used. [Petitioner's Exhibit 14]
32. The Student's mother developed a successful feeding routine for him, and on approximately August 22, 2006, demonstrated it to AISD staff; the District collaborated with the Mother in the development of a new feeding protocol. The Student has been eating at school since that time "after not eating *** years in school." [Transcript 264, 467-468]

33. The Mother agreed with the February 17, 2006 and August, 2006 ARDC meetings. [Transcript Page 274; Respondent's Exhibits 6 and 1]
34. Although AISD typically does not mention methodologies and strategies within the context of ARD documents, strategies associated with applied Behavior Analysis ("ABA") have been used throughout the Student's day during the relevant time period. Among other strategies, AISD uses pairing, errorless teaching, variable ratios, most to least prompts, and works on extinction and replacement behaviors with the Student. [Transcript Pages 370, 386-395, 700]
35. While Petitioner's expert witness, ***, recommends teaching sign language to the Student, AISD uses a total communication approach with the Student for the reason that his limited motoric ability in his hands make precise sign approximations difficult, and the use of objects and photographs are more appropriate to provide consistency. [Transcript Pages 361-362, 699]
36. The Student's private speech therapist, Dr.***, supports the use of "multiple modalities, multiple options" for him including signs, vocalizations and cards. [Transcript Page 200-202]
37. The Student's May 25, 2005 IEP included 25 minutes per week of direct speech therapy services, one hour per month speech therapy consultation services, two hours per semester of occupational therapy consultation services, and two hours per semester of physical therapy consultation services. [Petitioner's Exhibit 26]
38. The November 30, 2005 IEP included 15 minutes per week of direct speech therapy services, one hour per month speech therapy consultation services, two hours per month of physical therapy consultation services, and five hours per month of occupational therapy services. In addition, autism support in the amount of five hours per semester "to train staff, coach, model, and work with [the Student] in support of IEP goals and objectives." [Petitioner's Exhibit 21]
39. In lieu of longer portions of time in direct speech therapy, the District utilizes consultations in collaboration with the teachers in order to assist the Student to generalize and be able to use what he is taught. Regarding the Student, the District's administrative supervisor of speech/language services stated, "Table top therapy ... would not benefit him for several reasons: one being his tolerance level, you have to sit and really attend and focus on one-on-one type traditional speech therapy; the other being for him to generalize and be able to use what you're teaching him, he needs to do it all day every day." [Transcript Pages 471-472]
40. Petitioner receives private training from Helping Autism with Learning and Outreach ("HALO") which consists of a series of opportunities for Petitioner to make choices between written words while the instructor is telling a story. [Respondent's Exhibit 22-C]

Standard of Review

Public school districts must comply with the IDEA procedures for identifying children with disabilities who need special education, and delivering appropriate

services as necessary to provide a free and appropriate public education (FAPE). 20 U.S.C. §1412(a)(1); *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176, (1982); *Cypress Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

The Fifth Circuit has further defined a free appropriate public education by delineating four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite benefits: 1) Is the educational program individualized on the basis of the child's assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated? *Cypress Fairbanks*, 118 F.3d at 253.

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

Discussion

Petitioner is *** years old with a cognitive level between *** months and cannot perform activities of daily living independently. He receives outside services that are not necessarily consistent with the services provided by Respondent.

Although his Father believes that his son's cognitive level is higher than does Respondent, there is no supporting evidence for that belief.

Petitioner argues that he did not receive an educational benefit from his educational program at AISD from June 25, 2005. He contends that his program was inappropriate until his teacher was assigned as his one-on-one teacher.

Petitioner argues that he requires an ABA program and that five hours of related services are insufficient to provide him an educational benefit.

Applied Behavior Analysis

Applied Behavior Analysis is a science that applies the principles of behavior

(motivation, reinforcement, stimulus control, punishment, extinction) to change behavior. ABA focuses on analyzing the function of a behavior and the data that is taken on the interventions that are used. Determinations of successful/unsuccessful interventions are made from the analysis of that data. Various treatment packages have been developed within ABA. [Transcript Pages 682-683]

Petitioner devoted much of the hearing in an effort to prove that the science of ABA should be used in his education plan. Although his IEPs did not specify ABA, the testimony supported the District's position that, although Petitioner did not receive a full ABA program, many of the strategies of ABA, including data collection, are used throughout the educational day of the Student. In Petitioner's Post-Hearing Argument and Brief, to support his request for ABA as relief in this matter, Petitioner relied on *Deal v. Hamilton County Board of Education* in which the Sixth Circuit Court of Appeals found a denial of FAPE when a school system predetermined not to offer a student ABA. However, in this case, there was no evidence that AISD predetermined not to offer student intensive ABA.

Congress chose to leave the selection of educational policy and methods where they traditionally have resided---with state and local school officials. *Rowley*, 458 U.S. at 207. The substance and the details of the education plan for a child with a disability are left to state and local school officials. *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036, 1044 (5th Cir. 1989). IDEA simply mandates a "basic floor of opportunity" to receive an educational benefit. *Rowley*, 458 U.S. at 201. That Respondent uses a variety of methodologies does not mean that it has failed to meet the floor, and in this case, AISD includes many strategies recommended by Petitioner's ABA expert. In disputes regarding methodology between parents of children with autism and school districts, courts have consistently held in favor of school district. *Samuel W. v. Northwest Independent School District*, 202 F.Supp. 2d 557 (5th Cir. 2002).

Feeding

Regarding the Student's feeding, the Father wanted the District to adopt his

protocol which he demonstrated, but the District refused to do so because it felt the Father's methods were too aggressive and socially unacceptable, and instead followed its own protocol. The Mother agreed that the Student should not be forced to eat, and that he should have small meals due to delayed gastric emptying. Feeding attempts were made throughout the school day, and the Student accepted small amounts. The Father wanted him to finish his meals. AISD argued that due to the aggressive feeding manner of his Father, the activity had become a negative experience for the Student until his Mother began to work with him using a gentler approach. Once the Student began to accept meals from his Mother, she demonstrated her technique to the AISD staff which adopted the feeding protocol.

Progress Report

Although grades of "****" seem meaningless in Petitioner's case, in addition to report cards, AISD consistently kept data regarding the Student's performance and conveyed that information to the Father who was a regular presence on campus and kept in close communication with Petitioner's teacher. The Father testified that the District provided data and graphs.

An IEP is a written statement for each child with a disability that must include (1) a statement of his present levels of academic achievement and functional performance, (2) a statement of measurable annual goals, (3) a description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals will be provided, (4) a statement of the special education and related services and supplementary aids and services to be provided to the child, (5) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class, (6) a statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments, and (7) the projected date for the beginning of the services and modifications and the anticipated frequency, location, and duration of those

services and modifications. 34 C.F.R. § 300.320. Petitioner correctly asserts that no baselines were shown on his November 2004-2005 and his November 2005 IEPs. However, there are descriptions of how the Student's progress would be measured and when reports would be provided. Petitioner's Father attended a November 16, 2005 ARDC meeting during which a discussion occurred regarding baselines. The minutes state that "as goals and sub objectives are mastered, the baseline will be raised to an appropriate level as determined through consultation with parent." Since the baselines were not intended to remain the same, it appears that it would have been ill advised to include them in the IEPs.

At a September, 2005 ARDC meeting, the minutes reflected that, referring to the prior 10 ½ months, both AISD staff and the Student's private therapist "noted that there has been growth during this time." At an October, 2005 ARDC meeting, the notes state, "There has been a reduction in behavior concerns noted at *** and an increase in his communication attempts....He requests more hugs, ... and is initiating interactions with peers. Spontaneous initiation of pre vocational kinds of tasks has been observed this school year. [The Student] will consistently reach into the dryer and pick up a towel on his own." The Father indicated that he thought the Student's progress had been a flat line.

In November, 2005, it was reported that Petitioner had made overall progress in most areas. In a continuation ARDC meeting held November 30, 2005, the minutes state, "There is already evidence of reduction of inappropriate behaviors." Petitioner's teacher testified that the Student has made "incremental progress." Petitioner's expert, Dr.***, reported that Petitioner's parents "support [the Student's] current classroom placement and believe that the teacher ... has been able to make progress with [the Student]."

Petitioner is both severely autistic and mentally retarded. His development should be measured not in relation to other children, but with respect to the individual student. *Houston Independent School District v. Bobby R.*, 200 F. 3d

341 (5th Cir. 2000). Although Petitioner's progress may be less than the Parents would like to see, the evidence supports that overall, he has made progress.

Extended School Year 2005

Despite the finding that Petitioner made overall progress in his goals and objectives, the evidence reflects that, after 2005 ESY, he had regressed from his performance level at the end of May, 2005. It took him three to four weeks to recoup those skills. ESY programs are designed to prevent regression during the summer months; however, AISD failed to prevent Petitioner's regression. Given the severity of Petitioner's handicaps, this regression was significant and was a denial of FAPE. As such, Petitioner is entitled to an equitable remedy in the form of compensatory educational services.

Conclusions of Law

1. Although Petitioner showed that his November 2004-2005 IEPs contained no baselines in the areas of communication, activities of daily living, feed and behavior, he failed to show that such baselines were required in the IEPs and that Respondent failed to provide assessment data in those areas. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); 34 C.F.R. § 300.320.
2. Petitioner failed to meet his burden of proof that his November 2005 IEPs were incomplete, lacked appropriate baselines, and contained more objectives than could be implemented. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); 34 C.F.R. § 300.320.
3. Petitioner failed to meet his burden of proof that his current IEP (at the time this matter was filed) or his IEP at the time of hearing is implemented by a para-professional, or that his certified teacher was out of the classroom for one-half of each day. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
4. Petitioner failed to meet his burden of proof that five (5) hours of related services for occupational therapy, speech therapy and behavior specialist services are inappropriate because of an inadequate amount of time to provide him an educational benefit. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
5. Petitioner failed to meet his burden of proof that AISD fails to use credible measurement tools and was unable to show that he made progress in the areas of behavior and communication. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

6. Petitioner failed to meet his burden of proof that AISD's occupational therapist does not sufficiently train Petitioner's teacher and para-professional regarding implementation of fine motor activities. *TTatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
7. Petitioner's placement is the least restrictive environment. *TTatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); 34 C.F.R. § 300.114.
8. AISD denied FAPE to Petitioner in that it failed to provide an appropriate extended school year program for Petitioner during the summer, 2005. 34 C.F.R. § 300.101; *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982).
9. Petitioner is entitled to compensatory services for AISD's failure to provide an appropriate ESY 2005 program. 20 U.S.C. 1415(i)(2)(c)(iii).
10. Petitioner failed to meet his burden of proof that AISD refused to complete two head injury sheets for him during the summer session, 2005. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
11. Although AISD did not provide a one-on-one certified teacher for Petitioner until February, 2006, it did provide one-on-one assistance, and Petitioner failed to meet his burden of proof that such assistance was insufficient to provide educational benefit to him. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).
12. Petitioner failed to meet his burden of proof that AISD failed to provide him with a safe environment. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
13. Petitioner failed to meet his burden of proof that AISD failed to provide a trained speech pathologist to instruct him in the area of feeding. *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005).

Order

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, Respondent, Austin Independent School District, is ordered to provide Petitioner compensatory educational services in an amount that totals four 5-day educational weeks.

Respondent is ordered to convene an Admission, Review, and Dismissal Committee meeting at the earliest practicable time, but no later than one month from the date of this order. At that meeting, the ARDC is ordered to consider and determine appropriate compensatory educational services for Petitioner that are

designed to meet his individual needs. If the ARDC and Petitioner's legal guardian agree, such compensatory services may be delivered beyond Petitioner's 22nd birthday.

All other relief not specifically granted is hereby DENIED.

The district shall timely implement this Decision within 10 school days in accordance with 19 T.A.C. §89.1185(q) and 34 C.F.R. §300.514. The following must be provided to the Division of Special Programs, Monitoring and Intervention at the Texas Education Agency and copied to the Petitioner within 15 school days from the date of this Decision: 1.) Documentation demonstrating that the Decision has been implemented; or 2.) If the timeline set by the Hearing Officer for implementing certain aspects of the Decision is longer than 10 school days, the district's plan for implementing the Decision within the prescribed timeline, and a signed assurance from the superintendent that the Decision will be implemented.

Finding that the public welfare requires the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

SIGNED this 4th day of February, 2007.

Brenda Rudd

Special Education Hearing Officer

NOTICE TO THE PARTIES

The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.516. A civil action brought in state or federal court under 20 USC, §1415(i)(2), and 34 CFR, §300.516 must be initiated not more than 90

days after the date the hearing officer issued his or her written decision in the due process hearing. 19 Tex. Admin. Code §89.1185(p).

DOCKET NO. 143-SE-0306

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

AUSTIN INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

SYNOPSIS OF DECISION

- In Petitioner's November 2004-2005 Individualized Education Programs ("IEPs") for communication, activities of daily living, feeding and behavior, did the District fail to provide a baseline (or present competencies) from which progress can be shown and did it fail to provide assessment data in those areas?
- ISSUE:**
- CITATION:** *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); 34 C.F.R. § 300.320
- HELD:** For Respondent
- Whether Petitioner's November 2005 IEPs are incomplete, lack appropriate baselines, and contain more objectives than can be implemented
- ISSUE:**
- CITATION:** *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); 34 C.F.R. § 300.320
- HELD:** For Respondent
- Whether Petitioner's current IEP is implemented by a para-professional, and Petitioner's certified teacher is out of the classroom for one-half of each day
- ISSUE:**
- CITATION:** *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005)
- HELD:** For Respondent
- ISSUE:** Whether Petitioner's November 2005 IEPs in behavior and communication

are inappropriate due to an inadequate amount of time of occupational therapy, speech therapy and behavior specialist services to provide an educational benefit to Petitioner

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

HELD: For Respondent

Whether the District fails to use credible measurement tools and is unable

ISSUE: to show that Petitioner has made progress in the areas of behavior and communication

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

HELD: For Respondent

Whether the District failed to provide appropriate training and supports for Petitioner's teacher; specifically, whether the occupational therapist does not sufficiently train Petitioner's teacher and para-professional regarding implementation of fine motor activities

ISSUE:

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

HELD: For Respondent

Whether the District's placement for Petitioner is not the least restrictive environment ("LRE")

ISSUE:

CITATION: For Respondent

HELD: *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *Schaffer v. Weast*, 126 U. S. 528 (2005); 34 C.F.R. § 300.114

ISSUE: Whether the District failed to provide an appropriate extended school year ("ESY") program for Petitioner from June 24, 2005

CITATION: *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982); 34 C.F.R. § 300.101

HELD: For Petitioner

Whether the District refused to complete *** injury sheets for Petitioner during the summer session, 2005

ISSUE:

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

HELD: For Respondent

Whether the District failed to provide Petitioner with a one-on-one trained teacher

ISSUE:

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

HELD: For Respondent

Whether the District failed to provide Petitioner with a safe environment in that when Petitioner sits in the classroom and bangs his head, no District personnel intervenes

ISSUE:

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

HELD: For Respondent

ISSUE: Whether the District failed to provide a trained speech pathologist to instruct Petitioner in the area of feeding

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

HELD: For Respondent