

TEA DOCKET NO. 196-SE-0307

STUDENT,	§	
b/n/f PARENTS	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
NORTH EAST	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

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Appearances for Petitioner:

Matthew L. Finch, Esq.  
San Antonio, TX

Appearances for Respondent:

Jeffrey L. Rogers, Esq.  
Houston, TX

STUDENT, b/n/f PARENTS	§ § § § § § § § §	BEFORE A SPECIAL EDUCATION HEARING OFFICER FOR THE STATE OF TEXAS
Petitioner		
v.		
NORTH EAST INDEPENDENT SCHOOL DISTRICT		
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Statement of the Case

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

1. The Respondent has denied the child a free appropriate public education (FAPE);
2. The Respondent has denied the child an appropriate placement; and
3. The Respondent has denied the child appropriate related services.

As relief, the Petitioner requests that the Respondent provide (1) compensatory education and related services in a residential setting addressing the child's disability; (2) reimbursement of out-of-pocket expenses for the residential placement that the child is attending; (3) when the child transfers upon release from the residential placement, staffing and training for all personnel who work directly or indirectly with the child; (4) counseling by a private provider; (5) when the child transfers upon release from the residential placement, a duly constituted admission, review, and dismissal (ARD) committee, in which all appropriate personnel, including the parents, participate as equal partners; (6) parent in-home training in the child's disability; (7) when the child transfers upon release from the residential placement, progress reports to monitor progress on goals as often as progress reports are provided for general education students; (8) reimbursement of all reasonable costs and attorneys' fees the parents have incurred as a result of the filing of this Due Process Complaint; (9) actual and exemplary damages; and (10) any and all remedies that Petitioner may be entitled to under the law.<sup>2</sup>

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

<sup>2</sup> During the Prehearing Conference, the Respondent objected to certain relief requested by the Petitioner on the grounds that the Hearing Officer does not have authority to award attorneys' fees or damages. This Hearing Officer sustained that objection and determined that in this proceeding, attorneys' fees and damages could not be granted. Prehearing Conference Tr. at 7 – 8 (April 11, 2007).

### Procedural History

The Texas Education Agency (TEA) received the Petitioner's Due Process Complaint on March 21, 2007. Per 34 C.F.R. § 300.508(e), as amended, the Respondent filed its response to the Due Process Complaint on March 30, 2007. Per 34 C.F.R. § 300.510, as amended, the parties participated in a resolution session on April 2, 2007, but were unable to resolve the issues in the case.

This Hearing Officer conducted a pre-hearing teleconference with the parties on April 11, 2007. Subsequently, this Hearing Officer issued an order that, among other things, confirmed the contested issues and set the timetable for the Due Process Hearing.

The Due Process Hearing was conducted on May 10 and 11, 2007. During the Hearing, the Petitioner was afforded a fair opportunity to offer and solicit evidence and testimony to satisfy the Petitioner's burden of persuasion as assigned under *Schaffer v. Weast*, 546 U.S. 49, 57 – 58 (2005).<sup>3</sup> Following the Due Process Hearing, this Hearing Officer extended the decision due date to accommodate the court reporter and the parties with regard to the production of the Hearing transcript and the preparation and submission of written closing statements and rebuttal briefs.

### Findings of Fact

Based upon the testimony and evidence taken on the record in this proceeding, this Hearing Officer makes the following findings of fact:

1. The child is a child with a disability under the IDEA and was a student in the district. The child qualifies under the autism eligibility category with Asperger syndrome and "other health impairment" eligibility category with attention deficit disorder.<sup>4</sup> (Hr'g Tr. at 241, 280 (vol. 1) (May 10, 2007); Pet'r Ex. 7, pp. 2, 13)

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<sup>3</sup> This Hearing Officer notified the Petitioner during the Prehearing Conference that the Petitioner would control the calling of witnesses on the first day of the Due Process Hearing. During the course of the Hearing, this Hearing Officer permitted the Petitioner to control the calling of witnesses into the second day before deeming the Petitioner's case-in-chief as rested. Under 19 Tex. Admin. Code § 89.1185(f), a Hearing Officer may set reasonable time limits for presenting evidence. This Hearing Officer determines that the time allotted to the Petitioner was reasonable. Prehearing Conference Tr. at 10, 17 (April 11, 2007); Hr'g Tr. at 467 – 75 (vol. 2) (May 11, 2007). See also First Scheduling Order, ¶ 7 (April 11, 2007).

<sup>4</sup> The parents testified that their child has a co-occurring condition of bipolar disorder. They did not allege, however, that their child had been inaccurately identified as a child with a disability by the district through failure to include this condition in the child's eligibility determination. (Hr'g Tr. at 22, 93) (vol. 1) (May 10, 2007)).

2. In the 2005-06 school year the child attended a new school to which the child had been promoted. (Hr'g Tr. at 128 (vol. 1) (May 10, 2007); Pet'r Ex. 10, pp. 1, 5, 9; Resp't Ex. 5, pp. 2, 6, 10)
3. During the spring, 2006 semester, the child left wood shop class and was unaccounted for for approximately 15 – 20 minutes on at least two occasions. (Pet'r Ex. 24, p. 39; Pet'r Ex. 25, p. 1)
4. In April, 2006, the child was assessed on grade level on the Texas Assessment of Knowledge and Skills (TAKS) and met the minimum standard in reading but did not meet the minimum standard in mathematics. (Hr'g Tr. at 128 – 29 (vol. 1) (May 10, 2007); Hr'g Tr. at 483 – 84 (vol. 2) (May 11, 2007); Pet'r Ex. 44, p. 1; Resp't Ex. 2, p. 32; Resp't Ex. 11, p. 1)
5. For the spring, 2006 semester, the child passed all classes, including algebra, and was eligible to advance to the next grade. (Hr'g Tr. at 142 – 43 (vol. 1) (May 10, 2007); Resp't Ex. 10, p. 2)
6. During summer, 2006, the child voluntarily attended summer school to earn additional credits toward graduation. (Hr'g Tr. at 141 (vol. 1) (May 10, 2007); Pet'r Ex. 26, p. 2)
7. On June 5, 2006, the child's parents and the district adopted amendments to the child's then current individualized education program (IEP), dated Jan. 27, 2006. Among other things, they added compensatory social skills training that was provided to the child in summer school during summer, 2006. In addition, they approved a counseling evaluation. They noted that the child continued to have difficulty with peer social interactions and that the child's then current IEP did not include behavioral goals. (Hr'g Tr. at 318 – 20, 350 – 51, 428 (vol. 2) (May 11, 2007); Pet'r Ex. 40, pp. 1 – 2; Resp't Ex. 4, pp. 1 – 7)
8. The 2006-07 school year began on or about August 14, 2006. The child was at the next grade level at the child's school. (Resp't Ex. 10, pp. 1 – 2)
9. For the fall, 2006 semester, the child had all regular education classes except for one special education class: applied skills. Of the regular education classes, three were “co-teach” classes with both a regular education teacher and special education teacher: English, geometry and

history. (Hr'g Tr. at 140 – 41 (vol. 1) (May 10, 2007); Hr'g Tr. at 540 – 41 (vol. 2) (May 11, 2007))

10. On August 31, 2006, an ARD committee meeting was held for the child. The parents were in attendance and participated. Among other things, the committee noted that the child “has difficulty holding reciprocal conversations” and that “social integration is difficult.” The committee further stated: “A Behavior Intervention Plan has been addressed as a means of helping [the child] interact in a ‘prosocial’ manner with his peers especially as it involves communication.” The committee determined, however, that the child’s behavior did not impede the child’s learning or the learning of others. (Pet’r Ex. 8, pp. 3 – 5, 19 – 20, 25; Resp’t Ex. 3, pp. 3 – 5, 19 – 20, 25)
11. The August 31, 2006 ARD committee provided for individual counseling for the child by a licensed specialist in school psychology (LSSP). The LSSP was slated to meet with the child on a monthly basis for 30-minute sessions. The goal of the counseling was to “enhance peer relationship building.” (Hr’g Tr. at 322, 341 (vol. 2) (May 11, 2007); Pet’r Ex. 8, pp. 6, 12, 17, 25 – 26; Resp’t Ex. 3, pp. 6, 12, 17, 25 – 26)
12. The August 31, 2006 ARD committee provided for a “shadow” to follow the child between class periods and during lunch period on a daily basis. The shadow was a teaching assistant whose responsibility was to stay near the child and redirect the child in the proper direction if necessary to ensure the child safely arrived at the next classroom. (Hr’g Tr. at 30 – 31, 143 (vol. 1) (May 10, 2007); Hr’g Tr. at 425, 436 – 37 (vol. 2) (May 11, 2007); Pet’r Ex. 8, p. 17; Resp’t Ex. 3, p. 17)
13. The August 31, 2006 ARD committee provided the parents with a copy of a social skills curriculum book for the parents to review and approve for use for their child. (Hr’g Tr. at 322 – 23, 345 – 46 (vol. 2) (May 11, 2007); Pet’r Ex. 8, p. 16; Resp’t Ex. 3, p. 16)
14. The August 31, 2006 ARD committee approved an assessment of in-home training needs in light of the parents’ report that their child was having behavioral issues at home. (Pet’r Ex. 8, pp. 16 – 17, 19, 27; Pet’r Ex. 53, p. 2; Resp’t Ex. 3, pp. 16 – 17, 19, 27)
15. The August 31, 2006 ARD committee report included “status reports” completed by the child’s teachers. Among other things, the child’s

teachers reported on the child's interpersonal relations with peers. All provided positive descriptions of the child's interpersonal relations with peers. (Pet'r Ex. 8, pp. 29 – 35; Resp't Ex. 3, pp. 29 – 35)

16. On or about September 5, 2006, the “shadow” began following the child during the school day. (Resp't Ex. 13, p. 1)
17. On or about September 14, 2006, the child was involved in a physical altercation with a fellow student in art class. During the incident, the fellow student struck the child without justification. The incident was precipitated by the child making a comment to the fellow student about the fellow student's clothing. (Hr'g Tr. at 26 – 29, 103 – 04, (vol. 1) (May 10, 2007); Hr'g Tr. at 433 – 34, 449 – 50, 544 – 45 (vol. 2) (May 11, 2007); Resp't Ex. 25, p. 1)
18. On September 15, 2006, the district held a staff training for the child's teachers. (Hr'g Tr. at 326 (vol. 2) (May 11, 2007))
19. On September 20, 2006, the district completed a reevaluation report on the child as part of the three-year review. Among other things, the reevaluation report found that the child had “average” achievement scores in basic reading, reading comprehension and math calculation. The child had “low average” achievement scores in written expression and math reasoning. (Hr'g Tr. at 328 (vol. 2) (May 11, 2007); Resp't Ex. 7, pp. 16 – 17)
20. The September 20, 2006 reevaluation report also found the following regarding the child's social interactions: “On a social level, [the child] continues to experience difficulty reading social cues from others. [The child] has significant difficulty deciphering what motivates people to act the way [they] do toward [the child] and how they perceive [the child.] As indicated by BASC-2<sup>5</sup> results from teachers and [the child's] parents, [the child] also continues to experience difficulty reciprocating in a socially appropriate manner with [the child's] peers. [The child] may exhibit a tendency to withdrawal from others or avoid engaging in spontaneous fun with others for lack of interpreting the situation accurately. Much of the time, however, [the child's] desire to belong overrides [the child's] willingness to avoid social situations. [The child] is eager to make friends

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<sup>5</sup> Behavior Assessment System for Children – Second Edition.

and belong as evidenced by [the child's] peer involvement and extracurricular involvement.” (Resp’t Ex. 7, p. 13)

21. On September 22, 2006, an ARD committee meeting was held for the child. The parents were in attendance and participated. Among other things, the committee qualified the child for special education under the additional eligibility category of “other health impairment” based upon documentation of attention deficit disorder.<sup>6</sup> (Pet’r Ex. 7, pp. 2, 13; Resp’t Ex. 2, p. 13)
22. The September 22, 2006 ARD committee discussed with the child’s art class teacher the child’s behaviors and the teacher’s training on the child’s needs. Committee members discussed suggestions to maintain the child in the art class. (Pet’r Ex. 7, pp. 13 – 14; Resp’t Ex. 2, pp. 13 – 14)
23. The September 22, 2006 ARD committee discussed transition planning for the child with a representative of the Texas Department of Assistive and Rehabilitative Services (DARS), the state agency that administers the vocational rehabilitation program for individuals with disabilities. (Pet’r Ex. 7, pp. 3, 13; Resp’t Ex. 2, p. 13)
24. The September 22, 2006 ARD committee reviewed prior staff training and provided for additional training on the child’s disabilities and anti-bullying strategies. (Pet’r Ex. 7, p. 13; Resp’t Ex. 2, p. 13)
25. The September 22, 2006 ARD committee adopted a social skills curriculum for the child that the parents approved. The committee agreed to purchase the curriculum textbook for both the parents and campus. (Hr’g Tr. at 345 – 46 (vol. 2) (May 11, 2007); Pet’r Ex. 7, p. 14; Resp’t Ex. 2, p. 14)
26. The September 22, 2006 ARD committee report included “status reports” completed by the child’s teachers. Among other things, the child’s teachers reported on the child’s interpersonal relations with peers. All provided positive descriptions of the child’s interpersonal relations with peers. (Pet’r Ex. 7, pp. 22 – 30)
27. On September 28, 2006, the child’s special education teacher began implementing the social skills curriculum approved by the child’s parents.

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<sup>6</sup> The child had previously been qualified for special education under the eligibility category of “autism” based upon Asperger syndrome.

(Hr'g Tr. at 357, 406 – 07 (vol. 2) (May 11, 2007); Pet'r Ex. 29, p. 52; Resp't Ex. 15, p. 10)

28. On September 29, 2006, an LSSP met with the child for an individual counseling session. (Pet'r Ex. 38, p. 1; Resp't Ex. 24, p. 1)
29. On October 5, 2006, an ARD committee meeting was held for the child. A parent was in attendance and participated. Among other things, the committee discussed implementation of the social skills curriculum for the child. (Pet'r Ex. 4, p. 14; Pet'r Ex. 7, p. 20; Resp't Ex. 2, p. 14)
30. The October 5, 2006 ARD committee discussed the child's art class, including the addition of a teaching assistant and training for the assistant and teacher. (Pet'r Ex. 4, pp. 14 – 15; Pet'r Ex. 7, p. 20; Resp't Ex. 2, pp. 14 – 15)
31. The October 5, 2006 ARD committee discussed and confirmed the role of the shadow following the child between class periods; the shadow was to intervene if the child seemed lost or going in the wrong direction to the next classroom. (Pet'r Ex. 4, p. 15; Pet'r Ex. 7, p. 21; Resp't Ex. 2, p. 15)
32. The October 5, 2006 ARD committee received an update on training of the child's teachers. (Pet'r Ex. 4, p. 15; Pet'r Ex. 7, p. 21; Resp't Ex. 2, p. 15)
33. The October 5, 2006 ARD committee discussed transition planning for the child, including a work program for the child. (Pet'r Ex. 4, pp. 15, 20; Pet'r Ex. 7, p. 21; Resp't Ex. 2, p. 15)
34. The October 5, 2006 ARD committee agreed that the child's special education teacher, who also serves as the child's campus case manager, would check on implementation of the child's IEP every three weeks. (Pet'r Ex. 4, p. 15; Pet'r Ex. 7, p. 21; Resp't Ex. 2, p. 15)
35. On October 31, 2006, an LSSP met with the child for an individual counseling session. (Pet'r Ex. 38, p. 1; Resp't Ex. 24, p. 2)
36. The child's teachers completed "status reports" on the child in early November, 2006. Among other things, the child's teachers reported on the child's interpersonal relations with peers. All provided generally positive

descriptions of the child's interpersonal relations with peers. (Resp't Ex. 14, pp. 1 – 13)

37. On November 7, 2006, the district completed an in-home and parent training evaluation report. (Resp't Ex. 9, pp. 1 – 5)
38. On November 8, 2006, the child was involved in a physical altercation with a fellow student following Reserve Officer Training Corps (ROTC) class. (Hr'g Tr. at 132 – 33 (vol. 1) (May 10, 2007))
39. On November 9, 2006, an ARD committee meeting was held for the child. A parent was in attendance and participated. Among other things, the committee received an update about the child's involvement in the altercation after ROTC class on November 8, 2006. The committee noted with regard to the child, there had been "an escalation of behavior this past week." (Pet'r Ex. 4, p. 16; Resp't Ex. 2, p. 16)
40. The November 9, 2006 ARD committee discussed the role of the shadow following the child between class periods. The child expressed displeasure with being followed by the shadow and expressed commitment to improve behavior. The committee agreed that the shadow would not trail the child as closely and that if the child successfully reached class for a week, the use of the shadow would cease. (Hr'g Tr. at 143 – 44 (vol. 1) (May 10, 2007); Pet'r Ex. 4, p. 16; Resp't Ex. 2, p. 16)
41. The November 9, 2006 ARD committee received an update that the teaching assistant was still present in the child's art class. (Pet'r Ex. 4, p. 16; Resp't Ex. 2, p. 16)
42. The November 9, 2006 ARD committee discussed training of the child's teachers. (Pet'r Ex. 4, p. 16; Resp't Ex. 2, p. 16)
43. The November 9, 2006 ARD committee discussed the prospect and plan for the child to earn the credits to graduate a year early. (Pet'r Ex. 4, pp. 15 – 16; Resp't Ex. 2, pp. 15 – 16)
44. On November 10, 2006, the child eluded the shadow and left campus without permission and was unaccounted for approximately three to four hours. School personnel located the child at a fast food restaurant no more than one mile from school and escorted the child back to campus. (Hr'g Tr. at 32 – 34, 115 – 16 (vol. 1) (May 10, 2007); Hr'g Tr. at 437 – 39, 454)

– 55 (vol. 2) (May 11, 2007); Pet'r Ex. 2, p. 15; Pet'r Ex. 4, p. 16; Resp't Ex. 2, p. 16)

45. On November 11, 2006, the child ran away from home but was found late that day. Subsequently, the child's parents hospitalized the child in an acute care unit for noneducational reasons. The child did not attend school for a week from November 13, 2006 to November 17, 2006.<sup>7</sup> (Hr'g Tr. at 133 – 35, 154 – 55 (vol. 1) (May 10, 2007); Pet'r Ex. 2, pp. 15 – 16; Pet'r Ex. 4, pp. 16 – 17; Resp't Ex. 2, pp. 16 – 17; Resp't Ex. 12, p. 1; Resp't Ex. 13, p. 2; Resp't Ex. 20, p. 1)
46. The child's parents learned from the acute care unit that their child had not been taking medications prescribed for the child during fall, 2006. (Hr'g Tr. at 104 – 05, 145 (vol. 1) (May 10, 2007); Pet'r Ex. 2, p. 16; Pet'r Ex. 4, p. 17)
47. During the child's hospitalization at the acute care unit, the district sent homework to the child's family for the child to complete. (Hr'g Tr. at 155 (vol. 1) (May 10, 2007)).
48. On November 17, 2006, an ARD committee meeting was held for the child. The parents were in attendance and participated. Among other things, the district determined that the child's behavior impeded the child's learning or the learning of others. (Pet'r Ex. 2, p. 3; Pet'r Ex. 4, p. 3)
49. The November 17, 2006 ARD committee discussed the role of the shadow following the child between class periods. The district determined that upon the child's return to school, the shadow would escort the child between classes. The district also determined that upon the child's return to school, the child would eat lunch in the special education office. (Pet'r Ex. 2, pp. 16 – 17; Pet'r Ex. 4, pp. 17 – 18)
50. The November 17, 2006 ARD committee discussed IEP goals and objectives for the child. The district continued six goals in the child's IEP: (1) the student will use words to establish and/or enrich social relationships independent of adult structure (two objectives with mastery criteria); (2) the student will demonstrate behavioral restraints in group and social settings (one objective with mastery criteria); (3) the student

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<sup>7</sup> The child did not miss any school the second week of hospitalization because it was the district's Thanksgiving holiday break. Resp't Ex. 13, p. 2.

will demonstrate knowledge of, and compliance with, basic social rules for constructive interactions (one objective with mastery criteria); (4) the student will demonstrate appropriate verbal and gestural interactions (one objective with mastery criteria); (5) the student will comply with requests from authority figures (one objective with mastery criteria); and (6) the parents will participate in parent training (one objective). (Hr'g Tr. at 345, 350 (vol. 2) (May 11, 2007); Pet'r Ex. 2, pp. 16, 21 – 24; Pet'r Ex. 4, p. 17; Resp't Ex. 2, pp. 17, 22 – 25, 33 – 35)

51. The November 17, 2006 ARD committee discussed in-home training for the child and parent training for the parents by an in-home trainer. The district determined that the in-home trainer would meet with the child and family on a weekly basis for 1-hour sessions for in-home training and 30-minute sessions for parent training. The in-home trainer, however, never delivered any training. (Hr'g Tr. at 498 – 500 (vol. 2) (May 11, 2007); Pet'r Ex. 2, pp. 5, 16 – 17; Pet'r Ex. 4, pp. 6, 17 – 18)
52. The November 17, 2006 ARD committee discussed transition planning for the child. The district attached an IEP transition supplement to the ARD report for the child. (Pet'r Ex. 2, pp. 16, 19; Pet'r Ex. 4, pp. 17, 20)
53. At the end of the November 17, 2006 ARD meeting, the parents requested the opportunity to take the ARD report and IEP home to review with their advocate before signing. The district acceded to the parents' request. (Hr'g Tr. at 107, 109, 146, 148 (vol. 1) (May 10, 2007); Pet'r Ex. 2, p. 16; Pet'r Ex. 4, p. 17)
54. On November 20, 2006, private psychologists prepared an evaluation report on the child at the acute care unit. Among other things, they recommended “group therapy for children with similar social-emotional problems to help with getting immediate feedback for [the child] and working on social conflicts as they occur.” (Pet'r Ex. 50, p. 3; Resp't Ex. 9, p. 3)
55. On or about November 27, 2006, the child returned to school in the district for the remainder of the fall, 2006 semester. (Hr'g Tr. at 135 – 36, 164 (vol. 1) (May 10, 2007); Resp't Ex. 12, p. 1; Resp't Ex. 13, p. 2; Resp't Ex. 25, p. 2)
56. On November 29, 2006, the district sent a letter via regular mail to the child's parents requesting that the parents respond regarding whether they

would sign the November 17, 2006 ARD report. The letter also stated that if the parents did not respond, the district would implement the November 17, 2006 ARD and IEP. (Hr'g Tr. at 490 – 92, 497 (vol. 2) (May 11, 2007); Resp't Ex. 2, p. 17)

57. The district has no proof the parents received the November 29, 2006 letter. (Hr'g Tr. at 492 (vol. 2) (May 11, 2007); Pet'r Ex. 1, p. 13; Resp't Ex. 1, p. 14)
58. On November 30, 2006, an LSSP met with the child for an individual counseling session. (Pet'r Ex. 38, p. 1; Resp't Ex. 24, p. 2)
59. On or about December 1, 2006, the child's parents requested and received another copy of the November 17, 2006 ARD report and IEP. (Hr'g Tr. at 480, 490 (vol. 2) (May 11, 2007))
60. On December 6, 2006, the district "locked" the November 17, 2006 ARD committee report and IEP. Locking the report and IEP prevents any further changes to the documentation. (Hr'g Tr. at 495 – 97 (vol. 2) (May 11, 2007); Resp't Ex. 2, p. 17)
61. During the period that the child attended school during the fall, 2006 semester, the child's parents were actively involved and participated in their child's ARD committee meetings. (Hr'g Tr. at 346 (vol. 2) (May 11, 2007))
62. During the period that the child attended school during the fall, 2006 semester, the child successfully engaged in peer social interactions at school. (Hr'g Tr. at 344, 371, 381 – 84, 389 – 90, 392, 395 – 96, 435, 461 (vol. 2) (May 11, 2007); Resp't Ex. 2, pp. 37 – 38)
63. During the period that the child attended school during the fall, 2006 semester, the child received passing grades in all classes. (Hr'g Tr. at 141 (vol. 1) (May 10, 2006); Hr'g Tr. at 366, 435 – 36 (vol. 2) (May 11, 2007); Resp't Ex. 10, p. 1)
64. On or about January 1, 2007, the child's parents hospitalized the child again in the acute care unit. (Hr'g Tr. at 136 (vol. 1) (May 10, 2007); Pet'r Ex. 1, p. 12; Resp't Ex. 1, p. 13)

65. On or about January 3, 2007, the child's parents informed the district that their child was hospitalized in the acute care unit. (Hr'g Tr. at 109 – 10 (vol. 1) (May 10, 2007); Hr'g Tr. at 500 (vol. 2) (May 11, 2007))
66. The parents received recommendations from private treating professionals that their child be placed in a therapeutic facility. (Hr'g Tr. at 111 – 12 (vol. 1) (May 10, 2007); Hr'g Tr. at 518 (vol. 2) (May 11, 2007); Pet'r Ex. 1, p. 13; Resp't Ex. 1, pp. 14, 46; Resp't Ex. 27, p. 2)
67. On January 11, 2007, the district sent a letter to the child's parents inviting them to request an ARD committee meeting regarding serving the child. (Hr'g Tr. at 500 (vol. 2) (May 11, 2007); Resp't Ex. 17, pp. 1 – 2)
68. On January 22, 2007, the child's parent informed a district guidance counselor that the district did not need to provide homework for the child as the parents were planning on moving the child to a private residential placement. (Hr'g Tr. at 139 – 40 (vol. 1) (May 10, 2007); Hr'g Tr. at 501, 542 (vol. 2) (May 11, 2007); Resp't Ex. 1, p. 43)
69. On January 23, 2007, the child's parents received a copy of the December 6, 2007 locked ARD and IEP from the November 17, 2006 meeting via certified mail from the district. (Hr'g Tr. at 166, 262 – 65 (vol. 1) (May 10, 2007); Hr'g Tr. at 492 (vol. 2) (May 11, 2007); Pet'r Ex. 43, p. 1)
70. Upon the child's release from the acute care unit on February 7, 2007, the child's parents transported the child to an out-of-state private residential school. (Hr'g Tr. at 112 – 13, 137, 165 (vol. 1) (May 10, 2007))
71. On February 7, 2007, the district received a letter from the child's parents stating their concerns about their child's schooling and indicating that their child's treating professionals recommended residential therapeutic placement for the child. The child's parents requested an "emergency" ARD committee meeting. (Hr'g Tr. at 156 – 57, 159, 166, 168 (vol. 1) (May 10, 2007); Pet'r Ex. 34, pp. 1 – 3; Resp't Ex. 1, pp. 43, 46)
72. On February 8, 2007, the child was officially enrolled in the out-of-state private residential school. (Resp't Ex. 1, p. 40)
73. On February 13, 2007, an ARD committee meeting was held for the child. A parent was in attendance and participated. Among other things, the committee discussed placement options for the child upon the child's

release from the acute care unit, ranging from alternatives within the district to residential settings. The parent described the child's out-of-state private residential school and the recommendation for residential placement from the child's treating professionals. The parent also expressed disagreement with the December 6, 2006 locked ARD and IEP from the November 17, 2006 meeting. The parent and district agreed to a 10-day recess of the ARD committee meeting. (Pet'r Ex. 1, p. 12; Resp't Ex. 1, p. 13)

74. On February 23, 2007, an ARD committee meeting was held for the child. The parents were in attendance and participated. Among other things, the committee considered placement options for the child. The district proposed maintaining the child in an inclusive placement at the child's school with the support of the "I-Team" and "redirection program," an increase in the related service of individual counseling and the addition of the related service of family counseling. The district also proposed an additional IEP objective: "student will remain on the [school] campus during the school day." The district provided a "prior written notice" regarding its proposed placement to the child's parents. (Hr'g Tr. at 523 – 25 (vol. 2) (May 11, 2007); Pet'r Ex. 1, pp. 10, 13 – 14, 17, 23; Resp't Ex. 1, pp. 11, 14 – 15, 19, 31)
75. The February 23, 2007 ARD committee discussed a conversation between a treating professional of the child at the acute care unit and a district psychologist that occurred on February 20, 2007. The conversation established that attempting to educate the child while the child was in the acute care unit would not have been appropriate. (Hr'g Tr. at 518, 530 – 31, 536 (vol. 2) (May 11, 2007); Pet'r Ex. 1, p. 13, Resp't Ex. 1, p. 14; Resp't Ex. 27, p. 2)
76. On February 23, 2007, the child's parents prepared and submitted written statements as addenda to the ARD report. The parents expressed dissatisfaction with the district's actions and plans and indicated that they had "no choice" but to make a private placement. (Hr'g Tr. at 106 – 07 (vol. 1) (May 10, 2007); Pet'r Ex. 1, pp. 13, 34; Pet'r Ex. 2, p. 27; Resp't Ex. 1, p. 14; Resp't Ex. 22, p. 1)
77. During the child's stay at the out-of-state private residential school thus far, the child has attempted to run away on two occasions and is "having a very difficult time there." (Hr'g Tr. at 34, 57, 61 – 62, 66 (vol. 1) (May 10, 2007); Hr'g Tr. at 521 (vol. 2) (May 11, 2007); Pet'r Ex. 1, p. 13; Pet'r

Ex. 51, pp. 1 – 11; Pet’r Ex. 52, p. 1; Resp’t Ex. 1, p. 14; Resp’t Ex. 27, pp. 3 – 4)

78. The cost of the child’s out-of-state private placement is \$6,500 per month. It is not being covered by the parents’ insurance. (Hr’g Tr. at 114, 121 (vol. 1) (May 10, 2007); Pet’r Ex. 1, p. 12; Resp’t Ex. 1, p. 13)

### Discussion

#### Free Appropriate Public Education (FAPE)

The central issue in this action is the Petitioner’s allegation that the Respondent failed to make FAPE available to the Petitioner. Under the IDEA, a school district’s fundamental duty is to provide each child with a disability with FAPE.<sup>8</sup> The question of whether there is a denial of FAPE is examined under a two-part test enunciated by the U.S. Supreme Court in *Board of Education v. Rowley*.<sup>9</sup> According to *Rowley*, there is a deprivation of FAPE if a child’s program and services are not (1) in compliance with the IDEA procedures, and (2) reasonably calculated to enable the child to receive educational benefits.

#### First Prong of the *Rowley* Test

My analysis under the first prong of the *Rowley* inquiry focuses on Petitioner’s procedural complaints, which are an alleged denial of parental participation in the ARD process and alleged lack of measurable goals in the child’s IEP.

#### ARD Committee Meeting of November 17, 2006

The Petitioner’s first procedural allegation is that the Respondent failed to conduct a proper ARD committee meeting on November 17, 2006. Specifically, the Petitioner alleges that the parents were denied an opportunity to participate as equal partners in the ARD process because of the manner in which the meeting was closed and the ARD report locked by the district. Under the IDEA and TEA regulations, a school district must afford parents the opportunity to participate in ARD committee meetings.<sup>10</sup> Further, under TEA regulations, at the end of each ARD committee meeting, the district must obtain the signatures of all participants and an indication of whether they agree with

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<sup>8</sup> 20 U.S.C. § 1412(a)(1), as amended; 34 C.F.R. § 300.101 (71 Fed. Reg. 46540, 46762 (effective Oct. 13, 2006)).

<sup>9</sup> 458 U.S. 176, 206-07 (1982).

<sup>10</sup> 34 C.F.R. § 300.345(a) (July 1, 2006); 34 C.F.R. § 300.322(a) (71 Fed. Reg. 46540, 46788 (effective Oct. 13, 2006)); 19 Tex. Admin. Code § 89.1050(h).

the determinations of the committee.<sup>11</sup> Also, any ARD committee member who disagrees with the committee decisions must be offered the opportunity to write a statement.<sup>12</sup> If it is the parents who disagree, the district must provide them with a “prior written notice.”<sup>13</sup>

This Hearing Officer finds that there were no procedural irregularities in the conclusion of the November 17, 2006 ARD committee meeting. The parents were provided an opportunity to participate. When the meeting was completed, the district attempted to obtain the parents’ signatures as required by state regulation. The parents declined to sign and requested time to review the paperwork before signing. The district agreed, allowing the parents to return it later with their signatures. The parents, however, never returned the signature page. While it would have been more helpful for both sides to have actually communicated with one another over the parents’ intention of signing or not, the district abided with the state rule when it tried to gather signatures at the end of the November 17, 2006 meeting. Whether the parents disagreed that day or effectively disagreed later by not returning the signature page, the district properly concluded the ARD committee meeting with respect to signatures. It was not unreasonable for the district to lock the ARD report and IEP when it did not hear back from the parents since it could have done so immediately on November 17, 2006 when the parents did not sign.

#### IEP Goals

The other procedural allegation by the Petitioner is that the Respondent failed to include measurable goals in the child’s IEP. Under the IDEA, one of the required components of an IEP is a statement of measurable annual goals, including functional and academic goals, designed to: (1) meet the child’s needs that result from his or her disability to enable the child to be involved in and make progress in the general education curriculum; and (2) meet each of the child’s other educational needs that result from his or her disability.<sup>14</sup> For children with disabilities who take alternative assessments aligned with alternative achievement standards, their IEPs must also include a description of benchmarks or short-term objectives.<sup>15</sup>

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<sup>11</sup> 19 Tex. Admin. Code § 89.1050(e). Subsection 89.1050(e) provides in relevant part: “The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 C.F.R. §§ 300.344, 300.345, 300.348, and 300.349. The report shall also indicate each member’s agreement or disagreement with the committee’s decisions.”

<sup>12</sup> 19 Tex. Admin. Code § 89.1050(h)(5).

<sup>13</sup> 19 Tex. Admin. Code § 89.1050(h)(6). A “prior written notice” informs the parents in writing of the district’s actions and the grounds for the actions.

<sup>14</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(II), as amended.

<sup>15</sup> 20 U.S.C. § 1414(d)(1)(A)(i)(I)(cc), as amended.

Here, the district specified “mastery criteria” to render the objectives under each goal measurable. Under the IDEA statute and caselaw, even if the child’s IEP goals were not measurable, there is no violation if the child nonetheless received educational benefit.<sup>16</sup> As discussed more fully below, the child received educational benefit while attending school in the district. Thus, this Hearing Officer finds that there is no procedural defect with respect to the child’s IEP goals.

In sum, the child’s program while at the district was in compliance with the IDEA procedures.

### Second Prong of the *Rowley* Test

My analysis under the second prong of the *Rowley* inquiry focuses on the Petitioner’s substantive complaints as they relate to the four factors articulated by the Fifth Circuit Court of Appeals in *Cypress-Fairbanks Independent School District v. Michael F.*<sup>17</sup> In *Michael F.*, four factors must be considered when deciding whether a child’s program and services are reasonably calculated to confer educational benefits.

#### Individualized Services

Under the first *Michael F.* factor, the IEP for the child must be individualized. Here, the child’s ARD committee accurately recognized the child’s primary needs stemming from the child’s disability – Asperger syndrome – as development in social interaction skills. There is no question that the child has had some problems getting along with classmates, including, most seriously, two physical altercations.<sup>18</sup> These fights or physical conflicts with other students are attributed to a typical feature of children with Asperger syndrome: impaired social skills.

The district addressed the child’s individualized social training needs. The ARD committee authorized one-on-one counseling for the child to help the child in peer relationships. A social skills curriculum, approved by the parents, was implemented to enhance the child’s ability to build and maintain relationships with classmates. IEP goals centered on building social skills were added.

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<sup>16</sup> 20 U.S.C. § 1415(f)(3)(E)(ii)(III), as amended; *Leticia H. v. Ysleta Indep. Sch. Dist.*, 47 IDELR ¶ 13 (W.D. Tex. 2006) (IEP not defective under the IDEA if child received educational benefits despite lack of measurable goals).

<sup>17</sup> 118 F.3d 245, 253 (5<sup>th</sup> Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).

<sup>18</sup> The parents also testified about another incident that occurred outside the child’s math classroom prior to March 21, 2006. The Petitioner may not rely upon this incident as a basis for its claims as such reliance is barred by the one-year statute of limitations under 19 Tex. Admin. Code § 89.1151(c). (Hr’g Tr. at 25 – 26 (vol. 1) (May 10, 2007); Pet’r Ex. 24, p. 6).

The district also addressed the child's other individualized needs. A staff member was assigned to shadow the child during passing periods between classes to ensure the child safely arrived at the next classroom.

The Petitioner alleges that the district failed to deliver individualized in-home training for the child. The ARD committee did authorize in-home training. This service, however, was never provided before the child was removed to private settings in 2007. A failure to implement an IEP service is evaluated under the standard announced by the Fifth Circuit in *Houston Independent School District v. Bobby R.*<sup>19</sup> Under the standard in *Bobby R.*, the Petitioner must demonstrate that the Respondent failed to implement substantial or significant provisions of the IEP.<sup>20</sup> This Hearing Officer finds that the in-home training was one piece of an array of IEP services and did not constitute a substantial or significant part of the IEP. Therefore, the lapse in providing it did not deny the child the social skills training that was the significant part of the IEP.

The Petitioner alleges that the child's individualized transition needs were not addressed. This Hearing Officer finds that to the contrary, the child's ARD committee did address transition planning on more than one occasion.

The Petitioner alleges that the child's teachers were not highly qualified, trained and lacked resources to meet the child's individualized needs. This Hearing Officer finds that the Petitioner failed to substantiate these allegations by a preponderance of evidence.

#### Least Restrictive Environment (LRE)

The second *Michael F.* factor is whether the child's program is administered in the least restrictive environment (LRE).<sup>21</sup> Compliance with the LRE mandate is evaluated through the two-part test announced by the Fifth Circuit in *Daniel R.R. v. State Board of Education.*<sup>22</sup>

#### First Prong of the *Daniel R.R.* Test

The first prong of the *Daniel R.R.* test asks whether full-time education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily. Several factors are considered under the first prong, such as the steps the school has taken to accommodate the student, the sufficiency of these efforts, the ability

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<sup>19</sup> 200 F.3d 341 (5<sup>th</sup> Cir.), *cert. denied*, 531 U.S. 817 (2000).

<sup>20</sup> *Id.* at 349.

<sup>21</sup> This discussion addresses the Petitioner's claim that the Respondent denied the child an appropriate placement.

<sup>22</sup> 874 F.2d 1036, 1048 (5<sup>th</sup> Cir. 1989)

of the student to receive educational benefit in the regular classroom, the overall experience of the student, and the effect of the student on his or her classmates.<sup>23</sup>

#### Steps Taken to Accommodate the Child in General Education Setting

Here, the ARD committee initiated several steps to accommodate and integrate the child in the regular education environment. As discussed above, the district provided one-on-one counseling, a social skills curriculum and IEP goals to enable the child to relate to classmates. The district also provided a shadow to trail the child to ensure safe passage through the halls of the child's school.

#### Sufficiency of Efforts to Accommodate Child

Here, the steps taken by the ARD committee to accommodate the child in the regular education environment were sufficient. The child was able to function in the regular education environment.

#### Educational Benefits

Here, the child received educational benefit in the regular education environment. As discussed more fully below, the child received academic benefits from the district as evidenced by advancing a grade level and receiving passing grades during the final semester in attendance at the district.

#### Overall Experience in General Education Setting

This Hearing Officer is mindful of the Fifth Circuit's tenet that "mainstreaming a child [with a disability] who will suffer from the experience would violate the Act's mandate for a free appropriate public education."<sup>24</sup> Here, the evidence shows that the child was involved in two physical altercations with other students. These altercations were attributed to the child's poor social interaction skills stemming from the child's disability – Asperger syndrome.<sup>25</sup> The parents were worried that their child was being bullied. While the parents' concern is understandable, these incidents were isolated. Both were discussed by the child's ARD committee. In regard to the incident that occurred in the art classroom, the district responded by taking action to avert and did avert any further altercations by the addition of a teacher assistant. In regard to the incident of the child leaving campus when the shadow gave the child more space in the

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<sup>23</sup> 874 F.2d at 1048 – 49.

<sup>24</sup> 874 F.2d at 1049.

<sup>25</sup> Hr'g Tr. at 48 – 50 (vol. 1) (May 10, 2007).

hallway, the district planned for the shadow to return to closely following the child. Overall, the child did not suffer from being in the general education setting.

#### Child's Effects on General Education Setting and Classmates

Here, there was no evidence that the child had a negative or detrimental effect on the regular education environment and classmates.

#### Second Prong of the *Daniel R.R.* Test

The second prong of the *Daniel R.R.* test is invoked if the child cannot be integrated into the general education setting satisfactorily. It asks which setting permits the child to be mainstreamed to the maximum extent appropriate. In the context of the continuum of alternative placements that school districts must have available, the Petitioner seeks the most restrictive placement – residential placement with other children with disabilities.

According to the Petitioner's prior treating psychologist, this child needs a "lock-down facility" with other children with Asperger syndrome so the child can "come to grips with the fact" that the child has Asperger syndrome and can acquire appropriate social interaction skills best developed through exposure to the "social milieu" generated by a facility with children with the same needs.<sup>26</sup> (According to the prior treating psychologist, the child denies having Asperger syndrome.) Having received this advice, the child's parents bypassed asking for a more restrictive setting within the district.<sup>27</sup>

Given this recommendation as articulated by the Petitioner's expert, the Petitioner cites as its principal authority an Eighth Circuit Court of Appeals reimbursement case, *Independent School District No. 284 v. A.C.*,<sup>28</sup> to justify the move to the out-of-state private school.<sup>29</sup> In *A.C.*, the Eighth Circuit stated: "If the problem prevents a disabled child from receiving educational benefit, then it should not matter that the problem is not cognitive in nature or that it causes the child even more trouble outside the classroom than within it. What should control our decision is not whether the problem itself is 'educational' or 'non-educational,' but whether it needs to be addressed in order for the child to learn."<sup>30</sup> Here, the evidence does not show that the child's state of denial over

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<sup>26</sup> Tr. at 53, 55 – 56, 62, 75, 79, 80 – 81 (vol. 1) (May 10, 2007); Pet'r Ex. 49, p. 1; Resp't Ex. 1, p. 38.

<sup>27</sup> The child's parents apparently also forewent the transfer option available under the Texas Education Code for victims of bullying at school. Tex. Educ. Code § 25.0341 (as added by Acts 2005, 79th Leg., ch. 920, § 2).

<sup>28</sup> 258 F.3d 769 (8<sup>th</sup> Cir. 2001).

<sup>29</sup> Pet'r Closing Argument at 9.

<sup>30</sup> 258 F.3d at 777.

Asperger syndrome prevented learning, thus necessitating the restrictive placement to address it. As discussed more fully below, the child did learn, receiving academic benefits from the district evidenced by advancing a grade level and receiving passing grades during the final semester in attendance at the district. While exposure to the “social milieu” of the private facility might be superior to the child continuing in the district environment, that does not render the district setting inappropriate.<sup>31</sup> The IDEA does not require a comparative analysis of public versus private schools; the district setting must only offer a basic floor of opportunity for FAPE, not a better program than what the parents locate on their own.<sup>32</sup>

After applying the two-part test announced in *Daniel R.R.*, this Hearing Officer finds that the district’s placement was appropriate and complied with the LRE mandate for this child.

### Key Stakeholders

Under the third *Michael F.* factor, the child’s key stakeholders must work in a coordinated and collaborative manner. This Hearing Officer finds no problems under this factor. There was no evidence produced at the Due Process Hearing to suggest that communication and collaboration among the school staff and service providers were faulty. While the parents were frustrated with the district, the parents remained engaged in the ARD process. For example, the district encouraged the parents to review and approve the social skills curriculum for their child.

The Petitioner complains about an alleged lack of coordination of services while the child was at the acute care unit on two occasions. During the first stay at the acute care unit in November, 2006, the district provided homework for the child. Given that the child was absent for only five school days, this response was reasonable and did not require the district and acute care unit to collaborate. During the second stay at the acute care unit in January and February, 2007, the district was notified by the parents not to provide homework. Communication between the district and the acute care unit revealed that the acute care unit did not recommend educational services for the child while hospitalized, thus the district was not in a position to do anything further with the acute care unit.

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<sup>31</sup> The Respondent’s expert challenged the thesis that exposing the child to the “social milieu” of a private facility comprised only of other children with Asperger syndrome would be better for the child’s growth in social skills. Hr’g Tr. at 384 – 85 (vol. 2) (May 11, 2007). In either case, the private setting is not the LRE for this child.

<sup>32</sup> See, e.g., *Jenkins v. Squillacote*, 935 F.2d 303, 305 (D.C. Cir. 1991) (if there is an appropriate public school program available, the district need not consider private placement, even though the private placement might be better able to serve the child).

## Educational Benefit

The fourth *Michael F.* factor is whether the child's IEP is reasonably calculated to generate educational benefits, including academic and nonacademic benefits. Here, the spring, 2006 TAKS administration revealed that the child met the state passing standard in reading. The child advanced a grade level from the 2005-06 school year to the 2006-07 school year. During the fall, 2006 semester, the child passed all general education classes.<sup>33</sup> Achievement testing administered in fall, 2006 showed the child scoring at the low-average level in written expression and math reasoning and average levels in basic reading, reading comprehension and math calculation. The only blemish on the child's academic record is that the child did not meet the TAKS passing standard in math in spring, 2006. Academically, the child made meaningful overall progress.

The Petitioner alleged that the child regressed socially. The Petitioner, however, failed to establish this by a preponderance of the evidence. The child's special education teacher testified that he observed the child engaging in appropriate social interactions during school and at school functions.<sup>34</sup> The child's LSSP testified that she observed the child engaging in appropriate social interactions in the hallways. A district autism consultant testified that she observed the child engaging in appropriate social interactions at school. The child's regular education teachers reported in written "status reports" that the child generally demonstrated positive interpersonal relations with peers in their classrooms.

In sum, the four *Michael F.* factors militate in favor of a finding that that district's program for this child was reasonably calculated to confer educational benefits.

## Private School Reimbursement Request

As relief, the Petitioner primarily seeks reimbursement for a private school placement. Under the IDEA, such reimbursement is allowed under specified conditions.<sup>35</sup> Procedurally, parents generally must demonstrate that they provided advanced notice to the school district before removing their child to a private school.<sup>36</sup>

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<sup>33</sup> The child's parents expressed skepticism about their child earning passing grades but acknowledged that they had no proof of grade inflation or misrepresentation of scores. Hr'g Tr. at 207 – 09 (vol. 1) (May 10, 2007).

<sup>34</sup> This Hearing Officer finds the testimony of the child's special education teacher credible and his observations should be accorded due weight per *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1292 (5<sup>th</sup> Cir. 1991) (weight given to testimony of those with daily and continuing observation within the school environment).

<sup>35</sup> 34 C.F.R. § 300.148 (71 Fed. Reg. 46540, 46769 (effective Oct. 13, 2006)).

<sup>36</sup> 34 C.F.R. § 300.148(d)(1) (71 Fed. Reg. 46540, 46769 (effective Oct. 13, 2006)).

Substantively, parents must demonstrate that they have satisfied a two-part test: first, showing that the school district cannot offer an appropriate education to their child and, second, showing that the private school can do so.<sup>37</sup>

The Petitioner did not comply with the notice requirement for a reimbursement request. Under the IDEA, parents may provide notice in one of two ways. Notice provided through an ARD committee meeting must occur before the child is removed.<sup>38</sup> Notice provided through a notice letter must occur at least 10 business days before the child is removed.<sup>39</sup> Here, the parents did not inform the district they were rejecting the district's placement for their child until an ARD committee meeting that was held after they had already enrolled the child in the out-of-state private school. A letter from the parents was received by the district the day before the child was officially enrolled there.

Notwithstanding the parents' failure to provide timely notice to the district, they could still obtain reimbursement if specified IDEA exceptions applied. Here, the pertinent exception is the risk of serious emotional harm to the child. If such harm is likely, parents may first remove their child and then provide notice.<sup>40</sup> Given the professional advice the parents received here that their child needed a therapeutic placement, this Hearing Officer will exercise his discretion and excuse the lack of timely notice.

However, substantively, the Petitioner has not demonstrated that the Respondent cannot offer an appropriate education to their child. As discussed above, the Respondent did provide FAPE to the child.

Furthermore, the Petitioner has not demonstrated that the out-of-state private school can provide an appropriate education to the child. In the short time there thus far, the child has already left campus more times than the child did at the district in the entire fall, 2006 semester. The Petitioner's expert testified that the child is "having a very difficult time" at the out-of-state placement.<sup>41</sup> Based upon this evidence, this Hearing Officer cannot conclude the residential setting selected by the Petitioner meets the IDEA test for reimbursement.

In conclusion, this Hearing Officer finds that the Respondent prevails on all claims asserted by the Petitioner.

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<sup>37</sup> 34 C.F.R. § 300.148(c) (71 Fed. Reg. 46540, 46769 (effective Oct. 13, 2006)).

<sup>38</sup> 34 C.F.R. § 300.148(d)(1)(i) (71 Fed. Reg. 46540, 46769 (effective Oct. 13, 2006)).

<sup>39</sup> 34 C.F.R. § 300.148(d)(1)(ii) (71 Fed. Reg. 46540, 46769 (effective Oct. 13, 2006)).

<sup>40</sup> 34 C.F.R. § 300.148(e)(2)(ii) (71 Fed. Reg. 46540, 46769 (effective Oct. 13, 2006)).

<sup>41</sup> Hr'g Tr. at 57 (vol. 1) (May 10, 2007).

Conclusions of Law

After due consideration of the foregoing findings of fact, this Hearing Officer makes the following conclusions of law:

1. The Respondent, North East Independent School District, provided and proposed a program reasonably calculated to provide FAPE to the Petitioner under *Board of Educ. v. Rowley*, 458 U.S. 176 (1982) and *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).
2. The Respondent, North East Independent School District, provided and proposed a placement that was appropriate and the LRE for the Petitioner under *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5<sup>th</sup> Cir. 1989).
3. The Respondent, North East Independent School District, provided appropriate social skills training to the child. The failure to provide in-home training for the child did not deny the child substantial or significant services and, consequently, did not violate the IDEA under *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir.), *cert. denied* 531 U.S. 817 (2000).

Order

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

**IT IS HEREBY ORDERED THAT:**

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

**SIGNED** this 29<sup>th</sup> day of June, 2007.

/s/ Steven R. Aleman  
Steven R. Aleman  
Special Education Hearing Officer

Notice

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

TEA DOCKET NO. 196-SE-0307

STUDENT,	§	
b/n/f PARENTS	§	BEFORE A
	§	SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER
	§	
NORTH EAST	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

SYNOPSIS

ISSUE 1: Whether the Respondent failed to provide a free appropriate public education to the Petitioner.

CITE: 34 C.F.R. § 300.101 (effective Oct. 13, 2006)

HELD: For the Respondent. The district provided FAPE to the child.

ISSUE 2: Whether the Respondent failed to provide an appropriate placement to the Petitioner.

CITE: 34 C.F.R. § 300.114 (effective Oct. 13, 2006)

HELD: For the Respondent. The district provided an appropriate placement in the LRE for the child.

ISSUE 3: Whether the Respondent failed to provide appropriate related services to the Petitioner.

CITE: 34 C.F.R. § 300.34 (effective Oct. 13, 2006)

HELD: For the Respondent. The district provided appropriate social skills training to the child. The failure to provide in-home training for the child did not deny the child substantial or significant services.