

TEXAS EDUCATION AGENCY
DOCKET NO. 010-SE-0907

STUDENT BNF PARENTS, Petitioner	§	BEFORE A DUE PROCESS
	§	
VS.	§	HEARING OFFICER FOR
	§	
COPPELL INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS
	§	

DECISION OF THE HEARING OFFICER

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Statement of the Case

Petitioner (also “parent(s)”), as next friend and on behalf of their son (hereafter “student”), brought this due process complaint against Coppell Independent School District (hereafter “Coppell ISD”) pursuant to the Individuals with Disabilities Education Improvement Act (hereafter “IDEA”), 20 U.S.C. §1400 *et seq.* The parents complained that Coppell ISD failed to provide the student with a free appropriate public education during the 2006-2007 school year. The parents unilaterally withdrew the student from Coppell ISD and enrolled the student in a private school. The parents seek tuition reimbursement from Coppell ISD for the private educational costs incurred in educating the student.

Procedural History

The parents filed this request for a due process hearing with the Texas Education Agency (hereafter “TEA”) on September 18, 2007. The hearing in this matter was initially set for October 29, 2007. On September 26, 2007, at the request of parents’ counsel, the hearing was rescheduled for November 8 and 9, 2007.

A telephone prehearing conference was held on October 3, 2007 wherein twenty-six issues were identified as being set forth in the due process complaint notice.

Coppell ISD filed a Motion to Dismiss certain issues claiming they had been previously resolved and released by Petitioner as set forth in a mediated settlement agreement between the parties dated December 5, 2006. This settlement agreement purported to resolve all educational issues in controversy between the parties through December 5, 2006 and it contained a full release of such claims executed by Petitioner.

In response, the parents’ raised as an affirmative defense that Coppell ISD had committed a prior material breach of the settlement agreement which rendered the

agreement unenforceable.¹ They argued they should be allowed to pursue all their claims and causes of action that accrued on or before December 5, 2006.

After completing an evidentiary hearing on the Motion to Dismiss, I determined that Coppell ISD had substantially complied with the mediated settlement agreement, although it had failed to comply with two terms of the agreement. Consequently, for purposes of determining the scope of the issues for hearing, the parents were allowed to present evidence relating back one year regarding two issues: (1) whether Coppell ISD failed to provide the student with instruction in the least restrictive environment; and (2) whether Coppell ISD failed to protect the student from bullying, harassment and physical assaults to the extent that it resulted in a denial of a free appropriate public education. The other issues in the due process complaint were either dismissed or limited in scope, because they involved claims which had accrued on or before December 5, 2006. Accordingly, this matter proceeded to hearing on the following issues:

1. Whether Coppell Independent School District, from September 19, 2006 through September 18, 2007, failed to change the placement of the student and whether the school's failure to protect that student from bullying, harassment and physical assaults resulted in a denial of a free appropriate public education ("FAPE");
2. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to provide a full continuum of services to the student at ** and proposed placement at ** for the 2007-2008 school year;
3. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, delayed the parents' rights to timely due process;
4. Whether Coppell Independent School District failed to comply with a binding and legally enforceable Mediation Agreement dated December 5, 2006 as agreed upon by the parents and the school district:
 - a. By not following the individualized education plan ("IEP") and behavior intervention plan ("BIP");
 - b. By suspending the student on February 20, 2007 as outlined in the BIP as a consequence that would not be given to the student;
 - c. By failure to provide related services as outlined in the IEP and BIP;
 - d. By failure to provide training to teachers and paraprofessionals on the student's disabilities and implementation of the IEP, including his BIP by trained and qualified staff;
 - e. By failure to ensure that the written agenda form was checked and signed by each classroom teacher and sent home daily for the parent to initial and return to the District;

¹ When one party to a contract commits a material breach of that contract, the other party is discharged or excused from any obligation to perform. The contention that a party is excused from performance because of prior material breach by the other contracting party is an affirmative defense. *Davis v. Allstate Ins. Co.*, 945 S.W.2d 844, 845-46 (Tex. App. – Houston [1st Dist.] 1997, pet withdrawn).

- f. By failure to ensure the Full Individual Evaluation by the Independent Evaluators assessed the student in all areas and in a timely manner as agreed upon in the ARD meeting of December 8, 2006;
 - g. By failure to convene an ARD meeting no later than February 19, 2007;
 - h. By delaying contracting with **, LCSW, to provide eight one-hour sessions at the District's expense, to the student regarding objectives in his IEP by February 19, 2007;
 - i. By delaying the parents request on June 28, 2007 to return to mediation by first requiring the parents to attend an ARD meeting on July 16, 2007;
 - j. By failure to provide ** with written information on how bullying/harassment was to be addressed at **;
5. Whether Coppell Independent School District, from September 19, 2006 through September 18, 2007, failed to provide the student with instruction in the least restrictive environment;
6. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to provide the student opportunities for the student to interact with non-disabled peers;
7. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to provide social skills training to meet the unique individual needs of the student to allow him to interact with non-disabled peers;
8. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to implement:
 - a. The IEP and BIP in effect for the 2006-2007 school year,
 - b. Related services to the student and parents as indicated on the Schedule of Services,
 - c. Providing the parents with timely three week and six week progress report cards,
 - d. Providing the parents with timely IEP and BIP progress reports;
9. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to appropriately assess the student in all areas such as Occupational Therapy, Physical Therapy, Assistive Technology, Speech, Psychological Counseling, Adaptive Physical Education, In-Home Training and consider all related services to meet the unique, individual needs of the student;
10. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to assess the student prior to discontinuing related services;
11. Whether Coppell Independent School District failed to provide educational services to the student during the ten weeks the student was out of school, as

- limited from December 6, 2006 through December 21, 2006 due to the emotional distress caused by the hostile and unsafe educational environment;
12. Whether the student's IEP and BIP goals and objectives in effect for the 2006-2007 school year, from December 6, 2006 through September 18, 2007, were measurable, based on the student's areas of need and whether a time was included for projected dates for meeting those goals and objectives;
 13. Whether Coppell Independent School District, from December 6, 2006, failed to provide an appropriate BIP for the 2006-2007 school year:
 - a. Whether the BIP contained positive behavioral strategies based on the student's unique and individualized needs,
 - b. Whether the school district failed to conduct a formal Functional Behavior Assessment or if one was performed whether it complied with the requirements of the law;
 14. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to conduct ARD meetings in a collaborative manner as evidenced by:
 - a. Presenting already prepared documentation at the ARD and not allowing the parents an opportunity to review and consider the information prior to the ARDs,
 - b. Failing to conduct the ARD meetings in a timely and mutually agreed upon manner;
 15. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to provide the parents with appropriate Prior Written Notice of the issues to be addressed in the ARD meetings and individuals invited and as to their rights when the school was denying the parents' request for changes in services and placement;
 16. Whether Coppell Independent School District, from December 6, 2006, failed to complete the student's triennial evaluation before the required deadline of April 21, 2007;
 17. Whether Coppell Independent School District, from December 6, 2006, failed to convene an annual ARD before the required deadline of April 21, 2007;
 18. Whether Coppell Independent School District, from December 6, 2006, failed to address Transition Services prior to the student's ** birthday of **;
 19. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, represented and considered the appropriate Graduation Option for the student;

20. Whether Coppell Independent School District, from December 6, 2006, failed to develop a schedule of courses for the 2007-2008 school year in a timely manner;
21. Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to address ESY in a timely and appropriate manner;
22. Whether Coppell Independent School District, from December 5, 2006 through September 18, 2007, falsified educational documents;
23. Whether Coppell Independent School District, from December 5, 2006 through September 18, 2007, failed to provide the student services available to students with autism/pervasive developmental disorder; and
24. Whether Coppell Independent School District, from December 5, 2006 through September 18, 2007, failed to provide Highly Qualified Teachers and related service providers and whether the school district failed to ensure that the teachers and staff received in-service training in regard to the student and his needs.

The parties, by agreement, incorporated the Motion to Dismiss hearing, exhibits and testimony into the record of this proceeding.

Based on the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law. For administrative clarity and expediency, findings of fact and conclusions of law are also contained in the discussion section of this decision:

Findings of Fact

1. The student is ** years old, in the ** grade (2007-2008 school year) and resides with his parents within the jurisdictional boundaries of Coppell ISD. [Hearing Transcript, 654, 846, hereafter, T. page ___].
2. Coppell ISD is a duly incorporated school district under the laws of the State of Texas and is the local educational agency responsible for providing the student with a free appropriate public education.
3. The student qualifies for special education services as a student with an emotional disturbance and other health impairments.
4. The student was initially referred for special education in the third grade because his behavior was interfering with his learning. He was not focusing on his school work nor completing his tasks; he frequently refused to work when frustrated, was non-compliant with his teachers' requests and had poor social skills. At that time, he qualified for special education services under "other health impairment" – attention deficit hyperactivity disorder. Respondent's Exhibit #2, 4, hereafter R. Exh. #___].

5. A Functional Behavioral Assessment of the student was completed in September, 2003. The problematic behaviors reported by school staff included the student being easily frustrated, throwing pencils, crawling under the table, non-compliance with adult requests, behavior outbursts (e.g. turning over chairs, destroying papers), inappropriate peer relations, physical aggression, and off task behaviors such as wandering the room, sleeping or complaining of feeling tired. The antecedents to these behaviors included request/directives by teachers, physical restraint, teacher denied student requests, redirection from inappropriate activity, change in routine, peer interactions, engagement in academic activities, hunger, overstimulation, time of day, and being in an unstructured setting. [R. Exh. #6].

6. In March, 2004, a neuropsychological assessment of the student was completed wherein he was diagnosed as having Asperger's Syndrome, and a Bipolar Disorder. [R. Exh. #8].

7. A follow-up full and individual evaluation of the student completed by Coppell ISD in April, 2004 did not confirm the existence of Asperger's Syndrome, but found his behavior more consistent with his Bipolar Disorder and an obsessive-compulsive disorder. [R. Exh. 9].

8. In the 2004-2005 school year, the student was in the ** grade and attended **. He was educationally placed in the Personal Academic Growth ("PAG") class for the full school day at the beginning of the school year. The PAG class is a self-contained behavior unit wherein the student's behavioral issues were addressed. [T. 495-496, 567-570]

9. In the 2005-2006 school year, the student was in the ** grade and attended **. He was educationally placed in general education classes except for resource language arts and math. He received inclusion support, accommodations and had a behavior intervention plan. In approximately October, 2005, the student was returned to the PAG class for half the school day due to him shutting down and refusing to do his academic work.

10. The student achieved passing grades in the ** grade and was promoted to the eighth grade. [R. Exh. #42].

11. In the ** grade, the student also exceeded ARD Committee expectations on the Texas State-Developed Alternative Assessment II in the area of reading and met the Committee's expectations in math and writing. [R. Exh. #43].

12. The student's annual ARD Committee met on April 27, 2006. The ARD Committee determined that the student was making significant academic progress in all areas and was working on grade level in Language Arts, Science and Social Studies and at the ** grade level in math. The ARD Committee developed an individualized education plan that addressed not only academic areas, but also, life skills (organizational

issues) and behavior. The duration of this individualized education plan was from April 27, 2006 to April 27, 2007. The ARD Committee also agreed to increase the amount of the student's instruction in general education. As a result, the student thereafter began receiving half of his language arts instruction in the general classroom and received special education instruction in math and organizational skills. [R. Exh. # 12].

13. The student's behavior intervention plan targeted the behaviors of failure to stay on task and constructive communication. [R. Exh. #12].

14. The parent agreed with the decisions of the April 27, 2006 ARD Committee. [R. Exh. #12].

15. On August 10, 2006, Coppell ISD completed a psychological addendum at the request of the parents to determine the student's best learning modality. The results indicated the student was weak in internalizing new information visually and verbally; that he had short term memory problems, with weak recall skills, but that his recognition based skills were much stronger. Consequently, it was recommended that the student have multi-sensory teaching as much as possible, that tests should not be recall based, but rather recognition based, such as multiple choice, word banks, etc.; that new information be coupled with pictures, rhymes, and other memory techniques; there be ongoing repetition to learn new information; and behaviorally, not to press him if he begins to resist as he will shut down and not perform for extended periods of time. [R. Exh. #13].

16. On August 11, 2006, an ARD Committee met and reviewed the psychological addendum. The Committee added instructional modifications of shortened written assignments by 70%, textbooks for home, use of a dictionary, typing composition and essay questions, the use of spell check for compositions, and typing lengthy assignments. This ARD Committee also addressed outstanding issues related to compensatory educational services due the student. The parent did not indicate agreement with the decisions of the ARD Committee. [R. Exh. #14].

17. The student began the 2006-2007 school year (88 grade) receiving one half of his language arts instruction, his math instruction and instruction in organizational skills in the PAG class. He spent the remainder of the day mainstreamed in general education classes. He began having difficulties in certain of his general education classes with teachers and his inclusion staff and he began leaving the classes at least once a week. Additionally, his behavior became more violent as the year progressed. [T. 505-508].

18. On September 26, 2006, the student became upset when required to run one mile in his P.E. class. He cursed other students and tried to hit the teacher. He repeatedly refused to go to a cool down area and ultimately kicked the teacher. He also threw a puzzle and knocked over a study carrel in his PAG class and attempted to throw his memory keyboard. These acts of aggression resulted in two restraints by his PAG teacher and staff and a Coppell ISD safety officer. During one of the restraints, the safety officer held the student face down in a prone position with his hands behind his back and

with the officer pressuring his neck. [R. Exh. #41, T. 547-550, 893]. Thereafter, the student became fearful of adults and attending school. [T. 47, 224-225, 651, 893]. His parents contended this restraint was dangerous and could have injured or caused the death of the student.

19. On September 29, 2006, the student was again restrained when he became agitated and threw papers off his teacher's desk. Afterwards, he fell asleep on the floor. [R. Exh. #41].

20. The student was subjected to certain types of conduct that could be considered as bullying, including having his P. E. shoes taken, and having his memory keyboard taken and hidden under a urinal and being poked with a pencil by a student. Additionally, he was called names by other students such as "fag," "fruitcake," "gay," "retard," and "rapist" and they made commented that he "stinks." He was also assaulted in the locker room by other students. [T. 538-539, 561-563, 631, 635, 725-726,].

21. School personnel did not recognize these incidents as bullying behavior, but in situations where they believed the student had been mistreated, they took appropriate measures. [R. Exh. #15; T. 537-538]. The school conducted an investigation into the complaints of bullying but found a lack of evidence of bullying in the assaults in the locker room and found that the name calling was in response to comments and actions initiated by the student. [T. 561-564, 590-591, R. Exh. #15].

22. These incidents caused the student to suffer depression and anxiety and in October, 2006, he began medication to address these symptoms. [T. 890].

23. On October 13, 2006, the parents requested that the student be allowed to transfer from ** to **. This request was initially denied because of ** did not have a PAG classroom. [T. 727].

24. On October 31, 2006 and November 7, 2006, an ARD Committee met to address the parents' request to change the student's placement to **. The ARD Committee declined to change the student's placement due to concerns that the student needed the PAG classroom and its behavior support to be successful and that ** did not have that classroom or support. The parent disagreed with the decisions of this ARD Committee.

25. The parents kept the student from school from October 23, 2006 through December 21, 2006, the end of the fall semester due to their concerns regarding his safety and his emotional trauma.

26. During the student's absence, school officials collected and provided the student with his homework assignments at the request of the student's parent. However, no other actions, other than sending a few emails to the parents, were initiated by school officials to either compel the student's attendance, to ensure that the student absences were excused or that the student was receiving and completing home-based educational

services from October 23, 2006, through December 21, 2006. It was not until sometime after the mediation session on December 5, 2006, that school officials received a note from the student's physician dated October 23, 2006 indicating that he should remain at home due to increased emotional distress at school. [T. 579, 597, P. Exh. #68]. Although school officials should have initially made greater attempts to ensure that the student's absences were excused, the physician's statement adequately addressed these absences. The intervening settlement agreement of the parties addressed the issues that caused the student's removal from school. Since the mediation agreement provided that the student would return to school on January 8, 2007 and because the absences were otherwise excused, and because the student was provided with his school work by school officials, I find no improper denial of educational services to the student by Coppell ISD from December 6, to January 8, 2007.

27. To resolve the dispute over the student's educational placement, the parties proceeded to mediation on December 5, 2006. The parties reached an agreement in which the student was provided with a six week trial placement at ** effective January 8, 2007. His placement was to be in general education except for math and organizational skills which were to be provided in a resource setting, and his behavior intervention plan, as modified, was to be implemented. His parents agreed that these services were reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment during the trial period. Additionally, the parties agreed to request mediation prior to requesting a due process hearing.

28. As part of the mediation agreement, Coppell ISD agreed to adopt a written agenda form to document daily work, homework and that the form would be checked and signed by each classroom teacher and sent home daily for the parents to initial and return. Coppell ISD substantially complied with this term, except that it failed to ensure that each classroom teacher checked and signed the agenda form.

29. Coppell ISD also agreed that the Principal at ** would provide the parents and **, LCSW, with written information on how bullying/harassment was addressed at that campus. Coppell ISD failed to ensure that this was done by the Principal, however, this information was provided to the parents and **, LCSW. Coppell ISD substantially complied with this provision of the mediation agreement.

30. In the mediation agreement, the parties contemplated obtaining a full and individual evaluation of the student, including a psychological evaluation from an independent psychologist named in the mediation agreement and to thereafter convene an ARD Committee meeting by February 19, 2007, to review the evaluation and make any necessary changes to the student's IEP. However, the named psychologist declined to perform the evaluation. As a result, the parties were compelled to obtain another evaluator and alter the date of the ARD Committee meeting. The evaluation provisions were written as mutual obligations on the part of both parties and these provisions, as altered by subsequent agreements, were complied with by the parties.

31. As part of the mediation agreement, the parents released Coppell ISD, its officials, employees, and agents, in their individual and official capacities, from any and all claims related to the education of the student through December 5, 2007, the date of the mediation agreement and the parents agreed not to file any litigation or complaint against the District or its agents or employees based on any factual allegations prior to December 5, 2007, the date of the agreement.

32. Coppell ISD did not commit a prior material breach of the mediation agreement. Coppell ISD substantially complied with the terms and conditions of the December 5, 2006 mediation agreement. Therefore, all issues raised by the parents in this proceeding relating to events that occurred on or before December 5, 2007, are subject to Coppell ISD's affirmative defense of "release."

33. Per the terms of the mediation agreement, the student's educational services and placement during the six week trial period from January 8, 2007 through February 19, 2007, were reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment.

34. By stipulation, the student received a free appropriate public education in the least restrictive environment from Coppell ISD from January 8, 2007 through February 19, 2007.

35. Those claims and issues of the parents and student that accrued from January 8, 2007 through February 19, 2007, are waived by the stipulation of the parents contained in the mediation agreement that such services and placement during the agreed upon trial period are reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment.

36. In compliance with the mediation agreement, the parties convened an ARD Committee meeting on December 8, 2006, and the District agreed to transfer the student to ** effective January 8, 2007. The Committee placed the student in general educational classes with paraprofessional support for language arts, social studies, science, and P. E. and in a resource class for math and a special education class for organization skills. The Committee also adopted the behavior intervention plan as developed on November 7, 2006, excluding all of the strategies other than the Quick Stress Busters and any additional strategies that were mutually agreeable to the ARD Committee. The ARD committee also adopted the following components of the August 11, 2006, IEP: (1) accommodations, (2) related services of psychological services, adaptive PE, occupational therapy, in-home training, and parent training, and (3) goals and objectives. The parent agreed with the decisions of this ARD Committee. [P. Exh. #49, pages 975-1017].

37. The student began the spring semester of the 2006-2007 school year on January 8, 2007, at **.

38. Although the student was involved in several behavioral incidents at **,

he was not bullied or harassed. [R. Exh. #40; T. 313].

39. The student was not successful in the general education environment. He did not want to go into the classroom, would start shaking and would become very anxious, would put his head down and put the hood of his sweatshirt over his head, and would refuse to do work. [T. 261]. The student continued to exhibit this discomfort even with appropriate interventions by the District. [T. 311 –312].

40. By late January 2007, **’s staff was concerned about the student’s lack of work completion and his “shutting down” when work was demanded of him. [R. Exh. #18]. Behaviors displayed by the student that interfered with his education included becoming easily frustrated and shutting down in class. He would put his head down on his desk and refuse to do work or would crawl under his desk or table. He would not move from his seat when instructed by his teacher. He ignored teacher directions, refused to participate in class, did not complete assignments, was unable to function in an unstructured or demanding atmosphere, became aggressive when upset, had poor motivation, emotionally was not on the same level as peers, and was quick to react negatively. [R. Exh. #20]. His teachers convened a parent/teacher conference on February 1, 2007, to discuss their concerns. The parent and teachers agreed to continue implementing the current IEP until the receipt of the pending evaluation report. [R. Exh. #18; T. 296].

41. In an attempt to comply with the mediation agreement, an ARD committee meeting was scheduled prior to February 19, 2007, to review the results of the independent educational evaluation. However, the independent evaluator indicated she could not be in attendance on that date and Coppell ISD rescheduled the ARD committee for February 22, 2008, so that the independent evaluator could be in attendance. [R. Exh. #19].

42. The independent evaluator failed to attend the February 22, 2008 ARD Committee meeting and her independent evaluation was not available. [R. Exh. #19]. The District staff expressed concerns about the student’s lack of class participation/shutting down, lack of attending his general education classes, lack of work completion and missing assignments, limited academic progress, and behavioral outbursts and recommended a more restrictive educational environment. [T. 297– 298]. The ARD Committee meeting was recessed for purposes of obtaining the independent evaluation report. [R. Exh. #19].

43. On March 1, 2007, the independent evaluator sent an e-mail to Coppell ISD stating that she must withdraw from the evaluation due to a recent diagnosis of a medical condition. [R. Exh. #32]

44. The parent then selected **, Ph.D., at Diagnostic Assessment Services, to conduct the independent educational evaluation. [R. Exh. #32].

45. The ARD committee reconvened on March 9, 2007. Due to ongoing

concerns expressed by the student's teachers, the ARD Committee agreed to change the student's placement to a resource classroom for language arts, math, science, social studies, and career skills. The student continued to receive special education instruction in the resource classroom for math and remained in the general education classroom for P. E. The ARD Committee agreed to implement the placement change on March 19, 2007, following spring break. [R. Exh. #19].

46. The student was able to make some educational progress in the resource classroom, a more restrictive educational environment at **. [T. 263].

47. At **, after March 19, 2007 until the end of the 2006-2007 school year, the student had the opportunity to interact with students without disabilities when he was not in the resource classroom. He interacted with such students in the hallways, during breaks, during his general education P. E. class, during lunch, at assemblies, at pep rallies, and during advisory activities. [T. 310-311].

48. **, the Coppell ISD Director of Intervention Services, met with Dr. ** to identify the scope of the evaluation agreed upon through mediation. It was intended by the parties that Dr. ** or her office would conduct a full assessment including autism, occupational therapy, emotional disturbance, and/or anything else that was needed. [R. Exh. #32].

49. An autism evaluation was completed on April 10, 2007, by three of Dr. **'s staff including **, LSSP; **, Educational Diagnostician; and **, Speech Language Pathologist. The evaluators determined that the student did not demonstrate a profile of behaviors consistent with a diagnosis of an autism spectrum disorder, including Asperger's Syndrome. The evaluators concluded that Petitioner's emotional and behavioral concerns may best be explained by one or a combination of Petitioner's prior diagnoses including ADHD, Bipolar Disorder, Sensory Integration Dysfunction, and Adjustment Disorder-Anxiety. [R. Exh. #32].

50. The student does not qualify for special education services as a student with autism.

51. Coppell ISD failed to timely convene the student's annual ARD committee meeting by April 27, 2007, because it was awaiting the results of the independent educational evaluation report.

52. Coppell ISD failed to timely provide for the student's transition planning by his ** birthday on **, because it was awaiting the results of the independent educational evaluation report.

53. Ms. **, lead special education teacher and the student's case manager, personally sent home Petitioner's report cards for progress reports on the same day that other students received report cards. Ms. ** also personally sent home the IEP and BIP progress reports every six weeks. [T. 317-318].

54. Although a correction was made to the student's report card, the District did not falsify the student's educational records. [T.318].

55. A Full and Individual Re-Evaluation for Emotional Disturbance was completed on June 15, 2007, by another member of Dr. **'s staff, **, Psy.D., LSSP. Dr. ** determined that the student's general cognitive ability was in the average range and that his achievement scores were in the average range in reading and written language, and in the low average range for math. Dr. ** recommended that Petitioner met the criteria for eligibility as a student with an emotional disturbance. Dr. ** recommended that the ARD committee consider a more structured and supportive educational environment due to the student's attention deficits, reduced processing speed, sensory issues, emotional dysregulation, and frequent misinterpretation of social situations. She further opined that the general education classroom setting was not an appropriate placement for learning given the student's difficulties with ADHD and emotional dysregulation, as exacerbated by his sensory issues. She recommended a classroom with a lower student-teacher ratio, increased opportunities to incorporate social skills training with a coping skills component, decreased opportunities for sensory overload, and increased opportunities to use appropriate multi-sensory, multi-modal methods of teaching. She further recommended that an emphasis be placed on an appropriate level of academic instruction rather than focusing on behavior modification alone. Dr. ** did not conduct a Functional Behavioral Assessment, however, she recommended that one be completed. [R. Exh. #20].

56. After receipt of the independent educational evaluation reports, the ARD Committee met on July 16, 2007, to review the evaluation report, to conduct the student's annual ARD Committee meeting, and to develop a plan for his ** grade school year. [R. Exh. #21].

57. The ARD Committee properly determined, based on current assessment data, that the student met the eligibility criteria for special education services as a student with an emotional disturbance and other health impairment. The ARD Committee also properly determined that the student did not meet eligibility as a student with autism. [R. Exh. # 21].

58. After review of the independent educational evaluation reports and in response to parent and District staff concerns, the ARD Committee requested additional evaluations including pragmatic language, occupational therapy, assistive technology, physical therapy, evaluation for Asperger's Disorder, Functional Behavior Assessment, and a counseling assessment to be conducted within the first six weeks of the fall semester. [R. Exh. #21].

59. The parent was provided with consent forms for the evaluations by Coppell ISD, but she declined to give consent for the evaluations. [T. 917].

60. The ARD Committee determined that the student's anticipated method for

graduation would be the successful completion of his IEP and direct mastery of specific employability and self-help skills which do not require direct ongoing educational support of the local school district. [R. Exh. #21].

61. The ARD Committee in devising the student's individualized education plan for the 2007-2008 school year, re-adopted his BIP with the addition of strategies for social skills instruction. The ARD Committee determined that the student's BIP was successful as far as intervening in inappropriate behavior but it was not successful in preventing interfering behaviors. Accordingly, the ARD Committee added objectives to address the student's interfering behaviors of cussing and aggressive behaviors. [R. Exh. #21].

62. The ARD Committee developed goals and objectives for math, life skills, and behavior with the expectation that the student would master the grade level curriculum for reading, language arts, science, and social studies. [R. Exh. #21].

63. The ARD Committee reviewed and revised the student's instructional modifications and continued the provision of a word processor. The committee discussed Extended School Year services but did not recommend such services because the student demonstrated the ability to recoup lost skills after his return to school following his ten-week absence. [R. Exh. #21].

64. The ARD Committee recommended the student's placement at the high school in the PAG class for language arts, science, and social studies; in the resource class for math; and in general education with co-teacher support for tech/elective, health/teen leadership and P. E. The Committee discussed that the focus of the PAG class would be grade level achievement by the student with support for behavior. [R. Exh. #21].

65. The ARD Committee recommended related services of adaptive PE and occupational therapy. The parent requested that parent training be discontinued and the ARD Committee agreed to this request. The ARD Committee determined that social skills would be better addressed at school than at home; therefore, in-home training was discontinued. Additionally, the ARD Committee determined that psychological services could be subsumed by the behavior specialists in the PAG class and therefore, discontinued these services. [R. Exh. #21].

66. The parents' disagreed with any placement in the PAG classroom.

67. The student's IEP for the 2007-2008 school year, as developed by the July 17, 2007 ARD Committee was appropriate in that it was based on current assessment data and was reasonably calculated to confer upon the student an educational benefit. The IEP provided for the student's placement in the least restrictive environment.

68. The student demonstrated some academic achievement on the State Developed Alternative Assessment –II by achieving the ARD committee's expectations

of 8-II in reading and exceeded the ARD committee's expectation of 5-II in math by achieving a 5-III. However, the student failed the TAKS in social studies and science. [R. Exh. #21, 43].

69. The student's grades dropped dramatically when he was moved from the PAG class at ** to **. In ** grade in the PAG class at **, the student achieved all passing grades. During the first six weeks of eighth grade in the PAG class at **, he achieved all passing grades. The student was absent and did not receive grades for the second and third six weeks of the eighth grade. During the fourth six weeks at ** without PAG support, the student received a failing grade of 50 in language arts, a failing grade of 63 in social studies, and a failing grade of 50 in science. During the fifth six weeks at ** without PAG support, the student received a failing grade of 62 in social studies. During the sixth six weeks at ** without PAG support, the student received a failing grade of 68 in math. For the spring semester, 2007, the student failed language arts with a 68 and science with a 66. He was able to achieve promotion to the ** grade due to the passing grades that he had received while in the PAG class at **. [R. Exh. #42].

70. By letter dated July 9, 2007, the parents provided Coppell ISD with 10 business day's written notice of their intent to withdraw the student from school and enroll the student in a private school and seek reimbursement for the costs of the private school. [P. Exh. #2, pages 13-14]. The parents withdrew the student from Coppell ISD effective July 24, 2007. [P. Exh. # 14, page 275]. The student enrolled at the ** School, a private school in **, Texas on July 19, 2007. He currently attends this private school and is in the ** grade.

71. At ** School, through September 18, 2007, the student was achieving academic and behavioral progress. The student is no longer anxious about attending school, feels safe, is more focused and has a happy demeanor. [T. 717-718].

72. ** School is an appropriate educational environment for the student. His primary teacher at the school indicated that staff was assisting the student both therapeutically and academically and that the student was making B's in all his classes. He indicated the student had significantly improved behaviorally since the beginning of school, that he now takes redirection easily, that he rarely feels overwhelmed, and that he has made several friends. [T. 369-371, 381].

73. The private school tuition costs for ** School for the 2007-2008 school year were not affirmatively established in the record. The cost is approximately \$15,500 to \$15,900 plus an additional \$900.00 enrollment fee. [T. 896].

74. The parents seek reimbursement for transportation costs at the state rate for transporting the student approximately 15 miles roundtrip to and from school. [T. 898].

75. The parents requested reimbursement for a private occupational therapy evaluation from Journey Pediatric Rehabilitation in the amount of \$350.00. [T. 899].

This request is denied in that the Coppell ISD has sought from the parent consent to perform its own occupational therapy evaluation of the student but the parent has refused to provide consent.

76. The parents requested that the hearing officer order the school to pay for an independent assistive technology evaluation. [T. 899]. This request is denied in that Coppell ISD has sought from the parent consent to perform its own assistive technology evaluation of the student but the parent has refused to provide consent.

77. Although the student no longer attends Coppell ISD, it sent a letter to the parents expressing its continued willingness to conduct the requested evaluations upon receipt of parental consent.

78. Coppell ISD requested that the independent educational evaluators conduct an observation of the PAG classroom at ** to determine the appropriateness of the placement if the student's parents decided to re-enroll him in Coppell ISD. ** conducted an observation of the PAG classroom on September 10, 2007, and Dr. ** observed the classroom on September 17, 2007. Mr. ** testified that he felt that the PAG program would be helpful to the student as long as it was limited to the three periods per day set forth in Petitioner's IEP. [T.950– 951]. Dr. ** initially had some misunderstandings as to how the PAG class would be used for the student's individual needs. After obtaining clarification from Coppell ISD, Dr. ** determined that the PAG program could provide both the behavioral support and teaching interventions and modifications appropriate for facilitating Petitioner's educational progress. [R. Exh. #23].

Discussion

Scope of the Issues:

The issues in this proceeding are limited by the mediation agreement to those events that occurred after December 5, 2006 and before January 8, 2007, and to those events that occurred between February 20, 2007 and September 18, 2007. Those claims and issues brought by the parents that accrued on or before December 5, 2006 were released by the parents in the mediated settlement agreement dated December 5, 2006. Those claims and issues of the parents that accrued from January 8, 2007 through February 19, 2007, are waived by the stipulation of the parents in the mediation agreement that such services and placement during the agreed upon trial period are reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment. Accordingly, the issues addressed in this decision involve those complaints arising during the time periods from December 6, 2006 through January 7, 2007 and from February 20, 2007 to September 18, 2007, the date of the filing of the due process hearing complaint.

Additionally, pursuant to the IDEA, the issues addressed herein are limited to those identified as contained in the due process complaint notice. 20 U.S.C. §1415 (f)(3)(B).

Applicable Law

The Petitioner bears the burden of proof on each issue raised in this proceeding. *Schaeffer v. Weast*, 126 S. Ct. 528 (U.S. 2005); *Adam J. ex rel. Robert J. v. Keller ISD*, 328 F.3d 804, 806 (5th Cir. 2003); *Cypress Fairbanks ISD v. Michael F.*, 118 F.3d 245, 252 (5th Cir. 1997).

In *Board of Education of Hendrick Hudson Central School District v. Rowley*, 458 U.S. 176 (1982), the U.S. Supreme Court established a two-part test for determining whether a school district has provided a free appropriate public education (FAPE) to a student under the IDEA: 1) has the district complied with the procedures set forth in the IDEA; and 2) is the individual education plan (IEP) developed reasonably calculated to confer educational benefit on the student. Under the IDEA, procedural errors must have either impeded the child's right to FAPE, significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of FAPE to the child, or caused a deprivation of educational benefits. *See* 20 U.S.C. § 1415(f)(3)(E).

The Fifth Circuit has established criteria for determining when an IEP is reasonably calculated to confer educational benefit. In *Cypress Fairbanks ISD v. Michael F.*, the Fifth Circuit set forth four factors "that can serve as indicators of whether an IEP is reasonably calculated to provide meaningful educational benefit." *Michael F.*, 118 F.3d 245, 249 (5th Cir. 1997):

- The IEP is individualized on the basis of current assessment and performance;
- The IEP is to be carried out in a coordinated and collaborative manner by key stakeholders;
- The IEP is to be implemented in the least restrictive environment; and
- The IEP results in positive academic and/or non-academic benefit.

The free appropriate public education proffered in an IEP need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him to benefit from instruction. The IDEA guarantees only a basic floor of opportunity, consisting of specialized instruction and related services which are individually designed to provide educational benefit. *Adam J.*, 328 F.3d at 808. (internal citations and quotations omitted). Thus, the IDEA "cannot be read as imposing any particular substantive educational standard upon the states." *Rowley*, 102 S.Ct. at 3048. The Fifth Circuit has held that a placement is appropriate if it is designed to meet the child's individual needs and includes services that will permit the child to benefit from instruction even if it is not the best possible placement for the

student. *Adam J. ex rel. Robert J. v. Keller ISD*, 328 F.3d 804, 808, 810 (5th Cir. 2003); *see also Michael F.*, 118 F.3d at 252, (the IEP must be designed to meet the student's individual needs and include sufficient support services to allow the student to benefit from instruction).

To prevail on a claim under the IDEA, a party challenging the implementation of an IEP "must show more than a *de minimus* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant" provisions of the IEP. This approach affords the school district some flexibility in implementing IEPs, but it still holds them accountable for material failures and for providing the disabled child a meaningful educational benefit. *Houston ISD v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

If a procedural violation is alleged, a hearing officer may find a student did not receive FAPE only if the procedural violation impeded the student's right to FAPE, significantly impeded the parent's opportunity to participate in the educational decision-making process or caused a deprivation of educational benefit. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(2). The hearing officer's determination of whether a student received FAPE must be based on substantive grounds. 20 U.S.C. § 1415(f)(3)(E); 34 C.F.R. § 300.513(a)(1).

Issue

Whether Coppell Independent School District, from September 19, 2006 through September 18, 2007, failed to change the placement of the student and whether the school's failure to protect that student from bullying, harassment and physical assaults resulted in a denial of FAPE?

The time frame for this issue was not limited by my ruling on the Motion to Dismiss and thus Petitioner was afforded the opportunity to present evidence of alleged bullying, harassment and physical assaults that occurred from September 19, 2006 through September 18, 2007, that denied the student FAPE. However, the only evidence presented regarding alleged bullying, harassment and physical assaults involved alleged incidents which occurred prior to the December 5, 2006 mediation agreement.² [T. 715, 725-727]. Based on the evidence presented at the hearing, I have determined that Coppell ISD substantially complied with the mediated settlement agreement and therefore the agreement, including the parents' release of all their educational claims that accrued on or before December 5, 2006 is binding and enforceable in this proceeding.

² Petitioner alleged two incidents of bullying of the student occurred while he was at **. One incident involved the student observing another student being picked on in the locker room and when a student asked him who was doing it, the student said it was "the fat boy." In response, the boy, upset that the student called him "fat," took the student's P.E. clothes and threw them behind the bleachers. Since the incident was provoked by the student, I do not find this incident constitutes bullying of the student. The other incident involved the student holding a door shut to prevent his classmates and teacher from proceeding through it. When he finally released the door one of the students' brushed against him. Again, I do not find this incident constitutes bullying or harassment of the student. [T. 901-903].

Accordingly, I find that the parents have released Coppell ISD from any liability for any alleged denial of FAPE resulting from bullying, harassment and physical assaults which occurred on or before December 5, 2006.

Moreover, even if the release were deemed invalid, I find insufficient evidence of bullying, harassment and physical assaults of the student that resulted in a denial of FAPE. First, it is noted that the student did not testify. Instead, the incidents of alleged bullying, harassment and physical assaults as reported in the record were provided by a parent who did not personally observe what transpired. Additionally, Petitioner's evidence was controverted by testimony of school district witnesses that the student was not bully or harassed, but that his own actions provoked responses from other students that were perceived as bullying or harassment. As for the physical assaults, there is no definitive indication as to what transpired to cause the student's injuries. As indicated, overall, there was a clear lack of evidence as to exactly what occurred during the incidents alleged. Additionally, there was a lack of evidence to support that the Coppell ISD ignored the concerns of the parents. On the contrary, the evidence established that when allegations of bullying, harassment and physical assaults were made by the parents, they were timely and properly investigated by school officials. Consequently, I also find that Petitioner failed to establish by a preponderance of the evidence that Coppell ISD failed to protect the student from bullying, harassment and physical assaults during those time periods he was in school in Coppell ISD from September 19, 2006 through September 18, 2007.

Regarding the issue of whether Coppell ISD failed to change the student's placement as a result of the alleged bullying and harassment, the evidence confirmed that the student's placement was changed through the mediation agreement from ** to **. The student was educationally placed pursuant to the terms of the mediation agreement at ** on January 8, 2007, and he remained in that placement through the end of the 2006-2007 school year. Since there is lack of evidence establishing any bullying or harassment of the student at **, and since the student was removed from ** to ** pursuant to a mediated settlement agreement, I find no merit in Petitioner's claim of a denial of FAPE.

Issue

Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to provide a full continuum of services to the student at Coppell ** and proposed placement at Coppell ** for the 2007-2008 school year?

Whether Coppell Independent School District failed to provide educational services to the student during the ten weeks the student was out of school, as limited from December 6, 2006 through December 21, 2006, due to the emotional distress caused by the hostile and unsafe educational environment?

Per the December 5, 2006 mediation agreement, the student was placed at ** for a six week trial period. The trial period began on January 8, 2007 (beginning of the spring semester) and ended on February 19, 2007. The parents stipulated and agreed in the

mediation agreement that the student's services during the trial period were reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment. Accordingly, I find, per this agreement, that during the six week trial period, from January 8, 2007, through February 19, 2007, that Coppell ISD provided the student a full continuum of services at ** and that he received a free appropriate public education.

For the period from December 6, 2006 through December 21, 2006, the end of the fall semester, the student was not in school but had been kept home due to emotional distress confirmed by his physician. Although, potentially, homebound services might have been offered by Coppell ISD if it had been timely provided with an appropriate physician's order, the evidence confirmed that it was not provided with such an order or note until sometime after the mediation session on December 5, 2006.³ By that time, the parties had settled their outstanding disputes and agreed to change the student's placement effective January 8, 2007. Accordingly, I find no fault in the failure of Coppell ISD to offer the student homebound educational services from December 6, 2006 through the remainder of the fall semester, 2006.

For the period from February 20, 2007 through the end of the 2006-2007 school year, Coppell ISD did not offer a PAG class at **. However, Coppell ISD correctly argues that it was not required to provide a full continuum of placement options on each campus. Instead, it had elected to centralize its PAG unit on the ** campus due to the small number of students that required a high level of behavioral support. The Fifth Circuit has ruled that a school district's decision to provide services at a centralized location does not violate the IDEA, and in fact can result in better services to eligible students. *White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380-82 (5th Cir. 2003) (rejecting parents' argument that the IDEA required a transfer of their son to the neighborhood school since the IEP requires services that are provided at a centralized location, holding that schools have significant authority to determine the school site for providing IDEA services and stating that nothing in the IDEA grants parents the right to alter a school district's policy decision regarding site location); *Flour Bluff Indep. Sch. Dist. v. Katherine M.*, 91 F.3d 689, 693-95(5th Cir. 1996) (holding that placement of deaf student at regional day school, rather than at regular school, satisfied the least restrictive environment requirement of the IDEA, and assisted the school in better serving students with disabilities by allocating limited resources into a regional program).

For the student's ** grade year (2007-2008 school year), his IEP included a number of placement options on the continuum including instruction in general education classes with special education co-teacher support and instructional accommodations for tech/elective, health/teen leadership and PE; instruction in the resource room for math skills that are below grade level; and instruction in the PAG classroom for behavioral support in language arts, science and social studies. Petitioner failed to present any evidence that Coppell ISD did not have access to a full continuum of applicable placements and services that the student could access at ** during the 2007-2008 school

³ 19 Tex. Admin. Code §89.63(c)(2) allows for homebound services to students who are expected to be confined for a minimum of four consecutive weeks as documented by a physician.

year. On the contrary, the evidence established the availability of such services and placements at **. Accordingly, Petitioner’s complaint in this regard is without merit.

Issue

Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, delayed the parents’ rights to timely due process?

This issue relates to the parents’ claim that they were denied the opportunity to timely pursue their due process rights by Coppell ISD failing to proceed to mediation prior to requesting this due process hearing. I find no merit to this claim.

On June 28, 2007, the parents requested mediation prior to requesting this due process hearing, in compliance with the mediation agreement. Coppell ISD responded to this request by agreeing to mediate, but indicated it preferred to first conduct the ARD Committee meeting which had been scheduled for July 16, 2007. Coppell ISD was hopeful that the ARD committee meeting would end in consensus and that mediation would not be necessary. However, the ARD Committee failed to reach consensus, and on July 27, 2007, TEA appointed a mediator. Thereafter, the parties participated in an unsuccessful mediation on August 9, 2007.

The parents acted under the assumption that they were required first to proceed to mediation before they could request a due process hearing. This is incorrect. The mediation agreement only required either party to “request” mediation prior to requesting a due process hearing. [R. Exh. #17]. It did not require the parties to first proceed to mediation before requesting a due process hearing. Accordingly, neither the mediation agreement nor any actions taken by Coppell ISD precluded the parents from requesting a due process hearing immediately after they requested mediation.⁴

Issue

Whether Coppell Independent School District failed to comply with binding and legally enforceable Mediation Agreement dated December 5, 2006 as agreed upon by the parents and the school district:

- a. By not following the IEP and BIP,**
- b. By suspending the student on February 20, 2007 as outlined in the BIP as a consequence that would not be given to the student,**
- c. By failure to provide related services as outlined in the IEP and BIP,**
- d. By failure to provide training to teachers and paraprofessionals on the student’s disabilities and implementation of the IEP, including his BIP by trained and qualified staff,**

⁴ Although mediation and due process hearings are separate proceedings, they are not mutually exclusive. In fact, the IDEA specifically provides that mediation is not to be used to deny or delay a parent’s right to a due process hearing. 20 U.S.C. §1415(e)(2)(A)(ii).

- e. **By failure to ensure that the written agenda form was checked and signed by each classroom teacher and sent home daily for the parent to initial and return to the ISD,**
- f. **By failure to ensure the Full Individual Evaluation by the Independent Evaluators assessed the student in all areas and in a timely manner as agreed upon in the ARD meeting of December 8, 2006,**
- g. **By failure to convene an ARD meeting no later than February 19, 2007,**
- h. **By delaying contracting with **, LCSW, to provide eight one-hour sessions at the ISD expense, to the student regarding objectives in his IEP by February 19, 2007,**
- i. **By delaying the parents request on June 28, 2007 to return to mediation by first requiring the parents to attend an ARD meeting on July 16, 2007,**
- j. **By failure to provide ** with written information on how bullying/harassment was to be addressed at **?**

As indicated herein, I find that Coppell ISD substantially complied with all material terms of the mediation agreement. The mediation agreement is a legally binding contract between the parties. See 20 U.S.C. §1415 (e)(2)(F). In construing a written contract, the primary concern is to ascertain the true intentions of the parties as expressed in the instrument. *J.M. Davidson, Inc. v. Webster*, [128 S.W.3d 223](#), 229 (Tex.2003); *Coker v. Coker*, [650 S.W.2d 391](#), 393 (Tex.1983). To achieve this objective, one must examine and consider the entire writing in an attempt to harmonize and give effect to all provisions of the contract so that none are rendered meaningless. *Webster*, 128 S.W.3d at 229; *Coker*, 650 S.W.2d at 393.

Petitioner claims that Coppell ISD violated the mediation agreement by failing to follow the BIP and IEP. I find no requirement in the mediation agreement that Coppell ISD was required to “follow” the BIP or IEP. Instead, the mediation agreement only required that an ARD Committee “adopt” the BIP as developed on November 7, 2006, excluding all of the strategies other than the Quick Stress Busters and any additional strategies that were mutually agreeable to the ARD Committee and that the ARD Committee adopt certain stated elements of the August 11, 2006 IEP. The evidence indicated that the ARD Committee of December 8, 2006, fully complied with these requirements by “adopting” these required elements of the student’s BIP and IEP. Whether or not the BIP and IEP of the student were subsequently followed by Coppell ISD are separate FAPE issues, not issues relating to compliance with the mediation agreement.

Petitioner next claims that the student was suspended in violation of his BIP. Again, in reviewing the mediation agreement, there is no requirement therein that the student’s BIP would be followed or that he would not be suspended. Accordingly, any suspension of the student did not violate any term of the mediation agreement. Therefore, this claim is also without merit.

Petitioner argues that Coppell ISD failed to provide related services as outlined in the student’s BIP and IEP. Again, there is no requirement in the mediation agreement for

Coppell ISD to provide related services as outlined in the student BIP and IEP. This was not addressed by the parties. Only those express terms as set forth in the mediation agreement are enforceable under contract law. Accordingly, whether Coppell ISD failed to provide related services to the student would be a separate FAPE issue outside of the confines of a claimed breach of the mediation agreement.

Petitioner claims that Coppell ISD failed to provide teachers and paraprofessionals with appropriate training. The mediation agreement contained the provision that Coppell ISD would provide training to the student's teachers and paraprofessional, prior to January 8, 2007, regarding the student's disabilities and the implementation of his IEP, including his BIP. The evidence established that such training was provided to the student's teachers and paraprofessional prior to January 8, 2007. [R. Exh. #29, T. 248-249, 319-321].

Petitioner argues that Coppell ISD also violated the mediation agreement by failing to ensure that the student's teachers properly checked and signed the written agenda form. The evidence confirmed this was not done daily by the student's teachers but that it was checked and sent home usually with initials of the teachers or the paraprofessional. I find that although this was a technical violation of the mediation agreement, the fact that the written agenda form was reviewed by either the teachers or paraprofessional and initialed or signed constitutes substantial compliance with this provision. Accordingly, I find Coppell ISD's failure to fully comply with this provision did not constitute a material breach of the mediation agreement.

Petitioner further complains that the mediation agreement was violated by the failure of Coppell ISD to obtain a timely evaluation of the student and in failing to timely convene an ARD Committee meeting to review the evaluation. The terms of the mediation agreement do not specifically require Coppell ISD to timely evaluate the student. Instead, the applicable provisions required the parent to provide "written consent" so that the District could obtain, during the first six week trial period, a full and individual evaluation of the student, including a psychological evaluation by an independent evaluator specifically identified therein. Unfortunately for the parties, this independent evaluator later declined to perform the evaluation. Additionally, there was a provision for the parties to convene an ARD Committee meeting to review the evaluation no later than February 19, 2007. However, because the evaluator selected by the parties declined to act, the parties modified or otherwise entered into a new agreement regarding who would conduct the evaluation and when it would be reviewed. The delays in obtaining the evaluation were not the fault of either party. Accordingly, I find no evidence of any violation by Coppell ISD of the provisions in the mediation agreement as they relate to the completion of the student's full and individual evaluation or the convening an ARD Committee meeting to review the evaluation.

Petitioner contends that Coppell ISD violated the mediation agreement by delaying contracting with **, LCSW, to provide eight one-hour sessions at District expense, to the student regarding objectives in his IEP by February 19, 2007. Again, the mediation agreement provided only that Coppell ISD would "request" that **, LCSW,

provide eight one-hour sessions, at District expense, to the student, regarding objectives in his IEP by February 19, 2007. Accordingly, this provision only required Coppell ISD to make this request, not that the services would actually be provided by February 19, 2007. The evidence confirmed that this requirement was met by Coppell ISD making a request to ** to provide these services on or about January 10, 2007. The first session was provided to the student by ** on January 11, 2007. [T. Mtn to Dismiss, 73-74]. Therefore, this claim is also without merit.

Petitioner's next claims that the mediation agreement was violated by Coppell ISD when it allegedly delayed the parents' request on June 28, 2007 to return to mediation by first requiring the parents to attend an ARD meeting on July 16, 2007. As previously indicated herein, the mediation agreement did not require the parties to proceed to mediation prior to requesting a due process hearing. Accordingly, Coppell ISD did not delay the parents' right to request a due process hearing. The parents could have filed for a due process immediately after requesting mediation and have been in compliance with the mediation agreement.

Lastly, Petitioner claims that the mediation agreement was violated by Coppell ISD when it failed to provide ** with written information on how bullying/harassment were to be addressed at **. The mediation agreement provided that the principal at ** would provide the parents and ** with written information on how bullying/harassment are addressed at that campus. The evidence confirmed that both the parents and ** received this information, but it was not established that such information was provided to them by the principal. In fact, it appears the parent obtained the information from Coppell ISD and forwarded it to Ms. **. Again, although there was a technical violation of the mediation agreement, since the information was obtained by both the parents and **, I find no material breach of the mediation agreement.

Issues:

Whether Coppell Independent School District, from September 19, 2006 through September 18, 2007, failed to provide the student with instruction in the least restrictive environment?

Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to provide the student opportunities for the student to interact with non-disabled peers?

The time frame for the first issue was not limited by my ruling on the Motion to Dismiss and thus Petitioner was afforded the opportunity to present evidence of alleged failures to provide the student with instruction in the least restrictive environment from September 19, 2006 through September 18, 2007. However, finding no prior material breach of the mediation agreement, this issue is limited by the parents' "release" contained in the mediation agreement. Accordingly, the time period applicable to these "least restrictive environment" issues is from December 6, 2006 to September 18, 2007.

The IDEA requires that “to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in the regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.” 20 U.S.C. § 1412(a)(5)(A).

The Fifth Circuit, in *Daniel R.R. v. State Bd. of Edu.*, 874 F.2d 1036, 1045 (5th Cir. 1989), recognized that the requirement to provide a least restrictive environment does not supersede the District’s obligation to provide each student with a FAPE, stating, “even when school officials can mainstream the child, they need not provide for an exclusively mainstreamed environment; the Act requires school officials to mainstream each child only to the maximum extent appropriate.” The Fifth Circuit further recognized that the least restrictive environment requirement must be weighed in tandem with the IDEA’s principal goal of ensuring that each student receives a free appropriate public education, stating “we emphasize, however, that school officials are not obligated to mainstream every handicapped child without regard for whether the regular classroom provides a free appropriate public education.” *Daniel R.R.*, 874 F.2d at 1047, n. 7; *see also Bd. of Edu. v. Rowley*, 458 U.S. 176, 197, 102 S.Ct. 3034, 3046, n. 21 (1982) (“The use of the word ‘appropriate’ in the language of the Act, although by no means definitive, suggests that Congress used the word as much to describe the settings in which handicapped children should be educated as to prescribe the substantive content or supportive services of their education.”). *Id.*

Whether a student is placed in the least restrictive environment is determined by: (1) whether education in the regular classroom, with the use of supplemental aids and services, can be achieved satisfactorily for a given child, and (2) if it cannot, and the school intends to provide special education or to remove the child from regular education, whether the school has mainstreamed the child to the maximum extent appropriate. *Daniel R.R.*, 874 F.2d at 1048.

From December 6, 2006 through December 21, 2006, the end of the fall semester, the student was not in school. However, his educational placement during that time period involved receiving one half of his language arts instruction, his math instruction and instruction in organizational skills in the PAG class and for the remainder of the day being mainstreamed in general education classes. I find no violation of the IDEA’s least restrictive environment provisions regarding this time period. Although the student was not in school during this time period, he had been removed by his parents for emotional trauma caused by assaults and perceived bullying at **. The parties mediated these issues and agreed on December 5, 2006, to change the student’s educational placement effective January 8, 2007 to mostly general education classes at ** and had further agreed this was the least restrictive environment for the student. I find no evidence that the student was educational placement within Coppell ISD from December 6, 2006 through December 21, 2006 violated the least restrictive environment provisions of the IDEA. Had the student attended school, he would have spent approximately half of the school

day in general education classes with nondisabled peers. At that time, the student needed PAG support and therefore I find this placement to be the least restrictive environment for the student.

As indicated, the parents stipulated and agreed in the mediation agreement that the trial placement at ** from January 8, 2007, through February 19, 2007, was the least restrictive environment.

At the October 31, 2006, ARD committee meeting, the parents requested that the student be placed at ** where there was not a PAG classroom. Coppell ISD did not agree to this proposed change in placement. The District was concerned that the student could not be successful without PAG support. However, in mediation on December 5, 2006, the District agreed to the less restrictive six week trial placement with extensive supportive aids and services, including a 1:1 paraprofessional at all times. During this trial period, the student was not academically or behaviorally successful in his general education classes. The student did not want to attend class, would start shaking and become very anxious, would put his head down and put the hood of his sweater over his head and refuse to do his work. [T. 261, 297; R. Exh. #18]. An ARD Committee meeting was held on February 22, 2007, after the six week trial period, which reconvened on March 9, 2007, wherein the parents and the District agreed to change the student's placement to the most restrictive educational environment available at **, which was placement in all resource classes except for general education P. E. This change in placement was to be effective March 19, 2007, after the spring break recess. [R. Exh. #19]. The resource class at ** was typically used for students who were two or more grades levels behind academically. The resource class normally would not have not been an appropriate educational setting for the student, who was capable of and performing grade level work in most academic subjects. [T. 414]. However, this resource class was designed for the student to receive his academic instruction at his level while providing him with a small structured classroom environment to more fully address his behavioral needs. This resource class had just one other student, a student with a disability. [T. 323-324]. Thereafter, his only interaction with non-disabled peers was in his general P. E. class for 50 minutes a day, and during non-academic times such as lunch, between classes, assemblies, pep rallies, and during an advisory class. [T. 311, R. Exh. # 19].

Although this resource placement seems quite unusual and restrictive, I find that Petitioner failed to establish by a preponderance of the evidence that the student's educational placement in this more restrictive setting effective from March 19, 2007 through the end of the 2006-2007 school year was inappropriate or otherwise violated the least restrictive environment provisions of the IDEA. I find a lack of evidence to support Petitioner's assertion that student was not educated in the least restrictive environment appropriate for the student at that time. Although his interactions with non-disabled students were limited, his behavior problems justified the more restrictive setting. The evidence confirmed that prior to this change in placement the student was not making educational progress in his general education classes. His behavior was significant interfering with his ability to obtain an educational benefit from his academic instruction. In fact, the student received failing grades in language arts, science and social studies

during that six week period. [R. Exh. #42]. After the change in placement to the resource setting, the student was more successful academically. Behaviorally, the record does not indicate any significant improvement and in fact, it tends to reflect deterioration in his behavior in May, 2006, the last month of the 2006-2007 school year. [R. Exh. #38, P. Exh. #6, pages 55-61]. This deterioration was related to the fact that the parties had attempted to resolve their dispute by placing the student in a less than ideal setting. The student required significant behavioral supports by trained staff. Such services were available in the PAG unit. Consequently, the ARD Committee recommended that for ** grade the student be returned to the PAG unit for part of the school day

I also find that the parties were actively researching and trying to determine an appropriate educational setting for the student after completion of the six week trial period. I find that from February 19, 2007 through March 9, 2007 the parties acted appropriately in investigating alternative educational placements and that it was appropriate to wait until March 19, 2007, after the spring break, to implement the student's change in placement. Therefore, I find that the student was educated in the least restrictive environment from December 6, 2006 through the end of the 2006-2007 school year.

I also find that the student was offered an educational placement in the least restrictive environment from Coppell ISD for the 2007-2008 school year.

The July 16, 2007, ARD Committee recommended the student's placement at the high school be changed to the PAG class for language arts, science, and social studies; to resource class for math; and to general education with co-teacher support for tech/elective, health/teen leadership and P. E. [R. Exh. #21, 27, 32]. I find this proposed placement to be the least restrictive environment for implementation of the student's IEP. As indicated, the student's behavior was deteriorating at the end of the 2006- 2007 school year. The resource class designed by Coppell ISD at ** was not an ideal setting for the student, despite its appropriateness based on the level of supports it offered. The PAG class proposed for the student at ** provided the small classroom setting and behavioral supports the student would require to be successful academically, behaviorally, socially and emotionally. The appropriateness of this educational placement was confirmed by an independent report from **, a licensed clinical psychologist and a licensed specialist in school psychology. After observing the PAG unit, Dr. ** initially opined that it would be an inappropriate educational placement for the student since it seemed to be too behaviorally oriented and would not meet his academic needs. This however, was based on a misunderstanding that the student would be placed full time in the PAG unit. Once it was clarified that the student's placement in the PAG would be limited to Language Arts, Science and Social Studies and that the student would be provided with an opportunity to work on social skills and coping skills in this behaviorally supportive environment, Dr. ** opined that the partial PAG placement was appropriate to provide the student with behavior supports and teaching interventions and modifications the student needed to make educational progress. [R. Exh. #23].

Issue

Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to provide social skills training to meet the unique individual needs of the student to allow him to interact with non-disabled peers?

The student's IEP in effect from December 8, 2006 through September 18, 2007 included an annual goal involving constructive communication. This goal contained three objectives in the area of social skills. Those were (1) initiating interactions/conversations with peers on their topics of interest and maintain for 4-5 turns; (2) being able to identify two calming strategies; and (3) to utilize positive age-appropriate calming strategies. This goal and its objectives were to be implemented by school staff and the parents. Additionally, the student had an IEP in the area of social/life skills with four objectives. These were (1) use problem solving skills to determine good and bad choices in specific situations, accurately predict cause and effects of those good and bad choices and determine which one is a good solution; (2) appropriately initiate activities/play dates with peers through a request or invitation in structured situations/role play and in unstructured situations; (3) utilize positive calming strategies when role playing (practice) and when upset (e.g. seek adult assistance, ask for break, take a deep breath, walk away, squeeze ball, etc.); and (4) identify in self and others friendly banter/playing, bullying, and teasing, and learn how to respond appropriately to peers that tease/bully him. The persons responsible for implementing the social/life skills IEP were the parents and the in-home trainer. In-home training was to have been provided for 180 minutes every six weeks. [P. Exh. #49, pages 975-1017; R. Exh #19].

The issue presented is whether Coppell ISD provided instruction/training to the student in these areas. The parents had the burden of establishing that the required social skills instruction was not provided. I find that the parents failed to meet this burden. The only evidence presented by the parent was a hypothesis that because she had not seen evidence that social skills training had been provided to the student, it must not have been provided. [T. 857]. However, the evidence in the record confirms that the student received social skills training from Coppell ISD. His inclusion teacher testified that she provided the student with social skills training in his advisory class and at the end of the day in a program called career skills. [T. 251, 264-266]. Additionally, the in-home trainer provided the in-home training services as required by the student's IEP and the student mastered all of the objectives. [R. Exh. # 28].

Issue

Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to implement:

- a. The IEP and BIP in effect for the 2006-2007 school year,**
- b. Related services to the student and parents as indicated on the Schedule of Services,**

- c. Providing the parent with timely three week and six week progress report cards,**
- d. Providing the parents with timely IEP and BIP progress reports;**

Petitioner makes a general allegation that the student's IEP and BIP in effect for the 2006-2007 school year were not implemented. The parent testified concerning her belief that the IEP and BIP were not implemented prior to December 5, 2006. However, the parents released these claims in the mediation agreement. The parent's testimony regarding the BIP after February 19, 2007, involved not its lack of implementation, but whether it was appropriate or otherwise being successfully implemented. As indicated, the student's BIP was not successfully implemented during the six week trial period. As a result, the parties agreed to change the student's placement to a more restrictive resource setting. In that setting, the student's BIP was successfully implemented, that is, to the extent that the student was able to obtain some educational benefit from his program.

As for the time period after the student returned to school on January 8, 2007, the parent testified that she had not been presented with documentation that the district had provided the student with a psychological consult, parent training, in-home training, occupational therapy, or adaptive P. E. [T. 842-843]. The parents had the burden of proving a failure to implement these related services. The parent's testimony that she had not received information indicating these services had been provided does not establish that the services were not provided. Accordingly, I find the parents simply failed to meet their evidentiary burden regarding this issue.

On the contrary, Coppell ISD presented evidence that the student's IEP had been implemented at **. **, the student's case manager testified that the student's IEP required adaptive PE consultation for thirty minutes per six weeks and that these services were provided by ** in compliance with the IEP. [T. 292-293]. Ms. ** further testified as to the involvement by the occupational therapist and provision of assistive technology. The student's IEP required integrated occupational therapy for ninety minutes per semester [P. Exh. #49, page 1001] and she testified that this therapy was provided in compliance with the IEP by Shalea Fike. [T. 286-287, 293; R. Exh. #30]. The student received a total of one hundred forty minutes of occupational therapy during the spring semester at **. [R. Exh. #30]. The student's IEP required psychological consultation for fifteen minutes per six weeks. [P. Exh. #49, page 1001]. The student's psychological services were provided in compliance with the IEP by **, LSSP. [T. 290-291]. The student's IEP required one hundred eighty minutes per six weeks of in-home training and sixty minutes per six weeks of parent training. [P. Exh. #4, page 1001]. Petitioner's in-home and parent training were provided in compliance with the IEP. [R. Exh. #28, 29].

Regarding progress reports, the parent requested at the March 9, 2007 ARD Committee meeting that she be provided three week progress reports. The ARD Committee declined this request and instead determined that progress reports would be provided every six weeks. [R. Exh. #19]. The parent testified that she did not always receive progress reports, but she failed to identify which six weeks progress reports she

failed to receive. Ms. **, the student's case manager, testified that she personally sent home the student's report cards for progress reports on the same day that other students received report cards and that she sent home the IEP and BIP progress reports every six weeks. [T. 317–318]. Accordingly, I find the parent's claim that Coppell ISD failed to implement the student's IEP and BIP or provide timely progress reports to be without merit.

Issues

Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to appropriately assess the student in all areas such as Occupational Therapy, Physical Therapy, Assistive Technology, Speech, Psychological Counseling, Adaptive Physical Education, In-Home Training and consider all related services to meet the unique, individual needs of the student?

Whether Coppell Independent School District, from December 6, 2006 through September 18, 2007, failed to assess the student prior to discontinuing related services?

In the December 5, 2006 mediation agreement, the parties agreed to obtain a full and individual evaluation of the student by an independent evaluator. Thereafter, Coppell ISD took steps to ensure that this independent educational evaluation was conducted as requested. Unfortunately, the initial evaluator had to withdraw resulting in the parent selecting **, Ph.D., at Diagnostic Assessment Services, to conduct the independent educational evaluation. It was the intent of the parties that Dr. ** or her office would conduct a full assessment of the student in all areas of suspected need, including autism, occupational therapy, emotional disturbance, etc. Upon completion of the independent educational evaluation, the ARD committee met on July 16, 2007, to review the evaluation report, to conduct Petitioner's annual ARD committee meeting, and to develop a plan for Petitioner's ** grade school year. [R. Exh. #21]. After reviewing the evaluation, the ARD committee determined that it had not evaluated the student in all areas of his suspected disability and therefore requested additional evaluations, including pragmatic language, occupational therapy, assistive technology, physical therapy, evaluation for Asperger's Disorder, Functional Behavior Assessment, and a counseling assessment. [R. Exh. #21]. Petitioner's mother was provided with the consent for evaluation form, but did not provide consent. At that time the parents had provided Coppell ISD with notice of their intent to withdraw the student from Coppell ISD and seek reimbursement for all costs of his private school placement. [P. Exh. #1, pages 13-14]. They withdrew the student from Coppell ISD effective July 24, 2007. [P. Exh. #14, page 274]. Thereafter, Coppell ISD continued to seek consent from the parents to perform these evaluations, but consent has not been provided. [P. Exh. #12, page 256].

It is the parents' lack of consent that has prevented Coppell ISD from completing the evaluations of the student deemed necessary by the ARD Committee. The parent cannot deny Coppell ISD the opportunity to perform these assessments, while at the same seeking redress against Coppell ISD under the IDEA for an alleged failure to perform

these evaluations. *See, Andress v. Cleveland*, 64 F.3d 176, 179 (5th Cir. 1995). Accordingly, I find that Coppell ISD has appropriately evaluated the student and has pending additional evaluations awaiting the consent of the parent. Therefore, I find no merit in Petitioner's complaint that the student has not been appropriately evaluated.

Petitioner also contends that related services were discontinued by Coppell ISD without conducting an evaluation to determine whether the student continued to need such services.

The July 16, 2007 ARD Committee discontinued the provision of in-home training, parent training, and psychological services to the student. Parent training was discontinued at the request of the parent and the ARD Committee agreed to this request. [R. Exh. #21]. The ARD Committee determined that the student had mastered his in-home training goals involving social skills and that social skills would be better addressed at school than at home. Therefore, in-home training was discontinued. [R. Exh. #21]. As for the provision of psychological services, the ARD Committee intended that these were to be subsumed by the behavior specialists in the PAG class.

Petitioner does not provide any authority for its inferred proposition that before related services can be discontinued, an evaluation of the student must be conducted. The IDEA and its implementing regulations simply do not contain such a requirement. Instead, a reevaluation of a student is required if the public agency determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation, or if the child's parent or teacher requests a reevaluation. 34 C.F.R. §300.303 (a). In fact, in this case, Coppell ISD is precluded by the federal regulations from conducting a reevaluation of the student as not more than one reevaluation can occur within one year without the consent of the parents. 34 C.F.R. §300.303 (b)(1).

Based on the evidence presented, I find that the July 16, 2007 ARD Committee acted appropriately and within its discretion when it discontinuing certain related services to the student.

Issue:

Whether the student's IEP and BIP goals and objectives in effect for the 2006-2007 school year were measurable, based on the student's areas of need and whether a time was included for projected dates for meeting those goals and objectives following December 5, 2006?

An IEP must contain a statement of measurable annual goals, including academic and functional goals designed to meet the child's needs to enable the child to be involved in and make progress in the general education curriculum. 34 C.F.R. §300.320 (a)(2).

Petitioner does not point to any particular IEP as being defectively written. Accordingly, an analysis of each IEP is required to determine if it contains a measurable annual goal. The IEPs in effect from February 19, 2007 through the end of the 2006-2007 school year contained academic, behavioral and social goals. The annual goals for Language Arts and Mathematics required the student to obtain a 70% mastery level in the listed objectives. Each of these objectives were measurable. The annual goals in the areas of life skills (organization), behavior (off task, constructive communication) and social skills also required the student to demonstrate measurable progress in those areas by mastering the listed objectives at the mastery levels set forth for each objective. Accordingly, these annual goals were measurable. In reviewing the annual goal for parent training, I also find that it is measurable. Accordingly, in reviewing the student's IEP and behavioral goals and objectives, I find them to be measurable. Moreover, each of the goals had a duration of service stated. This would be the projected dates for completion of these goals and objectives. Accordingly, I find this claim lacks merit.

Issue

Whether Coppell Independent School District failed to provide an appropriate BIP for the 2006-2007 school year following December 5, 2006:

- a. **Whether the BIP contained positive behavioral strategies based on the student's unique and individualized needs,**
- b. **Whether the school district failed to conduct a formal Functional Behavior Assessment or if one was performed whether it complied with the requirements of the law.**

The purpose of the student's behavior intervention plan was to sufficiently control those behaviors that interfered with his ability to be appropriately educated in his general education classes. *Oberti v. Board of Educ.*, 19 IDELR 908 (3rd Cir. 1993). As with an IEP, a perfectly designed behavior intervention plan is not the IDEA standard, only an appropriately designed plan is required, when necessary, as a supplement to assist a student in managing his or her behavior so that the student can be successfully educated in the least restrictive environment. Accordingly, the standard of appropriateness for a behavior intervention plan is whether it is reasonably calculated to allow the student to benefit from his educational program in the least restrictive environment, without unduly disrupting other students. *Board of Education of Hendrick Hudson Central School District v. Rowley*,

The expert testimony presented by Petitioner related to this issue was from Dr. **, LSSP. Dr. ** rendered an opinion on the appropriateness of the student's behavior intervention plan finding it contained appropriate strategies, but that the plan was "incomplete," explaining that the strategies may be antiquated since there had not been a recent formal Functional Behavior Assessment of the student. [T. 218-220, 241].

Coppell ISD claims that its Functional Behavioral Assessment of the student, completed in 2003, continued to be appropriate since he continued to exhibit the same

types of behaviors as those assessed. The parents claimed that the student was exhibiting new behaviors, such as head banging, hand stabbing, that the old strategies were not successful, and that a new Functional Behavioral Assessment should have been performed.

The IDEA does not define a Functional Behavioral Assessment and only requires such assessments be performed, when necessary, in disciplinary removals of a student from his or her current placement. See 34 C.F.R §300.530(d)(1)(i). There is no requirement that a Functional Behavioral Assessment be performed as part of the development of a student's behavior intervention plan.

The general purpose of a Functional Behavioral Assessment is to provide the ARD Committee with additional information, analysis and strategies for dealing with a student's undesirable behaviors, especially those that are interfering with the student's education. The process usually involves some variant of identifying the "target" behaviors, observing the student and collecting data on the targeted behaviors, and the antecedents for the behaviors and consequences and then formulating a hypothesis about the causes of the behavior and developing appropriate strategies and interventions to change the behavior.

Clearly, a new Functional Behavioral Assessment of the student is warranted and one is currently recommended by Coppell ISD. However, the lack of a recent Functional Behavioral Assessment of the student did not render his behavior intervention plan inappropriate. Instead, the issue is whether the behavior intervention plan, as designed and implemented, was successful in allowing the student to benefit from his educational program in the least restrictive environment. I find that after March 19, 2007, the behavior intervention plan, despite concerns with its effectiveness, was sufficiently successful in doing so.

The evidence showed that after March 19, 2007, the student made significant progress on his IEP goals and objectives. [R. Exh. #44]. At that time, the student was placed in a more restrictive resource placement because his behavior was not being controlled sufficiently to enable him to be educated in the general education setting. Because of the small class size and structure of the resource setting implementation of his BIP was more successful and academically he began to improve. The evidence indicated that the student began participating more in his academics and that his "shut downs" for extended periods of time when asked to perform work became less frequent. However, significant problems continued to exist. On several occasions, it was reported that the student would bang his head on his desk or stab his hand with a pencil [R. Exh. #38]. He did not pass the TAKS I in either science or social studies [T. 309-310], and although he met ARD Committee expectations on the State Developed Alternative Assessments II in reading – for developing knowledge and skills related to TEKS at the 8th grade instructional level - he did so only because the expected achievement level was low. He correctly answered only 24 of 42 questions. However, in math, he performed above his expected achievement level, which was the 5th grade instructional level, correctly answering 35 of 42 questions. [P. Exh. 9, pages 167-169]. He received a failing grade

in math the last during six weeks period, but overall received passing grades in a majority of his classes. Clearly, the student's behavior intervention plan, as implemented, was not perfect, but it was sufficient to maintain the student in the least restrictive environment to the extent that he received passing grades in a majority of his academic classes and achieved an overall meaningful educational benefit.

The parents argue in their closing statements that the amendments to the IDEA and the No Child Left Behind Act have modified the *Rowley* "basic floor" standard and now require that students with disabilities meet high academic standards to achieve significant learning and meaningful benefit. For support, they cite *Houston Indep. Sch. v. Daveby R.*, 200 F.3d 341 (5th Cir. 2000) and *Ridgewood Bd. of Educ. v. N. E.*, 172 F.3d 238, 247 (3rd Cir. 1999). I do not find support for such an overturning the *Rowley* standard in the suggested authority. Accordingly, I decline to do so in this matter.

Issue

Whether Coppell Independent School District failed to conduct ARD committee meetings in a collaborative manner following December 5, 2006, as evidence by:

- a. Presenting already prepared documentation at the ARD and not allowing the parents an opportunity to review and consider the information prior to the ARDs,**
- b. Failing to conduct the ARD meetings in a timely and mutually agreed upon manner**

The parent complains that she did not have copies of the teacher input forms prior to the July 16, 2007 ARD Committee meeting. These reports were reviewed at the July 16, 2007, ARD committee meeting.

There is no requirement in the IDEA that precludes previously prepared documentation from being presented at ARD Committee meetings or that requires a school district to give parents an opportunity to review and consider such documents prior to ARD Committee meetings. All that is required is that the school districts take steps to ensure that the parents of a child with a disability are present at the meeting or are afforded the opportunity to participate. 34 C.F.R. §300.322 (a). The record confirms that the parent actively participated in all ARD Committee meetings involving the student.

Moreover, there is no requirement that an ARD committee meeting be conducted in a mutually agreed upon manner. 19 Tex. Admin. Code §89.1045 does provide that a parent may request an ARD Committee meeting at any mutually agreeable time to address concerns about his or her child's special education services and the school district must either respond by holding the requested meeting or request assistance through the Texas Education Agency's mediation process. See also 34 C.F.R. §300.322(a)(2). I find no evidence that the parents requested an ARD Committee meeting that was not otherwise conducted. Accordingly, I find this claim lacks merit.

Issue:

Whether Coppell Independent School District failed to provide the parent with appropriate Prior Written Notice of the issues to be addressed in the ARD meetings and individuals invited and as to their rights when the school was denying the parents' request for changes in services and placement following December 5, 2006?

I find based on a preponderance of the evidence that Coppell ISD provided the parents with the required notice of all ARD committee meetings convened after December 5, 2006 through September 18, 2007, and that the mother participated in the meetings. [P. Exh. #49, pages 1012-1014; P. Exh. # 48, pages 941-946; R. Exh. #21]. Additionally, I find that the District fully informed the parents of their rights.

Issue:

Whether Coppell Independent School District failed to complete the student's triennial evaluation before the required deadline of April 21, 2007?

Coppell ISD intended that the independent educational evaluation provided for in the December 5, 2006 mediation agreement would be utilized as Petitioner's triennial evaluation. Unfortunately, completion of the independent evaluation was delayed until after the April 21, 2007 deadline.

The IDEA's implementing regulations require that a public agency must ensure that a reevaluation of each child with a disability is conducted in accordance with the applicable regulations at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. 34 C.F.R. §300.303. Although Coppell ISD claims extenuating circumstances precluded it from meeting the deadline, the fact is the District failed to comply with this requirement. The District was not bound to utilize the pending independent educational evaluation as its evaluation. It could have completed its own evaluation timely, in accordance with applicable law. As a result, the evaluation was not completed until June 15, 2007 and was not reviewed by an ARD Committee until July 17, 2007. [R. Exh. 20, 21].

I find this failure to timely evaluate the student constitutes a procedural violation of the IDEA that impeded the child's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education and caused the student a deprivation of educational benefits. The parents and the student were entitled to completion of a timely evaluation and the accompanying review by an ARD Committee. As of April 21, 2007, the student had been placed in a more restrictive setting due to behavioral and academic concerns. Had the evaluation been completed, the ARD Committee would have had valuable information available to make any necessary educational programming changes. Accordingly, I find, based on this procedural violation, that the student was denied a free appropriate public education from April 21,

2007 until July 17, 2007. *See M. L. v. Federal Way Sch. Dist.*, 394 F.3d 634 (9th Cir. 2005) (district's failure to include at least one regular education teacher on student's IEP team where student was in integrated setting held to constitute a denial of FAPE); *Amanda J. v. Clark County Sch. Dist.* 267 F.3d 877 (9th Cir. 2001) (failure to disclose student's records, including evaluations held to have prevented parents from participating in the development of student's IEP, and thus constituted a denial of FAPE).

Issue:

Whether Coppell Independent School District failed to convene an annual ARD before the required deadline of April 21, 2007?

The student's annual ARD committee meeting was not timely held by Coppell ISD due to the delay in obtaining the independent educational evaluation. Consequently, this meeting did not occur until July 17, 2007. [R. Exh. #21]. The purpose of an annual ARD Committee is to review a child's IEP to determine whether the annual goals of the child are being met. It must be held not less than annually. 34 C.F.R. §300.324 (b)(1); 19 Tex. Admin. Code §1050 (h). Again, although Coppell ISD claims extenuating circumstances, nothing precluded it from holding a timely annual ARD Committee meeting. Its failure to do so deprived the parents of the opportunity for a timely review of the student's education progress and the opportunity to address their concerns over his programming during the remainder of the 2006-2007 school year. I find this failure to timely convene the student's annual ARD Committee meeting constitutes a procedural violation of the IDEA that impeded the child's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education and caused the student a deprivation of educational benefits. Accordingly, I find, based on this procedural violation, that the student was denied a free appropriate public education from April 21, 2007 until July 17, 2007.

Issue:

Whether Coppell Independent School District failed to address Transition Services prior to the student's ** birthday of **?

The IDEA was amended in 2004 to require that transition services be addressed in a child's first IEP after the child turns sixteen. 34 C.F.R. §300.320(b). The Texas Commissioner of Education adopted new Commissioner's Rules that went into effect on November 11, 2007, that bring the Texas requirements of transition planning in line with the federal requirements. Therefore, transition planning is no longer required by age fourteen, and is now required by age sixteen. 19 Tex. Admin. Code §89.1055(g).

Coppell ISD had intended to address transition services at the student's annual ARD committee meeting that was anticipated to be held by April 21, 2007, which was prior to the student's ** birthday. Coppell ISD delayed the ARD Committee meeting to obtain the independent educational evaluation. I find this short delay constitutes a

procedural violation, but that it was a *de minimus* violation. It did not impede the child's right to a free appropriate public education, significantly impede the parent's opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education nor did it cause the student a deprivation of educational benefits. *Houston ISD v. Bobby R.*, 200 F.3d 341, 349 (5th Cir. 2000).

Issue:

Whether Coppell Independent School District represented and considered the appropriate Graduation Option for the student?

The July 16, 2007, ARD Committee determined that the student's anticipated method for graduation would be successful completion of his IEP and direct mastery of specific employability and self-help skills which do not require direct ongoing educational support of the local school district. [R. Exh. #21]. The ARD Committee discussed that revisions to the graduation plan would be made if necessary following the development of a transition statement during the first six weeks of the fall semester. [R. Exh. #21]. The parents presented no evidence that these were not the appropriate decisions based on the information available to the ARD Committee at the time. Accordingly, I find in favor of Coppell ISD regarding this issue.

Issue:

Whether Coppell Independent School District failed to develop a schedule of courses for the 2007-2008 school year in a timely manner?

The parent complained that the student was not allowed to timely develop a schedule of courses for high school as were other students. The parent cites no authority and I can find none indicating that this is an issue involving an alleged denial of a free appropriate public education. There is no IDEA requirement related to the timeliness of developing a schedule of courses for a student. The only IDEA requirement is that the student's IEP be in place before the beginning of the school year. 34 C.F.R. §300.323 (a). The student had a schedule of services in his IEP for the 2007-2008 school year, prior to the beginning of the school year. Accordingly, I find no merit to this claim.

Issue:

Whether Coppell Independent School District failed to address ESY in a timely and appropriate manner?

The student's eligibility for extended school year services (ESY) was not addressed by an ARD Committee prior to the summer of 2007. It was addressed at the July 16, 2007, ARD Committee meeting. ESY services were not recommended because the student demonstrated the ability to recoup lost skills after his return to school following his ten-week absence from October through December, 2006. (R21:32)

Therefore, the ARD Committee determined he did not meet the eligibility requirement for ESY.

ESY services are not specifically mandated for each child with a disability. Instead, such services are provided only when necessary, based on individual need. Therefore, there is no requirement that ESY services be addressed by an ARD Committee. However, when appropriate, if an ARD Committee has not addressed a student's need for ESY services, then the parent has the right to request an ARD Committee meeting to address the need for these services. See, 19 Tex. Admin. Code §89.1065. There is no indication that the parents' requested such an ARD Committee meeting.

Moreover, I also find that the parents failed to meet their evidentiary burden that the student would have qualified for such services. Accordingly, I find in favor of Coppell ISD on this issue.

Issue:

Whether Coppell Independent School District falsified educational documents?

Petitioner presented no evidence that Coppell ISD falsified educational documents. Petitioner alleged that a math grade in the student was changed at the end of the 2006-2007 school year to indicate a passing grade. However, this was shown to be a correction, not falsification of a document. Even assuming this change was inappropriate and contained a falsified grade, this hearing is not the appropriate forum to address this issue. If a document is inaccurate or misleading, then the parents may seek an amendment of the document from the public agency. Additionally, the parents would have hearing rights under the Family Educational Rights and Privacy Act of 1974 if the document was not amended. See 34 C.F.R. §300.618-621. Accordingly, I lack jurisdiction to address this issue.

Issue:

Whether Coppell Independent School District failed to provide the student services available to students with autism/pervasive developmental disorder?

The most recent autism evaluation of the student indicated that he did not meet the eligibility criteria for special education services as a child with autism or a pervasive developmental disorder. [R.Exh. #20]. Petitioner failed to present any evidence that he met the criteria at any time from February 19, 2007 through September 18, 2007. Accordingly, I find in favor of Coppell ISD on this issue.

Issue:

Whether Coppell Independent School District failed to provide Highly Qualified Teachers and related service providers and whether the school district failed to

ensure that the teachers and staff received in-service training in regard to the student and his needs?

Petitioner presented no evidence that the Coppell ISD failed to provide highly qualified teachers and staff to the student from February 20, 2007 through September 18, 2007. On the contrary, Coppell ISD presented evidence that it provided in-service training to Petitioner's teachers and service providers regarding the student and his needs. The mediation agreement contained the provision that Coppell ISD would provide training to the student's teachers and paraprofessional, prior to January 8, 2007, regarding the student's disabilities and the implementation of his IEP, including his BIP. The evidence established that such training was provided to the student's teachers and paraprofessional prior to January 8, 2007. [R. Exh. #29, T. 248-249, 319-321].

Issue:

Whether the parents unreasonably protracted the final resolution of the issues in controversy?

Coppell ISD raises this issue in response to the claims of the parents that they were excused from the release in the mediation agreement because Coppell ISD had committed a prior material breach of the agreement. Coppell ISD claims that this was groundless and frivolous and seeks an unreasonable protraction finding. I do not find that the parents unreasonably protracted the final resolution of the issues in controversy in this matter. Coppell ISD failed to comply with several provisions of the mediation agreement and therefore the parent had the right to raise the issue of whether such failures to comply constituted material violations of the agreement. This was a legitimate issue that did not unreasonably protract the final resolution of the issues in controversy. 19 Tex. Admin. Code § 89.1185.

Tuition Reimbursement

The parents seek reimbursement of the tuition and costs of the student's private school ** grade placement during the 2007-2008 school year.

The IDEA allows for reimbursement of private school placements by parents in limited circumstances. Specifically, the statute provides:

“(ii) Reimbursement for Private School Placement: If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.” *See* 20 U.S.C. §1412(a)(10)(C)(ii).

The IDEA also places limitation on reimbursement as follows:

“The cost of reimbursement described in clause (ii) may be reduced or denied –
(I) if –

(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or

(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in item (aa);

...

(III) upon a judicial finding of unreasonableness with respect to the action taken by the parents.” *See* 20 U.S.C.§1412(a)(10)(C)(iii).

The IDEA provides the following exceptions to the potential reduction or denial of reimbursement:

“Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement

(I) shall not be reimbursed or denied for failure to provide such notice if –

(aa) the school prevented the parent from providing such notice;

(bb) the parents had not received notice, pursuant to section 1415 of this title, of the notice requirement in clause (iii)(I); or

(cc) compliance with clause (iii)(I) would likely result in physical harm to the child; and

(II) may, in the discretion of a court or hearing officer, not be reduced or denied for failure to provide such notice if –

(aa) the parent is illiterate or cannot write in English; or

(bb) compliance with clause (iii)(I) would likely result in serious emotional harm to the child.” *See* 20 U.S.C.§1412(a)(10)(C)(iv).

Accordingly, to be entitled to reimbursement for tuition and costs of the student’s private school placement, the parents must prove by a preponderance of the evidence, not only that Coppell ISD failed to make available to the student a free appropriate public

education in a timely manner, but also that they timely and properly notified the school district of their intent to privately place the student at public expense.

I find that the parents failed to establish by a preponderance of the evidence that the agency had not made a free appropriate public education available to the child in a timely manner prior to his enrollment in the private school placement. As indicated, Coppell ISD committed procedural violations that resulted in a finding of a denial of a free appropriate public education to the student from April 21, 2007 until July 17, 2007. In making this finding, I take into account that the July 17, 2007 ARD Committee meeting had been initially scheduled to take place on June 11, 2007, again on June 29, 2007, but was delayed. The reasons for the delay are not clear. [R. Exh. #21, P. Exh. #10, pages 235-241]. However, Petitioner failed to establish that the student was denied a free appropriate public education after July 17, 2007. The student was withdrawn from Coppell ISD on July 24, 2007. At that time, Coppell ISD had developed an IEP for the student for the 2007-2008 school year. Petitioner, having the burden of proof on this issue, failed to establish that the student's proposed IEP for the 2007-2008 school year was not reasonably calculated to confer an educational benefit on the student or denied the student a free appropriate public education. Petitioner failed to present a preponderance of the evidence that the student's 2007-2008 IEP or the student's proposed placement was in some manner inappropriate or otherwise violated the least restrictive environment provisions of the IDEA. Accordingly, the parents' request for tuition reimbursement is denied.

Remedy

Petitioner is entitled to compensatory educational services for the denial of a free appropriate public education to the student from April 21, 2007 until July 17, 2007. The compensatory education award must be reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place. *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005). Petitioner was denied the opportunity to a timely evaluation and a timely annual ARD Committee meeting to review the evaluation, the student's progress and address his then current educational needs. The student performed poorly academically during the time period he was denied a free appropriate public education and received failing semester grades in Language Arts, and Science and a failing six weeks grade in Math. It is in this area that I find that compensatory educational services are appropriate. I find that the student received 50 minutes per day of instruction in Social Studies and 100 minutes per of instruction in Math and Language Arts, but that his behavior significantly interfered with this instruction. Had the student been timely evaluated and has a timely ARD Committee meeting, his behavior intervention plan could have been modified and improved which would have given the student greater access to his instruction. To provide the student the opportunity to make up for his academic deficits in these subjects, I find that a total of 20 hours of tutorial services would be sufficient and that they should be provided within one year of the date of this decision.

Conclusions of Law

1. The parents, being the party attacking the appropriateness of the educational program and services developed by Coppell ISD for the student, bears the burden of showing why the educational programming and/or resulting placements are inappropriate under the IDEA. *Cypress-Fairbanks Indep, Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-48 (5th Cir. 1997).
2. All issues raised by the parents in this proceeding relating to events that occurred on or before December 5, 2007, are subject to Coppell ISD's affirmative defense of release. 20 U.S.C. §1415 (e)(2)(F).
3. Coppell ISD substantially complied with the terms and conditions of the December 5, 2006 mediation agreement and has the right to enforce in this proceeding its provisions, including the release and limitations provisions contained therein. 20 U.S.C. §1415 (e)(2)(F).
4. Those claims and issues of the parents that accrued from January 8, 2007 through February 19, 2007, are waived by the stipulation of the parents in the mediation agreement that such services and placement during the agreed upon trial period are reasonably calculated to provide the student with a free appropriate public education in the least restrictive environment. 20 U.S.C. §1415 (e)(2)(F).
5. The student was provided with a free appropriate public education by Coppell ISD from December 6, 2007 through through April 20, 2007, and from July 18, 2007 to September 18, 2007. 20 U.S.C. §1415 (f)(3)(E)(i).
6. Coppell ISD's failure to timely evaluate the student constitutes a procedural violation of the IDEA that impeded the child's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education and caused the student a deprivation of educational benefits. 20 U.S.C. §1415 (f)(3)(E)(ii).
7. Coppell ISD's failure to timely convene the student's annual ARD Committee meeting constitutes a procedural violation of the IDEA that impeded the child's right to a free appropriate public education, significantly impeded the parent's opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education and caused the student a deprivation of educational benefits. 20 U.S.C. §1415 (f)(3)(E)(ii).
8. Coppell ISD denied the student a free appropriate public education from April 21, 2007 until July 17, 2007. 20 U.S.C. §1415 (f)(3)(E)(ii).

9. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary school or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.” See 20 U.S.C. §1412(a)(10)(C)(ii).

10. When the parent withdrew the student from Coppell ISD on July 24, 2007, the student’s IEP in effect at that time was appropriate. It was reasonably calculated to provide the student with a meaningful educational benefit. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-48 (5th Cir. 1997).

11. The student’s compensatory education award of 20 hours of tutorial services in the subjects in which he received failing grades while being denied a free appropriate public education is reasonably calculated to provide the educational benefits to the student that likely would have accrued from special education services the school district should have supplied in the first place. *Reid v. District of Columbia*, 401 F.3d 516 (D.C. Cir. 2005).

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, I hereby ORDER:

1. Coppell ISD is responsible for offering the student 20 hours of private tutorial services in those subject areas in which he received failing semester/six week grades at the end of the 2006-2007 school year. The parents shall have the right to select a qualified teacher or educational company to provide these tutorial services. Coppell ISD shall either pay the costs of these services directly to the provider or reimburse the parents for the costs of such services, upon submission of paid invoices for such services. The student shall access these services within one year from the date of this decision. Any services not accessed within one year are thereafter forfeited.

2. Coppell ISD shall reimburse the parents at the state rate for mileage for taking the student to and from the location where the tutorial services are provided.

3. All claims by parents raised in this proceeding which accrued on or before December 5, 2006 are DISMISSED under the legal doctrine of release.

4. All other relief not expressly granted herein is DENIED.

5. The District shall timely implement this Decision within 10 school days in accordance with 19 Texas Administrative Code §89.1185(q) and 34 C.F.R. §300.514. The following must be provided to the Division of Complaints Management at the Texas Education Agency, and copied to the parent 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.

SIGNED this 4th day of January 2008.

James W. Holtz
Special Education Hearing Officer

NOTICE TO PARTIES

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

STUDENT BNF PARENTS, Petitioner	§	BEFORE A DUE PROCESS
	§	
VS.	§	HEARING OFFICER FOR
	§	
COPPELL INDEPENDENT SCHOOL DISTRICT, Respondent	§	THE STATE OF TEXAS
	§	

SYNOPSIS

Issue: Whether the parents had right to void mediation agreement on affirmative defense of prior material breach?

Held: For School District. School District committed prior breach of the mediation agreement but the breach was not determined material and therefore parents were not excused from its enforcement. The mediation agreement released all of parents' claims against the school district that accrued on or before December 5, 2006. Accordingly, all claims by parents raised in this proceeding which accrued prior to December 5, 2006 were dismissed under the doctrine of release.

Cite: 34 C.F.R. §300.506

Issue: Whether School District failed to change placement of student or protect student from bullying/harassment?

Held: For School District. Petitioner failed to present sufficient evidence to establish that student was bullied/harassed or that the School District failed to appropriately and timely investigate such claims. The student's placement was changed pursuant to an agreement reached at mediation.

Cite: 34 C.F.R. §300.101; 300.114-300.116

Issue: Whether School District failed to provide a continuum of services?

Held: For School District. There was no evidence that the school district failed to provide a continuum of placements for students with disabilities. The school district had the right to centralize its behavior unit at one campus.

Cite: 34 C.F.R. §§300.114-300.116

Issue: Whether School District failed to provide student placement in least restrictive environment?

Held: For School District. At all applicable times, the student was educated in the least restrictive environment. He was educated with non-disabled peers to the maximum extent appropriate.

Cite: 34 C.F.R. §§300.114-300.116

Issue: Whether School District failed to provide student with social skills training?

Held: For School District. IEP goals and objectives address the student's deficits in social skills and training and instruction was provided to the student.

Cite: 34 C.F.R. §§300.101, 300.320-323

Issue: Whether School District failed to implement the student's IEP and BIP?

Held: For School District. Petitioner failed to establish that student's IEP and BIP were not implemented. Evidence showed that student's BIP and IEP were implemented to the extent that he achieved some educational benefit from his instruction. However, he received failing semester grades in two classes and a failing six weeks grade in another. Because of procedural inadequacies amounting to a denial of FAPE, the student was awarded compensatory educational services.

Cite: 34 C.F.R. §§300.101, 300.320-323

Issue: Whether the student's Behavior Intervention Plan was appropriate?

Held: For School District. To prevail on a claim under the IDEA, a party challenging the implementation of an IEP must show more than a *de minimis* failure to implement all elements of that IEP, and, instead, must demonstrate that the school board or other authorities failed to implement substantial or significant provisions of the IEP. Significant provisions of the student's 2006-2007 IEP which included the student's behavior intervention plan had been followed by the school district and the student did receive some educational benefit from his instruction. However, he received failing semester grades in two classes and a failing six weeks grade in another. Because of procedural inadequacies amounting to a denial of FAPE, the student was awarded compensatory educational services.

Cite: 34 C.F.R. §§300.101, 300.320-323

Issue: Whether ARD Committee meetings were held in a collaborative manner when documents were brought to meeting not previously reviewed by parent and when meetings were not conducted timely and in a mutually agreed upon manner?

Held: For School District. There is no provision in the IDEA requiring documents used at the meeting be given to parents prior to the meeting. Nor is there a requirement that the meetings be conducted in a mutually agreed upon manner. The only requirements are that parents be afforded the opportunity to attend the meetings and that they be held at a mutually agreeable time.

Cite: 34 C.F.R. §300.322 (a); 19 Tex. Admin.Code §89.1045.

Issue: Whether parents were provided with prior written notice of ARD meetings?

Held: For School District. Parents failed to present evidence that they were not provided with prior written notice of ARD meetings during the relevant time periods.

Cite: 34 C.F.R. §300.503; 300.322 (a) and (b)

Issue: Whether School District failed to timely complete triennial evaluation?

Held: For Parent. IDEA requires public agency to ensure that a reevaluation of each child with a disability is conducted in accordance with the applicable regulations at least once every three years, unless the parent and the public agency agree that a reevaluation is unnecessary. Although School District claimed extenuating circumstances precluded it from meeting the deadline (awaiting independent educational evaluation), the fact is the District failed to comply with this requirement. The District was not bound to utilize the pending independent educational evaluation as its evaluation. It could have completed its own evaluation timely, in accordance with applicable law. As a result, the evaluation was not completed until June 15, 2007 and was not reviewed by an ARD Committee until July 17, 2007. This failure to timely evaluate is a procedural violation of the IDEA which denied the student FAPE from April 21, 2007 until July 17, 2007.

Cite: 34 C.F.R. §300.303

Issue: Whether School District failed to timely convene student's annual ARD meeting?

Held: For Parent. The student's annual ARD meeting was not timely held. The purpose of an annual ARD Committee is to review a child's IEP to determine whether the annual goals of the child are being met. It must be held not less than annually. Although Coppell ISD claims extenuating circumstances, nothing precluded it from holding a timely annual ARD Committee meeting. Its failure to do so deprived the parents of the opportunity for a timely review of the student's education progress and the opportunity to address their concerns over his programming during the remainder of the 2006-2007 school year. This failure to timely convene the student's annual ARD Committee meeting constitutes a procedural violation of the IDEA that denied the student a free appropriate public education from April 21, 2007 until July 17, 2007.

Cite: 34 C.F.R. §300.324 (b)(1); 19 Tex. Admin. Code §1050 (h).

Issue: Whether School District failed to address ESY in a timely manner?

Held: For School District. Not all students qualify for ESY services. If ESY services are not addressed, a parent may request an ARD meeting to request these services. Parents did not request meeting and student was subsequently determined by ARD not to qualify for ESY services.

Cite: 19 Tex Admin. Code §89.1065.

Issue: Whether Parent is entitled to tuition reimbursement from school district for a unilateral home school placement?

Held: For School District. Student was withdrawn from school on July 24, 2007. At that time, the school district had in place an IEP and BIP for the 2007-2008 school year reasonably calculated to provide student with FAPE.

Cite: 20 U.S.C. §1412(a)(10)(C)(ii) and (iii); 34 C.F.R. §300.148