

TEA DOCKET NO. 063-SE-1207

STUDENT, b/n/f Parent	§	
	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
CARROLLTON-FARMERS BRANCH	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

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Statement of the Case

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

1. The Respondent failed to fully explain the rights of the Petitioner under the IDEA to the Petitioner's parent;²
2. The Respondent failed to provide an interpreter for the Petitioner's parent in admission, review and dismissal (ARD) committee meetings;
3. The Respondent failed to explain data used to determine services for the Petitioner to the Petitioner's parent;
4. The Respondent failed to address the learning gap between the Petitioner's achievement level and grade level;
5. The Respondent failed to fully diagnose or evaluate all of the suspected disabilities of the Petitioner;
6. The Respondent failed to provide proper instruction in the native language of the Petitioner;
7. The Respondent failed to implement the individualized education program (IEP) of the Petitioner and improperly denied services to the Petitioner;
8. The Respondent failed to address the behavioral needs of the Petitioner;
9. The Respondent failed to provide appropriate instructional time to the Petitioner;
10. The Respondent failed to explain to the Petitioner's parent how the annual goals in the Petitioner's IEP were developed and how they are measured;

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

² This list closely tracks but is not a verbatim reiteration of the Petitioner's claims. The Petitioner's statement of claims has been edited here, in part, to remove personally identifiable information. See Pet'r Due Process Complaint at 1 – 2 (filed Dec. 3, 2007); Pet'r First Amended Due Process Complaint at 1 (filed Dec. 6, 2007); and Pet'r Second Amended Due Process Complaint at 2 – 4 (filed Dec. 20, 2007).

11. The Respondent failed to provide a free appropriate public education (FAPE) to the Petitioner;³
12. The Respondent failed to completely evaluate the Petitioner prior to recommending a change in placement to the Respondent's discipline alternative education program (DAEP);⁴
13. The Respondent inappropriately made a change in placement of the Petitioner to the Respondent's DAEP;
14. The Respondent failed to provide appropriate services to the Petitioner in the DAEP;
15. The Respondent failed to consider an other health impairment (OHI) report for the Petitioner at the manifestation determination review conducted on December 14, 2007;
16. The Respondent failed to provide a copy of the full and individual initial evaluation (FIE) report completed on April 2, 2007 to the Petitioner's parent in the parent's native language;
17. The Respondent failed to consider the Petitioner's learning ability at the manifestation determination review conducted on December 14, 2007;
18. The Respondent failed to conduct an appropriate manifestation determination review on December 14, 2007 and inappropriately supported the school's recommendation for a change of placement of the Petitioner to the Respondent's DAEP.
19. The Respondent failed to provide the Petitioner with content mastery and all core classes needed to be successful with certified and qualified teachers in the DAEP;
20. The Respondent failed to show that the Petitioner is subject to a series of patterns of behaviors that constitute more than a 10-day change in placement in a school year; and
21. The Respondent failed to consider the need for an evaluation of the Petitioner's behavioral intervention plan (BIP) at the manifestation determination review conducted on December 14, 2007.⁵

³ Claims No. 1 – 11 are from the Petitioner's Due Process Complaint, filed December 3, 2007. See Pet'r Due Process Complaint at 1 – 2 (filed Dec. 3, 2007); Prehearing Conference Tr. at 8 – 16 (Dec. 20, 2007); and Due Process Hearing Tr. at 21 – 22 (Jan. 25, 2008).

⁴ Claim No. 12 is from the Petitioner's First Amended Due Process Complaint, filed December 6, 2007. See Pet'r First Amended Due Process Complaint at 1 (filed Dec. 6, 2007); Prehearing Conference Tr. at 16 – 18 (Dec. 20, 2007); and Due Process Hearing Tr. at 21 – 22 (Jan. 25, 2008).

⁵ Claims No. 13 – 20 are from the Petitioner's Second Amended Due Process Complaint, filed December 20, 2007. See Pet'r Second Amended Due Process Complaint at 2 – 4 (filed Dec. 20, 2007); and Due Process Hearing Tr. at 21 – 22 (Jan. 25, 2008). While the Petitioner's Second Amended Due Process Complaint identified ten new claims, one of those claims (No. 4) was merely a factual statement and did not include any allegation against the Respondent ("The FIE completed [on] April 2, 2007 showed a

As relief, the Petitioner requests that the Respondent provide (1) special education services to address the child's academic needs; (2) an increase in the child's mainstream classes; (3) a "workable" BIP; (4) tutoring by a private provider; (5) an independent educational evaluation; and (6) immediate placement at the child's home campus instead of at the DAEP.⁶

Procedural History

The Texas Education Agency (TEA) received the Petitioner's Due Process Complaint on December 3, 2007. On December 6, 2007, the Petitioner requested permission from this Hearing Officer to amend the Due Process Complaint. This Hearing Officer granted the Petitioner leave to file an amendment and the Petitioner did so on December 6, 2007. The Respondent filed its response to the Due Process Complaint on December 14, 2007. The parties participated in a resolution session on December 20, 2007, but were unable to resolve the issues in the case.

This Hearing Officer conducted a prehearing teleconference with the parties on December 20, 2007. During the prehearing teleconference, among other things, the Petitioner requested additional permission from this Hearing Officer to further amend the Due Process Complaint. This Hearing Officer granted the Petitioner leave to file a second amendment and the Petitioner did so on December 20, 2007. The second amendment to the Due Process Complaint is the Petitioner's appeal of the determination of a manifestation review held on December 14, 2007. The second amendment to the Due Process Complaint converts the Petitioner's case to an expedited appeal under 34 C.F.R. § 300.532(a).

An Expedited Due Process Hearing was conducted in accordance with the timeline requirement under 34 C.F.R. § 300.532(c)(2) on January 25, 2008.⁷ During the Hearing, the Petitioner was afforded a fair opportunity to offer and solicit evidence and testimony to satisfy the Petitioner's burden of persuasion as assigned under *Schaffer v.*

language proficiency 'Below Average' in receptive and expressive."). Thus, this Hearing Officer has designated an aggregate total of 21 claims that the Petitioner is prosecuting against the Respondent.

⁶ See Pet'r Due Process Complaint at 2 (filed Dec. 3, 2007); Pet'r First Amended Due Process Complaint at 1 (filed Dec. 6, 2007); and Pet'r Second Amended Due Process Complaint at 7 (filed Dec. 20, 2007).

⁷ Under 34 C.F.R. § 300.532(c)(2), an expedited due process hearing must occur within 20 school days of the filing of the appeal of a manifestation review. Here, because the Petitioner filed the expedited appeal on the eve of the Respondent's winter holiday recess, and because of the district's observance of a federal holiday in January, the due date for the expedited hearing is February 1, 2008. See Prehearing Conference Tr. at 46 – 52 (Dec. 20, 2007).

Weast, 546 U.S. 49, 57 – 58 (2005).⁸ Following the Expedited Due Process Hearing, this Hearing Officer permitted the parties to submit written closing statements.⁹

Findings of Fact

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

1. The child is a child with a disability under the IDEA and is a student in the district. The child qualifies under the specific learning disability eligibility category. (Hr’g Tr. at 206, 212 – 13 (Jan. 25, 2008); Resp’t Ex. 6, pp. 19 – 27; Resp’t Ex. 13, p. 3)
2. On or about March 21, 2007, the child transferred into the district. The child began attending a ** school in the district at the ** grade level. (Hr’g Tr. at 149, 188, 228, 243 (Jan. 25, 2008); Pet’r Ex. 14, p. 225; Resp’t Ex. 3, p. 1; Resp’t Ex. 4, pp. 3 – 4; Resp’t Ex. 5, pp. 1 – 2, 4, 8, 12, 15, 17)
3. On March 22, 2007, the child’s parent signed a completed “home language survey” indicating that the language used most in the family’s home is English. The survey indicates the child speaks English most of the time at home. (Hr’g Tr. at 186 – 87 (Jan. 25, 2008); Resp’t Ex. 4, p. 1)
4. On March 26, 2007, the Respondent conducted a transfer ARD committee meeting. The child’s parent attended and participated in the meeting. Among other things, the ARD committee received information from the child’s parent on the child’s disability and special education needs. The committee determined that the child would attend resource classes with content mastery assistance. The child’s parent provided consent for the district to evaluate the child. The child’s parent participated in the ARD committee meeting in English; neither the district nor the ARD committee received a request for an interpreter for the parent. The district provided the parent with a notice of IDEA procedural safeguards in English. The

⁸ This Hearing Officer conducted a final Prehearing Conference on January 23, 2008 to ensure, among other things, that plans were in place for the Petitioner to have available all witnesses it wished to call for its case-in-chief.

⁹ Under 34 C.F.R. § 300.532(c)(2), the expedited decision of the Hearing Officer is due within 10 school days after the expedited due process hearing. Under 19 Tex. Admin. Code § 89.1191, the expedited decision of the Hearing Officer is due within 45 days after the filing of the request for an expedited due process hearing.

district provided the parent with a prior written notice in English that included the offer to contact it if the parent had any questions about procedural safeguards; the offer included a contact name and phone number. Neither the district nor the ARD committee received a request that the procedural safeguards notice and prior written notice be provided in a language other than English at this time. (Hr'g Tr. at 188 – 90, 197 – 99, 229 (Jan. 25, 2008); Pet'r Ex. 14, p. 225; Pet'r Ex. 15, p. 226; Resp't Ex. 5, pp. 1 – 20)

5. The Respondent completed a FIIE report on the child on April 2, 2007. The evaluation was a full evaluation as it assessed the child in the following areas: language, physical, emotional, sociological, and intellectual and achievement. The FIIE was conducted in English after determining the child's dominant language. Among other things, the report notes that the child has a low-average full scale IQ of 86 on the universal nonverbal intelligence test (UNIT) standard battery. The report also notes that the child did not demonstrate any behaviors indicative of an emotional or behavioral disorder. The district's ** school diagnostician who administered assessments to the child did not suspect that the child has mental retardation, autism or attention deficit hyperactivity disorder. After the completion of the FIIE report, the ** school diagnostician who wrote the FIIE report met with the child's parent at school to review the results prior to the ARD committee meeting on April 30, 2007. The child's parent did not express any concerns about suspected disabilities overlooked by the FIIE. Neither the district nor the diagnostician received a request for an interpreter for the parent for the meeting. (Hr'g Tr. at 49 – 50, 132 – 33, 200 – 10, 224 – 26 (Jan. 25, 2008); Pet'r Ex. 12, pp. 181 – 202; Resp't Ex. 6, pp. 1 – 27)
6. On April 30, 2007, the Respondent conducted an ARD committee meeting. The child's parent attended and participated in the meeting. Among other things, the ARD committee reviewed the results of the FIIE. The committee determined that the child qualified for special education as a child with specific learning disabilities. Among other things, the committee prepared a “graduation plan” for the child. Neither the district nor the ARD committee received a request for an interpreter for the parent. The district provided the parent with a notice of IDEA procedural safeguards in English. The district provided the parent with a copy of the FIIE report in English. Neither the district nor the ARD committee received a request that the procedural safeguards notice and FIIE report be

provided in a language other than English. (Hr'g Tr. at 133, 210 – 19 (Jan. 25, 2008); Pet'r Ex. 11, p. 178; Resp't Ex. 7, pp. 1 – 17)

7. For the spring, 2007 semester, the child passed all classes and was advanced to the next grade. (Resp't Ex. 19, p. 1)
8. In the 2007-08 school year, the child began attending **. (Pet'r Ex. 8, p. 98; Resp't Ex. 8, p. 1)
9. On September 12, 2007, the child was charged with a violation of the Respondent's code of student conduct. Specifically, the child was charged with throwing gang signs. (Hr'g Tr. at 343 – 44 (Jan. 25, 2008); Resp't Ex. 9, pp. 1 – 7)
10. On or about September 16, 2007, the Petitioner requested that the Respondent provide an interpreter for the ARD committee meeting on September 18, 2007. (Hr'g Tr. at 351 – 52 (Jan. 25, 2008))
11. On September 18, 2007, an ARD committee meeting was held for the child. The child's parents attended and participated; they were accompanied by an advocate from Advocacy, Inc. The Respondent provided an interpreter (a district employee). Among other things, the committee reviewed the child's FIIE report from April, 2007. The committee discussed counseling for the child. The committee determined that the child's class placement should be changed to modified classes from resource classes to provide a more appropriate instructional setting for the child. (While the child is with other special education students in the modified classes themselves, the child does get exposure to students without disabilities during, for instance, the passing periods between classes.) The committee determined that the child's behavior impeded the learning of the child. The committee reviewed a functional behavioral assessment and adopted behavioral intervention plan (BIP) for the child. The BIP had one goal and two objectives; one objective pertained to helping the child refrain from gang-related activity and the other pertained to helping the child appropriately express emotions. The committee added the services of a behavioral resource specialist (BRS) to work with the child on behavioral issues. The committee also conducted a manifestation determination review and determined that the child's violation of the code of student conduct was not a manifestation of the child's disability. Subsequently, the child was assigned to the DAEP. The district provided the parent with a notice of IDEA procedural safeguards in the language the

parent now indicated was the parent's native language. (Hr'g Tr. at 50, 72, 265 – 74, 277, 279 – 80, 324, 328 – 29, 331 – 32, 335 – 40, 358 – 60, 372, 396 – 97 (Jan. 25, 2008); Pet'r Ex. 8, pp. 98 – 163; Resp't Ex. 8, pp. 1 – 51; Resp't Ex. 21, p. 1)

12. On or about September 19, 2007, the child's parent declined counseling services by the Respondent for the child. (Hr'g Tr. at 72, 280, 340 (Jan. 25, 2008); Resp't Ex. 8, p. 52)
13. On October 1, 2007, the Respondent held a Level II hearing and determined that the child's placement should not be changed to the Respondent's DAEP. The child was permitted to return to ** from the DAEP. (Hr'g Tr. at 281, 361 (Jan. 25, 2008); Resp't Ex. 9, pp. 8 – 12)
14. Upon the child's return to **, the child and the child's parent had a meeting with a ** assistant principal to receive an explanation of the Respondent's policies pertaining to gangs and the consequences for violating them. (Hr'g Tr. at 361 – 62 (Jan. 25, 2008))
15. During the fall, 2007 semester, the Respondent received a copy of a January, 2007 ARD committee meeting report from the child's prior school district. (Hr'g Tr. at 318 (Jan. 25, 2008); Resp't Ex. 2, pp. 1 – 23)
16. On November 6, 2007, the child was involved in a disciplinary incident at the **. The child was involved in an altercation with another student with a disability; the child teased the other student and called the other student "autistic." (Hr'g Tr. at 281 – 82 (Jan. 25, 2008); Pet'r Ex. 7, pp. 93 – 94; Resp't Ex. 10, pp. 1 – 2)
17. On or about November 15, 2007, the child was charged with a violation of the Respondent's code of student conduct. Specifically, the child was charged with carving the name of a gang into the child's desk. (Hr'g Tr. at 283 – 84, 362 – 68 (Jan. 25, 2008); Pet'r Ex. 6, pp. 74, 77 – 78, 84 – 87, 90; Resp't Ex. 12, pp. 1 – 9)
18. On November 29, 2007, the Respondent held a Level I hearing and determined that the child committed the conduct in question and should be assigned to the Respondent's DAEP for "30 actual, successful school days." The child's parent was present for the Level I hearing. The Respondent stated that it was prepared to immediately hold a manifestation determination review but the child's parent declined to

attend. After attempting to confer with the child's parent, the Respondent rescheduled the manifestation determination review and notified the child's parent in English and in the language the parent indicated was the parent's native language. The Respondent provided a procedural safeguards notice to the parent. (Hr'g Tr. at 284 – 87, 297 – 98, 368 – 70 (Jan. 25, 2008); Pet'r Ex. 4, pp. 52 – 54; Pet'r Ex. 6, pp. 66 – 68, 81; Resp't Ex. 12, pp. 11 – 13; Resp't Ex. 13, pp. 44 – 51; Resp't Ex. 14, p. 1; Resp't Ex. 21, p. 1)

19. On December 6, 2007, the child's parent requested the Respondent's "other health impaired" (OHI) form. At the parent's request, the Respondent transmitted its OHI form by facsimile to the office of the Petitioner's physician. The Respondent's facsimile number was included on the transmittal cover page. (Hr'g Tr. at 62, 290 – 96 (Jan. 25, 2008); Resp't Ex. 14, pp. 2 – 3, 7 – 9)
20. On December 6, 2007, the child's physician completed the OHI form. The physician indicated that the child has severe "ADD," "PDD" and "LD." (Hr'g Tr. at 63 – 64 (Jan. 25, 2008); Pet'r Ex. 1, p. 5; Resp't Ex. 15, p. 2)
21. On December 10, 2007, another advocate for the child notified a ** diagnostician for the Respondent by telephone of the child's physician's findings on the OHI form. The diagnostician is familiar with the child and participated in the ARD committee meeting on December 14, 2007. (Hr'g Tr. at 47, 67, 301 – 02 (Jan. 25, 2008); Resp't Ex. 14, p. 3)
22. On December 14, 2007, the Respondent conducted an ARD committee meeting. The child's parent had notice of the ARD committee meeting in English and in the language the parent indicated was the parent's native language but opted not to attend the meeting; the Respondent was unable to convince the parent to attend. Among other things, the ** diagnostician reported that the child's advocate had notified her that an OHI form had been completed on the child, although it had not yet been submitted. No committee members in attendance expressed suspicion that the child might have additional disabilities warranting evaluation. The committee reviewed existing evaluation data in the areas of achievement, assistive technology, emotional, health, intellectual, sociological, and speech/language. The committee determined that the data were all current and no additional data were needed. The committee discussed that no behaviors indicative of emotional or behavioral disorders had been seen at

school. The committee modified the child's BIP by adding a new objective to address aggression. The Respondent conducted a manifestation determination review. The committee reviewed all relevant information in the child's file. The committee determined that the conduct in question was not caused by the child's disability and that the conduct in question did not have a direct and substantial relationship to the child's disability. The committee determined that the Respondent did not fail to implement the child's IEP. The committee determined that the behavior that gave rise to the violation of the code of student conduct was not a manifestation of the child's disability. The committee determined that the child can receive appropriate services in the DAEP, including behavioral modifications to address the code violation. (Hr'g Tr. at 68, 298, 303 – 08, 325 – 26, 373 (Jan. 25, 2008); Pet'r Ex. 3, pp. 30 – 44, 46 – 47, 49 – 50; Pet'r Ex. 4, p. 51; Resp't Ex. 13, pp. 1 – 39; Resp't Ex. 14, p. 3)

23. On December 17, 2007, the Respondent received the OHI form on the child completed by the child's physician. (Hr'g Tr. at 65 – 66, 299, 301, 311 (Jan. 25, 2008); Resp't Ex. 15, pp. 1 – 2)
24. On or about December 20, 2007, the Respondent provided the child's parent with a notice of assessment to evaluate the child in the areas identified by the child's physician on the OHI form. The Respondent also provided the child's parent with a release form to obtain permission for the Respondent to discuss with the child's physician the findings on the OHI form. (Hr'g Tr. at 67, 308 – 09 (Jan. 25, 2008); Resp't Ex. 14, pp. 4, 14 – 16)
25. During the fall, 2007 semester, the child received passing grades in all classes. (Hr'g Tr. at 122, 126, 127 – 28, 316 – 17 (Jan. 25, 2008); Resp't Ex. 19, pp. 2 – 3)
26. During the fall, 2007 semester, the child made progress on the goals in the child's IEP. (Hr'g Tr. at 304 – 05 (Jan. 25, 2008); Resp't Ex. 13, pp. 10 – 18)
27. On January 7, 2008, the child began a change in placement to the Respondent's DAEP for 30 "successful" school days. (Hr'g Tr. at 123 – 25, 307 (Jan. 25, 2008); Resp't Ex. 17, pp. 1 – 2)
28. The child's special education teacher in the DAEP has a generic special education certification. (Hr'g Tr. at 99, 117, 120 (Jan. 25, 2008))

29. At the DAEP, the child's IEP is being implemented and the child is receiving content mastery services. At the DAEP, the child utilizes the "READ 180" program to assist the child in meeting the child's IEP reading goals. The child attends "Seven Habits," a specialized class to improve the child's behavior. The child has access to the "peace curriculum" for anger management. The Respondent identified "avoid negative peer pressure" as a targeted behavior for the Petitioner to work on while at the DAEP. The child is making academic and behavioral progress in the DAEP. (Hr'g Tr. at 117 – 26, 371, 379, 391, 394 – 95 (Jan. 25, 2008); Pet'r Ex. 6, p. 92; Resp't Ex. 12, p. 16; Resp't Ex. 17, pp. 5 – 6)

Discussion

Explanation of Rights

The Petitioner's first claim is that the Respondent failed to fully explain the IDEA rights of the parent to the parent. Under the IDEA, parents must be provided – on certain specified occasions – a written notice of procedural safeguards that informs them of their various IDEA rights and opportunity to participate in their child's education.¹⁰ This notice of procedural safeguards must be available in the native language of the child's parents.¹¹

Here, the district provided the notice of procedural safeguards in English and, once requested, in the language the parent indicated was the parent's native language. While explaining the procedural safeguards to a parent is no doubt a gesture of good faith and perhaps an advisable practice, there is no specific provision in the IDEA that school districts must explain the procedural safeguards to a parent. In nonregulatory commentary about procedural safeguards accompanying the 2006 federal regulations for the IDEA, the U.S. Department of Education stated that it was not necessary to add a regulation requiring school districts to explain procedural safeguards to parents since, in part, the procedural safeguards notice must be written in language understandable to the general public.¹² The Petitioner did not assert that the Respondent's notice was not written in understandable language. Further, the Petitioner was accompanied to a September, 2007 ARD committee meeting by an advocate from a state-wide organization that specializes in assisting persons with disabilities with their legal rights, so the child's parents had access to independent advice on their IDEA rights. The Respondent met the

¹⁰ 34 C.F.R. § 300.504(a).

¹¹ 34 C.F.R. §§ 300.503(c)(1)(ii), 300.504(d).

¹² 71 Fed. Reg. 46688 – 89 (2006).

strict requirement to transmit the procedural safeguards to the parent and offered the parent an opportunity to contact it if any questions arose surrounding the procedural safeguards.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 1.

ARD Committee Meetings

The Petitioner's second claim is that the Respondent failed to provide an interpreter for ARD committee meetings. Under the IDEA and the TEA regulations, a school district must afford parents the opportunity to participate in ARD committee meetings.¹³ Further, a school district must take whatever action is necessary to ensure that the parent understands the proceedings of the ARD committee meeting, including arranging for an interpreter for parents whose native language is other than English.¹⁴

Here, the district provided an interpreter when one was requested by the child's parent. The Petitioner failed to establish by a preponderance of the evidence that the Respondent should have been aware of a need to furnish an interpreter at the ARD committee meetings in March and April of 2007. The Petitioner also failed to establish by a preponderance of the evidence that there were occasions in which the Respondent did not respond to a parental expression of a desire or need for an interpreter.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 2.

Full and Individual Initial Evaluation (FIIE) Report and Data

The Petitioner's third claim is that the Respondent failed to explain evaluation data that were obtained through the district's FIIE. The Petitioner's sixteenth claim is that the Respondent failed to provide a copy of the FIIE report to the parent in the parent's native language. Under the IDEA, parents of a child with a disability must be afforded an opportunity to review their child's education records, including evaluation documents, and must receive a response from the school district to reasonable requests for explanations and interpretations of their child's education records, including evaluation documents.¹⁵ Under the IDEA, parents must be provided a copy of evaluation

¹³ 34 C.F.R. § 300.322(a); 19 Tex. Admin. Code § 89.1050(h).

¹⁴ 34 C.F.R. § 300.322(e). In addition, under state law a school district must provide parents whose native language is Spanish either a translated written copy of their child's IEP or an interpreted audio copy of their child's IEP. Texas Educ. Code § 29.005(d)(1).

¹⁵ 34 C.F.R. §§ 300.501(a), 300.613(b)(1).

reports.¹⁶ While not specifically mandated, evaluation reports must be available in the native language of the child's parents to ensure that they are able to participate meaningfully in ARD committee meetings.¹⁷

Here, the district held a pre-ARD meeting with the child's parent to review the evaluation data obtained through the FIIE of the child. The FIIE data were also reviewed during the April, 2007 ARD committee meeting. The district provided a copy of the FIIE report at the April, 2007 ARD committee meeting. The Petitioner failed to establish by a preponderance of the evidence that the Respondent should have been aware of a need to explain and supply the FIIE report in a language other than English. The Petitioner also failed to establish by a preponderance of the evidence that the Respondent refused a request to provide a copy of the FIIE report in a language other than English.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claims No. 3 and 16.

Learning Gap Between Petitioner's Achievement Level and Grade Level and Receipt of Free Appropriate Public Education (FAPE)

The Petitioner's fourth claim is that the Respondent failed to address the gap between the child's achievement level and the child's grade level. While the child is in the ** grade, the child is on the ** grade level in language and math skills. The Petitioner's eleventh claim is that the Respondent failed to provide the Petitioner with FAPE. Under the IDEA, a school district's fundamental duty is to provide each child with a disability with FAPE.¹⁸ The question of whether there is a denial of FAPE is examined under a two-part test enunciated by the U.S. Supreme Court in *Board of Education v. Rowley*.¹⁹ According to *Rowley*, there is a deprivation of FAPE if a child's program and services are (1) not in compliance with the IDEA procedures, and (2) not reasonably calculated to enable the child to receive educational benefits.

The Fifth Circuit Court of Appeals, in *Cypress-Fairbanks Independent School District v. Michael F.*,²⁰ announced four factors to consider in deciding whether a child's IEP is reasonably calculated to confer educational benefits. This part of my discussion applies the second prong of the *Rowley* test.

¹⁶ 34 C.F.R. § 300.306(a)(2).

¹⁷ This is also consistent with requirements that other important documents that must be given to parents such as IEPs, prior written notices, and notices of procedural safeguards be in the parents' native language.

¹⁸ 20 U.S.C. § 1412(a)(1), as amended; 34 C.F.R. § 300.101.

¹⁹ 458 U.S. 176, 206-07 (1982).

²⁰ 118 F.3d 245, 253 (5th Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).

Individualized Services

Under the first *Michael F.* factor, the IEP for the child must be individualized. Here, the child's ARD committee accurately recognized the child's primary needs stemming from the child's disability – specific learning disabilities. The district addressed the child's individualized needs in the BIP and English, math, science, world geography and business computer information systems (BCIS) IEPs.

Least Restrictive Environment (LRE)

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

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

The first prong of the *Daniel R.R.* test asks whether full-time education in the regular classroom, with the use of supplementary aids and services, can be achieved satisfactorily. Several factors are considered under the first prong, such as the steps the school has taken to accommodate the student, the sufficiency of these efforts, the ability of the student to receive educational benefit in the regular classroom, the overall experience of the student, and the effect of the student on his or her classmates.²³

Steps Taken to Accommodate the Child in General Education Setting

Here, the ARD committee first attempted to place the child in resource classes with content mastery support. The transition to ** and the heightened academic expectations, however, necessitated moving the child to modified classes that allow the child to work in a smaller group and at a slower pace more appropriate to the child's abilities.

Sufficiency of Efforts to Accommodate Child

Here, the steps taken by the ARD committee to accommodate the child in the mainstream environment were sufficient. The committee deferred making a switch to

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

²² 874 F.2d 1036, 1048 (5th Cir. 1989)

²³ 874 F.2d at 1048 – 49.

modified classes until the committee assured itself that the child could not gain educational benefit in regular classes.

Educational Benefits

As discussed below, the child received educational benefit while in the modified classes.

Overall Experience in General Education Setting

Here, the ARD committee's judgment was that it would be a detriment to the child for the child to be fully integrated into regular ** classes. The Petitioner failed to establish by a preponderance of the evidence that this judgment was faulty.

Child's Effects on General Education Setting and Classmates

Here, the child's effect on others was not an issue.

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

Because full-time education in the regular classroom, even with the use of supplementary aids and services, cannot be achieved satisfactorily, the analysis turns to the second prong of the *Daniel R.R.* test. The second prong asks which setting permits the child to be mainstreamed to the maximum extent appropriate. Here, the ARD committee determined that setting to be modified classes. While the child does not have exposure to peers without disabilities in the modified classes, the child still has exposure to non-disabled peers in the elective course of physical education. Further, the child moves from one modified class to another to take different subjects and is exposed to the general student body in the hallways while passing from one modified class to another.

After applying the two-part test announced in *Daniel R.R.*, this Hearing Officer finds that the child's placement in modified classes is appropriate and complies with the LRE mandate for this child.

Key Stakeholders

Under the third *Michael F.* factor, the child's key stakeholders must work in a coordinated and collaborative manner. There was no evidence produced at the Expedited Due Process Hearing to suggest that communication and collaboration among the school staff and diagnosticians were faulty. While the child's parent testified about being unable to fully participate in and understand ARD committee meetings because of a language

barrier, the Petitioner failed to establish by a preponderance of the evidence that a need for communication in a language other than English was brought to the attention of the Respondent prior to the September, 2007 ARD committee meeting. Once the Respondent had notice of a need for communication in a language other than English, it did accommodate the child's parent.

Educational Benefit

The fourth *Michael F.* factor is whether the child's IEP is reasonably calculated to generate educational benefits. Here, the child advanced a grade level from the 2006-07 school year to the 2007-08 school year. During the fall, 2007 semester, the child received passing grades in all subjects. During the fall, 2007 semester, the child made progress on IEP goals. Academically, the child is making progress.

In sum, the four *Michael F.* factors militate in favor of a finding that the child's IEP was reasonably calculated to address the child's learning gap. As discussed elsewhere in this Decision, the alleged procedural violations raised by the Petitioner are not substantiated. Therefore, the child was not denied FAPE.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claims No. 4 and 11.

Full Evaluation of Suspected Disabilities

The Petitioner's fifth claim is that the Respondent failed to fully evaluate the child. Specifically, the Petitioner believes the Respondent failed to test the child for mental retardation, autism and attention deficit hyperactivity disorder. Under the IDEA, a school district must evaluate a child in all areas of suspected disability.²⁴

Here, the district conducted a comprehensive evaluation. Neither the child's diagnosticians at the district nor the child's teachers in ** and ** have detected any signs of the conditions flagged by the Petitioner. When the Petitioner submitted the OHI form raising the new conditions as areas of concern, the Respondent did not summarily dismiss them. Rather, the Respondent provided to the parent the paperwork to begin the evaluation process.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 5.

²⁴ 34 C.F.R. § 300.304(c)(4).

Instruction in Native Language

The Petitioner's sixth claim is that the Respondent failed to instruct the Petitioner in the Petitioner's native language. Under the IDEA, children with disabilities and those suspected of having disabilities must be evaluated in their native language.²⁵ Further, for those children with limited English proficiency, ARD committees must consider the language needs of each child as those needs relate to the child's IEP.²⁶

Here, the ** school diagnostician, as the first part of the child's FIIE, determined the appropriate language to use for the FIIE. There was no indication that the child should be evaluated in a language other than English. The Petitioner failed to establish by a preponderance of the evidence that the Petitioner is a child with limited English proficiency.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 6.

Implementation of Individualized Education Program (IEP)

The Petitioner's seventh claim is that the Respondent failed to implement the child's IEP and improperly denied services. Under the IDEA, school districts must ensure that as soon as possible following ARD committee meetings, special education and related services are provided in accordance with the child's IEP.²⁷

Here, the Petitioner failed to establish by a preponderance of the evidence that the district has not implemented the child's IEP and denied the child services.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 7.

Addressing Behavioral Needs

The Petitioner's eighth claim is that the Respondent failed to address the Petitioner's behavioral needs. Under the IDEA, ARD committees, in developing each child's IEP, are required to consider: (1) the child's strengths; (2) the parents' concerns for enhancing their child's education; (3) the child's evaluation and reevaluation results;

²⁵ 34 C.F.R. § 300.304(c)(1)(ii).

²⁶ 34 C.F.R. § 300.324(a)(2)(ii). The provision of instruction in the native language of a student is otherwise addressed by state law and other federal laws, not the IDEA.

²⁷ 34 C.F.R. § 300.323(c)(2).

and (4) the child's academic, developmental and functional needs.²⁸ Further, for those children whose behavior impedes learning, ARD committees are to consider positive behavioral interventions and supports in the IEP.²⁹

Here, the September, 2007 ARD committee meeting determined that the child's behavior impeded learning and conducted a functional behavioral assessment and developed a BIP for the child. In particular, the BIP included an objective to help the child refrain from gang-related behaviors. (The BIP was revised at the next ARD committee meeting with the addition of another objective.) The ARD committee also added the services of a behavior specialist within the district to work with the child on behavioral issues. In October, 2007, while not mandated by the IEP, a ** assistant principal met with the child and the child's parent to ensure the child had guidance on which behaviors to avoid to prevent the child from violating the Respondent's gang policy.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 8.

Appropriate Instructional Time

The Petitioner's ninth claim is that the Respondent failed to provide appropriate instructional time to the Petitioner. Under the TEA regulations, children with disabilities must have available an instructional day commensurate with that of children without disabilities. The ARD committee determines the appropriate length of day for the child and specifies it in the child's IEP.³⁰

Here, the Petitioner failed to establish by a preponderance of the evidence that the child has been denied a school day of appropriate length.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 9.

Explanation of Annual Goals

The Petitioner's tenth claim is that the Respondent failed to explain how the annual goals in the Petitioner's IEP were developed and how they are measured. Under the IDEA, each IEP must include a statement of measurable annual goals, including

²⁸ 34 C.F.R. § 300.324(a)(1).

²⁹ 34 C.F.R. § 300.324(a)(2)(i).

³⁰ 19 Tex. Admin. Code § 89.1075(d).

academic and functional goals.³¹ Under the IDEA and TEA regulations, a school district must afford parents the opportunity to participate in ARD committee meetings.³² For required elements of the IEP, such as annual goals, the ARD committee should attempt to make its decision by mutual agreement if possible.³³

Here, the parent last attended an ARD committee meeting in September, 2007. During that meeting, the child's parent had the assistance of an interpreter and an advocate. This Hearing Officer finds that with the aid of these resources, the child's parent had an opportunity to inquire about the annual goals and receive any necessary explanation to permit participation in the meeting.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 10.

Evaluation Prior to Recommending Change in Placement

The Petitioner's twelfth claim is that the Respondent failed to evaluate the Petitioner prior to recommending a change in placement to the DAEP. Under the IDEA, school districts must reevaluate a child with a disability if either the district determines that the educational or related services needs of the child warrant a reevaluation or if the child's parent or teacher requests a reevaluation.³⁴ In a reevaluation, the first step is to review existing data and identify what additional data must be obtained.³⁵

Here, neither the child's parents nor teachers requested a reevaluation.³⁶ The December, 2007 ARD committee reviewed existing evaluation data in the areas of achievement, assistive technology, emotional, health, intellectual, sociological and speech/language. The committee determined that the data were all current and no additional data were needed. The committee discussed that no behaviors indicative of emotional or behavioral disorders had been seen at school. At the time of the December, 2007 ARD committee meeting, the Petitioner had not yet submitted a completed OHI form. This Hearing Officer finds that it was not unreasonable for the ARD committee to determine that a reevaluation was not warranted.

³¹ 34 C.F.R. § 300.320(a)(2).

³² 34 C.F.R. § 300.322(a); 19 Tex. Admin. Code § 89.1050(h).

³³ 19 Tex. Admin. Code § 89.1050(h).

³⁴ 34 C.F.R. § 300.303(a).

³⁵ 34 C.F.R. § 300.305(a).

³⁶ Claim No. 12 is from the Petitioner's First Amended Due Process Complaint, filed December 6, 2007. In the First Amended Due Process Complaint, the Petitioner requests an independent educational evaluation, not a reevaluation. See Pet'r First Amended Due Process Complaint at 1 (filed Dec. 6, 2007).

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 12.

Change in Placement to Discipline Alternative Education Program (DAEP) and Consideration of Other Health Impairment (OHI) Report, Child's Learning Level and Behavioral Intervention Plan (BIP)

The Petitioner's thirteenth claim is that the Respondent inappropriately placed the Petitioner in the DAEP. The Petitioner's fifteenth claim is that the Respondent failed to consider an OHI report for the Petitioner at the manifestation determination review. The Petitioner's seventeenth claim is that the Respondent failed to consider the Petitioner's learning ability level at the manifestation determination review. The Petitioner's eighteenth claim is that the Respondent inappropriately supported the school's recommendation for a change of placement to the DAEP. The Petitioner's twenty-first claim is that the Respondent failed to consider the need for an evaluation of the Petitioner's BIP at the manifestation determination review. Under the IDEA, before a school district may make a disciplinary change in placement that exceeds 10 consecutive school days, the district must determine that the behavior that gave rise to the violation of the code of student conduct is not a manifestation of the child's disability.³⁷

Here, the district conducted a proper manifestation determination review. The December, 2007 ARD committee reviewed all relevant information in the child's file.³⁸ The committee determined that the carving of a gang sign into a desk was not caused by the child's learning disabilities and that carving a gang sign into a desk did not have a direct and substantial relationship to the child's learning disabilities. The committee determined that the Respondent had not failed to implement the child's IEP. The committee determined the child can receive appropriate services in the DAEP, including a BIP and behavioral modifications to address the code of student conduct violation.

The Petitioner's appeal that essentially the child did not understand carving a gang name into a desk was a violation of the code of student conduct because of the limited intellectual ability of the child fails on two counts. First, while the child has a low average IQ of 86, there was no evidence produced that such an IQ level actually impairs this child's comprehension of school rules. Second, this type of appeal – lack of

³⁷ 34 C.F.R. § 300.530(c).

³⁸ The federal regulation at 34 C.F.R. § 300.530(e)(1) makes specific reference to a review of all relevant information in the student's file. At this point, the Petitioner had not yet submitted the completed OHI form. The Petitioner complained during the Expedited Due Process Hearing about not being provided a correct facsimile number for the district. Even if it was true that the district did not provide a correct facsimile number, the Petitioner still had ample time from December 6, 2007, the day the Petitioner obtained the completed OHI form, to December 14, 2007, the day of the manifestation determination, to turn in the OHI form to the Respondent so it could be placed into the student's file.

capacity to understand – was removed from the IDEA manifestation determination analysis by the 2004 amendments to the IDEA. Prior to the Individuals with Disabilities Education Improvement Act of 2004, Public Law No. 108-446, ARD committees had to determine, among other things, whether the child’s disability impaired the ability of the child to understand the impact and consequences of the behavior subject to the disciplinary action.³⁹ This step is no longer in the IDEA and, thus, cannot be relied upon by the Petitioner.

In sum, this Hearing Officer determines that the removal of the child to the DAEP was not a violation of 34 C.F.R. § 300.530. Further, this Hearing Officer determines that the child’s behavior was not a manifestation of the child’s disability. Thus, the Respondent prevails on Claims No. 13, 15, 17, 18 and 21.

Appropriate Services in the Discipline Alternative Education Program (DAEP)

The Petitioner’s fourteenth claim is that the Respondent failed to provide appropriate services to the Petitioner in the DAEP. The Petitioner’s nineteenth claim is that the Respondent failed to provide the Petitioner with content mastery and all core classes needed to be successful with certified and qualified teachers in the DAEP. Under the IDEA, a child removed under the discipline procedures for more than 10 consecutive school days must continue to receive educational services so as to enable the child to continue to participate in the general education curriculum and to progress toward meeting the child’s IEP goals. The child must also receive, as appropriate, a functional behavioral assessment and BIP, designed to address the code violation so that it does not recur.⁴⁰

Here, the child has a certified special education teacher at the DAEP. The DAEP special education teacher’s testimony that she is implementing the child’s IEP and the child is making progress was not contested. There are several behavioral components at the DAEP, either generally or individually, that are available to help the child correct the misbehaviors at issue.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 14 and 19.

10-Day Change in Placement

The Petitioner’s twentieth claim is that the Respondent failed to show that the Petitioner is “subject to a series of patterns of behaviors that [constitute] more than a 10

³⁹ 34 C.F.R. § 300.523(c)(2)(iii) (prior regulation implementing 1997 amendments to the IDEA).

⁴⁰ 34 C.F.R. § 300.530(d).

day change of placement in a school year.” Under the IDEA, a change of placement occurs if, among other things, the child is removed for more than 10 consecutive school days.⁴¹ Once a child has undergone a change in placement, the child must continue to receive FAPE.⁴²

Here, the child has undergone a change in placement but is receiving FAPE while assigned to the DAEP. Although the child has been at the DAEP a short amount of time, thus far, according to the DAEP special education teacher, the child is making progress.

In conclusion, this Hearing Officer finds that the Respondent prevails on Claim No. 20.

Conclusions of Law

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

1. The Respondent, Carrollton-Farmers Branch Independent School District, provided an IEP reasonably calculated to provide FAPE to the Petitioner under *Board of Educ. v. Rowley*, 458 U.S. 176 (1982) and *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997), *cert. denied* 522 U.S. 1047 (1998).
2. The Respondent, Carrollton-Farmers Branch Independent School District, provided a placement that was appropriate and the LRE for the Petitioner under *Daniel R.R. v. State Bd. of Educ.*, 874 F.2d 1036 (5th Cir. 1989).
3. The Respondent, Carrollton-Farmers Branch Independent School District, appropriately implemented the Petitioner’s IEP in the alternative interim educational placement under *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir.), *cert. denied* 531 U.S. 817 (2000).
4. The Respondent, Carrollton-Farmers Branch Independent School District, appropriately conducted a manifestation determination review under 34 C.F.R. § 300.530.

Order

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

⁴¹ 34 C.F.R. § 300.536(a)(1).

⁴² 34 C.F.R. §§ 300.101(a), 300.530(d)(1).

IT IS HEREBY ORDERED THAT:

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

SIGNED this 3rd day of February, 2008.

/s/ Steven R. Aleman _____

Steven R. Aleman

Special Education Hearing Officer

Notice

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

TEA DOCKET NO. 063-SE-1207

STUDENT, b/n/f Parent	§	
	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
CARROLLTON-FARMERS BRANCH INDEPENDENT SCHOOL DISTRICT	§	FOR THE
	§	STATE OF TEXAS
Respondent	§	

SYNOPSIS

ISSUE 1: Whether the Respondent failed to fully explain the rights of the Petitioner under the IDEA to the Petitioner’s parents.

CITE: 34 C.F.R. § 300.504(d)

HELD: For the Respondent. The Respondent provided a copy of the notice of procedural safeguards to the parents in the parents’ native language.

ISSUE 2: Whether the Respondent failed to provide an interpreter for the Petitioner’s parents in ARD committee meetings.

CITE: 34 C.F.R. § 300.322(e)

HELD: For the Respondent. The Respondent provided an interpreter once it was on notice the parents preferred the assistance of an interpreter at ARD committee meetings.

ISSUE 3: Whether the Respondent failed to explain data used to determine services for the Petitioner to the Petitioner’s parents.

CITE: 34 C.F.R. § 300.501(a)

HELD: For the Respondent. The Respondent provided an interpreter to facilitate the participation of the parents in ARD committee meetings, providing them the opportunity to inquire about evaluation data.

- ISSUE 4: Whether the Respondent failed to address the learning gap between the Petitioner's achievement level and grade level.
- CITE: 34 C.F.R. § 300.101
- HELD: For the Respondent. The Respondent provided FAPE to the Petitioner.
- ISSUE 5: Whether the Respondent failed to fully diagnose or evaluate all of the suspected disabilities of the Petitioner.
- CITE: 34 C.F.R. § 300.304(c)(4)
- HELD: For the Respondent. The Respondent conducted a full and comprehensive evaluation of the Petitioner.
- ISSUE 6: Whether the Respondent failed to provide proper instruction in the native language of the Petitioner.
- CITE: 34 C.F.R. § 300.324(a)(2)(ii)
- HELD: For the Respondent. The Petitioner failed to establish that the child is a child with limited English proficiency.
- ISSUE 7: Whether the Respondent failed to implement the IEP
- CITE: 34 C.F.R. § 300.323(c)(2)
- HELD: For the Respondent. The Petitioner failed to establish that the child's IEP was not implemented.
- ISSUE 8: Whether the Respondent failed to address the behavioral needs of the Petitioner.
- CITE: 34 C.F.R. § 300.324(a)(2)(i)
- HELD: For the Respondent. The Respondent conducted an appropriate functional behavioral assessment and developed an appropriate IEP and BIP for the child.
- ISSUE 9: Whether the Respondent failed to provide appropriate instructional time to the Petitioner.

CITE: 19 Tex. Admin. Code § 89.1075(d)

HELD: For the Respondent. The Petitioner failed to establish that the child was denied instructional time.

ISSUE 10: Whether the Respondent failed to explain to the Petitioner's parents how the annual goals in the Petitioner's IEP were developed.

CITE: 19 Tex. Admin. Code § 89.1050(h)

HELD: For the Respondent. The Petitioner's parents had the resources of an interpreter and advocate at the last ARD committee meeting they attended and had the opportunity to inquire about and receive any necessary explanation of annual goals to enable them to participate in the ARD committee meeting.

ISSUE 11: Whether the Respondent failed to provide FAPE to the Petitioner.

CITE: 34 C.F.R. § 300.101

HELD: For the Respondent. The Respondent provided FAPE to the Petitioner.

ISSUE 12: Whether the Respondent failed to completely evaluate the Petitioner prior to recommending a change in placement to the Respondent's discipline alternative education program.

CITE: 34 C.F.R. § 300.303(a)

HELD: For the Respondent. There were no indications that a reevaluation of the Petitioner by the Respondent was warranted.

ISSUE 13: Whether the Respondent inappropriately made a change in placement of the Petitioner to the Respondent's discipline alternative education program.

CITE: 34 C.F.R. § 300.530

HELD: For the Respondent. The Respondent conducted an appropriate manifestation determination review before removing the Petitioner to the Respondent's discipline alternative education program.

ISSUE 14: Whether the Respondent failed to provide appropriate services to the Petitioner in the Respondent's discipline alternative education program.

CITE: 34 C.F.R. § 300.530

HELD: For the Respondent. The Respondent appropriately implemented the Petitioner's IEP and BIP in the Respondent's discipline alternative education program.

ISSUE 15: Whether the Respondent failed to consider an OHI report for the Petitioner at the manifestation determination review.

CITE: 34 C.F.R. § 300.530

HELD: For the Respondent. The Respondent conducted an appropriate manifestation determination review before removing the Petitioner to the Respondent's discipline alternative education program.

ISSUE 16: Whether the Respondent failed to provide a copy of the FIIE report to the Petitioner's parents in the parents' native language.

CITE: 34 C.F.R. § 300.306(a)(2)

HELD: For the Respondent. The Petitioner failed to establish that the Respondent should have been aware of a need to supply the FIIE report in a language other than English when prior interactions with Petitioner's mother had been in English.

ISSUE 17: Whether the Respondent failed to consider the Petitioner's learning ability level at the manifestation determination review.

CITE: 34 C.F.R. § 300.530

HELD: For the Respondent. The Respondent conducted an appropriate manifestation determination review before removing the Petitioner to the Respondent's discipline alternative education program.

ISSUE 18: Whether the Respondent failed to conduct an appropriate manifestation determination review and inappropriately supported the school's recommendation for a change of placement.

CITE: 34 C.F.R. § 300.530

HELD: For the Respondent. The Respondent conducted an appropriate manifestation determination review before removing the Petitioner to the Respondent's discipline alternative education program.

ISSUE 19: Whether the Respondent failed to provide the Petitioner with content mastery and all core classes needed to be successful with certified and qualified teachers in the Respondent's discipline alternative education program.

CITE: 34 C.F.R. § 300.530

HELD: For the Respondent. The Respondent appropriately implemented the Petitioner's IEP and BIP in the Respondent's discipline alternative education program with a certified special education teacher.

ISSUE 20: Whether the Respondent failed to show that the Petitioner is "subject to a series of patterns of behaviors that [constitute] more than a 10 day change of placement in a school year."

CITE: 34 C.F.R. § 300.536

HELD: For the Respondent. The Respondent conducted an appropriate manifestation determination review before making a change in placement to the Respondent's discipline alternative education program.

ISSUE 21: Whether the Respondent failed to consider the need for an evaluation of the Petitioner's BIP at the manifestation determination review.

CITE: 34 C.F.R. § 300.530

HELD: For the Respondent. The Respondent conducted an appropriate manifestation determination review before removing the Petitioner to the Respondent's discipline alternative education program.