

**BEFORE A SPECIAL EDUCATION  
HEARING OFFICER FOR THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

**STUDENT, b/n/f  
PARENT,  
Petitioner**

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**v.**

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**DOCKET NO. 119-SE-0208**

**DALLAS  
INDEPENDENT SCHOOL  
DISTRICT,  
Respondent**

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**ASSISTING PETITIONER:**

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DALLAS INDEPENDENT  
SCHOOL DISTRICT,  
Respondent

FOR THE STATE OF TEXAS

**DECISION OF THE HEARING OFFICER**

**Statement of the Case**

Petitioner, acting through his parents as next friends, filed a complaint for a due process hearing pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, as amended. The parties produced evidence on the following contested issues:

1. Failure to timely complete the Full Individual Evaluation (“FIE”) of the student, originally discussed in May 2007;
2. Failure to have the input of the student’s classroom teachers into the student’s FIE, so that the student’s classroom progress was not adequately addressed as part of the evaluation;
3. Failure to develop, implement, and adequately monitor measurable goals for the student, with no subsequent: a) intervention in or modification of the student’s educational program; or, b) provision of homework support in the Spanish language;
4. Failure of the school district’s FIE to address the student’s failure in his core classes;
5. Failure of the FIE to adequately identify all areas of the student’s disability, including Attention Deficit Hyperactivity Disorder (“ADHD”) as an Other Health Impairment (“OHI”) and failure to make adequate recommendations for the student’s educational needs as a result of ADHD; and,
6. Failure to provide a Free Appropriate Public Education (“FAPE”) for the student;

Petitioner sought the following relief within the jurisdiction of this Hearing Officer:

1. Provide appropriate services to address the student’s educational needs due to his ADHD;
2. Provide counseling at school district expense to address the student’s self-esteem;
3. Provide tutoring at school district expense to address the student’s lack of progress in his educational program; and,
4. Provide an Independent Educational Evaluation (“IEE”) with a psychological evaluation at school district expense.

**HELD, for Respondent.**

### **Procedural History**

Petitioner filed the above-captioned due process complaint on February 6, 2008. This Hearing Officer received the case assignment and issued the initial scheduling order on February 6, 2008, setting the hearing on March 18, 2008. The initial Decision Due Date was April 21, 2008. The Parties participated in a telephonic pre-hearing conference on March 6, 2008. The Parties requested a continuance, granted for good cause shown, resetting the hearing for April 15-16, 2008, with an extension of the Decision Due Date to May 20, 2008. The due process hearing took place on April 15-16, 2008, with the assistance of a Spanish interpreter. The Parties waived closing statements in this proceeding. Prior to the conclusion of the two-day hearing, the Parties agreed to extend the Decision Due Date to June 18, 2008, to ensure sufficient time for receipt and review of the record by this Hearing Officer.

The record closed at the conclusion of the due process hearing on April 16, 2008. On June 18, 2008, the Hearing Officer issued this Decision.

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law.

### **Findings of Fact**

1. Petitioner is a \*\* year-old student who resides with his parents within the jurisdictional boundaries of Dallas ISD (“Respondent” or “DISD”). He currently qualifies as a student with a Learning Disability (“LD”) and an OHI. [Petitioner’s Exhibits (“P.Exs.”) 1, 4, 7, 10, 11, and 12; Respondent’s Exhibits (“R.Exs.”) 2, 3, and 12; Transcript (“Tr.”) at 94-95, 299, 356, 426-427].
2. Petitioner’s parents speak Spanish at home. Respondent supplied Admission, Review, and Dismissal Committee (“ARDC”) notices, proposals of evaluation, and other information to Petitioner’s parents in Spanish. At ARDC meetings, Respondent provided a Spanish interpreter or provided an audiotape Spanish interpretation of the meeting for the parents. [R.Exs. 2, 3, 6, 9, 12, 13, 19, 20, and 21].
3. At the beginning of Petitioner’s \*\* grade year in August 2005, Respondent held a screening meeting for Petitioner at his \*\* school. The screening committee recommended a referral to Dyslexia Services within the school district for testing. In September 2005, Petitioner’s parents obtained a private psycho-educational evaluation. The evaluation concluded that Petitioner exhibited some characteristics of Dyslexia. His mother subsequently gave a copy of this evaluation with Respondent but does not recall when she shared the information. [R.Exs. 11 at 180-187 and 17; Tr. at 417-418].

4. In April 2006, the ARDC added goals and objectives for improvement of reading, writing, math, science, social studies, and mainstream compensatory and organizational skills. All ARDC participants, including Petitioner's mother, accepted the goals and objectives to be effective through April 2007 of the student's \*\* grade year. Each annual goal included short-term instructional objectives, specified evaluation procedures, and indicated mastery level criteria. [R.Ex. 23].
5. At the conclusion of the Spring 2006 semester, as Petitioner prepared to enter \*\* grade, Respondent administered the Iowa Tests of Basic Skills ("ITBS") to Petitioner. The ITBS is a district-wide norm referenced test. Petitioner scored at the \*\* grade \*\* month (\*\*) level for total Reading, at the \*\* grade (\*\*) level for total Math, at the \*\* grade, \*\* month (\*\*) level for Language, and at the \*\* grade \*\* month (\*\*) level for Spelling. [R.Ex. 14 at 210].
6. In April 2006, Petitioner's ARDC specified testing for Petitioner on the State Developed Alternative Assessment ("SDAA-II") in Reading and Math for his upcoming \*\* grade school year. Testing accommodations for Petitioner included reading aloud to Petitioner the test questions and answer choices. [R.Ex. 23 at 268].
7. At the beginning of Petitioner's \*\* grade year in September 2006, Petitioner received special education services as a student with LD. He received all instruction in the general education setting except for a special education setting for Reading. All ARDC participants, including Petitioner's mother, agreed to in-class support of 150 minutes per week for Petitioner in Reading/Language Arts and Math, with external support of 30 minutes per week for Social Studies and Science. [R.Ex. 22].
8. During Petitioner's \*\* grade year, Petitioner met ARDC expectations on the SDAA-II in Reading at \*\* grade level I and Math at \*\* grade level II. Petitioner did not meet ARDC expectations of the \*\* grade level II in Writing, achieving a score at the \*\* grade level I. [P.Ex.194-196; Tr. at 247-248].
9. On March 29, 2007, Respondent sent out a Notice of Proposal for Evaluation in preparation for Petitioner's three-year reevaluation with an FIE. As part of this notice, Respondent enclosed a parent form. [R.Ex. 21].
10. Respondent gave written notice to Petitioner's parents of an annual ARDC meeting, scheduled for April 4, 2007, to review of Petitioner's current program, to review existing data, and to prepare for Petitioner's three-year reevaluation. Respondent sent out three notices to Petitioner's parents for the meeting. On or about March 27, 2007, Petitioner's mother returned the invitation with a hand-written date with a contact time of April 5, 2007, but did not indicate on the invitation her intention to attend the meeting. The ARDC convened as scheduled on April 4, 2007 without the presence of Petitioner or Petitioner's parents. ARDC participants were unable to reach Petitioner's mother by telephone during the meeting. Following this meeting, Respondent mailed the ARDC documents and an audiotape of the interpreted meeting in Spanish to Petitioner's parents. [R.Exs. 19 and 20; Tr. at 82-83].

11. On April 4, 2007, the ARDC discussed Petitioner's schedule, goals, and objectives. Participating ARDC members reviewed and accepted changes to Petitioner's IEP for three areas of English/Language Arts, Mathematics, and Mainstream Compensatory and Organizational skills. The long-term goals included short-term objectives with specified evaluation procedures and mastery levels. [R.Ex. at 227-229].
12. On April 12, 2007, Respondent sent an explanation of the procedural safeguards and a notice of the FIE to Petitioner's parents. Petitioner's mother gave written consent for the reevaluation on April 13, 2007. [P.Ex. 7 at 1; R.Exs. 16 and 20; Tr. at 81-85].
13. On May 1, 2007, Petitioner's mother came to the middle school campus with a family friend and her advocate. She gave Respondent a written request for an ARDC meeting to discuss Petitioner's academic development. Petitioner's mother disagreed with the decisions of the ARDC held on April 4, 2007, and waived five-day notice to attend another ARDC set for May 1, 2007. [R.Exs. 12 and 15; Tr. at 97-101].
14. On May 10, 2007, the ARDC met from 9:00 a.m. until the end of the school day to continue review of Petitioner's program. ARDC participants could not complete the annual review in the allotted time, but reached agreement on Extended School Year services for Petitioner during Summer 2007. The ARDC participants discussed accelerating Petitioner's reevaluation, although the completed three-year reevaluation was not due until November 2007. ARDC participants agreed to an FIE with a psychological evaluation. At the conclusion of this meeting, participants made plans to convene another ARDC meeting within the first three weeks of the 2007-2008 school year for review of the completed FIE and to make any needed adjustments to Petitioner's individualized education program ("IEP") and behavioral issues. [P.Ex. 12 at 194; R.Ex. 13; Tr. at 98-100].
15. Petitioner's family speaks Spanish at home. Petitioner, however, does not write Spanish fluently and is neither proficient in English nor Spanish. According to Respondent's educational diagnostician, Petitioner is considerably stronger in English. Petitioner's English skill development, Respondent's educational diagnostician rated Petitioner under the Cognitive Academic Language Proficiency ("CALP"). Scores on the CALP range from a low of zero to a high of five. The educational diagnostician initially assessed Petitioner's listening comprehension scores on the CALP at three, or the mid-range. Petitioner's Relative Proficiency Index ("RPI"), a rating of what Petitioner hears as compared to his English-proficient peers hear, was \*\* in contrast to his English-proficient peers' scores at the 90% level. [R.Ex. 12; Tr. at 99-101].
16. Petitioner is classified as limited English proficiency ("LEP"). Respondent serves Petitioner as a student with English as a second language ("ESL") with all ESL teachers having proper ESL certification. [P.Ex. 9].
17. Petitioner had academic difficulty in the 2006-2007 school year and did not make passing grades in his core subjects. Petitioner, however, attended summer school in Summer 2007 and performed well. To determine whether Petitioner achieved promotional standards, Respondent convened a meeting of the Grade Placement Committee for review Petitioner's

- situation and determined that Petitioner should be promoted into the \*\* grade. [Tr. at 250-251].
18. Petitioner never attended Spanish tutoring offered by his Spanish teacher during the 2006-2007 school year. [Tr. at 447].
  19. Respondent completed Petitioner's FIE on June 27, 2007, including the psychological evaluation component. The written report detailed information regarding Petitioner's language gathered from his parents, information from educational records, review of the student's original Home/Language Survey, information from his current teachers, and data from an interview and observation of Petitioner. The FIE report included Petitioner's academic performance data, compiled on May 4, 2007, from review of his education records. [R.Ex. 11].
  20. The June 2007 FIE report included data supplied by his parents and nurse on Petitioner's physical conditions. emotional/behavioral data supplied by Petitioner's teachers, parents, and self as measured by the Behavior Assessment for Children ("BASC"), and sociological data from his parents and educational records. Intellectual data from parents and teachers was included as well as data from the Woodcock-Johnson Cognitive-III ("WJ-III"). On the WJ-III, Petitioner achieved a Standard Score of \*\* on the Broad Cognitive Ability – Low Verbal Scale. Petitioner's intellectual function fell in the Low Average range. [R.Ex. 11].
  21. As part of the June 2007 FIE, Respondent tested Petitioner with the WJ-III and the Woodcock-Munoz III Pruebas de Aprovechamiento ("Bat-III APROV") to obtain a reasonable estimate of his current level of academic achievement. The mathematics portions of the subtests were not administered to Petitioner since his higher Standard Scores in English eliminated the need for comparison in Spanish. Based on the testing, Petitioner achieved a Standard Score of \*\* in English. [R.Ex. 11].
  22. In the written FIE report, Petitioner achieved a CALP level of \*\* and an RPI of \*\*, denoting Petitioner's performance at \*\*% in comparison to the performance of English-proficient peers at 90%. By contrast, Petitioner achieved a Standard Score of \*\* in Spanish, with a CALP level of \*\* and an RPI of \*\*. These scores indicate Petitioner has a higher proficiency in English. Comparison of the English and Spanish scores reveals a very limited oral language ability in Spanish and limited ability in English. [R.Ex. 11 at 150-151].
  23. In the June 2007 Specific Learning Disability Evaluation Report portion of the FIE, the Licensed Specialist in School Psychology ("LSSP") determined that Petitioner continues to meet eligibility as a student with LD, based on testing results, in the areas of Written Expression, Basic Reading Skill, and Reading Comprehension. [R.Ex. 11 at 152].
  24. Petitioner's FIE included review of data for possible ED eligibility. Based on the LSSP's interview, observation, and review of data, Petitioner did not meet eligibility as ED. The LSSP concluded that Petitioner's LD contributes to Petitioner's feelings of some emotional stress due to academic difficulties, resulting in defensive and noncompliant behaviors at times. Among the recommendations by the LSSP for improvement of Petitioner's reading

- and writing skills, the LSSP suggested peer tutoring, additional instructional help, encouragement for his parents to “provide tutoring for him, to supplement his class work,” career counseling, consistent discipline, and “lots of encouragement and positive reinforcement.” [R.Ex. 11 at 152-156].
25. The ARDC convened after the summer break on September 26, 2007. Petitioner’s mother and her advocate attended the meeting. When ARDC participants did not complete review of the entire June 2007 FIE report, participants made plans to reconvene at a later date for an annual ARDC and to complete review of the June 2007 FIE report. Minutes of this ARDC meeting include discussion “that the parent would take student for medical evaluation to consider possible diagnosis of attention deficit disorder.” [R.Ex.9 at 119].
  26. Petitioner was diagnosed by a professional counselor with ADHD, primarily inattentive type, on October 24, 2007. [P.Ex. 11].
  27. Petitioner’s educators did not observe ADHD symptoms in Petitioner. [Tr. at 398].
  28. On October 29, 2007, Respondent sent out a Notice of Proposal for Evaluation to Petitioner’s parents for a Review of Existing Evaluation Data (“REED”). [R.Ex.6].
  29. On October 31, 2007, Petitioner’s mother participated in an ARDC meeting to conduct a REED. At this meeting Petitioner asked for additional assessment of an assistive technology evaluation, a medical report for ADHD, and an evaluation for Dyslexia. The LSSP referenced Petitioner’s outside evaluation for Dyslexia, expressing plans to incorporate this outside evaluation into Respondent’s Dyslexia evaluation, “He had evaluation in June and we would like to get this evaluation and add it altogether and go over it together.” The meeting ended in agreement with the written consent from Petitioner’s mother for the additional requested evaluation of an assistive technology evaluation and a Dyslexia evaluation. [R.Exs. 6 and 7].
  30. In October 2007, Petitioner took the ITBS. He earned a Core Total grade equivalent of \*\* grade, \*\* month (\*\*) on the Level 14 test. [P.Ex.12 at 193].
  31. Petitioner’s science inclusion teacher for the 2007-2008 school year served as the “note taker” for Petitioner’s annual and several brief ARDC meetings, as well as Petitioner’s case manager. ARDC discussion recorded by the case manager included Petitioner’s homework needs and the added difficulty of the home language barrier. Because Spanish is the primary language in Petitioner’s home environment, Petitioner does not have homework assistance from his parents. As a result, the case manager and other ARDC participants encouraged Petitioner to come to before-school tutoring and tutoring on Saturday to get homework assistance. To facilitate Petitioner’s success, his teachers tried to “make sure that he has work that he can do independently at home.” Discussions with Petitioner’s mother regarding tutoring opportunities included the assistance of an interpreter during meetings and the assistance of a Spanish speaker on the telephone. [Tr. at 377-381].
  32. Petitioner’s mother did not ask for homework support in Spanish for her son.

33. Petitioner's attendance at Respondent's tutoring sessions was inconsistent during the 2007-2008 school year. At hearing, Petitioner's case manager reported that Petitioner attended some tutoring sessions offered by Petitioner's case manager, but "most of the time he does not. At least to my tutoring." In early April 2008, the case manager observed Petitioner's attendance at morning tutoring sessions "three or four mornings in a row." After this brief period, Petitioner did not return for morning tutoring sessions with the case manager. [Tr. at 377-378].
34. Respondent's Saturday school sessions focus on core classes of Math, Reading, Language Arts, Social Studies, and on occasion, Science. Both general education and special education students have access to the Saturday school sessions that include course content. As the school year progresses closer to Texas Assessment of Knowledge and Skills ("TAKS") testing time, the Saturday school focus shifts to test-taking skills and practice. [Tr. at 306 and 379-380].
35. During the 2007-2008 school year Respondent assigned a peer tutor for Petitioner in Math. According to Petitioner's \*\* grade Math teacher, this method is successful with Petitioner and he expressed satisfaction with the peer tutoring. [Tr. at 306-307].
36. Petitioner sporadically attended tutoring sessions during the 2007-2008 school year, including Saturday school sessions. At hearing, Petitioner admitted attending the Saturday school sessions between five to seven times for the school year. Petitioner believes that the Saturday tutoring sessions are for TAKS preparation. Petitioner chose not to attend after-school tutoring offered by his reading teacher, as he received tutoring from a private tutor and his reading teacher did not offer after-school tutoring every day. [Tr. at 60-61 and 65-66].
37. Petitioner's Spanish teacher did not meet Petitioner's mother during the 2006-2007 school year until an end-of-school gathering in May 2007. On numerous occasions, the Spanish teacher urged Petitioner to come to after-school tutoring sessions. During the 2007-2008 school year the Spanish teacher participated in several ARDC meetings for Petitioner, including the meeting held on October 31, 2007. Several days later, the Spanish teacher and Petitioner's mother conversed in the school hallway about Petitioner's need to attend after-school Spanish tutoring sessions with the Spanish teacher. Although Petitioner's mother indicated Petitioner would attend, Petitioner never came to the Spanish teacher for tutoring during Fall 2007. [Tr. at 457-458].
38. Petitioner's \*\* grade Reading/Language Arts teacher offered after-school tutoring three days a week in the 2007-2008 school year. On numerous occasions, Petitioner's Reading/Language Arts teacher suggested Petitioner to come to after-school sessions. Petitioner, however, chose not to attend any after-school tutoring sessions with his Reading/Language Arts teacher. Although the Reading/Language Arts teacher specifically asked Petitioner to practice his reading nightly for 20 minutes, suggesting that he read books of any level or variety, the teacher observed no evidence that Petitioner followed this suggestion. [Tr. at 240-214 and 256-257].

39. Petitioner's \*\* grade Reading/Language Arts teacher holds ESL certification and is fluent in both English and Spanish. On November 13, 2007, the Reading/Language Arts teacher called Petitioner's mother to discuss Petitioner's failure to return assignments. The telephone call was in Spanish. The teacher informed Petitioner's mother about the availability of school tutoring sessions, but Petitioner's mother informed the teacher that her son received private tutoring. The teacher discussed Petitioner's failure to return homework assignments and clarified that Petitioner "always" had homework in Reading/Language Arts class. In response, Petitioner's mother said she did not know that Petitioner had homework, but would provide an assignment notebook to record Petitioner's assignments so that Petitioner's mother and the Reading/Language Arts teacher could communicate back and forth in Spanish. The Reading/Language Arts teacher encouraged Petitioner's mother to come observe Petitioner's class and to contact the Reading/Language Arts teacher at any time for additional assistance. [Tr. at 252-253].
40. Following the November 2007 telephone call with Petitioner's mother, the Reading/Language Arts teacher did not receive an assignment notebook from Petitioner's mother. Petitioner's mother did not visit her son's Reading/Language Arts classroom and did not make further contact with the Reading/Language Arts teacher for a parent conference. However, for approximately one week following the November 2007 telephone call, Petitioner's performance improved in Reading/Language Arts. After the one-week improvement, Petitioner reverted to his previous pattern of failure to return homework, failure to participate in class, and failure to bring supplies to class. [Tr. at 253-254 and 258-259].
41. Petitioner's private tutor sent an undated letter to Petitioner's Reading/Language Arts teacher in approximately December 2007. There were no additional attempts made by the private tutor to collaborate with Petitioner's educators on what Petitioner did during the private tutoring sessions. Likewise, neither the private tutor nor Petitioner's parents provided Respondent with work from Petitioner's private tutoring sessions. [R.Ex. 54; Tr. at 240-241 and 255-258].
42. Respondent completed Petitioner's assistive technology evaluation on December 12, 2007. The report recommended the provision of a reading pen and electronic dictionary to help Petitioner with spelling and reading for home and school use at no cost to Petitioner or his parents. The Assistive Technology Team recommended that the ARDC consider "Books on Tape" for assistance with reading comprehension, and recommended a tape player. The Assistive Technology Team planned to train Petitioner, his family, and school staff on the recommended equipment. [R.Ex. 4 at 86].
43. The Fast ForWord Program is a computer-based program for reading skill acquisition. The program, self-paced and individualized for each student, is appropriate for general or special education students, including students classified as ESL. [Tr. at 128 and 145-149].
44. Petitioner began work with the Fast ForWord program in Spring 2008. Computer-generated grades reflect that Petitioner is doing well in the program. [Tr. at 67].

45. At hearing, Petitioner expressed his belief that the program is not helping him acquire reading or decoding skills, but he is passing the course. [Tr. at 45-47, 67-68].
46. Respondent's special education department chair on Petitioner's middle school campus oversees the Fast ForWord program, provides assistance for the program, and performs any assessment of the Fast ForWord program. Since beginning the program, Petitioner's grade equivalency has increased approximately one grade level from the \*\* grade \*\* month level to between the \*\* and \*\* grade level as measured by the Brigance Test, an informal testing measure. [Tr. at 149-152].
47. Petitioner's grades for the first semester of 2007-2008 reflect failing first semester grades in Reading, Social Studies, Science, and Language Arts, but also reflect a range of passing grades for individual grading periods. [P.Ex. 12 at 174].
48. Respondent completed a Dyslexia Report on January 10, 2008. Based on assessment with the Comprehensive Test of Phonological Processing and the Gray Oral Reading Tests, the evaluating educational psychologist concluded that Petitioner exhibited some characteristics of Dyslexia. [R.Ex. 4 at 87].
49. On January 10, 2008, the ARDC attempted to convene to review the additional assessment data. Although Petitioner's mother attended, Petitioner's advocate was not present. The participants agreed to reschedule the meeting to January 31, 2008. [R.Ex. 3].
50. Prior to the conclusion of the attempted ARDC meeting on January 10, 2008, Petitioner's mother confirmed that Petitioner's physician had not yet signed the OHI report. The FIE Physician's Information Report indicates that Petitioner's physician signed Respondent's form on January 28, 2008. [R.Exs. 3 at 69-70 and 4 at 84].
51. Respondent included the additional assessments in Petitioner's final FIE report for assistive technology, the OHI report, and the Dyslexia Report into a final FIE written report on January 31, 2008. [R.Ex.4; Tr. at 212].
52. The ARDC convened on January 31, 2008, to review the additional testing reports and to make final adjustments to Petitioner's IEP. Petitioner's mother attended this meeting with her advocate. Petitioner's mother delivered the OHI document signed by Petitioner's physician to the ARDC at this time and the document was attached to the FIE. The meeting ended in disagreement over the FIE results and the ARDC participants made plans to reconvene on February 13, 2008.
53. Seven days after Petitioner filed his due process complaint, the ARDC convened as planned for Petitioner's annual ARDC review on February 13, 2008. Although Petitioner's mother previously indicated she would attend this meeting, she did not attend. Participants reviewed the assessment covered on January 31, 2008, accepting the assessment conclusions that Petitioner continues to have an LD in the areas of written expression, basic reading, and reading comprehension. Petitioner's secondary disability is OHI, with a qualifying disorder of ADHD. ARDC participants reviewed Petitioner's progress over the past year on his IEP

- goals, noting his inconsistent progress in Reading/Language Arts, Math, and his minimal progress on his Mainstream Compensatory and Organizational goals. The ARDC agreed to add new sub-goals in Math and Reading/Language Arts, and continued Petitioner's goals in Mainstream Compensatory and Organizational skills. [R.Ex. 2 at 29-33].
54. Participants at the ARDC on February 13, 2008, increased Petitioner's schedule of services to 180 minutes per week of in-class support for Reading/Language Arts. The ARDC agreed to 90 minutes of in-class support in each of the following classes: a) Math; b) Science; and c) Social Studies. Participants agreed to add 120 minutes of assistive technology training per semester. [R.Ex. 2 at 29].
55. The February 2008 ARDC also discussed and adopted Behavior IEP goals and sub-goals for Petitioner. The Behavior IEP set Petitioner's annual goal as the "completion of behavioral goals at the \*\* grade level by Petitioner," with a corresponding mastery level of 80%. The Behavior IEP designated the use of a daily point sheet to address rewards and consequences. Petitioner's Behavioral Intervention Plan ("BIP") targeted behaviors to decrease, including: a) noncompliance; b) lack of effort directed toward academic tasks; and, c) failure to complete and turn in work/failure to bring needed supplies. The BIP identified interventions and strategies to change behavior, identified positive consequences to increase desired behaviors, and specified negative consequences to decrease inappropriate behaviors. [R.Ex. 2 at 25-26].
56. Respondent's Special Education Chair on Petitioner's middle school campus, a special education teacher who serves as Petitioner's case manager, did not learn of Petitioner's dyslexic tendencies until the ARDC meeting held in February 2008. [Tr. at 148-149].
57. At hearing, Petitioner's \*\* grade ESL teacher reported that Petitioner did not pass the first administration of the TAKS test during Spring 2008, based on newly-received test score data. [Tr. at 251-252].
58. Petitioner reported at hearing that he was not passing Reading, Language Arts, and Social Studies. [Tr. at 48].

## **Discussion**

### **Background**

Petitioner's parents believe that Respondent's evaluation and educational program have not addressed all areas of disability for Petitioner, a student served as an ESL student with primary disability classification of an LD. As a result, Petitioner's parents are frustrated that Petitioner experiences continued academic struggles, including low grades. Petitioner's parents believe that Respondent's program for their son does not address all of Petitioner's educational needs. By contrast, Respondent believes that the educational program developed, adjusted, and monitored by Petitioner's educators addressed Petitioner's individualized needs, including Petitioner and his parents' English and Spanish language needs. According to Respondent, Petitioner's choices,

rather than Respondent's program and assessment, explain Petitioner's progress in Respondent's program. Nonetheless, Respondent believes Petitioner made progress under his educational program at all times pertinent to this dispute.

Petitioner attacks the appropriateness of the school district's program and, as a result, bears the burden to prove the inappropriateness of Petitioner's IEP and placement under IDEA by a preponderance of the evidence. *Schaffer v. Weast*, 156 S.Ct. 528, 44 IDELR 150 (2005). The school district's educational program is presumed appropriate for a student who is eligible for IDEA services. *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir.1983) *aff'd on other grounds sub nom.*, *Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984). To determine whether a school district delivered a FAPE to a student, two factors must be considered: 1) the school district must comply with the procedural requirements of IDEA; and, 2) the school district must design and implement a program that is reasonably calculated to enable the child to receive educational benefits. *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175, 206-207 (1982). School districts are not required to maximize the student's potential or to supply every conceivable program that may benefit a student. *Id.*

The Fifth Circuit enunciated a four-factor test to determine whether an IEP is reasonably calculated to confer educational benefit to a student in *Cypress-Fairbanks Indep. School District v. Michael F.*, including: 1) whether the school district used proscribed procedures to develop the student's IEP, including an individualized program based on the student's assessment and performance; 2) whether delivery of the program occurs in the least restrictive environment ("LRE"); 3) whether the program was delivered in a collaborative and coordinated manner by key stakeholders; and, 4) whether the program produced academic and non-academic benefits for the student. *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5<sup>th</sup> Cir. 1997).

## **Evaluation**

It is undisputed that Respondent's three-year reevaluation of Petitioner was due by November 2007, based on Petitioner's previous FIE evaluation in November 2004. Petitioner challenges the timely completion of Petitioner's three-year reevaluation by Respondent, a process that includes completion of the assessment, issuance of evaluation reports, and subsequent review by the ARDC.

Petitioner's ARDC made early preparations to gather needed data for the three-year reevaluation in Spring 2007 and completed initial testing by June 2007. However, Petitioner and Respondent disagree that the 2007 FIE was both timely and adequate, as addressed separately below.

### **A. Compliance with Timelines**

Petitioner alleges untimely completion of Petitioner's FIE by Respondent. Section 300.303 of IDEA's implementing regulations mandates that a school district perform a reevaluation of a disabled student when the school district determines that circumstances warrant a reevaluation, or upon the request of the parent or teacher. 34 C.F.R. §300.303(a). Reevaluations must proceed in accordance with evaluation procedures in IDEA's implementing regulations. *Id.* Under 34 C.F.R. 300.303(b), a reevaluation may not occur more than once a year, unless the parent and the school district agree otherwise, and must occur at least every three years, unless the school district and parent agree that a reevaluation is unnecessary. 34 C.F.R. 300.303(b). The Texas Education Code specifies that the written report of an FIE for the purposes of special education services *shall* be

completed not later than the 60<sup>th</sup> calendar day after the school district receives written consent for the evaluation, signed by the student's parent or legal guardian. Tex. Educ. Code Ann. §29.004(a) (Vernon 2008). [Emphasis added].

Respondent began data gathering plans for Petitioner's three-year review on March 29, 2007, including transmittal of a parent form to Petitioner's parent. On April 4, 2007, Respondent convened the ARDC to finalize reevaluation plans. Although Respondent properly notified Petitioner's parents of the meeting, Petitioner's parents did not attend. After the meeting, the ARDC transmitted the ARDC documents of the meeting to Petitioner and also transmitted notice of the proposed evaluation and procedural safeguards to Petitioner's parents. Petitioner's mother gave written consent on April 13, 2007, for reevaluation of Petitioner. At this point, the 60-day timeline for completion of the three-year reevaluation under Section 29.004 of the Texas Education Code began. However, at the request of Petitioner's mother, the ARDC convened again on May 1 and May 10, 2008, at which time the Parties specifically agreed to additional evaluation on a psychological evaluation as part of the three-year reevaluation. Although the three-year reevaluation was due for completion by November 4, 2007, Respondent agreed to try to accelerate the evaluation and revised plans for the reevaluation. Petitioner's mother gave written consent for a FIE including a psychological evaluation on May 10, 2007, resulting in a 60-day timeline for completion by July 9, 2007.

Respondent complied with the 60-day timeline for completion of the FIE by issuing the written FIE report on June 27, 2007, or a date that fell within the summer break for Respondent. At this time, Petitioner received summer school instruction. After the summer break, the ARDC convened on September 26, 2007, with Petitioner's mother and Petitioner's advocate in attendance. The ARDC discussed Petitioner's plans to take the student for outside medical evaluation. When the ARDC convened on October 31, 2007, Petitioner's mother gave written consent for additional evaluation agreed to by Respondent for an assistive technology evaluation and an evaluation for Dyslexia, beginning the 60-day timeframe for completion of the evaluations due by December 30, 2007.

Respondent completed the written report for the Assistive Technology Evaluation by December 14, 2007, within the 60-day timeframe. The written Dyslexia Report, issued on January 10, 2008, was issued 11 days outside the 60-day timeframe for completion.

## **B. Content of the Evaluation**

Petitioner's challenge to the appropriateness of Respondent's reevaluation content focuses on teacher input, information about Petitioner's progress in his program, and whether the evaluation addressed Petitioner's suspected areas of disability.

### **a. Teacher Input**

Petitioner believes that Respondent's FIE failed to include the input of Petitioner's teachers into the reevaluation process. By contrast, Respondent believes the testing documentation and evaluation process included the input of Petitioner's teachers throughout the entire reevaluation process. I agree with Respondent.

Petitioner did not produce evidence that Respondent either ignored teacher input or failed to collect input. Instead, the evidence preponderates to show that Respondent's evaluators repeatedly

included teacher input into the reevaluation process. Petitioner's teachers served variously as ARDC members as Respondent undertook the three-year reevaluation process in March 2007. Sources of data included input from Petitioner's teachers, review of educational records, and receipt of checklists as appropriate from Petitioner's teachers. For example, Respondent's psychological component to the FIE includes data from his teachers regarding Petitioner in May 2007, with added input from Petitioner's summer session educators. I find that Petitioner did not sustain his burden to show the FIE process lacked teacher input.

**b. Academic Progress**

Petitioner's mother has ongoing concern about her son's academic progress, noting that Petitioner continues to struggle and frequently does not make passing grades. Petitioner alleges that the three-year reevaluation did not properly address the student's failures in his core classes. Respondent, by contrast, asserts that the FIE reevaluation process considered Petitioner's academic progress in the early preparation stages, in review of educational data, with input from educators and parents, and through observation.

IDEA's regulations require a school district to include observation of the student in the learning environment. 34 C.F.R. §300.10. Under 34 C.F.R. §300.304(c)(4), assessment must include all areas related to the student's disability, including academic performance, if appropriate. Both initial and reevaluations must include a review of existing data, including the present levels of academic achievement. 34 C.F.R. §300.305(a)(2)(ii). In accordance with these mandates, the three-year reassessment data includes observation of the student in the classroom, review of educational records, and review of student performance information by means of teacher, parent, and evaluator input, record review, and participation in the reevaluation process. Petitioner failed to meet this burden.

**c. All Areas of Disability**

Petitioner challenges whether all areas of Petitioner's disability were addressed in the three-year reevaluation. More specifically, Petitioner alleges the reevaluation FIE did not address Petitioner's OHI needs as a student with ADHD. Respondent asserts that Petitioner's ARDC addressed all areas of concern brought to the attention of the ARDC throughout the three-year reevaluation process, including OHI concerns of Petitioner's mother and private care providers.

IDEA's implementing regulations specify that a student may be identified as OHI who has ADHD, one of a list of conditions under this eligibility, when the condition results in limited strength, vitality, or alertness to environmental stimuli that results in limited alertness with respect to the educational environment, and adversely impacts the student's educational performance. 34 C.F.R. § 300.8(c)(9)(i).

Petitioner produced no evidence to establish that Respondent observed ADHD or other symptoms exhibited by Petitioner to suggest an OHI condition. Rather, Respondent's educators had not observed symptoms of ADHD in Petitioner at this time. [Tr. at 398]. Upon receipt of Petitioner's ADHD diagnosis in October 2007, Respondent sought consent for a REED from Petitioner's mother. By the end of October 2007, Respondent sought more information from Petitioner's private physician to establish an OHI eligibility. Ultimately, after Respondent received the medical diagnosis from Petitioner's physician, Respondent completed the OHI report.

Respondent did not ignore other suspected areas of disability during the three-year reevaluation. In May 2007, Respondent began testing for a suspected ED classification when Petitioner's mother requested a psychological evaluation for her son. Although results of the psychological evaluation ruled out ED classification, the evidence shows immediate response to the request for evaluation.

I conclude that Petitioner did not meet his burden to show Respondent ignored the suspected disability classifications of Petitioner, including suspected OHI and ED.

## **IEP Development and Review**

### **A. Native Language**

Petitioner alleges a failure of Respondent to meet Petitioner's needs for homework support in the Spanish language. In response, Respondent presented ARDC documentation and hearing testimony of Petitioner's educators detailing the on-going process for development and review of Petitioner's IEP.

Petitioner's home language is Spanish. Although Petitioner uses both English and Spanish, he qualifies as a student with ESL. Under 34 C.F.R. §300.29(a)(1), the native language of a person with limited English proficiency is the language normally used by the person, or in the case of a child, the language normally used by the parents of the child. Subsection (a)(2) defines native language for all direct contact with the child – including evaluation of the child – as the language normally used by the child in the home or learning environment. Under Texas Commissioner's Rules, it is the policy of the state that every child identified as bilingual or as ESL, shall have a full opportunity to participate in the bilingual or ESL program as required by the Texas Education Code. 19 T.A.C. §89.1201. Petitioner, as an ESL student, has language barriers based on his limited English and Spanish proficiency. It is undisputed that these difficulties extend to his home and include the challenges faced by his parents to support their son's education as well as access information to be able to make informed educational decisions.

In this dispute, Respondent produced abundant ARDC documentation and the hearing testimony of educators to show that the language needs of Petitioner and his family have been addressed. Respondent provided Spanish interpreters at ARDC meetings, telephone contact in Spanish for the parents, assessment of the student in both English and Spanish as appropriate, contact by teachers with his parents to explain Petitioner's homework duties and responsibilities, and documentation supplied to the parents in both English and Spanish.

Petitioner's challenge to Respondent's program includes an alleged failure to provide homework support in the Spanish language. Petitioner, however, did not produce any evidence of Respondent's refusal to assist Petitioner and his parents in their native language for all aspects of Petitioner's education. Based on the preponderance of the evidence, I conclude that Petitioner did not sustain his burden to show a failure to provide homework support to Petitioner in Spanish.

## **B. Development and Implementation of Measurable Goals**

Petitioner challenges the goals for Petitioner in his IEP as not measurable. Petitioner alleges that the ARDC failed to review and adjust these goals. Respondent asserts that Petitioner's educational plan contains measurable goals that were, in fact, adjusted over time based on Petitioner's needs and progress.

Section 300.324 of IDEA's implementing regulations requires the ARDC to consider the needs of a student with limited English proficiency in the development of the student's IEP. 34 C.F.R. §300.324(a)(2). Federal regulations require that a student's IEP must include a statement of measurable annual goals including academic and functional goals designed to: a) meet the student's needs resulting from the disability to enable the student to be involved in and make progress in the general education curriculum; and, b) meet each of the student's other educational needs that result from the disability. 34 C.F.R. §300.320(a)(2)(i).

Section 89.1009 of the Texas Commissioner's Rules sets out requirements for serving special education students with limited English proficiency to include members in the ARDC to ensure that language proficiency issues are considered. 19 T.A.C. §89.1009(a)-(e). Once the IEP is developed, the ARDC has a continuing duty to review and revise the student's IEP to address the following: a) any lack of expected progress toward the annual goals; b) results of any reevaluation; c) information provided to or by the student's parents; d) the student's anticipated needs; and, e) other matters. 19 T.A.C.324(b)(1)(ii).

Petitioner began his \*\* grade year in 2006-2007 under an IEP developed by the ARDC in April 2006 with parental input with goals and objectives in six skill areas. Each annual goal included short-term instructional objectives, specified evaluation procedures, and indicated mastery level criteria. In April 2007, the ARDC revised Petitioner's annual goals into three skill areas, noting his inconsistent and minimal progress on previous goals. Subsequently, Petitioner's mother disagreed with the decisions of this ARDC meeting.

During the reevaluation process, the ARDC completed Petitioner's FIE, obtained additional test results, and developed new annual goals and objectives after consideration of the new data, Petitioner's need for new sub-goals, and progress under his IEP. Ultimately, after Petitioner's disagreement with FIE results in January 2008, the ARDC made plans to reconvene to finish Petitioner's annual ARDC meeting. When Petitioner did not attend, the ARDC reviewed Petitioner's progress on the goals set in April 2007, made changes to Petitioner's goals and objectives for the upcoming school year, and added a Behavior IEP with goals and objectives.

Based on the record evidence in the proceeding, I conclude that Respondent complied with state and federal regulations to develop, review, and revised Petitioner's goals and objectives. The process included review of his progress, review of his testing on norm-referenced and the SDAA-II, and reflected Petitioner's unique language needs. Petitioner did not meet his burden to prove that Respondent did not meet the on-going duty to refine Petitioner's goals and objectives.

## **Receipt of FAPE**

To evaluate whether or not a school district complied with IDEA's requirements, the Fifth Circuit developed a four-factor test to determine whether or not a school district complied with IDEA's requirements. *Michael F., supra.*

### **A. Individualized Program and Development of the IEP**

Applying the first factor of *Michael F.*, Petitioner must prove by a preponderance of the evidence that Respondent's educational program is *not* individualized on the basis of the student's assessment and performance. *Id.* The extensive evidence established Respondent's efforts to refine and gather current assessment and performance data for Petitioner during the three-year reevaluation process. Based on the new data, Respondent met the first factor by providing an individualized program for Petitioner, revised periodically as Petitioner's needs changed.

### **B. LRE**

Under the second factor in the four-factor *Michael F.* test, Respondent must deliver the student's program in the LRE. *Id.* Petitioner's program is in the general education setting with special education support. Respondent's program for Petitioner considered Petitioner's special needs while maintaining his instruction within the general education setting. To help maintain the general education setting for instruction, the ARDC added supplementary aids and services to Petitioner's program, offered assistive technology devices to Petitioner, and made program revisions to include assistive technology training. In Spring 2008, Petitioner's program included computer support in the Fast ForWord program. As a result of these efforts, Respondent maintained the LRE setting for Petitioner by adding additional services to address his needs as a student with LD and OHI. I find that Respondent's program met the LRE standard enunciated under the second factor in *Michael F. Id.*

### **C. Delivery of the Student's Program**

Under the third factor of the four-part *Michael F.*, a school district must deliver the student's educational program in a collaborative and coordinated manner by key stakeholders. *Id.* Despite the language barrier for his Spanish-speaking parents, Respondent made effort to meet the specific language needs of the parents to assist them in full participation in the educational process for their son. Respondent delivered documents to the parents – including ARDC notices, ARDC minutes, testing summaries, and notices of proposed evaluation – with Spanish interpretation or translation. Respondent kept Petitioner's parents informed. On the occasional breakdown in communication, such as the desire of Petitioner's mother to reschedule the April 2007 ARDC meeting, Respondent addressed the situation and offered to hold another ARDC meeting. I find that Respondent's program met the third factor as collaborative and coordinate.

### **D. Academic and Non-academic Benefits**

The fourth and final factor of the *Michael F.* test mandates receipt of academic and non-academic benefits by the student as a result of the school district's individualized program. *Id.* Petitioner challenges both areas.

#### **a. Academic Benefit**

Petitioner challenges whether Respondent's program resulted in academic progress for Petitioner, based on Petitioner's continued struggle with grades. At the conclusion of the 2006-2007

school year, Petitioner did not pass his core subject areas. However, with his attendance in the summer school session and good performance, the Grade Placement Committee promoted him to the \*\* grade. Petitioner met ARDC expectations on his SDAA-II assessment in Reading and Math, but did not meet Writing expectations by one level. Petitioner's grades for the first semester of 2007-2008 reflect failing first semester grades in Reading, Social Studies, Science, and Language Arts, but also reflect a range of passing grades for individual grading periods. At the time of the hearing, in April 2008, Petitioner reported that he was not passing Reading, Language Arts, and Social Studies. Also at hearing, Petitioner's ESL teacher reported that Petitioner did not pass the first administration of the TAKS in Spring 2008.

The achievement of passing marks and advancement from grade to grade are indicators of academic success. See *Rowley, supra*, at 207 n.28. Petitioner's scores on the SDAA-II and the ITBS indicated improvement from year to year on grade-level progress. Although Petitioner has failing grades in several core courses, I cannot conclude that he has not made some academic progress based on the preponderance of the credible hearing testimony from his educators. According to his educators, when Petitioner puts forth effort, he is able to perform. Petitioner applied himself during summer 2007 and had academic success, culminating in the decision to promote him to Grade \*\*.

#### **b. Non-academic Benefit**

Petitioner challenged the non-academic benefit from Respondent's program relating to Petitioner's behavioral needs, his ESL status, and self-esteem needs. In response, the ARDC attempted to review Petitioner's behavioral needs in May 2007 with a draft of a BIP. Both the BIP and the annual review of Petitioner's program upon completion of new assessment data was not completed in Fall 2007; instead, the ARDC completed the annual review and approved the draft BIP in February 2008. As identified during the three-year reevaluation process, the ARDC planned new strategies to assist Petitioner's appropriate behavior acquisition, to add classroom support, and to provide new assistive technology to augment Petitioner's program. The ARDC did not complete the annual review until February 2008. As of the close of the evidence in mid-April 2008, Respondent simply has not had sufficient time to implement the IEP changes.

Petitioner progressed in his ESL skill acquisition based on the evidence in this proceeding. He has responded well to a self-paced computer program. I conclude that Petitioner has received non-academic benefit from Respondent's program.

Based on the above four factors, I conclude that Petitioner received a FAPE under Respondent's program. I turn to the procedural violations alleged by Petitioner.

#### **Procedural Violations**

Under 34 C.F.R. §300.513(a), IDEA's implementing regulations specify that a hearing officer may determine that a student did not receive FAPE for a procedural violation only if the procedural violation: a) impeded the student's right to a FAPE; b) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to the student; or, c) caused a deprivation of educational benefit.

Petitioner met his burden to establish two procedural violations in preparation of the FIE. First, there was an approximate eleven-day delay for completion of the Dyslexia Report by January 10, 2008. Second, Respondent did not completed the OHI written report until the end of January 2008, resulting in an approximate 30-day delay, due primarily to Petitioner's delay in obtaining the private physician's input necessary to complete the OHI report.

Based on the evidence in this proceeding, I do not find that these procedural violations meet the standards enunciated in Section 300.513(a) and the two procedural errors did not deny provision of a FAPE to Petitioner.

### **Conclusions of Law**

1. Petitioner is entitled to special education and related services at no cost to the parents under the provisions of IDEA, 20 U.S.C.A. §1400, *et. seq.*, and its implementing regulations.
2. Petitioner and his parents reside within the jurisdictional boundaries of Respondent, a legally constituted independent school district operating as a political subdivision of the State of Texas. Respondent is responsible for providing the student with a FAPE. 20 U.S.C. §1412(a)(1); *Hendrick-Hudson District Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); 20 U.S.C.A. §1412; 34 C.F.R. §300.300; 19 T.A.C. §89.1001.
3. The educational program proposed by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program offered by Respondent, bears the burden of proof. *Tatro v. State of Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983), *aff'd on other grounds sub nom., Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); *Alamo Heights ISD v. State Board of Education*, 790 F.2d 1153 (5<sup>th</sup> Cir. 1986). Petitioner did not meet his burden of proof in this case.
4. Petitioner did not meet his burden to show that the IEP developed by Respondent was not reasonably calculated to enable Petitioner to receive an educational benefit. *Hendrick-Hudson District Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5<sup>th</sup> Cir. 1997); *Polk v. Central Susquehanna Inter. Unit 16*, 853 F.2d 171, 181 (3<sup>rd</sup> Cir. 1988); *Hall v. Vance County Board of Education*, 774 F.2d 629, 636 (4<sup>th</sup> Cir. 1985).
5. Petitioner met his burden to show violations of procedural rights under IDEA. However, the procedural violations did not impede Petitioner's right to receive a FAPE, did not significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE to Petitioner, and did not cause a deprivation of educational benefit. 34 C.F.R. §300.513(a).

6. Petitioner did not meet his burden to show a violation of substantive rights under IDEA. *Burlington Sch. Comm. v. Department of Educ.*, 471 U.S.359, 369-371 (1985); *Alamo Heights Indep. School Dist. v. State Bd. of Educ.*, 790 F.2d 1153 (5<sup>th</sup> Cir. 1986); *Parents of Student W. v. Puyallup School District, No. 3*, 21 IDELR 723 (9<sup>th</sup> Cir. 1994).
7. Petitioner is not entitled to an award of compensatory services. *Burlington Sch. Comm. v. Department of Educ.*, 471 U.S.359, 369-371 (1985); *Alamo Heights Indep. School Dist. v. State Bd. of Educ.*, 790 F.2d 1153 (5<sup>th</sup> Cir. 1986); *Parents of Student W. v. Puyallup School District, No. 3*, 21 IDELR 723 (9<sup>th</sup> Cir. 1994).

## **ORDERS**

Based upon the record of this proceeding, the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED** that all relief requested by Petitioner is **DENIED**.

**IT IS FURTHER ORDERED** that any findings of fact that are more properly characterized as conclusions of law, and any conclusions of law that are more properly characterized as findings of fact, shall be considered and shall have the same effect as if properly characterized.

**IT IS FURTHER ORDERED** that any and all additional or different relief not specifically ordered herein is **DENIED**.

Signed this 18<sup>th</sup> day of June 2008.

*/s/ Mary Carolyn Carmichael*

Mary Carolyn Carmichael  
Special Education Hearing Officer

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

DOCKET NO. 119-SE-0208

STUDENT, b/n/f  
PARENT,  
Petitioner

v.

DALLAS INDEPENDENT  
SCHOOL DISTRICT,  
Respondent

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§

BEFORE A SPECIAL EDUCATION

HEARING OFFICER

FOR THE STATE OF TEXAS

**SYNOPSIS OF DECISION**

**ISSUE:** A. *Whether the school district timely completed the Full Individual Evaluation (“FIE”) of the student originally discussed in May 2007?*

**CITATION:** 34 C.F.R. §§300.303, 300.304, and 300.305;  
Tex. Educ. Code Ann. §29.004.

**HELD:** For the District.

**ISSUE:** B. *Whether the school district failed to include the input of the student’s classroom teachers on the student’s progress into the student’s FIE?*

**CITATION:** 34 C.F.R. §§300.305(a)(1)(iii) and 300.310(a);  
19 T.A.C. §89.1040(c)(9)(A) and (c)(9)(B)(ii)(II).

**HELD:** For the District.

**ISSUE:** C. *Whether the school district failed to develop, implement, and adequately monitor measurable goals for the student, with neither: a) subsequent intervention in or modification of the student’s educational program; or, b) subsequent provision of homework support in the Spanish language?*

**CITATION:** 34 C.F.R. §§300.29(a)(2), 300.305(a)(2)(iv), 300.324(a)(2)(ii), and 300.324(b)(ii); 19 T.A.C. §§89.1201, 89.1210, 89.1220, and 89.1225.

**HELD:** For the District.

**ISSUE:** D. *Whether the school district’s FIE addressed the student’s failure in his core classes?*

**CITATION:** 34 C.F.R. §§300.10, 300.304(c)(4), and 300.305(a)(2)(ii); 19 T.A.C. §89.1040(c)(9)(A)(i).

**HELD:** For the District.

**ISSUE:** E. *Whether the school district’s FIE adequately identified all areas of the student’s disability, including Attention Deficit Hyperactivity Disorder (“ADHD”) as an Other Health Impairment (“OHI”), and as a result, whether the FIE made adequate recommendations for the student’s educational needs as a result of ADHD?*

**CITATION:** 34 C.F.R. §§300.8(c)(9)(i), 300.304(c)(4), and 300.305(a)(2)(iv); 19 T.A.C. §89.1040(c)(8).

**HELD:** For the District.

**ISSUE:** F. *Whether the school district provided a free appropriate public education (“FAPE”) for the student?*

**CITATION:** 34 C.F.R. §§300.17, 300.101, 300.320, 300.324, and 300.513.

**HELD:** For the District.