

**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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**DOCKET NO. 163-SE-0308**

**v.**

**NORTH EAST  
INDEPENDENT SCHOOL  
DISTRICT,  
Respondent**

**AND**

**DOCKET NO. 204-SE-0508**

**REPRESENTING PETITIONER:**

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PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER
	§	
NORTH EAST INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	FOR THE STATE OF TEXAS

**DECISION OF THE HEARING OFFICER**

**Statement of the Case**

Petitioner, acting through his parent as next friend, 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. Whether the school district’s educational program provided a free appropriate public education (“FAPE”) to the student in the least restrictive environment (“LRE”);
2. Whether the school district timely assessed the student’s Emotional Disturbance (“ED”);
3. Whether the school district properly developed and provided an Individualized Education Program (“IEP”) for the student to address all areas of disability;
4. Whether the school district provided all related services necessary to address the student’s disability; and,
5. Whether the school district maintained the confidentiality of the student.

Petitioner sought the following relief in this proceeding:

1. Data collection over time and across various school environments prior to convening a meeting of the Admission, Review, and Dismissal Committee (“ARDC”) to revise the student’s IEP to address the student’s individual needs and to develop measurable IEP objectives, including: a) revising the Behavioral Intervention Plan (“BIP”); b) implementing the revised BIP at home and school; and, c) closely assisting the student’s parent;
2. Provision to the parent of timely reports on student progress;
3. Provision of the following at school district expense: a) appropriate therapy recommended by a psychiatrist and other therapist(s) designed to address the student’s needs; b) the student’s membership in a fitness center; c) social skills training and music therapy, including guitar lessons; and, d) after-school services for the student, delivered by a family member or a paid caretaker;
4. Reimbursement of private educational services, interim private placements, and costs, including the cost of clinicians who treated the student;
5. Provision of the following for the student: a) the opportunity to participate in football with appropriate modifications; and, b) the opportunity to use a cell phone at school when the student exhibits signs of anxiety; and,

6. Provision of appropriate related services and compensatory special education, including but not limited to, compensatory services for time missed by the student from tutoring due to special education transportation.

**HELD, for Respondent.**

### **Procedural History**

Petitioner filed his due process complaint with the Texas Education Agency (“TEA”) on March 26, 2008. This Hearing Officer received the case assignment and issued the initial scheduling order on March 26, 2008, setting the hearing on May 12, 2008. The initial Decision Due Date was June 9, 2008. On April 3, 2008, the parties participated in the initial telephonic pre-hearing conference and jointly requested a brief continuance to attempt resolution of this dispute and to allow the parties to submit briefing on Petitioner’s retaliation claims. After timely submission of the parties’ briefs, Petitioner filed an Amended Due Process Complaint on April 30, 2008, resetting the procedural schedule in accordance with 34 C.F.R. §300.508(d)(4) for the hearing to June 19-20, 2008. Due to a clerical error, Petitioner’s amended complaint received a separate docket number from TEA, Docket No. 204-SE-0508. This Hearing Officer consolidated the two dockets by written order on May 1, 2008.

A second telephonic pre-hearing took place on May 16, 2008. The Hearing Officer granted the parties’ agreed request for continuance, resetting the hearing to July 15-16, 2008. Without objection of Petitioner and for good cause shown, the due process hearing was reset to August 28-29, 2009, with an extension of the Decision Due Date to October 18, 2008. The hearing took place as scheduled on August 28-29, 2008. Prior to conclusion of the hearing, the Hearing Officer granted the parties’ agreed request to submit their closing argument in writing by October 16, 2008.

The parties agreed to the extension of the Decision Due Date from October 30, 2008, to November 12, 2008, due to an unforeseen family emergency of the Hearing Officer. The record closed upon the timely submission of the parties’ written closing argument on October 16, 2008. On November 12, 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 mother within the jurisdictional boundaries of North East ISD (“Respondent”). He qualifies as a student with Other

Health Impairment (“OHI”) and Emotional Disturbance (“ED”). [Petitioner’s Exhibit (“P.Ex.”) 2 at 6; Respondent’s Exhibits (“R.Exs.”) 7.3 and 13.1].<sup>1</sup>

2. In 2003, Petitioner’s physician diagnosed the student with Attention Deficit Hyperactivity Disorder, Inattentive type. Respondent served the student as OHI and as a student with a Learning Disability (“LD”) in Written Expression until December 2007. [Transcript (“Tr.”) at 16; P.Ex.5 at 51; R.Exs. 5.8 and 10.1].

3. In 2006-2007, Petitioner was in the \*\* grade in \*\* school (“\*\*\*”). Petitioner’s mother participated in development of his IEP and signed in agreement with the ARDC on November 29, 2006. Under this IEP, Petitioner received all instruction in the general education setting. The IEP specified the following classroom accommodations and modifications for all classes: a) preferential seating; b) no penalties for misspelling (other than spelling tests); c) provision of study guides; and, d) two days extended time for assignment completion. In Language Arts and Reading, the student received reduced written task accommodations, with shortened assignments in Reading. This IEP continued into the 2007-2008 school year through November 28, 2007. Petitioner’s mother never complained about the content of the goals or objectives of this IEP within the one-year statute of limitations period. [P.Ex. 7; R.Ex. 8].

4. In Spring 2006 of his \*\* grade year, Petitioner passed his Texas Assessment of Knowledge and Skills (“TAKS”) Math assessment, achieving a commended performance score at \*\*% accuracy. On the TAKS Reading assessment, he passed with \*\*% accuracy. In Spring 2007 of his \*\* grade year, Petitioner passed his Math TAKS assessment, but missed passing his Reading TAKS by one question. In Spring 2008 of his \*\* grade year, Petitioner passed his TAKS assessment in Reading, Math, and Writing. [Tr. at 48-49, 329-330, and 436; P.Exs. 7 at 8 and P.Ex. 15 at 173-177; R.Exs. 8.10 and 18.0].

5. In his 2007-2008 \*\* grade year, Petitioner changed \*\* campuses. He attended the first campus (“\*\*\*”) until December 2007. He transferred to the second campus (“\*\*\*”) on December 17, 2008, at the request of Petitioner’s mother as the “school of choice.” [Tr. at 164 and 172-173; P.Ex. 2 at 17; R.Ex. 13.20].

6. During his \*\* grade Fall 2007 semester, Petitioner’s educators at \*\* did not observe any pattern of Petitioner’s behavior indicating the possibility of an ED. [Tr. at 45, 268, and 405].

7. Petitioner received the following disciplinary referrals during Fall 2007: a) causing a classroom disruption with a shocking device; b) throwing another student’s food in the cafeteria; c) failing to pick up his trash in the lunchroom and arguing with adult redirection attempts; and, d) slapping a student twice during lunch. The \*\* assistant principal witnessed the slapping incident and Petitioner admitted his conduct. Petitioner’s misbehaviors appeared typical for an adolescent male -- he had friends, and did not seem unusually different from any other \*\* student. [Tr. at 343-345 and 350; R.Ex. 17.0-17.1].

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<sup>1</sup> Petitioner’s exhibits include sequential page numbering throughout Petitioner’s exhibits; Respondent’s exhibits are numbered by exhibit with the first page numbered as zero (for example, page one of R.Ex. 13 appears as 13.0, page two is 13.1, and so on). For ease of reference, the parties’ respective numbering is maintained.

8. On September 20, 2007, Petitioner's mother alleged bullying episodes by Petitioner's peers against Petitioner's \*\* case manager. Petitioner's educators did not observe any bullying of Petitioner, but observed bullying behavior by Petitioner directed at other students. Administrators at \*\* contacted the administrative office, the counseling office, and the entire team to investigate the allegations through observation and hallway monitoring of the student, reviewing video-cameras in campus hallways, discussion with Petitioner's gym teacher, and the students alleged to have bullied Petitioner. The investigation concluded that no bullying behaviors took place against Petitioner. [Tr. at 50-51, 54-55, 269, 343-344, and 348; P.Ex. 6; R.Ex. 9].

9. On September 24, 2007, the \*\* case manager began attempts to schedule the student's annual ARDC. Respondent cancelled the ARDC scheduled for October 16, 2007, upon notification by Petitioner's mother that her attorney would attend the meeting. Respondent reset the ARDC meeting to include Respondent's attorney for November 6, 2007, but Petitioner's mother cancelled the meeting. Petitioner's mother did not attend the ARDC meeting planned for November 13, 2007, as she mistakenly thought the meeting date was November 14, 2007. Ultimately, the first 2007-2008 ARDC meeting of Petitioner's \*\*-grade year convened on November 28, 2007, with Petitioner's mother and advocate in attendance. [Tr. at 160 and 400; R.Exs. 9.11 and 24].

10. On November 25, 2007, three days before the ARDC convened, Petitioner's mother made the request for a transfer from \*\* to \*\* through Respondent's Executive Director for Special Education. In support of this request, Petitioner's pediatrician wrote a letter on November 25, 2007, expressing concern for Petitioner's emotional state, reporting Petitioner's feelings of being threatened and bullied by peers, and specifically requesting a transfer to \*\* campus. [Tr. at 172-173; P.Exs. 12 at 143 and 21 at 229].

11. At the ARDC meeting on November 28, 2007, Petitioner's mother requested additional Dyslexia testing for the student and requested a Full and Individual Evaluation ("FIE") including a psychological assessment for possible ED eligibility. The ARDC reviewed the letter from Petitioner's physician dated November 25, 2008. This meeting ended in disagreement regarding the student's annual program review, but with agreement to proceed with the Dyslexia testing and an FIE with a psychological assessment. The ARDC recessed and made plans to reconvene at \*\* after a ten-day recess on December 11, 2007. [Tr. at 167; P.Ex. 6 at 73; R.Ex. 9.11].

12. Respondent completed the additional Dyslexia testing on November 30, 2007, determining that Petitioner does not have Dyslexia. [Tr. at 173-174; R.Ex. 6].

13. On December 11, 2007, the ARDC reconvened as planned to continue annual review of the student's program. Petitioner's mother, attorney, and special education advocate attended, but during the deliberations, announced that they did not want to continue the meeting. Respondent's attorney clarified that the ARDC would complete the student's IEP annual review at that meeting. Petitioner's mother, attorney, and advocate chose to leave the meeting early. [P.Ex. 5 at 60; R.Ex. 10.8].

14. As promised on December 11, 2007, the remaining ARDC participants developed a new IEP for Petitioner, reviewed his behavioral competencies, and determined that Petitioner's

behaviors are usually not the “acting out” type and do not interfere with his learning. The ARDC designed behavioral goals in the nature of a BIP for Petitioner and noted minor behaviors related to his ADHD. To monitor Petitioner’s behavior, the ARDC implemented a behavior tracking form to be given by Petitioner to his teachers four out of five days each school week as follows:

<b>Behavioral Goal</b>	<b>Mastery</b>
The student will maintain compliant behaviors.	Response in a pro-social manner 90% of the time when asked by an adult to complete a task, 90% of the day
<b>Objectives</b>	<b>Mastery</b>
<ul style="list-style-type: none"> <li>Complete and turn in class work/homework, based on his behavior tracking card.</li> </ul>	-4 of 5 opportunities per week for each class -Based on behavior tracking card
<ul style="list-style-type: none"> <li>Speak respectfully and comply with adult requests by:               <ul style="list-style-type: none"> <li>-Looking at teacher,</li> <li>-Saying “okay,” and,</li> <li>-Complying with request with no more than two repeat requests or reminders.</li> </ul> </li> </ul>	-7 of 8 opportunities per day
<ul style="list-style-type: none"> <li>Stay on task during work and study periods, and raise hand for permission to ask a question or speak.</li> </ul>	-4 of 5 opportunities per week for each class

[P.Ex. 5 at 60 and 61b-62; R.Ex. 10.10 -10.11 and 10.8].

15. On December 11, 2007, the ARDC revised Petitioner’s IEP goals, objectives, and mastery criteria included the following:

<b>Goal</b>	<b>Objective</b>	<b>Mastery</b>
Select and use writing processes for self-initiated and assigned writing.	With writing prompt, student will complete writing process: <ul style="list-style-type: none"> <li>• Pre-writing</li> <li>• Outlining; and,</li> <li>• Composing an essay with:               <ul style="list-style-type: none"> <li>-Introduction</li> <li>-3 body Paragraphs</li> <li>-Conclusion</li> </ul> </li> </ul>	3 of 4 trials 80% accuracy
The learner will achieve mastery of the school district curriculum objectives by assignment completion and maintaining passing grades (Grade 7).	Student will maintain passing grades in each of his classes .	Per class each 9-weeks: No more than 2 missed assignments

[P.Ex. 5 at 62; R.Ex.10.11].

16. Respondent uses “Special Ed Manager,” a forms management system for electronic data collection. Copies of ARDC documents and assessment documentation printed directly off the system will not have the original signatures. When data is entered incorrectly, such as an incorrect

date, the error may continue in the system when data is again accessed at a later time. [Tr. at 239-240].

17. At the ARDC meeting on December 11, 2007, the student's science teacher served as the general education representative and gave input into the meeting. The signature page indicates that this teacher "left prior to signing." Respondent's Dyslexia Coordinator also attended this meeting, discussed the results of the Dyslexia assessment, and signed in agreement. The minutes of the meeting indicate that this member "was excused" prior to the conclusion of the meeting. [Tr. at 91-92, 271-272, and 277-279; P.Ex. 5 at 59-61; R.Ex. 10.7-10.9].

18. Respondent's Licensed Specialist in School Psychology ("LSSP") completed the student's FIE evaluation and issued the completed report on December 13, 2007. The LSSP concluded that the student no longer met eligibility requirements as LD, but continued to qualify as OHI with an added disability category of ED. The evaluation included input from the student, Petitioner's mother, current teachers of the student, and a clinical interview of Petitioner. Both Petitioner and Petitioner's mother reported bullying at school issues to the LSSP. [Tr. at 283-284; P.Ex. 9 at 113-114 and 128; R.Ex. 7.0-7.2 and 7.15].

19. As part of the Fall 2007 evaluation, the multidisciplinary team concluded that the student exhibited the following characteristics of an ED: a) an inability to build or maintain satisfactory interpersonal relationships between peers and teachers; b) a general pervasive mood of unhappiness or depression; and, c) a tendency to develop physical symptoms or fears associated with personal or school problems. [P.Ex. 9 at 114; R.Ex. 7.0-7.2].

20. Symptoms of ED symptoms manifest either internally or externally. Petitioner's ED symptoms are internal and less obvious to teachers and other adults. [Tr. at 307].

21. In the 2007 FIE, the LSSP used a variety of instruments to assess Petitioner. On the Reynolds Adolescent Depression Scale Petitioner's scored in the Clinically Significant range for Depression Total. On the Revised Children's Manifest Anxiety Scale, Petitioner's scored in the Significant range for Total Anxiety. On the Piers Harris 2, a self-report measure for evaluation of psychological health of children and adolescents, Petitioner scored in the Low range for his Total Score ("TOT"). Children with a low TOT are frequently associated with disturbances in mood and behavior. On the Behavior Assessment System for Children – Second Edition ("BASC-II") Self-Report of Personality, Petitioner rated himself Clinically Significant in only one area, Self Reliance, with At-Risk ratings in Attitude to School, Atypicality, Social Stress, Anger Control, and Interpersonal Relationships. [P.Ex. 9 at 120-123; R.Ex. 7.7-7.10].

22. The LSSP administered the BASC-II Parent Rating Scale as part of the 2007 FIE. Petitioner's mother rated Petitioner Clinically Significant in 11 of 14 assessment components. The LSSP administered the BASC-II Teacher Rating Scale to three of Petitioner's teachers. Two teachers reported no Clinically Significant scores; the third teacher reported Clinically Significant scores in five assessment components. [Tr. at 304-305; P.Ex. 9 at 118-121; R.Ex. 7.5-7.8].

23. As part of the 2007, the LSSP assessed the student's overall intellectual ability in the Superior range based on the Woodcock-Johnson III Tests of Cognitive Ability. On the Woodcock-Johnson III Tests of Achievement, the student scored above average in the areas of Basic Reading Skills, Math Reasoning, and Written Expression. The student performed in the

average range in Reading Comprehension and Math Calculation Skills. [P.Ex. 9 at 126-127; R.Ex. 7.13-7.14].

24. The LSSP's written 2007 report concluded the following ranges of performance: a) overall intellectual ability – Superior; b) verbal ability (acquired knowledge and language comprehension) – Above Average; c) thinking ability (intentional cognitive processing) – Superior; and, d) cognitive efficiency (automatic cognitive processing) -- Average. [P.Ex. 9 at 127; R.Ex. 7.14].

25. The completed FIE report included an Individual Assessment Addendum with results of the counseling evaluation of Petitioner. The recommendations and assurances in the FIE and the addendum report would be in effect for three years, allowing ARDC members flexibility to design and later revise Petitioner's IEP with applicable educational implications and suggestions throughout the three-year period. The multidisciplinary team did not recommend counseling as a related service, instead recommending counseling be provided through the student's BIP in line with behavioral goals and objectives. [Tr. at 305-306; P.Exs. 9 at 130 and 10 at 34-35; R.Ex. 7.17].

26. On December 14, 2007, with the written permission and without the presence of Petitioner's mother, the ARDC convened for the sole purpose of adding transportation as a related service. [Tr. at 34-36; P.Ex. 4 at 47; R.Ex. 11.7].

27. Before \*\* had a chance to implement the student's new IEP developed on December 11, 2007, the student transferred and began classes at \*\* on December 17, 2007. [Tr. at 163-164 and 262-263].

28. On December 18, 2007, the ARDC convened at \*\*. Petitioner's mother did not attend this meeting. The sole issue at this meeting was to change the student's schedule to include a resource period for reading support and to eliminate a reading workshop. [Tr. at 147-149; P.Ex. 3 at 38; R.Ex. 12.12].

29. On December 20, 2007, the LSSP personally delivered the completed FIE report to Petitioner's mother at the \*\* campus within the school district where she taught. [Tr. at 300 and 304].

30. On December 21, 2007, Respondent mailed notification of an ARDC meeting scheduled for January 22, 2008. The purpose of this meeting included discussion of new testing results and annual revision of Petitioner's IEP. On January 7, 2008, Petitioner's mother signed the notice indicating her plans to attend the meeting. [R.Ex. 13.2-13.4].

31. On January 13, 2008, Petitioner's mother requested a meeting with Respondent's Executive Director of Special Education and her advocate to discuss her concerns about the completed FIE. In response, Respondent's lead psychologist and the Executive Director of Special Education scheduled a meeting for January 25, 2008. [P.Ex. 21 at 210-213].

32. The Fall 2007 semester ended on December 21, 2007. The Spring 2008 semester began on January 7, 2008. [R.Ex. 16.2].

33. On January 18, 2008, Petitioner’s mother spoke with Respondent’s chief psychologist by telephone. Petitioner’s mother expressed three concerns that she wanted to address: a) the student will begin seeing a psychiatrist based on concerns of his pediatrician and the ED diagnosis; b) a request for private counseling services at school district expense in lieu of 14 sessions offered by Respondent with Jewish Family Services; and, c) receipt of physical training at a fitness center. [Tr. at 303; P.Ex. 2 at 17; R.Ex. 13.20].

34. On January 22, 2008, the ARDC convened on the \*\* campus to review the completed assessment, hold the annual review of the student’s IEP, and to address parental concerns. Petitioner’s mother and her advocate attended this meeting. The ARDC recommended Petitioner’s psychiatric evaluation, with agreement to pay for the initial visit upon completion of the psychiatric evaluation. Subsequent visits with Petitioner’s psychiatrist would be at the expense of the parent. Petitioner’s mother declined the ARDC offer of 14 counseling sessions with Jewish Family Services for individual, group, and family therapy, clarifying her intent to further pursue her requests for additional counseling at school district expense. The ARDC discussed parental concern that Petitioner had body image issues and the parental request for the student to receive physical training at a fitness center by Petitioner’s physician. The ARDC clarified that body image issues are currently addressed in Petitioner’s physical education class. All ARDC members agreed on the IEP goals developed at this meeting. The goals and modifications included some of the educational implications and suggestions from the FIE Individual Assessment Addendum. [Tr. at 305-306; P.Ex. 2; R.Ex. 13].

35. Petitioner’s mother signed in agreement with the IEP goals, the BIP, the related counseling services at \*\*, and Petitioner’s placement. She provided a written addendum to reflect her belief that Petitioner did not receive a FAPE, did not have measurable goals uniquely tailored to his needs, and did not make meaningful emotional and academic progress prior to the January 2008 ARDC, based on the student’s enrollment at \*\* before December 17, 2007. [P.Ex. 2 at 26; R.Ex. 12.31].

36. The January 2008 ARDC, with the agreement of Petitioner’s mother and her advocate, reviewed a Functional Behavioral Assessment (“FBA”) of the student. The \*\* LSSP who assessed the student participated in the ARDC and explained the assessment results. [Tr. at 339-340; P.Ex. 2; R.Ex. 13].

37. On January 22, 2008, the ARDC revised the student’s behavioral goals and objectives as follows:

<b>Behavioral Goals</b>	<b>Mastery</b>
<p>The student will use words to establish and/or enrich social relationships independent of adult structure.</p> <p><u>Strategies:</u></p> <ul style="list-style-type: none"> <li>• Direct instruction/teach replacement behavior</li> <li>• Rules/Expectations</li> <li>• Verbal mediation (stop &amp; think strategies)</li> <li>• Communication Skills</li> <li>• Mood Moderation (mood monitoring, goal setting, &amp;</li> </ul>	<p>Be able to independently identify pro-social behavior when practicing interaction skills during individual counseling, 80% of time:</p> <ul style="list-style-type: none"> <li>• Using multiple choice format</li> <li>• Listing pro-social behavior</li> <li>• Role playing</li> </ul>

relaxation skills) <ul style="list-style-type: none"> <li>• Stress Management</li> <li>• Cognitive Restructuring (reframing negative thoughts)</li> <li>• Problem Solving</li> </ul> <u>General Ed/Special Ed Reinforcers/Consequences:</u> <ul style="list-style-type: none"> <li>• Feedback through a Monitoring System</li> <li>• Reinforce with privileges/responsibilities</li> <li>• Use home/school reward system</li> <li>• Student/parent conferences</li> </ul>	
The student will demonstrate appropriate participation.	Student will ask for assistance with class work/homework in a respectful, positive manner when needed 1x per week by asking case manager for missing work/progress report.

[P.Ex. 2 at 19-24; R.Ex. 13.23-13.29].

38. At the January 2008 ARDC, all participants agreed to continue the two goals and objectives developed by the December 2007 ARDC for writing and assignment completion. All participants agreed to add the following additional goal:

Goal	Objective	Mastery
The student will demonstrate measurable progress in reading skills	Demonstrate an understanding of literary elements.	7 of 10 per nine weeks: <ul style="list-style-type: none"> <li>• Assignments</li> <li>• Tests</li> <li>• Benchmarks</li> <li>• Common assessments</li> </ul>

[P.Ex. 2 at 20; R.Ex. 13.24].

39. The January 2008 IEP included the following modifications for his general education classes: a) preferential seating; b) cooling-off period; c) Content Mastery Class for academic support; d) opportunity for “reteach and retest”; e) reminders of expectations and consequences; f) avoid penalizing for spelling; and, g) provide study guides with answers. [P.Ex. 2 at 12; R.Ex. 13.15].

40. Petitioner’s January 2008 IEP included counseling as a related service from an LSSP for 25 sessions of 30-minute duration during the IEP year. The \*\* LSSP kept a weekly counseling log of Petitioner’s sessions. [Tr. at 363; P.Ex. 2 at 12 and 21; R.Ex. 13.12 and 13.24].

41. The student began riding a special education bus in December 2007. To compensate for his inability to attend morning tutorial sessions, his \*\* special education case manager checked on the student’s eighth period Resource class three or four times a week. During these times, the case manager checked his homework or took him to the case manager’s office for one-on-one work. [Tr. at 333-334].

42. Petitioner's treatment with his private psychiatrist began on January 23, 2008. The psychiatrist diagnosed Petitioner with a primary diagnosis of ADHD and a secondary diagnosis of Dysthymia and Anxiety. The psychiatrist monitors Petitioner's mediations every two months. Currently, Petitioner takes \*\* mg. of Zoloft to manage anxiety and, during school months, Vivance to address attention problems. Petitioner's psychiatrist noted school phobic behaviors from the student in January 2008; as treatment progressed, these symptoms improved. Since that time, the psychiatrist notes improvement in school phobic behaviors. The psychiatrist believes outside counseling and medication are necessary for Petitioner's continued educational progress, but admitted receiving no input or having any phone conversations with Petitioner's educators. [Tr. at 441-452; P.Ex. 12 at 144].

43. Petitioner began seeing a private counselor in February 2008. [P.Ex. 12 at 141-142 and 144].

44. During related service counseling sessions, Petitioner reported walking to school on his own, -- a behavior not exhibited by students with school phobia. In the Spring 2008 semester, Petitioner had good school attendance with few absences and has developed friends at the \*\* campus. [Tr. at 371-374; R.Ex. 23.24].

45. Petitioner had no disciplinary incidents on the \*\* campus. [Tr. at 423].

46. Petitioner has access to extra-curricular activities at \*\*, including football, track, and basketball. All students who wish to participate in these activities are placed on a team through a "no cut" policy. Petitioner also has access to choir, orchestra, band, and theatre arts activities. Students who have not previously played an instrument may take Beginning Band. [Tr. at 423-425].

47. Cell phone usage during school hours is prohibited on the \*\* campus. Exceptions, however, are made to this policy on a one-by-one basis if a parent requests an exception. Petitioner has the opportunity to call his mother with the school phone if he becomes anxious at school. [Tr. at 425-426].

48. At \*\* during the Fall 2007 semester, Respondent regularly sent home IEP report cards on the student's progress every nine weeks in a sealed envelope stapled to the student's report card. On the \*\* campus, IEP report cards to Petitioner's mother each nine-week grading period, also sent home with the student's report card. Petitioner's mother admitted receiving at least one of the IEP report cards during the 2007-2008 school year. [Tr. at 41-42, 191, 338-339, and 404; P.Ex. 8 at 109-111].

49. Regular communication took place by Respondent's staff with Petitioner's mother including numerous E-mail transmissions. Petitioner's mother confirmed that she was "in the loop and that "there was a lot of communication." [Tr. at 181-182; P.Ex. 21; R.Exs. 22 and 23].

50. In 88 grade during 2006-2007, Petitioner passed all his classes with the following grades (first semester, second semester, and final average): Physical Ed – \*\*, \*\*, \*\*; \*\*<sup>th</sup> Grade Theatre Arts (Fall Semester) – \*\*; Art (Spring Semester) – \*\*; Enriched English – \*\*, \*\*, \*\*;

Enriched Math – \*\*, \*\*, \*\*; Reading – \*\*, \*\*, \*\*; Social Studies – \*\*, \*\*, \*\*; and, Science – \*\*, \*\*, \*\*. [P.Ex. 14; R.Ex. 14].

51. In \*\* grade during 2007-2008, Petitioner passed all his classes with the following grades (first semester, second semester, and final average): Math – (\*\*, \*\*, \*\*; Reading – \*\*, \*\*, \*\*; English – \*\*, \*\*, \*\*; Texas History – \*\*, \*\*, \*\*; Physical Ed (Fall Semester) – \*\*; Physical Ed (Spring Semester) – \*\*; Science – \*\*, \*\*, \*\*; 7th period (Fall Semester) – \*\*; and 7<sup>th</sup> period (Spring Semester) – \*\*. <sup>2</sup> [P.Ex. 14; R.Ex. 15].

52. Petitioner’s mother described Petitioner as a “B-C student, sometimes A’s,” and admitted that he never made a failing semester grade. [Tr. at 39-40, 44-45, and 183]

53. Petitioner’s mother expressed concern that her son’s confidentiality was violated at \*\* as a result of the proscribed “check in” procedures in the school office prior to ARDC meetings. As a result she felt forced to verbally reveal the special education status of her son in the presence of parent volunteers and other students by nametag procedures and when she received a personal escort by student office assistants to the special education office. [Tr. at 129-130].

54. Parents arriving for ARDC meetings on the \*\* campus are routinely greeted by the \*\* special education coordinator or the student’s case manager. If parents are familiar with the building, the parents walk directly to the conference room where ARDC meetings are held, a separate wing from the main wing of the \*\* campus. Occasionally, student assistants escort parents to the conference room. [Tr. at 411-414].

55. Petitioner’s mother is a teacher. She was previously employed at another school within the school district. Petitioner’s mother brought a complaint with the Equal Employment Opportunity Commission (“EEOC”). She believes that the principal of the school where she previously taught gave out information that violated her son’s confidentiality in the course of the EEOC investigation. [Tr. at 130-131].

56. Respondent’s \*\* principal at the campus where Petitioner’s mother previously taught did not give out information regarding Petitioner’s special education status and did not violate the student’s confidentiality. [Tr. at 95-96 and 99].

57. Petitioner presented no evidence regarding a need for after-school services for the student by a family member or third party.

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<sup>2</sup> The exact abbreviations of the courses in the 7<sup>th</sup> period on Respondent’s grading report list the first semester course as “Course 0641- Expl Mult Med” and the second semester course as “Course 0849 – Inter Exp.”

## Discussion

### **Background**

Petitioner's complaint centers on when and how Respondent identified, assessed, and developed an individualized program designed to address Petitioner's additional eligibility classification of ED. Specifically, Petitioner believes Respondent ignored indications that the student was suffering emotionally at school, further exacerbated by a failure to provide periodic reports to Petitioner's mother. As a result, Petitioner transferred to another \*\* within the school district to have a new environment. By contrast, Respondent believes Petitioner's educational program was appropriate in all respects with timely assessment and identification of all disability classifications. Respondent believes that efforts to develop and implement an appropriate educational program were delayed by Petitioner's actions, including Petitioner's choice to transfer to a second \*\* as well as various delays in convening ARDC meetings with the presence of Petitioner's mother. Respondent believes that Petitioner made educational progress under his program and failed to identify and prove, by a preponderance of the evidence, a denial of FAPE under Respondent's program.

### **Burden of Proof**

Petitioner, as the party attacking the appropriateness of the school district's program, has the burden to prove by a preponderance of the evidence that the student's IEP and placement are inappropriate under IDEA. *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).

### **Receipt of FAPE**

In order to provide a FAPE to a student, school districts must meet two factors: 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).

There were some allegations in this proceeding that Respondent did not fully comply with all procedural requirements of IDEA and its implementing regulations, but that issue is not squarely before me in this proceeding.

In *Cypress-Fairbanks Indep. School District v. Michael F.*, the Fifth Circuit employed a four-factor test to determine whether a school district offered a student a FAPE under the second factor of the *Rowley* analysis: 1) whether the educational program is individualized based on the student's assessment and performance using proscribed procedures; 2) whether the program is administered in the least restrictive environment ("LRE"); 3) whether key stakeholders, in a collaborative and coordinated manner, delivered and/or implemented the program; and, 4) whether the program produced academic and non-academic benefits. *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5<sup>th</sup> Cir. 1997).

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

The first factor of *Michael F.* requires Petitioner to 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.* In the instant case, the evidence established the ARDC's use of the most recent assessment and performance data for Petitioner's Fall 2007 IEP revision in November 2007. At that time, Respondent made plans to gather new assessment data, with diligent effort to schedule an ARDC meeting upon completion of the new assessment data. When the ARDC convened after completion of the new FIE results in December 2007, the ARDC revised the IEP based on this new information to reflect Petitioner's changed needs. Upon Petitioner's transfer to \*\*, the ARDC considered new information from the parent to revise the IEP using the recent FIE and FBA.

**IEP Development and Goals**

Under IDEA's implementing regulations, a school district must consider the student's strengths, the parents' concerns for their student's education, the results of the initial or most recent evaluation, as well as the academic, developmental, and functional needs of the student. 34 C.F.R. §300.324(a)(1). Once developed, a school district's duty continues to review the IEP at least annually and revise the program to address a lack of progress toward annual goals and in the general curriculum, to include reevaluation results, to address concerns or information about the student provided to or by the parents, to address anticipated needs, or for other matters. 34 C.F.R. §300.324(b). The annual goals included in the IEP must be measurable and designed to meet the following: 1) the student's disability-related needs to enable the student to be involved in and make progress in the general curriculum; and, 2) meet each of the student's other educational needs that result from the student's disability. 34 C.F.R. 300.320(a)(2)(i). The IEP must specify how the student will make progress toward the annual goals and how this progress will be measured as well as when periodic reports on the student's progress toward the annual goals will be issued. 34 C.F.R. §300.320(4).

Petitioner believes that Respondent failed to gather emotional data necessary to develop goals and objectives necessary for the student's success. Upon completion of the 2007 FIE assessment, Petitioner believes Respondent still did not adequately revise Petitioner's IEP goals and objectives, develop behavioral goals, or provide adequate related services. Respondent defends Petitioner's IEP development and implementation, pointing to ARDC review of the student's previous assessment, the new 2007 FIE assessment data and ED eligibility, review of the student's grades and performance on the TAKS testing, current information from teachers, as well as the input of Petitioner's mother, physician, and other medical and clinical providers.

The record evidence conclusively shows that Petitioner's mother was a full participant in the development of Petitioner's IEP in November 29, 2006, and signed in agreement at that ARDC meeting. Petitioner's mother attended the initial 2007-2008 ARDC meeting on November 28, 2007, yet refused to participate in the development of new goals and objectives until completion of the new testing requested by Petitioner's mother. At the reconvened meeting ten days later, Petitioner's mother, attorney, and advocate refused to remain in the meeting to develop a new IEP. Unable to reach consensus, the remaining participants reviewed the existing data and developed new goals and objectives based upon known data at that time, with measurable goals and objectives to address the student's current needs. The evidence and testimony established that Petitioner sought and received a "campus of choice" transfer to \*\* and completed this process by December 17, 2007, resulting in a five-day week at \*\* prior to the winter holiday break.

Even if the IEP goals and objectives developed on Tuesday, December 11, 2007, were deficient, I find that \*\* did not have the opportunity to implement this IEP in the three school days preceding Petitioner's "campus of choice" transfer to \*\* beginning on Monday, December 17, 2007. I conclude that

Petitioner did not meet his burden to prove any negative impact on the student from the IEP developed on December 11, 2007.

**Behavioral Goals** Neither IDEA nor its implementing regulations delineated the requirements for a proper BIP. See, *Alex R. v. Forrestville Valley Community Sch. Dist. #221*, 41 IDELR 146, 375 F.3d 603 (7<sup>th</sup> Cir. 2004) (declining to create out of “whole cloth” any substantive standards for a BIP). Respondent addressed the behavioral concerns evident at each stage of development of the IEP to address Petitioner’s current behavior and collect current assessment data. For example, when Petitioner’s mother requested a psychological assessment as part of the Fall 2007 FIE, Respondent agreed to the request, performed the assessment within the 6-day timeframe, presented the assessment to Petitioner’s mother and subsequently convened an ARDC for review and development of additional goals and objectives specifically to address behavioral concerns.

I therefore conclude that Petitioner did not meet his burden to overcome the presumption of Respondent’s BIP for Petitioner. The evidence preponderates to show ARDC development, review, and revision of Petitioner’s BIP to address changes in Petitioner’s behavioral needs. As those needs changed, Respondent properly convened the ARDC to revise Petitioner’s program and addressed his behavioral need based on new data. When the ARDC next convened for the first meeting at \*\* on January 22, 2008, all ARDC members reached agreement on new goals and objectives that incorporated some of the LSSP’s recommendations from the December 2007 FIE.

For the above reasons, I conclude that Respondent developed an IEP for Petitioner with measurable goals and objectives to address his individual needs. I find that Respondent met the first factor through an individualized program for Petitioner.

**B. LRE**

Under the second factor of the *Michael F.* test, a school district must deliver the educational program for the student in the LRE. *Michael F., supra.* Under IDEA, a student must be educated in the LRE. 20 U.S.C. §1312(5)(b). School districts must place disabled students with non-disabled students to the maximum extent appropriate. 20 U.S.C. 1412(a)(5)(A). At all times pertinent to this dispute, Respondent provided a general education setting for administration of Petitioner’s program with all general education classes and Petitioner did not challenge the general education placement. Petitioner did not present evidence challenging Respondent’s compliance with the mandate to educate Petitioner in the LRE. I conclude that Respondent’s program met the LRE standard under the second factor.

**C. Delivery of the Student’s Program**

The third factor of the *Michael F.* test specifies delivery of the student’s educational program in a collaborative and coordinated manner by key stakeholders. *Id.* Respondent fully included Petitioner’s mother in the educational process, received and reviewed input from private providers of the student, included pertinent educators in ARDC meetings who held the responsibility of implementing the student’s IEP, and kept Petitioner’s mother informed by periodic reports, E-mail communication, telephone calls, and other written communication. I conclude that Respondent delivered Petitioner’s program in a collaborative and coordinated manner.

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

The fourth and final factor of the *Michael F.* test requires both academic and non-academic benefits accrue to the student as a result of the school district's individualized program. *Id.* Petitioner's allegations challenge both components.

**a. Academic Benefit.** Petitioner received substantial academic benefit from his educational program, passed all his courses, and passed his most recent TAKS testing. His achievement levels in the 2007 FIE demonstrate this solid academic progress. The undisputed evidence shows that Petitioner received significant academic benefits from Respondent's program.

**b. Non-academic Benefit.** Petitioner stringently disputes that the student received sufficient non-academic benefit from his educational program. Petitioner asserts that Respondent's program did not result in non-academic benefit in the areas of behavior and social needs. Petitioner believes that Respondent ignored these areas and did not provide an appropriate program with individualized counseling services or develop an appropriate BIP.

As previously discussed above, I conclude that Petitioner did not meet his burden to show the inappropriateness of Respondent's program in the behavioral and social areas. Petitioner's November 2006 IEP included opportunities for private feedback on behavior with opportunities to socialize and interact in the general education setting. The IEP revised by the ARDC on December 11, 2007, included new behavioral objectives with plans to review new assessment data after completion, including the counseling assessment by an LSSP.

When Petitioner's mother brought alleged bullying incidents to the attention of Respondent, the credible documentary evidence and hearing testimony established that Respondent took prompt action to intervene and began thorough investigation by observing Petitioner, interviewing students allegedly involved, and visually monitoring Petitioner and other students, and reviewing videotapes from cameras at the \*\* campus. There was no substantiation of the allegations. After Petitioner's transfer to \*\*, the January 2008 ARDC thoroughly addressed concerns regarding Petitioner's behavioral and social needs, as expressed by Petitioner's mother. Further revisions to the IEP at that meeting addressed Petitioner's non-academic needs, instituted related services designed to specifically address those needs, and put in place a program that, contrary to Petitioner's assertions, resulted in non-academic benefit to Petitioner. The evidence established that Petitioner's disciplinary incidents decreased during Spring 2008 and he made progress on his behavioral and social goals, interacted with the \*\* LSSP in counseling sessions, and adjusted well in his program. In January 2008, Petitioner's mother declined additional services offered by Respondent for outside counseling services; instead, Petitioner pursued private counseling services selected by Petitioner's mother.

Based on the foregoing, I conclude that Respondent's program meets the standards enunciated under the four-part test of *Michael F.*, resulting in progress under his program. *Id.* Under Respondent's program, Petitioner made substantive progress toward his IEP goals and made academic progress at all times pertinent to this dispute. When Petitioner's needs changed and upon receipt of parental requests, Respondent promptly acted to revise Petitioner's program to address additional concerns.

### **Timely Identification of ED**

Petitioner believes that Respondent should have noticed deterioration in the student's emotional status before the 2007-2008 school year in his \*\* grade year based on declining grades and the student's failure to pass his \*\* grade Reading TAKS test. It is undisputed that Petitioner's mother notified Respondent about alleged bullying behaviors of fellow students in September 2007; Petitioner believes that Respondent, upon receipt of this information, should have taken corrective action. Even if Respondent took corrective action at the \*\* campus, Petitioner argues that Respondent had knowledge by Fall 2007 that Petitioner experienced increased difficulties at school, and should have referred Petitioner for additional assessment.

The preponderance of the evidence in this proceeding establishes that Respondent's efforts to convene Petitioner's annual ARDC meeting in Fall 2007 were prolonged by efforts to include Petitioner's mother and accommodate her desire to bring her attorney and advocate. These efforts began on September 24, 2007, or within four days of the bullying communication by Petitioner's mother on September 20, 2007. Ultimately, the first convened ARDC meeting finally occurred on November 28, 2007, at which time Petitioner's mother requested an FIE with psychological testing. The undisputed evidence established that Respondent agreed to the testing on that date and completed the evaluation within the 60-day timeline as required by IDEA. 34 C.F.R. §300.301(c)(1)(i); TEX. EDUC. CODE §29.004.

### **Related Services**

Petitioner alleges that Respondent failed to provide all the related services needed by Petitioner to benefit from Respondent's educational program and, as a result should now pay for a variety of private services, including therapy recommended by Petitioner's psychiatrist, a membership in a fitness center, music therapy with guitar lessons, and social skills training. Respondent denies any failure to provide related services needed by Petitioner. Respondent asserts that upon identification of Petitioner's various needs, Respondent promptly offered requested services needed by Petitioner.

Under IDEA and its implementing regulations, related services include transportation, developmental, corrective, and other supportive services required to assist a child with a disability to benefit from special education. 34 C.F.R. §300.34(a). These services include psychological services, recreation and therapeutic recreation, counseling services, as well as counseling and parent training. *Id.* The definition of counseling services includes services by qualified social workers, psychologists, guidance counselors, or other qualified personnel. 34 C.F.R. §300.34(c)(2). Psychological services include planning and managing a program of psychological services, including psychological counseling for children and parents. 34 C.F.R. §300.34(c)(10)(v). Related services of recreation include the assessment of leisure function, therapeutic recreation services, recreation programs in schools and community agencies, and leisure education. 34 C.F.R. §300.34(c)(11).

Under Respondent's program in place at the beginning of the 2007-2008 school year Petitioner received counseling support through the campus counselor. Petitioner produced no evidence of any request for special education counseling services or a denial of such a request by Respondent. Instead, the evidence established that Petitioner's educators during the fall semester did not observe any behavior of Petitioner that indicated a need for special education counseling. The credible hearing testimony of his educators depicts a normal adolescent male who occasionally needed redirection for misbehavior and who had only minor disciplinary infractions.

After identification of the student's ED eligibility in December 2007 and review of the assessment, the ARDC incorporated special education counseling sessions into the student's IEP to

address his emotional needs. When Petitioner's mother expressed concerns to Respondent's chief psychologist on January 18, 2008, these concerns were discussed just four days later at the ARDC on January 22, 2008. The ARDC agreed to provide an initial psychiatric visit for Petitioner but did not agree to provide ongoing sessions with the psychiatrist, did not agree to provide ongoing counseling with the student's private counselor, and did not agree to provide physical training services at a fitness center. Instead, Respondent addressed these issues through related counseling services by the \*\* LSSP, offered outside counseling services with Jewish Family Services that Petitioner chose to reject, and addressed body image issues in Petitioner's physical education class.

The services offered to Petitioner in response to parental request did not include all the services requested that might add additional benefit to Petitioner, but Respondent is not required to "maximize" these services. *Rowley, supra*. Instead, the preponderance of the evidence shows that Respondent's program provided services designed to address each service area and did not ignore Petitioner's varied related service needs. After review of the hearing testimony and documentary evidence, I conclude that Petitioner did not meet his burden to show that Respondent did not provide appropriate related services to address Petitioner's individual needs.

### **Student Confidentiality**

Implementing regulations of IDEA require school districts to maintain the confidentiality of educational records of a student receiving special education in accordance with the Family Educational Rights and Privacy Act of 1974 ("FERPA"). 34 C.F.R. §300.611. Although parents are presumed to have the right to inspect their child's records, school districts must maintain a record of access for other persons who view the records. 34 C.F.R. §§300.613 and 300.614.

Petitioner's first allegation of a confidentiality breach concerns the reception of Petitioner's mother when she came onto the \*\* campus for ARDC meetings. In essence, Petitioner's mother alleges that these procedures required her to "announce" that her son receives special education services in front of parent volunteers and student office aides. Respondent presented hearing testimony of the \*\* Special Education Coordinator regarding the manner of "receiving" parents of special education students at the \*\* campus. I do not find Petitioner's allegations persuasive. I find no evidence that Respondent "forced" Petitioner's mother to make a declaration that revealed the special education status of her son to others.

Petitioner's second confidentiality allegation apparently stems from an ongoing EEOC investigation begun by Petitioner's mother. Petitioner's mother alleges that the \*\* campus principal on the campus where Petitioner's mother previously taught had knowledge of the special education status of her son – knowledge acquired by a "breach" of confidentiality by \*\* personnel. Petitioner did not produce evidence to establish that this breach of confidentiality occurred. By contrast, Respondent produced credible hearing testimony from the \*\* principal alleged to have made the breach that directly refutes this allegation.

Even if such a breach of confidentiality had occurred, Petitioner did not produce evidence to show how such a breach impacted Petitioner's education or violated IDEA and its implementing regulations. For these reasons, I conclude that Petitioner did not meet his burden to show that Respondent breached confidentiality concerns by forcing Petitioner's mother to reveal that her son is a special education student or by a vague and unsubstantiated allegation of a confidentiality breach in connection with an EEOC investigation brought by Petitioner's mother. I find that the preponderance of the evidence on this issue overwhelmingly weighs in favor of Respondent.

Based on the foregoing, I conclude that Respondent's program meets the standards enunciated under the four-part test of *Michael F.*, resulting in progress under his program. *Michael F., supra.* When Petitioner's needs changed, Respondent gathered new information to identify the needs, and made appropriate revisions to include additional services and supports to address Petitioner's areas of disability.

### **Conclusions of Law**

1. Petitioner is entitled to special education and related services at no cost as a student with OHI and ED. Petitioner and his mother 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. §1400, *et. seq.*; *Hendrick-Hudson District Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); 34 C.F.R. §300.300; 19 T.A.C. §89.1001.
2. 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.
3. Petitioner did not meet his burden to show a violation of procedural or substantive rights under IDEA, or that the actions of Respondent deprived Petitioner of meaningful participation in the development of the student's educational program. *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).
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 did not meet his burden to show that Respondent's assessment of his ED was untimely. 34 C.F.R. §300.301(c)(1)(i); TEX. EDUC. CODE §29.004.
6. Petitioner is not entitled to an award of compensatory or related services. *Burlington Sch. Comm. v. Department of Educ.*, 471U.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); 34 C.F.R. §300.34.

## **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 12<sup>th</sup> day of November 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.