



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

**DECISION OF THE HEARING OFFICER**

**Statement of the Case**

Petitioner, acting through her parent as next friend, requested 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 District failed to provide Extended School Year (“ESY”) services during Summer 2007, and if so, whether the lack of ESY services denied the student a free appropriate public education (“FAPE”);
2. Whether the District failed to develop an appropriate Individualized Education Program (“IEP”) for the student’s 2006-2007 school year, resulting in a denial of FAPE;
3. Whether the District failed to implement the IEP from January 2007 to present, resulting in a denial of FAPE;
4. Whether the District failed to submit a proper Admission, Review, and Dismissal Committee (“ARDC”) notice for an ARDC meeting held on February 15, 2007;
5. Whether the District failed to submit test evaluations to the parent prior to an ARDC meeting held on February 15, 2007;
6. Whether the District failed to reschedule a “tabled” or recessed ARDC meeting and then implemented the IEP improperly in August 2007;
7. Whether the District failed to release behavior reports from the student’s \*\*\* campus and \*\*\* school campus from August 2006 to September 28, 2007; and,
8. Whether the District improperly denied the parent an Independent Educational Evaluation (“IEE”).

Petitioner initially requested relief outside the jurisdiction of this hearing officer, including monitoring or oversight of the student’s \*\*\* and \*\*\* school campuses by the Texas Education Agency (“TEA”) and assessment of a monetary fine or penalty to the school district. Petitioner sought the following relief within the jurisdiction of this Hearing Officer:

1. A change of placement for the student;

2. Private tutoring at District expense; and,
3. Outside therapeutic counseling.

**HELD, for Respondent.**

### **Procedural History**

Petitioner by her parent and next friend filed the above-captioned due process complaint with the Texas Education Agency on April 20, 2007. The first Hearing Officer received the case assignment and issued the initial scheduling order on April 23, 2007, setting the hearing on May 29, 2007. The initial Decision Due Date was July 4, 2007. Subsequent to the first scheduling order, Petitioner filed four amended complaints, each resulting in a resetting of the resolution deadlines, the hearing, and the Decision Due Date. Petitioner's parent filed the fourth amended complaint on June 16, 2007. The first Hearing Officer held four pre-hearing conferences in this dispute on May 16, June 11, July 10, and July 16, 2007. On July 11, 2007, the parties participated in a resolution meeting but were unable to resolve this dispute. In August 2007, the first Hearing Officer granted Respondent's request for a continuance of the due process hearing for good cause shown and the parties attempted to find hearing dates in September 2007.

On August 15, 2007, TEA reassigned this due process complaint to a second Hearing Officer. The second Hearing Officer convened a telephonic pre-hearing conference regarding scheduling on September 26, 2007. On October 15, 2007, Petitioner's parent filed a Motion for Continuance that the second Hearing Officer granted for good cause shown. On October 27, 2007, the second Hearing Officer issued a revised scheduling order with a new hearing date of October 16, 2007, and a revised Decision Due Date of November 16, 2007. The second Hearing Officer reset the due process hearing to November 6-7, 2007, with a revised Decision Due Date of December 7, 2007. During a telephonic pre-hearing conference on October 30, 2007, the second Hearing Officer granted Petitioner's request for amendment of the due process complaint. Following this conference on October 30, 2007, the second Hearing Officer entered a written order specifying the contested issues and requested relief. Revisions to the procedural schedule moved the due process hearing to November 27-28, 2007, with a revised Decision Due Date of December 28, 2007. On November 27, 2007, Petitioner's parent failed to show for the due process hearing. Petitioner's parent informed the second hearing officer that she \*\*\*\*\* could not come to the hearing at the scheduled time.

On December 6, 2007, the due process complaint was reassigned to the undersigned Hearing Officer. After repeated contact with Petitioner and Respondent, receipt of the procedural record, and review of the same, this Hearing Officer granted the parties' agreed request to reset the hearing to March 12-13, 2008, with an extended Decision Due Date of April 17, 2008. The contested issues and requested relief, as specified on October 30, 2007, remained in place for the due process hearing. This Hearing Officer held telephonic pre-hearing conferences with the parties on February 12, 2008, and March 3, 2008.

The due process hearing took place on March 12-13, 2007. Prior to the conclusion of the hearing, the parties sought leave to submit their closing argument in writing after receipt of the hearing transcript. Finding that this request stated good cause for an extension of the Decision Due

Date, the undersigned Hearing Officer granted the parties' request and set a submission date for the written argument of April 3, 2008, with a Decision Due Date to May 8, 2008.

The record closed upon the timely submission of the parties' written closing argument on April 3, 2008. On May 8, 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 in the \*\* grade who resides with her parent within the jurisdictional boundaries of Houston ISD. She qualifies as a student with an Emotional Disturbance ("ED"). [Petitioner's Exhibit ("P.Ex.") 13; Respondent's Exhibits ("R.Exs.") 8 and 9; Transcript ("Tr.") at 32].

2. The ARDC convened with Petitioner's parent present on October 20, 2005. The purpose of this meeting was to develop Petitioner's IEP for her \*\* grade 2006-2007 school year effective until October 20, 2006. All participants at this meeting agreed to Petitioner's IEP and updated Behavior Intervention Plan ("BIP"). Petitioner qualified for 25 hours of special education services per week in a self-contained Behavior Service Class ("BSC") placement. As related services, the ARDC scheduled 30 minutes weekly of counseling services for Petitioner. ARDC meeting participants developed IEPs for Petitioner in Reading, Science, Language, Math, Social Studies, and Counseling. [Joint Exhibit ("J.Ex.") 8; R.Ex. 7].

3. Petitioner met ARDC expectations on the State-Developed Alternative Assessment ("SDAA") in all areas during the 2005-2006 school year in Reading, Math, and Writing. [R.Ex. 15].

4. Petitioner had the same \*\*\* school BSC teacher for three years through the 2006-2007 school year. [Tr. at 135-136].

5. On November 11, 2006, the ARDC reconvened Petitioner's annual review with Petitioner's parent in attendance. The ARDC recommended continued placement in the self-contained BSC classroom at the student's current campus. Petitioner's parent disagreed with the placement recommendation because she believed that her daughter's behavior would not improve in the current BSC classroom. According to Petitioner's parent, Petitioner understood the Student Code of Conduct, but purposefully did not follow the rules. The reconvened meeting ended in disagreement. [J.Ex. 6; R.Ex. 5].

6. Petitioner refused to enter her BSC classroom in Fall 2006 and indicated that her parent instructed her not to go into the BSC classroom. As a result, the ARDC chairperson, a certified special education teacher, supervised Petitioner during the school day. The ARDC chairperson ensured that Petitioner worked on her IEP goals and objectives with the input and cooperation of the BSC teacher. There is only one BSC on Petitioner's \*\*\* campus. In January

2007, Respondent moved Petitioner into another special education teacher's self-contained setting with approximately 15 other students in the setting. [R.Ex. 6 at 20; Tr. at 84-87, 135-136, and 143-144].

7. Respondent performed reevaluation of Petitioner in November 2006 and issued the written report on December 14, 2006. Petitioner continued to meet eligibility requirements as a student with ED, based on the input of teachers, Petitioner's self-report, Petitioner's parent, and observations of current teachers. On the Wechsler Intelligence Scale for Children, Fourth Edition, Petitioner scored a full-scale Intelligence Quotient of \*\*\*. Petitioner exhibited achievement test scores commensurate with her intelligence on the Wechsler Individual Achievement Test, Second Edition. Petitioner did not meet criteria as a student with a specific Learning Disability. Overall, Petitioner performed approximately \*\*\*. [R.Exs. 8 and 9; Tr. at 357-358].

8. At the request of Petitioner's parent, Respondent made the reevaluation test results available for pick-up at Petitioner's \*\*\* school rather than mailing the report to her. Petitioner's parent failed to pick up the documents. [Tr. at 76 and 93-94].

9. Respondent reassigned Petitioner to another special education teacher's classroom in January 2007 when Petitioner refused to reenter her 2006-2007 BSC classroom. The new special education teacher received copies of Petitioner's IEPs and attempted to implement them "[t]o the letter." Petitioner remained in the new special education teacher's classroom all day from January through the end of the Spring 2007 semester. [Tr. at 151-152].

10. On January 4, 2007, Respondent sent notice of a proposed ARDC meeting to convene on January 11, 2007, to discuss the completed reevaluation results. This notice was hand-delivered by the ARDC chairperson of Petitioner's \*\*\* campus to Petitioner's home address. As Petitioner's parent was not at home, the ARDC chairperson left the notice with Petitioner's \*\*\*. On January 8, 2007, Petitioner's parent replied via facsimile that she was not available on the proposed meeting date stated in the first notice. On January 11, 2007, the ARDC chairperson sent out a second meeting invitation proposing January 19, 2007, for the ARDC meeting. On January 16, 2007, Petitioner's parent declined the invitation because she was not available on the proposed date and proposed a new ARDC meeting date of January 30, 2007. On January 29, 2007, Petitioner's parent responded via facsimile to the ARDC chairperson, restating her availability on January 30, 2007. [P.Ex. 3; J.Ex. 5; R.Exs. 4 and 17].

11. The ARDC chairperson made numerous communication attempts to find a workable date for Petitioner's ARDC meeting. Respondent did not schedule the ARDC meeting for January 30, 2007, the last date proposed by Petitioner's parent, as not all individuals needed for the meeting could attend on that date. [R.Ex. 17].

12. On February 6, 2007, the ARDC chairperson attempted to reach Petitioner's parent by telephone to get more suggested dates for the proposed ARDC meeting. The ARDC chairperson left Petitioner's parent a telephone message requesting additional dates for the proposed meeting, but Petitioner's parent did not respond. On February 8, 2007, Respondent sent out the third ARDC notice correctly addressed to the residence of Petitioner via courier. The courier service returned the hand-delivered notice to the school on the same date with a message that Petitioner did not live there. As a result, Respondent also mailed a copy of the notice via U.S. Mail on February 8, 2007. [P.Ex. 3; J.Ex. 5; R.Exs. 4 and 17].

13. Petitioner's parent never informed Respondent that she could not attend the ARDC on the proposed date of February 15, 2007.

14. The ARDC chairperson contacted Petitioner's parent prior to the ARDC meeting on February 15, 2007, to tell her that the documents she requested were available for pick-up at school. Petitioner's parent did not pick up the documents prior to the ARDC meeting on February 15, 2007. [Tr. at 76 and 93-94].

15. On February 15, 2007, the ARDC convened to review Petitioner's completed reevaluation results. Petitioner's parent did not attend the meeting. The ARDC members proceeded with the meeting as this was Respondent's third attempt to hold an ARDC meeting to discuss the reevaluation. Petitioner continued to qualify as a student with ED, based on the completed reevaluation results. Participating ARDC members agreed to continue Petitioner's self-contained BSC placement, effective February 16, 2007. [J.Ex. 4; R. Ex. 3].

16. The ARDC considered Petitioner's need for ESY services under her current IEP. Committee members included individuals with multiple years of contact with Petitioner, including her BSC teacher for the past three years and her school principal for the past six years. The ARDC determined that ESY services were not needed for Petitioner as she was not likely to show regression over the summer months. [R.Ex. 3 at 21; Tr. at 95].

17. The ARDC chairperson mailed a copy of the February 15, 2007, ARDC documentation to Petitioner's parent immediately after completion of the meeting. [J.Ex. 4 at 22; R. Ex. 3 at 23].

18. Petitioner's parent never contacted Respondent to voice any disagreement with any decision made at the ARDC on February 15, 2007.

19. On April 27, 2007, Respondent attempted to schedule an ARDC meeting to discuss Petitioner's promotion into the \*\*\* grade in a \*\*\* school setting. Respondent mailed an invitation for an ARDC meeting to Petitioner's parent on May 15, 2007, for a meeting on May 24, 2007. On May 16, 2007, Petitioner's parent requested an explanation of goals and objectives before the scheduled meeting. She requested that she be called to pick up the information rather than have it mailed to her. She picked up information from the school office on May 16, 2007. [J.Ex. 3; R.Exs. 2 and 17].

20. Petitioner met ARDC expectations on the SDAA in all areas tested during the 2006-2007 school year in Math. On the Reading SDAA, she exceeded the ARDC's expectation of a level \*\*\* in Reading, reaching an achieved level of \*\*\*. [R.Ex. 14].

21. The ARDC convened with Petitioner's parent in attendance on May 24, 2007. Participants considered Petitioner's promotion into the \*\*\* grade. As part of the deliberations, the ARDC developed IEPs in all academic areas, social skills, and an IEP for related services of counseling. ARDC members recommended promotion of the student into \*\*\* \*\*\* School and recommended that Petitioner receive 22.8 hours of special education services per week. [J.Ex. 2; R.Ex. 1].

22. Petitioner's parent requested an IEE during the ARDC meeting of May 24, 2007, due to her specific disagreement with the testing results of the student's SDAA-II and Stanford Achievement Test Series, 10<sup>th</sup> Edition ("Stanford 10"). Petitioner's parent expressed her opinion that she did not see the same results when she worked with Petitioner as reflected in the SDAA-II and Stanford 10. ARDC paperwork for this meeting included Petitioner's request in the written deliberations. Following this meeting, the ARDC chairperson responded to requests by Petitioner's parent to get information on an IEE ready for pick-up at the \*\*\* school, as requested by the parent. [R.Exs. 1 at 2 and 17 at 1].

23. The ARDC chairperson attempted to schedule another ARDC meeting to reconvene the meeting held on the last day of school, May 24, 2007, as evidenced by the ARDC chairperson's communication log and hearing testimony. When Petitioner's parent did not provide a date for reconvening the ARDC, Respondent's Counsel sent a letter to Petitioner's parent on June 4, 2007. The letter clarified the range of dates for the ten school-day recess to reconvene on May 24, 2007, noting that Respondent had until September 10, 2007, in which to reconvene the ARDC. In response, Petitioner's parent sent a letter addressed to the \*\*\* school ARDC chairperson, the \*\*\* school campus, Respondent's Counsel, and the first Hearing Officer assigned to this docket on June 6, 2007, stating that she was available between August 27, 2007, and September 10, 2007. [P.Ex. 3 at 58-62; R.Ex. 17].

24. Respondent did not provide written notice of attempts to reconvene the ARDC meeting during August 27, 2007, through September 10, 2007. At hearing, the \*\*\* school ARDC chairperson described efforts to contact Petitioner's parent via telephone to reconvene the recessed ARDC of May 24, 2007. The chairperson did not receive a response from Petitioner's parent in August 2007. [Tr. at 102-104; R.Ex. 17 at 1].

25. During the 2006-2007 school year Petitioner received all counseling hours specified in her IEP. [P.Ex. 7 at 101-102; Tr. at 289].

26. Petitioner passed all her classes for the 2006-2007 school year and was promoted to \*\*\* school for the 2007-2008 school year. [R.Ex. 16].

27. Petitioner entered \*\*\* school in the 2007-2008 school year at the proposed campus, and the ARDC continued a BSC placement for Petitioner. [J.Ex. 2; R.Ex. 1].

28. On October 17, 2007, Respondent sent notice to convene an annual review ARDC meeting for October 26, 2007. The notice stated that the purpose of the ARDC meeting was to discuss parental concerns, review Petitioner's IEP including any new evaluation results, and develop Petitioner's IEP. Petitioner's parent participated in the meeting. [R.Ex. 24].

29. As part of the ARDC deliberations on October 26, 2007, Petitioner's parent requested an IEE based on a disagreement with "all testing based on cognitive levels as well as emotional testing." Petitioner's parent signed in disagreement on the ARDC signature page during this meeting, stating that she disagreed with the IEP and that she had been "denied an IEE." Respondent at the October 26, 2007, ARDC meeting did agree to provide an IEE in the areas of achievement, psychological, and intelligence testing during this meeting. At the conclusion of the meeting, ARDC participants made plans to reconvene the meeting. [R.Ex. 24 at 27-30; Tr. at 239].

30. In November 2007, personnel at Petitioner's \*\*\* school made and documented repeated attempts to reconvene the tabled ARDC meeting of October 26, 2007, including handing Petitioner's parent written notice for a November 8, 2007, meeting date. Ultimately, these efforts were unsuccessful as Petitioner's parent asked that the ARDC meeting not be reconvened. [R.Ex. 25 at 2]

31. Petitioner made progress on her IEP during Spring 2007. She completed her school work and passed her classes with the following final averages: Reading – \*\*; Language Arts – \*\*; Mathematics – \*\*; Science – \*\*; and, Social Studies – \*\*. [R. Ex.16].

32. During the 2007-2008 school year, Petitioner's \*\*\* school counselor began the delivery of counseling services to Petitioner on September 10, 2007. All sessions missed at the beginning of the year were made up. The total amount of counseling hours delivered to Petitioner exceeded those required under Petitioner's IEP, based on the hearing testimony and counseling services documentation log. [P.Ex. 7 at 104; R.Ex. 29 at 7; Tr. at 184-188].

33. Petitioner's two BSC classroom teachers during the 2007-2008 school year implemented Petitioner's IEPs. The IEPs implemented at the beginning of the 2007-2008 school year were put in place in the ARDC meeting held on February 15, 2007. [Tr. at 226, 251, and 327-328].

34. Petitioner passed all her subjects with a grade of \*\* with the exception of PE/Health during the first grading period of the 2007-2008 school year. During the second grading period, she made a \*\* average in Math, Study Lab, English, and Social Studies. She made a \*\* average in Enrichment, an \*\* average in PE/Health, and an \*\* average in Science. [R.Ex. 23].

35. Petitioner's conduct grades improved from the first to the second grading period during the 2007-2008 school year. At hearing, her current BSC teacher noted Petitioner's improvement on all her IEP objectives over the six-week grading period immediately preceding the due process hearing. [R.Ex. 23; Tr. at 331-332].

36. Petitioner's parent chose not to testify during the due process hearing. [Tr. at 352].

37. Respondent produced behavioral documents and counseling reports to Petitioner no later than October 9, 2007, when the second Hearing Officer assigned to this docket compelled Respondent's production of these documents. [P.Ex. 1 at 1-3].

38. Respondent refused to release Petitioner's behavioral reports to Petitioner's parent.

39. Petitioner has not received ESY services during her education by Respondent.

40. Petitioner's parent did not request ESY services from the ARDC for the student for Summer 2007. Petitioner's ARDC determined that ESY services were not necessary.

## Discussion

### **Background**

This dispute concerns the program developed by Respondent for a student with ED who transitioned from \*\*\* school to \*\*\* school in the 2007-2008 school year. Petitioner's parent believes that Respondent has not served her child properly and alleges that Respondent intentionally thwarted the efforts of Petitioner's parent to obtain and review various documents and to participate in the ARDC process. Respondent believes that the school district made an extraordinary effort to include the parent in all steps of the ARDC process, communicated appropriately with Petitioner's parent, and provided an appropriate program for Petitioner. Respondent contends that any communication difficulties occurring during the pendency of this long-standing dispute have been caused or exacerbated by Petitioner's parent. Respondent believes that Petitioner made educational and behavioral progress under Respondent's educational program for the student.

A school district's educational program for a student who is eligible for IDEA services is presumed to be appropriate. *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). Petitioner, as the party attacking the appropriateness of the school district's program, bears 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). School districts are not required to maximize the student's potential or supply every conceivable program that may benefit a student. *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034 (1982). Under *Rowley*, two factors must be considered to determine whether a school district has provided a student with a FAPE: 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. *Id.* at 206-207.

The Fifth Circuit enunciated a four-factor test in *Cypress-Fairbanks Indep. School District v. Michael F.* to assess whether an IEP is reasonably calculated to confer educational benefit to a student, including: 1) whether the eligible student's IEP was developed in accordance with proscribed procedures, including an individualized program based on the student's assessment and performance; 2) whether the program is administered in the least restrictive environment ("LRE"); 3) whether the program was delivered in a collaborative and coordinated manner by key stakeholders; and, 4) whether positive benefits are demonstrated both academically and non-academically. *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245, 247-248 (5<sup>th</sup> Cir. 1997).

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

Applying the first factor of *Michael F.*, Petitioner must prove by a preponderance of the evidence that the school district's educational program developed for the student is not individualized on the basis of the student's assessment and performance. *Id.* Petitioner specifically challenges the appropriateness of Petitioner's educational program for the 2006-2007 school year.

On October 26, 2006, Respondent convened an ARDC meeting to review Petitioner's program and to plan for a reevaluation of Petitioner, due in December 2006. When Petitioner's parent disagreed with the recommendation for continued placement in the BSC class, the ARDC reconvened on November 11, 2006. Participants recommended continued placement in a self-contained setting of the BSC classroom. During this time period and upon receipt of parental consent for the reevaluation, Respondent gathered additional information on Petitioner's current performance with new evaluation data. The evidence established that the ARDC made prompt attempts to convene upon completion of the new assessment data. After repeated effort to find a workable date for Petitioner's parent and written notification of several proposed dates, the ARDC meeting ultimately met on February 15, 2007. Yet Petitioner's parent chose not to attend this meeting. At the February 2007 ARDC meeting, ARDC members present reviewed the completed reassessment results, reviewed Petitioner's progress on current IEP goals, and adopted new IEPs for Petitioner.

Respondent produced credible evidence of prompt transmission of ARDC documents of the February 2007 ARDC meeting immediately following the meeting. By contrast, Petitioner did not produce evidence or testimony that Petitioner's parent did not receive these documents or, once received, that Petitioner requested an additional ARDC meeting to revise Petitioner's IEP.

Petitioner did not produce documentary evidence or testimony to show a lack of progress by Petitioner under the 2006-2007 IEP. Instead, the evidence established that Petitioner met ARDC expectations on the SDAA assessments in both 2005-2006 and in 2006-2007, even surpassing ARDC expectations in Reading. The ARDC considered Petitioner's need for ESY services during the ARDC meeting of February 15, 2007, but, as all participants agreed, Petitioner was not likely to show regression during the summer months. Petitioner did not produce any testimony or documentary evidence that Petitioner, in fact, regressed during Summer 2007.

Without a showing by Petitioner that Petitioner's IEP was inappropriate, I conclude that Respondent's program was appropriately individualized and conferred academic benefit to Petitioner during 2006-2007. Respondent repeatedly and properly convened the ARDC to review, revise, and develop Petitioner's IEP based on her individual need. Petitioner's parent was included in the ARDC process and given full opportunity to participate in ARDC meetings or to challenge the results of meetings she did not attend.

### **Behavioral Placement**

Under the second factor in the four-factor *Michael F.* test, the least restrictive environment must be used to administer the student's program. *Id.* Petitioner's parent challenges her daughter's receipt of a FAPE under Respondent's program in the BSC placement. According to Petitioner's parent, Respondent improperly moved her daughter's placement to another classroom without her input and without ARDC action, resulting in improper implementation of Petitioner's IEP. Respondent acknowledges that Petitioner moved into another classroom during the 2006-2007 school year by January 2007, but contends that full implementation continued of Petitioner's IEP at all times pertinent. I agree with Respondent.

Respondent's testifying BSC teacher for the 2006-2007 school year, the \*\*\* school ARDC chairperson, and Petitioner's special education teacher beginning in January 2007, gave credible and convincing testimony that Petitioner, on the directive of Petitioner's parent, refused to enter her BSC classroom. Respondent addressed the student's placement issue in the October 2006 ARDC meeting

when Petitioner's parent requested that her daughter be moved out of her current BSC classroom. The ARDC recessed and gathered more information on possible placements, reconvening in November 2006. Although Petitioner's parent disagreed, the other ARDC members recommended continued placement of Petitioner in her BSC classroom. Yet, at this time, Petitioner continued to refuse to enter the classroom. Respondent's educators took steps to implement Petitioner's IEP with the supervision of the \*\*\* school ARDC chairperson, a certified special education teacher. In January, as the problem persisted, the ARDC took simultaneous steps to get Petitioner's parent to commit to an ARDC date to discuss Petitioner's progress, program and reassessment. Respondent took steps to implement Petitioner's IEP in another special education self-contained classroom. Yet, Petitioner's parent declined to participate in the subsequent ARDC meeting of February 2007.

Based on the specific facts of this dispute, I do not fault Respondent for failing to get Petitioner's parent to come to another ARDC meeting. By contrast, the evidence preponderates to show that Respondent documented repeated efforts to get Petitioner's parent to attend another ARDC meeting and that she did not ultimately participate in the February 2007 ARDC meeting. I am persuaded that Petitioner directed her daughter not to enter the BSC classroom. As Petitioner continued her refusal to enter the classroom, Respondent was not relieved from the duty to deliver Petitioner's IEP. As enunciated by the Fifth Circuit in *Bobby R.*, a school district has some flexibility in implementation of a student's IEP. *Houston Indep. Sch. Dist. V. Bobby R.*, 200 F.3d 341, 349-350 (5<sup>th</sup> Cir.), *cert. denied*, 521 U.S. 817 (2000). Petitioner did not meet her burden to show a failure by Respondent to implement her IEP from January 2007 to the present.

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

The third factor under the four-part *Michael F.* test requires a school district to deliver an educational program to the student in a collaborative and coordinated manner by key stakeholders. *Michael F.*, *supra*. Petitioner's parent alleges that she was not allowed to be a full participant in the ARDC process by various actions of Respondent, discussed separately below, including improper notice of an ARDC meeting, a failure to provide student documents at parental request, and improper refusal of a parental request for an IEE. Respondent counters these allegations with specific testimony and documentary evidence to show compliance with the procedural requirements of the ARDC process.

#### **A. ARDC Meeting Notification and Scheduling**

##### **a. Notification of the ARDC Meeting held on February 15, 2007.**

Under IDEA and its implementing regulations, written notice of an ARDC meeting must specify the purpose, participants, time, and location of the proposed meeting. 34 C.F.R. §300.322. The notice must also inform a parent of the right to include other individuals who have knowledge or special expertise about the student. *Id.* Texas law further requires that the notification of an ARDC meeting must be provided within a "reasonable" time before the meeting, defined as at least five school days, unless the parent agrees otherwise. 19 Tex.Admin.Code §89.1015. In the event that the school district is unable to persuade a parent to come to an ARDC meeting, IDEA's implementing regulations allow the school district to proceed with the meeting. The school district is required, however, to keep records of attempts to include the parent. 34 C.F.R. §300.322(d).

Petitioner's parent complains that Respondent did not provide proper notice to her prior to the ARDC meeting ultimately held without her on February 15, 2007. In response, Respondent provided hearing testimony and documentary evidence to show that Respondent met the notification

requirements under state and federal law for the February 2007 meeting. On January 4, 2007, the ARDC chairperson began scheduling attempts for an ARDC meeting to review the completed reevaluation results. Repeated efforts by the chairperson to find a mutually agreeable date and time were thwarted by Petitioner's various refusals to agree and rejection of notices delivered to Petitioner's residence. After the third attempt to find a mutually agreeable time and date for the necessary ARDC meeting, the ARDC chairperson sent notice to Petitioner's parent by courier and by U.S. Mail on February 8, 2007, for the meeting scheduled for February 15, 2007. I find that the preponderance of the evidence shows that Respondent properly conveyed notice to Petitioner for the February 2007 ARDC meeting.

**b. Failure to Reschedule the ARDC meeting of May 24, 2007.**

When the ARDC met to discuss Petitioner's promotion on May 24, 2007, the meeting ended in disagreement. Petitioner's parent believes that Respondent failed to reconvene this ARDC meeting within the proper ten-day period. As proof, Petitioner submitted documentary evidence to show that Petitioner's parent responded to Respondent's request for workable dates to reconvene the ARDC between August 27 to September 10, 2007, but Respondent failed to respond and did not reconvene the ARDC meeting. [P.Ex. 3].

Under 19 Tex. Admin. Code §89.1050(h)(1), a parent who disagrees with an ARDC decision "shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days." At hearing, Petitioner's \*\*\* school ARDC chairperson testified that Petitioner's parent did not submit dates for a reconvened ARDC meeting to Respondent during the summer. The chairperson attempted to reach Petitioner's parent by telephone at the beginning of the 2007-2008 school year to reconvene the May 2007 ARDC meeting, but Petitioner's parent did not reply. While Petitioner's documents and facsimile confirmation shows that Petitioner's parent did, in fact, submit a range of dates to Respondent for reconvening the ARDC within the ten school-day window, I find no evidence in the record to show that Petitioner ever requested an ARDC meeting and Respondent refused. Instead, the preponderance of the credible testimony and documentary evidence affirms that Respondent was not able to reconvene the ARDC meeting within the ten school-day period, telephone calls and attempts to contact Petitioner's parent at the beginning of the year were not successful, and the ten-day window for reconvening the May 24, 2007, ARDC meeting closed without further inquiry from Petitioner.

Even if Respondent failed to properly submit additional dates for reconvening the ARDC meeting in August and September 2007 to Petitioner through the form of a written invitation to a proposed ARDC meeting, I find no evidence in the record to show that such a procedural error impacted Petitioner's receipt of an educational benefit or prevented the parent overall from participating meaningfully in educational planning for the student. By contrast, the evidence established that Petitioner began the school year in her new \*\*\* school with implementation of the IEPs put in place on February 15, 2007, rather than the IEPs from the ARDC meeting that ended in disagreement on May 24, 2007. Petitioner made progress during the beginning of the 2007-2008 school year under her IEP, as evidenced by school records.

**B. Release of Documents**

**a. Provision of Reevaluation Results to the Parent.**

Petitioner's parent alleges that her request for a copy of her daughter's reevaluation results was not timely provided to her, resulting in an inability of the parent to be prepared to give input into

the student's IEP development prior to the ARDC meeting of February 15, 2007. The testimony of the \*\*\* school ARDC chairperson established that Petitioner's parent requested that the documents be made ready for her pick-up at Petitioner's school, but that Petitioner's parent never picked up the documents. I find that Petitioner has not met her burden to prove that Respondent improperly withheld reevaluation results from Petitioner's parent.

**b. Failure to Release Behavioral Reports to the Parent.**

Petitioner's documentary evidence contains copies of behavioral reports of the student during the 2006-2007 and 2007-2008 school years. Although Petitioner alleges that Respondent withheld behavioral reports concerning her daughter, Petitioner's disclosure includes disciplinary reports that were, in fact, provided to Petitioner no later than October 9, 2007. [P.Ex. 1 at 1-3]. Petitioner failed to meet her burden to show that behavioral reports were withheld from Petitioner's parent by Respondent.

**C. IEE Requests**

**a. Request on May 24, 2007.**

At the ARDC meeting held on May 24, 2007, Petitioner's parent disagreed with testing results of the SDAA-II and the Stanford 10, and requested an IEE. Respondent counters that before a school district has a duty to grant or deny an IEE, a parent must indicate disagreement with an "evaluation" obtained by the school district as the term is defined under IDEA.

Implementing regulations of IDEA at 34 C.F.R. §300.15 define an "evaluation" as "procedures used in accordance with §§300.304 through 300.311 to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs." [Emphasis added.] Respondent argues, and I agree, that the SDAA-II and Stanford 10 are not evaluations obtained under §§300.304 through 300.311, but instead qualify as state and district-wide assessments of student achievement that the ARDC considered under the IEP provisions of IDEA. See 34 C.F.R. 300.320(a)(6). As a result, the disagreement voiced by Petitioner's parent with the SDAA-II and the Stanford 10 results are not a disagreement for which an IEE is available.

**b. Request on October 26, 2007.**

During the ARDC meeting on October 26, 2007, Petitioner's parent requested an IEE based on her disagreement of "all testing based on cognitive levels as well as emotional testing." In response during the same ARDC meeting, the ARDC granted the IEE for testing areas of achievement, psychological, and intelligence testing. Respondent refuted these allegations with documentation of this ARDC meeting and the testimony of one of the ARDC members present at this meeting – the \*\*\* school principal. Contrary to Petitioner's allegation, the evidence preponderates that Respondent granted the parental request for an IEE at the ARDC meeting on October 26, 2007. Petitioner has not sustained her burden.

For the reasons discussed above, I find that the third factor under the *Michael F.* test has been met by Respondent. *Michael F.*, *supra*.

**Academic and Non-academic Benefits**

The fourth and final factor of the *Michael F.* test requires a showing by the school district that the student's individualized program resulted in both academic and non-academic benefits. *Id.*

Petitioner's parent believes her child did not progress under her program. Yet the weight of the hearing testimony of classroom providers and the data collected by Respondent such as reevaluation results, grades, and teacher observations, show that the student continues to progress under her IEP. I find that Respondent met the fourth factor of the *Michael F.* test. *Id.*

#### **FAPE**

Based on the foregoing, I conclude that Respondent developed and implemented an educational program for Petitioner at all times during the 2006-2007 and 2007-2008 school years as agreed upon by the ARDC. The program included a self-contained placement with trained educators certified in special education. Petitioner received related services of counseling in the 2006-2007 and 2007-2008 school years, as set out in her IEP. Further, the program meets all four factors of *Michael F.*, as evidenced by Petitioner's progress in her program. Petitioner exhibited ongoing progress on her IEP goals and academic progress during the 2006-2007 and 2007-2008 school years. *Michael F.*, *supra.* I find that Petitioner made meaningful progress in the special education program designed by Respondent.

### **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 her parent 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 free appropriate public education. 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 her burden of proof in this case.
4. Petitioner did not meet her 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 her burden to show a violation of substantive or procedural violations of 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).

6. 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 8<sup>th</sup> day of May 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.

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

**SYNOPSIS OF DECISION**

**ISSUE:**           A.       *Whether the school district failed to provide Extended School Year (“ESY”) services during Summer 2007, and if so, whether the lack of ESY services denied the student a free appropriate public education (“FAPE”)?*

**CITATION:**       34 C.F.R. §300.106;  
19 T.A.C. §§89.1055(c) and 89.1065.

**HELD:**            **For the District.**

**ISSUE:**           B.       *Whether the school district failed to develop an appropriate Individualized Education Program (“IEP”) for the student’s 2006-2007 school year, resulting in a denial of FAPE?*

**CITATION:**       34 C.F.R. §300.324;  
19 T.A.C. §89.1055.

**HELD:**            **For the District.**

**ISSUE:**           C.       *Whether the school district failed to implement the IEP from January 2007 to the present, resulting in a denial of FAPE?*

**CITATION:**       34 C.F.R. §300.323(a) and (d).

**HELD:**            **For the District.**

**ISSUE:** D. *Whether the school district failed to submit a proper Admission, Review, and Dismissal Committee (“ARDC”) notice for an ARDC meeting held on February 15, 2007?*

**CITATION:** 34 C.F.R. §§300.322(b) and 300.501(b)(2);  
19 T.A.C. §§89.1015 and 89.1045.

**HELD:** For the District.

**ISSUE:** E. *Whether the school district failed to submit test evaluations to the parent prior to an ARDC meeting held on February 15, 2007?*

**CITATION:** 34 C.F.R. §§300.306(a)(2), 300.501(a), and 300.613.

**HELD:** For the District.

**ISSUE:** F. *Whether the school district failed to reschedule a “tabled” or recessed ARDC meeting and then implemented the IEP improperly in August 2007?*

**CITATION:** 34 C.F.R. §§300.322 and 300.501(b);  
19 T.A.C. §89.1050(h)(1).

**HELD:** For the District.

**ISSUE:** G. *Whether the school district failed to release behavior reports to the parent from the student’s \*\*\* school campus and \*\*\* school campus from August 2006 to September 28, 2007?*

**CITATION:** 34 C.F.R. §§300.306(a)(2), 300.501(a), and 300.613.

**HELD:** For the District.

**ISSUE:** H. *Whether the school district improperly denied the parent an Independent Educational Evaluation (“IEE”)?*

**CITATION:** 34 C.F.R. §300.502.

**HELD:** For the District.