

STUDENT, <i>B/N/F</i> PARENTS,	§	BEFORE A SPECIAL EDUCATION
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
CHINA SPRING INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

**DECISION OF THE SPECIAL EDUCATION HEARING OFFICER**

**I.  
STATEMENT OF THE CASE**

On May 15, 2007, Petitioner, Student *b/n/f* Parents (“Student”), requested a Due Process Hearing pursuant to the Individuals With Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. §1400 *et. seq.*, contending that Respondent, China Spring Independent School District (“CSISD” or “the District”) denied Student a free, appropriate, public education (“FAPE”). Student complained of acts and omissions on the part of CSISD during school year 2005-2006 related to testing, implementing Student’s IEP, timely convening an ARD Committee meeting, providing the Parents notice of an ARD Committee meeting convened in May 2006, and failing to develop an appropriate IEP for school year 2006-2007.

On June 1, 2007, CSISD filed a Motion for Summary Judgment, contending that the one-year statute of limitations adopted by the State of Texas precluded all of Student’s claims arising prior to May 15, 2006. The undersigned granted, in part, CSISD’s Motion for Summary Judgment, which left the following issues for the Due Process Hearing: 1) whether CSISD denied the Parents the right to participate in the May 23, 2006, ARD Committee meeting; 2) whether Student’s IEP developed at that May 23, 2006, ARD Committee meeting was appropriate; and 3) whether Student’s private educational services during 2006-2007 were appropriate. At that time, Student was requesting reimbursement for private educational services and compensatory special education or related services. At the hearing Student requested future private educational services until Student graduates from high school.

## II. PROCEDURAL HISTORY

Upon its receipt of Student's Request for Due Process Hearing on May 15, 2007, the Texas Education Agency ("TEA") assigned the case Docket No. 252-SE-0507 and forwarded it to the undersigned Hearing Officer, who transmitted the Initial Scheduling Order to the parties on May 21, 2007. Pursuant to that Order, the pre-hearing telephone conference was set for June 4, 2007, the Due Process Hearing was set for June 29, 2007, and the Decision deadline was set for July 29, 2007.

On May 24, 2007, CSISD filed its Response to Complaint. On May 25, 2007, CSISD filed its Amended Response to Complaint. Also on that date CSISD filed its Notice of Insufficiency of Complaint, asserting that Student's complaint failed to comply with the pleading requirements of IDEIA. The undersigned Hearing Officer found that Student's complaint was sufficient and overruled CSISD's Objection on May 30, 2007.

On June 4, 2007, the parties convened for the pre-hearing telephone conference. In attendance were the following: 1) Ms. Yvonnilda Muniz, counsel for Student; 2) Student's Parents; 3) Ms. Evelyn Howard-Hand, counsel for CSISD; 4) the court reporter, who made a record of the telephone conference; and 5) the undersigned Hearing Officer. During this telephone conference the parties discussed the issues and re-scheduled the Due Process Hearing to August 29-31, 2007, with Disclosures due August 22, 2007, and the Decision Deadline extended to September 30, 2007. Also during the pre-hearing telephone conference, the parties discussed the Motion for Summary Judgment filed by CSISD on June 1, 2007. On July 10, 2007, the undersigned Hearing Officer issued the Second Order Scheduling Due Process Hearing, which set forth the issues originally pled by Student, with a scheduling order related to the pending Motion for Summary Judgment. In compliance with the agreement of the parties, Student filed his Response to the Motion for Summary Judgment on July 16, 2007. CSISD filed a Reply to Student's Response on July 16, 2007.

On August 3, 2007, the undersigned granted, in part, CSISD's Motion for Summary Judgment, dismissing all claims arising prior to May 15, 2006, and limiting the Due Process Hearing issues to any claim arising after May 15, 2006.<sup>1</sup>

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<sup>1</sup> CSISD sought a full summary judgment on all issues, alleging that 1) all of Student's claims related to events prior to May 15, 2006, and are barred by the one-year statute of limitations; 2) Student's claims for the 2006-2007 school year and any future school years are moot because Student's parents unilaterally withdrew him from CSISD; and 3) Student is not entitled to prospective relief because he cannot prove that CSISD is unable to provide him FAPE. Student responded that the statute of limitations is not a bar in this case because 1) IDEIA has a two-year statute of limitations, and 2) even if the one-year limitations period is applicable, Student's claims fell within the exception, *i.e.*, the Parents were prevented from requesting a hearing due to "specific misrepresentations by the local educational agency that it had resolved the problem forming the basis of the complaint." 20 U.S.C. 1415(f)(3)(D). Finding that the exception did not apply, on August 3, 2007, the undersigned granted the summary judgment, in part, leaving for the Due Process Hearing "any and all claims occurring after May 15, 2006. ... includ[ing] claims related to the May 23, 2006, ARD Committee meeting, whether CSISD could, and can, provide [Student] with an appropriate program and

On August 20, 2007, Student filed a Motion for Continuance of the August 29-31, 2007, Due Process Hearing based upon personal health issues of the Student's counsel. Finding good cause, the undersigned granted the continuance and scheduled another telephone conference.

On August 29, 2007, another pre-hearing telephone conference was held. In attendance were the following: 1) Ms. Yvonnilda Muniz, counsel for Student; 2) Mr. David Beinke, Advocate; 3) Student's Parents; 4) Ms. Evelyn Howard-Hand, counsel for CSISD; 5) the court reporter, who made a record of the telephone conference; and 6) the undersigned Hearing Officer. During this telephone conference the parties re-scheduled the Due Process Hearing for November 1-2, 2007. The Disclosure Deadline was agreed to be 5:00 p.m., October 25, 2007, and the Decision Deadline was extended to December 2, 2007.

On October 18, 2007, Student requested another continuance of the Due Process Hearing based upon personal health issues of the Student's counsel. Finding good cause, the undersigned granted the continuance and scheduled another telephone conference.

On November 19, 2007, another pre-hearing telephone conference was held. In attendance were the following: 1) Ms. Yvonnilda Muniz, counsel for Student; 2) Mr. David Beinke, Advocate; 3) Student's Mother; 4) Ms. Evelyn Howard-Hand, counsel for CSISD; 5) the court reporter, who made a record of the telephone conference; and 6) the undersigned Hearing Officer. During this telephone conference the parties re-scheduled the Due Process Hearing for February 11-12, 2008. The Disclosure Deadline was agreed to be 5:00 p.m., February 1, 2008, and the Decision Deadline was extended to March 2, 2008.

The Due Process Hearing convened on February 11-12, 2008. Both parties introduced documentary evidence; Student called eight (8) witnesses; CSISD called seven (7) witnesses. Both parties conducted extensive cross-examination of the witnesses. Because the parties were unable to complete their presentations during the allotted two-day Hearing, and in light of the sudden illness of counsel for CSISD on February 12, 2008, the undersigned granted a request to re-convene for a final day on February 28, 2008.

During the Hearing Student was represented by counsel, Ms. Muniz and Ms. Beverly Davidek. Student's Mother attended the Hearing all three (3) days; Student's Father attended the first two (2) days. CSISD was represented by counsel, Ms. Evelyn Howard-Hand. Ms. \*\*, CSISD Special Education Coordinator, served as the District's representative. Dr. \*\* Stern, CSISD's expert, attended a portion of the Hearing on February 12 and 28, 2008.

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placement, and whether [Student] is entitled to reimbursement, and continued payment, for private school placement."

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At the conclusion of the Hearing on February 28, 2008, the parties and Hearing Officer agreed to a post-hearing schedule. The parties' closing arguments would be due April 25, 2008, and the Decision would be rendered April 30, 2008. Due to personal illness of the Hearing Officer, the Decision Deadline was extended by agreement to May 2, 2008.

### III. FINDINGS OF FACT

1. Student is a male who resides with his Parents within the jurisdictional limits of CSISD. Student enrolled in CSISD when he was in \*\*
2. CSISD is a political subdivision of the State of Texas and a duly incorporated independent school district.
3. At the time of Student's withdrawal from CSISD in April 2006, Student was attending \*\*\* school, receiving special education services under the eligibility categories of a) other health impairment ("OHI"), based upon attention deficit/hyperactivity disorder-inattentive type ("ADHD"), and b) learning disability ("LD") in math calculation and written expression. Student's ADHD classification was provided by his medical doctor.
4. Student was placed in the general education classroom with access to content mastery. Student had certain modifications in place to provide him extra time to complete his work and manage his behaviors.
5. On October 20, 2004, Student's \*\*\* grade year, Student's Admission, Review, Dismissal Committee ("ARD Committee") met to review an evaluation. A functional behavioral assessment ("FBA") was done. The ARD Committee developed a Behavior Intervention Plan ("BIP"), which targeted building and maintaining satisfactory interpersonal relationship. The ARD Committee specified that Student would be monitored in physical education ("PE") due to problems with other students in that setting.
6. Student's Parents ultimately withdrew Student from CSISD in November 2004 to home-school him because they believed the District was not following Student's IEP.
7. Student re-enrolled in CSISD in August 2005. Student's ARD Committee met on August 16, 2005, to develop an IEP. Student's Parents requested that he be allowed to skip \*\*\* grade, which was the grade he was entering in fall 2005, and be directly placed in the \*\*\* grade because he had suffered a traumatic event perpetrated by another \*\*\*-grade student and they felt that separating the two \*\*\* would be beneficial to Student. Because Student passed the \*\*\* grade released Texas Assessment of Knowledge and Skills ("TAKS") tests in math and reading,

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the ARD Committee placed Student in the eighth grade for school year 2005-2006. The Committee developed an IEP. No BIP was requested or developed by the Committee, which reached consensus.

8. On October 11, 2005, Student's ARD Committee convened to address concerns of the Parents and teachers regarding Student's progress. Student was having trouble staying on task, completing assignments, turning in work, daydreaming, following instructions (especially in math), maintaining appropriate peer and teacher relationships, and mastering concepts (especially those that were built upon seventh grade material). The ARD Committee changed Student's schedule by withdrawing him from \*\*\* and placing him in \*\*\* and changing some of his teachers.
9. Throughout the fall 2005 semester, Student continued to display negative behaviors. It was difficult for his teachers to get him to perform independent work without close supervision. Student was tardy often; Student refused to show his work in math, although admonished repeatedly to do so. When confronted by a teacher Student often became obstinate. Fellow students did not work well with him. Some requested that the teacher not assign Student to work in their group because he agitated them. On one occasion \*\*\*.
10. Student's Principal received several disciplinary referrals for verbal confrontations with students and teachers, problems with classmates, and tardiness. Student often went to the Principal's office just to inform him of some problems with teachers or students. Student fostered some of the negative reactions of his peers because he inserted himself into issues that did not concern him. Likewise, he created problems with his teachers when he refused to follow directions, show his work, turn in his work, or stay on task.
11. At this time, Student's Parents requested counseling, which required an assessment. On November 29, 2005, Student's Mother signed the consent for a psychological evaluation.
12. On December 9, 2005, Student's ARD Committee convened to discuss concerns of Student's Parents related to whether Student's teachers were fully implementing his IEP. At the request of the Parents, the ARD Committee agreed to complete an FBA. Student's Mother requested that the Parents be contacted anytime Student had missing work. Student's Mother did not want Student removed from core academic classes for disciplinary matters.
13. Prior to the Christmas break, Student's Parents received notice from Student's teachers that he was missing fifteen (15) assignments, which were due the next day. Student completed these assignments and turned them in as required. However, he failed three (3) of his seven (7) classes: \*\*\*.

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14. Although the FBA was not done, the psychological evaluation was completed by the end of December 2005 by \*\*\*, a psychologist who works with the Rio Brazos Education Co-op. \*\*\* found that Student has ADHD, mild to moderate; Student does not have an emerging personality disorder; Student is more immature and oppositional than inattentive; Student had good concentration and attention in a one-on-one setting. \*\*\* found that certain psychosocial stressors impact Student: academic demands as well as sensitivities within relationships with peers and teachers. In his prior 2004 assessment report, \*\*\* found that Student had ADHD, moderate to significant, as well as oppositional defiant disorder.
15. \*\*\*, CSISD Special Education Coordinator, received \*\*\* report on January 11, 2006, and sent it to the Parents on February 2, 2006, along with a letter requesting that the Parents contact her if there was a need to convene an ARD Committee meeting.
16. Parents were under the impression that a mandatory ARD Committee had to convene within ten (10) days of the psychological report and that CSISD's failure to notice such meeting until March 2006 was procedurally infirm. As such, Parents refused to attend an ARD Committee meeting in early March 2006 because they did not receive five-days' notice. The ARD Committee meeting was re-scheduled to provide them with this notice.
17. On March 28, 2006, Student's ARD Committee met to review Student's progress and assessment results. Parents requested one-on-one instruction; the Committee refused this request and provided Parents with a notice of refusal. The ARD Committee did not reach consensus and the Parents agreed to waive the ten-day recess period.
18. Student's Parents were extremely upset with the District, believing that CSISD was not implementing Student's IEPs, not educating Student, not protecting Student from class bullies, and blaming Student for any altercations that occurred on campus. On March 28, 2006, Parents filed a complaint with TEA, which held that the District failed to submit documentation of its implementation of Student's modifications and accommodations. A required corrective measure was to convene an ARD Committee to discuss compensatory services for Student.
19. On April 17, 2006, Parents requested that the District withdraw Student. The paper work was not finalized until May 2006. Student was deemed withdrawn from CSISD on April 17, 2006.
20. Student withdrew prior to taking the 2006 TAKs exams for \*\*\* graders. Student did not complete his courses in spring 2006.
21. On May 5, 2006, CSISD mailed Parents a notice that Student's annual ARD Committee meeting would be held on May 23, 2006. On May 15, 2006, a reminder

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was mailed to Parents. On May 16, 2006, Student's Parents informed the District that they would not participate in the ARD because Student was no longer enrolled in the District.

22. On May 23, 2006, Student's ARD Committee convened for Student's annual ARD. Parents were not in attendance. The Committee removed some of Student's prior modifications and added others; increased Student's time in content mastery; added a parent liaison to improve communications between the District and Parents; and provided for summer school 2006 so that Student could make up lost credits and be promoted to ninth grade.
23. Since Student's withdrawal in April 2006, he has received educational services from his mother and an instructional aide. Student has not attended private school except for an on-line algebra class through the \*\*\*.
24. On March 15, 2007, Student filed the Request for Due Process Hearing in this matter. Most of Student's issues were dismissed based upon the one-year statute of limitations, which applies to this case.
25. On November 23, 2007, Student was evaluated by \*\*\*, Ph.D. \*\*\* found that Student no longer qualifies for special education services under the LD category and, although he is not a medical doctor, he found that Student no longer exhibits characteristics of ADHD.<sup>2</sup> \*\*\* found that Student's behaviors were more likely a result of immaturity, family issues, anxiety resulting from the traumatic event Student suffered in the \*\*\* grade, and academic and social problems directly related to being home-schooled and skipping the \*\*\* grade.
26. The evidence was insufficient to prove that the May 23, 2006, IEP was not individualized under the guidance of Student's then-current assessments and performance data.
27. The evidence was insufficient to prove that the May 23, 2006, IEP was not developed in a coordinated and collaborative manner by Student's key stakeholders and that it could not be accomplished in a coordinated and collaborative manner by Student's key stakeholders.
28. The evidence was insufficient to prove that Student's recommended placement for school year 2006-2007 in general education, with an increase in time allowed in content mastery, was not in the least restrictive environment ("LRE") for Student.
29. The evidence was insufficient to establish that the May 23, 2006, IEP could not render positive benefits to Student in both academic and nonacademic areas.

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<sup>2</sup> Whether Student qualifies for special education services is not an issue in this proceeding.

30. The evidence was insufficient to establish that Student has made educational progress since his withdrawal from CSISD in April 2006.

#### IV. DISCUSSION

The issues in this case were limited by summary judgment to any and all issues occurring after May 15, 2005, which is one year prior to Student's May 15, 2006, filing. The only issue arising during that time period concerns the May 23, 2006, ARD Committee meeting convened without Student's Parents. Student argues that the District's proposed IEP for school year 2006-2007 was infirm on several grounds: the parents were precluded from any discussion related to the May 23, 2006, ARD Committee meeting where this IEP was developed because they never received notice from the District of either the meeting date or the subsequent ARD Committee report; the IEP was developed using insufficient assessments; the IEP as written cannot provide Student with an appropriate education. As such Student seeks reimbursement for all private school expenses incurred to date and future private school educational services until Student graduates from high school.

CSISD counters by asserting that Student can make educational progress under the IEP if given the opportunity; the assessments were current and appropriate; the Parents willingly withdrew Student from CSISD and declined to participate in the May 23, 2006, ARD Committee meeting, though duly noticed; and even if the IEP was infirm, Student failed to prove that the requested private educational placement has or can provide him with any educational benefit.

##### **A. The Appropriateness of the May 23, 2006, IEP**

IDEIA mandates that all state school districts receiving federal funding must provide all handicapped children a free, appropriate, public education. The United States Supreme Court, in *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982), established a two-part test for determining whether a school district has provided a student FAPE: 1) the school district must comply with the procedural requirements of IDEIA, and 2) the school district must design and implement a program "... reasonably calculated to enable the child to receive educational benefits." An educational benefit must be meaningful and provide the "basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit to the handicapped child." *Rowley*, 458 U.S. at 200-01. In determining whether a child is receiving FAPE, the *Rowley* Court insisted that the reviewing court must not substitute its concept of sound educational policy for that of the school authorities. *Id.*, 458 U.S. at 206. Although the school district need only provide "some educational benefit," the educational program must be meaningful. *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). The educational benefit cannot be a mere modicum or *de minimis*. It must be likely to produce progress, not

regression or trivial educational advancement. *Houston Independent School District v. Bobby R. and Caius R.*, 200 F.3d 341, 347 (5<sup>th</sup> Cir. 2000).

In *Cypress-Fairbanks Independent School District v. Michael F.*, the Court set forth four factors that aid in evaluating whether a student is receiving the “basic floor of opportunity, or access to specialized instruction and related services, which are individually designed to provide educational benefit” to that student: 1) whether there is an individualized program based on the student's assessment and performance; 2) whether the individualized program is administered in the least restrictive environment (“LRE”); 3) whether the services are provided in a coordinated and collaborative manner by the key stakeholders; and 4) whether positive benefits are demonstrated both academically and non-academically.

In applying these factors to the case at bar, it is clear that the proposed May 23, 2006, IEP was appropriate and would have provided Student with a meaningful educational benefit.

**1. The May 23, 2006, IEP Was Individualized On The Basis Of Student’s Assessments And Performance.**

Although there were some changes to Student’s modifications from prior IEPs, the changes were minimal and were conceived by Student’s teachers through their history with him. During school year 2005-2006, Student received passing grades when he turned in his work. His behaviors in class, such as drawing, failing to be on task, failing to complete tests, and generally, refusing to work when directly instructed to do so were viewed as more deliberate actions than actions springing from a disability. When forced to complete fifteen (15) assignments in one night, Student accomplished this task in a timely manner. This is not characteristic of ADHD. As such, the ARD Committee decided that Student no longer would receive extended time to complete assignments. It did not, however, remove the modification that allowed modified tests or additional testing time.

Student’s IEP called for the use of a parent liaison to improve the communication between the school and Parents. The relationship of these parties had deteriorated significantly to the point that the police were called to the campus in spring 2006 during an altercation between the Parents and the Principal. Messages transmitted by the Parents to the District via email degenerated to the point of being abhorrent. Parents were demanding that neither administrator attend any of Student’s ARD Committee meetings or meet to discuss anything, including disciplinary matters, with Student. The Parents had lost all faith in the District’s ability to educate their son. Accordingly, the liaison concept was developed to try and bring the parties together for the good of child. The liaison had worked previously with this family and the Committee believed that she could effect great benefit in the communications arena. Additionally, she would work with Student with any emotional, social, academic, or communication issues.

Further, the May 23, 2006, IEP provided summer school services to Student so that he could make up his lost work from spring 2006 when he withdrew without completing his courses. The goal was to help him achieve success in summer school so that he could promote with his class to the ninth grade.

In addition to teacher input, the Committee utilized the 2003 OHI medical form, which found Student to have ADHD, the previous 2004 educational evaluation, which diagnosed a learning disability, and the psychological assessment performed by \*\*\* in December 2005. As part of his overall evaluation, \*\*\* reviewed existing evaluation data, including information provided by the Parents and teachers; reviewed assessment information provided by the Parents and teachers; met with Student and performed assessments including the Minnesota Multiphasic Personality Inventory (MMPI/Mini-Mult.). Based upon his assessment, \*\*\* found that Student manifested no severe emotional disturbance; Student's problems were grounded in attention issues and not hyperactivity and that the inattention was generally of minimal concern to Student's teachers; and that Student would be capable of following rules and regulations at school. Consequently, \*\*\* recommended that services that addressed the inattention "should be conservative." The May 23, 2006, IEP embraces this recommendation.

Student has alleged that the failure of \*\*\* to conduct the FBA as agreed by the November 2005 ARD Committee results in an assessment that is inadequate as a basis for developing the May 23, 2006, IEP. The District admits that no FBA was performed. However, \*\*\* report suggests that there was no need for an FBA. His final management recommendation to Student's ARD Committee was "[t]here are no emotional issues that interfere with learning." Accordingly, to the extent CSISD committed a procedural violation of IDEIA in failing to conduct the FBA, it was *de minimis*.

## **2. Student's Services Were Developed In A Coordinated And Collaborative Manner By The Key Stakeholders.**

Student claims that the District failed to inform Parents of the May 23, 2006, ARD Committee meeting and that such failure denied him FAPE. While it is certainly difficult to remember details of an event occurring two (2) years ago, the evidence presented does not support this claimed procedural error. Furthermore, Student asserts that the failure of the District to involve the Parents in this ARD Committee meeting renders the resulting IEP infirm because it was not developed by all of the key stakeholders.

The only missing participants at the ARD Committee meeting were the Parents. Other key stakeholders attended and developed an appropriate IEP.

\*\*\* attended to provide input to the Committee related to his December 2005 assessment. The school Principal likewise attended, as did teachers who had worked with Student during the prior months. Parents claim they never received 1) the notice of the meeting; 2) the subsequent reminder that the meeting was going to occur; or 3) the report generated by the Committee. CSISD claims it did mail all of these documents and that based upon a telephone conference between \*\*\* and Mother, the Parents were

declining to attend the meeting. Mother claims no such telephone conference happened and she was shocked when she found out nine (9) months later that the ARD Committee had met in May 2006.

The evidence was more persuasive that Student's Parents did receive notice of the ARD Committee meeting but chose not to attend. The statements noted by \*\*\* on school records, that Mother informed her that they would not attend because Student had been withdrawn and there was no reason for the meeting, are more plausible than Mother's recall of the circumstances without documentation. Likewise, it is more believable that the District sent the documents to the Parents by mail, at their address, and that those documents were received at that address. Parents had received written notification by mail from the District without any problems for years. The fact that suddenly the District was not sending notices or that the notices and report related to the May 23, 2006, ARD Committee meeting were not received is just not logical. It could be that the Parents failed to open the mail from the District since Student was no longer enrolled and the relevance of the mail seemed obscure.

The District neither committed a procedural error in proceeding with the ARD Committee meeting without the Parents nor in doing so, failed to assemble a panel of key stakeholders to develop Student's program and placement.

### **3. Student's May 23, 2006, IEP Was Reasonably Calculated To Provide Student With Academic And Non-Academic Benefits.**

This component of the analysis is difficult in that Student's May 23, 2006, IEP was never put to the test. Had Student attended summer school and been successful, then he would have promoted to the \*\*\* grade with his fellow classmates, as contemplated by the IEP. The addition of the parent liaison was a creative component of Student's IEP. With her assistance to both the Parents and Student, communication issues could have been corrected and monitored. Student appeared to often be in the middle of the dispute between his Parents and the District. Removing this pressure would free him to work on his own relationships with his peers and instructors.

The May 23, 2006, IEP had many components of prior IEPs. Under these prior IEPs, Student demonstrated progress. Not to be forgotten is the fact that Student skipped the \*\*\* grade entirely and went from a home-schooling environment to the \*\*\* grade. Student did suffer some failing grades in fall 2005, but these were directly related to his failure to complete his work. Student failed to complete work because he became frustrated (possibly because of skills deficits), and he became obstinate when his teachers insisted that he show his work or begin a task or complete a task. The IEP addressed these issues.

The problems with communication, negative behaviors, and failing grades were addressed in the May 23, 2006, IEP. This IEP was reasonably calculated to provide Student with academic and non-academic benefit.

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#### **4. Student's May 23, 2006, IEP Would Be Implemented In The Least Restrictive Environment.**

The Parents requested that Student receive one-on-one instruction at the March 28, 2006, ARD Committee meeting. The Committee declined such restrictive placement. The May 23, 2006, IEP called for placement in the general education population with thirty (30) minutes of content mastery per week. While this was an increase of time in content mastery, it did not violate the LRE requirements of IDEIA. Student is capable of being educated in the general education population with certain supports, which arguably could be provided outside the umbrella of special education.

#### **B. The Appropriateness Of Student's Private School Education**

Student is seeking reimbursement for the private school educational expenses he has paid to date and future private educational services until Student graduates from high school. Student is only entitled to reimbursement for these expenses if 1) CSISD failed to provide him FAPE; and 2) the private placement provided an appropriate educational program. *Florence County School Dist. Four v. Carter*, 510 U.S. 7, 114 S.Ct. 361 (1993); *Town of Burlington v. Dept. of Educ.*, 471 U.S. 359, 105 S.Ct. 1996 (1985). As set forth above, Student failed to prove that the May 23, 2006, IEP would not have provided Student FAPE. However, even if Student had met that burden, Student failed to prove that the private educational services he has received since April 2006 have provided him an appropriate educational program. There was insufficient evidence of the courses he has taken, the grades or credits he has achieved, the credentials of his instructors, the level of his class work, or any achievement he has garnered.

### **V.**

#### **CONCLUSIONS OF LAW**

1. Student's proposed May 23, 2006, IEP was appropriate and reasonably calculated to provide Student FAPE. *Cypress-Fairbanks Independent School District v. Michael F.*, 118 F.3d 245 (5th Cir. 1997); *Houston Independent School District v. Bobby R. and Caius R.*, 200 F.3d 341, 347 (5<sup>th</sup> Cir. 2000).
2. CSISD committed no procedural violation of IDEIA related to the notification of the Parents of the May 23, 2006, ARD Committee meeting.
3. Student is not entitled to any reimbursement of expenses related to his private school educational services since April 2006. *Florence County School Dist. Four v. Carter*, 510 U.S. 7, 114 S.Ct. 361 (1993); *Town of Burlington v. Dept. of Educ.*, 471 U.S. 359, 105 S.Ct. 1996 (1985).

### **VI.**

#### **ORDER**

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Based upon the record of this proceeding and the foregoing Findings Of Fact and Conclusions Of Law, it is ORDERED that the relief requested by Student is DENIED.

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

SIGNED this 2<sup>nd</sup> day of May 2008.

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*Deborah Heaton McElvaney*  
Special Education Hearing Officer

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