

**DOCKET NO. 163-SE-0120**

<b>STUDENT b/n/f PARENT</b>	§	<b>BEFORE A SPECIAL EDUCATION</b>
<i>Petitioner</i>	§	
<b>V.</b>	§	
	§	<b>HEARING OFFICER FOR THE</b>
<b>NORMANGEE INDEPENDENT</b>	§	
<b>SCHOOL DISTRICT</b>	§	
<i>Respondent</i>	§	<b>STATE OF TEXAS</b>

**DECISION OF THE HEARING OFFICER**

**Statement of the Case**

Petitioner, \*\*\* (“the student”) b/n/f \*\*\* (“the parent”)\*\* (“the student”) b/n/f \*\*\* (“the parent”)\*\* (“the student”) b/n/f \*\*\* (“the parent”) filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). The Respondent in the complaint is Normangee Independent School District, (“the district,” “NISD,” or “Normange”).

Petitioner was represented by Terry Gorman, an attorney with the Gorman Law Firm PLLC in Austin. Respondent was represented by Rebecca Bailey, Ashley Addo, and Hailey Janecka, attorneys with the firm of Thompson & Horton LLP in Houston. Petitioner's request for hearing was filed on January 28,

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5. The district has served the student through Section 504 as a student with ADHD since Student's \*\*\* grade school year and up until Student's withdrawal from NISD during Student's \*\*\* grade year in the 2019-2020 school year. An initial Section 504 evaluation was conducted when the student was in the \*\*\* grade on January \*\*\*, 2015. The Section 504 committee determined that the major life activity impaired

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- b. DSM-V-315.1 Specific Learning Disorder, Mathematics
  - c. DSM-V315.00 Specific Learning Disorder, Reading, Dyslexia
- [J4:10].

24. After the parent provided the district with the private evaluation in August 2019 the district immediately initiated a referral for the student to be evaluated for special education services. [J5].

25. Upon referral and consent to evaluate, the parent was provided both her Guide to the ARD Process and her procedural safeguards. [J5; J6; Tr. 234].

**The September \*\*\*, 2019 Full And Individual Evaluation (FIE)**

26.

33. The recommendations of the private evaluation and FIE were thoroughly reviewed in the ARD committee meeting on September \*\*\*, 2019. The consensus of the ARD committee was that the student's educational progress in all areas of concern was adequate and that Student's current level of performance in reading and math was not significantly discrepant from Student's peers. [J8:2-4; Tr. 552].

34. The ARD committee also discussed the impact their decision could have on the student's \*\*\*. At the time, the student \*\*\* which the committee believed required a \*\*\*. [J8:3; Tr. 561-562].

35. The team analyzed the student's deficits and concluded that Student did not need special education and related services and that the accommodations in the student's Section 504 plan were appropriate to meet Student's needs. [J8:2-4; Tr. 553].

36.

## **DISCUSSION**

### **I. The Governing Legal Standards**

#### **A. Burden of Proof**

Petitioner has the burden of proof to establish that the district violated IDEA and failed to provide the student with a Free and Appropriate Public Education (FAPE). *Schaffer v. Weast*, 546 U.S. 49, 62 (2005).

#### **B. FAPE**

The IDEA requires that all children with disabilities who are in need of special education and related

In this case, Petitioner sought an order identifying the student as eligible for and in need of special

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assessments and that the school provides tutoring and additional opportunities to pass it. The case of *Student v. Harmony Science Academy*, Dkt No. 234-SE-0513 (SEA Tx 2013), also involved a student who

Dismissal Process. [J6:1]. In addition, at the September \*\*\*, 2019 ARD meeting the parent signed for receipt of a second copy of the procedural safeguards as well as a copy of A Guide to the Admission, Review and Dismissal Process. [J6:2]. The Guide to the Admission, Review and Dismissal Process clearly explains what options a parent has when they disagree with proposals in an ARD meeting. The parent did not exercise any of these options. [Tr. 252]. Further, the parent was accompanied at the ARD by family friend and business partner, \*\*\*. Ms. \*\*\* is a special education diagnostician, currently employed by the \*\*\*. Ms. \*\*\* testified that she has

more than 20 years' experience in special education and has attended hundreds and hundreds of ARDs. [Tr. 134]. Ms. \*\*\* testified that she, as well as the parent, participated fully in the ARD meeting. With her extensive knowledge and experience of the ARD process, if Ms. \*\*\* believed that the parent was being deprived of her right to fully participate, she knew how to intervene and assure that the parent's right to participate in the student's education decision making process was exercised.

Appropriate Prior Written Notice ("PWN") was provided to the parents prior to and after the ARD committee meeting on September \*\*\*, 2019. [J8:7]. The parents received notice of scheduling of the ARD committee meeting. [R19]. The notice informed the parents of the reasons for the meeting, who would attend, and the documentation that would be considered. It provided contact information for a person they

teacher was present at the September \*\*\*, 2019 ARD Committee meeting. She testified that the parent was given meaningful participation and that she “felt like [the meeting] ended where we all came to the consensus that we were doing the best for “the student.” When asked about the principal’s demeanor in the meeting, the \*\*\* teacher replied, “Mr. \*\*\*’s demeanor is always professional. It is always looking out for the best interest of the students. And I would say that I have been in lots of ARD meetings and it was no different than any other ARD meeting, just seeking a way to serve the kid best.” [Tr. 664].

The district’s ultimate decision not to find the student eligible for special education and related services does not indicate a lack of collaboration, but rather a disagreement over the appropriate educational program for the student. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003); “Absent any evidence of bad faith exclusion of the parents or refusal to listen to or consider the [parents’] input, [the district] met IDEA requirements with respect to parental input.” *Id.* Additionally, to further address the parent’s concerns, the district added accommodations to the student’s Section 504 plan in a meeting held the day after the ARD meeting. [J9].

The evidence does not support a finding that the district excluded the parent from the ARD process. Rather, the evidence demonstrates that the parent was a full and active participant in the September \*\*\*, 2019 ARD committee meeting. Moreover, Petitioner presented no evidence that the student was deprived of educational benefit because of a procedural violation.

### **Conclusions of Law**

1. As the party challenging the district's decision on eligibility, the Petitioner failed to meet the burden of proof on any of the claims asserted

participating in the September \*\*\*, 2019 Admission, Review and Dismissal (“ARD”) Committee meeting under 34 C.F.R. §300.501(b)-(c).

**Order**

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