BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS

STUDENT,		
bnf. PARENT	**§**	
Petitioner,	**§**	
	§	
v.	**§**	**DOCKET NO. 015-SE-0914**
	§	
GRAPEVINE-COLLEYVILLE	**§**	
INDEPENDENT SCHOOL DISTRICT,	**§**	
Respondent.	**§**	

DECISION OF THE HEARING OFFICER

Introduction

Petitioner, Student bnf Parent (ñPetitionerò or ñthe Studentò) brings this action against the Respondent Grapevine-Colleyville Independent School District (ñRespondent,ò or ñthe school districtò) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1400 et. seq. (IDEA) and its implementing state and federal regulations.

Party Representatives

Petitioner was represented pro se throughout this litigation by Studentôs parent, *** Respondent has been represented from the inception of this litigation by its legal counsel Nona Matthews with the law firm of Walsh, Anderson, Gallegos, Green & Trevino. Interpreter and translation services have been provided throughout this litigation to facilitate the parentôs understanding and communication between the parent, the school districtôs counsel, and the hearing officer.

Resolution Session/Mediation

The parties met in a Resolution Session on September 25, 2014 but were not successful in resolving the issues in this case. The parties also convened a mediation session on November 18, 2014 but again were unable to resolve the issues in this case through that process.

Studentôs Issues

Petitioner seeks resolution of the following issues under the Individuals with Disabilities Education Act (IDEA)ab/P wpeo

3. Whether Student is entitled to an Independent Educational Evaluation (IEE) at school district expense; and,

4. Whether the school district failed to provide Student with a free, appropriate public education under the IDEA.

Studentôs Requested Relief

Student requests the following items of relief:

1. The school district identify Student as a student with OHI and eligible for special education services under the IDEA;

2. Provide Student with a free, appropriate public education including: (i) occupational therapy; (ii) language therapy; (iii) accommodations in the classroom and assistance in the areas of reading, writing, and math as recommended by the *** evaluation;

3. The school district fund Studentôs IEE, including the full cost of the *** IEE;

4. Allow Studentôs parent to be present for all future evaluations conducted by the school district to ensure the school districtôs evaluations are accurate; and,

5. Address Studentôs health and medical needs as a component of Studentôs ability to learn.

School Districtôs Legal Position and Counterclaim

The school district contends it evaluated Student appropriately in all areas of suspected disability and rightfully concluded Student was not eligible for special education services under IDEA criteria. The school district contends it did consider all available information including information provided by the parent and from outside evaluators. The school district confirmed it is tendering payment to the *** for the intelligence portion of the IEE at a rate that meets the school districtôs cost criteria.

However, the school district contends the scope of the *** IEE went beyond what the school district agreed to with the parent. The school district submitted a Counterclaim as to whether Petitioner is entitled to the full cost of the *** IEE because it did not meet school district criteria. The school district also contends the parentôs failure to communicate with the school district in a timely manner or follow school district procedures in securing the IEE delayed payment of the IEE.

Due Process Hearing

The due process hearing in this case was

1. Student first enrolled as a *** grader in the school district in August 2013. (Respondentôs Exhibit 3, pp. 14-15)(referred to hereafter as ñR. Ex. ___.ò). Before enrollment Student attended *** and *** in the *** (the prior school district). Student was evaluated by the prior school district with a Full and Individual Evaluation (FIE) in *** in October 2011. The 2011 FIE noted that ***

address Studentôs receptive and expressive language skills and

conversation. Intelligibility of connected speech was excellent with or without contextual information. The Studentôs teacher reported no difficulty understanding Studentôs speech in the classroom. Speech was intelligible when asking or answering questions, when reading, and during casual conversation. Fluency skills were also assessed to fall within normal range. (P. Ex. 26, p. 3) (R. Ex. 3, p. 3) (Tr. Vol. I., p. 136).

17. Although Studentôs ***. Studentôs *** did not impact the intelligibility of Studentôs connected speech in conversation. An oral facial exam was completed on September 24, 2013 and included as a component of the FIE. Studentôs facial symmetry appeared normal; no abnormal movements were observed, Student was able to open and close the mouth normally, and able to pucker and ñswingò the lips normally with adequate lip strength. The tongue was normal in color and size with a normal range and speed of motion and adequate strength. Student could move the tongue tip in all directions without difficulty. Student exhibited normal posterior and lateral movement. (P. Ex. 26, p. 4).

18. In the classroom Student interacted appropriately with peers, was cooperative, completed tasks, had good attendance, worked independently, completed assignments, had a positive work attitude, maintained

particular stage are able to perform as opposed to identifying a specific grade level. At the beginning of *** grade a student is expected to be performing at a stage *** ï Studentôs writing at the beginning of *** grade was a stage ***. Student was able to write ***. (Tr. Vol. II, p. 289). This was somewhat below average for the beginning of *** grade but not statistically significant. (Tr. Vol. II, p. 292).

24. The FIE also included a high

were factors in getting back to ARD. (R. Ex. 9, pp. 8-10)(R. Ex. 10) (Tr. Vol. II, pp. 309-310). The ARD discussed parental concerns over Studentôs hearing ability, the ***, and Studentôs speech/language skills ï including parental concerns over Studentôs ability to speak Spanish correctly. Studentôs classroom teacher reported Student was able to communicate with peers and adults in the classroom. (P. Ex. 24)(R. Ex. 10, pp.2-3)

38. Studentôs parents finally identified their chosen IEE evaluators at the February 11th ARD. *** was selected to conduct the speech/language IEE and *** for IQ testing. The school district requested parental consent to make arrangements with *** for the IQ IEE. Instead, Studentôs parent reported private insurance would cover the cost of both evaluations even though the school district continued to offer to fund the IEEs. (R. Ex. 10, p. 3) (Tr. Vol. II, pp. 312, 314).

39. The school district later discovered that the *** would not conduct an IQ test alone and instead would only conduct a comprehensive evaluation. (Tr. Vol. I., p. 256). Because the school district only approved an IEE for IQ testing Studentôs parents were asked to select another evaluator ï school district IEE criteria and a list of possible evaluators were again provided to Studentôs parents. (R. Ex. 11, pp. 1-2) (Tr. Vol. II. pp. 312-313). The school district continued to offer to pay for the IEEs. (R. Ex. 13) (Tr. Vol. II, p. 314).

40. At the end of the first term in *** grade (2013-2014 school year) Student made excellent grades in all academics: *** in language arts, *** in math, *** in reading, *** in science and *** in social studies. Student was identified as ñExcellentò in art, music, and PE. At the end of the second term in *** grade Studentôs grades were *** in language arts, *** in math, *** in reading, *** in science, and *** in social studies. Student again attained ñExcellentò ratings in music, PE and Spanish (replacing art in the second term). By the third term of *** grade Studentôs grades were *** in language arts, *** in math, *** in reading, *** in science and *** in social studies. Student was again rated ñExcellentò in music, PE and Spanish. (P. Ex. 25).

41. By the end of *** grade Studentôs overall score on grade level assessments exceeded the goal for the end of *** grade. (R. Ex. 14, p. 4) (Tr. Vol. II, p. 315). The school district also administered a standardized cognitive abilities assessment to all *** graders using a nationally normed test that assesses three areas of intelligence: verbal, quantitative, and nonverbal. (R. Ex. 14, p. 5) (Vol. II., pp. 315-3

52. The parties met in a two day ARD meeting on September 10-11, 2014. (R. Ex. 18) (Tr. Vol. II, p. 337). The *** speech/language IEE was presented by Studentôs parent for the first time at the September 10th ARD and reviewed. The *** speech/language IEE confirmed Student did not meet eligibility requirements for special education as a student with a speech impairment. (R. Ex. 18, pp. 10-11) (Tr. Vol. II, pp. 335-336).

53. An auditory processing disorder is a deficit of auditory input and how it is understood or managed by the central nervous system. (Tr. Vol. I, p. 147). The IEE included an auditory processing assessment. Although Studentôs phonological awareness and word memory were lower Studentôs memory scores were higher ï

Studentôs parent. A parent may restrict a studentôs dietary choices by completing and submitting a dietary restriction form. Studentôs parents were provided with the form but the form has never been submitted. (R. Ex. 26, pp. 14-21).

68. In addition, the school districtôs Child Nutrition Department has a registered dietician on staff who can work with the family to meet medically certified dietary needs. (R. Ex. 26, p. 18) (Tr. Vol. I., pp. 194-196).Studentôs health needs can be met through the school districtôs health services -- available to all students with medical needs whether they are special education students or not. (Tr. Vol. I., pp. 203-204, 206-207). The school district can only provide medical services ordered by a physician under state law. (Tr. Vol. I., pp. 207-208). Parents play a collaborative role with the health services department in meeting a studentôs health needs. (Tr. Vol. I., p. 209).

69. Studentôs parent also expressed concerns over Studentôs math skills even though school district assessment data showed Student was performing on grade level. (R. Ex. 18, p. 15). To address those concerns the school district agreed to provide Tier I RTI services in math. However, the ARD again determined Student did not meet eligibility criteria as a student with a disability in need of special education. (R. Ex. 18, p. 15) (Tr. Vol. II, pp. 337, 405, 407, 411-412). The school district again provided Studentôs parent with prior written notice of its decisions regarding Studentôs eligibility. (R. Ex. 18, pp. 17-20).

70. Studentôs parent communicated with school staff frequently and regularly on a wide variety of issues and concerns during the relevant time period. Staff attempted to answer parental questions and address concerns. Staff worked with Studentôs parent in securing information from outside providers, facilitating the IEEs, and in providing Studentôs parent with Notice of Procedural Rights under both the IDEA and 504. (P. Ex. (16) (P. Ex. 17) (P. Ex. 18) (P. Ex. 19) (P. Ex. 20). The school district provided Studentôs parent with

education and related services. *34 C.F.R. § 300.101 (c) (1).* The determination that a child is eligible for special education and related services must be made on an individual basis by the group responsible for making eligibility determinations. *34 C.F.R. § 300.101 (c) (2).* In Texas that group is the Admission, Review & Dismissal Committee (ARD). *19 Tex. Admin. Code §§ 1040 (b); 89.1050 (a) (5).* The student must be a ñchild with a disabilityò within the meaning of the IDEA to be eligible for special education services in Texas. *19 Tex. Admin. Code § 89.1040 (a).*

Child With a Disability

A ñchild with a disabilityò is a defined term under the IDEA. *34 C.F.R. § 300.8 (a).* A child with a disability may qualify for special education services under more than one of the IDEA enumerated disability categories. *E.M. v. Parajaro Valley Unified Sch. Dist., 63 IDELR 211 (9th Cir. 2014), cert. denied (1/12/15) (No. 14-604) (auditory*

has ***, a ***. The Student requires ***. The school district had access to the medical information as Studentôs parents shared it over time. Student proved the presence of chronic health problems in that regard with the exception of ADHD. The IEE evaluator and other medical records suggest the presence of ADHD.

However, the information supporting possible ADHD provided to the IEE evaluator and medical providers came almost solely from Studentôs parents. Even the IEE evaluator noted a diagnosis of ADHD could not be confirmed without data across environments, including most significantly, the educational environment. The evidence showed that Student did not exhibit symptoms or signs of ADHD at school and was no more distractible or inattentive than Studentôs classmates.

Although Student does have some chronic health issues Student did not meet the burden of proving those conditions adversely affected Studentôs educational performance. The school district was aware of Studentôs *** and took the appropriate steps to ensure *** when needed. Medical/health services such as these are a component of the school districtôs health services -- special education is not required to address Studentôs health needs.

Studentôs parent was concerned with Studentôs eating at school. There is some evidence that Student has some ***, ***, and ***. However the evidence also showed that Studentôs eating was adequately monitored by the school staff. Studentôs parent had the opportunity to limit Studentôs diet at school by providing the proper documentation but apparently chose not to do so. School staff observed Student eating properly at school. The speech/language evaluation included an assessment of Studentôs lips, tongue, and related anatomical components related to Studentôs ability to eat and speak. The evidence established that any issues in that regard were adequately addressed and did not adversely affect Studentôs educational performance.

the school district provided Studentôs parents with the requisite IEE information and the delay was due in large part to the length of time it took the parent to identify the selection of the IEE examiners. Some delay was also a result of the school districtôs objections to the scope of the *** IEE that went beyond the agreed upon IQ testing. However, it was reasonable for the *** IEE to include achievement and behavioral assessments since the school districtôs FIE included at least some inquiry into those areas as well as measuring Studentôs intelligence.

Although the school district raised a legitimate question about the qualifications of the *** examiner (who was not a LSSP) there is insufficient evidence in the record to conclude the examiner was not otherwise qualified to conduct the IEE. Finally, the record is unclear as to whether there is a balance due on the *** IEE. There was some evidence that the school district paid at least one invoice but there is also some evidence there may be a balance due on the account. If so, the school district is responsible for the balance due. *34 C.F.R. § 300.502*

Free, Appropriate Public Education

A free, appropriate public education is special education, related services and specially designed personalized instruction with sufficient support services to meet the unique needs of the child in order to receive a meaningful educational benefit. The instruction and services must be provided at public expense and comport with the childôs IEP. *20 U.S.C. § 1401(9); Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 188-189, 200-201, 203-204 (1982).*

While the IDEA guarantees only a ñbasic floor of opportunityò the IEP must nevertheless be specifically designed to meet Studentôs unique needs, supported by services that permit Student to benefit from the instruction. *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. at 188-189.*

While the IEP need not be the best possible one nor must it be designed to maximize Studentôs potential the school district must nevertheless provide Student with a meaningful educational benefit ï one that is likely to produce progress not regression or trivial advancement. *Houston Ind. Sch. Dist. v. VP, 582 F. 3d 576, 583(5th Cir. 2009) cert. denied, 559 U.S. 1007(2010).* The basic inquiry in this case is whether the IEP implemented by the school district was reasonably calculated to provide the requisite meaningful educational benefit. *Rowley, 458 U.S. at 206-207.*

Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. [1] *Schaffer v. Weast, 546 U.S. 49, 62 (2005); Teague Ind. Sch. Dist. v. Todd L., 999 F. 2d 127, 131 (5th Cir. 1993).* In this case the school district was obligated to provide Student with special education services during the period of time the school district conducted an updated evaluation following Studentôs transfer from the prior school district. *19 Tex. Admin. Code § 89.1050 f) (2).* Student was identified as a student with a speech impairment in need of special education by the prior school district. The prior school district developed and implemented a speech/language IEP.

The evidence showed the school district implemented a speech/language IEP while it conducted an updated evaluation. Student continued to be eligible for special education during the period of time the parties debated whether Student met eligibility criteria. The school district continued to implement the IEP up through the February 2014 ARD when Student was dismissed from special education. The school district also supported Student with RTI services for both reading and later on in math and continued to do so through the remainder of the relevant time period.

The Four Factors Analysis

[1] There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z., 580 F. 3d 286, 292 n. 4 (5th Cir. 2009).*

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GRAPEVINE-COLLEYVILLE	**§**	
INDEPENDENT SCHOOL DISTRICT,	**§**	
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SYNOPSIS

ISSUE:

Whether *** bilingual student should have been identified by school district as a student with a speech/language impairment, a specific learning disability and/or as a student with other health impairment for purposes of eligibility for special education services under the IDEA.

HELD: FOR THE SCHOOL DISTRICT

School district conducted FIE that demonstrated Student was performing academically commensurate with Studentôs intellectual ability, acquiring and demonstrating expressive and receptive language skills given Studentôs status as bilingual learner, and performing well in the classroom, on grade level, and within average range on most measures. Although Student did prove presence of a number of medical conditions Student did not prove those conditions adversely affected Studentôs ability to learn or need for special education.

Outside IEEs also supported, for the most part, that Student was performing academically commensurate with Studentôs intellectual ability and given status as bilingual learner. Student did not prove existence of auditory processing deficit that adversely affected Studentôs learning or a hearing impairment.

Behavioral assessment as component of IEE suggested ADHD. IEE conceded there was insufficient information from a varieQBT1E0( )]TJET( )-149(a)14(2910(r)1( )-29(vl4w)12(a)24(s)9(13(r)13(o)10]TJ3(o(0( )-59(a)14(9(s)9(r)1ua)

Evidence showed school district collaborated with Studentôs parents over the course of multiple ARD meetings and considered all information provided by Studentôs parents and outside evaluators, including medical information, as it became available. School staff conferred with some medical providers to clarify reports and medical information. School district considered, reviewed and discussed outside evaluations in series of ARD meetings. School district considered results of comprehensive FIE, reviewed prior FIE, classroom observation, teacher input, OT evaluation, and, all outside data and evaluations in reaching determination Student did not demonstrate a need for special education services.

34 C.F.R. §§ 300.8 (a); 300.304-300.311

ISSUE:

Whether parents entitled to IEEs at school district expense.

HELD: FOR THE STUDENT IN PART AND THE SCHOOL DISTRICT IN PART

Parents were entitled to independent evaluations at school district expense and to full payment of a comprehensive IEE that went beyond the scope of IQ testing school district initially agreed to. School districtôs own FIE included more than simply IQ testing. School district fulfilled its obligation to pay a speech/language assessment and paid invoice submitted to date by comprehensive IEE evaluator but record unclear as to whether balance due for that evaluation. To the extent a balance remains on the comprehensive IEE school district responsible for paying it. Even though school district raised legitimate questions about qualification of IEE examiner (not a LSSP) school district did not prove examiner otherwise not qualified to conduct the assessments that comprised the IEE.

34 C.F.R. § 300.502

ISSUE:

Whether the school district provided Student previously identified as student with speech/language impairment by prior school district with a free, appropriate public education while school district evaluated Student for continued eligibility until date Student dismissed from special education . School district implemented IEP that addressed Studentôs need to develop language skills and ensure intelligibility of speech. Services provided met the four factors test of *Michael F.* and thus provided Student with FAPE.

20 U.S.C. § 1401 (9); 34 C.F.R. 300.17*; Bd. of Educ. of Hendrick Hudson Int. Sch. Dist. v. Rowley, 458 U.S. 176 (1982); Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245 (5th*