

dent's parents to bring
concerns about Student's education to ARD Com

Education Program ("IEP") goals and objectives and progre

ropriately address Student

Respondent requested that Parent's buy th
Student's

□

("FAPE").

Respondent failed to provide Student's teachers, staff,
regarding Student's disability.

Respondent failed to provide Parents copies of Student's
□□ □□

to discuss Student's annual A R D.

As relief in this due process hearing, Petitioner requests that Respondent be ordered to do the following:

aide on Student's A T device.

Student's

's program until Student i

2. Student will touch and vocalize the new vocabulary word when it is presented as a choice of the two.
3. Student will touch and vocalize the new vocabulary word 2 of 3 opportunities during the story.

It was noted in the IEP that satisfactory progress was being made towards these goals.

7. The March, 2007 IEP included an Annual Measurable Goal for Writing. Benchmarks included Spelling Words and Applying Conventions of Spelling, with criteria involving:

- Student putting letters in the correct order to spell the word.
- Student will write the word.
- Student will spell the word correctly.

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programming, daily schedules reflecting minimal unstructured time and active engagement in learning activities; in-home and community-based training; positive behavior support strategies; futures planning; parent/family training and support provided by qualified personnel with experience in Autism Spectrum Disorder; suitable staff to student ratio; communications interventions; social skills supports and strategies; and professional educator/staff support(training).

17. An IEP was developed during an ARD meeting that was convened in May, 2008. The IEP included Annual Measurable Goals for Student in Self Help, Math, Reading, and Writing Skills. Under the Self-Help Annual Measurable Goal, it was noted that Student ***.

18. The May, 2008 IEP included the Annual Measurable Goals for Reading. Under the benchmarks, it was noted that in Matching, Selecting, and Naming lower case letters, Student had not been able to say the names of the letters.

19. According the May, 2008 ARD documents under the Annual Measurable Goals for Reading, Student has been using a voice output device. The IEP stated that Student is using a sight word program, and Student has acquired the skill of following the printed word as the teacher reads sentences in the sight word program. Further, using a voice output device, Student can read phrases and sentences and match them to the picture. Under the benchmarks, Student is also now able to receptively identify nouns and action pictures, and has acquired the skill to match a picture to the noun or verb.

20. According to the May, 2008 IEP, under the Annual Measurable Goals for Writing, Student has acquired the skills of writing lower case letters, is gaining good progress with legibility in gaining increasing control of penmanship, is making good progress in writing messages that move (left-to-right, top-to-bottom), is making good progress on using capital letters, has acquired the skill of identifying specific words in sentences, and is doing well with copying and identifying familiar words.

21. According to the May, 2008 IEP, under the Annual Measurable Goals for Math, Student is now capable of matching all numbers from 1 to 50 using the voice output device. However student needs improvement in writing the numbers 14 to 50 as dictated. Student as also acquired the skill of counting pennies up to 14 using the token board, Velcro strip, and voice output device. Rote counting is a prerequisite in creating addition problems with concrete objects.

22. According to the May, 2008 IEP, under the Annual Measurable Goals for Math, Student was given the benchmark to match, select, and name shapes. It was only noted that Student could match picture to word for a circle.

23. In the May, 2008 IEP, Student was provided with an Annual Measurable Goal to demonstrate oral motor awareness, strength, and movement for improved speech sound production. Student was given the following Educational Benchmarks to improve oral motor functions:

-Imitate 5 oral motor actions given a model and instructions, 3/5 times per session (skill is partially or rarely observed).

- Sequence 2 oral motor actions given a model and instructions, 3/5 times per session (skill is partially or rarely observed).
- Imitate 5 CV and VC syllables with 70% accuracy for 8 consecutive sessions (skill is inconsistent and requires cueing).

24. An ARD meeting was convened on the Student's behalf on December 11, 2008. The purpose of the ARD was to meet to discuss disagreement to the Amendment in Student's goals and benchmarks discussed at an ARD held on October 24, 2008. Participating in the ARD was Special Education Teacher, Administrator/Designee, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, and Parent.

25. At the December 11, 2008 ARD, the ARDC recommended that Student receive the following Supplementary Aids and Services: Modifications in General Education classroom; Special Education Consultation/Co-teacher; Related Services in General Education classroom; and Assistive Technology Device. The ARDC also recommended the following Special Education Services: Supplementary Aids and Services; Resource Classroom; and Self-contained Classroom. All services had previously been tried and provided and found to be successful by the ARDC. The ARDC also recommended that the Student be educated in the General Education classroom for part of the day, as this education setting had also been found to be successful.

26. The December 11, 2008 ARDC determined that Student would receive the following Schedule of Services: *** in the General Education with Accommodations and Special Education Support; Speech Therapy for language and oral motor for a minimum of 25 sessions for 30 minutes each; Student Support Team/ACE in language arts, mathematics, STAR training, and self help for 240 minutes daily, and Occupational Therapy in Special Education for 10 units, 15 minutes each. All services will be provided from December 11, 2008 till June, 2009.

27. At the December 11, 2008 ARD, all committee members except Parent agreed that a minimum of 40 sessions with speech/language per school year is still appropriate for Student. Parent noted that Parent does not agree with the minimum of 40 sessions recommended and Parent feels that 60 sessions is appropriate. Parent agreed to implement the proposed speech IEP goals that were discussed at the Amendment ARD on 10/24/08.

28. The December 11, 2008 ARDC discussed the opportunity for Parent to observe Speech Therapy Teacher and the speech strategies Teacher uses with Student at school. This opportunity was offered to Parent. Parent expressed at the ARD that Parent would like the parent training in the exercise to occur in home. Parent also expressed unhaoc0Aahainn,0(e)4(r2(e)4(x)-9(pr)3

- Reason for 1 hour time limitation at meetings.
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classroom would include First/Then procedure, Waiting, Finishing, Visual Schedules and Visual Supports, Augmentative Communication, and Positive Reinforcement

50. The June 4, 2009 ARD ended in disagreement between Parent and School District. Parent did not agree with Student attending Extended School Year (“ESY”), but would like more OT at ESY. Parent also expressed that Student should use a voice output device and received speech therapy at ESY.

51. The IEP developed during the June 4, 2009 ARD included an Annual Measurable Goal to improve Receptive Language. This goal included the following benchmarks to demonstrate receptive language:

- Student will put three pictures in the correct order that show a simple sequence.
- Student will point to named actions, specific people doing an action, and an adjective + noun in a simple picture book.

52. The IEP developed during the June 4, 2009 ARD included an Annual Measurable Goal to improved Expressive Language. The goal included the following benchmarks:

- Student will learn to say four new nouns per week using a voice output device, gestures, signs, and/or word approximations.
- Student will identify different action pictures using a voice output device, gestures, signs, and/or approximations.
- Student will say an action when asked “what is this person doing?” using a voice output device, gestures, signs, and/or word approximations.
- Student will tell the story of a simple sequence when give three pictures using a voice output device, gestures, signs, and/or word approximations.
- Student will say how a person feels using a voice output device, gestures, signs, and/or word approximations.
- Student will answer social questions while engaged in other activities using a voice output device, gestures, assigns, and/or word

Therapist, Occupational Therapist, Behavior Support Therapist, Assistive Technology Consultant, and Parent Liaison.

60. At the November 13, 2009 ARD, Parent disagreed with several of Student s IEPs, but was willing to agree to add AT to the IEPs at the time. The ARD ended with Parent signing the lending agreement to take AT device home and have Student begin using the DynaVox device at home.

61. An IEP was administered on Student s behalf and included with the November 13, 2009 ARD. The IEP included an Annual Measurable Goal for Preacademic Concepts. The goal included the following benchmarks:

- Rote counting to 30 using a voice output device.
- Counting 1-15 objects using a voice output device.
- Receptive Identification of Numbers to 100.
- Expressive Identification of Numbers to 100 using a voice output device.
- Receptive Counting of Sets of Objects using a voice output device.
- Sight Word Reading and Match to Picture using a voice output device.
- Receptive Identification of Sounds (Student will give the correct letter when the letter sound is spoken).
- Reading a Simple Book.
- Coloring within Lines and Attention to Task.
- Cutting and Gluing.
- Writing from Dictation.
- Writing each letter of the alphabet when dictating.
- Gain increasing control of penmanship.
- Write messages that move.
- Use capital letters at the beginning of the sentence.
- Identify specific words in sentences.

It was observed that Student is able to put 2 pictures in a sequence, and is making satisfactory progress on all other benchmarks.

63. The November 13, 2009 IEP included an Annual Measurable Goal for Expressive Language that included the following Educational Benchmarks:

-Student will learn to say four new nouns per week using a voice output device, gestures, signs, and/or word approximations.

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69. An ARD meeting was convened on the Student s behalf on February 11, 2010. The purpose of the ARD was to conduct a Special Review and meet prior to an agreement at the previous ARD in which all members were not in agreement and agreed to meet within 10 school days. Participating in the ARD were Administrator/Designee, Parent, Special Education Teacher, General Education Teacher, Counselor, LSSP/School Psychologist, Speech Therapist, Occupational Therapist, Behavior Support Therapist, Assistive Technology Consultant, and

meaningful educational benefit.
supra, at. P. 349)

(See, *Bobby R.*,

The issues in this case will be discussed, individually following each allegation, but the bases of this decision are ultimately informed by the foregoing caselaw. This record contains many allegations and emotionally charged accusations. To the extent that each allegation raises a separate issue of FAPE it will be discussed. Certain exhibits, such as Petitioner's Exhibit 28, the recordings of the Student's ARD meetings, provide a revealing picture of the nature and legitimacy of some of the allegations. The Student's ARD meetings were adversely impacted by a failure of a key stakeholder to remain productive and consistently participate in a process that demands cooperation and consensus. The recordings of the meetings show that this was not always observed. However, the recordings also provide persuasive evidence of the most important issue: during the statutory period in question the Student's ARDC reported to each other and discussed the Student's educational progress in most of the important areas of the Student's IEP. (I listened to all 10 hours and 34 minutes of the ARD meetings.) The Student continues to struggle with ***. This is an important objective that will require continued work by the Student and the ARDC. However, I conclude that the record, as a whole, shows that the student has received a FAPE from the educational program that has been developed and implemented by the District.

1. *Respondent failed to include Student in Student's general education setting as determined by the ARD Committee.*

The record does not support this allegation. The Student was education in a general education setting various portions of each school day. Because of the Student's need for intensive specialized educational techniques and curriculum, education solely in a general

Respondent has provided Student s parents with ample information about the Student s educational progress in

The Student's IEP goals and objective do appear to be tailored to meet the Student's individual needs. The goals and objectives are in need of refinement so that Student's failure to progress can be quantified. However, this deficiency in the goals and objectives has not prevented the Student from making significant educational progress.

The Student's classroom behavior does not appear to warrant the development of a BIP *per se*. To the extent that the Respondent should incorporate behavioral interventions into the Student's IEP to maximize the Student's engagement in the classroom activities, the record shows that Respondent has developed and implemented such appropriate positive behavioral interventions and behavioral strategies. [See 19 TAC §§ 89.1040 (c) (1); 89.1055 (e) (4) (A)-(B)]

11. *Respondent failed to conduct a functional behavioral assessment prior to drafting a Behavior Intervention Plan.*

Because the Student's behavior does not warrant a formal BIP, the conduct of a functional behavioral assessment is unnecessary.

This allegation is more of a statement than a clearly enunciated IDEIA issue. However, the implication is that the District failed to provide an appropriate AT device as is its obligation. The record is not so clear on this point. Apparently the *** system or its successor device is one of several methodologies to assist the Respondent in implementing the Student s *** IEP. There is some confusion about when or if such a system was ever incorporated into the Student s IEP. However, this allegation, even if true, does not constitute a denial of FAPE.

19. Respondent destroyed educational records, including electronic mail, pertaining to Student.

This allegation is not stated as a violation of the Student s rights under IDEIA. As such, it is not an appropriate matter for a special education hearing officer to verify or address.

20. Respondent required Parents to sign the School District ISD Technological Device Lending A

2. Respondent has a responsibility to provide Student with a free appropriate public education. 20 U.S.C. §1412; 34 CFR §300.17; 19 TAC § 89.1001.

3. Student made educational progress and obtained a meaningful educational benefit from the IEP which was implemented by the Respondent. *Hendrick Hudson Central Sch. Dist. v. Rowley*, 458 US 176 (1982); *Cypress-*

