

**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT, bnf  
Parent,  
Petitioner,**

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v.

**DOCKET NO. 104-SE-0110**

**HOUSTON INDEPENDENT  
SCHOOL DISTRICT,  
Respondent.**

**DECISION OF THE HEARING OFFICER**

Introduction

Petitioner, Student (“Petitioner” or “Student”) brings this action against the Respondent Houston Independent School District (“Respondent,” “the school district,” or, “HISD”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

Party Representatives

Student has been represented throughout this litigation by his legal counsel Dorene Philpot, Attorney at Law. The school district has been represented throughout this litigation by its legal counsel Hans Graff, Assistant General Counsel for HISD.

Resolution Session and Mediation

The parties met in a Resolution Session but were not able to reach a mutually agreeable settlement. The parties engaged in informal settlement negotiations but also were not able to reach a mutually agreeable settlement. Respondent declined the opportunity to attempt mediation as an alternative form of dispute resolution in this case.

Procedural History

Petitioner filed his initial request for hearing on January 6, 2010. An initial Scheduling Order was issued on January 7, 2010. The case was first set for hearing on March 3-4, 2010. A prehearing conference was conducted on February 5, 2010 with counsel for both parties. The hearing was continued once and reset to April 20-22, 2010 at Petitioner’s request in order to resolve a scheduling conflict for Petitioner’s counsel.

The due process hearing was conducted on April 20, 21 and 22, 2010. Both parties continued to be represented by their legal counsel. Student and his mother, \*\*\* attended all three days of the due process hearing. In addition, \*\*\*, Special Education Program Specialist for HISD, attended the first day of the due process hearing as the party representative and \*\*\*, Special Education Manager for HISD - West Region, attended the second and third days of the due process hearing as the party representative.

The parties requested an opportunity to submit written closing briefs. The record remained open and the parties submitted their briefs in a timely manner. The Decision of the Hearing Officer was extended to June 14, 2010 and again, by agreement, to June 18, 2010.

### Issues

Petitioner submitted the following broad, overall issue: whether the school district provided Student with a free, appropriate public education (FAPE) in the least restrictive environment within the meaning of the Individuals with Disabilities Education Act (IDEA); and specifically:

1. Whether the school district failed to devise and implement an appropriate transition plan for Student;
2. Whether the school district failed to implement Student's Individual Educational Plan (IEP);
3. Whether the school district failed to provide Student with FAPE because his IEP failed to address his needs as student with dysgraphia;
4. Whether the school district failed to provide Student with FAPE because his IEP failed to address his difficulties in mathematics;
5. Whether the school district failed to provide Student with FAPE because he is not ready to \*\*\*; specifically because he has not met IEP goals of meeting grade level standards for:

in IQ can be the basis for additional services denied Student FAPE;

12. Whether the school district failed to provide Student



operated by HISD. \*\*\* is a \*\*\* program that provides eligible students with an opportunity to earn \*\*\* high school and \*\*\* credit subject to certain requirements. (R. Ex. 55). Students may either graduate from high school after four years or, if eligible, may choose to “hold back” some of their high school requirements \*\*\*. (Tr. Vol. III, pp. 634, 638-639).

6. Eligible students may take \*\*\* classes at \*\*\* beginning in their junior year. The \*\*\* campus adjoins \*\*\* campus. (P. Ex. 79). The \*\*\* earned at \*\*\* are transferable to other \*\*\* Texas institutions. One of the requirements for \*\*\* enrollment is that the student must demonstrate mastery of the knowledge and skills necessary for success \*\*\* through specified scores on the \*\*\* test. (P. Ex. 79).
7. During the fifth year the student is primarily enrolled in \*\*\* courses with individualized support provided by \*\*\*. Students who \*\*\* from \*\*\* under this option have the potential to earn \*\*\* and an \*\*\* at the \*\*\* level. (P. Ex. 79) (Tr. Vol. I, p. 48).
8. \*\*\* utilizes a block schedule. This allows teachers to pace lessons according to student needs.

program. (Tr. Vol. I, pp. 202-203) (Tr. Vol. III, pp. 640-641).

13. The \*\*\* and the Special Ed Chair were Student's academic advisors. (Tr. Vol. II, pp. 130, 132-133)(Tr. Vol. III, pp. 608-609). The Dean of Students also supervised Student's academics and discipline. (Tr. Vol. II, p. 133)(Tr. Vol. II, p. 546. In the fall of 2009 \*\*\* conducted a record review of students who did not maintain a 3.0 GPA. Student was identified as one of those students. (R. Ex. 20, pp. 956-958) (R. Ex. 42, p. 1497) (Tr. Vol. II, pp. 548-549, 557-558).
14. This meant that Student was no longer eligible to remain at \*\*\* for the fifth year. Several \*\*\* staff members discussed Student's status by email on October 30, 2009. They agreed Student should \*\*\* in May \*\*\* under the four year high school program. Student needed four courses in the spring of 2010 to \*\*\* in May. (P. Ex. 53, p. 363) (R. Ex. 21, p. 978) (Tr. Vol. II, p. 549). In late fall of his \*\*\* year Student was advised by the Special Ed. Chair and \*\*\* that he was not eligible for the fifth year. He was told to change his class schedule and plan to \*\*\* in May 2010. (Tr. Vol. II, p. 524, 527)(Tr. Vol. II, pp 520-521, 719, 721).
15. A personal graduation D~~HN~~ staff sta10( )9 H4tionBT1 0 0 (h)10(a)14(i)8(r)149t







32. Student also took the \*\*\* TAKS. The scores were reported in May 2009. Student met the minimum state standards for English/Language Arts and Science. Student not only met the minimum state standards but scored high enough to earn commended performance in Mathematics and Social Studies. (P. Ex. 78, p. 588). The TAKS scores meant Student was eligible to \*\*\*, and indicated his readiness for \*\*\* (P. Ex. 79, p. 10) (R. Ex. 46).
33. After learning that he would need to \*\*\* in May Student dropped the spring 2010 semester \*\*\* classes he was registered for in an attempt to remain at \*\*\* for another year. He did so without the requisite approval. The \*\*\* discovered the change in Student's spring 2010 schedule. Thinking it was an error in the system she re-registered Student in the classes. Student made a second attempt to ensure \*\*\* high school by dropping an \*\*\* class also without the requisite approval. (Tr. Vol. II, pp. 535-536)(Tr. Vol. III, pp. 614-615, 617, 619-620).
34. An annual ARD was required by October 2009. (R. Ex. 59, p. 1003). The parties had some difficulties agreeing on a mutually convenient date for the annual ARD. A number of emails were exchanged between the school and Student's mother in attempts to schedule the annual ARD. The parties were not successful in communicating by phone. (R. Ex. 22, p. 963). On October 26, 2009 Student's mother requested copies of all records to be reviewed at the ARD in advance so that she could be prepared. (R. Ex. 59, p. 1065).
35. The school proposed three possible dates in November for the ARD: November 9, 10 or 11<sup>th</sup>. (R. Ex. 59, p. 1005). The school sent Student's mother three ARD notices for each of the proposed dates. The three notices were transmitted to Student's mother on the same day. (Tr. Vol. II, p. 403). This resulted in some confusion and miscommunication between the parties. The ARD was not confirmed with Student's mother until the morning of November 11<sup>th</sup>. (P. Ex. 57) (P. Ex. 59, p. 419) (R. Ex. 59, p. 1004). Student's mother complained that she had not received the requisite five days prior notice of the November 11<sup>th</sup> ARD. (P. Ex. 59, p. 432).
36. The annual ARD meeting was conducted on November 11, 2009. Student's mother participated by telephone. Student did not attend. (R. Ex. 22) (Tr. Vol. II, p. 401). Student's IEP was revised with a single measurable annual goal: "Student will master grade level TEKS in all academic subjects". A set of accommodations for the remainder of the school year were also included in the revised IEP. (R. Ex. 22, p. 1014). These included: extended time, math tables and formula sheets, use of laptop for note taking and written work, note taking assistance, and, small group administration for tests. (R. Ex. 22, p. 1014). The graduation plan proposed at the November 11<sup>th</sup> ARD meeting was for Student to graduate in May \*\*\* under the Recommended High School Program. (R. Ex. 22, p. 1024). Student's mother did not agree with the recommendation for Student to graduate from high school in May 2010. (R. Ex. 22) (Tr. Vol. II, pp. 401-402).
37. Transition needs were also addressed at the November 11<sup>th</sup> ARD. A written Personal Graduation Plan was completed as a component of the ARD paperwork. (R. Ex. 22, pp. 1024-1031). Student's post high school plans to attend a four year college or university were previously discussed and documented in ARD meetings beginning as early as ninth grade. (R. Ex. 28, pp. 1184, 1186) (R. Ex. 29, pp. 662-663, 682).
38. Student's mother requested copies of the November 11<sup>th</sup> ARD paperwork and any educational



Petitioner submitted a motion to extend the limitations period at the beginning of the due process hearing. Petitioner argued that Respondent waived application of the one year limitations rule in this case. In response, and prior to the presentation of the evidence, Respondent objected to Petitioner's motion to extend the one year limitations periods as untimely and that there is no basis in the law for doing so. Petitioner's motion to extend the limitations period remained pending during the due process hearing to provide Petitioner with an opportunity to prove one or both of the two exceptions to the limitations rule. See, *J.W. bnf P. & M. W. v. Silsbee Ind. Sch. Dist.*, Dkt. No. 268-SE-0709 (SEA. Tex. 2009) (*school district waived objection to extension of SOL where objection not submitted until written closing argument and hearing was completed*).

#### Misrepresentation Exception

The first exception to the statute of limitations rules requires proof that the misrepresentation alleged was intentional or flagrant. Petitioner must show the school district subjectively determined that Student was not receiving FAPE and intentionally misrepresented that fact to Student's mother. See, *Evan H. v. Unionville-Chadds Ford Sch. Dist.*, 2008 U.S. Dist. LEXIS 91442, pp. 4-5 (D.C. Pa. 2008) (*no evidence school district determined student eligible for special education but specifically misled parents otherwise*); *Sch. Dist. of Philadelphia v. Deborah A.*, 2009 U.S. Dist. LEXIS 24505, pp. 3-4 (D.C. Pa. 2009) (*school s that student making educational progress were not misrepresentations to extend SOL*).

While there is evidence in the record to conclude the parties disagreed from time to time on Student's educational program there is no credible evidence of an intentional or flagrant misrepresentation by the school district to warrant extension of the one year limitations period.

#### Failure to Provide Required Information

The second exception to the statute of limitations rule requires a showing that the school district failed to provide Student's mother with information required under IDEA. The information that a school district must provide to parents under IDEA includes:

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The evidence also confirmed Student's mother had both actual and constructive knowledge of her parental rights under IDEA. *See, El Paso Ind. Sch. Dist. v. Richard R.*, 567 F. Supp. 2d 918, 945 (D.C. Tex. 2008), in part and vacated on o.g. 591 F. 3d 417 (5<sup>th</sup> Cir. 2009); *Sch. Dist. of Philadelphia v. Deborah A.*, supra (parent must show she was information regarding procedural rights).

Student's mother was actively involved in and participated in his educational programming. She advocated for his needs, asked questions, and took steps to secure educational documents. She maintained frequent communications with teachers and other school district staff about Student's educational program and accessed the HISD chain of command. The school district provided Student's mother with the requisite prior written notice when the two November ARD meetings ended in disagreement about Student's \*\*\* high school. The credible evidence shows that Student's mother was not prevented from filing a due process request because the school district failed to provide her with information required by the IDEA. 34 C.F.R. § 300.511 (f).

Therefore, Petitioner's claims are limited to the one year limitations period established under both state and federal law and Petitioner's motion to extend the limitations period shall be denied. 34 C.F.R. § 300.511 (e); 19 Tex. Admin. Code § 89.1151 (c); *Fern v. Rockwood R-VI Sch. Dist.*, 48 IDELER 35, (D.C. Mo. 2007)(holding neither of the exceptions applied where record showed parents fully participated in IEP process, met with district representatives and were continuously advised of ogram).

#### FAPE Issues

Petitioner alleges a broad overall issue: i.e., that the school district failed to provide him with a free, appropriate public education at \*\*\*. He describes this alleged failure specifically to include the following: a failure to de



When Student chose to attend \*\*\* he also chose to abide by the special requirements of the unique



The school district is also at fault for failing to provide the information stated on its own consent forms. Had it done so, Student's mother would not have had anything to complain about. While the school district is to be commended for its willingness to conduct a full individual evaluation including whatever specific components were requested by Student's mother, it left the matter unresolved by failing to follow up with Student's mother and provide her the information she noted was missing. The school district's counsel also failed to bring the problem with the consent forms to the attention of either opposing counsel or the hearing officer until the due process hearing. Student's three year evaluation was due by April 27, 2010. He needs an updated evaluation for purposes of securing disability services from \*\*\*.

#### \*\*\* Assessments

The \*\*\* grade \*\*\* TAKS is the \*\*\* assessment required by the State to determine whether a high school student is ready to \*\*\*. There is no other type of assessment required by law. Student not only successfully met state mandated curriculum objectives on the \*\*\* TAKS but earned commended performance on two out of four of the TAKS components. Student also placed \*\*\* on every measure of the \*\*\* and tested high enough on the \*\*\* to earn the privilege of enrolling in \*\*\* classes as a \*\*\* student.

#### Procedural Issues

Petitioner alleges a number of procedural issues: first, that the school district failed to provide his mother with the requisite prior written notice when the parties disagreed about whether Student





## **ORDERS**

Based upon the foregoing findings of fact and conclusions of law it is therefore **ORDERED** that an Admission, Review and Dismissal Committee (ARD) convene within 10 business days from the date this Decision is issued (calculated beginning on June 21, 2010 and counting forward ) for the purpose of reviewing Petitioner's status for \*\*\* high school and to discuss, explain, and clarify Petitioner's options in securing whatever \*\*\* he lacks, if any, in order to \*\*\*.

It is further **ORDERED** that both Petitioner and his mother make every effort to attend the ARD in person and that the ARD is scheduled at a time and place agreeable to Petitioner and his mother in order to do so.

It is further **ORDERED** that a representative from the Disability Support Services Office of \*\*\* shall be invited to the ARD meeting.

It is further **ORDERED** that the ARD Committee will also review the status of the three-year evaluation and Respondent shall provide Petitioner's mother with any and all information and attachments referenced in the parental consent forms.

It is further **ORDERED** that Respondent is entitled to conduct the re-evaluation without parental consent if Petitioner's mother fails to execute the requisite parental consent forms and Petitioner shall cooperate in scheduling and appearing for all components of the re-evaluation.

It is further **ORDERED** that the re-evaluation shall be conducted and completed no later than 30

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**DOCKET NO. 104-SE-0110**

**HOUSTON INDEPENDENT  
SCHOOL DISTRICT,  
Respondent.**

**SYNOPSIS**

**ISSUE:**

Whether school district's program provided high school student with dysgraphia, ADHD and processing speed deficits with FAPE in charter high school using \*\*\* model operated by public school district; specifically, whether school district failed to devise and implement appropriate transition plan, implement IEP, address needs as student with dysgraphia, address difficulties with math, provide additional services when IQ score fell, and failed to provide graduation plan.

**HELD:**

**FOR THE SCHOOL DISTRICT.**

Student did not meet burden of proof that school district did not provide FAPE. Credible evidence demonstrated school district provided individualized program based on assessment and performance, administered in the least restrictive environment, with services provided in coordinated, collaborative manner by key stakeholders and with demonstrated educational benefits.

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