



Petitioner alleged that the district has not provided the student with a free appropriate public education (“FAPE”). Petitioner alleges both substantive and procedural violations of the law. Petitioner contends that the district did not properly evaluate the student, identify the student’s educational disabilities, provide appropriate transition planning, and provide at all times an appropriate individual education program (“IEP”) based upon the student’s educational needs and present levels of performance with measurable goals and objectives necessary to create an opportunity to make reasonable educational progress (both academic and non-academic). Petitioner seeks compensatory educational services, reimbursement for evaluation, and further independent evaluation.

Respondent seeks an order declaring its evaluation appropriate and supporting its denial for payment for additional evaluation.

Based upon the evidence and argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law:

#### Findings of Fact

1. The student resides with the student’s parents and family within the Houston Independent School District. [Petitioner’s Exhibits 7 & 8 and Transcript Page 353]

2. The student is eligible for special education and related services based upon eligibility criteria of autism, emotional disturbance (“ED”), intellectual disability (“ID”), and other health impairment (“OHI”). [Petitioner’s Exhibits 7 & 8; Respondent’s Exhibits 13 & 15; and Transcript Pages 81-82, 661, 769-770 & 824-825]

3. The student attended the \*\*\* grade year in the 2015-2016 school year. [Petitioner’s Exhibits 4 & 12; Respondent’s Exhibit 38; and Transcript Pages 534 & 826]

4. The student's IEP for the \*\*\* grade was developed by an admission review and dismissal ("ARD") committee including the student's parents containing the student's present levels of performance and measurable goals and objectives. [Respondent's Exhibit 31]

5. During the student's \*\*\* grade year, the student reported to the student's parents that the student was subjected to bullying by other students and a teacher at school. The student was involved in \*\*\* fights with other students. [Petitioner's Exhibit 4 and Transcript Pages 254-263]

6. A psychologist in private practice in Houston performed an evaluation of the student during the spring of 2016. The psychologist performed psychological testing, evaluated the student on four different days, and issued a report on April \*\*\*

refused to return the student to school. The testimony of the district's personnel was credible.  
[Petitioner's Exhibits 25 & 25A and Transcript Pages 193-199]

9. The student was \*\*\*. The student's \*\*\*". The records indicate problems with the student's behavior at school and concerns with the student's compliance in \*\*\*. [Petitioner's Exhibits 26 & 26A and Transcript Page 303]

10. While the student was out of school, school personnel sought information about a

school, and compensatory services because of the student's absences. [Respondent's Exhibits 32-36 and Transcript Pages 417-429]

14. The district proposed extended school year ("ESY") services for the student during the summer of 2015 but the schedule for the services was not immediately provided to the parent and the parent did not bring the student to ESY. [Petitioner's Exhibit 18; Respondent's Exhibit 32; and Transcript Pages 357-359]

15. The student began attending the \*\*\* grade year in \*\*\* in August 2015. In a meeting on August \*\*\*, 2015, the ARD for the student provided: "Due to [the student]'s missing approximately \*\*\* months of school in \*\*\* 2015, [the student] will be offered 2 hours per week of compensatory time totaling 20 weeks beginning 2015-2016 school year." The student's father attended the meeting and agreed to the compensatory services but stated in writing: "I reserve the right 2 update, include and whatever the current plan if not satisfactory 4 [the student]." [Respondent's Exhibit 32 and Transcript Pages 379-380]

16. The student's mother testified at the hearing that she did not agree to the provision of compensatory services. [Transcript Pages 445-446]

17. A vision screening for the student was included in a full individual evaluation ("FIE") for the student in October 2015. The student passed the vision screening unaided but the screening noted "The parents reported that [the student] is in good health at this time, but [the student] is \*\*\*." [Petitioner's Exhibit 7]

18. The student has \*\*\* in the \*\*\* eye. \*\*\*. But in using \*\*\* in the normal environment, the student's vision is within normal limits. The student needs \*\*\*. The student frequently attended school \*\*\*. Some of the student's teachers did not know that the student \*\*\*. [Petitioner's Exhibits 7 & 40 and Transcript Pages 580-581]

19. The student's IEPs have been individualized based on formal and informal evaluation in a timely fashion and addressed in ARD committee meetings during the last three years. [Respondent's Exhibits 1-13 & 30-36 and Transcript Pages 551-566, 582-590, 605-612 & 629-634]

20. The district's documentation of the student's progress was reviewed and considered in ARD committee meetings and IEPs developed in October 2014, April 2015, June 2015, August 2015, September 2015, and October 2015. [Respondent's Exhibits 31-36]

21. Progress on the student's goals was substantiated in reports for the 2015-2016 school year. [Respondent's Exhibits 37 & 53 and Transcript Pages 18, 24-26, 33-34, 86 & 97-



The burden of proof in these cases is a high one. Schaffer v. Weast, 126 S.Ct. 528 (2005). The standard of Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983) requires a presumption in favor of the district's educational program and requires that Petitioner must prove the inappropriateness of the program. The standard of Adam J. v. Keller ISD, 328 F.3d 804 (5<sup>th</sup> Cir. 2003) established that procedural deficiency in some respects not does not, by itself, result in a loss of appropriate educational opportunity or infringe on parents' opportunity to participate in the IEP process. Essentially, the problems presented by Petitioners in this case did not prove that the district's deficiencies resulted in a denial of a free appropriate education for the student.

Instead, the evidence from the hearing, taken as a whole, established that the student's program was developed in collaborative efforts by the student's parents and appropriate school personnel. It provided the student with academic and non-academic benefit as required under Michael F., *supra*.

The district demonstrated that its reliance on substantive and timely assessments of the student was appropriate and sufficient and did not require additional independent evaluation at public expense.

The student received an individualized program based on the student's assessment and

1. The student is eligible for a free appropriate special education program under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The student's parents are residents of the Houston Independent School District, and the district is responsible for providing an appropriate educational placement and related services for the student.
3. Petitioner failed to meet the burden of proof to demonstrate a violation of IDEA under the standard of Schaffer v. Weast, 126 S.Ct. 528 (2005).
4. The student received a free appropriate public education because the educational program was properly developed to provide educational benefit under the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982), 34 CFR 300.552, and 19 T.A.C. §89.1055.
5. The implementation of the student's program complied with the legal framework provided under Adam J. v. Keller ISD, 328 F.3d 804 (5<sup>th</sup> Cir. 2003).
6. The district's assessment of the student was appropriate and the student's parents are not entitled to an independent educational evaluation at public expense under 34 CFR 300.502.

#### ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner – including a request for an independent educational evaluation at public expense – is DENIED.

SIGNED this 15<sup>th</sup> day of August, 2016.

/s/ Lucius D. Bunton  
Lucius D. Bunton  
Special Education Hearing Officer

DOCKET NO. 111-SE-1215

STUDENT,	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENT	§	
	§	
VS.	§	HEARING OFFICER
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

**ISSUE 1:** Whether Petitioner received a free appropriate public education.

**CFR CITATIONS:** 34 CFR 300.552

**TEXAS CITATION:** 19 T.A.C. §89.1055

**HELD:** For Respondent.

**ISSUE 2:** Whether the Petitioner is entitled to an IEE at public expense.

**CFR CITATIONS:** 34 CFR 300.502

**HELD:** For Respondent.