

**In the Matter of PARENT, on Behalf of STUDENT v. RESERVE INDEPENDENT SCHOOL DISTRICT, Case No. DPH 1112-14.**

**ABSTRACT OF DECISION OF JANUARY 30, 2012**

**Jane B. Yohalem, Due Process Hearing Officer**

**Failure to Develop Behavioral Goals, Instruction, and a BIP, Reasonably Calculated to Meet Student's Needs:** In this final decision, the hearing officer concludes that the District has denied Student a FAPE during his fourth grade year and the first few weeks of fifth grade by failing to respond to Student's rapidly escalating behavior problems by developing behavioral goals and instructional strategies appropriate to address these behaviors and by developing a behavior intervention plan (BIP) founded on an analysis of the purpose and function of Student's behavior, so that it is reasonably calculated to meet Student's individual needs. 34 C.F.R. § 300.324(b)(i) and (ii); *O'Toole v. Olathe Dist. Schs. Unified Sch. Dist. No. 233*, 144 F.3d 692 (10<sup>th</sup> Cir. 1998); 20 U.S.C. §1414(d)(3)(B)(i).

**The District's Practice of Allowing Parents' to Unilaterally Reject Services Found Necessary by Student's IEP Team Denied Student a FAPE:** The hearing officer finds, as well, that Student was denied services which his IEP team determined were necessary to provide him a FAPE, including psychological, counseling, and social skills instruction, by the District's practice of allowing Parents to unilaterally reject particular services and particular staff members assigned to work with Student by the District. 34 C.F.R. §300.300(b)(4) (2008).

**Failure to Timely Reevaluate for Emotional Disturbance:** The hearing officer also finds that the District failed to heed warning signs of emotional disturbance and failed to timely reevaluate Student, as required by the IDEA. 34 C.F.R. §300.303(a) (2006).

**The District Provided FAPE in the IAES:** The hearing officer rejected Parents' claim that Student was denied a FAPE in the IAES, finding the evidence insufficient to establish a denial of FAPE under the special definition of FAPE applicable in the IAES setting. 20 U.S.C. § 1412(a)(1) (2004); 34 C.F.R. § 300.530(d).

**Use of Alternate Assessment Appropriate; No Improper Reliance on Mental Retardation Eligibility; Temporary Failure to Provide SLT Required by IEP:** Parents' claim that the District improperly continued to rely on the eligibility of mentally retarded, even after Student was found eligible as Other Health Impaired, was rejected, as was Parents' claim that the District's use of an alternate assessment was not necessary to meet Student's needs. Finally, the District acknowledged that its temporary failure to provide the speech therapy provided for in Student's IEP was a denial of FAPE. 20 U.S.C. §1412(a)(16); 34 C.F.R. § 300.320(a)(6).

**Manifestation Determination:** In an interim decision included as part of this final decision, the hearing officer concluded that Parents did not carry their burden of establishing that Student's behavior in kicking the principal on September 22, 2011, was a manifestation of his disability. Even though the District failed to reevaluate Student for emotional disturbance and has been found to have denied Student a FAPE, conduct is a manifestation of a student's disability only if it either has a direct and substantial relationship to the student's identified disabilities, or is a direct result of the District's failure to implement Student's IEP. 20 U.S.C. §1415(k)(1)(E) (2004); 34 C.F.R. §300.530(2006). Neither of these criteria were met.