

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

The student brought a complaint pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of the Houston Independent School District (hereinafter “Respondent” or “HISD”).

Petitioner was represented by Michael O’Dell an attorney in Houston, assisted by Louis Geigerman, an advocate. Respondent was represented by Hans Graff, an attorney with Houston Independent School District. Petitioner’s complaint was filed on April 26, 2010, and came on for hearing by agreement of the parties and order of the Hearing Officer on September 14, 15, and 16, 2010, in the offices of the district.

Counsel filed written closing arguments and the parties agreed that this decision would be timely issued on or before November 10, 2010, in accordance with the statutory and regulatory time-line.

Petitioner alleged that:

1. the district failed to provide the student with an appropriate educational placement with related services to provide a meaningful opportunity to make academic process;
2. the district failed to provide the student with an appropriate *** plan to enable the student to continue academic work *** or provide the student with appropriate skills to ***;
3. the district failed to provide independent educational evaluations (“IEE”) as requested by the parent; and
4. the one year statute of limitations should not apply to the student’s request for hearing.

As relief, Petitioner seeks: a speech IEE at public cost; an assistive technology (“AT”) IEE at public expense; an order continuing educational services until the student ***; the development of a *** plan which

would include individual education plans (“IEP”) for ***, independent living skills, and social skills; compensatory services; and reimbursement for therapies provided to the student two years prior to the filing of the request for hearing.

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 parent within HISD. [Petitioner’s Exhibit 1 and Transcript Page 239]

2. The student receives special education and related services based upon eligibility criteria of autism (“AU”) and auditory impairment (“AI”). [Petitioner’s Exhibits 3, 6 & 12 and Transcript Page 239]

3. Formerly, the student was also eligible for special education based upon eligibility criteria of emotional disturbance (“ED”) and speech impairment (“SI”). [Petitioner’s Exhibits 24-26, Respondent’s Exhibits 70-72 and Transcript Page 240]

4. Recent full and individual initial evaluations (“FIE”) indicate that – while the student has *** intellectual functioning – conceptual, social, and practical abilities are all *** with percentile ranks of ***. [Petitioner’s Exhibit 25 & 29]

5. The student has been evaluated for autism and Asperger’s and the student’s scores show that the student clearly is autistic. [Petitioner’s Exhibits 25 & 29]

6. Petitioner has suffered from an auditory impairment since birth. [Respondent’s Exhibits 3, 4 & 39 and Transcript Pages 239 & 240]

7. The student’s right ear has *** and the left ear has ***. [Respondent’s Exhibit 39]

8. The hearing loss significantly effects the student’s abilities in speech and language. [Petitioner’s Exhibit 26]

9. The student’s auditory impairment significantly impedes the student’s ability to access an academic program and to develop appropriate social skills. [Petitioner’s Exhibits 12-15, 24 & 25, Respondent’s Exhibit 50 and Transcript Pages 12, 73, 147 & 157]

10. Beginning in the 2006-2007 school year, the student was placed by the district in the ***, a *** school in Houston. Placement was made because of the student's emotional and behavioral problems. [Petitioner's Exhibit 27, Respondent's Exhibit 32 and Transcript Page 12]

11. In the last several years the student's parent has complained about evaluation for the student. [Petitioner's Exhibits 26, 28 & 38, Respondent's Exhibits 76 & 77 and Transcript Pages 240-253]

12. The parent's particular concerns have been for evaluations in assistive technology and speech and language. [Petitioner's Exhibits 8, 9, 37 & 57]

13. HISD objects to evaluators chosen by the parent because the evaluators do not meet district criteria based upon the geographic area in which the evaluator works or the cost of the evaluations. [Petitioner's Exhibit 28, 31, 33, 34, 36 & 38, Respondent's Exhibit 105 and Transcript Pages 381-383]

14. The student's parent believes that the speech evaluation for the student must be performed by someone with extensive experience in evaluations of students with autism. [Petitioner's Exhibit 31-38, Respondent's Exhibit 105 and Transcript Page 94-99 & 557-564]

15. HISD maintains that a speech evaluator must meet its guidelines for costs within the geographic area and the evaluation must be completed by a licensed speech pathologist with a certificate of clinical competence from the American Speech-Language-Hearing Associates ("ASHA"). The student's parent wants the evaluation done by an individual without those credentials. [Respondent's Exhibits 83 & 105 and Transcript Pages 381-383]

16. For the assistive technology evaluation, the district requires that the evaluator be licensed in occupational therapy. Because the parent selected someone to do the evaluation who is not licensed, the district refused to pay for an evaluation. [Transcript Pages 381-383]

17. The student was born in ***, and has been on different district plans from ***. Originally, the student was on a plan to prepare the student to ***. The student's parent told the members of admission, review and dismissal ("ARD") committee meetings that the student needed to develop academic and social skills which would prepare the student to ***. [Transcript Pages 79, 441-442 & 517]

18. The district accepted the parent's wishes and began the *** plan in 2006. [Respondent's Exhibits 61, 72, 76, 80 & 98]
19. The student developed sufficient ***. [Respondent's Exhibit 92]
20. The student's *** plan (***) also called for satisfactory completion of *** requirements which would include the ability to succeed in academics ****. [Petitioner's Exhibit 2 & Transcript Pages 79 & 517]
21. Some confusion is involved in whether or not the student ***, and the district originally claimed that the student had *** and would no longer attend the *** after May of 2010. [Petitioner's Exhibit 16]
22. At the hearing, however, Respondent's counsel stipulated that the student had not ***. [Transcript Page 517]
23. At an ARD committee meeting on May 25, 2009, the student's *** plan changed to the student's ****. [Petitioner's Exhibit 12 and Transcript Page 24]
24. The district's position was inconsistent in determinations about the *** plans for the student. [Petitioner's Exhibits 12 & 16 and Transcript Pages 86-89]
25. The district's inconsistent positions on *** and *** have caused some confusion in educational planning. [Transcript Pages 79 & 517]
26. The district now contends that the student is eligible for *** but must return to the student's home campus. [Petitioner's Exhibit 17 and Transcript Pages 6, 268 & 469-471]
27. The student's parent believes the student needs *** instruction and development of social skills which could provide the student the ability to ***. [Petitioner's Exhibit 19 and Transcript Page 372]
28. The district refused to allow the student to attend the *** for the school year 2010-2011. [Petitioner's Exhibit 60]
29. The student was tested for admission into *** after the student left the ***. The tests for the *** showed that the student needed five *** courses to begin ***. The student needed one in writing, one in reading, and three in math. [Petitioner's Exhibit 52]
30. An ARD committee met for the student on March 25, 2009, to develop the student's IEP for the following school year. [Petitioner's Exhibit 12]

31. The IEPs developed for the student failed to develop a competent *** plan for the student and did not design plans to *** the student's weaknesses in academic, reading comprehension, and speech and pragmatic issues. [Petitioner's Exhibit 12]

32. The social skills programming for the student's IEP at the ARD did not address the student's needs in attending classes, transitioning from class to class, and engaging in appropriate social intercourse. [Petitioner's Exhibit 12 and Transcript Pages 59 & 156]

33. The IEP of March 2009 indicated that the student would take the *** TAKS-M (Texas Assessment of Knowledge and Skills – Modify) exam, but the student was not required to pass the exam and was exempted from the exam after the student ***. [Petitioner's Exhibit 12 and Transcript Pages 281-283]

34. The student's IEP developed at the meeting in March 2009 noted the student's weaknesses in academic courses and in reading but failed to develop plans to address the weaknesses. [Petitioner's Exhibit 12]

35. At another ARD committee meeting in January 2010 the student participated and stated that the student was ***. [Petitioner's Exhibit 14]

36. The student's weaknesses in speech – language and reading were noted on numerous assessments and were discussed in ARD committee meetings beginning in 2006 and continuing through 2010. [Petitioner's Exhibits 1-21, 24-25, 29, 30, 45-47]

37. The student's parent had the student evaluated at the *** in December of 2007 and began reading tutorials privately for the student in January 2008. [Petitioner's Exhibits 39 & 40]

38. Though the student has *** intellectual abilities, the student failed to progress in reading, reading fluency, and reading comprehension until the private tutorials. [Petitioner's Exhibits 39 & 40]

39. Since the date of the filing of Petitioner's request for hearing, the student's parent has paid \$1,309.00 for reading tutorials. [Petitioner's Exhibit 41]

40. The student's IEPs for the 2009-2010 school year did not develop scientifically based reading strategies to address appropriately the student's reading weaknesses. [Petitioner's Exhibits 12-21 & 53]

41. Though the student's grade transcripts indicate some educational progress, independent and standardized evaluation do not support educational progress. [Petitioner's Exhibits 44-48 & 51]

42. The student's parent consulted with an expert dealing with social and cognitive development for the student. The consultant concluded that the student had significant needs in self-help and self-advocacy skills. The consultant believed that the student could not be successful in ***. Additionally, the student has problems with pragmatic language, verbal communication and appropriate understanding in communication regarding social needs and ***. [Petitioner's Exhibit 41 and Transcript Pages 147-153]

43. The student's educational progress and the monitoring of the student's IEP were under the direction of a psychologist who serves as the director of the ***. According to the director, the academic measurement of the student's progress was inexact and largely unmeasurable. Additionally, the student continues to have significant problems in social skills and social interaction and is unprepared to access an academic program ***. [Transcript Pages 484-516]

44. The student *** in the summer of 2010 but was unsuccessful in managing and coping with attendance and participation. [Transcript Pages 348-351]

45. The student has been represented by the student's parent throughout enrollment in HISD. The student *** in March 2010. [Respondent's Exhibits 89]

Discussion

The student has demonstrated significant problems in accessing an educational program from the district based upon the student's disabilities and lack of appropriate planning by both the district and the parent. The student's potential for success in *** was limited by the *** plans developed by the district and the parent.

While the parent initially believed that the student should be *** for academics, the parent came to realize in 2009 that the student could not be successful after completion of the ***. The parent then believed that the student needed to be in a *** plan which would provide for ***, i.e., ***.

Though the district placed the student in a *** for a number of years because of behavior problems, behavior issues with the student (because of the lack of success in developing social skills) and the failure to progress academically – particularly in reading – have limited the student's abilities to ***. Confusion within the district and with the parent about *** plans for the student exacerbated difficulties ***. Regardless of the confusion, the district has a responsibility to design and implement – in collaboration with the parent if possible

– an appropriate educational placement with related services to permit the student access to a successful placement in ***. Unfortunately, the collaboration between the student’s parent and the district failed to provide for the student what is required under the law.

The credible evidence at the hearing demonstrated that though the parent’s participation in developing and implementing educational plans was not always appropriate or helpful, the district failed to implement educational programming required under IDEA.

Conclusions of Law

1. The student is eligible for special education and related services under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. The Houston Independent School District is the local education agency responsible for the provisions of an appropriate educational placement for the student.

3. The district failed to develop and implement appropriate individual education plans to provide the student educational placement under the standards 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, and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055.

4. The student is entitled to independent educational evaluations in the areas of speech/language and assistive technology but the district may limit the evaluations to criteria for the evaluator’s expertise and cost of the evaluations. 34 CFR 300.502(e)(1) and 34 CFR 300.532(c)(1).

5. The district has not provided an appropriate *** plan which should include development of the student’s social skills in accordance with T.A.C. §89.1055(c)(5) and §89.1055(e)(9) and the student is entitled to educational services and *** services until ***.

6. The student is entitled to one year of compensatory educational services ***. 34 CFR 300.552 and 19 T.A.C. §89.1055.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

1. The district shall provide to the student independent educational evaluations in the areas of speech/language and assistive technology under the existing criteria of the district for such evaluations.
2. The district shall design and implement an IEP for the student which will include appropriate *** including instruction, related services, community experiences, development of *** objectives, and acquisition of daily living skills in accordance with 20 U.S.C. §1401(34) and 34 CFR 300.324 and 300.325.
3. The district will provide reimbursement in the amount of \$1,039.00 for reading tutorial services.
4. The district shall provide one year of compensatory educational services. In addition to services required for the student ***.
5. The district shall timely implement this decision by making an offer of a plan to implement the decision within ten (10) school days.
6. To demonstrate their compliance with this decision, the district shall furnish to the Texas Education Agency within fifteen (15) school days from the date of this decision documentation (with copy to Petitioner) demonstrating that the decision is being implemented within the prescribed time. The district shall include a signed assurance from the superintendent that the orders in this decision will be implemented.

All other relief requested by Petitioner is DENIED.

SIGNED this 10th day of November, 2010.

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

DOCKET NO. 219-SE-0410

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the Petitioner was provided FAPE.

CFR CITATIONS: 34 CFR 300.552 and 34 CFR 300.300

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Petitioner.

ISSUE #2: Whether Petitioner is entitled to reimbursement, compensatory services, and IEEs.

CFR CITATIONS: 34 CFR 300.502(e)(1) and 34 CFR 300.532(c)(1)

HELD: For Petitioner.