

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

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by next friends and parents *** and Student (hereinafter “Petitioner” or “the student”), brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of the Joshua Independent School District (hereinafter “Respondent” or “the district”).

Petitioner was represented by Dorene Philpot, an attorney in Galveston. Respondent was represented by Cynthia Buechler, an attorney in Austin. Petitioner's request for hearing was filed on July 28, 2010, and came on for hearing by agreement of the parties and order of the Hearing Officer on October 26 and 27 and November 11, 2010, in the offices of the district. The parties were afforded an opportunity to file written closing arguments and agreed that this decision would be timely issued on or before December 20, 2010, in accordance with the regulatory time-line. Counsel for the parties filed written closing arguments.

Petitioner alleged that the district failed to appropriately evaluate the student in all suspected areas of disability, failed to identify the student as a student with a disability in need of special education and related services, and failed to provide the student with a free appropriate public education. Petitioner alleged that the student is entitled to reimbursement for evaluations and compensatory educational services for the two years prior to the filing of the request for hearing. At a prehearing conference, it was determined that the issue of the statute of limitations would be considered at the hearing.

Petitioner seeks as relief an order determining the student eligible for special education. Petitioner also seeks compensatory educational services, reimbursement for private placement, and reimbursement for a speech evaluation, a hearing evaluation, therapeutic services, and the cost of placement in a private school.

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 was born *** and resides with the student's parent within the Joshua Independent School District. [Petitioner's Exhibits 11 & 13]

2. The student attended school within the district from *** through *** grade. On occasion, school personnel discussed with the student's parent retention rather than promotion at the end of the school year because of a lack of mastery of educational instruction. [Petitioner's Exhibit 6 & 12 and Transcript Pages 83-84, 128 & 185]

3. In October 2008, a problem solving team ("PST") met to consider Response To Intervention ("RTI"). Petitioner's parents attended the meeting and agreed to interventions developed by the problem solving team. [Respondent's Exhibit 8 and Transcript Pages 421-425]

4. The student's parent raised no concern about speech issues or other issues for the student at the meeting. [Respondent's Exhibit 8]

5. In May 2009 the problem solving team met to discuss the student's parent's request for special education testing to consider ***. Because the student had made significant progress in the student's reading, the team determined that special education testing would not be warranted. [Respondent's Exhibit 8]

6. Procedural safeguards for special education were provided to the parent later that month. [Respondent's Exhibit 15]

7. *** were administered for the student at the parent's request but the results did not determine characteristics of ***. [Petitioner's Exhibit 14 & 15 and Respondent's Exhibit 13]

8. The student's parent requested a special education hearing seeking special education testing in June, 2009, but the request was dismissed that month when the district agreed to conduct the testing. [Respondent's Exhibit 16]

9. A full individual evaluation ("FIE") was conducted for the student and completed in August 2009. The evaluation showed that the student did not have a speech impairment. [Petitioner's Exhibits 19-21 and Respondent's Exhibits 10, 11, 16 & 17]

10. The FIE did indicate that the student had a weakness in reading fluency but was not eligible as learning disabled because of progress through RTI. [Petitioner's Exhibits 19-21, Respondent's Exhibits 10, 11, 16 & 17, and Transcript Page 853]

11. An admission review and dismissal ("ARD") meeting was conducted on two dates in December 2009 to discuss the FIE. The committee determined that the student did not qualify for special education. The student's parent maintained that the student was eligible. The student's parent indicated that parent sought special education eligibility only to ensure that the plan of the problem solving team would be implemented. [Respondent's Exhibit 12 and Transcript Page 857]

12. After the ARD committee meeting, the student's parent requested an independent educational evaluation ("IEE") and the district agreed to the IEE. The district advised the parent that the evaluation must be conducted by an evaluator within a hundred (100) mile radius of the district and within monetary limits which are reasonable and customary. [Petitioner's Exhibit 25]

13. The district, however, agreed to a private evaluation to be provided by an evaluator outside geographic limits. [Petitioner's Exhibit 28]

14. The examination by the independent evaluator included interviews with school personnel on campus, student observation, and independent assessment. [Petitioner's Exhibit 35]

15. Though the evaluator did not determine that the student has a learning disability or ***, the evaluator recommended a *** program and Section 504 accommodations. [Petitioner's Exhibit 35]

16. The district was provided with a copy of the independent evaluation during the summer of 2010 when school personnel were not available for an ARD. [Petitioner's Exhibit 37]

17. In August 2010 the district sought to schedule an ARD committee meeting to consider the IEE. The student's parent refused to attend the ARD. The district also scheduled a Section 504 meeting for the student but the student's parent refused to attend. [Respondent's Exhibits 2, 4, 5 & 7]

18. The student's parent withdrew the student from the district in August 2010 and enrolled the student in a private placement. [Petitioner's Exhibit 1 & 64]

Discussion

The evidence at the hearing demonstrated that the student's parents struggled in dealing with the student's progress in school. The student's parent believed that the student was not successful in the student's educational placement and required intervention. The district demonstrated that it determined that RTI could be successful for the student and that the student's progress indicated the RTI process was successful for the student.

Parents want their children to be successful in school and try to determine how their children can best succeed in school. Districts have the responsibility to provide an opportunity for a child to make reasonable educational progress. Progress can be made in a regular educational placement, in an RTI program, Section 504, or in special education.

In seeking relief under IDEA, a parent has the burden to prove that a student has not been properly identified or has been denied an appropriate educational placement and related services when the student is determined eligible. In considering this student and interventions made by the district, the parties could not agree on the student's eligibility and progress – or lack of progress – in school. Petitioner showed that there were problems with the student's educational progress which did not meet the parents' expectations. But the parents did not prove that the district failed to meet its legal responsibilities.

The Petitioners failed to show that the statute of limitation should be tolled.

Conclusions of Law

1. The district met its obligation to determine whether or not the student has a disability recognized under IDEA as eligible for special education and related services. The student has not been shown to be eligible for special education placement or related services. 20 U.S.C. §1400(A)(1); 34 CFR 300.7(a); 19 T.A.C. §89.1011.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED.

SIGNED this 20th day of December, 2010.

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

DOCKET NO. 304-SE-0710

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SYNOPSIS

ISSUE: Whether the district failed to properly identify the student as eligible for special education.

CFR CITATIONS: 34 CFR 300.7(a)

TEXAS CITATION: 19 T.A.C. §89.1011

HELD: For Respondent.