

United Independent School District	§	BEFORE A SPECIAL EDUCATION
	§	
v	§	HEARING OFFICER
	§	
Student bnf Parents	§	FOR THE STATE OF TEXAS

FINAL DECISION

Attorneys Stacy C. Ferguson and Sonya M. Garcia, of Escamilla, Poneck & Cruz, LLP., San Antonio, Texas, represent the petitioner.

*** and ***, are the parents and next best friends of student/respondent, *** and appeared pro se on student’s behalf. Since Parent speaks no English, we used a certified court interpreter fluent in Spanish and English, Ms. Mariana Rios. Mr. Michael Naegele was the court reporter.

Statement of the Case

This is an action brought by Petitioner, United Independent School District (sometimes referred to below as “the school district”, “the district” or the “ISD”). The respondents are the parents and next friends of *** (“student”). The district seeks a final decision which orders the parent to allow student to attend the Regional Day School Program for the Deaf managed by a neighboring school district, the Laredo Independent School District. United ISD and other area ISDs have a shared services agreement with the Laredo ISD to provide services for deaf students. This regional center is near to the student’s home. Student is an ***-year old *** who is deaf and who also ***. Student previously attended the Regional Day School Program for the Deaf. However, student’s parents withdrew student after student ***, ***, *** endangered Student’s life, health, and safety. The student’s doctor wrote the school district that student needed to be returned to the United ISD school nearest student’s home because that school has quick access to a hospital where student could receive proper treatment ***. Because of the ***, parents have lost confidence in the Regional Day School for the Deaf. Parents also assert that the Laredo ISD Regional Day School Program for the Deaf teachers don’t have the skills and training necessary to provide Student a free appropriate public education (“FAPE”). Parents seek:

- to transfer Student to the Texas School for the Deaf in Austin
- to have the district pay for travel back and forth to Austin from Laredo, and
- to have the district to pay for an apartment for the mother and student to live in while student attends classes at the Texas School for the Deaf in Austin.

I will order United ISD to place Student in the Regional Day School Program for the Deaf in Laredo at United ISD’s expense. Further, I will order United ISD to transport Student to and from school each day in a manner approved by the child’s doctor. I will also order the parents to allow Student to attend the Regional Day School Program for the Deaf at Laredo ISD. In the alternative, the parents may elect to place Student in the Texas School for the Deaf in Austin as a day student. If the parents elect to do this, I would strongly encourage United ISD to pick up expenses related to Student’s education but the district is not legally obligated to do this since I have concluded that student’s placement in the Regional Day School Program for the Deaf in Laredo will provide Student a FAPE satisfying the district’s obligations under the Individuals with Disabilities Education Act. In no event should United ISD be liable for travel expenses between Austin and Laredo. Neither shall United ISD be responsible for lodging for mother and student in Austin. Neither shall United ISD be

liable for any of the mother's personal expenses. The family shall also pay for any of student's meals not provided by the Texas School for the Deaf to its students.

I will deny all further relief sought by either the school district or the parent. Stated another way, I will deny any relief sought which I haven't expressly granted.

Separately stated findings of fact and conclusions of law follow.

Procedural History

United Independent School District originally filed this case on May 13, 2011 with a final decision due date of July 27, 2011. The case got off to a slow start. The father is Student's primary spokesperson. He speaks only Spanish and often travels on business. Both parents wanted to be together on the prehearing conference phone call. I had to arrange for a Spanish language interpreter and find a time for the call to accommodate the father's travel schedule. When we finally held the call, we found communication through the interpreter difficult and the father felt at a disadvantage since the school district had a lawyer on the call and the parents didn't. We finally decided to hold a second face-to-face prehearing conference in the Laredo offices of the United Independent School District followed up by a supervised deposition of the child's doctor which I attended. At the school district's request, I extended the decision due date for 60 days until September 25, 2011, to allow time for the district to depose Student's doctor before we held the hearing and to allow time to prepare the transcripts of both the doctor's deposition and the hearing transcript and to allow time for briefs and preparation of the decision. We held the hearing on August 15, 2011. At the request of both parties, I entered an interim order on August 17, 2011, changing the student's placement to the Regional Day School Program for the Deaf in Laredo at United ISD's expense (including transportation to and from home to school with trained personnel whose training met the training requirements recommended by Student's doctor). In the alternative, the interim order gave the parents an option to place Student in the Texas School for the Deaf with all expenses paid by the parent.¹

Findings of Fact

1. Student is an ***-year-old student who qualifies for special education services and who lives within the United Independent School District. Student is deaf but has two cochlear implants which enable student to hear some. The extent to which student can hear isn't known (or, if known, is not in evidence).

2. The United Independent School District doesn't have the resources to properly serve the needs of deaf students in United ISD schools. Instead, United ISD contracts with several surrounding school districts to serve the needs of area deaf students in a centralized location at the Laredo ISD Regional Day School Program for the Deaf. Districts taking part in sponsorship of this regional deaf school program include:

- Laredo ISD,
- United ISD,
- Jim Hogg ISD,

¹ After the record closed, I received an email from the father telling me that Student is now attending the Texas School for the Deaf in Austin. I also received a letter from the General Counsel of the Texas School for the Deaf. The General Counsel asked me to change my interim order. He asked that I substitute an order requiring United ISD to pay all Student's expenses at the Texas School for the Deaf. However, I can not do this. My legal analysis is that since I have found the United ISD is providing a FAPE in the Laredo ISD Regional Day School Program for the Deaf, I can not order United ISD to pay for student's education at the Texas School for the Deaf unless Student's ARD committee decides that would be a better placement for Student than the Laredo ISD regional day school program.

- Webb Consolidated ISD, and
- Zapata ISD.

3. By consolidating their deaf education services, the school districts can economically provide better services to deaf students together than each ISD could provide individually. In addition, there is a shortage of qualified teachers for deaf students in the Laredo area. By consolidating services to the deaf, all schools in the area can take advantage of the few qualified deaf school teachers who are available in Laredo.

4. Student's parents have resisted placement of Student in the Laredo ISD Regional Day School Program for the Deaf. Student suffers from frail health and ***. Student's parents assert Student's doctor has advised them that Student needs to attend the United ISD school nearest student's home. The doctor wrote United ISD a letter stating this placement is needed since a nearby hospital may provide proper medical treatment if Student should ***. In deference to the Dr.'s letter and the parents' wishes, the United ISD placed Student in the United ISD school nearest student's home for the 2010-2011 school year.

5. Within several months of placing Student back in the United ISD schools for the 2010-2011 school year, United ISD decided this placement was a mistake. Student's communication skills were worse than the district had understood to be the case. Student's teacher was almost unable to communicate with Student and therefore could not teach student. The district asked the parents' permission to talk to Student's doctor. The district wanted to find out if there were any acceptable conditions under which it could safely return Student to the Laredo ISD Regional Day School Program for the Deaf. The district was concerned that Student was falling behind student's grade level and reaching an age at which learning language skills becomes more difficult. But Student's parents refused to give the district permission to talk directly with Student's doctor. Instead, the parents required the district to communicate with the doctor through the parents by questions in writing. When the district attempted to communicate by questions in writing, the parents deleted several questions posed by the district on the advice of a San Antonio attorney who has been advising the parents but who apparently refused to represent them in this due process hearing.

6. In 2009-2010 (Student's *** year), Student attended the Laredo ISD Regional Day School Program for the Deaf. Student's father testified the teaching was excellent and that Student made more progress during the time student was in that school than at any comparable time period. But in May 2010, ***. ***. This failure endangered Student's life, health, and safety. Because of this incident, the parents are understandably reluctant to put Student back in the Laredo ISD Regional Day School Program for the Deaf.

7. Dr. *** is Student's doctor. He is a pediatric neurologist. He has treated both Student and Student's older brother (***) for many years. He is a close friend of Student's family. The ISD deposed Dr. ***. He testified that he knows of no sound medical reason why United ISD shouldn't transfer Student to the Laredo ISD Regional Day School Program for the Deaf. There is a hospital close to the Laredo ISD Regional Day School Program for the Deaf and Dr. *** has privileges to practice in that hospital. He stated he wrote the letter recommending Student be kept in the United ISD school closest to Student's home because Student's mother asked him to write it.

8. Based on Dr. *** deposition, I find there is no sound medical reason preventing United ISD from returning Student to the Regional Day School Program for the Deaf in the 2011-2012 school year.

9. To prevent recurrence of ***, the district has agreed to *** to the Laredo ISD deaf regional day school program and to train *** according to specifications recommended by Student's doctor. Therefore, Student will not *** the school. Fortunately, the Laredo ISD Regional Day School Program for the Deaf is

located close to Student's home.²

10. The teachers in the Laredo ISD Regional Day School Program for the Deaf are properly trained to meet Student's current needs. The school will place Student in a class of approximately six to eight other deaf children with a teacher certified to teach deaf students³ and two teachers aides who are fluent in American Sign Language but who don't have any certifications. The teacher isn't certified as a Special Education teacher. The teacher doesn't need a Special Education certification to teach Student since student is classified as a Special Ed student only because Student is deaf and has impaired health. Student doesn't fall in other Special Education categories that might necessitate extensive training in dealing with the problems of Special Ed students. The teacher who will have Student next year has the proper certification to educate deaf students and Student's health problems can be cared for by the school nurse.

11. The Laredo ISD Regional Day School Program for the Deaf teaches "total communication skills" primarily using American Sign Language but also Signed Exact English; pictures; and oral communication. The students are also encouraged to use their voices to communicate. Signed Exact English is used only for reading and writing courses. American Sign Language is taught and used in all other courses. Most schools for the deaf use all of these methods to teach deaf students.

12. Both the parents and the school district agreed on the record that the Texas School for the Deaf in Austin would be an appropriate placement for Student if student were a resident of the City of Austin. They further agreed that *** and lacks the communication skills to be away from home in a residential dormitory setting. The father offered to pay for Student's mother to live in Austin so that Student could attend the Texas School for the Deaf as a day student during the interim placement between the beginning of the 2011-2012 school year and the issuance of this decision.⁴

Conclusions of Law

1. The teachers and education offered in the Laredo ISD Regional Day School Program for the Deaf is sufficient to meet Student's present educational needs. It will provide a FAPE under *Rowley*.⁵ The *Rowley* court held that school districts aren't required to maximize the educational benefits of a child. An education program will provide a FAPE if reasonably calculated to provide the child with a meaningful educational benefit. Stated another way, the Individuals with Disabilities Education Act does not entitle a child eligible for benefits under the Act to receive the best education money can buy. It only requires that student receive a reasonable educational benefit during each school year which allows student to progress from grade-to-grade. Student's placement in the Laredo ISD Regional Day School Program for the Deaf during the 2011-2012 school year should satisfy that standard.

2. I have found placement in the Laredo ISD Regional Day School Program for the Deaf is an appropriate placement for Student in the 2011-2012 school year. Student is likely to receive a FAPE from that placement given student's current educational needs. Therefore, there isn't any legal requirement that United ISD incur the added expense of housing for Student and student's mother so that student can attend the Texas School for the Deaf in Austin as a day student. Neither does the district have any responsibility to pay the cost of the proposed weekly commute of Student and student's mother between Austin and Laredo. I encourage the district to pay for student's attendance as a day student at the Texas School for the Deaf if the parents will pay both for student's lodging and living expenses in Austin and for the commute. However, the district has no

² Map quest shows the distance from Student's home to the school to be *** miles and estimates drive time as only ***.

³ The teacher has an "AI" (auditory impairment) certification which is the proper certification for teachers who teach deaf students.

⁴ I was advised outside the record that the father did this and that Student is currently enrolled in the Texas School for the Deaf living with student's mother off campus. See footnote 2.

⁵ *Board of Educ. v. Rowley*, 458 U.S. 176 (1982).

legal obligation to do this. This is because the district has already offered a FAPE through the Laredo ISD Regional Day School Program for the Deaf.

3. The parents are ordered to allow Student to be educated at the Laredo ISD Regional Day School Program for the Deaf. In the alternative, they may place student at the Texas School for the Deaf in Austin assuming all expenses connected with that placement other than those voluntarily assumed by United Independent School District.

IT IS SO ORDERED, this 25th day of September, 2011.

/s/ Larry Craddock

Larry Craddock

Special Education Hearing Officer

Notice

Any party aggrieved by the findings and decisions of this Hearing Officer has the right to bring a civil action seeking review in a state or federal court of competent jurisdiction. The party bringing the civil action shall have no more than 90 days from the date of this Decision to file the civil action. See 20 U.S.C. § 1452 as amended.