

STUDENT,	§	
b/n/f PARENTS	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
FLOUR BLUFF	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

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Appearances for Petitioner:

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Appearances for Respondent:

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Austin, TX

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	§	SPECIAL EDUCATION
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FINAL DECISION OF THE HEARING OFFICER

Statement of the Case

The Petitioner (Student)<sup>1</sup> brings this action against the Respondent (District), under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. §§ 1400 et seq.). The Petitioner complains that:

1. The Respondent failed to implement a \*\*\* schedule for the Petitioner.
2. The Respondent failed to establish a health care plan for the Petitioner.
3. The Respondent failed to assess for transitional positioning of the Petitioner.
4. The Respondent failed to implement a repositioning plan for the Petitioner.
5. The Respondent failed to provide a Rifton chair for the Petitioner.
6. The Respondent failed to offer extended school year (ESY) services to the Petitioner.
7. The Respondent failed to provide a list of independent educational evaluation (IEE) providers to the Petitioner.
8. The Respondent failed to assess the Petitioner for chewing and swallowing difficulties.
9. The Respondent failed to provide speech services to the Petitioner.
10. The Respondent inappropriately \*\*\* the Petitioner.
11. The Respondent failed to implement occupational therapy (OT) recommendations for the Petitioner.
12. The Respondent failed to provide and/or utilize a modified spoon for the feeding of the Petitioner.
13. The Respondent failed to provide appropriate physical therapy (PT) services to the Petitioner.

As relief, the Petitioner requests: a one-to-one aide; appropriate evaluations; an admission, review, and dismissal (ARD) committee meeting; appropriate modifications, interventions and services to enable the Petitioner to receive FAPE; placement in the least restrictive environment (LRE); and compensatory educational services.

Procedural History

The Texas Education Agency received the Petitioner’s Due Process Complaint requesting a due process hearing on October 4, 2010. The parties participated in a resolution session but were unable to resolve the Petitioner’s complaints. This Hearing Officer held a prehearing teleconference with the parties on October 20, 2010. Subsequently, the Petitioner requested continuances of the due process hearing on two occasions due in part to the hospitalization of Petitioner’s counsel. Upon consideration, this Hearing Officer determined that good cause was shown and the hearing was rescheduled. The hearing was conducted on February 16, 2011. Subsequent to the hearing, the Petitioner requested continuances of the decision due date due to the hospitalization of Petitioner’s counsel to afford the Petitioner’s counsel an opportunity to brief hearing issues. Upon consideration, this Hearing Officer determined that good cause was shown and the decision due date was rescheduled.

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<sup>1</sup> To protect the privacy of the Petitioner, the Petitioner is also referred to as “Student” in this Decision.

## Findings of Fact

Based upon the testimony and evidence taken on the record in this proceeding, this Hearing Officer makes the following findings of fact:

1. The Student is a child with a disability under the IDEA. The Student qualifies as a child with multiple disabilities. Specifically, the Student's identified IDEA impairment categories are: "other health impairment," "visual impairment," "orthopedic impairment," and "mental retardation." (Hr'g Tr. at 98, 121; Pet'r Ex. 4 at 6 – 7; Resp't Ex. 7 at 2)
2. During the 2009-2010 school year, the Student arrived in the District and was assigned to the \*\*\* grade in the District's \*\*\* school. (Hr'g Tr. at 27 – 28, 75 – 76; Resp't Ex. 17 at 1)
3. On October 7, 2009, an ARD committee for the Student met. All ARD committee members – including one of the Student's parents in attendance – signed in agreement. Among other things, the committee adopted annual goals for the Student's individualized education program (IEP) and incorporated a "health care plan while at school" for the Student. The Student's placement was in a self-contained life skills class. (Hr'g Tr. at 74 – 76; Resp't Ex. 16 at 3 – 4, 14 – 17, 19 – 33, 47 – 50)
4. On November 16, 2009, the District notified the Student's parents that the Student qualified for personal care services and corrected the Student's IEP to so indicate. (Pet'r Ex. 1 at 1 – 2)
5. On March 3, 2010, the District conducted an OT evaluation of the Student. The District's evaluator noted that the Student was receiving OT services and recommended 30 minutes of OT every 6 weeks. Among other things, the evaluator noted how the child was transferred from a wheelchair. The focus of the OT was on "sensory motor diet tasks." The evaluator did not detect any specific evaluation need in the area of chewing. (Hr'g Tr. at 184, 187 – 91; Resp't Ex. 15 at 1 – 4)
6. On March 10, 2010, the District conducted a speech impairment evaluation of the Student. The District's evaluator did not recommend direct speech therapy services. The basis of the recommendation was that the Student's "cognitive/developmental level does not appear to be sufficient to acquire increased language skills." While direct speech therapy services would not benefit the Student's communication ability, the evaluator approved of the Student's teacher working on language and communication objectives not dependent on speech therapy. (Hr'g Tr. at 228 – 30, 233 – 38; Resp't Ex. 4 at 3 – 4)
7. On March 11, 2010, the District completed a full and individual evaluation of the Student. Among other things, the evaluators noted that the Student has "severe cognitive and physical deficits." They noted diagnoses of "cerebral palsy (hypotonic quadriplegia), cortical visual impairment, severely developmentally delayed and a seizure disorder (refractory seizures and has \*\*\*). Student is non-verbal." The evaluation team recommended qualification for special education under four IDEA eligibility categories: "other health impairment," visual impairment, orthopedic impairment; and mental retardation. (Resp't Ex. 14 at 3 – 4, 15 – 16)
8. On March 11, 2010, the District's full and individual evaluation included, among other things, a PT evaluation. The PT evaluator noted that the Student's gross motor skills level was at "\*\*\*\* age." The PT evaluator reported: "We have been working on standing \*\*\* and walking \*\*\*. [The Student] does not like to wear his \*\*\*. [The Student] is now tolerating \*\*\* for 30 minutes but Student wants attention while \*\*\*. Student does not seem to like \*\*\*, but we are continuing

to introduce new skills and will continue to work on walking with [the Student] with different pieces of equipment.” The PT evaluator recommended “motor lab” for 30 minutes once every 6 weeks. The PT evaluator also recommended 30 minutes 3 times every 6 weeks. (Resp’t Ex. 11 at 1 – 2; Resp’t Ex. 14 at 6 – 7)

9. On March 11, 2010, the District’s full and individual evaluation included, among other things, an assistive technology (AT) evaluation. The AT evaluator recommended that the Student use a wheelchair for mobility, touch screen computer or Smartboard in the classroom, sound stimulators, use of a switch for communication, a light box, and \*\*\*. (Resp’t Ex. 14 at 27 – 28)
10. On April 15, 2010, an ARD committee for the Student met. All ARD committee members – including one of the Student’s parents in attendance – signed in agreement. Among other things, the committee continued IEP annual goals for the Student. The annual goal for PT included the following short-term objective: “[The Student] will be able to stand \*\*\* for 30-45 minutes 1-2 times a day by classroom staff with consult from PT.” The time frame for the PT IEP spanned from April, 2010 to April, 2011. The annual goal for OT included the following short-term objective: “Improve self feeding skills via \*\*\* as needed.” The time frame for the OT IEP spanned from April, 2010 to April, 2011. The annual goal for personal life skills (PLS) included the following short-term objectives: “cooperate with changing procedures and schedules with prompts” and “self feed solid foods, using utensils with food already on it with hand over hand assistance.” The time frame for the PLS IEP spanned from April, 2010 to May, 2010. The annual goal for community-based instruction (CBI) included the following short-term objective: “demonstrate and maintain acceptable dress, personal care, and hygiene.” The time frame for the CBI IEP spanned from April, 2010 to May, 2010. (Resp’t Ex. 10 at 18 – 43, 65, 71)
11. Among other things, the April 15, 2010 ARD committee included plans for the Student to participate in ESY during the summer of 2010. The committee adopted goals in two areas: functional academics and personal living skills. ESY was planned for four hours each day, four days a week, for one month. ESY was to begin on June 15, 2010. (Resp’t Ex. 10 at 12, 16 – 17, 43 – 44)
12. Among other things, the April 15, 2010 ARD committee included personal care services for the Student. The following areas of personal care needs were checked: eating/assisted feeding, \*\*\*. (Resp’t Ex. 10 at 2, 48; Resp’t Ex. 12 at 1 – 2)
13. Among other things, the April 15, 2010 ARD committee included a Health Care Plan for the Student. The Plan addressed needs in the areas of: medical, medications, cerebral palsy, \*\*\*, seizures, allergies, diet, mobility, and visual impairment. Under the diet category, the Plan states the Student has a “chopped food diet.” Under the seizures category, the Plan states in part: “The classroom staff will \*\*\* at any the following [sic]: 1. If a seizure is coming on. 2. If [the Student] is having a seizure. 3. If [the Student] has just had a seizure.” The Plan also outlines steps for school personnel to follow after \*\*\*. (Hr’g Tr. at 168, 177 – 78, 181; Resp’t Ex. 10 at 2, 50 – 53)
14. Among other things, the April 15, 2010 ARD committee considered the March, 2010 speech evaluation and decided the Student did not need direct speech therapy. The committee did include meeting communication needs through “use of switch, pictures, gestures, light box and vocalizations.” The following annual goal was adopted: “The student will demonstrate measurable progress toward mastery of enrolled and functional grade level skills of pre-academic auditory and visual discrimination skills, as measured by the mastery of a minimum of 70% of the annual IEP objectives.” (Resp’t Ex. 10 at 4, 27, 43)

15. The District did not receive a request for an IEE following the evaluations. (Hr’g Tr. at 239 – 40)
16. The April 15, 2010 ARD committee included in its documentation a Student Progress Report in PT. The Progress Report indicated “work in progress” on the short-term objective of standing \*\*\* for 30-45 minutes 1-2 times a day. (Resp’t Ex. 10 at 71)
17. The April 15, 2010 ARD committee included in its documentation a Student Progress Report in OT. The Progress Report indicated “work in progress” on the short-term objective of improving self-feeding skills with an adaptive spoon. (Hr’g Tr. at 123; Resp’t Ex. 10 at 65)
18. The child has had an adaptive spoon for feeding. (Hr’g Tr. at 185)
19. The April 15, 2010 ARD committee included in its documentation a Student Progress Report in PLS. The Progress Report indicated a rise in mastery from 60% to 65% from November, 2009 to April, 2010 on the short-term objective of cooperating with changing procedures and schedules. The Progress Report indicated a rise in mastery from 60% to 65% from November, 2009 to April, 2010 on the short-term objective of self feeding using a utensil with hand over hand assistance. (Resp’t Ex. 10 at 67)
20. On May 25, 2010, the District issued a Student Progress Report in PT. The Progress Report indicated “work in progress” on the short-term objective of standing \*\*\* for 30-45 minutes 1-2 times a day. The physical therapist added a comment that the Student was “Doing better with student’s standing.” (Pet’r Ex. 4 at 5)
21. During the school year, the child’s special education teacher utilized \*\*\* to prevent the child from sucking on student’s hand. The teacher discontinued use of \*\*\* at the request of the parents. (Hr’g Tr. at 198)
22. On or about June 3, 2010, the Student’s parent notified the District that the Student would not attend ESY. (Resp’t Ex. 9 at 1)
23. During the 2010-2011 school year, the Student was assigned to the \*\*\* grade in the District’s \*\*\* school. (Hr’g Tr. at 27; Pet’r Ex. 5 at 1; Resp’t Ex. 8 at 1)
24. On September 8, 2010, the District completed a full and individual reevaluation of the Student. Among other things, the reevaluation team noted that “An FIE is being completed to bring together all relevant information, including the eligibility of Multiple Disabilities.” (Pet’r Ex. 5 at 1; Resp’t Ex. 8 at 1)
25. The September 8, 2010 reevaluation team noted that in the area of speech/language, the Student’s parents “are requesting another speech evaluation be completed. The ARD committee agreed that although the speech evaluation is current, an additional evaluation will be completed.” (Pet’r Ex. 5 at 13; Resp’t Ex. 8 at 13)
26. On September 8, 2010, an ARD committee for the Student met. All ARD committee members – including the Student’s parents in attendance – signed in agreement. Among other things, the committee determined that the Student’s placement was in a self-contained life skills class. (Hr’g Tr. at 77 – 78, 132, 144; Pet’r Ex. 4 at 10, 15; Resp’t Ex. 7 at 5, 10)
27. Among other things, the September 8, 2010 ARD committee included an annual goal for OT including the following short-term objective: “Student will participate in feeding using ‘hand

under hand' technique.” The time frame for the OT IEP spanned from September, 2010 to September, 2011. (Pet’r Ex. 4 at 2; Resp’t Ex. 7 at 13)

28. On or about September 8, 2010, the District notified the Student’s parents that at their request an additional speech and language evaluation of the Student would be conducted by the District. The parents did not request an IEE. (Hr’g Tr. at 249 – 54; Pet’r Ex. 4 at 4; Resp’t Ex. 6 at 1)
29. On or about September 9, 2010, the Student’s physician completed and submitted to the District a school health services form for incorporation into the Student’s Health Care Plan. Among other things, the Student’s physician stated that the Student’s \*\*\* to prevent rashes. (Hr’g Tr. at 169, 180 – 81; Pet’r Ex. 6 at 3)
30. The District has complied with the Student’s physician’s directive on \*\*\* of the Student. The Student’s \*\*\* before the Student left school by bus. (Hr’g Tr. at 122, 124 – 26; Pet’r Ex. 14 at 16 – 21; Resp’t Ex. 22 at 1)
31. There have been incidences when the Student arrived home \*\*\*. (Hr’g Tr. at 98 – 99)
32. On or about September 9, 2010, the Student’s physician completed and submitted to the District a school health services form for incorporation into the Student’s Health Care Plan. Among other things, the Student’s physician stated that the Student should be repositioned at least every two hours. (Pet’r Ex. 6 at 3)
33. The District has complied with the Student’s physician’s directive on repositioning of the Student, including at transitional moments. (Hr’g Tr. at 122, 129 – 30, 194, 258)
34. On September 10, 2010, the Student’s parent notified the District that when the Student came home from school the Student’s \*\*\*. (Pet’r ex. 7 at 1)
35. On September 15 and 17, 2010, the Student’s parent noted in the parent/teacher communication log that when the Student was picked up from school the Student’s \*\*\*. (Pet’r Ex. 11 at 1)
36. On or about October 19, 2010, a physician for the Student prepared a notification that the Student’s \*\*\* temporarily was not working. The physician instructed that if the Student had a seizure for more than five minutes, a specific medication – Diastat – should be administered. The District received the notification. The school nurse was aware of it and placed it in the Student’s health folder. (Hr’g Tr. at 169 – 70, 174, 181; Pet’r Ex. 9 at 1)
37. On October 20, 2010, a physician for the Student prepared an order directing the administration of Diastat to the Student if the Student had a seizure for more than five minutes. (Hr’g Tr. at 174; Pet’r Ex. 10 at 1)
38. On November 16, 2010, a physician for the Student prepared a notification that the Student’s \*\*\* was activated and operational. (Hr’g Tr. at 174 – 75; Pet’r Ex.10 at 2)
39. On December 6, 2010, the District conducted a speech impairment reevaluation of the Student. The District’s evaluator noted that “A speech/language re-evaluation was requested to identify [the Student’s] communication abilities and determine ways to increase [the Student’s] communication.” The evaluator stated that “[the Student] has a long-term history of a profound language disorder and is non-verbal.” The evaluator recommended that the Student be considered a child with a speech impairment. (Pet’r Ex. 13 at 1 – 2; Resp’t Ex. 4 at 1 – 2)

40. The District did not receive a request for an IEE following the speech reevaluation. (Hr'g Tr. at 241)
41. On January 19, 2011, an ARD committee for the Student met. The Student's parents objected and did not attend the meeting. Among other things, the committee agreed to accommodate the parental request for speech therapy services and try a language methodology designed for children with significant cognitive delays. The committee added a speech therapy IEP with objectives for utilization of the "Every Move Counts" program with the goal of improving the Student's functional communications skills. (Hr'g Tr. at 231 – 32; Pet'r Ex. 14 at 10 – 12; Resp't Ex. 3 at 11 – 13)

### Discussion

#### \*\*\* Schedule

The Petitioner's first complaint is that the Respondent failed to implement a \*\*\* schedule for the Petitioner. Under the IDEA, a \*\*\* schedule would be considered a supplementary service.<sup>2</sup>

Here, the Petitioner failed to meet its burden to demonstrate that the Respondent did not implement a \*\*\* schedule. While the parents had complaints that the child would arrive home from school with \*\*\*, the child \*\*\* at school on a schedule and the school produced a log to document its efforts in this area. Under IDEA caselaw, the Respondent's communication with the parents on \*\*\* and its coordination among those working with the child to ensure while at school the child \*\*\* are satisfactory.<sup>3</sup>

In conclusion, the Respondent prevails on Claim No. 1.

#### Health Care Plan

The Petitioner's second complaint is that the Respondent failed to establish a health care plan for the Petitioner. Under the IDEA, a health care plan would be considered a school health service under related services.<sup>4</sup>

Here, the child did have a health care plan that was developed and adopted by an ARD committee. The Petitioner failed to demonstrate by a preponderance of evidence that it was deficient. Further, the Petitioner failed to show that while the child's \*\*\* was temporarily not working, that the district was either unaware or unprepared if the child had a seizure.

In conclusion, the Respondent prevails on Claim No. 2.

#### Positioning

The Petitioner's third complaint and fourth complaint are related and pertain to the positioning of the child. The third complaint is that the Respondent failed to assess for transitional positioning. Under the IDEA, a school district must ensure that each child is assessed in all areas related to the suspected disability; further, evaluations must be sufficiently comprehensive to identify all of the child's special education and related

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<sup>2</sup> 34 C.F.R. 300.42, 300.320(a)(4). See also *J.H. v. Los Angeles Unified Sch. Dist.*, 54 IDELR 195 (C.D. Calif. 2010) (school district must provide services that meet child's unique needs \*\*\*).

<sup>3</sup> See *D.B. v. Ocean Twp. Bd. of Educ.*, 985 F.Supp. 457, 520 – 23 (D. N.J. 1997), *affirmed*, 159 F.3d 1350 (3rd Cir. 1998) (relief requested by parents denied where educational program \*\*\*).

<sup>4</sup> 34 C.F.R. 300.34(c)(13), 300.320(a)(4).

services needs.<sup>5</sup> The fourth complaint is that the Respondent failed to implement a repositioning plan for the Petitioner. Under the IDEA, a repositioning plan would be considered a supplementary service.<sup>6</sup>

During an evaluation, the occupational therapist noted how the child was transferred from a wheelchair. During the school day, the child was repositioned on a regular basis. The Petitioner failed to establish by a preponderance of evidence that the child's positioning needs were not adequately assessed or addressed.

In conclusion, the Respondent prevails on Claim No. 3 and 4.

### Rifton Chair

The Petitioner's fifth complaint is that the Respondent failed to provide a Rifton chair for the Petitioner. A Rifton chair is an activity chair to position a child with a disability.<sup>7</sup> Under the IDEA, a Rifton chair may be considered an assistive technology device.<sup>8</sup>

Here, the Respondent established that it did offer to provide a Rifton chair for the child's use at school but that the parents declined.

In conclusion, the Respondent prevails on Claim No 5.

### ESY

The Petitioner's sixth complaint is that the Respondent failed to provide ESY services to the Petitioner. Under the IDEA, ESY services must be available when needed to prevent regression in a child's skills.<sup>9</sup>

Here, the Respondent established that it did offer to provide ESY for the child during the summer of 2010 but that the parents did not bring the child. The Petitioner failed to establish by a preponderance of evidence that the Respondent's ESY plan was inadequate.

In conclusion, the Respondent prevails on Claim No. 6.

### IEE

The Petitioner's seventh complaint is that the Respondent failed to provide a list of IEE providers to the Petitioner. Under the IDEA, one of the procedural safeguards is the opportunity to acquire an independent evaluation of a child at public expense when the parents disagree with the results of an evaluation performed by the school district. If there is a parental dispute with a district evaluation, the district must either provide the independent evaluation or file for a due process hearing to defend its evaluation.<sup>10</sup>

Here, the parents assert that they wanted an IEE at the September, 2010 ARD committee meeting in the area of speech.<sup>11</sup> The Hearing Officer finds that at the September, 2010 ARD committee meeting a speech reevaluation by the school was planned. As the speech reevaluation had not yet been conducted, the parents were not entitled to an IEE at that juncture. The Respondent established that it never received an IEE request subsequent to the results of this speech reevaluation.

In conclusion, the Respondent prevails on Claim No. 7.

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<sup>5</sup> 34 C.F.R. 300.304(c)(4), (c)(6).

<sup>6</sup> 34 C.F.R. 300.42, 300.320(a)(4).

<sup>7</sup> Hr'g Tr. at 58 – 59, 163 – 64.

<sup>8</sup> 34 C.F.R. 300.5, 300.105.

<sup>9</sup> 34 C.F.R. 300.106; 19 Tex. Admin. Code 89.1065.

<sup>10</sup> 34 C.F.R. 300.502.

<sup>11</sup> Hr'g Tr. at 281 – 82.

## Assessment of Chewing and Swallowing

The Petitioner's eighth complaint is that the Respondent failed to assess the Petitioner for chewing and swallowing difficulties. Under the IDEA, a school district must ensure that each child is assessed in all areas related to the suspected disability; further, evaluations must be sufficiently comprehensive to identify all of the child's special education and related services needs.<sup>12</sup>

Here, the Respondent's occupational therapist did assess the child's feeding needs. The Petitioner failed to establish by a preponderance of evidence that the evaluation of the child's feeding needs was not sufficiently comprehensive in regard to chewing and swallowing. The Respondent was otherwise aware of the child's chewing and swallowing abilities as indicated in the diet category on the child's health plan.

In conclusion, the Respondent prevails on Claim No. 8.

## Speech Services

The Petitioner's ninth complaint is that the Respondent failed to provide speech services to the Petitioner. Under the IDEA, speech services are a type of related services.<sup>13</sup> Related services must be provided if required to assist a child with a disability to benefit from special education.<sup>14</sup>

Here, the Respondent established that the child's communication level did not make the child a suitable candidate for direct speech therapy services. Instead, the Respondent utilized a variety of other means and techniques for communication with the child. The Petitioner failed to establish by a preponderance of evidence that speech services were necessary for the child to receive the benefit of special education.

In conclusion, the Respondent prevails on Claim No. 9.

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The Petitioner's tenth complaint is that the Respondent \*\*\* of the Petitioner without parental permission. Under the IDEA, all services are required to be provided in accordance with the IEP.<sup>15</sup>

Here, there is no provision for the utilization of \*\*\* in the child's IEPs. Nonetheless, school personnel did \*\*\*. This temporary practice ceased, however, once the parents requested that it stop. This Hearing Officer finds that there is no violation of the IDEA under these circumstances. Under the federal regulations implementing the IDEA, for a procedural violation to amount to a denial of FAPE, the procedural inadequacy must either impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit.<sup>16</sup> The Petitioner failed to establish by a preponderance of evidence that either the right to FAPE was impeded, the parents participation was significantly impeded, or that the child was denied educational benefit because of this temporary practice.

In conclusion, the Respondent prevails on Claim No. 10.

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<sup>12</sup> 34 C.F.R. 300.304(c)(4), (c)(6).

<sup>13</sup> 34 C.F.R. 300.34(c)(15), 300.320(a)(4).

<sup>14</sup> 34 C.F.R. 300.34(a).

<sup>15</sup> 34 C.F.R. 300.323(c)(2).

<sup>16</sup> 34 C.F.R. 300.513(a)(2).

## OT

The Petitioner's eleventh complaint is that the Respondent failed to implement OT recommendations for the Petitioner. Under the IDEA, occupational therapy is a type of related services.<sup>17</sup> Related services must be provided if required to assist a child with a disability to benefit from special education.<sup>18</sup>

Here, the child had an OT IEP. The Petitioner failed to establish by a preponderance of evidence that the OT IEP was inadequate for addressing the child's needs.

In conclusion, the Respondent prevails on Claim No. 11.

## Modified Spoon

The Petitioner's twelfth complaint is that the Respondent failed to provide and/or utilize a modified spoon for the feeding of the Petitioner. Under the IDEA, a modified spoon may be considered an assistive technology device.<sup>19</sup>

Here, while the school experimented with different types of spoons to determine the appropriate utensil for the child, the child had use of a modified spoon. The Petitioner failed to establish by a preponderance of evidence that the child was denied a specific kind of modified spoon that prevented the child from receiving educational benefit.

In conclusion, the Respondent prevails on Claim No. 12.

## PT

The Petitioner's thirteenth complaint is that the Respondent failed to provide PT services for the Petitioner. Under the IDEA, physical therapy is a type of related services.<sup>20</sup> Related services must be provided if required to assist a child with a disability to benefit from special education.<sup>21</sup>

Here, the child was provided PT services. The Petitioner failed to establish by a preponderance of evidence that in regard to the use of \*\*\* – a piece of equipment that \*\*\* – that the Respondent ever acted contrary to orders that it had notice of that limited the duration that the Petitioner could \*\*\*. Further, the Petitioner failed to show by a preponderance of evidence that the school placed the child \*\*\* for longer that the child could tolerate.

In conclusion, the Respondent prevails on Claim No. 13.

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<sup>17</sup> 34 C.F.R. 300.34(c)(6), 300.320(a)(4).

<sup>18</sup> 34 C.F.R. 300.34(a).

<sup>19</sup> 34 C.F.R. 300.5, 300.105.

<sup>20</sup> 34 C.F.R. 300.34(c)(9), 300.320(a)(4).

<sup>21</sup> 34 C.F.R. 300.34(a).

## Conclusions of Law

After due consideration of the foregoing findings of fact, this Hearing Officer makes the following conclusions of law:

1. The Respondent, Flour Bluff Independent School District, provided the Petitioner, \*\*\*, an appropriate \*\*\* schedule. 34 C.F.R. 300.42, 300.320(a)(4).
2. The Respondent, Flour Bluff Independent School District, provided the Petitioner, \*\*\*, an appropriate health care plan. 34 C.F.R. 300.34(c)(13), 300.320(a)(4).
3. The Respondent, Flour Bluff Independent School District, did not fail to assess the Petitioner, \*\*\*, for transitional positioning. 34 C.F.R. 300.304(c)(4), (c)(6).
4. The Respondent, Flour Bluff Independent School District, provided the Petitioner, \*\*\*, an appropriate repositioning plan. 34 C.F.R. 300.42, 300.320(a)(4).
5. The Respondent, Flour Bluff Independent School District, did not fail to provide the Petitioner, \*\*\*, a Rifton chair. 34 C.F.R. 300.5, 300.105.
6. The Respondent, Flour Bluff Independent School District, offered the Petitioner, \*\*\*, ESY services. 34 C.F.R. 300.106; 19 Tex. Admin. Code 89.1065.
7. The Respondent, Flour Bluff Independent School District, did not fail to provide the Petitioner, \*\*\*, a list of IEE evaluators. 34 C.F.R. 300.502.
8. The Respondent, Flour Bluff Independent School District, did not fail to assess the Petitioner, \*\*\*, for chewing and swallowing difficulties. 34 C.F.R. 300.304(c)(4), (c)(6).
9. The Respondent, Flour Bluff Independent School District, did not fail to provide the Petitioner, \*\*\*, appropriate speech services. 34 C.F.R. 300.34(c)(15), 300.320(a)(4).
10. The Respondent, Flour Bluff Independent School District, inappropriately placed \*\*\* of the Petitioner, \*\*\*. The placement of \*\*\*, however, did not impede the child's right to a FAPE, significantly impede the parents' opportunity to participate in the decision-making process regarding the provision of FAPE, or cause a deprivation of educational benefit. 34 C.F.R. 300.513(a)(2).
11. The Respondent, Flour Bluff Independent School District, provided the Petitioner, \*\*\*, appropriate OT services. 34 C.F.R. 300.34(c)(6), 300.320(a)(4).
12. The Respondent, Flour Bluff Independent School District, provided the Petitioner, \*\*\*, an appropriate modified spoon. 34 C.F.R. 300.5, 300.105.
13. The Respondent, Flour Bluff Independent School District, provided the Petitioner, \*\*\*, appropriate PT services. 34 C.F.R. 300.34(c)(9), 300.320(a)(4).
14. The Respondent, Flour Bluff Independent School District, provided the Petitioner, \*\*\*, with FAPE.

Order

Based upon the foregoing findings of fact and conclusions of law,

**IT IS HEREBY ORDERED THAT:**

1. All relief sought by the Petitioner shall be and is **DENIED**.

**SIGNED** this 30th day of April, 2011.

/s/ Steve R Aleman  
Steven R. Aleman  
Special Education Hearing Officer

STUDENT,	§	
b/n/f PARENTS	§	BEFORE A
	§	SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER
	§	
FLOUR BLUFF	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

SYNOPSIS

- ISSUE 1: Whether the Respondent failed to implement a \*\*\* schedule for the Petitioner.  
 CITE: 34 C.F.R. 300.42, 300.320(a)(4)  
 HELD: For the Respondent. A \*\*\* schedule was followed for the child.
- ISSUE 2: Whether the Respondent failed to establish a health care plan for the Petitioner.  
 CITE: 34 C.F.R. 300.34(c)(13), 300.320(a)(4)  
 HELD: For the Respondent. A health care plan was developed for the child.
- ISSUE 3: Whether the Respondent failed to assess for transitional positioning of the Petitioner.  
 CITE: 34 C.F.R. 300.304(c)(4), (c)(6)  
 HELD: For the Respondent. The school addressed the child’s positioning needs.
- ISSUE 4: Whether the Respondent failed to implement a repositioning plan for the Petitioner.  
 CITE: 34 C.F.R. 300.42, 300.320(a)(4)  
 HELD: For the Respondent. The school repositioned the child throughout the school day.
- ISSUE 5: Whether the Respondent failed to provide a Rifton chair for the Petitioner.  
 CITE: 34 C.F.R. 300.5, 300.105  
 HELD: For the Respondent. The parent declined a Rifton chair.
- ISSUE 6: Whether the Respondent failed to offer ESY services to the Petitioner.  
 CITE: 34 C.F.R. 300.106; 19 Tex. Admin. Code 89.1065  
 HELD: For the Respondent. The Respondent offered ESY services.
- ISSUE 7: Whether the Respondent failed to provide a list of IEE providers to the Petitioner.  
 CITE: 34 C.F.R. 300.502  
 HELD: For the Respondent. The Respondent did not receive a request for an IEE.
- ISSUE 8: Whether the Respondent failed to assess the Petitioner for chewing and swallowing difficulties.  
 CITE: 34 C.F.R. 300.304(c)(4), (c)(6)  
 HELD: For the Respondent. The child was evaluated for feeding services and needs.

- ISSUE 9: Whether the Respondent failed to provide speech services to the Petitioner.  
CITE: 34 C.F.R. 300.34(c)(15), 300.320(a)(4)  
HELD: For the Respondent. Speech services were provided when determined as necessary.
- ISSUE 10: Whether the Respondent inappropriately \*\*\* of the Petitioner.  
CITE: 34 C.F.R. 300.323(c)(2)  
HELD: For the Respondent. The school temporarily \*\*\* and suspended practice upon parental request.
- ISSUE 11: Whether the Respondent failed to implement OT recommendations for the Petitioner.  
CITE: 34 C.F.R. 300.34(c)(6), 300.320(a)(4)  
HELD: For the Respondent. The Respondent implemented OT related services for the child.
- ISSUE 12: Whether the Respondent failed to provide and/or utilize a modified spoon for the feeding of the Petitioner.  
CITE: 34 C.F.R. 300.5, 300.105  
HELD: For the Respondent. The Respondent provided and used a modified spoon for feeding the child.
- ISSUE 13: Whether the Respondent failed to provide appropriate PT services to the Petitioner.  
CITE: 34 C.F.R. 300.34(c)(9), 300.320(a)(4)  
HELD: For the Respondent. The Respondent implemented PT related services for the child.