

**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT, bnf  
PARENTS,  
Petitioner,**

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v.

**DOCKET NO. 038-SE-1008**

**ORANGEFIELD INDEPENDENT  
SCHOOL DISTRICT,  
Respondent.**

**DECISION OF THE HEARING OFFICER**

Procedural History

Petitioner, STUDENT, brings this action against the Orangefield Independent School District (“Respondent,” “the school district,” or, “Orangefield ISD”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

STUDENT has been represented throughout this litigation by her legal counsel, Sam Shobassy, Attorney at Law. The school district has been represented throughout this litigation by its legal counsel David Richards of Richards, Lindsay & Martin.

The parties convened a Resolution Session on October 30, 2008 and mediation on December 17, 2008 but were unable to reach a settlement. Three continuances were granted in this case -- all by agreement. The first was to resolve a scheduling conflict for Respondent’s counsel and to allow Petitioner an opportunity to consider the use of mediation. The second was to continue settlement negotiations following the mediation in December. The third was to add a second day of hearing which required a short continuance in order to schedule two consecutive days for the hearing that were mutually convenient to the parties and their counsel.

The due process hearing was conducted on March 17-18, 2009. Petitioner continued to be represented by legal counsel. In addition, STUDENT’s foster parents, \*\* and \*\* also attended the hearing (referred to hereafter as “foster parents” or “\*\* and/or \*\*”). Respondent continued to be represented by its legal counsel. In addition, \*\*, Director of Special Education for Orangefield ISD, attended the hearing as the party representative.

At the conclusion of the hearing the parties requested the record remain open in order to allow submission of written closing arguments and legal briefs on the seminal issues in this case. Those pleadings were submitted by both parties in a timely manner. The Decision in this case was initially due April 10, 2009 but extended, by agreement, to May 8, 2009 in order to allow the hearing officer an opportunity to review the written closing arguments and legal briefs submitted by the parties.

## **Issues**

The issues for decision in this case are:

1. Whether STUDENT needs \*\* as a related service under the Individuals with Disabilities Education Act (IDEA) in order to receive a free, appropriate public education (FAPE) or whether school district personnel can provide those services;
2. Whether the school district amended STUDENT's Individual Educational Plan (IEP) outside of the Admission, Review & Dismissal Committee (ARD) process and, if so, whether that constitutes a violation of IDEA; and,
3. Whether the school district improperly terminated transportation as a related service beginning on or about August 29, 2008 and, if so, whether that constitutes a violation of IDEA.

## **Relief Requested**

Petitioner requests the following items of relief:

1. An order directing the school district to allow \*\* services to be provided to STUDENT during the school day, at all school functions, and on school transportation;
2. An order directing the school district to revise STUDENT's IEP to specifically include the provision that \*\* services shall be provided by \*\* and that the school district shall cooperate with the \*\* service to do so;
3. An order directing the school district to provide STUDENT with transportation as a related service and that \*\*;
4. An order directing the school district to refrain from filing truancy charges against Petitioner as a result of STUDENT's absence from school while this litigation is pending; and,
5. An order awarding attorney's fees.

## **Attorney's Fees**

Special education hearing officers in Texas do not have the authority to award attorney's fees. Instead, a prevailing party in a special education due process hearing may seek an award of attorney's fees from a court of competent jurisdiction. *34 C.F.R. § 300.517.*

## FINDINGS OF FACT

1. STUDENT is eligible for special education and related services from the Orangefield ISD as a student with \*\* (Joint Exhibit 1, p. 1); (referred to hereafter as J- \_\_, p. \_\_) (J- 2, p. 1)(J-3, p. 2) (J-5, p. 2).
2. STUDENT is a \*\* year old born with \*\*. \*\* (J-9, p. 1)(J-11, pp. 1-2).
3. STUDENT has a \*\* that is changed once a month and as needed for dislodgement/obstruction. She receives \*\* care twice daily and as needed for \*\*. She also requires pulse ox monitoring as needed. STUDENT has \*\*. (J-9, p. 1)
4. STUDENT has a \*\* which is changed every 6 months or as needed for dislodgment. She receives \*\* care daily and as needed for \*\*. She receives \*\*. (J-9, p. 1)
5. STUDENT developed new onset of \*\* activity last August and has been prescribed medication. She has experienced \*\* but has not required oxygen following \*\* activity. STUDENT has \*\*. (J-9, p. 1).
6. STUDENT's ability to communicate her wants and needs is very limited. \*\*. (J-11, pp. 8-16).
7. STUDENT is \*\*. STUDENT has health and medical needs that impact her involvement or progress in the general curriculum at school. STUDENT needs the following special health procedures \*\*. (J-3 pp. 2-3)( J-4 pp. 3-4, 15, 21)( J-5, p. 6) (J-6, p. 10)(J-7, p. 1)(J-10, p. 1)(J-11, pp. 2, 21, 23). STUDENT receives \*\*. (J-4, p. 2)(J-5, p. 21)(J -10, p. 2).
8. STUDENT was born in \*\*. Parents were appointed to serve as STUDENT's foster parents \*\*. STUDENT went to live with Parents and their children \*\*. This gave STUDENT access to medical, educational and therapeutic services. (J-14, pp. 46-50)(Hearing Transcript, Vol. I, pp. 219-220)(referred to hereafter as Tr. Vol. \_\_ , p. \_\_).
9. In late 2004 \*\*'s father became ill and the family moved back to Texas. Before leaving \*\* Parents approached STUDENT's biological parents about adopting her. \*\*. In January 2005 STUDENT's biological parents executed a power of attorney. This authorized Parents to take a number of actions on STUDENT's behalf including making decisions regarding her education, health, medical hospitalization and emergency surgical needs. STUDENT's biological parents also authorized Parents to obtain, review and copy all of STUDENT's records, including medical, dental, and educational records and to discuss and negotiate the payment of Medicaid and SSI where applicable. (J-14, pp. 5-6, 20)(Tr. Vol. I, pp. 219-220).

10. Before leaving \*\* STUDENT came down with a serious illness in February 2005 and was hospitalized for over a week. She experienced rapid heart rate and difficulty breathing. This was a frightening experience for her biological mother, foster family and her medical/therapeutic team who all realized how rapidly STUDENT's medical condition can change in a very short amount of time. (J-14, p. 46).
11. Maxim Healthcare (Maxim) has provided \*\* nursing care to STUDENT for about three years beginning when Parents first moved back to Texas from \*\*. (Tr. Vol. I, pp. 167, 222). Maxim was selected by Parents through a referral from STUDENT's pediatrician, Dr. \*\*. Parents had difficulty finding a pediatrician in the area who would agree to take STUDENT as a patient given her \*\*. They contacted eleven physicians before finding Dr. \*\*. Parents trust Dr. \*\* and Maxim nurses as a result. Maxim nursing services are paid through Texas Medicaid. (Tr. Vol. I, pp. 181, 221-223). The Maxim nurses who provided care to STUDENT are licensed vocational nurses (LVNs). (Tr. Vol. I, p. 128, 150).
12. Beginning in the 2006-2007 school year up through May 2008, the ARD committee agreed that nursing services would be provided by the Maxim \*\* nurses through the arrangement between STUDENT's family and Maxim. (J-1, p. 5)( J-2, p. 15)( J-3, p. 19)( J-4, p. 25)( J-9, p. 1). Maxim nurses and administrators attended several ARD Committee meetings over the years and participated in ARD Committee decisions. (J-2, p. 16)( J-3, p. 19)( J-4, p. 20)( J-5, p. 23).
13. The school district participates in a State Medicaid program under the Health & Humans Services Commission (HHSC) known as SHARS – School Health and Related Services. The school district serves as the Medicaid Provider under SHARS and receives reimbursement for eligible related services stated in a student's IEP. Parental consent for reimbursement is a requirement of the SHARS program. PARENT signed a SHARS consent form in May 2008. (J-9, p. 1)( J-19)(Tr. Vol. I. pp. 23-25).
14. \*\* is a Licensed Vocational Nurse (LVN) in the State of Texas. She is a certified vision screener and has completed the curriculum of the American Heart Association for administering CPR and AED as a health provider. (J-13, pp. 19-20). A licensed vocational nurse completes a one year nursing program. Ms. \*\* graduated from Lamar University in Orange. An LVN is trained in basically all nursing skills in both clinical and hospital settings before taking the State Board exam. (Tr. Vol. I, pp. 121-122). Ms. \*\* has been an LVN for 14 years. (Tr. Vol. I, p. 122).
15. Ms. \*\* has been assigned to the life skills class at Orangefield \*\* School campus since the beginning of the current school year. (Tr. Vol. I, p. 110). She was previously assigned to serve as the nurse for the life skills class at Orangefield \*\*

School during the spring semester of the 2007-2008 school year. (Tr. Vol. I., pp. 110-111). Ms. \*\* was reassigned to the \*\* school shortly before the beginning of the current school year \*\*. (Tr. Vol. I., p. 111). \*\*. (Tr. Vol. I, p. 124).

16. To prepare for caring for STUDENT Ms. \*\* discussed STUDENT with the classroom teacher, reviewed the emergency medical information on file with the school district, (including a review of records from Maxim) and conducted her own independent research of \*\* Syndrome and \*\* care. Ms. \*\* hoped to meet with both STUDENT's foster family and the Maxim nurses to review STUDENT's condition and to gain further insight into caring for STUDENT Those meetings did not take place. (Tr. Vol. I, pp. 114, 119-121).
17. Ms. \*\* is confident in her ability to care for STUDENT. She has \*\* care training as part of her clinical nursing program. She worked at Baptist Hospital in Orange for a year where she provided \*\* care to hospital patients. She has had training in \*\* and on the use of \*\*. (Tr. Vol. I, pp. 112-113, 121). Ms. \*\* worked in a nursing home and for a home health agency and served \*\* patients in both environments. She also provided one on one private care for a patient who had a \*\*. (Tr. Vol. I, p. 113). In the nursing home she took care of elderly patients administering medications, taking blood sugars, administering insulin, providing G-tube feedings, colostomy care, wound care, and communicating with physicians about the health issues of her patients. (Tr. Vol. I, p. 122). She worked in the nursing home for a little over one year. (Tr. Vol. I, p. 123).
18. In the home health care setting, Ms. \*\* conducted in-home visits and patient assessments. She provided patient and family education on different medical conditions. She took vital signs, administered insulin, set up weekly medication schedules, provided wound care, and dealt with Foley catheters. She worked in home health for two years. (Tr. Vo. I, pp. 122-123). Ms. \*\* also worked in family practice for 8-9 years. Ms. \*\* gave injections, administered immunizations, assisted with minor surgical procedures, performed venipunctures for various lab tests, conducted pulmonary function tests, EKGs, and vision screenings. (Tr. Vol I., pp. 123-124).
19. In addition to providing STUDENT \*\* nursing care at school Ms. \*\* was to provide nursing services \*\* each day. Ms. \*\* continues to \*\* every day and continues to be available to STUDENT \*\*. (Tr. Vol. I, pp. 114-115).
20. \*\* is a Registered Nurse (R.N.). Ms. \*\* has received additional training in various aspects of health care from the American Heart Association, the University of Texas Medical Branch-Orange County Health Department, Western Schools, (an accredited provider of continuing nursing education), Lamar University, and Region 5 Education Service Center. (J-13, pp. 1-18). Ms. \*\* is the R.N. assigned to the Orangefield \*\* School campus and is available to all staff for assistance. (Tr. Vol. I, p. 120).

21. \*\* is one of the Maxim \*\* nurses who provided nursing care to STUDENT during the past three years. She is an LVN and completed the same one year program at Lamar University that \*\* completed. (Tr. Vol. I, pp. 128, 142). Ms. \*\* returned to school and completed the R.N. program although she has not yet taken the test to become a licensed R.N. (Tr. Vol. I, p. 142).
22. Ms. \*\*'s work experience includes eight months as an LVN at St. Elizabeth Hospital, one year as a private duty nurse for an adult patient with needs similar to STUDENT's, one year at a private duty pediatric agency, and one year for a pediatrician before working for Maxim. She has worked for Maxim Health Care for the past five years. (Tr. Vol. I, p. 144).
23. Ms. \*\* initially provided \*\* nursing care to STUDENT Monday through Friday for the first year. However Ms. \*\* elected to reduce her work schedule for personal reasons at first working four days a week, then reducing further to three days a week and, as of the date of the hearing, to one to two days a week. (Tr. Vol. I, pp. 145-146). \*\*, another Maxim nurse, began providing nursing care at school one to three times a week about one year ago splitting nursing services with Ms. \*\*. (Tr. Vol. I, pp. 150-151). Ms. \*\* provided Ms. \*\* with some training when she began caring for STUDENT (Tr. Vol. I, pp. 155, 161).
24. Ms. \*\* is also an LVN licensed in 1994. She worked in a nursing home for more than ten years, then in a rehab facility. She has provided extended care for clients at home over the past five to six years. Ms. \*\* has worked for Maxim Healthcare since July 2007. (Tr. Vol. I, p. 164). A number of other Maxim nurses filled in to care for STUDENT from time to time as needed. (Tr. Vol. I, pp 178, 201-202, 236-237).
25. The Maxim nurses began each day at \*\*. \*\*. Maxim nurses \*\*. The Maxim nurse \*\*. (Tr. Vol. I, pp. 132-133, 151-152). The Maxim nurses left STUDENT in the care of teaching staff each day \*\*. (Tr. Vol. I, pp. 134, 156, 176-177).
26. The Maxim nurse \*\*. (Tr. Vol. I, p. 134). If STUDENT fell ill at school, the nurse contacted PARENT by cell phone \*\*. (Tr. Vol. I, p. 135). On one occasion \*\*. (Tr. Vol. I, p. 136). \*\*. (Tr. Vol. I, p. 137).
27. STUDENT has been prescribed hearing aids although she resists wearing them. A schedule for the use of hearing aids was reviewed and approved by the teacher, PARENT, Ms. \*\*, and representatives from the Regional Day School for the Deaf. (Tr. Vol. I, pp. 138-139)( J-3, p. 19). PARENT also discussed the hearing aid issue with the Maxim nurse and instructed the nurse to put the hearing aids away after two or three attempts if STUDENT continued to resist them. (Tr. Vol. I, pp. 138-140).

28. Problems arose for the classroom teacher with the Maxim nurses beginning in September 2006. (Tr. Vol. I, pp. 20, 69, 78, 99). The classroom teacher felt that the Maxim nurses did not always understand STUDENT's educational needs or school district's efforts to implement aspects of her IEP. \*\*. (Tr. Vol. I, pp. 69-71, 72-73, 83-84, 87-88, 98, 100-101, 224).
29. The classroom teacher discussed her concerns with the Maxim nurses from time to time. Some were more cooperative than others. (Tr. Vol. I, pp. 74-77). The classroom teacher also discussed her concerns with the Special Education Director and, prior to the current school year, with the Superintendent. (Tr. Vol. I, pp. 78, 211-212). Maxim nurses and administrators did not feel there were any significant conflicts with teaching staff and that any problems that arose were resolved. (Tr. Vol. I, pp. 183-184, 196-197, 198-199). STUDENT's foster parents were unaware of continuing problems between Maxim nurses and the school district. (Tr. Vol. I, pp. 233-234, 238).
30. School district administrators began talking about assigning a school district nurse to STUDENT for the current school year in late July/early August because Ms. \*\* became available when her nursing services were no longer needed at the \*\* school. (Tr. Vol. I, p. 206). The Special Education Director notified PARENT by telephone two weeks before the first day of school that \*\* the school district could now provide its own qualified nurse to care for STUDENT (Tr. Vol. I, pp. 30-32). A follow up letter was sent on August 29, 2008. (J-8).
31. STUDENT's foster parents objected to this decision for several reasons. First, they had a strong trust relationship with Maxim. (Tr. Vol. I, pp. 222-223). Second, STUDENT's foster mother maintained daily and frequent communications with Maxim nurses which were reassuring. She doubted a school district nurse would maintain the same level of communication. (Tr. Vol. I, pp. 224-225, 233). Third, STUDENT's foster mother had the ability to replace any Maxim nurse she found to be unprofessional. (Tr. Vol. I, pp. 235-237). Fourth, the school district could not guarantee that its nurse would be able to devote her attention to STUDENT \*\*. (Tr. Vol. I, pp. 226-227). In sum, the continuity of care given by Maxim nurses provided PARENT with peace of mind that STUDENT was safe at school. She did not want to lose that sense of security. (Tr. Vol. I, pp. 226, 233).
32. The parties had a series of communications in August about the nursing services including a Sunday afternoon meeting with the Superintendent. PARENT was concerned about the school district's ability to adequately monitor and provide proper nursing care for STUDENT. PARENT did not meet \*\* until the Resolution Session convened as a procedural step in this litigation. (Tr. Vol. I, pp. 206-207, 239, 246).

33. The school district made several attempts to communicate with both Dr. \*\* and Maxim to gain additional information in order to facilitate the transition from Maxim to \*\*. Maxim declined to meet with Ms. \*\* for that purpose. Dr. \*\* did not respond to school district attempts either. By then, the parties were in litigation. (J-7)(Tr. Vol. I, pp. 32-33, 207-210, 213)(Tr. Vol II, pp 23-24, 27-29).
34. The school district offered transportation to STUDENT for the current school year. The bus driver drove to STUDENT's home the first few days of school \*\*. However, the school district stopped sending the bus to STUDENT's home after it became clear that STUDENT's parents were not going to send STUDENT to school because of the dispute over nursing services. (Tr. Vol. I, p. 46, pp. 54-57; Vol II, pp. 33-34).

## **DISCUSSION**

### Nursing Services

School health services are health services designed to enable a child with a disability to receive a free, appropriate public education (FAPE) as described in the child's Individual Educational Plan (IEP). School nurse services are services provided by a qualified school nurse. School health services may be provided by either a qualified school nurse or other qualified person. *34 C.F.R. § 300.34 (b)(13)*. The qualifications for school health service personnel are set by the state educational agency consistent with state approved or state recognized certifications or licensure that apply to the professional discipline in which the personnel are providing related services. *34 C.F.R. § 300.156 (a)(b); 19 Tex. Admin. Code § 89.1121 (a)*.

The evidence showed that the school district nurses and the Maxim \*\* nurses had essentially the same or similar professional credentials, experience and education. Ms. \*\* was qualified to administer to STUDENT's needs during the school day and the school district had another qualified nurse who was available as back-up. The evidence also showed that the school district requested additional information and/or training for its nursing staff in order to meet STUDENT's nursing needs from the outside health care providers. The school district cannot be faulted for the failure of Maxim, STUDENT's physician, or her foster parents to cooperate in providing that information and training.

I conclude that the school district had the authority and responsibility to assign appropriate qualified personnel to provide the health care services stated in STUDENT's IEP. The evidence showed that the school district's nurses were qualified to provide STUDENT with the health care services she needs at school in order to access and benefit from her educational program. *34 C.F.R. §§ 300.34 (a),(b)(13); 300.156 (a)(b); 19 Tex. Admin. Code § 89.1131 (a)*. See, *New Britain Bd.of Educ., 47 IDELR 86 (SEA Conn. 2006)(parents of student with \*\* could not require school district to hire a different nurse from one assigned by district where assigned nurse met certification requirements stated in student's IEP and*

*obtained additional training).*

### IEP Amendment

IDEA requires an Admission, Review & Dismissal Committee (ARD) meeting at least once annually for the purpose of reviewing and discussing a student's educational progress under her IEP. *34 C.F.R. § 300.324 (b); 19 Tex. Admin. § 89.1050 (a)*. In addition, the school district must ensure that the ARD meets to revise an IEP to address, among other items, the child's anticipated needs or "other matters." *34 C.F.R. § 300.324 (b)(ii)(D)(E)*. Amendments to the IEP may take place either in an ARD meeting or, by agreement between the parents and the school district outside of the ARD process through a written amendment. *34 C.F.R. § 300.324 (a)(4)(6)*.

The evidence in this case showed that nursing services were stated in STUDENT's IEP's as a related health service. *See, Cedar Rapids Comm. Sch. Dist. v. Garret F., 526 U.S. 66, 73-79(1999)(confirming health care services provided in school by a nurse or qualified layperson are "related services" under IDEA)*. The evidence also showed that the parties and ARD Committee clearly contemplated that nursing services would be provided to STUDENT by Maxim nurses. The designation of Maxim nurses was reflected in ARD minutes and by their attendance and participation in ARD decisions.

The evidence demonstrates that the school district agreed that Maxim would provide nursing services to STUDENT -- at least through the end of the 2007-2008 school year. STUDENT's foster parents had no reason to believe that the arrangement with Maxim would not continue. An annual ARD was conducted in late May 2008 for the purpose of planning for the upcoming 2008-2009 school year. The ARD Committee did not discuss or contemplate a change in the delivery of the nursing services by Maxim at that time. It was not until Ms. \*\* became available in August 2008 that the school district made the decision to terminate the use of Maxim nurses. This decision was made outside of the ARD process without input or the agreement of STUDENT's foster parents.

The IDEA requires a school district take steps to ensure that the parents of a student with a disability are afforded the opportunity to participate in ARD meetings. *34 C.F.R. § 300.322*. The decision to terminate the use of Maxim nurses should have been discussed in an ARD meeting. The evidence showed that STUDENT's medical condition was subject to swift deterioration and this was understandably frightening for PARENTS. There was a strong relationship between Maxim nurses and STUDENT's family. The school district should have recognized that a transition from the Maxim nurses to its own nursing staff would be difficult for Parents and perhaps for STUDENT.

The transition from Maxim nurses to school district nurses was an appropriate topic for an ARD meeting because it related to STUDENT's anticipated needs and/or constituted "other matters" within the meaning of the statute and its implementing regulations. *34 C.F.R.*

§300.324 (b)(ii)(D)(E). The failure to convene an ARD meeting deprived STUDENT's foster parents of participating in developing her educational program. 34 C.F.R. § 300.324 (a)(ii). The school district retains the ultimate right and responsibility to make personnel decisions and assign qualified staff to provide services stated in a student's IEP. However, the ARD meeting was a forum that should have been used to introduce \*\* to Parents and to discuss and plan for a smooth transition in nursing care for STUDENT.

It is also reasonable to infer from the evidence that Maxim had a vested financial interest in continuing to provide nursing care for STUDENT and therefore little motivation to cooperate with the school district when it proposed taking over the school health services. The evidence showed that the school district attempted to secure information from Maxim and Dr. \*\* and that those efforts were not successful. However, had the school district proceeded with an ARD meeting in early August both parties would have had the opportunity to begin working through the transition. Had PARENT met \*\* in August she might well have been less fearful and more cooperative in securing information from Dr. \*\* and Maxim. Ms. \*\* also would have had an opportunity to begin building a rapport with STUDENT and her family.

#### SHARS Conflict Resolution Procedures

The evidence also showed that the classroom teacher's concerns about the role the Maxim nurses played in STUDENT's education were left unresolved and built up over time. The teacher's concerns were the basis for the school district's decision to terminate its agreement to use Maxim nurses for STUDENT's nursing care. I agree with Petitioner that the HHSC Senior Policy Analyst for SHARS could have been consulted to resolve conflicts between Maxim nurses and school personnel. Having agreed to the use of Maxim nurses up through May 2008 the school district failed to utilize the case management services available under the SHARS program that it participated in. See, <http://ritter.tea.state.tx/interagency/sharsfaq>, p. 23.

#### Transportation

There is no dispute that STUDENT needs transportation as a related service. The evidence showed that the school district sent a bus \*\* to STUDENT's home the first few days of the new school year. Upon arrival the bus driver was notified by STUDENT's foster mother that STUDENT would not be riding the bus because she would not be attending school. The school district ceased providing transportation when it became clear that STUDENT would not be coming to school unless and until the dispute over nursing services was resolved.

It would have been futile for the school district to continue to send the bus to STUDENT's home while the parties disputed nursing services and STUDENT did not attend school. Therefore, I conclude that the cessation of transportation as a related service was not a violation of the IDEA under the unique factual circumstances of this case.

## CONCLUSIONS OF LAW

1. Petitioner does not need \*\* nurses to provide school health services as a related service in order to receive a free, appropriate public education under the Individuals with Disabilities Education Act where the Respondent school district can provide those services with its own qualified school nursing staff. Respondent retains ultimate responsibility for selecting and assigning qualified staff to provide IEP services. Petitioner did not meet her burden of proof on this issue. *Schaffer v. Weast*, 546 U.S. 49,62 (2005); 34 C.F.R. §§ 300.34, 300.156 (a)(b); 19 Tex. Admin. Code § 89.1131(a).
2. Respondent failed to provide Petitioner's parents with the opportunity to participate in developing Petitioner's IEP to address parental concerns to enhance Petitioner's education when it failed to convene an Admission, Review & Dismissal Committee meeting for the purpose of planning and implementing the transition in the provision of school health services by \*\* nurses to the school district's own qualified nursing staff. The decision to terminate a prior agreement to use the family's designated \*\* nurses related to the student's needs and/or constituted "other matters" that should have been reviewed by the ARD Committee. 34 C.F.R. §§ 300.322 (a), 300.324 (a)(1)(ii)(4)(6)(b)(ii)(D)(E); 19 Tex. Admin. Code § 89.150 (a).
3. Respondent did not improperly terminate transportation as a related service at the beginning of the current school year when it became clear that Petitioner was not attending school due to a dispute between the parties concerning the provision of school health care services. Petitioner did not meet her burden of proof on this issue. *Schaffer v. Weast, supra.*; 34 C.F.R. §300.34 (a).

## ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Petitioner's requests for relief are hereby **DENIED** with other equitable relief **GRANTED** as follows: the Respondent shall convene an Admission, Review & Dismissal Committee meeting for the purpose of discussing and planning for the transition of school health services provided by \*\* nurses from Maxim Healthcare to the school district's own nursing staff within ten school days of the date of this Decision or on a date mutually agreed upon by the parties. It is further **ORDERED** that Respondent shall invite Petitioner's physician, Dr. \*\* (or his designee), representatives from Maxim Healthcare Services, and a representative from HHSC's SHARS program, to participate in the meeting either by telephone or in person. All other relief not specifically stated herein is **DENIED**.

**SIGNED the 30th day of April 2009**

*/s/ Ann Vevier Lockwood*  
Ann Vevier Lockwood  
Special Education Hearing Officer

**NOTICE TO THE PARTIES**

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).