

STUDENT <i>b/n/f</i>	§	BEFORE A SPECIAL EDUCATION
PARENT,	§	
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
NEEDVILLE INDEPENDENT	§	
SCHOOL DISTRICT	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

**ORDER GRANTING RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

**I.
PROCEDURAL HISTORY**

On October 8, 2007, the Texas Education Agency (“TEA”) received the Request for Due Process Hearing filed by Student *b/n/f* Parent (“Petitioner”) against Needville Independent School District (“Respondent”) and assigned the case Docket No. 021-SE-1007. On October 10, 2007, the undersigned Hearing Officer issued the Initial Scheduling Order, setting forth all relevant deadlines pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”). Pursuant to that Order, the prehearing telephone conference was set for October 29, 2007; the Due Process Hearing was set for November 21, 2007; and the Decision deadline was set for December 22, 2007.

On October 29, 2007, the parties convened for the prehearing telephone conference. In attendance were the following: 1) Mr. Christopher Jonas, counsel for the Petitioner; 2) Ms. Larae Idleman, counsel for the Respondent; 3) Mr. Curtis Rhodes, superintendent, for the Respondent; 4) the court reporter, who made a record of the telephone conference; and 5) the undersigned Hearing Officer. During this telephone conference the parties discussed the issues and re-scheduled the Due Process Hearing to December 7, 2007, with Disclosures due November 30, 2007, and the Decision deadline extended to January 7, 2007. Additionally, the parties discussed the possibility of filing dispositive motions and set the following deadlines: November 16, 2007 for Respondent’s Brief; with November 21, 2007 for Petitioner’s Brief.

Respondent submitted its Motion for Summary Judgment on November 16, 2007, and Petitioner submitted Petitioner’s Response to Respondent’s Motion for Summary Judgment on November 21, 2007.

II.
RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

Respondent contends the issues in this case have been identified as (1) what is the proper interpretation of the settlement agreement between the parties dismissing a prior due process hearing, and (2) whether Respondent has complied with that agreement. Respondent argues that the Hearing Officer does not have proper jurisdiction to interpret the terms of a settlement agreement, and as such, an interpretation does not arise under the IDEA. Secondly, Respondent asserts that the District has provided transportation reimbursement in accordance with the agreement, the underlying disputed subject matter of the settlement agreement.

Petitioner's response refers to his entitlement to a Free Appropriate Public Education (FAPE) under the IDEA, and consequently to special education services and an impartial due process hearing. Moreover, Petitioner argues that transportation is guaranteed to a student receiving special education services, and it was clearly understood that transportation would be provided as a result of the mediation agreement and as a result of the ARD meeting on May 23, 2007.

III.
ISSUE IN THIS CASE

As taken from the Order Following Prehearing Conference and Order Extending Decision Deadline, the Hearing Officer found:

Based upon discussions and clarifications during the prehearing telephone conference, Petitioner identified the following issue(s) for this case: What is the proper interpretation of the settlement agreement with respect to appropriate transportation and reimbursement for transportation, and whether Respondent has complied with the settlement agreement.

IV.
**ANALYSIS - JURISDICTION OF THE
HEARING OFFICER**

The issue presented to the Hearing Officer appears to be one of first impression in terms of Texas cases interpreting any federal statutes or regulations. Moreover, there appear to be no state rules or regulations on the subject presented by the parties.

However, according to the research that has been identified by the Hearing Officer, there do appear to be applicable federal regulations: 34 C.F.R. § 300.537, and 34 C.F.R. § 300.506 (b) (7).

300.537 State enforcement mechanisms.

Notwithstanding §§300.506(b)(7) and 300.510(d)(2), which provide for judicial enforcement of a written agreement reached as a result of mediation or a resolution meeting, there is nothing in this part that would prevent the SEA from using other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is not mandatory and does not delay or deny a party the right to seek enforcement of the written agreement in a State court of competent jurisdiction or in a district court of the United States.
(Authority: 20 U.S.C. 1415(e)(2)(F), 1415(f)(1)(B))

§ 300.506 Mediation.

....

(b) Requirements. The procedures must meet the following requirements:

....

(7) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.

Although parties can use “state mechanisms” to seek enforcement of a mediation agreement [300.506(b)(7)] or a resolution agreement [300.510(d)(2)], in this instance, a due process hearing under the aegis of the Texas Education Agency (the SEA), according to § 300.537, that use of the “state mechanism” *may not be mandatory* (emphasis added).

The Hearing Officer interprets this to mean that the only mandatory forum that both parties have to seek enforcement of the written agreement is a State court of competent jurisdiction or a district court of the United States. By inference, that would exclude the state mechanism over which the Hearing Officer presides, meaning the Hearing Officer does not have jurisdiction to hear this case.

ORDER

IT IS THEREFORE ORDERED that Respondent’s motion for summary judgment is hereby granted. A separate order of dismissal will be entered.

SIGNED this 15th day of January 2008.

Lucretia Dillard
Special Education Hearing Officer