

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

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

**I.  
PROCEDURAL HISTORY**

On March 2, 2008, the Texas Education Agency (“TEA”) received the Request for Due Process Hearing filed by Student *b/n/f* Parent (“Petitioner”) against Calallen Independent School District (“Respondent” or “the District”) and assigned the case Docket No. 139-SE-0308.

On March 4, 2008, 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”), amending the Individuals with Disabilities in Education Act (“IDEA”), 20 U.S.C. § 1400 *et seq.* Pursuant to that Order, the prehearing telephone conference was set for 24, 2008; the Due Process Hearing was set for April 17, 2008; and the Decision deadline was set for May 17, 2008.

The Hearing Officer convened the prehearing telephone conference on March 24, 2008. In attendance were the following: (1) Mr. Christopher Jonas, counsel for the Petitioner; (2) Ms. Paula Maddox Roalson, counsel for the Respondent; (3) the court reporter, who made a record of the telephone conference; and (4) the Hearing Officer. During the conference the parties discussed the issues and scheduling of the hearing.

Petitioner’s issues as stated in the Request for Due Process Hearing and confirmed in the prehearing conference are: (1) whether Respondent failed to timely provide Petitioner with a vocational evaluation; and (2) whether Respondent failed to timely provide Petitioner with an assistive technology evaluation.

On April 28, 2008, Respondent filed its Motion for Summary Judgment on all claims, alleging the alternative grounds of (a) lack of jurisdiction by the Hearing Officer, (b) mootness, and (c) lack of a genuine issue of material fact. Petitioner submitted a response on May 14, 2008, contending that fact issues exist, and that a hearing should go forth to develop the record in the case. On July 9, 2008, the Hearing Officer conducted a prehearing conference with the parties to hear arguments on the motion. Having considered all of the evidence submitted by the parties in the form of affidavits, the arguments of counsel and the law, the Hearing Officer grants Respondent’s motion as to jurisdiction.

## **II. BACKGROUND FACTS**

A brief statement of the facts is necessary to explain the context of the ruling in this case. Previous Due Process Hearings between these two parties have occurred, which resulted in the execution of a Settlement Agreement between them dated August 14, 2007. The terms of the agreement included a vocational evaluation and an assistive technology evaluation. The dispute in the instant Due Process Hearing centers around the provision of those evaluations agreed upon in the earlier mediation.

## **III. ANALYSIS**

### **A. Standard of Review**

As the summary judgment movant, Respondent has the burden to prove there is no genuine issue of material fact and that it is entitled to judgment as a matter of law. TEX. R. CIV. P. 166a. This may be accomplished by: (1) disproving at least one element of each of Petitioner's claims, or (2) establishing each essential element of an affirmative defense. *Montgomery v. Kenney*, 669 S.W.2d 309, 310-311 (1984).

Once a movant produces competent evidence to establish a right to summary judgment, the burden then shifts to the non-movant to introduce evidence to raise an issue of fact that would preclude the entry of judgment. *City of Houston v. Clear Creek Basin Auth.*, 589 S.W.2d 671, 678 (1979). In deciding whether there is a disputed issue of material fact, evidence favorable to the non-movant will be taken as true, and every reasonable inference must be indulged in favor of the non-movant and any doubts resolved in its favor. *Nixon v. Mr. Property Management Co.*, 690 S.W.2d 546, 548-49 (1985).

### **B. Jurisdiction**

The threshold question in this case is that of subject matter jurisdiction. *Texas Dept. of Parks and Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004), quoting *State Bar of Tex. v. Gomez*, 891 S.W.2d 243, 245 (Tex. 1994), "As a general proposition, before a court may address the merits of any case, the court must have jurisdiction over the party or the property subject to the suit, jurisdiction over the subject matter, jurisdiction to enter the particular judgment, and capacity to act as a court." Whether a court has subject matter jurisdiction is a question of law. *Tex. Natural Res. Conservation Comm'n. v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002).

### C. Relevant Statutes and Regulations

In this case the Hearing Officer's jurisdiction is called into question by Respondent because the issue of the proper interpretation of the terms of an enforceable contract is purely a matter of state law and not an issue arising under the IDEA. Respondent cites 20 U.S.C. § 1415 (f)(1)(B)(iii) and 19 TEX. ADMIN. CODE § 89.1151 in support of its argument.

20 U.S.C. § 1415 (f)(1)(B) (iii) addresses written settlement agreements and provides:

In the case that a resolution is reached to resolve the complaint at a meeting described in clause (i),<sup>1</sup> the parties shall execute a legally binding agreement that is—

(I) signed by both the parent and a representative of the agency who has the authority to bind such agency; and

(II) enforceable in any State court of competent jurisdiction or in a district court of the United States.

19 TEX. ADMIN. CODE § 89.1151 addresses Texas Due Process Hearings and provides:

(a) A parent or public education agency may initiate a due process hearing as provided in the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code (USC), §§1401 *et seq.*, and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 *et seq.*

(b) The Texas Education Agency (TEA) shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514, and 34 CFR, §300.532, if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter.

(c) A parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request.

Also of importance are the federal regulations that must be read in conjunction with the federal statute pertaining to agreements reached as a result of a mediation or resolution meeting. 34 C.F.R. §300.537 provides:

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

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<sup>1</sup> Clause (i) refers to the Resolution Session.

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))

34 C.F.R. §300.506 addresses the mediation process and specifies that ... “(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.”

#### **D. Discussion**

The plain language of 20 U.S.C. §1415 (f)(1)(B)(iii) specifies the forum to enforce a contract reached at a mediation; the forum is a state court of competent jurisdiction or a United States district court. The accompanying federal regulations authorize a state educational agency to use other mechanisms to seek enforcement of that agreement, provided that use of those mechanisms is (1) not mandatory and (2) does not delay or deny a party the right to seek enforcement in court.

The Texas Administrative Code and the Rules of the Commissioner of Education govern the Special Education Due Process Hearings in the State of Texas. TEA, the SEA here, has not enacted any rules that authorize Hearing Officers to play any role in any enforcement of mediated agreements.

Although it is difficult to know how many times this issue has presented itself, this Hearing Officer has ruled at least once before when the matter has arisen. *See Student b/n/f Parent v. Needville ISD*, Docket No. 021-SE-1007 (Jan. 15, 2008). Enforcement of settlement agreements reached between parties to a due process hearing does not lie within the jurisdiction of the Special Education Hearing Officer in Texas. Regardless of a fact issue, there is no jurisdiction.

#### **V. CONCLUSION**

The Hearing Officer has concluded based upon the record in this case that she does not have subject matter jurisdiction to hear the instant case.

#### **VI ORDER**

IT IS THEREFORE ORDERED that Respondent’s motion for summary judgment is hereby granted. Docket Number 139-SE-0308 is hereby dismissed with prejudice.

SIGNED this 29th day of July 2008.

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*Lucretia Dillard*  
Special Education Hearing Officer