

DOCKET NO. 014-SE-0905

STUDENT b/n/f PARENT,	§	BEFORE A SPECIAL EDUCATION
	§	
Petitioner,	§	
vs.	§	HEARING OFFICER
	§	
EL PASO INDEPDENT SCHOOL	§	
DISTRICT,	§	
Respondent	§	FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

I.

Procedural History

On September 30, 2005, the Texas Education Agency received the Request for Due Process Hearing filed by Student b/n/f Parent, (Petitioner) against the El Paso Independent School District (Respondent) and assigned the case Docket No. 014-SE-0905. On October 3, 2005, this case was assigned to the undersigned Hearing Officer. A Scheduling Order, dated October 11, 2005, was filed by the Hearing Officer establishing, among other things, a hearing for November 7, 2005. On October 17, 2005, a waiver of the preliminary meeting was filed by both parties. The response of the Respondent was made October 20, 2005.

On October 25, 2005, a prehearing conference was held among the hearing officer, Mark Berry as counsel for petitioner and Steven Hughes as counsel for respondent. Subsequent to the prehearing conference, respondent filed an "Answer Admitting All Allegations" on October 25, 2005. A response to this answer was filed by petitioner on October 26, 2005, pointing out that the issue of exactly how much speech therapy was denied Student was still to be determined and that discovery continued to be needed on this issue. Later on October 26, 2005, a Prehearing Order was entered directing respondent to, among other things comply with discovery requests by October 27, 2005. This Order was timely complied with.

On October 28, 2005, the petitioner submitted a Motion to Enter Order and requested that the respondent agree to this final decision, including findings of fact, conclusions of law and order.

II.

Findings of Fact

Based upon the allegations of petitioner the admission of respondent, and matters noted, the Hearing Officer makes the following Findings of Fact:

1. Student is a ** year old special education student who suffers from Downs Syndrome and a speech impairment. She is a student at ** School within the El Pas Independent School District.
2. On April 16, 2004, her ARD committee specified that she receive speech therapy from a licensed speech language pathologist for sixty minutes per week.
3. On April 13, 2005, the ARD committee again specified that Student continue to receive speech therapy for sixty minutes per week from a licensed speech language pathologist.
4. Since the beginning of the Fall semester of 2004, the El Paso Independent School District has failed to provide Student speech therapy as directed by the ARD committee.
5. There were 36 weeks of speech therapy missed by Student during the 2004-2005 school year. She has missed twelve weeks of speech therapy this school year which began on August 15, 2005. Therefore, Student is entitled to forty-nine weeks of speech therapy for one hour per week as compensatory education.
6. As of the date of this Decision, the respondent continues to not provide speech therapy to Student by a licensed speech language pathologist as required by the ARD committee.
7. The failure by the respondent to provide Student speech therapy impeded her right to a free appropriate public education and caused her a deprivation of educational benefits, thus denying her a free appropriate public education during the 2004-2005 school year and the 2005-2006 school year to date.

III. Conclusions of Law

Based on the foregoing Findings of Fact, the Hearing Officer hereby makes the following Conclusions of Law:

1. The El Paso Independent School District has a responsibility to provide Student with speech therapy as a related service because it was part of her IEP. 20 U.S.C. sec. 614(d)(1)(A)(i)(IV); 20 U.S.C., sec. 614(d)(2)(A); 20 U.S.C., sec. 602(9); and 20 U.S.C., sec. (a)(1)(A).

2. The El Paso Independent School District has an obligation to provide Student with a free appropriate public education. 20 U.S.C., sec. 612(a)(1).
3. The El Paso Independent School District failed to provide Student a free appropriate public education from the beginning of the 2004-2005 school year to the date of this decision.

IV. Order

After due consideration of the foregoing Findings of Fact and Conclusions of Law, it is Ordered that the relief requested by petitioner is Granted:

1. The El Paso Independent School District is Ordered to begin providing Student speech therapy by a licensed speech language pathologist on November 14, 2005 for one hour per week as directed by her IEP. This speech therapy shall be in lieu of her thirty minute enrichment period for two days per week and shall be in a class that does not exceed three students of similar functioning.
2. The El Paso Independent School District is Ordered to provide Student compensatory speech therapy by a licensed speech language pathologist, beginning November 14, 2005, for one hour per week for forty-nine weeks. This compensatory speech therapy shall be in lieu of her enrichment period for thirty minutes per day for two additional days per week and shall be in a class that does not exceed three students of similar functioning.
3. The El Paso Independent School District is Ordered to conduct an ARD committee meeting within ten days of this order to develop goals and objectives for the compensatory speech therapy ordered above.

Finding that the public welfare required the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

Signed this (10th) day of November, 2005.

Stephen P. Webb
Special Education Hearing Officer

AGREED:

MARK BERRY

State Bar No. 92247000
4171 N. Mesa, Suite B-202
El Paso, Texas 79902
(915)532-2244
(915)532-2085 Fax

Attorney for Petitioner

STEVEN L. HUGHES

State Bar No. 10239520
MOUNCE, GREEN, MYERS, SAFI & GALATZAN
P.O. Box 1977
El Paso, Texas 79950-1977
(915)532-2000
(915)541-1548 Fax

Attorneys for Respondent