

DOCKET NO. 278-SE-0503

|                      |   |                            |
|----------------------|---|----------------------------|
| Student <i>b/n/f</i> | § | BEFORE A SPECIAL EDUCATION |
| Parent ,             | § |                            |
| Petitioner,          | § |                            |
| V.                   | § | HEARING OFFICER            |
|                      | § |                            |
| DE SOTO INDEPENDENT  | § |                            |
| SCHOOL DISTRICT,     | § |                            |
| Respondent.          | § | FOR THE STATE OF TEXAS     |

DECISION OF THE HEARING OFFICER

Statement of the Case

Student ("Student"), by her next friends and parents Parent and Parent (hereinafter "Petitioner" or "Student"), brought a complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, et seq., complaining of De Soto Independent School District (hereinafter "Respondent" or "the district").

Petitioner was represented by Myrna Silver, an attorney in Dallas. Respondent was represented by Nona Matthews an attorney in the Irving office of the firm Walsh, Anderson, Brown, Schulze and Aldridge.

Petitioner's request for hearing was filed on May 7, 2003, and came on for hearing by agreement of the parties on December 16 and 17, 2003, in the offices of the De Soto Independent School District. At the close of the hearing, the parties agreed to file written closing arguments and agreed that the deadline for this decision was January 27, 2004, in compliance with the forty-five day rule.

Petitioner alleged that the district failed to provide an appropriate educational placement with related services for Student and that Petitioner had to place Student unilaterally in a private school placement in order for her to receive appropriate educational services. Petitioners seek reimbursement for their costs of private placement.

Based upon the evidence and argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. Student is a girl born in April \*\*\* who resides with her parents in the De Soto Independent School District. [Petitioner's Exhibits 1]
2. Student's parents first referred her for evaluation and services at the district when she was \*\*\* years old in May 1999 because of their concerns about developmental delays. [Petitioner's Exhibit 1]
3. An admission, review and dismissal ("ARD") committee was convened in May 1999 for Student, and the district concluded that Student was not eligible for services based upon their evaluations of her developmental strengths and weaknesses. [Petitioner's Exhibits 1 and 2]
4. Student's parents took Student for further evaluation by Easter Seals and the Scottish-Rite Hospital where the evaluations indicated some developmental delays, problems with attention and processing, and weaknesses in her fine and gross motor skills. [Petitioner's Exhibits 3 and 4]
5. A private occupational therapy evaluation for Student in the spring of 2000 noted significant developmental delays in Student in fine and gross motor skills, speech and language, and sensory integrative functioning. [Petitioner's Exhibit 5]
6. Student began attending \*\*\* in the fall of 2000-2001 school year within the district and was referred for special education evaluation. An ARD committee was convened for Student and the committee determined that Student was eligible for special education and related services based upon a learning disability. The committee noted that Student was

inconsistent in her work and highly distractible. Student was also referred for further occupational therapy and physical therapy evaluations. [Respondent's Exhibit 4]

7. Student's occupational therapy ("OT") evaluation noted an eligibility for on-going occupational therapy and she began receiving services of ninety minutes per month. [Respondent's Exhibit 5]
8. Student's ARD committee developed an individual education plan ("IEP") for Student with placement in what was called "inclusion \*\*\*" with some modifications, related services, and content mastery. [Petitioner's Exhibit 10]
9. At the conclusion of the school year, Student's parents did not believe that Student was ready to go into the \*\*\* grade and discussed her progress with school personnel. The district and Student's parents determined that she would remain in \*\*\* for the 2001-2002 school year as well but the decision was not a decision by an ARD committee for Student. An ARD committee convened for Student in October 2001 to consider assessment data on Student and to develop an IEP for her. The committee reached an agreement on the IEP and Student's mother was present and agreed with the decisions of the committee. The placement called for instruction in inclusion \*\*\* class again and included goals and objectives for her in speech, OT, and PT. The IEP did not include goals and objectives specific for Student in her academic curriculum. [Petitioner's Exhibit 16]
10. At the end of the 2001-2002 school year, another ARD committee for Student was convened in May 2002. Petitioner's attorney was present at the meeting and the committee reached an agreement for Student's IEP and related services. The committee determined that assessment would be done during the summer of 2002 for OT and PT

and Student's vision. The committee also determined that a neuropsychological evaluation would be part of a comprehensive individual evaluation to be completed on Student. Student's mother consented to the evaluations. [Petitioner's Exhibit 17]

11. Student's parents were concerned about Student's progress within the district during her two years in \*\*\* and sent Student for evaluation at the \*\*\* school, a private school, in the spring of 2002. [Petitioner's Exhibit 25]
12. Student's parents decided to enroll Student in the \*\*\* school for the 2002-2003 school year. [Petitioner's Exhibit 26]
13. Student attended the \*\*\* school during the 2002-2003 school year and Student's parents asked the district at ARD committee meetings to place Student in the private school and reimburse them for their tuition costs. The \*\*\* School is a small private school for students like Student. The school does not enroll students without disabilities, uses many assessment tools which are out-dated, and has personnel who are not certified to teach in their respective fields. [Petitioner's Exhibits 22, 23 and 29]
14. After the ARD committee meeting in May 2002, Student's mother revoked her consent for further evaluation by the district on Student. [Respondent's Exhibit 12]
15. An ARD committee meeting was convened in June 2002 to consider Student's situation, and the Petitioner's attorney attended the ARD committee meeting. Student's parents requested private placement at the \*\*\* school and the committee reviewed Student's situation and heard a report from school personnel who had visited the \*\*\* school. At the meeting, Student's parents agreed to the proposed evaluation for Student and agreed to reconvene in August 2002, after the evaluations and assessments were completed. [Respondent's Exhibit 13]

16. During the summer of 2002, an occupational therapy assessment and a physical therapy assessment, a functional vision evaluation, and a neuropsychological report were completed for Student. [Respondent's Exhibits 14-17]
17. An ARD committee meeting for Student was convened on August 5, 2002, to review the evaluations and assessments on Student and to develop an IEP with related services for her. The committee developed specific goals and objectives for her related services and academic plan for 2002-2003 school year and discussed the propriety of private placement at the \*\*\* school. The district did not agree with the parents' request for private placement and the meeting was recessed to convene again on August 14, 2002. [Petitioner's Exhibit 22]
18. The ARD committee reconvened on August 14, 2002, to discuss the educational planning for Student. Petitioner's attorney was present along with Student's mother. At the meeting, the Petitioner's attorney agreed that the district's current proposed IEP was appropriate but expressed concerns over the previous progress Student had made. The committee did not agree to private placement at \*\*\* believing the placement is too restrictive, that all educational personnel are not certified at the private school, and that Student could receive an appropriate educational program with related services within the district. [Petitioner's Exhibits 22 and 23]
19. Student has not returned to the district and at the time of the hearing was continuing in her placement at the \*\*\* school.

#### Discussion

Student is a young girl with educational disabilities which have challenged her parents, evaluators, educational professionals, and public and private schools. Because of early

difficulties in ascertaining the nature of Student's disabilities, there were considerable difficulties in determining an academic program for her. The district's efforts in Student's \*\*\* years failed to provide her with measurable goals and objectives specifically tailored to Student's unique needs. But Petitioner's complaint was filed on May 7, 2003, and the one year statute of limitations controls the period in which they could be entitled to relief. Petitioners demonstrated that the educational program the district was providing on May 7, 2002, was inadequate under the standards of IDEA. But Petitioner failed to prove that Petitioner is entitled to any relief beyond the one year statute of limitations and failed to demonstrate that the private placement selected by Student's parents was appropriate under the standard of IDEA. Accordingly, Petitioner is entitled to compensatory educational services for the district's failures from May 7, 2002, until an appropriate educational program with related services was offered to her in August 2003.

#### Conclusions of Law

1. Student is a student who is eligible for special education and related services under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The De Soto Independent School District is the local education agency responsible for the provisions of Student's free appropriate public education.
3. The educational program available to Student within the district for May 7, 2002, until the development of an IEP at the August 2002 ARD committees was not uniquely tailored to her educational needs, was not based on competent and accurate assessment, and did not include measurable long-term goals and short-term objectives necessary for her to have an opportunity to make meaningful educational progress. The program did not meet the requirements of 34 CFR §300.347(a); 19 T.A.C. §89.1055; and 20 U.S.C.

§1414(d); Houston ISD v. Bobby R., 200 F.3d 341 (5<sup>th</sup> Cir. 2000) and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5<sup>th</sup> Cir. 1997).

4. Student's disabilities do not require placement for her in a private school, and Petitioner failed to prove that such a placement is required under the standards of *Daniel R. R. v. State Board of Education*, 874 F.2d 1036 (5<sup>th</sup> Cir. 1989); 20 U.S.C. §1412(a)(5)(A); 34 CFR §300.552; and 19 T.A.C. §89.63.
5. The IEP and related services developed as the educational programming for Student at the ARD committee meetings in August 2002 provide an educational program for Student which is reasonably calculated to enable her to receive educational benefit under the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982); 34 CFR §300.347; and 19 T.A.C. §89.1055.

#### ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY

ORDERED:

1. The district shall develop a plan to provide compensatory educational services for Student based upon her denial of a free appropriate public education for the period of May 7, 2002, until August 14, 2002; and
2. The district shall timely implement this decision within ten (10) school days in accordance with 19 T.A.C. §89.1185(q) and 34 CFR §300.514.

To demonstrate their compliance with this decision, the Respondent shall furnish to the Division of Complaints Management at the Texas Education Agency within fifteen (15) school days from the date of this decision documentation (with copies to Petitioner's counsel) demonstrating that the decision has been implemented or the district's plan for implementing the

decision within the prescribed time line. The district shall include a signed insurance from the superintendent of the district that orders in this decision will be implemented.

All other relief requested by Petitioner is DENIED.

SIGNED this 27<sup>th</sup> day of January, 2004.

/s/ Lucius D. Bunton

Lucius D. Bunton

Special Education Hearing Officer

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SYNOPSIS

**ISSUE:** Whether the district failed to provide an appropriate educational program for Petitioner from May 7, 2002 until August 14, 2002.

**CFR CITATIONS:** 34 CFR §300.347(a)

**TEXAS CITATION:** 19 T.A.C. §89.1055

**HELD:** For Petitioner

**ISSUE:** Whether the Petitioner proved that Petitioner is entitled to reimbursement for private placement.

**CFR CITATIONS:** 34 CFR §300.552

**TEXAS CITATION:** 19 T.A.C. §89.63

**HELD:** For Respondent

**ISSUE:** Whether Petitioner is entitled to compensatory educational services.

**CFR CITATIONS:** 34 CFR §300.347

**TEXAS CITATION:** 19 T.A.C. §89.1055

**HELD:** For Petitioner