

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

STUDENT, bnf

PARENT,

Petitioner,

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§

§

v.

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DOCKET NO. 025-SE-1008

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HEMPSTEAD INDEPENDENT

§

SCHOOL DISTRICT,

§

Respondent.

§

DECISION OF THE HEARING OFFICER

Procedural History

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

Student has been represented in this case pro se by his mother, Parent. The school district has been represented throughout this litigation by its legal counsel Charlotte Salter with the law firm of Walsh, Anderson, Brown, Schulze & Aldridge, P.C.

A prehearing telephone conference in this case was conducted on November 11, 2008. The hearing was reset by agreement from December 4-5, 2008 to December 9, 2008 to resolve a scheduling conflict for the school district. The due process hearing was conducted on December 9, 2008. Petitioner continued to be represented pro se by his mother Parent. Student also attended the due process hearing. Ms. Salter continued to represent the school district as its legal counsel. **, Director of Special Education for HISD, attended the hearing as the party representative and also testified. A certified court reporter recorded and transcribed the due process hearing.

Issues

The issues in this case are:

1. Whether Student needs direct one on one speech therapy as a related service in order to receive a free, appropriate public education (FAPE) within the meaning of the Individuals with Disabilities Education Act (IDEA);
2. Whether the school district failed to properly implement in home training services this past school year and extended year services during the summer of 2008 as components of Student’s Individual Educational Plan (IEP) and, if so, whether that constitutes a violation of the IDEA;

3. Whether the school district failed to convene a properly constituted Admission, Review & Dismissal Committee (ARD) meeting in May 2008 and, if so, whether that constitutes a violation of the IDEA; and,
4. Whether the school district failed to reconvene the May 2008 ARD meeting in a timely manner and, if so, whether that constitutes a violation of IDEA.

Requested Relief

Petitioner requests the following items of relief:

1. Compensatory in-home training services for the in-home training the school district failed to provide, beginning this current school year (2008-2009) and continuing into the summer 2008, if necessary;
2. One on one direct speech therapy as a related service for Student as a component of his IEP for the current school year (2008-2009); and,
3. Compensatory direct one on one speech services for the amount of speech therapy the school district failed to provide beginning this current school year (2008-2009) and continuing into the summer of 2009, if necessary.

Findings of Fact

1. Student is a Student eligible for special education services from the Hempstead ISD as a Student with autism and speech impairment. Student currently attends Hempstead ISD and at the time of the due process hearing was ** years old approaching his ** birthday.
2. Student has a history of atypical developmental patterns and developmental delays. He has been diagnosed with an autism spectrum disorder, most recently as a Student with pervasive developmental disorder (PDD). Student also has a history of significant expressive and receptive language deficits and communicative delay.
3. Student also demonstrates patterns of socialization compatible with an autism disorder. He does not initiate or maintain interactions with peers at the level one would expect for his age or grade. Instead, he is more often a solitary person able to occupy himself in an independent manner with some self-stimulatory behavior and unusual interests and preoccupations (for example, he enjoys playing with string). Student sat politely and quietly next to his mother during the entire due process hearing which lasted almost 7 hours. Student has difficulty making transitions and does not forge relationships with others very easily. It takes time for Student to be comfortable with new teachers, therapists, and/or care givers. Student exhibits

extreme resistance or overreaction to minor changes in his routine or environment.

4. Student does not talk easily or often. He often needs to be prompted by others to speak and does not use much spontaneous language. Student's greatest communication need is in the use of pragmatic language – he has marked difficulty initiating and sustaining a casual conversation, difficulty maintaining a topic, and tends to speak at a very low volume. His language can be so indistinct that it is unintelligible. Vocabulary building continues to be a need for Student. Student is capable of answering who, what, when, where and how questions but also requires prompting in order to express his needs with spoken language.
5. HISD provided Student with one on one direct speech therapy services during the 2007-2008 school year. The services were provided by ** an outside speech therapist working on contract with the school district. She provided speech therapy services in Student's home after school hours following a schedule worked out directly with Student's mother.
6. Ms. ** worked with Student on expressive language skills and specifically to improve his ability to formulate sentences both orally and in writing. Ms. ** worked on conversation building both in the home setting and during community outings to encourage and practice expressive language skills. Vocabulary building on a weekly basis was also a component of the one on one speech therapy.
7. Ms. ** has known and worked with Student for ** years. Student has demonstrated progress in the use of spontaneous and expressive language every year. Although Ms. ** expected his speech/language skills to "plateau" he has not done so and continues to show improvement each year. Ms. ** recommends continued direct one on one speech/language therapy for Student including addressing communication needs in a job setting.
8. HISD awarded Student a certificate of attendance in May 2008. However, he continues to attend school at HISD on a daily basis this school year. His current schedule includes working at a local grocery store accompanied by his one on one aide. Student also works at school picking up, sorting, and delivering the school mail, in the library and in the school office. The focus of these vocational activities is on the acquisition of functional job skills to foster independence and employability.
9. Student did not receive any in home training during the summer of 2007 because of a disagreement between the parties about the personnel assigned to provide the services. HISD hired ** to provide in home training services for the 2007-2008 school year. By mutual agreement of the parties, an additional 45 minutes per session was added to the in home training schedule as compensation for the in home

training that was missed during the summer of 2007. In home training was provided from October 5, 2007 to May 18, 2008. Ms. ** continues to provide Student with in home training services this current school year. Instruction is provided both in the home and during community outings. Ms. ** is not a certified speech/language therapist but is qualified to provide in home training services.

10. In the spring of 2008 Ms. **, the Special Education Director, attended a special education funding workshop. At the workshop she learned that a certified speech therapist employed by a public school district could not work independently as a contract speech therapist. During the 2007-2008 school year Ms. ** was employed by the Magnolia Independent School District as a certified speech therapist. Ms. ** discussed the issue with Ms. **. Ms. ** could have taken steps to get around the funding prohibition but apparently missed the application deadline to do so.
11. Ms. ** shared this information with Student's mother and the parties discussed several possible solutions. An ARD meeting was conducted on May 7, 2008 to plan for the summer 2008 and for the 2008-2009 school year. Members of the May 7th ARD included Student, Student's mother, the Special Education Director, another administrator, a general education teacher, two special education teachers (one the vocational teacher), two speech/language therapists, a counselor, and an assessment representative. The in home trainer, **, was excused from attending the meeting and submitted a written report instead.
12. Ms. ** attended the May 7th ARD and proposed extended school year speech services (ESY) for Student. The parties disagreed on whether Student met the criteria for ESY services. The parties agreed to recess the May 7th ARD in order to conduct a speech evaluation to determine whether Student demonstrated a need for continued one on one direct speech therapy. The parties agreed the speech evaluation would be conducted by the school district's speech pathologist, **.
13. Ms. ** issued her speech/language evaluation report on May 19, 2008. Ms. ** has known Student for ** years but has not worked with him in direct speech therapy. The ARD reconvened on May 20, 2008. Members of the May 20th ARD included Student, Student's mother, the Special Education Director, another administrator, the two speech/language therapists, a counselor, a general education teacher, two special education teachers (one the vocational teacher) and an assessment representative.
14. Ms. ** presented the findings of her evaluation. She concluded that continued direct one on one speech therapy was no longer appropriate for Student. Instead she recommended that speech/language needs be addressed through pragmatic and job related language activities during job and in home training. The May 20th ARD agreed to provide Student with 12 hours of in home training during the summer of

2008. The ESY in home training was to include a number of language development activities. Student's mother disagreed with Ms. **'s recommendation to discontinue direct speech/language therapy services and requested an independent speech/language evaluation.

15. The school district agreed to employ Ms. ** to provide the summer 2008 in home training services. This was a solution to get around the TEA funding rule that prohibited Ms. ** from providing speech therapy under an independent contract. In addition to her certification as a speech/language therapist, Ms. ** is also certified to teach Students with language/learning disabilities and mental retardation. Unfortunately, the school district and Ms. ** could not agree on mutually acceptable compensation terms.
16. HISD offered a rate lower than the rate HISD previously paid Ms. ** as a speech therapist. The school district's rationale was that the compensation should be in line with the going rate for in home trainers in neighboring communities. That rate was significantly less per hour than the rate paid for contract speech therapists. The school district then contracted with Ms. ** when Ms. ** and HISD could not reach an agreement on compensation. Ms. ** later contacted HISD and offered a reduced rate for the in home services but by then the school district had already contracted with Ms. **.
17. At the end of May 2008 Ms. ** called Student's mother to set up the summer 2008 in home training schedule. Student's mother was surprised by the call because she believed Ms. ** was not available to provide the services based on previous conversations between them that spring. There was a misunderstanding between the parties about whether Student's mother was refusing the in home training services for the summer of 2008. Scheduling issues were not resolved and Student's mother did not understand that Ms. ** was going to provide speech and language activities as a component of the ESY program. Consequently, the in home training services for the summer of 2008 were never provided.
18. Student's mother sent a letter to HISD requesting another ARD on May 21, 2008 because she continued to be concerned about speech therapy and vocational job training services. The letter was received by HISD on May 22, 2008. Teaching and related service personnel contracts for the 2007-2008 school year ended on May 28, 2008. The only other person on duty by the end of May/early June was the school principal. Ms. ** offered to schedule an ARD for August 2008. She also offered to meet personally with Student's mother to address parental concerns.
19. Student's mother continued to demand an ARD meeting be convened in June 2008 to resolve her concerns about ESY services and the school district's proposal to eliminate direct speech therapy. Ms. ** responded with a letter dated June 17, 2008

clarifying that ESY was indeed available for a total of 12 hours from June to August. Ms. ** also asked Student's mother to submit a written request for an independent speech evaluation if she disagreed with the HISD speech evaluation conducted by **. The June 17th letter was sent by certified mail and returned to HISD as unclaimed.

20. A notice of an ARD meeting was sent to Student's mother on August 28, 2008 proposing a meeting for September 8, 2008. The first day of school for the current 2008-2009 school year was August 26, 2008. In the meantime, Student's mother filed a complaint with TEA raising concerns about Student's educational program. An ARD meeting was ultimately convened on September 30, 2008. The September 30th ARD discussed the issues raised in the TEA complaint.
21. HISD resolved the TEA complaint when it agreed to fund the independent speech/language evaluation at the September 30, 2008 ARD. By October 21, 2008 HISD provided Student's mother with a list of acceptable evaluators and other information to facilitate the independent speech evaluation. As of the date of the hearing the independent speech evaluation had not yet been completed. There is no dispute that the school district has agreed to fund an independent speech/language evaluation.
22. Student needs to acquire and continue to develop as many vocational skills as possible. He needs continued vocabulary development related to vocational tasks so that the vocabulary is functional and meaningful to him. Student continues to need activities that support and enhance both daily living skills as well as vocational and job-related skills.

Discussion

Direct Speech Therapy in order to Receive FAPE

Petitioner complains that the school district's decision to eliminate direct speech therapy as a component of his educational program fails to provide him with a free, appropriate public education. *34 C.F.R. §§ 300.34 (a) (b) (15), 300.101*. The burden of proof in an administrative hearing challenging an IEP is placed upon the party seeking relief – in this case, the Petitioner. *Schaffer v. Weast, 546 U.S. 49, 537 (2005)*. I conclude that under the credible evidence in this case Petitioner has met his burden.

The evidence showed that Petitioner continues to need to develop language skills, especially vocabulary and the use of pragmatic language, to initiate and sustain social interaction, express his needs, and to meet vocational demands in order to foster independence and employability. The evidence also showed that Student demonstrated continued language improvement each year. The outside speech/language therapist who recommended continued direct therapy knows Student well as a result of her ** years of experience working with him.

Although the school district's speech/language therapist disagreed with the need for direct therapy both therapists did agree that continued development of communications skills is an important component of Student's educational program. The evidence also showed that Student responds better to people that are familiar to him and that he resists changes in his routine and environment. Student's eligibility for special education services from HISD will come to an end next year when he turns 21. *34 C.F.R. § 300.101 (a)*. As competent and skillful as Student's in home trainer, job coach, and/or one on one aide may be, they do not have the same level of expertise as a certified speech/language therapist. Therefore, the evidence supports the conclusion that Student continues to need direct speech therapy in order to receive a meaningful educational benefit from his education. *See, Polk v. Central Susquehanna Intermediate Unit 16, 853 F. 2d 171 (3d Cir. 1988)*.

Petitioner is entitled to direct speech therapy services for the remainder of the current school year and for compensatory direct speech therapy services for the amount of direct speech therapy he missed this fall. The amount of speech therapy should be equal to the amount of direct speech therapy provided during the 2007-2008 school year.

Failure to Provide In Home Training Services

Petitioner complains that the school district failed to provide him with a free, appropriate public education when it failed to provide him with in home training during the 2007-2008 school year and the summer of 2008. The evidence showed the school district did provide Student with in home training during the 2007-2008 school year. Petitioner did not meet his burden of proof on this issue. *Schaffer v. Weast, supra*.

The failure to provide the agreed upon in home services during the summer of 2008 was a result of poor communication and a misunderstanding between the parties. Both are to blame for failing to follow up and resolve the issue in a timely manner. Student's mother did not communicate her concerns over the summer schedule or the choice of personnel clearly to the school district nor did she attempt to work out a solution to those issues. Instead, she simply insisted on another ARD meeting. As discussed below, the school district was not obligated to convene an ARD meeting that summer.

On the other hand, the school district, having agreed to Student's need for ESY in home training had an affirmative obligation to provide the services. However, the evidence showed that the school district made the requisite arrangements to provide Student with a qualified in home trainer and that Student's mother failed to follow through with the Special Education Director to schedule the services. The evidence showed that the school district's attempts to provide in home training were thwarted by a lack of parental cooperation in scheduling the service. I conclude Petitioner did not meet his burden of proof on this issue. *See, Schaffer v. Weast, supra*.

Failure to Convene Properly Constituted ARD Meetings
and Failure to Convene ARD Meeting in a Timely Manner

Petitioner complains that the school district failed to convene a properly constituted Admission, Review & Dismissal Committee (ARD) meeting in May 2008 and failed to reconvene an ARD meeting in May in a timely manner. A school district must ensure that the ARD Committee consists of the following: the parent, a regular education teacher, a special education teacher, a representative of the school district who is qualified to provide or supervise special education services, a person who is qualified to interpret the instructional implications of evaluation results, other individuals with knowledge or special expertise regarding the child, and, whenever appropriate, the child with a disability. *34 C.F.R. § 300.321 (a) (1)-(7); 19 Tex. Admin. Code § 89.1050 (a)*. The evidence showed that all required members of the ARD Committee were present at both meetings in May 2008.

A parent may request an ARD meeting *at any mutually agreeable time* to address specific concerns about the services provided to their child. The school district must respond to the request either by holding the requested meeting or by requesting mediation through the Texas Education Agency. *19 Tex. Admin. Code § 89.1045 (b) (emphasis added)*.

The evidence showed that the school district convened an annual review of Student's IEP on May 7, 2008 to plan for both summer 2008 services and for the upcoming 2008-2009 school year. That meeting ended in disagreement. When mutual agreement about the elements of an IEP is not achieved the school district was required to offer Student's mother *a single opportunity* to recess the ARD for a period of time not to exceed ten school days. *19 Tex. Admin. Code § 89.1050 (h) (1) (emphasis added)*. The school district reconvened an ARD on May 20, 2008 – nine school days from the date of the May 7th ARD. Therefore, the May 20, 2008 ARD was reconvened in a timely manner. *Id.*

Student's mother continued to demand additional ARD meetings after the May 20th ARD again ended in disagreement. The law did not require the school district to convene additional ARD meetings over the summer. Instead, the law only required HISD to offer Student's mother a single opportunity to recess the May 7th ARD and then to reconvene within ten school days. *Tex. Admin. Code § 89.1050 (h) (1)*. The evidence showed that it did.

Furthermore, the school district could not have convened an ARD meeting in June or July 2008 because the requisite members of the ARD Committee were no longer under contract and therefore unavailable until the 2008-2009 school year began in August 2008. *See, 34 C.F.R. § 300.321 (a) (1)-(7)*. Student's mother invoked her rights under Texas law when she filed a complaint with the Texas Education Agency after the May 20, 2008 ARD ended in disagreement. *19 Tex. Admin. Code § 89.1050(h) (7)*. That complaint was ultimately resolved at an ARD conducted, by mutual agreement, on September 30, 2008.

Conclusions of Law

1. Petitioner met his burden of proving he needs direct one on one speech/language therapy in order to receive a free, appropriate public education. *Schaffer v. Weast*, 546 U.S. 49 (2005); *Polk v. Susquehanna Cent. Int. Unit 16*, 853 F. 2d 151 (3d Cir. 1988); 34 C.F.R. §§ 300.17, 300.34(15).
2. Petitioner did not meet his burden of proving Respondent failed to provide in home training services during the 2007-2008 school year or the summer of 2008. *Schaffer v. Weast*, *supra*.
3. Respondent convened a properly constituted Admission, Review & Dismissal Committee meeting in May 2008 and reconvened the meeting in a timely manner. 34 C.F.R. § 300.321; 19 Tex. Admin. Code § 89.1050 (h).

ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Petitioner's requests for relief are hereby **GRANTED IN PART AND DENIED IN PART** as follows:

- The school district shall begin to implement direct one on one speech therapy services as a component of Petitioner's Individual Educational Plan for the 2008-2009 school year in an amount no less than the amount of one on one direct speech therapy provided during the 2007-2008 school year;
- The school district shall provide compensatory direct one on one speech therapy in an amount equal to the amount of one on one direct speech therapy that was not provided during the fall semester 2008 either as additional minutes of speech therapy during the 2008-2009 school year or by agreement of the parties during the summer of 2009; and,
- The implementation and amount of direct one on one speech therapy services shall continue as ordered unless and until the recommendations from the agreed upon independent speech/language evaluation dictate otherwise.

It is further **ORDERED** that all other relief not specifically stated herein is **DENIED**.

SIGNED the 22nd day of December 2008

/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).*

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
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**STUDENT,
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v.

DOCKET NO. 025-SE-1008

**HEMPSTEAD INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

SYNOPSIS

ISSUE:

Whether ** year old Student with autism and significant expressive language and other speech deficits needed direct one on one speech/language therapy in order to receive FAPE.

34 C.F.R. §§ 300.34 (a) (c) (15).

HELD:

For the Student.

Student met burden of proving that he demonstrated improvement each year he received direct one on one speech/language therapy and that he continued to need language therapy in order to build vocabulary and develop and strengthen pragmatic language.

ISSUE:

Whether school district failed to implement in home training services during the 2007-2008 school year and as ESY services in the summer of 2008 and, if so, whether that constituted a violation under IDEA.

34 C.F.R. § 300.106; 19 Tex. Admin. Code § 89.1055 (e) (3) (6)

HELD:

For the school district.

Evidence showed that school district did provide in home training services during the 2007-2008 school year. Evidence also showed that school district was prepared to provide ESY in home

services during the summer of 2008 but miscommunication between the parties interfered with its ability to do so. Parent failed to take steps to clarify misunderstanding about her willingness to resolve personnel and scheduling issues for the summer services.

ISSUE:

Whether the school district failed to convene a properly constituted ARD Committee in May 2008 and whether school district failed to reconvene an ARD meeting when the first ended in disagreement.

34 C.F.R. § 300.321(a); 19 Tex. Admin. Code §§ 89.1045(b); 89.1050 (a) (h)

HELD:

For the school district.

Evidence showed requisite members of ARD Committee were in attendance at both ARD meetings in dispute including parent, Student, regular education teacher, special education teacher, vocational teacher, Special Education Director, another administrator, assessment personnel, school district's speech therapist, and outside speech therapist. In home trainer was excused from attending ARD but provided written report.

When annual ARD in May 2008 ended in disagreement, school district reconvened another ARD within nine school days. Law only requires school district offer parent a single opportunity to recess for a period of time not to exceed ten school days. School district not required to convene additional ARD meetings over the summer. ARD meetings are to be scheduled at mutually agreeable time. Parent's remedy was to file complaint, request for due process hearing, or seek mediation. Parent filed complaint in September 2008 and complaint was resolved at ARD meeting at end of the month.