

**Decision of Hearing Officer
Student v. McKinney ISD**

ISSUE AND RELIEF REQUESTED

The following is the sole issue for hearing:

1. Whether MISD fulfilled its Child Find obligations with regard to the student during the relevant limitations period.

The parent requested the following relief:

1. Reimbursement for an IEE conducted in the summer of 2009.
2. Parental education on Dyslexia through the SWF GPVU"ITCFWCVKQP
3. Hwvwtg"KGGøu"vq"dg"eqpfwevgf"d{"vjg"rctgpvsø"ejqugp"gxcnwcvt"cppwcm{"vj tqwi j"vjg"fcvg"qh"vjg"ejknføu"ITCFWCVKQP
4. Reimbursement of private placement costs from June 2009 to present as stated in the request for due process hearing.
5. Future actual costs for Alphabetic Phonics Tutoring with an ALTA Therapist until graduation from high school.
6. Reimbursement for ***curriculum since 10/18/07.
7. Reimbursement for legal advice.
8. Reimbursement for a laptop computer, printer, and internet service.
9. Provision of a Kindle DX Electronic Reader.
10. Provision of 12 text-to-audio books per year until graduation.
11. Provision of the Kurzweil 3000 USB.
12. Provision of the Verticy Language Program until graduation.

FINDINGS OF FACT

1. The student resides within the geographical boundaries of the McKinney ISD. The student is currently ***, and therefore attends a private school within the geographical boundaries of MISD.

2. The student received special education services from the District during the 2003-2004, 2004-2005, 2005-2006, 2006-2007 school years, and during the *** semester of the 2007-2008 school year. Petitioner filed request for hearing on January 18, 2010. It is undisputed that the student has not attended MISD since ***, 2007 and that the District has not provided educational services to the student since that time. (P-1; R-C; R-D)

3.

at any time, MISD would have had a duty to provide a FAPE to the student. If the parents had contacted MISD to request a re-evaluation, MISD would have been obligated to evaluate the student to determine whether student continued to be eligible for special education services. *See Letter to Fig. 52 IDELR 136 (OSEP, Jan. 28, 2009)* However, once the parent withdrew the student from MISD,

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parentally placed private school student with a disability.

6. MISD had an obligation as the local education agency where the *** was located to conduct a re-evaluation of the student. 34 CFR § 300.131(a). Vjg" Fkuvtkvøu" qdnki cvkqp" to a parentally-placed private school child under these circumstances existed without regard to whether or not the parent sought services or an evaluation on behalf of the student.

7. Vjg"uvwfgpvøu"vj tgg-year re-evaluation was due on or before ***, 2009. The District failed to timely re-evaluate the student. 34 CFR §300.303(b)(2)

8. The appropriate relief for a Child Find violation under 34 CFR §§300.131 is an order for an evaluation, or under appropriate circumstances, reimbursement for an IEE when required due vq"vjg" Fkuvtkvøu" hcknwtg"vq"eqpfwev"cp" gxcnwcvkqp0"

9. The parent was not required to obtain an Independent Educational Evaluation for the student due to the Dkuvtkvøu" hcknwtg"vq" tg-evaluate the student. Rather, the parent obtained an evaluation from an evaluator approximately 6 months before the re-evaluation was due and without tgi ctf"vq"OKUFøu"qdnki cvkqpu or notice to the District. Additionally, the parent did not intend to seek an evaluation from MISD and subsequently refused consent to an evaluation. The parent is not entitled to reimbursement for the cost of obtaining a private evaluation. Reimbursement is an equitable remedy and in determining whether to award equitable relief, the conduct of the parties should be considered. *Parents of Student W. v. Puyallup School District*, 31 F.3d 1489 (9th Cir. 1994).

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, I hereby **ORDER** that the following relief is **GRANTED**:

1. The District shall provide the parent with notice of re-evaluation within 10 school days of the date of this order. The notice shall comply with 34 CFR §300.304 and 300.503.

2. The District shall document its efforts to obtain informed parental consent for the re-evaluation. If the parent provides consent to the re-evaluation, the District shall complete the re-evaluation within 60 days of obtaining parental consent.

3. This Order shall not be construed as an override of parental consent as the parent has the absolute right to withhold consent to the re-evaluation. 34 CFR §§ 300.300(c)(4)(i).

All other relief not specifically granted herein is hereby **DENIED**.

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

NOTICE TO THE PARTIES

This Decision is final and is appealable to state or federal district court.

The District shall timely implement this Decision within 10 school days in accordance with 19 T.A.C. §89.1185(p). The following must be provided to the Division of IDEA Coordination at the Texas Education Agency and copied to the Petitioner within 15 school days from the date of this Decision: 1.) Documentation demonstrating that the Decision has been implemented; or 2.) If the timeline set by the Hearing Officer for implementing certain aspects of the Decision is longer than 10 uejqn"fc{u."vjg"fkvtkevu"rncp"hqt"ko rng o gpvki"vjg"Decision within the prescribed timeline, and a signed assurance from the superintendent that the Decision will be implemented.

SIGNED this 28th day of April, 2010.

SYNOPSIS

Issue: Whether the District violated its Child Find obligation with regard to the student who was *** by failing to timely complete a re-evaluation

Held: For Parent. The District failed to timely complete its reevaluation of the student and the District had notice that the student was a parentally placed private school student and had a duty to timely reevaluate student.

Citation: 34 CFR 300.131(a); 34 CFR 300.303(b)(2); 19 Tex. Admin. Code 89.1096(a)(2)