

STUDENT, B/N/F PARENTS	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER
	§	
LEWISVILLE INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by next friends and parents \*\*\* and \*\*\*

U.S.C. §1400, et seq., complain

Petitioner also sought relief under Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. Section 794), the American with Disabilities Act (42 U.S.C. Section 12.101, et seq.), the Civil Rights Act (42 U.S.C. Section 1983), and the Family Educational Rights and Privacy Act (20 U.S.C. Section 1232g(b)(6)). The hearing officer has no jurisdiction under these statutes and all claims other than IDEA claims were dismissed.

The hearing was originally set for two days but counsel for Petitioner asked for additional time and the hearing was reset for four days. By order of the hearing officer, the matter came on for hearing in the offices of the district in Lewisville, Texas, on March 23, 24, 25, and 26, 2015.

Petitioner was represented by Yvonnilda Muñiz, an attorney in Austin, Texas. Olivia Ruiz, also an attorney in Austin, appeared for Petitioner on March 23 and 24, 2015. Respondent was represented by Nona Matthews and Gwendolyn (Gigi) Maez with the Irving office of Walsh, Anderson, Gallegos, Green & Treviño.

At the close of the hearing, the parties jointly moved for an extension of the decision deadline to provide an opportunity to file written closing arguments. The deadline was again extended on the motion of Petitioner to provide additional time to file a closing argument. By agreement of the parties and order of the hearing officer, the decision deadline in this matter is May 22, 2015.

In the request for hearing, Petitioner alleged that the district by the actions of its admission, review, and offer a free appropriate public education

fai

A. Failing to provide/propose an appropriate educational program individualized to meet [the -2014 school year and 2014-15 school year;

B. R

C. Failing to propose appropriate levels of speech therapy;

D. Failing to provide [the student] with appropriate level (sic) of direct speech therapy services (direct versus small group);

E. Failing to provide [the student] with speech goals and objectives that are measurable and

F. Failing to provide [the student] goals and objectives that are uniquely tailored to meet [the

G.

and

H.

As relief, Peti in its entirety

1.

Dispute About Notice, Sufficiency of Pleadings, and  
Relevancy of Request for Reimbursement

- (b) Disagreements about FAPE. Disagreements between the parents and a public agency regarding the availability of a program appropriate for the child, and the question of financial reimbursement, are subject to the due process procedures in §§300.504 through 300.520.
- (c) Reimbursement for private school placement. If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary school, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to

(2) If, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in §300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation; or

(3) Upon a judicial finding of unreasonableness with respect to actions taken by the parents.

Because Petitioner did not notify the district that they intended their private placement of the student ability to obtain reimbursement as relief.

As discussed by counsel and the hearing officer on the record, though the issue for reimbursement will only be addressed if there is a finding that the district failed to provide or offer a free appropriate public education to the student.

Counsel for Petitioner asked for a continuance to provide timely notice of a reimbursement claim to the district. The district objected. The continuance was denied. Petitioner was allowed to present claims for reimbursement over a running objection as to relevancy from the district.

On March 26, 2015, the last day of the hearing, counsel for Petitioner filed another request for request but specifically seeking reimbursement for private placement and private services for the student. (Docket No. 206-SE-0315) The matter is pending.

If Petitioner cannot prove that what the district is offering the student is not FAPE, then the issue of

Findings of Fact

1. Petitioner is a student re

2. The student was born \*\*\*

3. \*\*\*

grade at \*\*\*

4.

was receiving special education

noted that the student exhibits difficulty with \*\*\* and noted that the student was \*\*\*. The FIE recommended a highly structured placement for the student with small group instruction, social skills

5. An ARD committee met for the student in November 2012 and the meeting continued on other dates and concluded in January 2013. The meeting ended in agreement. The committee determined that the student was eligible for special education based upon criteria of autism, a speech impairment, and \*\*\*. Measurable goals

written at the ARD. [Respo

6.

IEP goals. The parents provided the suggestions to the ARD committee, and the committee revised the

7. \*\*\* were addressed by private providers and by the district. An \*\*\* was successfully used by the student for \*\*\* & 759-760] -467, 580

8. The ARD noted that the student \*\*\* for private services provided by \*\*\* at \*\*\*. Ms. \*\*\* provided input -513]

9. Another ARD committee for the student was convened in May 2013. The committee added at the beginning of the new school year. The committee agreed to add the support of \*\*\* during ESY at the request of the parents. The committee considered data that showed to \*\*\* undermines any ability in developing \*\*\* -761]

10. In September 2013, an ARD committee for the student convened and requested another FIE to include consideration of speech/language issues, autism, PT, OT, adaptive PE, behavior, AT, \*\*\* and -108]

11. The district completed an FIE of the student in November 2013 which included extensive autism, \*\*\* -113 & 763-769]

12.



accuracy was not proficient and showed little if any prog

748-801]

14.

student could not master \*\*\*

-39, 49 & 59; Transcript Pages 79, 116-141 & 786-787]

19. SLP personnel for the district believed that continuing a focus on articulation for the student

communication for the student. This conclusion was not credible because the district established with credible testimony that \*\*\*

-20; Transcript Pages 477, 503, 511-523, 802-803, 837-838 &

909]

31. A private speech provider for the student began providing services and gives direct instruction three hours each week in speech articulation. The provider testified that the district did not provide an appropriate program for the student and that the student functions well in the student articulation instruction privately. An

-140, 395, 423-426, 495, 656, 777-779, 813 & 973-975]

32. \*\*\*. The \*\*\* teaches only children with disabilities. The student receives private OT services. The student receives speech services but \*\*\* has no SLP on staff. [Transcript Pages 16-18, 442, 532 & 676-679]

33.

w \*\*\* privately  
-63, 132-133, 157, 255,  
271, 642-643, & 694-695]

### Discussion

The student presents with a number of severe and complicated medical and educational disabilities. Because of the medical disabilities of the student, accurate assessment of educational abilities and educational progress in some areas is difficult. The student substantially on appropriate speech services and goals for the student. The student has been served in

Expert testimony about what is appropriate for the student is conflicting. The credible testimony of



DOCKET NO. 209-SE-0414

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SYNOPSIS

**ISSUE:** Whether Petitioner met its burden of proof to demonstrate that the proposed placement of the student was appropriate.

**CFR CITATIONS:** 34 C.F.R. §§ 300.513(a) and 300.552

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

**HELD:** For Respondent.