

**DOCKET NO. 098-SE-1103**

**Student, b/n/f** §  
**Parent & Parent, Petitioner** § **BEFORE A SPECIAL EDUCATION** §  
v. §  
§ **HEARING OFFICER**  
§  
**JUDSON INDEPENDENT** §  
**SCHOOL DISTRICT, Respondent** § **FOR THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

**STATEMENT OF THE CASE**

Student (Student or Petitioner), through his next friends Parent and Parent, requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., as amended.

The issues for hearing were as follows:

- 1) Whether Student should be provided 36 hours individual speech therapy and 36 hours group speech therapy per year, with an option for his parents to reduce the amount if they choose;
- 2) Whether it is appropriate for Student to be pulled out of an elective class in which he receives a grade to receive speech therapy;
- 3) Whether the terms of the mediation agreement of May 3, 2002, should have been implemented as a stay-put placement;
- 4) Whether the May 2003 admission, review, and dismissal committee (ARDC) agreed to adopt the terms of the expired May 2002 mediation agreement as the 2003-2004 individual education plan (IEP);
- 5) Whether the 2003-2004 IEP was appropriate;
- 6) Whether the 2003-2004 IEP was implemented;
- 7) Whether ARDC meetings were conducted in a collaborative manner and whether school staff failed to allow the parents to ask questions;
- 8) Whether the district failed to provide proper notice of ARDC meetings and proper procedural safeguards;
- 9) Whether Student has been provided a free, appropriate, public education (FAPE).

The relief requested was a stay-put placement based on the terms of the mediation agreement that had expired in May 2003; a finding that all terms of the mediation agreement were adopted by the ARDC for the 2003-2004 school year and continue to be necessary for a FAPE; and a ruling that Student must receive all speech therapy before or after school.

Held, for Respondent.

## **PROCEDURAL HISTORY**

Petitioner's request for hearing was received by the Texas Commissioner of Education on November 19, 2003, and was received by the Hearing Officer on November 20, 2003. Petitioner initially appeared pro se. Petitioner obtained legal representation by Christopher Jonas, Attorney at Law, on or about March 12, 2004. Respondent was represented by Paula Roalson of the law firm of Walsh, Anderson, Brown, Schulze and Aldridge, P.C.

The hearing was scheduled for December 12, 2003. A prehearing conference was held on December 10, 2003, and was transcribed by a court reporter. The prehearing conference was held in person at the parents' request to accommodate Parent's hearing difficulties. During the prehearing conference, Respondent requested consent for evaluation. Petitioner declined to grant consent. The parties jointly requested a continuance to allow time for further assessment of Student. The continuance was granted and the hearing was reset to January 20, 2004.

On December 11, 2003, Respondent filed a counterclaim, requesting an order from the Hearing Officer to override lack of parental consent for a full individual evaluation, including a speech evaluation.

Subsequently, Petitioner requested a continuance to allow time for further evaluation of Student's medical status. The continuance was granted over Respondent's objection, and the hearing was reset to March 9, 2004. Petitioner requested another continuance to allow time for further private evaluations and completion of evaluation reports. The continuance was granted over Respondent's objection, and the hearing was reset to April 7, 2004. Petitioner's counsel requested a continuance due to scheduling conflicts with two other hearings. The continuance was granted over Respondent's objection, and the hearing was reset to May 26, 2004, and was held on that date.

At hearing, Petitioner withdrew issues concerning reading tutoring and reimbursement for private speech therapy. Respondent withdrew its request for an order overriding lack of parental consent for evaluation, because Petitioner gave consent for evaluation during the hearing on May 26, 2004.

The Decision due date was extended to accommodate each continuance. It was further extended to July 2, 2004, because the parties requested additional time to submit written closing statements. The Decision was issued on July 2, 2004.

## **FINDINGS OF FACT**

1. Student is a \*\*\*-year-old boy who recently completed \*\*\* grade in Judson ISD (JISD). He is served in special education as a student with speech impairment. He attends \*\*\* School campus in JISD.
2. Student's most recent full individual evaluation (FIE) by JISD was performed in October 2000, and found that he no longer qualified as a student with a learning disability. His most recent speech evaluation by JISD was performed by \*\*\* in October 2001, and found that he did not qualify for special education as a student with speech impairment.

3. Following the October 2001 speech evaluation by the district, the parents requested an independent speech and language evaluation, which was performed by \*\*\* at district expense in January 2002. Ms. \*\*\*'s evaluation indicated a moderate articulation disorder, moderate receptive language disorder with a relative strength in semantics, and a severe expressive language disorder with a relative strength in semantics.
4. On February 20, 2002, the ARDC determined that Student should be dismissed from special education based on lack of educational need. At the time he was making good grades and his teachers believed his language needs could better be addressed in the regular classroom. The parents disagreed. The ARDC recessed and reconvened on February 25, 2002, at which time \*\*\*, then special education director, suggested that \*\*\* be evaluated for learning disabilities. The parents declined to consent for evaluation. The parents challenged the proposed dismissal from special education and threatened litigation against the district. The parties agreed to mediate the issues.
5. On May 3, 2002, the parties signed a mediation agreement which called for 36 hours of individual speech therapy and 36 hours of group speech therapy over the following 12 months, with the parents having the right to unilaterally reduce the amount of speech therapy at any time. The ARDC accepted the terms of the mediation agreement on May 6, 2002. Student received speech therapy before and after regular school hours during \*\*\* grade, although the mediation agreement specified only that he would not be taken out of academic classes for speech therapy. The mediation agreement also called for 60 minutes a week of reading tutoring with Ms. \*\*\*, itinerant reading teacher. The mediation applied specifically to the 2002-2003 school year and expired by its own terms on May 3, 2003.
6. An annual ARDC meeting was held on May 28, 2003, after several attempts by the district to secure the parents' attendance on earlier dates. The parents requested that all the terms of the mediation agreement be adopted by the ARDC for the upcoming 2003-2004 school year for \*\*\* grade. The ARDC agreed that Student would continue to be carried as eligible for speech services pending further assessment, but did not agree to "extend" the mediation agreement or adopt all of its terms. The committee determined that Student would receive approximately the same amount and type of speech services as in \*\*\* grade, 75 minutes per week. His reading tutoring was increased from 60 minutes to 90 minutes per week at the request of his reading teacher. The committee determined that Student probably would be taken out of his electives for speech therapy, with the exact schedule to be agreed upon by Student's parents, academic team, and speech therapist after classes were scheduled for Fall 2003. Another ARDC meeting was to be called if necessary to resolve any problems with scheduling speech therapy. The committee discussed that Student's FIE would take place during Spring 2004. At one point Parent became frustrated that the \*\*\*-grade counselor could not answer all his curriculum questions to his satisfaction. He wanted to terminate the ARDC meeting but he was persuaded to remain and he continued to participate. The ARDC meeting ended in consensus.

7. The May 28, 2003, ARDC drafted a speech and language IEP with the annual goal of using developmentally appropriate grammar and articulation skills for increased intelligibility of speech. Instructional modifications were developed for the regular classroom as follows: extra time for completing assignments; extra time for taking tests or shortened tests; opportunity to leave class for specialized assistance (content mastery); extra time for oral responses and modeling of correct speech patterns; assignments given one week in advance (syllabus); directions given in a variety of ways (minimize distractions); and copy of class notes when applicable.
8. The district mailed the parents a notice on August 28, 2003, scheduling an ARDC meeting for September 5, 2003, with the stated purpose of: "Adjust classroom modifications . . . \*\*\* needs to modify/change/eliminate one of Student's previous classroom modifications." The purpose of the meeting was to address the issue of a syllabus or advance notice of assignments.
9. On September 4, 2003, the team of five core teachers met with Parent and Parent to discuss Student's school performance. On September 5, 2003, the district attempted to convene the ARDC meeting. All core teachers were present, as well as Student's reading tutor and the school counselor. Parent and Parent attended but said they had not received the written notice and did not know of the meeting until a phone call from school staff that morning. Parent insisted that the meeting be changed to a "conference" and district personnel complied. Although the Parent's had met with Student's teachers the previous day, Parent said he wanted to meet individually with the teachers before having an ARDC meeting. The teachers reported problems with late and missing assignments. His reading tutor, Ms. \*\*\*, requested that he be evaluated for dyslexia, but Parent said that would not be discussed. Parent asserted that the ARDC previously had agreed to continue the mediation agreement into the 2003-2004 school year, and Ms. \*\*\*, principal, disagreed.
10. On September 8, 2003, the team of five core teachers met with Parent and Parent to discuss Student's school performance.
11. An ARDC meeting was scheduled for September 23, 2003. On September 19, 2003, Parent told Ms. \*\*\*, special education director, that it was too soon to have an ARDC meeting because he wanted time for additional meetings with the teachers. Ms. \*\*\* told him the ARDC meeting was necessary to plan for further evaluation. In a letter to the Parent's dated September 22, 2003, Ms. \*\*\* again stated the necessity for further evaluation.
12. On September 23, 2003, Student demanded that his speech teacher, Ms. \*\*\*, release him so he could attend his elective class, which was orchestra/strings. He told her his father said he did not have to attend speech therapy and did not have to speak to her.
13. On September 24, 2003, Student's team of academic teachers met to discuss Student's program.

14. On September 26, 2003, Ms. \*\*\*, Ms. \*\*\*, and Ms. \*\*\* held individual parent-teacher conferences with the parents. On September 30, 2003, Ms. \*\*\*, Ms. \*\*\*, and Ms. \*\*\* held individual parent-teacher conferences with the parents.
15. On September 29, 2003, the five core teachers again met with Parent and Parent to discuss Student's school performance.
16. On October 2, 2003, a parent conference was held with Parent and Parent, Ms. \*\*\*, speech therapist, and Mr. \*\*\*, content mastery teacher. The parents said they did not want Student taken out of his Strings class for speech therapy, and Ms. \*\*\* offered to take him out of P.E./health instead. No agreement was reached. Parent said he would inform Ms. \*\*\* the following week as to whether she "could" take Student out of Strings for speech therapy.
17. An ARDC meeting was scheduled for October 3, 2003. In a letter dated October 2, 2003, the parents requested that it be cancelled alleging that it was premature, the district was using "hurry and rush tactics," Student had been denied a proper evaluation, and further meetings were needed between the parents and school staff members prior to an ARDC meeting. The letter also asserted that the terms of the mediation agreement were still in effect. Subsequently, Parent informed the district that he intended to obtain legal counsel. The district postponed the ARDC to allow time for Petitioner to obtain legal counsel. In a letter dated October 23, 2003, Respondent's counsel notified the parents that if Petitioner's counsel did not contact her within three weeks, the ARDC meeting would be rescheduled.
18. The district's attempts to schedule an ARDC meeting in Fall 2003 included sending ARDC notices to the parents on September 17, September 22, October 2, October 6, October 31, and November 11, 2003, as well as letters from Ms. \*\*\* and the school's attorney. Ms. \*\*\* also contacted Parent by telephone in this regard. An ARDC meeting was scheduled for November 20, 2003, to address the re-evaluation issue. On November 19, 2003, Parent and Parent submitted a *pro se* request for due process to the Texas Education Agency.
19. The ARDC meeting went forward on November 20, 2003. The parents arrived late after being telephoned by Ms. \*\*\*. Parent said he had understood that the meeting would be cancelled due to his filing a request for due process. The committee noted that Student had passed all classes the first six weeks, but had failed English, math, and science during the second six weeks. His teachers noted that he was missing assignments, was disorganized, needed help staying on task, and was not consistently bringing his agenda notebook to class. The committee reviewed existing evaluation data and determined that it needed a full individual evaluation, including a new speech and language evaluation. Parent wrote a separate set of minutes which were attached to the ARDC report. The parents declined to consent to evaluation, requested that the mediation agreement be enforced as a stay-put placement, and requested that Student receive speech therapy before or after regular school hours. Parent accused the district of bias and

discrimination.

20. On December 9, 2003, the ARDC reconvened. Ms. \*\*\* said she was providing 90 minutes of speech therapy per week, and taking Student from his orchestra/strings class for this purpose. Parent insisted that orchestra is an “academic” class and Student should not be removed from it, but should instead receive speech services before and after school. At the time Student’s grade in orchestra was a \*\*\*. Parent declined consent for evaluation by the district and the meeting ended in disagreement. Parent wrote his own minutes, in which he asserted that the meeting was concluded prematurely. The meeting ended after Parent called the special education director and the district’s counsel “racist bigots.” \*\*\*, special education coordinator, made numerous phone calls to the Parent’s attempting to schedule an ARDC meeting during January and February 2004, without success.
21. Parent and Parent met with Student’s five academic teachers again on January 26, 2004.
22. Student attended \*\*\* grade at \*\*\* during the 2002-2003 school year. He passed all his courses and mastered all the objectives on his \*\*\*-grade speech and language IEP. In \*\*\* grade Student attended \*\*\* School, where his grades began to decline by the second six weeks. He was failing math at the end of the year, and his math teacher believes he needs one-on-one instruction next year. He mastered two objectives on his \*\*\*-grade speech and language IEP for 2003-2004, and made good progress on the third objective.
23. Student’s English teacher gave the family Student’s spelling and vocabulary lessons for the entire year in early October 2003. The parents were provided a copy of all his textbooks and one workbook to use with him at home. His agenda notebook contained advance notice of at least some of his assignments. Student’s math teacher did not provide his assignments in advance.
24. In the May 28, 2003, ARDC meeting, in response to the parental request for a syllabus for the upcoming school year, school staff offered to download a copy of the Texas Essential Knowledge and Skills (TEKS) curriculum for the parents during the meeting. Parent indicated that he had access to the Internet and would obtain the information on his own.
25. Dr. \*\*\*, clinical psychologist, performed a private neuropsychological evaluation of Student on January 13, 2004. Dr. \*\*\* is not a licensed specialist in school psychology (L.S.S.P.), and he did not have contact with the school or input from Student’s teachers. He found Student to have “attenuated attentional functions compounded by problems in language functioning,” but not attention deficit disorder, *per se*. On the Woodcock Johnson III Tests of Cognitive Abilities, Student received a standard General Intellectual Ability score of \*\*\*. Dr. \*\*\* believes this score is due to impaired language functioning rather than to mental retardation. On the Woodcock Johnson III Tests of Achievement, Dr. \*\*\* found Student to have good arithmetic abilities and a good fund of knowledge, but poor language-based abilities due to an expressive and receptive language disorder.

26. Although the ARDC has not met to review Dr. \*\*\*'s recommendations, it has provided many of his recommendations on its own. Dr. \*\*\*'s recommendations include: books on tape; repetition and rephrasing of important verbal information; brief and direct instructions; extra time to think and respond; a structured environment with reduced noise and avoidance of open classrooms; preferential seating; checking his assignment notebook; emphasis on reading comprehension and functional writing skills; reduced assignments and reduced tests; extra time for standardized tests; grading spelling differentially and allowing him to correct spelling errors; extra time to complete major projects; and a study guide for major exams.
27. Parent provided the Hearing Officer a copy of Dr. \*\*\*'s evaluation on March 2, 2004. However, Petitioner did not provide the evaluation to the district or the district's counsel at any point. The Hearing Officer faxed a copy of the evaluation to the district's counsel on March 5, 2004.
28. The Parent's obtained a private speech and language evaluation of Student on January 4, 2004, from Our Lady of the Lake University. Student tends to speak quietly, but his articulation is normal for his age. The testing indicated a moderate to severe oral language disorder and moderate delays in written language skills and receptive vocabulary. No input was taken from the school for the evaluation.
29. \*\*\*, speech language pathologist and instructor at Our Lady of the Lake University, provided private speech therapy to Student during the 2002-2003 school year. She recommends that Student receive individual speech therapy at school at least twice a week, for 45 minutes to an hour, and that his teachers receive consultation from a speech therapist. Ms. \*\*\* has not been able to collaborate with JISD's speech pathologist. She requested that the Parent's sign a release to allow her to speak directly to JISD personnel, but the parents declined to sign the release.
30. \*\*\*, the lead speech pathologist for JISD, performed Student's speech and language evaluation in November 2001 and provided his speech therapy services during the 2002-2003 school year. She also collaborated regularly with \*\*\*, Student's speech therapist for the 2003-2004 school year, and \*\*\*, his reading tutor for the 2002-2003 and 2003-2004 school years. Both Ms. \*\*\* and Ms. \*\*\* saw characteristics of dyslexia exhibited by Student.

## DISCUSSION

The district's proposed educational program is entitled to a legal presumption of appropriateness. Petitioner bears the legal burden of proving that the educational program offered by the district is not appropriate. *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983). Petitioner has not met that burden in this case.

Student is a \*\*\*-year-old boy who receives special education as a student with a speech impairment. When Student moved to the \*\*\* school for \*\*\* grade in Fall 2003, he began to have problems with disorganization and missing assignments, and his grades went down sharply beginning the second six weeks. In response to his poor grades, the district made repeated attempts to obtain the parents' attendance at an ARDC meeting during Fall 2003, and to obtain parental consent for evaluation. The most recent FIE by JISD was performed in October 2000, and the most recent speech evaluation by JISD was performed in October 2001. JISD filed a counterclaim in this proceeding requesting that the Hearing Officer override lack of parental consent for evaluation. Petitioner gave consent for evaluation on the day of the hearing, May 26, 2004, and Respondent withdrew the counterclaim at that time.

### Mediation Agreement

A mediation agreement signed by the parties in May 2002 expired by its own terms on May 3, 2003. Petitioner alleged that the ARDC agreed to adopt all the terms of the mediation agreement for the 2003-2004 school year, in essence extending the mediation agreement for a year beyond its express terms. Petitioner failed to prove this allegation. Pursuant to the IEP developed in May 2003, the district in fact provided speech services and reading tutoring during the 2003-2004 school year that exceeded the amount of services listed in the expired mediation agreement. The district was not required to implement the expired mediation agreement as a stay-put placement.

### 2003-2004 IEP

Student's 2003-2004 IEP required speech therapy for 75 minutes per week and reading tutoring 90 minutes per week. In practice, and with the knowledge of his parents, Student received two 45-minute sessions of speech therapy a week. He mastered two of three objectives on his speech and language IEP for 2003-2004, and made good progress toward mastery of the third objective. Petitioner failed to demonstrate that it was necessary for Student to receive a different type or amount of speech therapy than he was provided pursuant to his IEP in order to receive a FAPE.

Student's reading tutoring was provided after school, and his parents want his speech therapy delivered before or after the regular school day, also. Speech therapy is an instructional arrangement commonly provided during the regular school day. See 19 T.A.C. Sec. 89.63 (4). Petitioner offered no justification for the request that his speech therapy occur outside regular school hours other than past practice, and the fact that Student enjoys his orchestra class. The speech therapist offered to take Student out of P.E./health instead of orchestra, but the family did not agree to that option. At the May 2003 ARDC meeting, it was agreed that an ARDC meeting

would convene in Fall 2003 if necessary to reach an agreement concerning the speech therapy schedule. However, the parents declined to attend an ARDC meeting for most of Fall 2003. Petitioner failed to demonstrate that Student was denied a FAPE by being taken out of his elective orchestra class twice a week to receive speech therapy.

While the mediation agreement was in effect, the parents had the unilateral right to reduce the amount of speech therapy at any time. The right to dictate the amount and the scheduling of speech therapy expired in May 2003 when the mediation agreement expired. The right of a parent to meaningful input and involvement does not constitute a right to dictate educational methodology or every detail of the child's educational program. "The right to provide meaningful input is simply not the right to dictate an outcome." *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5<sup>th</sup> Cir. 2003). "[P]arents, no matter how well-motivated, do not have a right . . . to compel a school district to provide a specific program or employ a specific methodology." *Lachman v. Illinois St. Bd. of Educ.* 852 D. 2d 290 (7<sup>th</sup> Cir. 1988), *cert. denied*, 488 U.S. 925 (1988).

### Modifications

Student's instructional modifications included extra time for completing assignments; extra time for taking tests or shortened tests; opportunity to leave class for specialized assistance (content mastery); extra time for oral responses and modeling of correct speech patterns; assignments given one week in advance (syllabus); directions given in a variety of ways (minimize distractions); and a copy of class notes when applicable. The modifications were substantially provided, but the math teacher did not provide assignments one week in advance. Student's English teacher provided the entire year's assignments in advance, and the parents were provided a copy of all Student's textbooks and a workbook to use with him at home, as well as an agenda notebook that contained advance notice of at least some of his assignments. Petitioner did not meet the burden of proving that any failure to implement the modifications rose to the level of substantive harm. See: *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5<sup>th</sup> Cir. 2003); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000).

### Collaboration with the Parents

Petitioner's allegations that the ARDC failed to collaborate with the parents or allow them to ask questions in ARDC meetings are without merit. The parents had numerous opportunities for meaningful input into Student's educational program. The record reveals a large amount of parental input in ARDC meetings, as well as in numerous meetings with Student's team of teachers and separate meetings with the teachers on an individual basis. Parent in particular spoke often and at length in ARDC meetings, and wrote his own set of minutes for several ARDC meetings, which were attached to the ARDC reports.

The parents' own actions at times undermined the district's attempts to collaborate with them, *e.g.*, they repeatedly requested that scheduled ARDC meetings be postponed, and Parent accused the district of "hurry and rush" tactics in its efforts to hold an ARDC meeting in Fall 2003 after Student began to have failing grades. They declined to provide a release so their private speech therapist could communicate with school personnel and failed to timely provide at

least one outside evaluation to the district. While it is true that an ARDC meeting in December 2003 was cut short, this happened due to Parent's inflammatory language toward other participants. Subsequently, the district tried without success to schedule another ARDC meeting in January and February 2004.

### Procedural Issues

The parents apparently did not receive the written notice mailed by the district for an ARDC meeting to be held on September 5, 2003. However, the parents did attend the meeting and at Parent's insistence the meeting was changed to a "conference" rather than an ARDC meeting. Petitioner failed to prove that procedural safeguards were not properly provided.

### Conclusion

An appropriate placement under IDEA is one that enables a student to obtain "some benefit" from his education, and does not require that a student's educational potential be optimal or "maximized." *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982). Schools are not required to provide all services from which a child might benefit. Rather, the district must provide personalized instruction with sufficient support services to permit the student to receive an "educational benefit," i.e., a program that is meaningful and is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Rowley, id.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000). JISD has provided Ezekiel a FAPE.

The exact nature of Student's disabilities and educational needs cannot be ascertained until current evaluations are completed by the district. Both parties should do everything in their power to facilitate the completion of JISD's FIE and speech and language evaluation, and convene an ARDC meeting prior to the beginning of the Fall 2004 semester to consider all recent and pending evaluations, including the private evaluations by Dr. \*\*\* and Our Lady of the Lake University.

## **CONCLUSIONS OF LAW**

1. Student resides in JISD, a legally constituted independent school district within the State of Texas, and is entitled to special education services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., as amended.
2. The educational program proposed by the school district is presumed to be appropriate. As the party challenging the educational program proposed by the district, Petitioner bears the burden of proof. *Tatro v. State of Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983), aff'd 468 U.S. 883 (1984); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000). Petitioner failed to meet the burden of proof in this case.
3. The mediation agreement of May 2002 was a contract which applied to Student's \*\*\*-grade year and expired by its own terms on May 3, 2003. The ARDC of May 2003 did not agree to adopt all the provisions of the May 2002 mediation agreement for the \*\*\*-grade IEP. The district was not required to carry out the expired mediation agreement as

a stay-put placement when Petitioner filed the request for due process, because it was not the current educational placement. 34 C.F.R. §300.514.

4. Student's parents were actively involved in the development of his IEPs, and were provided the opportunity to provide input and ask questions in ARDC meetings. The ARDC collaborated with the parents although it did not grant all their requests. The parents do not have the right to unilaterally dictate the type or amount of speech therapy or other educational services, or to dictate the schedule and setting for speech therapy. The right of a parent to meaningful input and involvement does not constitute a right to dictate educational methodology or the details of the child's educational program. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997); *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5<sup>th</sup> Cir. 2003); *Lachman v. Illinois St. Bd. of Educ.* 852 D. 2d 290 (7<sup>th</sup> Cir. 1988), *cert. denied*, 488 U.S. 925 (1988).
5. Student's 2003-2004 IEP was reasonably calculated to provide an educational benefit. He made good progress on his speech goals and objectives, and Petitioner failed to prove that he should have received a different amount or type of speech therapy or other service. Student's instructional modifications were substantially implemented, and Petitioner failed to prove substantive harm from any omissions. Petitioner did not demonstrate educational harm from being pulled out of his orchestra class to receive speech therapy during \*\*\* grade. JISD provided Student a free, appropriate, public education. *Bd. of Educ. v. Rowley*, 458 U.S. 176 (1982); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5<sup>th</sup> Cir. 2003); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000).
6. Petitioner provided no evidence of a failure to provide procedural safeguards. Petitioner failed to prove any harm by virtue of the parents' failure to receive the ARDC notice sent by the district for the September 5, 2004, meeting. The parents attended the meeting and at parental request the meeting was changed to a "conference" rather than an ARDC meeting. Petitioner did not prove any deficiencies in regard to other ARDC notices.

### **ORDER**

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the relief requested by Petitioner is **DENIED**.

### **NOTICE TO THE PARTIES**

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

**SIGNED** this 2<sup>nd</sup> day of July, 2004.

/s/ \_\_\_\_\_  
Janis Herd  
Special Education Hearing Officer

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**SCHOOL DISTRICT, Respondent** § **FOR THE STATE OF TEXAS**

**SYNOPSIS**

**Issue 1:** Whether the terms of the mediation agreement of May 3, 2002, were adopted by the ARDC as the 2003-2004 IEP and therefore should have been implemented as a stay-put placement when Petitioner filed for due process.

**Held:** For Respondent. The mediation agreement was a contract that applied to the previous school year and expired by its own terms on May 3, 2003. The ARDC did not agree to adopt all the provisions of the May 2002 mediation agreement for the \*\*\*-grade IEP, and the district was not required to carry out the expired mediation agreement as a stay-put placement because it was not the current educational placement.

**Citation:** 34 C.F.R. §300.514.

**Issue 2:** Whether the 2003-2004 IEP was appropriate, was implemented, and provided a FAPE.

**Held:** For Respondent. Student's 2003-2004 IEP was reasonably calculated to provide an educational benefit. He made good progress on his speech goals and objectives, and Petitioner failed to prove that he should have received a different amount or type of speech therapy or other service. Student's instructional modifications were substantially implemented, and Petitioner failed to prove substantive harm from any omissions. ISD provided Student a free, appropriate, public education.

**Citation:** 34 C.F.R. §300.300; §300.347.

**Issue 3:** Whether Student suffered educational harm by being pulled out of an elective class in which he received a grade to receive speech therapy.

**Held:** For Respondent. Petitioner did not demonstrate educational harm from being pulled out of his orchestra class to receive speech therapy during \*\*\* grade.

**Citation:** 34 C.F.R. §300.24; 19 T.A.C. §89.63 (4).

Issue 4: Whether ARDC meetings were conducted in a collaborative manner.

Held: For Respondent. Student's parents were actively involved in the development of his IEPs, and had the opportunity to provide input and ask questions. The ARDC collaborated with the parents although it did not grant all their requests. The parents do not have the right to unilaterally dictate the type or amount of speech therapy or other educational services, or to dictate the schedule and setting for speech therapy.

Citation: 34 C.F.R. §300.345.

Issue 5: Whether the district failed to provide proper notice of ARDC meetings and proper procedural safeguards.

Held: For Respondent. Petitioner did not demonstrate a failure to provide procedural safeguards. On the one occasion when Petitioner did not receive the mailed ARDC notice, Petitioner was in no way harmed because the ARDC meeting was changed to a "conference" at the parent's request.

Citation: 34 C.F.R. §300.345; §300.346.