

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

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
Procedural History**

On January 9, 2004, the Texas Education Agency received the Request for Due Process Hearing filed by Student *b/n/f Parent*, (“Petitioner”) and assigned the case Docket No. 157-SE-0104. On January 9, 2004, Docket No. 157-SE-0104 was assigned to the undersigned Hearing Officer. On January 22, 2004, the parties, Petitioner and El Paso Independent School District (“Respondent”), were notified that the prehearing telephone conference would be held on January 28, 2004, that the Due Process Hearing was scheduled for February 13, 2004, and that the Decision due date was February 23, 2004.

On January 21, 2004, Respondent filed an Original Answer in which it admitted Petitioner’s accusations and agreed to provide the relief requested in Petitioner’s Request for Due Process Hearing.

On January 28, 2004, the telephone conference convened as scheduled. In attendance were the following: Mr. Mark Berry, Petitioner’s counsel; Ms. Rose K. George, Respondent’s counsel; the court reporter; and the undersigned Hearing Officer. During the telephone conference the parties discussed the following issues: 1) whether Respondent failed to provide Petitioner with a full and individual initial evaluation (“FIE”) as requested by his mother; 2) whether Respondent failed to provide Petitioner notice of this denial of a FIE; and 3) whether Respondent failed to provide Petitioner with notice of procedural safeguards. Petitioner requested that the Respondent 1) perform the FIE and 2) agree to provide Petitioner with proper written notice, including notice of procedural safeguards, when it proposes or refuses to initiate or change Petitioner’s identification, evaluation or educational placement. During the telephone conference, the District again admitted to the omissions alleged by Petitioner and agreed to the requested relief. The parties also agreed that the Due Process Hearing would convene as scheduled on February 13, 2004, if necessary.

On February 4, 2004, Respondent filed its Motion to Enter Order, requesting that the Hearing Officer enter a final decision, with findings of fact and conclusions of law, and dismissed the scheduled hearing based upon its admission of all allegations proffered by Petitioner. Petitioner objected to this Motion, contending that 1) the proposed conclusions of law were insufficient, 2) the findings and conclusions should not be entered without

Petitioner's consent, and 3) absent an agreement between the parties, the Due Process Hearing should proceed. The parties convened for a second telephone conference to discuss Petitioner's objections to the entry of a judgment. The Hearing Officer informed the parties that she would take this issue under advisement and re-schedule the Due Process Hearing if she concurred with Petitioner's objections. Based upon the arguments of counsel and the applicable legal authority, I enter the following Decision on The Merits.

II. Findings of Fact

Based on the allegations of Petitioner, the admissions of Respondent, and matters noted, the Hearing Officer makes the following Findings of Fact:

1. Student is a ***-year-old student who resides within the jurisdictional limits of El Paso ISD. Student attends *** School.
2. El Paso ISD is a political subdivision of the State of Texas and a duly incorporated independent school district. El Paso ISD is responsible for the delivery of special education services to Student if he so qualifies.
3. Student suffers from AD/HD.
4. On October 6, 2003, Student's mother requested a FIE of Student.
5. Respondent failed to provide Student with the requested FIE.
6. Respondent failed to notify Student's mother with notice that it had not performed the FIE; Respondent failed to provide Student's mother with notice of her procedural safeguards.
7. El Paso ISD stipulated that it failed to perform the requested FIE.
8. El Paso ISD stipulated that it failed to provide Parent with notice that the FIE had not been performed.
9. El Paso ISD stipulated that it failed to provide Parent with notice of procedural safeguards.

III. Conclusions Of Law

Based on the foregoing Findings of Fact the Hearing Officer hereby makes the following Conclusions of Law:

1. El Paso ISD has a responsibility to provide Student with a free, appropriate, public education. 20 U.S.C.A. §1412; 34 C.F.R. §300.300; 19 T.A.C. §89.1001.

2. El Paso ISD violated the procedural safeguards of IDEA and such violation deprived Student of a FAPE. 34 C.F.R. 300.531; 300.503; 300.504; 19 TAC §89.1011.
3. El Paso ISD failed to comply with the “child-find” mandates of IDEA. 34 C.F.R. 300.125

**IV.
Order**

After due consideration of the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief requested by Petitioner is GRANTED:

1. El Paso ISD is ordered to provide Student with a full and individual evaluation.
2. El Paso is ordered to provide Parent with proper written notice, including notice of procedural safeguards, when it proposes or refuses to initiate or change the identification, evaluation, or education placement of Student.

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

Respondent shall timely implement this Decision within 10 school days. The following must be provided to the Division of Complaints Management 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 time line set by the Hearing Officer for implementing certain aspects of the Decision is longer than 10 school days, the District’s plan for implementing the Decision within the prescribed time line and a signed assurance from the superintendent that the Decision will be implemented.

SIGNED this 26th day of February 2004.

/s/Deborah Heaton McElvaney

Deborah Heaton McElvaney

Special Education Hearing Officer

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SYNOPSIS

ISSUE: *Whether El Paso ISD’s violations of the procedural safeguards mandated by IDEA denied Student FAPE*

C.F.R. CITATION: 34 C.F.R. 300.531; 300.503; 300.504

T.A.C. CITATION: 19 TAC §89.1011

HELD: **For Petitioner.** The stipulated facts prove that Student’s mother requested El Paso ISD to perform a FIE; that it failed to perform the FIE; that it failed to provide notice of such omission to Student’s mother; and that it failed to provide her notice of procedural safeguards.

ISSUE: *Whether El Paso ISD failed to comply with IDEA’s child-find mandates.*

C.F.R. CITATION: 34 C.F.R. 300.125

HELD: **For Petitioner.** The stipulated facts prove that Student’s mother requested El Paso ISD to perform a FIE; that it failed to perform the FIE; that it failed to provide notice of such omission to Student’s mother; and that it failed to provide her notice of procedural safeguards.

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DHM:cgc
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