

Student b/n/f Parent § BEFORE A SPECIAL EDUCATION
 §
V. § HEARING OFFICER FOR THE
 §
SOUTH TEXAS INDEPENDENT §
SCHOOL DISTRICT § STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner Student brings this appeal by her next friend, Parent, pursuant to the Individuals with Disabilities Education Act 20 U.S.C. § 1400 *et seq.*, (hereinafter referred to as "IDEA"), against Respondent South Texas Independent School District (hereinafter referred to as "Respondent" or "South Texas ISD"). Petitioner, Student by next friend Parent (hereinafter referred to as "Petitioner" or "Student") filed a written request for a due process hearing which was received by the Texas Education Agency on Thursday, May 20, 2004. Petitioner was represented by her next friend Parent. Respondent was represented by Attorney Tom Flemming of Brownsville, Texas. A telephone prehearing conference was held on Thursday, June 3, 2004, at which time both parties waived their right to a final decision within forty-five (45) days of the date the written request for due process hearing was filed. [34 C.F.R. §300.511(c)] A due process hearing was held on Tuesday, June 22, 2004, in Edinburg, Texas. The parties agreed to file post-hearing briefs on or before July 9, 2004.

Petitioner alleges that Student is a ***-year-old student in the *** grade at *** School in South Texas ISD who receives special education placement, programs and services on the basis of meeting eligibility criteria as a student Other Health Impaired ("OHI") because she has attention deficit hyperactivity disorder ("ADHD").

Petitioner's Allegation:

Petitioner alleges that the District failed to implement her existing individualized education plan ("IEP") by modifying how Student took her English TAKS test. Because of this violation, Student failed that test.

As relief in this due process hearing, Petitioner requests that Respondent be ordered appropriately implement Student's existing IEP.

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law.

II. Findings of Fact

1. Student is a ***-year-old female student who resides within the South Texas Independent School District.
2. South Texas ISD is a political subdivision of the State of Texas and a duly incorporated independent school district responsible for providing Student a free appropriate public education in accordance with the Individuals with Disabilities Education Act, 20 U.S.C.A. §1400, *et seq.*, and the rules and regulations promulgated pursuant to IDEA.
3. Student is eligible for special education placement, programs and services as a student who is Other Health Impaired (“OHI”) because she has attention deficit hyperactivity disorder (“ADHD”).
4. An Admission Review Dismissal (“ARD”) meeting was convened on Student’s behalf on March 13, 2003. The meeting was attended by Student and her parents via telephone. All members of the ARD committee were in agreement at the conclusion of the ARD meeting.
5. At Student’s May 13, 2003, ARD meeting the following deliberations were included in the ARD minutes:

“TAKS, ITBS, RPTE, EOC and other standardized testings. Student will be taking all TAKS assessments required for the *** grade. She will be able to use highlighters, calculators and any other reference material allowed to students in the general educational setting.” . . .

“Recommendations that were made by the ARD. It was recommended that all modifications be removed from Student’s IEP and that she be placed on a monitoring schedule in mainstream classes. It was recommended that she be on a monitor/consultation only basis for the 2003-2004 school year.
6. In February, 2004 Student was administered the Texas Assessment of Knowledge Skills (“TAKS”) test at her school. When Student arrived at her homeroom on the day of the test, she was told to go to the “special education room” to take the test. A *** School teacher named Ms. *** monitored the administration of the TAKS test in the “special education room.” When *** arrived at the “special education room” she asked Ms. *** why she was there. Ms. *** told her that she was there because she had modifications in place to take the test in a smaller room with fewer distractions.
7. Student complained to Ms. *** about the classical music that was playing in the “special education room.” Ms. *** did not change the music. Also, Student found the other students in the room noisy and distracting.

8. Student's name was included on a list that was circulated to the administrators of the TAKS test for *** School. The list was supposed to reflect those students whose ARD committees directed that they be moved to a more favorable testing environment.
9. The session of the TAKS test that Student took is used by the school to gather evaluative data, only. If a *** or *** grade student has a problem with the TAKS test, school administrators can respond to fix the problem for future testing. Student's failure of the English portion of the TAKS test has no bearing on class promotion or college admission.
10. The State determines the dates that a TAKS test is to be administered to a student. *** School could not administer the test to Student before the next state scheduled session, even if it wanted to do so.
11. Ms. *** is a diagnostician at *** School. It was her job this past school year to review the individualized education plans ("IEP"s) of special education students in order to compile a list of students who required special education modifications to take the TAKS test. Ms. *** placed Student on such a list.
12. Student was sent to the special education room to take the English portion of her TAKS test for no other reason than her name was on a list of students who required modification to take the test.
13. It is the position of the District's superintendent of schools, Dr. ***, Ph.D., that a school should adhere to the recommendations of a student's ARD committee in administering the student's special education student program.
14. At the time she took the English portion of her TAKS test, Student was passing her English class with grades in the ***'s. She failed the English portion of her TAKS test.

III. Discussion

The issues in this case are very straight-forward and easily resolved. Student is a *** grade special education student who has been diagnosed with ADHD and dyslexia. Apparently, because of her progress through the years, she has been mainstreamed into general education classes with fewer and fewer modifications. Her May 13, 2003 ARD Committee concluded, unanimously, that Student did not require special education modification on a number of standardized educational tests, including the TAKS test. Yet, when she was administered the English portion of the TAKS test in February of 2004, she was sent to a "special education room" maintained by the school, as a special education modification. She failed the test. Undoubtedly, the District failed to appropriately implement Student's IEP, with regard to the administration of this test.

The District has argued that Student's removal to the "special education room" was an appropriate exercise of its discretionary authority to devise a methodology for a special education student to take the state mandated test. The District's position is at odds with the record. It

appears that Student was sent to the “special education room” because of a simple mistake. She was directed to the room (which apparently contained students with eligible disabilities,) because her name was put on a list by school diagnostician, Ms. ***. Ms. *** was supposed to have consulted each special education student’s IEP to determine the appropriate modification that should be implemented in the administration of the TAKS test. Either Ms. *** did not review Student’s most recent IEP, adopted prior the test at issue; or she simply overlooked the unambiguous direction of Student’s ARD Committee that *no* modification of Student’s TAKS testing was to be made. No District witness of record testified that Student was sent to the “special education room” for any other reason, including that they believed in February of 2004 she “needed” a modification for the TAKS test. In any event, no less than the District’s School Superintendent testified that a special education student’s ARD Committee’s directions should be followed. This is a reasonable policy of a local education agency that is subject to the provisions of IDEA. There *is* no legitimate “methodology” issue that authorizes a district to ignore the recommendations of a duly convened ARD committee. However, this record indicates that South Texas ISD’s “methodology” in the testing of a special education student is to follow the student’s IEP.

The record does not support a finding that Student failed the test because of the erroneous modification or was otherwise denied a free appropriate public education (“FAPE”). Student may not have liked the conditions in the “special education room”, but I am not convinced that she failed the test for that reason. The issue is largely moot, because the test was administered to Student for evaluative purposes, only. Petitioner is entitled to a finding that the District failed to appropriately implement her IEP. However, on this record, the attached order amounts to no more than a simple admonition to Student’s school to be more careful in reviewing her IEP, in the future. Student has made educational progress and she was not denied a FAPE. No other conclusion or recommendation is necessary.

IV. Conclusions of Law

1. Petitioner is a student in South Texas ISD who is eligible for special education services based on her classification as a student who is Other Health Impaired (“OHI”) because she has attention deficit hyperactivity disorder (“ADHD”). [20 U.S.C.A. § 1401(3); 34 C.F.R. § 300.7; 19 T.A.C. § 89.1040]
2. Respondent South Texas 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]
3. Respondent failed to appropriately implement Student’s IEP by erroneously applying a modification to how she took the English portion of her TAKS test. [34 C.F.R. §§300.341-300.350]
4. Respondent has otherwise, provided Student with an appropriate educational program from which she has received a benefit. [*Board of Education v. Rowley*, 458- U.S. 176, 102 S. Ct. 3034 (1982)]

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SYNOPSIS

Issue: Whether Respondent failed to appropriately implement the IEP of an OHI student by imposing a special education modification on how the student took her TAKS test, causing her to fail the test and be denied FAPE.

Federal Citation: 34 C.F.R. §§ 300.341 -300.350

Texas Citation: 19 T.A.C. §§ 89.1050, 89.1055; *Tatro v. State of Texas*, 625 F.2d 557 (Fifth Circuit - 1980).

Held: For the Petitioner, in part. Respondent failed to abide by unambiguous language in Student’s IEP that removed all modifications on how she was to take the TAKS test. However, the modification was not shown to be the cause of her failure and she, otherwise, received a FAPE.