

**BEFORE A SPECIAL EDUCATION  
HEARING OFFICER FOR THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

<b>Student., b/n/f</b>	§	
<b>Parent,</b>	§	
<b>Petitioner</b>	§	
	§	
<b>v.</b>	§	<b>DOCKET NO. 362-SE-0704</b>
	§	
<b>BROWNSVILLE</b>	§	
<b>INDEPENDENT SCHOOL</b>	§	
<b>DISTRICT,</b>	§	
<b>Respondent</b>	§	

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**REPRESENTING PETITIONER:**

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**DOCKET NO. 362-SE-0704**

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

**DECISION OF THE HEARING OFFICER**

**Statement of the Case and Procedural History**

Petitioner, Student (“Student” or “Petitioner”), by next friend Parent, requested an impartial due process hearing under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, as amended, against Brownsville Independent School District (“Brownsville ISD” or “Respondent”). Petitioner filed her Request for Hearing with the Texas Education Agency (“TEA”) and the undersigned Hearing Officer received the case assignment on July 2, 2004. The Decision Due Date was set in compliance with the forty-five day rule for August 16, 2004.

A pre-hearing conference was held by telephone on July 13, 2004. During the conference, the parties jointly requested an eight-week continuance of the hearing date due to scheduling concerns that was granted for good cause shown. The hearing was reset for September 17, 2004, and the Decision Due Date extended accordingly to October 11, 2004.

The due process hearing was held on September 17, 2004, in the administrative offices of Brownsville ISD. At the conclusion of the hearing, the parties requested leave to submit their closing argument in writing, which was granted for good cause shown and the Decision Due Date extended to October 18, 2004. The Decision was issued on October 18, 2004.

Petitioner alleged the following actions and inactions of Brownsville ISD:

1. Whether Brownsville ISD failed to develop an appropriate individualized educational plan (“IEP”) in speech for Student that included specific and measurable goals and objectives;
2. Whether Brownsville ISD failed to provide an independent educational evaluation (“IEE”) upon parental request; and,

3. Whether Brownsville ISD improperly reduced speech services for Student in May 2004 without proper assessment data to support a reduction in services.

As relief, Petitioner sought the following:

1. Development of an appropriate speech IEP with specific and measurable goals and objectives;
2. An IEE for speech therapy services; and,
3. Compensatory speech services to address the reduction of speech therapy services in May 2004.

Based upon the evidence and argument admitted into the record of this proceeding, the Hearing Officer makes the following findings of fact and conclusions of law:

### **Findings of Fact**

- 1) Student is a \*\*\*-year-old student in the \*\*\* grade at \*\*\* School in Brownsville, Texas. [Transcript at 9].
- 2) Student lives with her parents, Parent and Parent, within the geographical boundaries of Brownsville ISD. [Transcript at 9].
- 3) Student qualifies for special education and related services as a student with Speech Impairment (“SI”). [Joint Exhibit 3].
- 4) On November 24, 2003, Respondent completed referral documents to test Student for special education eligibility, based on concerns over her speech articulation voiced by her parents and \*\*\* teacher. [Joint Exhibit 2; Transcript at 11-14].
- 5) On December 17, 2003, Brownsville ISD conducted a full individual evaluation (“FIE”) of Student by a licensed speech pathologist employed by Respondent. Testing results showed that Student’s expressive and receptive language skills were appropriate for her age as measured by the Receptive One Word Picture Vocabulary Test: Spanish Bilingual Edition, the Expressive One Word Picture Vocabulary Test: Spanish Bilingual Edition, and the Preschool Language Scale-4 (“PLS-4”). [Joint Exhibit 3 at 2].
- 6) As part of the FIE, the evaluator administered the PLS-4 Articulation Screener, noting that Student was able “to produce all age appropriate sounds in isolation, syllables, words and phrases but has difficulty carrying the sounds over into sentences and conversational speech. The misarticulated sounds appear to be

- developmental and/or emerging.” The FIE report fails to identify the specific sounds that Student had difficulty producing during her assessment and fails to characterize the severity of her speech disability. The FIE report concluded that Student exhibited significant educational and developmental deficits in articulation and speech intelligibility. [Joint Exhibit 3 at 3; Transcript at 120-121].
- 7) On December 17, 2003, the multi-disciplinary team reviewed the FIE with Student’s parents and concluded that Student met eligibility for special education services as SI. [Joint Exhibit 4].
  - 8) On January 9, 2004, Parent received and reviewed Respondent’s \*\*\* Mid-term Report. This report detailed Student’s performance on the regular education \*\*\* assessment instrument, the Texas Primary Reading Inventory (“TPRI”). Student had not reached mastery criteria in 3 of 10 TPRI task areas: a) detection of initial sounds; b) detection of final sounds; and, c) listening comprehension. [Respondent’s Exhibit 6 at 1].
  - 9) Brownsville ISD did not convene Student’s initial ARDC meeting until March 31, 2004. Student’s parents attended this meeting. All ARDC members agreed that Student required special education services of speech therapy in the amount of 25 sessions of 30 minute duration, or 750 minutes of speech therapy, to be delivered by March 31, 2005. The ARDC offered seven additional sessions of 30 minute duration, or 210 additional minutes to be delivered between March and May 2004, as compensation of the delay in convening Student’s initial ARDC meeting. All members of the ARDC signed in agreement at the conclusion of this meeting. [Joint Exhibit 7; Transcript at 81-82, 97-98, and 103].
  - 10) The March 2004 ARDC adopted a speech IEP goal for Student to “demonstrate measurable progress toward the acquisition of developmentally appropriate articulation.” [Joint Exhibit 8].
  - 11) On its face, Student’s speech IEP goal does not reference an age-equivalent level of expected achievement for the year. [Joint Exhibit 8].
  - 12) Student’s 2004-2005 speech IEP included the following short-term objectives: a) [m]aintain correct production of target phonemes in conversational speech with 80% accuracy using maximum visual and verbal cueing; and, b) [m]aintain articulation skills commensurate with developmental level in classroom activities with 80% accuracy using maximum visual and verbal cueing. Both objectives were to be implemented by Student’s speech pathologist and by Student’s parents. Teacher tests and observations formed the evaluation criteria to monitor her progress. [Joint Exhibit 8].

- 13) Student's speech IEP specified that Parent and Parent shared responsibility to implement the plan with Student's speech pathologist and her general education teacher. Yet Student's parents were unable to determine which sounds were targeted by Student's 2004-2005 speech IEP from the face of the IEP goal and two objectives. Parent made repeated telephone calls to Student's speech pathologist as well as her \*\*\* teacher, but did not get assistance in understanding Student's speech IEP until late May 2004. [Transcript at 29-32, 162-163, and 168].
- 14) Student's parents lacked specialized training or skills to understand the meaning of Student's IEP goal and two objectives. Neither the goal nor either short-term objective specified in sufficient detail what steps and strategies would be implemented to help Student achieve mastery of the speech goal. [Transcript at 17-18 and 157-160].
- 15) Student's speech pathologist admitted at hearing that the speech IEP did not identify the specific sounds targeted during Student's speech therapy sessions, so that the speech pathologist could "encompass more of what her needs [are] at the time." [Transcript at 94].
- 16) The therapy logs of Respondent's speech pathologist, rather than Student's IEP, contain details regarding specific sounds targeted and activities employed during Student's speech therapy. Parent and Parent received and reviewed these logs on a weekly basis. [Transcript at 26, 42, and 136-140].
- 17) Between the five-week school period of April 1 and May 19, 2004, Student received approximately 350 minutes of direct speech therapy with Student's speech pathologist. [Respondent's Exhibit 6 at 3-9; Transcript at 26].
- 18) Brownsville ISD delivered the seven compensatory speech sessions to Student by the conclusion of the Spring 2004 semester. [Respondent's Exhibit 6 at 3-9; Transcript at 103].
- 19) On May 21, 2004, the ARDC convened to review Student's progress with Parent and Parent in attendance. Student's parents requested summer extended school year ("ESY") speech services for Student, but Respondent denied the request. The ARDC participants agreed that Student's speech intelligibility was improving under her current program and continued Student's IEP until May 2005. [Joint Exhibit 9].
- 20) On May 28, 2004, the ARDC meeting convened at the request of Student's parents to discuss several parental concerns, including further individualization of the speech IEP to incorporate layman's terms. In response, the ARDC discussed modifying the two short-term speech IEP objectives. In the first objective, "target phonemes" was changed to "a combination of sounds" and the

- second objective, “articulation skills” was changed to “sound production.” [Joint Exhibit 10 at 8; Transcript at 109, 129-130 and 168].
- 21) Parent repeated her request for information on how to work with Student’s speech IEP for the coming summer during the ARDC meeting on May 28, 2004, at which time Student’s speech pathologist admitted that this information had not been sent home to the parents prior to the end of May 2004. Brownsville ISD handed a copy of the speech materials to Student’s parents during this meeting. [Joint Exhibit 10 at 8; Transcript at 95 and 161].
  - 22) Student’s parents repeated their request for Summer 2004 ESY services at the ARDC on May 28, 2004. In response, Student’s speech pathologist stated that Student was progressing over the past two months of speech therapy and did not appear to show any regression. A second administration of the TPRI to Student showed improvement in her skill level, as she had now mastered 9 of 10 developmental skills. She continued to develop the remaining skill, initial consonant identification. [Joint Exhibit 10 at 8].
  - 23) During the ARDC on May 28, 2004, Student repeated her request that Student’s weekly speech therapy be increase to two weekly sessions for the 2004-2005 school year. Parent made this request in part because of her belief that the more speech therapy Student received, the faster she would be dismissed from speech therapy. [Joint Exhibit 10 at 8-9].
  - 24) On May 28, 2004, Student’s parents reported to the ARDC that she frequently whispers and hesitates when speaking at home. By contrast at the same meeting, Brownsville ISD personnel reported their observation that Student is a “very social student” at school who is a shy child at times around new people, yet who does not exhibit whispering or hesitation behaviors when speaking at school. [Joint Exhibit 10 at 8].
  - 25) Because Parent and Parent disagreed with the ARDC recommendation not to increase Student’s speech therapy to two sessions a week for the upcoming school year, the ARDC recessed the meeting on May 28, 2004, and agreed to reconvene in 10 days. Although the school telephoned Parent to reschedule the meeting, the ARDC never reconvened, due in part to scheduling issues of the parents and the vacation schedule of school personnel. In mid-July 2004, the speech pathologist’s supervisor contacted Parent to schedule an ARDC meeting, Parent informed Respondent that she had retained legal counsel. [Joint Exhibit 10 at 9; Transcript at 165].
  - 26) Brownsville ISD did not reduce Student’s speech services in either ARDC meeting held in May 2004 from the level specified in Student’s IEP on March 31, 2004. [Joint Exhibits 9 and 10].

- 27) Student made progress on her speech objectives under her current IEP, as evidenced by her TPRI assessment results and the reports of her parents and educators. [Joint Exhibits 9 and 10].
- 28) Parent and Parent verbally requested an IEE for Student during the March 2004 ARDC and repeated the request at the ARDC on May 21, 2004. Neither request was documented in the ARDC minutes. [Transcript at 19-21, 156-157, 160, and 167-168].
- 29) Brownsville ISD did not provide an IEE for Student. [Joint Exhibit 10 at 9; Transcript at 123, 131-132, and 150-151].
- 30) Brownsville ISD did not file for due process to deny an IEE for Student. [Transcript at 132].

## Discussion

### **Legal Standard**

The Brownsville ISD program is presumed appropriate for Student and, as the party challenging the school district's special education program, Student bears the burden of proof to show that this program is inappropriate. *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir.1983) *aff'd on other grounds sub nom., Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883; *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5<sup>th</sup> Cir. 1986). The IDEA does not require a student's program to maximize the student's potential in order to be found appropriate, so long as the student receives "some benefit" from the educational program. *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034 (1982). Under this standard, a student must receive individualized instruction with sufficient support services to enable the student to receive an educational benefit, but schools are not required to provide all services that may produce benefit to the student. *Id.* at 3051. Under *Rowley*, two factors must be considered to determine whether a school district has provided a student with free appropriate public education ("FAPE"): 1) the school district must comply with the procedural requirements of IDEA; and, 2) the school district must design and implement a program that is reasonably calculated to enable the child to receive educational benefits. *Rowley* at 206-207.

The student's program must be a meaningful one that is reasonably calculated to result in the student's educational progress rather than regression or trivial educational advancement. *Houston ISD v. Bobby R.*, 200 F.3d 341 (5<sup>th</sup> Cir. 2000); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997). The Fifth Circuit used a four-factor test to assess whether an IEP is reasonably calculated to confer educational benefit to a student, including: 1) whether the eligible student's IEP was developed in accordance with proscribed procedures, including an individualized program based on the student's assessment and performance; 2) whether the program is administered in the least restrictive environment; 3) whether the program was delivered in a collaborative and

coordinated manner by key stakeholders; and, 4) whether positive benefits are demonstrated both academically and non-academically. *Michael F.* at 247-248.

### **Compliance with the IDEA’S Procedural Requirements**

Procedural compliance is stressed under the IDEA. *See Board of Educ. v. Rowley, supra; Hall v. Vance County Board of Educ.*, 774 F.2d 629 (4th Cir.1985); *Bobby R., supra.* The Fifth Circuit failed to find that educational harm resulted from procedural error in *Bobby R.* because the school district had substantially implemented the student’s IEP, the student’s academic progress was more than trivial, and the student received a meaningful benefit in other academic areas. *Bobby R.* at 349-350. Likewise in *Bobby R.*, an educational benefit may be received by the student without maximizing the student’s educational potential or without improvement in every area. *Id.* at 350.

Procedural defects alone do not violate a student’s right to a FAPE unless there is a corresponding loss of educational opportunity as a result, or the parent is deprived of the opportunity for meaningful participation in the student’s IEP, or both. *Adam J. v. Keller I.S.D.*, 328 F.3d 804 (5th Cir. 2003). Similarly, hearing officers strictly scrutinize IEPs for procedural defects that infringed upon the parents’ ability to participate in the IEP process. *Roland M. v. Concord School Comm.*, 910 F.2d 983 (1<sup>st</sup> Cir. 1990).

#### **A. IEP Formulation: Annual Goals and Short-Term Objectives**

Under the IDEA, each eligible student’s IEP must include a statement of measurable annual goals, including benchmarks or short-term objectives that have a twofold relationship to the student’s needs: 1) meeting the student’s needs resulting from the disability to enable the student to be involved in and progress in the general curriculum; and, 2) meeting the student’s other educational needs that result from the student’s disability. 20 U.S.C. §1414(d)(1)(A); 34 C.F.R. §300.347(a)(2). The IDEA’s implementing regulations at §300.347(a)(1) requires the IEP to include a statement of the student’s present levels of performance, including how the student’s disability affects his or her involvement in and progress in the general curriculum. The student’s assessed present educational levels should be the basis for development of the student’s annual goals. 34 C.F.R. §300.346(a)(1).

Procedurally, the formulation of written annual goals is a basic part of IEP development. Yet, in the absence of guidance from the IDEA and its implementing regulations as to the parameters of “measurable annual goals,” it is generally considered that some objective criteria must exist to make a determination that the student has mastered each goal. *See Windsor C-1 School Dist.*, 29 IDELR 170 (SEA MO 1998). At least one Texas Hearing Officer followed this analysis for evaluating annual IEP goals by concluding that “the annual goal must be written in positive terms that include sufficient specificity so that there will be no confusion in determining if the goal will be met.” *Rene H. v. Ysleta ISD*, 103 L.R.P. 50295 (SEA TX 2003), citing Gerry Klor, *Say*

*the Right Thing: A Guide for Responding to Parents' IEP Requests* (LRP Publications 2003).

Under the facts of this case, Brownsville ISD prepared a single goal for Student's speech IEP that she would "demonstrate measurable progress toward the acquisition of developmentally appropriate articulation," yet there is no reference of what age-equivalent level Student was expected to achieve during the year. Although this goal includes the word "measurable," there is no yardstick identified in the IEP with which to measure Student's progress. I find that this goal is vague on its face and insufficient to inform Student's parents, absent special training or input from additional sources, what material Student had to master to fully reach this goal. Sadly, and unlike the situation that existed in the case of *Rene H.*, *supra*, benchmarks or short-term objectives in this student's case do not provide additional specificity.

The IDEA allows a school district to use either benchmarks or short-term objectives to describe the sub-skills required to attain the annual goal. *Notice of Interpretation*, 34 C.F.R. Part 300, Appendix A, Section I, Question 1. Once an annual goal is identified, the short-term objectives are measurable, intermediate steps that can enable parents, students, and educators to monitor the student's progress towards the annual goal and, when indicated, revise the IEP to reflect the student's changing educational needs. *Id.* Inherent in the concept of short-term objectives is that they be understandable not only to the educators with specialized training and skills, but to the parents who want to monitor their child's progress.

In the instant proceeding, Brownsville ISD's speech pathologist drafted two short-term objectives, later approved by parents and other members of the ARDC on March 31, 2004. Yet these objectives further obfuscated how the annual goal would be reached. I find that the annual speech goal and short-term objectives failed the first factor under the *Michael F.*, *supra*, inquiry. As Student's parents did not have specialized training and information on interpretation of the short-term objective language, consequently the objectives utterly missed the mark as tools for the parents in their role of co-implementers of Student's speech IEP. Likewise, the objectives failed to serve as effective tools for them to monitor Student's progress on her speech IEP at school. I find that this violates *Michael F.*'s third factor. *Id.*

Yet, despite these procedural flaws, I decline to award relief. Respondent argues, and I agree, that another source of information filled in the missing information so that educators were able nonetheless to deliver an appropriate program to Student that produced academic and non-academic benefits, such as development of successful social skills at school. The speech pathologist's therapy notes detail the steps taken during Student's speech therapy in Spring 2004, as well as reference the TPRI assessment instrument used by Brownsville ISD educators for evaluation of Student and other general education \*\*\* students in January 2004. ARDC documentation substantiates that the TPRI was re-administered to Student prior to the end of May 2004, at which time she showed improved scores. This instrument presumably served as an appropriate criterion-referenced developmental skill sequence from the general

curriculum. *See Ysleta I.S.D.*, 33 IDELR 53, 33 LRP 6473 (SEA TX 2000); *Rene H. v. Ysleta ISD*, *supra*.

## **B. Parental Request for an IEE**

Just as the IEP development process is strictly scrutinized for procedural violations, so too are violations of rights afforded to parents of an IDEA-eligible student. The IDEA implementing regulations at §300.502(a) give the student's parent an automatic right to obtain an IEE at any time during their child's education if the parent disagrees with the evaluation obtained by the school. Once a parent disagrees with the school's evaluation and requests an IEE at public expense, the school must *without unnecessary delay* either initiate a hearing under §300.507 to show that its evaluation is appropriate, or provide the IEE at public expense unless the school demonstrates that an IEE obtained by the parent fails to meet agency criteria. 34 C.F.R. §300.502(b) [Emphasis added]. While a school may ask a parent the reason why the parent objects to the school's evaluation, "the explanation by the parent *may not be required* and the public agency *may not unreasonably delay* either providing the evaluation at public expense, or initiating a due process hearing to defend the public evaluation. 34 C.F.R. §300.502(b)(4) [Emphasis added].

In this case, Parent and Parent provided convincing hearing testimony that they made verbal requests for an IEE at Student's initial ARDC meeting on March 31, 2004, at which time Brownsville ISD reviewed Student's FIE. I am persuaded by the parents' testimony that Respondent failed to respond without unreasonable delay to the parental requests for an IEE. In the alternative, even if the parents had not requested an IEE prior to May 28, 2004, Respondent made no steps to provide the IEE, or instead, failed to timely request a hearing on the district's refusal to fund an IEE. I conclude that Respondent violated Student's procedural right to obtain an IEE and find for the Petitioner on this issue.

## **C. Level of Speech Services**

Petitioner alleged that Brownsville ISD reduced Student's speech services in May 2004 without supportive assessment data for a reduction. At hearing, Petitioner produced little if any credible evidence to support this contention. By contrast, Respondent showed convincing evidence through testimony and school documents that Student's speech therapy services were not reduced from the level specified in her March 2004 IEP. I find for the Respondent on this issue.

In conclusion, the preponderance of the evidence establishes that Student's IEP was reasonably calculated and has provided an educational benefit to her. Student's parents requested an IEE at school district expense; however, Brownsville ISD never provided an IEE or contested the request by filing a hearing request. Lastly, Brownsville ISD delivered speech services to Student at the level specified in her IEP without reduction.

## Conclusions of Law

1. Student is a student entitled to special education and related services under the provisions of the IDEA, 20 U.S.C.A. §1400, *et. seq.*, and its implementing regulations.
2. Student and her parents reside in Brownsville ISD, a legally constituted independent school district operating as a political subdivision of the State of Texas. Brownsville ISD is responsible for providing Student with a free appropriate public education. *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034 (1982); 20 U.S.C.A. §1412; 34 C.F.R. §300.300; 19 T.A.C. §89.1001.
3. The educational program proposed by the school district is presumed to be appropriate. Petitioner, as the party challenging the educational program offered by Brownsville ISD, bears the burden of proof. *Tatro v. State of Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983), *aff'd on other grounds sub nom., Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5<sup>th</sup> Cir. 1986).
4. Brownsville ISD provided speech services specified in Student's speech IEP in Spring 2004 through the close of the record, and were reasonably calculated to provide her with a free appropriate public education with sufficient individualized instruction and support services to allow her to benefit from her education. *Houston ISD v. Bobby R.*, 200 F.3 341 (5<sup>th</sup> Cir. 2000); *Cypress Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5<sup>th</sup> Cir. 1997); 34 C.F.R. §§300.346-300.347; 19 T.A.C. §89.1055.
5. Brownsville ISD provided additional compensatory direct speech services to Student in compensation for its failure to timely convene Student's initial ARDC prior to March 31, 2004. As a result, Petitioner is not entitled to compensatory speech services. *Burlington School Comm. v. Department of Educ.*, 471 U.S. 359 (1985); *Alamo Heights ISD v. State Board of Education*, 709 F.2d 1153 (5<sup>th</sup> Cir. 1986).
6. Student's speech goal alone and in combination with her short-term objectives failed to satisfy 34 C.F.R. §§300.346-347, which require that eligible students' IEP goals along with their objectives or benchmarks be measurable.
7. Despite the absence of measurable goals and objectives, Student made progress in the area of speech and received meaningful educational benefit from Brownsville ISD.
8. Brownsville ISD failed to provide an IEE of Student at public expense without unnecessary delay and failed to initiate a request for due process to defend its evaluation. As a result, Student is entitled to an IEE at school district expense. 34 C.F.R. §300.502(a)-(b).

## **ORDERS**

Based upon the record of this proceeding, the foregoing Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED** that Brownsville ISD provide Student with an independent educational evaluation at public expense. Within 10 school days of this Decision, Brownsville ISD shall deliver information to Petitioner on selection of an evaluator for the IEE.

**IT IS FURTHER ORDERED** that Brownsville ISD shall ensure that Student has the opportunity to be assessed through an IEE, to be completed within the next 45 calendar days of this Decision.

**IT IS FURTHER ORDERED** that, within 15 school days from the completion of the IEE report, Brownsville ISD shall convene Student's ARDC to consider the recommendations of the IEE.

**IT IS FURTHER ORDERED** that Brownsville ISD shall timely implement this Decision within 10 school days in accordance with 19 T.A.C. §89.1185(q) and 34 C.F.R. §300.514. The following must be provided to the Division of Special Education Programs and Complaints 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 school days, the district's plan for implementing the Decision within the prescribed timeline, and a signed assurance from the superintendent that the Decision will be implemented.

**IT IS FURTHER ORDERED** that any findings of fact that are more properly characterized as conclusions of law, and any conclusions of law that are more properly characterized as findings of fact, shall be considered and shall have the same effect as if properly characterized.

**IT IS FURTHER ORDERED** that any and all additional or different relief not specifically ordered herein is **DENIED**.

Signed this 18<sup>th</sup> day of October 2004.

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

/s/ Mary Carolyn Carmichael  
Mary Carolyn Carmichael  
Special Education Hearing Officer

DOCKET NO. 362-SE-0704

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Parent,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
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v.	§	HEARING OFFICER
	§	
BROWNSVILLE	§	
INDEPENDENT SCHOOL	§	FOR THE STATE OF TEXAS
DISTRICT, Respondent	§	

**SYNOPSIS**

**ISSUE:**     ***A. Whether the school district failed to develop specific and measurable goals and objectives for the student's individualized program?***

**C.F.R. CITATION:**     34 C.F.R. §§300.346-300.347

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

**HELD:**     **For the student.**

**ISSUE:**     ***B. Whether the school district's procedural violation denied the student an educational benefit from the student's individualized program?***

**CITATION:** *Adam J. v. Keller I.S.D.*, 328 F.3d 804 (5th Cir. 2003)

**HELD:**     **For the school district.**

**ISSUE:**     ***C. Whether the school district failed to provide an independent educational evaluation upon parental request?***

**C.F.R. CITATION:**     34 C.F.R. §300.502(a)-(b)

**HELD:**     **For the student.**

**ISSUE:**     ***D. Whether the school district improperly reduced the student's speech services without proper assessment data to support a reduction?***

**C.F.R. CITATION:**     34 C.F.R. §300.343(c)

**HELD:**     **For the school district.**