

DOCKET NO. 400-SE-0804

Student, B/N/F Parent

VS.

NORTHEAST INDEPENDENT SCHOOL
DISTRICT

BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

Statement of the Case

Student, by his next friends and Parents (hereinafter "Petitioner" or "Student"), brought a complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, *et seq.*, complaining of North East Independent School District (hereinafter "Respondent" or "NEISD").

Petitioner was represented by Bill Fowler, an attorney in San Antonio, and Paul Keller with the San Antonio firm of Carroll & Hinojosa. Respondent was represented by Miles T. Bradshaw and JoAnn Collier with the law firm of Feldman & Rogers.

Petitioner's request for hearing was filed on August 13, 2004, and came on for hearing on October 13 and 14, 2004. The parties filed written closing arguments and agreed that this decision would be issued on or before November 19, 2004, in compliance with the forty-five day rule.

Petitioner alleged that the district failed to provide a timely evaluation for Student, that Student was not timely and properly identified as a special education student, and that Student was not provided with an appropriate individual education plan ("IEP"). Petitioner also alleged that Student should have been provided with appropriate services during part of the summer of 2003 and all of the summer of 2004. Petitioner alleged that NEISD personnel were not properly trained and supervised in the provision of Student's educational services.

Petitioner also maintained that Student's IEP was not properly implemented and that the district failed to provide an appropriate homebound placement for Student, failed to provide admission, review and dismissal ("ARD") meetings for Student and his parents, and that the district failed to have an appropriate IEP in place for Student at the beginning of the 2004-2005 school year. As relief, Petitioner seeks an order declaring that their allegations are true and that they are entitled to the relief they have been denied.

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

Findings of Fact

1. Student is a ** year old child who resides with his parents within the NEISD. [Petitioner's Exhibits 1 & 14 and Respondent's Exhibit 1]
2. Student came to the district for services in September 2002 when he was ** years old after attending a private school and receiving services through the Early Childhood Intervention program. [Petitioner's Exhibits 2-5 & 7-11 and Respondent's Exhibits 1-6]
3. Student's parents were provided with information about special education services and their rights under federal regulations for special education students in September 2002. [Petitioner's Exhibits 2 & 3 and Respondent's Exhibits 3 & 4]
4. When Student came to NEISD he had been receiving speech therapy as a part of his educational program. [Petitioner's Exhibits 4 & 5 and Respondent's Exhibits 5 & 6]
5. A full individual evaluation ("FIE") was completed for Student in November 2002. The evaluation showed that Student was eligible for special education and related services because of learning disabilities and recommended that Student's ARD committee provide him with occupational therapy, physical therapy and speech therapy. [Petitioner's Exhibit 17]

6. An ARD committee for Student was held in November 2002 and the ARD concluded that Student needed special educational services based upon a non-categorical eligibility criterion and a speech impairment. The ARD committee considered developmental problems Student had demonstrated and discussed some characteristics of autism which Student exhibited. The ARD developed an IEP with placement in a PPCD class, noted a need for additional evaluation of Student, and provided an IEP for him based upon his disabilities. Student's parents attended the ARD and all members of the ARD committee agreed to the decisions of the ARD. [Petitioner's Exhibit 20]

7. An individual assessment addendum for Student was completed in March 2003. The addendum showed that Student met the Texas Education Agency guidelines for autism and other pervasive developmental disorders. [Petitioner's Exhibit 24]

8. Student was also assessed by a pediatrician in San Antonio who specializes in developmental delays and autism. The doctor concluded that Student has moderate autism, a severe language disorder, and a severe sensory integration disorder. [Petitioner's Exhibit 25]

9. Based on the evaluation of Student, Student's parents asked the district to provide an intensive therapy program recommended by the developmental pediatrician. [Petitioner's Exhibit 26]

10. Another ARD committee for Student convened in April 2003 to consider the new evaluation data concerning Student. The ARD committee determined that Student should receive educational services in a PPCD class with related services of speech therapy, occupational therapy, special transportation and consultative services. Student's parents attended the ARD committee meeting and agreed with the IEP developed for Student. [Petitioner's Exhibit 30 and Respondent's Exhibit 23]

11. Music therapy was later added as a related service for Student in May 2003.

[Petitioner's Exhibit 36]

12. Student's parents believe that Student's progress in school and in his therapies deteriorated during the fall of 2003 and attributed Student's regression to mistreatment by NEISD's staff in class and while he was eating in the cafeteria. [Petitioner's Exhibits 49, 50, 52-56, 58 & 71]

13. Another ARD committee for Student was convened in November 2003 to consider Student's progress in his speech goals and to develop new IEP goals for Student in speech. Student's parents attended the ARD and concurred with the determinations of the ARD. [Petitioner's Exhibit 60 and Respondent's Exhibit 27]

14. Student was observed by a psychologist in his classroom in November 2003 at the request of his parents. The psychologist concluded that Student was inappropriately subjected to loud sounds in the classroom, that he was handled improperly physically in attempts to correct his behavior, and that Student's instruction should include additional techniques from which he could benefit. [Petitioner's Exhibit 61]

15. Student was seen by his pediatrician again in December 2003 and she concluded that Student had regressed and that he should not continue in his current educational placement. She recommended that he be in a homebound placement. [Petitioner's Exhibit 64]

16. Student's parents stopped bringing Student to school on December 10, 2003, but Student received in-home training in the amount of twenty-four (24) hours a month and parent training in the amount of eight (8) hours per month as related services until the end of June 2004. [Respondent's Exhibit 66]

17. An ARD committee for Student convened in January 2004 and developed a transition plan to bring Student back into school using an in-home trainer, and Student attended school until the beginning of March 2004 in a ** class and a ** class. [Petitioner's Exhibit 68]

18. Student's parents attended school with Student most days (and often stayed all day) observing Student in class during the early spring 2004. [Respondent's Exhibit 40]

19. On February 27, 2004, Student's parents advised NEISD that Student's pediatrician had diagnosed Student as having post-traumatic stress disorder ("PTSD"). They stated that they believed the PTSD was caused by the inappropriate handling of Student by NEISD personnel in the fall of 2003. Student's parents gave the district a written request for homebound placement endorsed by Student's pediatrician. [Petitioner's Exhibits 71 & 72]

20. ARD committees for Student convened in March and April 2004 and the ARD committee asked Student's parents for consent to consult with the pediatrician who had diagnosed Student's PTSD. Student's parents did not consent to the consultation. [Petitioner's Exhibit 76]

21. Student's ARD committee considered the information about Student's evaluation and determined that it would be necessary to consult with Student's pediatrician to determine what placement was appropriate for him. The committee noted that Student had made educational progress while he was attending school. [Petitioner's Exhibits 37, 42, 45-47, 60, 62, 65-67, 75-76 & 82 and Respondent's Exhibits 60 & 62]

22. Student's parents did not agree with the conclusions of the ARD committee in April 2004 and Student has not returned to school. [Petitioner's Exhibit 76]

Discussion

Student's parents brought claims against the district alleging that they are entitled to relief because the district did not properly assess, timely assess, and timely provide an

appropriate education for Student when he was first entering school. The evidence proffered by the Petitioner indicates on the forms signed by Student's parents that they were advised of their rights under federal law and regulations. Though Petitioner claims that they are entitled to relief beyond the one year statute of limitations (which would include that time after Student first entered school), the evidence that they did not know of their rights – or should not have known of their rights – is unpersuasive. Further, Student's parents and the district disagree about what happened during Student's instruction at school in the fall of 2003 and disagree about whether or not Student made educational progress. Relying on the conclusions of the psychologist and pediatrician, Student's parents determined that he should not attend school and requested a homebound placement for Student but denied the district access to the pediatrician recommending the homebound placement. NEISD believed that it had insufficient information to conclude that Student should be educated in such a restrictive setting. Without an opportunity to consult with Student's pediatrician, NEISD refused such a restrictive placement.

Conclusions of Law

1. Student is a student who is eligible for special education and related services under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The North East Independent School District is the local education agency responsible for the provision of Student's free appropriate public education and related services.
3. Petitioner's claims arising prior to one year from the date of the filing of the request for hearing on August 13, 2004, are barred by the statute of limitations 19 T.A.C. §89.1151(c).
4. The IEPs for Student developed by NEISD for the 2003-2004 school year were properly developed by ARD committees for Student and provided him an educational placement with related services reasonably calculated to enable him to receive educational benefit under the

standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982) and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.347; and 19 T.A.C. §89.1055.

5. Petitioner failed to meet its burden to prove that the educational program provided by Respondent for Student was inappropriate. Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

6. The educational placements for Student provided by the Respondent were appropriate and in the least restrictive environment appropriate for him under the standard of Daniel R. R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED.

SIGNED this 19th day of November, 2004.

/s/ Lucius D. Bunton
Lucius D. Bunton
Special Education Hearing Officer

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NORTHEAST INDEPENDENT SCHOOL
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SYNOPSIS

ISSUE: Whether the Petitioner's claims based on matters arising more than one year prior to the filing of their request for hearing are barred by the statute of limitations.

TEXAS CITATION: 19 T.A.C. §89.1151(c)

HELD: For Respondent.

ISSUE: Whether the district failed to provide an appropriate educational placement for Student.

CFR CITATIONS: 34 CFR 300.347

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent