DOCKET NO. 101-SE-1204

Student	§	**BEFORE A SPECIAL EDUCATION**
B/N/F Parent	§	
	§	
VS.	§	**HEARING OFFICER**
	§	
BROOKS COUNTY INDEPENDENT	§	
SCHOOL DISTRICT	§	**FOR THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

PROCEDURAL HISTORY

The above-captioned Request for Impartial Due Process Hearing pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §1400 et seq. (hereinafter "IDEA"), was received by Texas Education Agency on 12/3/04, assigned to the undersigned Impartial Hearing Officer, and set for hearing on 1/4-5/05, with a decision deadline of 1/17/05. A telephone pre-hearing conference convened on 12/20/04, in which the parties clarified the nature of Petitioner's complaints and relief request. By agreement of counsel, the evidentiary hearing convened on 1/5/05, and then recessed and re-convened on 1/28/05 to accommodate the schedule conflict of a material witness. The record of evidence closed on 1/28/05 subject to the parties' submission of final argument in written form as requested by both parties. To accommodate written submission of argument, the decision deadline was extended to 3/4/05. The Decision of the Hearing Officer was filed in the record and mailed to the parties on 3/4/05. Throughout the proceedings Petitioner Student. was represented by Christopher. Jonas, Attorney at Law, and Respondent Brooks County I.S.D. by Kevin O'Hanlon and Leslie McCollom, Attorneys at Law.

STATEMENT OF THE CASE

As disclosed in the Request for Hearing and clarified in the Pre-hearing Conference, Petitioner alleged that Brooks County I.S.D. (hereinafter "BCISD") violated Petitioner's right to a free, appropriate public education in the following manner:

1. Failure to provide appropriate individualized education program ("IEP") instruction by a qualified teacher in Student's special education classroom.
2. Failure to provide specific and measurable IEP goals and objectives, with appropriate evaluation methods for assessing Student's performance.
3. Failure to provide sufficient instruction to enable Student to make meaningful progress on classroom IEP goals and objectives.
4. Failure to provide an appropriate setting for instruction in personal hygiene activities, in that Student was being taught to perform such activities as fastening and unfastening clothing and changing soiled clothing in a public rather than a private setting.

5. Failure to provide necessary appropriate instructional materials and supplementary aids and services in the classroom, including the following:
    a. failure to provide appropriate and accessible tables to address IEP goals that required wiping and placing objects on tables;
    b. failure to provide appropriate blocks and rings as required to implement the IEP;
    c. failure to provide appropriate switch adaptations to allow Student to activate the computers as required by his IEP;
    d. failure to provide living books as required by the IEP;
    e. failure to provide classroom dividers and shelving as required by the IEP;
    f. failure to provide communication boards and voice output devices as required by the IEP.
6. Failure to provide multiple classroom learning centers providing a variety of different educational experiences, as required by Student's IEP.
7. Failure to provide current and adequate assessment in the area of assistive technology.
8. Failure to give appropriate consideration to existing assessment recommendations for assistive technology.
9. Failure to provide any evaluation, IEP, or services in the area of adapted physical education ("PE").
10. Failure to provide any evaluation, IEP, or services in the area of community based instruction.
11. Failure to provide any evaluation, IEP, or services in the area of parent training.

In addition to these issues raised in the pre-hearing conference, Petitioner at hearing added the issue of BCISD's alleged failure to provide appropriate extended school year ("ESY") services. Respondent agreed to try the issue by consent.

As relief for the aforementioned violations, if proven, Petitioner requests an order requiring the District to provide Student with three years of compensatory education services.

FINDINGS OF FACT

1. Student is *** years old. He resides within BCISD and attends *** School. Student is eligible for special education and receives special education from BCISD. His current eligibility classifications are mental retardation and speech impairment. Petitioner's Exhibit ("P")-9; Transcript Page(s) ("Tr.") 20-25; Stipulation.

2. Student's teacher was absent from work for medical reasons for one semester in the 2002-2003 school year. His teacher was not absent a lot during the 2003-2004 school year. Tr. 93.

3. Parent, Student's parent and Next Friend herein, visited Student's classroom about twice in the 2003-2004 school year. On one of those visits, Student had not been eating for a few days in school. Generally Student has a good appetite, but on this occasion it would hurt his mouth when he chewed or swallowed something. Student's teacher informed Parent about this. After taking Student to the dentist, Parent told Student's teacher that he had wood splinters in his mouth. Student had been chewing on wood at home, probably the wood of his bed railing. Student also would chew on the knobs of his dresser at home. Tr. 89-91, 60-61, 100-101.

4. At school Student places non-food objects in his mouth and chews on them, if such objects are left accessible to him. Tr. 101.

5. Student is aggressive in school. He will hit, scratch, or pinch others, throw large objects such as chairs, and pull hair. He has hurt staff with his aggressive behavior. When Student is aggressive he has to be removed from the classroom and isolated. It requires more than one staff member to control Student's aggressive behavior; on one occasion, this required five staff members. Tr. 85-100, 137-141.
6. Student's aggressive behaviors in school have not changed over the past five years, it's basically about the same patterns every day, although some days are better. Tr. 85-100, 137-141.
7. Apart from his aggressive behavior, Student is difficult to control and uncooperative. He cannot be left on his own. He is able to move around, walk, and run. He is agile and fast, and needs people around to control him, or he will just run. At school, Student goes to activities outside his classroom only with the assistance of his teacher and paraprofessionals. Tr. 140, 83-100.
8. To control Student at home, Parent had constructed a special door for his room, that consists of a two-by-four frame supporting a wire barrier, similar to chicken wire. This way Parent can watch and hear Student, and still confine him in his room when necessary. Tr. 140, 83-100.
9. Regular education classes at *** School start at 7:55 a.m. Student and other students who rely on special transportation do not get to school until 8:15 or 8:20 a.m. Tr. 146.
10. Student's current comprehensive assessment was completed and reported in May 2002. The evaluator noted that Student in addition to having profound mental retardation and speech impairment also was diagnosed with cerebral palsy, microcephaly, and visual impairment. Student was said to be living with his mother, stepfather and three siblings in an apparently stable and supportive family. P-3.
11. According to Student's May 2002 assessment he was not exhibiting abnormal emotional or behavioral factors or indicators. Impulsivity, tantrums, and low frustration tolerance but not aggressiveness were stated as likely manifestations of Student's mental retardation. P-3.
12. Student's May 2002 assessment estimated his developmental functioning in the 9 – 28 month range with the areas of relative weakness being in academic skills and communication. P-3.
13. Student's May 2002 assessment considered Student's needs in the area of assistive technology, and did not then recommend any assistive technology. P-3.
14. Student's 2002 assessment included an eye examination that diagnosed Student with "normal ocular health" but also manifesting "visual impairment due to cortical limitations." BCISD followed up on this with a functional vision assessment by a teacher of visually impaired, which assessment found Student to be primarily a visual learner despite some visual loss after correction. BCISD's functional vision assessment noted numerous observed behaviors from Student indicating the presence of functional vision, and concluded that Student did not have an educational need for services from a teacher of visually impaired. P-3.
15. Student's 2002 assessment included examination in the area of functional communication, where Student experienced profound delays affecting all areas including augmentative and alternative communication. Respondent's Exhibit ("R")-3.
16. Student's ARDC at *** School met on 5/14/03 to discuss the IEP for Student's 2003-2004 school year. Parent attended the ARDC and signified her agreement with what transpired at the meeting. P-7, R-3.

17. Minutes of deliberations from the 5/14/03 ARDC state that Student's special education teacher was present and discussed Student's progress and strategies used with Student. The minutes also state that Student's goals and objectives were reviewed and modified. R-3.

18. Student's goals and objectives that came out of the 5/14/03 ARDC meeting were not reviewed and modified during the ARDC meeting. Rather, Student's teacher followed the teacher's usual practice of taking a copy of draft goals and objectives to the meeting, and there presenting to other ARDC members only general information about the areas in which goals and objectives were to be developed, such as cognitive skills, self-care, gross motor and fine motor skills, and so on. Then after the meeting, at the end of the school day or maybe the next day, the teacher would develop specific IEPs to go under those general areas. The final IEP goals and objectives would contain changes and corrections to the draft, and might contain additional goals and objectives that were not part of the draft. Tr. 128-143.

19. Student's teacher, after writing final IEP goals and objectives following the spring ARDC meeting, delivered the finished IEP documents to the special education administrator's office. Then, at the beginning of the following school year, someone was supposed to send final IEPs to the parent, since those were intended for implementation in the following school year. Sometimes draft IEP documents were mistakenly sent to the administrator's office along with the final documents. Tr. 128-143.

20. Student's teacher developed Student's IEP goals and objectives using the CLASS curriculum. The CLASS curriculum is in the form of a program that generates various goals and objectives from the computer. Tr. 129.

21. For Student's spring ARDC that took place on 5/14/03, the draft IEP contained approximately 20 objectives that were incorporated into his final 5/14/03 IEP. All of those draft objectives appear on a pre-printed form that indicates the objectives were accepted by the ARDC. Student's draft goals and objectives also contained approximately 10 objectives that were not made part of his final 5/14/03 IEP. P-10; R-3; Tr. 128-143.

22. Student's final 5/14/03 IEP also contained approximately 12 objectives that had not been among the draft objectives that Student's teacher took to the 5/14/03 ARDC meeting. Those 12 IEP objectives are documented on a form that indicates the objectives were not accepted by Student's ARDC. R-3; Tr. 128-143.

23. Student's 5/14/03 IEP objectives were written as statements of specific, observable behaviors. R-3.

24. Student's 5/14/03 IEP contained approximately 31 objectives, total. Student's progress reports of 4/28/04 and 6/10/04 indicate that Student mastered four out of those 31 objectives, with the remainder being continued, discontinued, not yet addressed, or still in progress on the date of the progress review. P-9.

25. Student's 5/14/03 ARDC scheduled Student in all special education classes except for PE. R-3.

26. Student's 5/14/03 IEP contains the modification of aide support, for mainstream PE and also for Art. Student was not scheduled in a mainstream art class in the 2003-2004 school year. R-3.

27. Student's 5/14/03 IEP contains a notation that Student requires adaptive PE. BCISD provided the modification for PE, that Student would be accompanied by his classroom aide. R-3.

28. Student has not had an assessment for adaptive PE.

29. In PE class, Student's aide typically has allowed Student to roam around for exercise, and then tried to have him interact with other students, which has not always been successful. Student is able to run in the gym and also likes kicking and playing with volleyballs, but more one-on-one and not interacting with other students. Tr. 93-96.

30. Student's 5/14/03 IEP contains a notation that Student's behavior does not impede his learning or the learning of others. The IEP does not contain objectives, strategies, or modifications to address aggressive behavior, restraint, or isolation, other than by providing special transportation. R-3.

31. Student's ARDC transition services supplement developed on 5/22/02 and scheduled for ARDC review on 5/14/03 addresses parent training only with the remark, "school related." R-3.

32. Student's 5/14/03 IEP transition supplement provides that Student will have objectives for participation community based instruction. R-3.

33. Student's ARDC met on 5/11/04. Student's IEP from 5/11/04 carried forward 20 objectives that had been included in the IEP from 5/14/03 but not mastered by Student. P-9.

34. Student's 5/11/04 IEP added approximately 20 new objectives, most of which address self-help skills. The new self-help objectives in the 5/11/04 IEP include, among others, the following: select/gather materials needed for hair care; operate washer/dryer; indicate what to eat/drink using concrete symbols, pictures, or gestures; demonstrate the ability to select materials needed for cleaning; dust, vacuum, clean sinks and mirrors; clean appliances; clean tables; wring out washcloth/sponge; perform basic meal preparation skills with assistance – spreading, pouring, stirring, scraping. P-9.

35. Student's 5/11/04 IEP documentation contains the assessment that Student's behavior does not impede his learning or the learning of others. P-9.

36. Student's 5/11/04 IEP documentation indicates that Student requires adaptive PE. R-9.

37. Student's 5/11/04 IEP Transition Supplement provides that Student will have objectives for participation community based instruction. P-9.

38. Student has approximately five switches in his classroom. These switches are large buttons attached to the computer and to different objects that play music, make noise, or move. Student knows that pushing a switch will play music and he uses the switch to listen to music for a few minutes. Student does not use a switch to activate the computer in his classroom. However he will attend to the computer for watching and listening to living books. Student will not turn the pages on the living books himself. Student also has movies available in class and likes to watch them. Tr. 95-98, 136-137.

39. Student's classroom has work centers where Student and other students in the classroom alternate working at different centers for five or 10 minutes each. Tr. 98.

40. Communication boards are available in Student's classroom. Student does not show interest in the communication boards. Tr. 98.

41. Student leaves his special education classroom at *** School with his aide to attend PE, and also to attend school activities such as assemblies and pep rallies with general education students whenever such activities are scheduled. Tr. 93-139.

42. BCISD did not offer or provide in-home training for Student, nor parent training to Parent for working with Student in the home and community settings. Parent did not request parent training,

nor was assessment performed in the past year to determine if Student could benefit from the provision of in-home or parent training. Tr. 19-20, P-7, P-9.

43. Student has not received community based instruction from BCISD, whether by way of visits out of school to the Falfurrias MHMR program, the grocery or department store, or otherwise. Tr. 99-101.
44. Student's 5/14/03 and 5/11/04 IEPs do not contain objectives or strategies addressing pica, or aggressive and dangerous behaviors other than with special transportation. R-3, R-9.
45. BCISD provided adequate classroom facilities for implementing all aspects of Student's IEP from May 2003 to the present. R-3; Tr. 16.

DISCUSSION

Standard of Review

IDEA's mandate for school districts to provide eligible students with a free appropriate public education (hereinafter "FAPE") requires that the student's IEP be developed in accordance with prescribed procedures, and be reasonably calculated to deliver educational benefit to the student. Board of Educ. V. Rowley, 102 S.Ct. 3034 (1982). Compliance with the applicable standard is demonstrated where the IEP is individualized based on assessment and performance, delivered in the least restrictive environment, implemented in a manner reflecting collaboration and coordination among key stakeholders, and ultimately produces meaningful academic and non-academic benefits. Cypress-Fairbanks Indep. Sch. Dist. v. Michael F., 118 F.3d 245, (5th Cir. 1997). A school district's proposed IEP is presumed to be appropriate, and so the petitioner in a case such as this has the burden to prove by a preponderance of evidence that the student's IEP was not developed according to IDEA procedures, or that the IEP did not provide the student with an appropriate education in the least restrictive environment. Tatro v. State of Texas, 703 F.2d 823 (5th Cir. 1983); Michael F., supra. A party must request a hearing to complain of alleged special education violations within one year of the date the complaining party knew or should have known about the action that serves as the basis of the hearing request. 19 T.A.C. 89.1151(c).

A district's substantial failure to satisfy IDEA's substantive or procedural requirements may, if proven, merit prospective or compensatory relief as necessary to provide FAPE. Burlington Sch. Comm. v. Department of Educ., 471 U.S. 359 (1985); Parents of Student W. v. Puyallup Sch. Dist. No. 3, 21 IDELR 723 (9th Cir. 1994). However, a procedural violation alone does not merit relief unless the violation causes a loss of educational opportunity or significantly infringes the parent's ability to participate in developing the student's IEP. Adam J. v. Keller I.S.D., 328 F.3d 804 (5th Cir. 2003).

Petitioner's Complaints

Petitioner alleged that Student's classroom teacher with the certification and qualifications to provide special education was absent from due to illness for a number of months, and therefore was not available to deliver or supervise educational services for Student. The evidence established that the teacher's extended absence occurred in the fall semester of 2002, and the teacher was not absent for any extended period of time in the 2003-2004 school year. Petitioner also complained that

Student's ESY services were insufficient or inappropriate. However, Petitioner did not offer sufficient evidence to sustain this claim.

Petitioner asserted varying complaints in regard to BCISD's provision of assistive technology as a related service under 34 C.F.R. §300.24. Petitioner alleged that appropriate assistive technology for Student, including a communication board, voice output devices, living books, classroom activity centers, and a switch adaptation for the computer, were not made available. But Student's teacher and paraprofessional both testified credibly that the materials in question, other than a voice output device, were available in Student's classroom. And except for the communication board, the technology items were utilized to some extent in Student's instruction. There was not a preponderance of evidence that Student's educational needs changed significantly, so as to indicate the need for updated assistive technology assessment and recommendations during the 2003-2004 school year, or thereafter.

Petitioner alleged that instructional materials necessitated by Student's IEP, specifically classroom dividers and shelving, blocks and rings, and an accessible table for use in Student's instruction, were not available in Student's classroom at *** School. Student's teacher and classroom paraprofessional testified otherwise, and the preponderance of testimony tended to show that the instructional materials in question were available and used in Student's instruction in the 2003-2004 school year and thereafter.

Petitioner complained about the classroom facilities provided by BCISD for Student at *** School, specifically that there was not a separate changing area for personal hygiene or delivering instruction in self help skills involving clothing fasteners and changing clothing. Parent complained about this to Student's ARDC, and BCISD made changes to the classroom. By May 2003, Parent was satisfied with the facilities, and so indicated to Student's ARDC.

Petitioner complained that Student's IEP objectives were not measurable, and the IEP did not contain appropriate evaluation methods to assess progress. This Hearing Officer's reading of the 5/14/03 objectives reflects that they were stated in terms of observable behavior. The IEP did not specify conditions and circumstances under which Student's performance of the objectives was to occur, but the record does not establish that Student's IEP objectives for 2003-2004 are inappropriate for the reason that such additional information was not spelled out. Student's teacher was able to record the teacher's estimation of Student's progress, if any, on those CLASS curriculum objectives. But Student's 5/11/04 IEP is different in this regard. Several of the IEP objectives added in the 5/11/04 IEP to address self-help skills are vague, and are not stated in measurable terms.

Petitioner complained that Student was not provided appropriate community based instruction. The record shows that community based instruction was included in Student's transition plan, such that field trips to community sites such as the grocery store or department store were scheduled to begin in the 2003-2004 school year. Community based instruction was included among the objectives or services in Student's 5/14/03 and 5/11/04 IEP transition supplements. However, Student left his self-contained special education class only for PE and certain events at school, and did not participate in any instruction off campus. Student did not receive community based instruction as described in his transition plan and transition supplements, during the 2003-2004 school year and up to the present time.

Petitioner complained that Student's adapted PE was inappropriate and not supported by assessment. The record discloses that Student's current comprehensive assessment did not address the area of adapted PE, and no other assessment in the area of adapted PE is disclosed by the evidence. Student's IEPs of 5/14/03 and 5/11/04 checked off adaptive PE as something Student needed, but then included no particular adaptive service, nor any objective as such, for PE or related services. The IEP did indicate aide support as a modification in PE. So the record discloses that BCISD provided support for Student in PE, but this was not based on assessment of his performance and needs.

Petitioner complains that BCISD did not provide sufficient instruction to enable Student to make meaningful progress on classroom goals and objectives. In this regard Petitioner's complaint has merit. Several problems affected both the sufficiency and the adequacy of Student's IEP and services. Applying the Fifth Circuit's interpretation of the Rowley standard, Student's IEPs appear not to have been individualized based on assessment and performance, not provided in a collaborative manner by key stakeholders, and not adequate to produce academic and non-academic benefits.

The procedures by which Student's IEP goals and objectives were developed appear to have contributed to their inappropriateness. Some specific IEP objectives in Student's 5/14/03 IEP facially were not discussed by the ARDC. The likely inference from the available evidence is that none were. The 5/14/03 ARDC appears to have been unaware of the extent to which Student was mainstreamed, or the fact that Student was receiving a somewhat reduced instructional day. The ARDCs led to the scheduling of objectives that had been drawn from the CLASS computer program, but without considering the specific draft objectives in light of Student's individual performance and needs. Indeed, the record discloses that Student's 2003-2004 school year was in most regards not a successful one. Student mastered a minimal number of his IEP objectives in the 2003-2004 school year. Student has not yet mastered any IEP objectives in the current 2004-2005 school year, despite the fact that at least half of these objectives were brought forward from the 2003-2004 IEP. New objectives added for the 2004-2005 school year contain several self-help objectives that are vague and thus not measurable. Many appear to require skills well beyond the developmental ages and characteristics described in Student's current assessment.

Despite considerable testimony describing Student's chronic aggressive and dangerous behaviors in school, which require restraint and isolation of Student as well as diverting resources from instruction, the current assessment, the ARDC deliberations, the IEP forms, and the IEPs themselves make scarce mention of such behaviors. The transportation services supplements are the only documents in Student's 5/14/03 and 5/11/04 IEPs that address Student's aggressive and dangerous behaviors, and then only as justification for special transportation. Testimony established that Student has made no progress toward reducing the occurrence of aggressive and dangerous behaviors in school.

The advent at school last year of what seems another fairly significant problem associated with Student's pica was not addressed by Student's ARDC. The same is true of the fact, known to school staff, that Parent has had to isolate Student at home behind a wire barrier in order to control his behavior. The record makes clear that no parent support services such as in-home training or parent training have been offered to try and impose consistency in the management of Student's

aggressive behaviors or pica, which according to the evidence the District did not regard as problems to be addressed by Student's ARDC.

The District's choice to bypass ARDC discussion of IEP goals and objectives, as well as classroom behavioral issues, effectively estranges the parent from the educational process, and denies IDEA procedural safeguards. Simply stated, Student's 5/14/03 IEP appears in a number of respects to have been written for a different student than the one described in hearing testimony of Student's teacher, his paraprofessional, and his parent.

Relief

Petitioner has requested as relief three years of compensatory education services for Student. Compensatory education may be an appropriate equitable remedy for violations of the IDEA, where a parent's rights are seriously infringed or a district's program resulted in significant loss of educational opportunity. Adam J., supra; Pace v. Bogalusa City Sch. Bd., 325 F.3d 609 (5th Cir. 2003). The conduct of the parties must be considered in fashioning equitable relief to redress lost educational benefit. The purpose of compensatory education services is not to replace services exactly as they might have been delivered, but rather to provide what is necessary according to the evidence for the child to receive FAPE. Student W., supra.

This case presents no urgent equitable issues favoring either Petitioner or Respondent. Parent never disagreed with any of Student's draft IEPs in the relevant time frame, nor did she request anything of note from the District other than better classroom facilities, which the District provided. Parent bears some responsibility for the state of Student's education. But Parent does not have expertise related to special education, and did not have the opportunity to participate fully in development of Student's IEP goals and objectives because of the manner in which the District structured the ARD process. Parent also claims she never understood nor was informed about the extent of services, such as parent training, that might be available, and there is nothing in the record to contradict her assertion in this regard. The District apparently never made a determination that parent training or in-home training was something that should even be discussed by Student's ARDC. For its part, the District is the party having unique expertise to address Student's educational needs, as well as the duty under IDEA to formulate and deliver a program reasonably calculated to confer meaningful academic and non-academic benefits.

With students having multiple severe challenges, professionals face understandable difficulty in foreseeing what extent of services may be necessary, or what kind of goals may be realistically achievable, for the one-year planning interval envisioned by IDEA. By the same token, if obvious problems are simply not addressed at all, or are not addressed in a thoughtful collaborative fashion, the more likely result is that opportunities will be lost. That has happened in Student's case. Compensatory relief is appropriate for serious violations of Parent's procedural rights, and for numerous omissions and deficiencies in Student's 5/14/03 and 5/11/04 IEPs that have resulted in a significant deprivation of educational opportunities to Student. But Petitioner's demand for 3 years of compensatory education is excessive. The record of the hearing tends to establish that one year of compensatory education services, if based on current assessment and including steps to address behavior issues, probably will suffice to provide Student with appropriate educational opportunities.

CONCLUSIONS OF LAW

1. Brooks County I.S.D. is a local education agency and a political subdivision of the State of Texas, and is subject to requirements of IDEA, 20 U.S.C. §1400 et seq., and its implementing federal and state regulations.
2. Student*** is an eligible student who at all relevant times has resided within Brooks County I.S.D. and is entitled to receive a free, appropriate public education from Brooks County I.S.D.
3. Brooks County I.S.D. has not provided appropriate special education and related services to Student*** 20 U.S.C. §1412(a)(1); Board of Educ. v. Rowley, 458 U.S. 176 (1982).
4. Petitioner is entitled to one year of compensatory education services from Brooks County I.S.D.

ORDERS

IT IS ORDERED that the relief claimed by Petitioner herein is **GRANTED IN PART AND DENIED IN PART**.

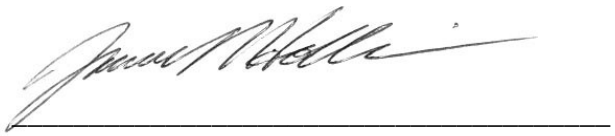
IT IS FURTHER ORDERED that Brooks County I.S.D. provide Student*** with one school year (180 days) of educational services as compensatory education, to be delivered in Brooks County I.S.D. facilities, within 12 months following the final day on which Student would otherwise be entitled to receive services from Brooks County I.S.D. Alternatively, Brooks County I.S.D. may satisfy this Order with equivalent compensatory services, subject to the mutual written agreement of the parties, and to the approval of Student's ARD Committee.

IT IS FURTHER ORDERED that Brooks County I.S.D. will schedule an ARD Committee meeting within 15 school days of receiving this Order, for the purpose of planning for the delivery of compensatory services.

IT IS FURTHER ORDERED that Brooks County I.S.D. shall timely implement this decision within 10 school days (except as otherwise specifically provided herein) in accordance with 19 TAC §89.1185(q) and 34 CFR §300.514. 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 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.

SIGNED this 4th day of March 2005.

Finding that the public welfare requires immediate effect of this Decision, this Hearing Officer makes it effective immediately, pursuant to 19 Tex. Admin. Code §157.5(n).



JAMES N. HOLLIS
SPECIAL EDUCATION HEARING OFFICER
FOR THE STATE OF TEXAS

DOCKET NO. 101-SE-1204

Student	§	**BEFORE A SPECIAL EDUCATION**
B/N/F Parent	§	
VS.	§	**HEARING OFFICER**
BROOKS COUNTY INDEPENDENT	§	
SCHOOL DISTRICT	§	**FOR THE STATE OF TEXAS**

SYNOPSIS OF DECISION

ISSUE: Whether Brooks County I.S.D. failed to provide appropriate related services.

CITATION: 34 C.F.R. §300.24

HELD: For the Petitioner in part. While the District provided appropriate assessment and services in relation to certain technology items that were scheduled as a related service for language and communication aids, the District failed to provide appropriate assessment and services in the area of adapted physical education. Additionally the District failed to provide assessment to address in-home services needs despite knowledge of severe difficulties Petitioner and the parent were experiencing at home.

ISSUE: Whether Brooks County I.S.D. failed to provide appropriate special education.

CITATION: 34 C.F.R. §300.26

HELD: For the Petitioner. Although the District provided appropriate facilities and materials as well as full-time services of the certified classroom teacher during the period for which Petitioner can lawfully assert complaints, the District failed to provide appropriate assessment, goals, and objectives related to appropriate classroom instruction, with the result that serious classroom behavior problems were never addressed and Petitioner did not make meaningful progress on a significant number of instructional objectives. Additionally the District provided a shortened school day without review or approval by Petitioner's ARD Committee.

ISSUE: Whether Brooks County I.S.D. failed to provide appropriate assistive technology.

CITATION: 34 C.F.R. §§300.4, 300.5

HELD: For the Respondent. Contrary to Petitioner's assertion, the District provided and made available in the classroom a variety of instructional materials and software that were referenced in Petitioner's IEP, and the evidence did not establish the need for further assessment or services in this area.

ISSUE: Whether Brooks County I.S.D. failed to provide appropriate community based instruction.

CITATION: 34 C.F.R. §300.346

HELD: For the Petitioner. Despite the IEP's requirement to provide a variety of community based activities for Petitioner beginning in the 2003-2004 school year, which requirement was mirrored in Petitioner's ITP supplements, the record established that the District provided no instruction or experiences of any kind for Petitioner off campus.