

DOCKET NO. 218-SE-0305

STUDENT,

B/N/F PARENTS

VS.

SHEKINA RADIANCE

ACADEMY

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§ BEFORE A SPECIAL EDUCATION

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HEARING OFFICER

FOR THE STATE OF TEXAS

DECISION OF THE 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 Shekina Radiance Academy (hereinafter "Respondent" or "Shekina").

Petitioners Parents. appeared pro se. Respondent was represented by Robert A. Schulman, an attorney with the San Antonio office of the firm Feldman & Rogers.

Petitioner's request for hearing was filed on March 11, 2005, and came on for hearing by agreement of the parties on April 18, 2005, in the offices of the Respondent in San Antonio, Texas. The parties were afforded an opportunity to file written closing arguments and agreed that this decision would be issued on or before May 23, 2005, in compliance with the provisions of the forty-five day rule.

Petitioner's request for hearing was originally brought against the Respondent and the North East Independent School District in San Antonio, Texas. The North East Independent School District is the district in which Student resides with his parents. After consideration of Petitioner's claims against the North East Independent School District, the school district was dismissed as a party and this matter came on for hearing with the Shekina Radiance Academy as the party Respondent.

Petitioners alleged that Student's individual education plan ("IEP") was not properly implemented and that a certified special education teacher was not available to serve Student. Petitioners sought as relief compensatory educational and related services and placement outside the Shekina Radiance Academy. Petitioners also sought an order requiring compensatory services to be provided in their home during the summer and reimbursement for prospective transportation expenses should Student be placed outside the district.

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

Findings of Fact

1. Student is a student who has been served by the Respondent in special education placement based upon IDEA eligibility criteria of a learning disability and speech impairment. [Respondent's Exhibits 3-6]
2. The Shekina Radiance Academy is a school open to students which operates under a charter with the Texas Education Agency.
3. Student originally was served by Respondent as a speech impaired student, but a full individual evaluation ("FIE") was performed on Student in November 2004 and the evaluation concluded that Student was also available for special education services based upon a learning disability. Student demonstrated significant deficits in word reading, reading comprehension, math reasoning and listening comprehension. [Respondent's Exhibit 3]
4. After the completion of the evaluation, an admission, review and dismissal ("ARD") committee met for Student in November 2004 and developed an IEP for him which included goals and objectives addressing his speech impairment and his learning disability. Student's parent attended the meeting and agreed with all the other members of the ARD committee with the provisions of the IEP. [Respondent's Exhibit 4]
5. Another ARD committee was convened for STUDENT in December 2004 which provided for placement in the general education classroom, accommodations and modifications in general education, speech therapy services, and resource services consisting of content mastery. Neither of Student's parents attended the ARD but gave their permission for the ARD to proceed without them. [Respondent's Exhibit 6]

6. The certified special education teacher responsible for implementing Student's IEP became seriously ill in November 2004 and was diagnosed with cancer. After the diagnosis, she did not return to school and the Respondent was informed after the Thanksgiving break that she would not be returning to school. [Transcript Pages 70 & 71]
7. The district secured a substitute for the teacher for about two weeks in January 2005 and sought to find another certified teacher to be hired permanently. [Transcript Pages 72 & 73]
8. A certified special education teacher with responsibility for Student was retained on March 30, 2005. [Transcript Page 73]
9. While Student did not have a certified special education teacher directly responsible for him, Student's educational instruction was provided by special education certified aides. The aides worked under the supervision of an administrator at the school who is a special education certified teacher. [Transcript Page 74 & 84-86]
10. While Student attended Shekina in the 2004-2005 school year, Student made educational progress and met goals and objectives provided him in his IEP. [Respondent's Exhibit 1 and Transcript Pages 113-115 & 123-124]
11. In February 2005 Shekina offered Student's parents compensatory educational services for the period of time in which Student did not receive special educational instruction in a resource class. Shekina offered to provide these services before and after school and/or in the summer. Student's parents rejected the services offered by Shekina. [Transcript Page 82 and Respondent's Exhibit 2]
12. Shekina determined that the number of hours of individualized special education services that were to be provided for Student with a certified teacher during the period of time after Thanksgiving 2004 until the date of the hearing. Shekina determined that Student

was to have received 125 hours of individualized instruction but that he had received only 87 hours of such instruction. [Transcript Pages 98 & 99]

13. Shekina has offered compensatory educational services for the 38 hours of instruction that Student has missed but Petitioners have refused the offer. [Transcript Pages 139-141]

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. As a charter school in Texas in which Student is enrolled, the Respondent is responsible for the delivery of special education and related services to Student
3. The IEPs developed for Student during the 2004-2005 school year were properly developed by duly constituted ARD committees and provided Student with an educational placement and 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), 34 CFR 300.552, and 19 T.A.C. §89.1055 and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055.
4. Respondent failed to implement the IEPs developed for Student when a certified special education teacher was not available for individualized instruction to Student from November 29, 2004, until March 30, 2005, in violation of 34 CFR 300.341, 34 CFR 300.342, 34 CFR 300.347 and 34 CFR 300.350, and 19 T.A.C. §89.1055.

1. ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY

ORDERED that:

1. The Respondent will develop a plan for the provision of compensatory educational services for Student, with individualized special education instruction for the thirty-eight (38) hours which were denied him during the 2004-2005 school year;
2. Respondent shall timely implement this decision within ten (10) school days in accordance with 19 T.A.C. §89.1185(q) and 34 CFR 300.514; and
3. To demonstrate their compliance with this decision, the Respondent shall furnish to the Texas Education Agency within fifteen (15) school days from the date of this decision documentation (with copies to Petitioner) demonstrating that the decision has been implemented or that the Respondent's plan for implementing the decision within the prescribed time line. The district shall include a signed assurance from the superintendent that the orders in this decision will be implemented.

All other relief requested by Petitioner is DENIED.

SIGNED this 23rd day of May, 2005.

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

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SYNOPSIS

ISSUE: Whether the Respondent failed to implement Student’s IEP because of its failure to provide individualized special education instruction with a certified special education teacher.

CFR CITATIONS: 34 CFR 300.552, 34 CFR 300.300, 34 CFR 300.341, 34 CFR 300.342, 34 CFR 300.347, and 34 CFR 300.350

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Petitioner.