
DOCKET NO. 010-SE-0906

B/N/F***&***

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER

EL PASO INDEPENDENT SCHOOL DISTRICT

SCHOOL DISTRICT

RESPONDENT

DECISION OF THE HEARING OFFICER

*** (hereinafter "the student") through his next friend, ***.. (Petitioner), requested a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 *et. seq.*. The Respondent is the El Paso Independent School District.

Petitioner alleged that Respondent denied the student a Free Appropriate Public Education ("FAPE") in the following particulars:

1. EPISD failed to provide the student the amount of speech therapy required under his IEP during the 2004-2005 and 2005-2006 school years.
2. EPISD changed the amount of speech therapy hours under the student's IEP by reducing said hours without notice to the parent and failed to notify the parent of the change during both school years.
3. EPISD concealed the change in speech therapy hours from the student during both school years and the parents did not discover the change until September 2006.
4. EPISD's changes to the student's IEP's impeded his right to a FAPE.
5. EPISD's failure to provide written notice to the student's parents significantly impeded his parents' opportunity to participate in the decision making process with regard to the provision of a FAPE.

For relief, Petitioner requested the following:

1. An Order requiring EPISD not to change the student's IEP's without written notice to the parents.
2. An Order requiring EPISD to provide the student speech therapy as directed by the IEP and the ARD Committee.
3. An Order requiring EPISD to provide compensatory speech therapy services in an amount equal to that which it failed to provide during the 2004-2005 and 2005-2006 (first and second grade) school years.
4. An Order requiring EPISD to convene an ARD Committee meeting to develop appropriate compensatory speech therapy goals.

Held, for Petitioner in part; for Respondent in part.

PROCEDURAL HISTORY

Petitioner filed this request for hearing on September 13, 2006, and it was received by the Texas Education Agency on September 14, 2006, and assigned to Special Education Hearing Officer Sharon M. Ramage. Petitioner was represented by Mark Berry, of El Paso. Carol Helms, of Walsh, Anderson, Brown, Schulze & Aldridge represented the El Paso Independent School District.

Following a continuance for good cause, the hearing was held on November 1 and 2, 2006. The parties requested an opportunity to submit proposed findings of fact and written arguments. The Decision due date was extended for good cause to December 12, 2006 and the Decision was timely rendered and forwarded to the parties.

Based upon the evidence and argument of the parties, I make the following findings of fact and conclusions of law. (All references to the transcript will be designated as "Tr." followed by the volume and page number; all references to Petitioner's and Respondent's exhibits will be designated as "R" or "P", followed by the exhibit number.)

STIPULATIONS

The District stipulated that it failed to provide all speech hours required under the student's IEP's for the 2004-2005 and 2005-2006 school years¹. However, the

District denied that it denied the student a FAPE and raised the affirmative defense of the statute of limitations.

¹The District also agreed that it had not provided all speech hours owed to the student under the 2003-2004 school year. However, Petitioner's request for hearing only encompasses alleged violations during the 2004-2005 and 2005-2006 school years.

FINDINGS OF FACT

1. The student resides within the geographical boundaries of the El Paso ISD. Student. was enrolled as a *** grade student during the 2004-2005 school year, and as a **** grade student during the 2005-2006 school year. *** is currently in the *** grade.
2. The student receives special education services as a student with a speech impairment.
3. During the 2004-2005 and 2005-2006 school years, the student's IEP provided that *** would receive 60 minutes of speech therapy per week.
4. The student attended *** within the District during the 2003-2004 school year. The parent complained during a May 13, 2004 ARD Committee meeting that the school needed a full-time speech therapist. (P-4) The District and the parent then determined that the student was owed 12.5 compensatory speech hours due to the District's failure to provide all speech services as dictated by his **** IEP. The hours were to be provided over the summer of 2004. (P-4)
5. During the summer of 2004, EPISD provided 5.25 hours of compensatory speech services to the student to make up for some of the speech hours which were not provided during the 2003-2004 school year. (TR-130, 205) In a May 4, 2005 ARD Committee meeting, the parent complained that compensatory time from the previous school year had not been provided. (P-3). At that time, the ARD Committee recommended that the missing *** speech hours would be made up during the school day by doubling the student's speech hours during the week. (P3) The only compensatory time discussed at the meeting was the time which the District had committed to make up from the 2003-2004 school year.
6. The student attended *** Elementary School during the 2003-2004 and 2004-2005 school years. At the beginning of the 2005-2006 school year, the student attended *** Elementary from August of 2005 until sometime in October of 2005. In October of 2005, the student transferred to *** Elementary, where he completed the 2005-2006 school year and where he is currently enrolled. There are no records which indicate the student received any speech services while at ***.
7. On January 19, 2006, the ARD Committee met and determined that the student would receive 2 hours of speech services per week, with one hour to be applied to deficiencies owed to the student for "previous years." (R-6; P-2). The speech logs for January 2006 contained the notation that makeup sessions would be provided

- to compensate the student for deficiencies for “previous years.” (P-9). The speech therapist testified that the makeup sessions were being provided to the student to compensate for deficiencies for prior school years when the student attended another campus within the District (a campus other than *** Elementary). The parent testified that he believed that as of the time of the hearing all time from the *** year had been made up. (Tr. 304) A substantial portion of the compensatory time from the 2003-2004 school year had been made up by the beginning of the 2005-2006 school year.
8. The student’s IEP for the 2005-2006 school year required that he receive 2,160 minutes of speech services. (P-4; R-1; P-16). The student received a total of 1,566 minutes of speech during that school year, inclusive of compensatory time. (P-16; P-9; R-7)
 9. During the 2005-2006 school year, EPISD provided 579 minutes of speech services to the student which it designated were being provided as compensation for prior school year deficiencies.
 10. During the 2005-2006 school year, the District failed to provide the student with 1,173 minutes of speech therapy deemed necessary under his May 2005 IEP.
 11. During the 2004-2005 school year, the District should have provided 2,160 minutes of speech therapy, but only provided 1,090 minutes, for a shortage of 1,070 minutes.

DISCUSSION

Statute of Limitations

Petitioner complains of a denial of FAPE over the course of two school years – 2004-2005 and 2005-2006. Petitioner filed his request for hearing on September 14, 2006. The applicable federal law provides the following with regard to the statute of limitations:

A parent or agency shall request an impartial due process hearing within 2 years of the date the parent or agency knew or should have known about the alleged action that forms the basis of the complaint, or, if the State has an explicit time limitation for requesting such a hearing under this part, in such time as the State law allows.” 20 U.S.C. §1415(f)(3)(C).

Texas has established an explicit time limitation within which a petitioner must request a special education due process hearing:

...[a] parent or public education agency must request a due process hearing within one year of the date the complainant knew or should have known about the alleged action that serves as the basis for the hearing request. 19 T.A.C. § 89.1151(c).

The Individuals with Disabilities Education Improvement Act of 2004 added the following exceptions to the applicable statute of limitations:

The timeline described in subparagraph (C) shall not apply to a parent if the parent was prevented from requesting the hearing due to –

1. specific misrepresentations by the local education agency that it had resolved the problem forming the basis of the complaint;
2. or the local education agency's withholding of information from the parent that was required under this part to be provided to the parent.

20 U.S.C. §1415(f)(D)

The District in this case has conceded that it failed to implement the student's IEP by failing to provide all speech services required under his 2004-2005 and 2005-2006 school years. The one year statute of limitations would bar any recovery for the district's acts or omissions occurring prior to September 13, 2005, as the request for hearing was filed on September 13, 2006. In order to not apply the statute of limitations pursuant to IDEIA with regard to his complaint for the 2004-2005 school year, I must make one of two findings. First, I must find that the district prevented the parent from requesting the hearing by making specific misrepresentations that it had resolved the problem in this case – its failure to provide missing speech hours. Alternatively, I must find that the district withheld information from the parent that was required under 20 U.S.C. §§ 1411-1419 (Part B).

Did the District make specific misrepresentations that it had resolved the problem in this case.

Clearly, the problem in this case was the District's failure to provide more than half of the speech hours required under the student's IEP for both the 2004-2005 and 2005-2006 school years. In May of 2004, at the conclusion of the student's *** year, the parent complained that the district had not provided all speech services recommended by the ARD Committee for that year. The ARD Committee determined the appropriate number of compensatory speech hours at that time to be 12.5 hours following a request by the parent that the district investigate the number of missing speech hours. (Tr. 279; P4) The services were to be provided over the summer of 2004, but were not completed due to scheduling conflicts with the parent which were discussed at the ARD Committee meeting. (P-4)

The student entered the *** grade during the 2004-2005 school year, again with an IEP requiring 60 minutes of speech services per week. (P4) At the end of the school year, the parent voiced concerns that the district had not completed the provision of compensatory services agreed upon the previous year. (P3) At that time, the ARD Committee recommended that services would be increased during the school year to make up the missing time from ***. The parent did not voice concerns about the provision of speech services during the 2004-2005 school year at that time, nor did he request speech logs for that particular year.

During the 2005-2006 school year, the student briefly attended a second elementary school, and then transferred to his current elementary school in October 2006, where he completed the school year. In January of 2006, the ARD Committee once again convened to discuss compensatory speech services. The ARD Committee met and determined that the student would receive 2 hours per week speech services, with one hour to be applied to deficiencies owed to the students for "previous years," and one hour per week to satisfy the requirements under his then current IEP. R-6; P-2. The speech logs for January 2006 contained the notation that makeup sessions would be provided to compensate the student for deficiencies for "previous years." P-9. The speech therapist testified that the makeup sessions were being provided to the student to

compensate for deficiencies for prior school years when the student attended another campus within the District (***)).

Unfortunately, by January of 2006, the school district was significantly deficient in the amount of speech hours it had provided to the student under his prior IEP's. The parent did not complain about the 2004-2005 school year at that time. The district made no specific misrepresentations regarding the amount of speech services it had provided to the student at that time. From a preponderance of the evidence it is clear that during all discussions both parties were focused primarily on the district's shortcomings from the 2003-2004 school year. Based on the preponderance of the credible evidence, I do not find that the District intentionally or specifically misrepresented the services it provided to the student during the 2004-2005 school year. The service logs were not maintained in the student's special education folder. (P11). The parent did not request the speech logs until the beginning of the 2006-2007 school year. (Tr. 212-213) In fact, there does not appear to have been a consistent method of maintaining the speech logs in that the records for all years were located at various places within the District, including a warehouse. (Tr. 116, 117, 121, P11) Although the District certainly had constructive knowledge of its shortcomings, there is no evidence that it made affirmative efforts to hide the speech logs from the parent or misrepresent the services provided. In sum, the evidence shows a lack of competence in the provision of services, documentation and communication on the part of the District. I find that something more than this type of negligence is required to justify tolling the statute of limitations under IDEIA. The fact that the District's omissions may have been actionable at any point in time is not controlling. Additionally, the issue for the purpose of the tolling of the statute of limitations is not whether the District's silence on the issue amounts to an implied misrepresentation. Rather, the statute explicitly provides that it is only a specific misrepresentation that it has resolved the problem that will toll the statute of limitations. 20 U.S.C. §1415(f)(3)(C). No such specific misrepresentation occurred in this case.

Did the District withhold information from the parent that was required under IDEIA?

Petitioner contends that during the 2004-2005 school year, Respondent changed the student's IEP to reduce the number of speech therapy hours without prior written notice to the parent. If the District did as Petitioner contends, then an exception to the statute of limitations would apply because a school district is required under IDEIA to provide prior written notice to a parent when it proposes to initiate or change, or refuses to initiate or change, the identification, evaluation, or educational placement of the child, or the provision of FAPE to the child. 20 U.S. § 1415 (c). Other information required under IDEIA relevant to this exception includes the Procedural Safeguards Notice (§1415(d)); the opportunity to review and examine the child's educational records (§1415(a)); certain notices pertaining to evaluations and re-evaluations (§1414(a), (b) and (c)); and copies of evaluations (§1414(b)).

The parent does not complain that the District withheld evaluations. The preponderance of the credible evidence establishes that the parent was an active participant in all ARD Committee meetings during the school years in question and that the District provided him with a copy of his procedural safeguards each year. Those safeguards included notice that he had the right to request and review records. However, the parent acknowledged he did not request the speech logs until the 2006-2007 school year. (Tr. 212-213).

The parent contends that the District's failure to implement the student's IEP during the 2004-2005 school year constituted a substantive change to the IEP that required prior written notice. In other words, according to Petitioner, when the District failed to provide approximately one-half of the required services under the IEP, it was by implication initiating a change to the IEP, thereby triggering IDEIA's prior written notice requirements under 20 U.S.C. §1415(c). Petitioner relies on the case of *Amanda J. v. Clark County School District* in support of its position. However, in *Amanda J.* a school district failed to disclose an evaluation to a parent that contained information about a student's suspected autism. The

parent had requested a copy of all assessments prior to meeting to develop an IEP for her child. The student was later found to have been misdiagnosed and improperly placed. The Ninth Circuit Court of Appeals held that the District's failure to disclose the evaluation prior to the IEP Team meeting was an egregious procedural violation that impeded the parent's ability to participate meaningfully in the development of the child's IEP. *Amanda J. v. Clark County School District*, 267 F.3d 877 (9th Cir. 2001). Of course, the statute specifically provides that evaluations must be provided to a parent prior to the development on an IEP. The very nature of Petitioner's complaint, failure to implement an IEP, by definition cannot be subject to the prior written notice requirements because it is a failure as determined after the fact, not an affirmative change or refusal anticipated in advance. Prior written notice is required if a District intends to propose a change to an IEP or refuse services. In this case, the preponderance of the credible evidence clearly shows the District failed to provide all the services required under the student's IEP's. The evidence does not demonstrate that the District from the outset intended to eliminate services from the student's IEP. The prior written notice requirements of IDEIA are not applicable to the facts in this case. No prior written notice was required. Although the District failed to implement the IEP, the preponderance of the credible evidence in no way suggests that the District anticipated withholding services from the student. I do not find that the District withheld required information under IDEIA.

Did the parent know, or should the parent have known, that the speech services for the 2004-2005 school year had not been provided?

The Texas statute of limitations applicable to special education complaints provides that a parent must bring an action within one year of the date the parent knew or should have known of the facts forming the basis for the hearing request. 19 T.A.C. § 89.1151(c); *Texas Advocates Supporting Kids with Disabilities v. Texas Education Agency*, 112 S.W.3d 234 (Tex. App.—Austin 2003, no pet.). Texas hearing officers have consistently applied the one year statute of limitations. See, e.g., *Niko G. v. Lake Travis ISD*, Dkt. No. 329-SE-

0603 (Sept. 2003); *Bobby P. v. Houston ISD*, Dkt. No. 332-SE-0603 (Jan. 2004). Of course, the 2005-2006 school year falls within the limitations period and is not time barred because the parent filed his request for hearing in September of 2006. However, the parent also complains of the District's failure to implement the student's IEP for the 2004-2005 school year. It is clear from the preponderance of the credible evidence that Petitioner had concerns about the speech services being provided by the District and it was the subject at each and every ARD Committee meeting he attended. The running of limitations begins at the time a litigant is entitled to seek a remedy, and contemplates the exercise of reasonable diligence on the part of the litigant to discover the facts giving rise to the claim. See, e.g., *Trinity River Authority v. URS Consultants*, 889 S.W.2d 259 (Tex. 1994). In light of the parent's knowledge of the District's failure to provide prior compensatory services over a period of two school years, his complaint about the lack of a full-time speech therapist, and his discovery from his son that he did not always receive speech services, reasonable diligence would have included further inquiry into the 2004-2005 school year's services at some point prior to September, 2006. The parent, by his own admission, did not exercise this type of diligence. The facts which form the basis of the complaint, the provision of speech hours, would have been available to Petitioner had he requested the speech logs prior to September 2006. The one year statute of limitations, and an expectation of the exercise of reasonable diligence on the part of the litigant, is consistent with the legislative intent that special education disputes be resolved in an expeditious manner. *Texas Advocates Supporting Kids*, supra. Petitioner's claims based on acts or omissions of the district arising prior to September 13, 2005 (i.e., the 2004-2005 school year) are time barred.

DENIAL OF FAPE AND RELIEF

The District contends that although it failed to provide approximately fifty percent of the speech services required under the IEP, the student nevertheless received a FAPE. I disagree. The issue in a failure to implement case is whether the

District failed to implement substantial and significant portions of the student's IEP. *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000). In this case, the only special education service to which the student is entitled is speech therapy. (P3, P4, R9). The student did not meet the eligibility criteria for any other classification and received all instruction in the general education classroom, with the exception of 60 minutes of speech therapy per week as a related service. The District should have provided 2,160 minutes of speech during the 2004-2005 school year and only provided 1,090 (approximately one-half of the time deemed necessary for the student to receive a FAPE). During the 2005-2006 school year, the District should have provided 2,160 minutes of speech therapy, but only provided 987 minutes (less than fifty percent), after committing to applying 579 make-up or compensatory minutes to the 2003-2004 and 2004-2005 school years. In other words, the District not only failed to make-up all the deficiencies from prior years which it committed to do, it stopped providing all the services to which the student was otherwise entitled during the 2005-2006 school year while it was providing the compensatory services. I cannot conclude that a deficiency of more than one-half of a student's special education related services is insignificant. Although the Bobby R. standard allows a school district some flexibility if the district later provides sufficient compensatory services and the student receives some meaningful educational benefit from those services, I cannot find that it did so in this case. Additionally, the compensatory services which did occur took the place of regular classroom time for the student, as he was to be pulled an extra two hours per week from his regular classes to participate in services. (P-2) The District's failure to implement substantial and significant portions of the student's IEP during the 2005-2006 school year and the manner in which it attempted to provide compensatory services for prior years resulted in a denial of FAPE for the student.

Having determined that there is a denial of FAPE, the next step is to determine what relief is appropriate to compensate the student for the denial.

Compensatory relief is available under IDEIA as an equitable device to remedy

substantive violations. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). IDEIA requires that relief be designed to ensure that the student is appropriately educated within the meaning of IDEIA. Parents of *Student W. v. Puyallup School District No. 3*, 21 IDELR 723 (9th Cir. 1994). Thus, determining what compensatory relief is appropriate turns on a consideration of the extent of the denial as well as what services would be needed to provide a free appropriate public education in light of that denial. In January of 2006, the ARD Committee committed to provide compensatory speech services to compensate for services it failed to provide during the previous school years. The ARD Committee continued to determine that the student required 60 minutes of speech services in order to receive an appropriate education. The ARD Committee also recommended that upon completion of the student's re-evaluation, the student's need for continued compensatory services would be evaluated in light of the results of the evaluation. (P2; R6) The speech therapist testified that she believed the student had made progress, but could not identify any goal or objective from any of the previous years that had been mastered. (Tr. 346-347) Although the articulation disorder identified in the 2006 evaluation was not as severe as in the prior evaluation, the September 2006 ARD Committee continued to recommend that the student required 60 minutes of speech therapy per week in order to receive a FAPE. (R9) Additionally, the ARD Committee recommended that the student receive an additional 6 hours of compensatory services to compensate the student for the deficiencies identified from prior years, at the rate of one additional 30 minute per session. (R9) Based on the credible evidence, I conclude that the ARD Committee determined that the compensatory hours provided during the 2005-2006 school year and those hours called for in the September 2006 IEP, were necessary to provide a FAPE to the student. In other words, the compensatory services provided during the 2005-2006 school year and through the date of this decision in compliance with both the January 2006 and September 2006 IEP's are compensable even though

outside the limitations period because the ARD Committee deemed them necessary and appropriate for the student during the limitations period. Compensatory relief is available under IDEIA as an equitable device to remedy substantive violations. *Burlington School Committee v. Department of Education*, 471 U.S. 359 (1985). IDEIA requires that relief be designed to ensure that the student is appropriately educated within the meaning of IDEIA. Parents of *Student W. v. Puyallup School District No. 3*, 21 IDELR 723 (9th Cir. 1994). Thus, determining what compensatory relief is appropriate turns on a consideration of the extent of the denial as well as what services would be needed to provide a free appropriate public education in light of that denial. It is important to emphasize that compensatory services are equitable in nature, and any award must be based on facts developed at the hearing. Compensatory services are awarded in order to do equity. These services are not awarded as “damages.” Rather, such equitable relief must be designed to ensure that the student is being properly educated within the meaning of IDEIA. It is proper for a hearing officer to take into consideration such factors as the complexity of the child’s difficulties, as well as a parent’s conduct in determining whether or not to order compensatory relief. *Reid v. District of Columbia*, 2005 WL 678385 (D.C. Cir. 2005) The ultimate award must be fact-specific and reasonably calculated to provide the student with educational benefits which would have accrued from special education services the school district should have supplied in the first place. *Id.*

I find it necessary to specify what the compensatory relief being ordered herein will and will not encompass. Any “compensatory” services provided to the student during the 2005-2006 school year through the date of this decision shall be applied to any deficiencies in speech services existing through the end of the 2004-2005 school year because that is what the ARD Committee deemed appropriate, and that portion of those IEP’s shall be implemented. In the event there are remaining hours owed to the student for the 2004-2005 school year after applying existing compensatory services, those hours will not be

compensated. Compensatory education services are equitable in nature and the conduct of the parent can be taken into consideration when fashioning an award. Deficiencies for the 2003-2004 and 2004-2005 school years would have been time barred and the student would not have been entitled to compensation but for the ARD Committee's decision to incorporate those missed hours into IEP's developed in 2006. The parent was resistant with regard to the provision of some of those services. Under all the circumstances, I do not find it appropriate to order that any compensatory services provided after the date of this decision be applied to any deficiencies accruing prior to the 2005-2006 school year.

The District shall provide 1,173 minutes of compensatory speech services to compensate the student for deficiencies during the 2005-2006 school year. Only minutes provided after the date of this decision shall apply to this award, unless the District has already provided compensatory services in excess of the 1,070 minutes owed to the student from the 2004-2005 school year, in which case the District may apply those excess compensatory service minutes to the 2005-2006 award.

Given the District's history in this case of promising to provide compensatory services and then failing to provide not only compensatory services, but services required under the student's IEP, I find as further relief that the District should provide documentation that it is complying with this Order on a frequent basis to the parent. It is apparent from the record that the root cause of many of the problems in this case is a lack of consistent communication and accountability among key stakeholders in the student's education. An ongoing effort to provide documentation of the services provided is necessary to insure that the student does in fact receive a Free Appropriate Public Education.

CONCLUSIONS OF LAW

1. The student meets the eligibility criteria and presents an educational need for special education services as a student with disability classification of Speech Impaired under IDEIA, 20 U.S.C. §1400 *et. seq.* and its implementing regulations.
2. The student's parents reside within El Paso ISD, a legally constituted independent school district within the state of Texas that is responsible for providing the student with a Free Appropriate Public Education.

3. The one year limitations period bars Petitioner's claim for speech services during the 2004-2005 school year. 19 Tex. Admin. Code § 89.1151(c).
4. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983) Petitioner bears the burden of proving that it is not appropriate. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has met his burden with regard to his allegations that the District failed to implement substantial or significant provisions of his IEP the 2005-2006 school year.
5. The student is entitled to compensatory services as an equitable remedy for Respondent's IDEIA violations. *Burlington Sch. Comm. V. Department of Educ.*, 471 U.S. 359, 369-71 (1985); *Alamo Heights Indep. School Dist. V. State Bd. of Educ.*, 790 F.2d 1153 (5th Cir. 1986); *Parents of Student W. v. Puyallup School Dist.* No. 3, 21 IDELR 723 (9th Cir. 1994).

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, I hereby ORDER that the following relief is GRANTED:

1. The District shall provide 1,173 minutes of compensatory speech services to the student to compensate him for any losses occurring during the 2005-2006 school year and shall begin doing so within 10 school days of the date of this Order.
2. The District shall provide written logs to the parent at least once per grading period which reflect both hours provided under the student's current IEP as well as compensatory hours provided.
3. The District shall provide the compensatory speech hours to the student in a manner that does not further reduce the student's time in the regular classroom when compared to the current schedule of services.
4. The 579 minutes of compensatory or "make-up" speech services provided to the student during the 2005-2006 school year should be first applied to the 2004-2005 school year because the ARD Committee expressly recommended that these hours were necessary, based on the student's needs to compensate for losses occurring prior to the 2005-2006 school year.
5. Any compensatory or "make-up" speech services occurring during the 2006-2007 school year through the date of the decision shall apply first to outstanding deficiencies from the 2004-2005 school year because the September 2006 ARD Committee recommended prior to the date this request was hearing was filed that compensatory hours provided were for the purpose of compensating the student for lost speech hours occurring prior to the 2005-2006 school year.
6. The ARD Committee shall meet within ten (10) school days of the date of this decision to develop appropriate goals for compensatory speech services ordered herein and shall review prior year goals and objectives to determine mastery and current competencies.
7. All compensatory speech hours ordered herein shall be completed no later than the last school day for the 2007-2008 school year.

8. All compensatory speech hours may be provided to the student at a location within the district convenient to the parent. The student's home campus or his current campus will satisfy this requirement.
9. The ARD Committee shall meet within ten (10) school days of the date of this decision to begin implementation of the relief ordered herein.

All other relief not specifically granted herein is hereby DENIED.

NOTICE TO THE PARTIES

This Decision is final and is appealable to state or federal district court.

The district 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 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 12th day of December, 2006.

Sharon M. Ramage
Special Education Hearing Officer

DOCKET NO. 010-SE-0906

B/N/F***&***

PETITIONER

vs.

EL PASO INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

SYNOPSIS OF DECISION

ISSUE: Whether the student's claims for the 2004-2005 school year are time-barred.

CITATION: 20 U.S.C. §1415(f)(3)(C); 19 TAC §89.1151(c).

HELD: For the District. The one year statute of limitations applies. The student failed to prove that the exceptions under 20 U.S.C. §. §1415(f)(3)(C). The student failed to prove that the District withheld information required under IDEIA and failed to prove that the District made specific misrepresentations that it had resolved the problem forming the basis of the complaint. The one year statute of limitations under Texas law applies.

ISSUE: Whether the student is entitled to compensatory education services.

CITATION: 20 U.S.C. §1401(9); 34 C.F.R. §300.13.

HELD: For the Parent. The student is entitled to compensatory speech in an amount equal to the number of speech hours the District failed to provide during the 2005-2006 school year. The District's failure to implement the student's IEP resulted in a denial of a Free Appropriate Public Education to the student because the District failed to implement substantial or significant provisions of the student's IEP.