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# DOCKET NO. 050-SE-1105

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PETITIONER

vs. BEFORE A SPECIAL EDUCATION  
HEARING OFFICER

ALLEN INDEPENDENT SCHOOL DISTRICT  
FOR THE STATE OF TEXAS

SCHOOL DISTRICT

RESPONDENT

## DECISION OF THE HEARING OFFICER

### **Procedural History**

Petitioner, ("Petitioner," or) brings this action against the Allen Independent School District ("Respondent," the "school district," or "Allen ISD") under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1400 et. Seq (IDEIA) and its implementing state and federal regulations. Petitioner filed her request for a due process hearing on November 7, 2005. The parties waived the opportunity of meeting in a resolution session. A prehearing telephone conference was conducted on December 9, 2005. Petitioner was represented pro se by her father Mr. G. Mr. G. continued to represent for all purposes throughout the remainder of this litigation. Respondent was represented by its legal counsel Nona Matthews of Walsh, Anderson, Brown, Schulze & Aldridge, P.C. Ms. Matthews continued to represent Respondent throughout the remainder of this litigation. The parties agreed to continue the due process hearing until January 20 and January 27, 2006 in order to provide them each with an adequate opportunity to prepare for the hearing.

Respondent submitted a Partial Motion to Dismiss on December 15, 2005. Petitioner submitted a response on December 16, 2005. The hearing officer issued an Order on Respondent's Partial Motion to Dismiss on December 21, 2005. Petitioner submitted a Partial Motion to Reconsider Findings of Fact (referring to the Hearing Officer's Order on Respondent's Motion to Dismiss) on January 4, 2006. The Hearing Officer issued a Revised Order on Respondent's Partial Motion to Dismiss on January 12, 2006 correcting some typographical errors in the dates noted in the original order. Other issues raised by Petitioner's Motion to Reconsider remained pending.

An unexpected illness prevented the hearing officer from proceeding with the January 2006 hearing dates. The parties conferred with the hearing officer by email and by telephone and declined the opportunity to have the case reassigned to another hearing officer. The parties further agreed to reset the due process hearing for March 27-28, 2006. The Decision of the Hearing Officer was therefore extended until April 29, 2006.

While the due process hearing was pending a dispute arose regarding the presence of Respondent's consulting and testifying expert in the hearing room. On March 22, 2006 the Hearing Officer issued an Order on Petitioner's Motion to Reconsider that resolved the dispute over the expert's presence at the hearing. Petitioner submitted a written set of Objections to the Hearing Officer's order on March 23, 2006.

On March 24, 2006 Petitioner submitted a request to videotape the due process hearing proceedings. The Hearing Officer denied the request the same day. The due process hearing was conducted on March 27 and 28, 2006. Petitioner attended the hearing and testified on her own behalf. Her parents, Mr. and Mrs. were also present. Mr. was primary advocate during the proceedings. Mrs. testified. Sister also attended the hearing but did not testify.

Respondent continued to be represented by its legal counsel Nona Matthews who was assisted by attorney Jan Watson. Also in attendance were Patti Frair,

Director of Special Education for the school district, and Dr., the school district's consulting expert. The parties requested an opportunity to submit written closing arguments after the hearing transcript became available. Both parties submitted timely written closing arguments on May 1, 2006. The parties agreed to extend the deadline for the Hearing Officer's Decision until June 1, 2006.

## **Issues**

The Hearing Officer issued an Order on Respondent's Partial Motion to Dismiss on December 21, 2005. (December 21st Order). In the December 21st Order the Hearing Officer concluded that a one year statute of limitations rule applied to Petitioner's claims. See, 20 U.S.C. § 1415 (f) (3) (c); 19 Tex. Admin. Code § 89.1151 (c); Texas Advocates Supporting Kids with Disabilities (TASK) v. Texas Education Agency, 112 S.W. 3d 234, 239 (Tex. App. – Austin 2003, no writ). The December 21st Order limited Plaintiff's claims to those arising on or after November 4, 2004 and, as a result, dismissed Petitioner's claim that an October 2004 school district evaluation did not meet IDEIA requirements.

The remaining issues for decision in this case are:

1. Whether the school district provided with a free, appropriate public education (FAPE) beginning on November 4, 2004 up through the present; including, specifically, the factual allegations on pages 2-3 of Petitioner's Complaint;
2. Whether the school district identified as a student with and in a timely manner;
3. Whether school district personnel who provided with educational and related services for the current school year are properly qualified within the meaning of IDEIA;
4. Whether the school district violated confidentiality provisions of IDEA during the spring of 2005 as specified on page 15 of Petitioner's Complaint;
5. Whether Petitioner's claims of violations of the Family Educational Rights and Privacy Act (FERPA) and Petitioner's request for attorney's fees are outside the jurisdiction of a special education hearing officer in Texas; and,
6. Whether Petitioner's requested compensatory relief should be limited to one year of prospective relief.

## **Relief Requested**

As relief, Petitioner requested the following:

1. Reimbursement for instruction in a private, phonics-based reading program until completes the program or reaches age 25, whichever is first, at \$450/month on a year-round basis;
2. Instruction in a private math skills program until skills reach a functional level sufficient to pass the TAKS exit exam in math, or until reaches age 25, whichever is first, at \$450/month on a year-round basis;
3. Reimbursement for weekly private speech services that address pragmatic communication skills in both vocational and social contexts until reaches age 25 at \$400/month on a year-round basis;
4. Reimbursement for a private occupational therapy assessment conducted in March 2004 at a cost of \$800;
5. Reimbursement for a vestibular evaluation and treatment at the Dore Achievement Center, including the following:
  - a. \$1,100 for the cost of the evaluation;
  - b. Ongoing treatment and evaluation at \$200 every six weeks for the past nine months for a total cost of \$1,200;
  - c. Ongoing treatment and evaluation at \$200 per month for the next 15 months for a total cost of \$2,000;
6. Reimbursement for private occupational therapy at a sensory clinic at \$600/month until reaches age 25;
7. Reimbursement for a private vocational counselor to assist on the job site with pragmatic communication/judgment as she interacts with others at \$400/month;
8. Reimbursement for counseling for 's eating disorder, including:
  - a. Reimbursement for past counseling for eating disorder for a total amount of \$1,418.00;
  - b. Reimbursement for future counseling for eating disorder, including weekly outpatient sessions and, if necessary, 30 days of inpatient treatment until reaches age 25;
9. Reimbursement for scotopic sensitivity evaluation at a total cost of \$150.00;
10. Reimbursement for legal consultation fees; and,
11. Reimbursement for tuition and fees related to auditing college classes or taking remedial college classes until reaches age 25.

## **Findings of Fact**

1. At the time of the due process hearing, was 21 years old. She turns 22 on May 29, 2006. attended Allen ISD schools since second grade, with a short stint of home schooling during the fall semester of fifth grade. She returned to Allen ISD in the spring of fifth grade and completed middle and high school in the Allen ISD.

- parents both have experience and training in educational areas: her father is a practicing psychologist employed by another Dallas area school district; her mother is a former educator and clinician of the hearing impaired. parents have both actively participated in her education.
2. has a history of academic and, to a lesser degree, social difficulties. Although she got along with others, she has been described as a loner, not particularly well liked by classmates, sensitive, emotional, anxious, and with virtually no friends. During the fall semester of fifth grade (while she being home schooled) her parents arranged for an evaluation by the Texas Scottish Rite Hospital for Children. The Scottish Rite evaluation concluded demonstrated deficits in both as well as some signs of.
  3. The parties met to review the Scottish Rite evaluation when returned to Allen ISD in the spring semester of fifth grade. A Comprehensive Individual Assessment (CIA) was completed and a report issued on March 16, 1996. The CIA determined that qualified for special education services as a student with. However, the parties decided she could be initially served by implementing classroom accommodations under Section 504 of the Rehabilitation Act of 1973 (504).
  4. By February 1997 both parents and school personnel concluded 504 accommodations were not sufficient in meeting needs. She was formally identified as a student with a learning disability and began to receive special education services from Allen ISD. Over the next few years M. was provided with extensive modifications and accommodations in her classes, along with schedule changes and program modifications in order to address continuing academic difficulties.
  5. Despite these efforts continued to feel frustrated with school. By the fall semester of 1999 she was anxious and stressed about school. An ARD decided that could graduate under a special educational option that would allow her to attend community college or a technical school without earning all the usual high school credits. This plan resulted in virtually "skipping" the 10th grade and being placed into the 11th grade. This aspect of the graduation plan was not clearly understood by parents.
  6. began to resist going to school and perceived that the teachers felt she was not capable of doing the work. Two months later, the ARD reconvened and decided to modify schedule by placing her in a full time vocational work program. The vocational component of high school program was a part time job as a babysitter. Although met her vocational requirements with this job, her hours were not consistent and she did not find the experience particularly rewarding.
  7. In previous years, outside of school, worked at a local grocery store sacking groceries. However, she had difficulty when she moved into a cashier's position and was unable to sustain her employment there. As a high school junior, worked at a local day care for approximately five to six months but school issues interfered with her ability to maintain that job either. continued to baby sit on the weekends. To her credit, has been able to purchase some furniture and pay for her own car as a result of her work experiences.

8. graduated from Allen High School in May 2002. post high school experience was problematic. Initially, her mother arranged a part time child care job at a local tennis club. did well in this position but ran into some difficulty after assuming a new position working the front desk and was terminated from the tennis club soon after. secured another part time job as a hostess at a local restaurant. However, her schedule was somewhat erratic and she began to have trouble keeping up with the fast pace of the restaurant business. At the time of the hearing, expected to be terminated from the restaurant as her work hours had recently been radically reduced.
9. In January 2003, Dr. conducted a neuropsychological evaluation through a referral from the Texas Rehabilitation Commission (TRC). Dr. found a. Dr. recommended that needed continued accommodations in the workplace to address impairments in.
10. Dr. also recommended placement in a non-academic training program aimed at the acquisition of practical vocational skills. He noted would need additional tutoring, repetition, and accommodations for testing. He also recommended short-term psychotherapy to address her feelings of social alienation, managing emotional frustration, and the need for increased vocational motivation. Through the TRC, also discovered she had a slight and was fitted for. use of the has been inconsistent and she has found them to be somewhat uncomfortable.
11. In December 2003, parents arranged for her to be evaluated by Dr. Dr. identified as a person with, \*\*\*. He prescribed Ritalin. \*\*\* found the medication helpful and has continued with the Ritalin therapy since then.
12. parents also arranged for an outside occupational therapy evaluation by in March 2004. Ms. found had difficulty with. She recommended a multisensory approach for remedial academic activities, and participation in rhythmic, physical activities such as swinging, jumping, bouncing, organized sports, swimming, martial arts, etc. parents also arranged for an evaluation by Dr. at the DORE Achievement Center in July 2004. Dr. concluded showed evidence of cerebellar developmental delay and recommended participate in the DORE Center exercise program. The DORE exercise program is somewhat controversial.
13. These post high school events and assessments led and her mother to return to Allen ISD in August 2004 with a request for continued educational services for remediation purposes. The parties agreed to conduct a comprehensive evaluation. A Full Individual Evaluation (FIE) was conducted by a multidisciplinary team in the fall of 2004 and a report issued on October 18, 2004. The FIE assessed in the areas of speech and language, auditory impairment and communication, physical/psycho motor skills, sociological functioning, emotional/behavioral functioning, intellectual functioning, adaptive behavior, and educational performance.
14. The FIE found that met eligibility criteria for (based on the diagnosis of ) and,. However, an OT assessment concluded she was not eligible for OT services. The speech/language assessment also concluded did not meet criteria for services as a student with a speech impairment. The multidisciplinary team recommended that return to Allen ISD for further special education services.

15. The results of the FIE were debated and discussed at a November 14, 2004 ARD meeting. Mr. disagreed with the intelligence test results and the parties agreed, at his request, to conduct two additional subtests to address his concerns. parents also disagreed with the results of the OT and speech/language evaluations, whether needed OT and speech/language therapy, and, certain aspects of the school district's psychological. The ARD also discussed the need for an autism evaluation.
16. The ARD reconvened on December 3, 2004. Scoring errors in the school district's intellectual testing were corrected and explained. parents presented Ms. 's OT report and the DORE evaluation conducted by Dr. The parties also discussed the design of an Individual Educational Plan (IEP) for but were unable to reach an agreement on an IEP design due to the unresolved assessment issues.
17. Dr. evaluated for autism in December 2004. Dr. reviewed history, background, and previous assessments, including Dr. 's evaluation and the school district's FIE. He also interviewed parents and then worked one-on-one with using both clinical and formal assessment measures. Dr. described as a young adult with. He found that were subtle but significant. Although she did not demonstrate "classic" autistic communication deficits such as echolalic speech, pronoun reversals or oddities in volume, cadence or pitch, she was prone to respond with scripted answers from a repertoire of learned responses. Dr. also found to be highly dependent upon environmental influences and that her affect, responses, stress, and anxiety levels vary according to how comfortable she is in a particular environment.
18. Dr. also concluded success in vocational settings is highly dependent upon available support and learning experience. While is easily capable of following simple rules and routines, her performance deteriorates rapidly in increasingly complex environments. Dr. concluded that extended history of educational and academic difficulties are related to multiple etiologies including diverse cognitive skills as well as emotional and developmental factors.
19. Dr. decided that impairments fell within the but that it was not appropriate to describe her solely on the basis of an atypical pervasive developmental disorder. Instead, he pointed to the extensive set of prior assessments that establish diverse cognitive skills with cognitive abilities ranging from normal limits in select areas to borderline functioning in others. is "all over the waterfront" in terms of her cognitive abilities – the scatter and disparity between discrete scores needs to be addressed but it doesn't describe her totally. Her also contribute to a more complete description of for educational purposes. Dr. described as a "very diagnostically complex individual, "not any one thing, "not a number," and not well characterized by.
20. Dr. noted that those who work with need to be "active" listeners and, after providing instruction, ensure she has grasped the intent of the communication. Dr. recommended that acquire both academic and social skills through the use of extensive repetition of tasks coupled with scripted explanations. In order to benefit from instruction, Dr. stated that it is essential for teachers to check for understanding by asking her such questions as "What does this mean?" and "What will you need to do next?"

21. is rooted in bio-genetics and is a chromosome-related disorder. It is a life long condition present at birth. However, individuals may differ at the point in time when the disorder manifests itself. It is not at all uncommon that the manifestation of the disorder does not become evident until much later in life for individuals. These individuals are often perceived as unusual but get along well during childhood and adolescence because they are in a routine, scripted environment. It is only when they reach adulthood and operate in a less scripted environment that the disorder may manifest itself. There often is no reason to suspect this disorder until later.
22. Dr. found that met IDEIA criteria as a student with. There was a gradient effect to the manifestation of i.e., the characteristics of her were not clearly manifested to the degree where it could have been detected earlier. Furthermore, was “masked” by her other disabilities – these multiple disabilities coupled with her verbal ability, hid the discovery of her. Dr. concluded that has struggled on a number of dynamics for a very long time.
23. Before the next ARD meeting, parents arranged for a perceptual processing evaluation by Jean Kerwin of the Irlen Clinics. Ms. Kerwin diagnosed with a visual-perception dysfunction (Irlen Syndrome) affecting reading and writing activities. Ms. Kerwin concluded that inefficient reading, strain and fatigue, sensitivity to light, background distortions, print distortions, distractibility, handwriting problems, and, sensory integration deficits were all manifestations of perceptual processing problem Ms. Kerwin made a number of instructional recommendations, including the use of overlays for reading. The Irlen Syndrome diagnosis and program is somewhat controversial.
24. An ARD meeting was conducted on February 16, 2005 to review Dr. ’ evaluation, a school district reading assessment, and, Ms. Kerwin’ s assessment. A draft IEP was reviewed and debated. The need for related services including counseling, reading, speech, and OT was discussed and IEP goals for those services were also discussed. The ARD discussed vocational needs and transition services as well as a proposed schedule of services. The school district offered to conduct an outside vocational assessment but this suggestion was deferred at parental request. The ARD also discussed a number of vocational courses and ultimately agreed on an individually structured job exploration course with a job coach. parents complained that the autism evaluation was not conducted in a timely manner.
25. The parties agreed on a set of compensatory services to address this complaint including OT, speech/language therapy, and, counseling. The parties reconvened on February 18, 2005 and ultimately agreed upon an educational program that included speech therapy, occupational therapy, counseling, auditory services, one-on-one instruction for math, and reading/language arts, tennis, and the vocational exploration class. IEP goals were agreed upon for written and oral language, reading, vocational experience, counseling, visual/motor skills, and, math. Services began in late February 2005.
26. A certified, licensed special education teacher was charged with the responsibility for implementing the reading and math goals of IEP. He was assisted by a paraprofessional who accompanied M. as she went through the school day. The paraprofessional also ate lunch with M. on a daily basis. The paraprofessional was

- not certified in special education but had three years experience as a substitute teacher and a bachelor's degree in psychology. The paraprofessional was closest in age to M. and, due to the solitary nature of her program on the high school campus, there were no other age appropriate peers to interact with and she resisted opportunities to interact with some of the high school students made available to her.
27. Another paraprofessional served as job coach at the work site. Occupational therapy was provided to M. by a certified, licensed occupational therapist. Speech-language therapy was provided by a certified, licensed speech-language pathologist. A licensed, contract special education counselor provided M. with one on one counseling as well as support and guidance to the instructional staff.
  28. The Scottish Rite Adult Literacy reading program was provided to M. in implementing her reading IEP. The program uses a phonetics based, phoneme awareness approach that required M. to interact vocally with a computer/video lesson in a solitary manner. The special education teacher monitored progress as she completed the lessons. M. felt uncomfortable when she was required to vocalize in the presence of others but did not express those feelings to the teacher. The use of the Irlen overlays was attempted but they were not in particularly good condition and ultimately abandoned.
  29. Math, reading, and speech/language therapy were initially conducted in the special education teacher's office - a small room off a larger Content Mastery classroom. Two special education teachers shared the office. Because it was a smaller space the daily, routine loudspeaker announcements were very loud and intrusive to the learning process. At times, the instructional period was also interrupted when students or the other special education teacher needed access to the office.
  30. These disruptions were extremely distracting for M. but she was unable to self advocate effectively for herself in bringing these issues to the attention of the teaching staff. The speech therapist also found the loudspeaker announcements intrusive and ultimately was able to change the location of the speech/language therapy after some delay. daily schedule differed each day depending upon the mix of related and compensatory services for the week. As a result, M. felt confused about her schedule and never settled into a routine.
  31. The vocational component of program had mixed results. She performed office tasks such as cutting, copying, and sorting materials at a local church work site but M. found these activities degrading and not sufficiently challenging. Furthermore, although the job coach observed M. was successful in performing assigned tasks, she was not aware that M. felt so negatively about the vocational experience. In addition, the job coach did not firmly grasp or understand need to work on recognizing social cues from others so that skill was not sufficiently addressed during the vocational exploration course component of her program.
  32. The special education counselor found needed to overcome a number of trust issues upon her return to school. The counselor needed time to build a rapport with and to address frustrations and past negative school experience. The counselor and used journaling as a therapeutic tool. responded well to this mechanism and she shared excerpts from her journal at the hearing. initially felt

- she benefited from the counseling sessions but the relationship was damaged later on.
33. is a resilient, persistent, extremely intuitive, and hopeful person. She attempts to please others but her deficits in pragmatic communication interfere with her ability to be socially successful, especially with peers. was caught in the crossfire when differing opinions and disagreements arose between the relevant adults in her life about various aspects of her educational program. This was extremely confusing and distressing for and led to a disintegration of her ability to trust and respond positively to various school personnel.
  34. For example, the paraprofessional told that the educational diagnostician tore up some notes the paraprofessional compiled at parental request. The paraprofessional shared her concerns with about this incident instead of discussing them directly with the diagnostician. The paraprofessional also made other comments to about the educational program. These communications were upsetting to and her mother and contributed to further disintegration of the family's relationship with the school district.
  35. By March 2005 began exhibiting clear signs of stress and anxiety and again began to resist going to school and to the vocational assignment. In order to properly evaluate complaints, her mother accompanied her to school one day and observed the instruction, the settings, and the job site. Mrs. questioned school staff and openly expressed her concerns about the overall program in presence. Her visit was disruptive to the learning environment and served to reinforce anxieties and negative feelings about school.
  36. A meeting was conducted on April 4, 2005 in an attempt to address the family's complaints about the educational program. parents were dissatisfied with the vocational experience and that a previously agreed upon physical fitness program with the paraprofessional was never implemented. was deeply emotionally attached to the paraprofessional and ultimately came to view the paraprofessional as the only staff member who genuinely cared about her and tried to help her. Although made some progress on all her IEP goals during the few months she attended Allen ISD, the parties could not reach an agreement about continuing the program withdrew from Allen ISD the next day.
  37. A previously agreed upon independent speech/language assessment was conducted in early June 2005 by. Ms. described as having a complex and unusual overall profile, including low language scores on standardized tests, and the recent diagnosis of.
  38. Ms. concluded exhibited a moderate language disorder, with specifically noted difficulties in the area of semantics. Ms. noted it is easy to overestimate level of comprehension because she is talkative and eager to please. Instead, Ms. found has. These deficits have a negative impact on vocational, social, and academic progress. Ms. recommended one-on-one therapy with a speech-language pathologist with experience working with.
  39. Ms. further recommended consultation with others working with , including job coaches and/or employers. Ms. found current IEP goals were generally appropriate from a communication standpoint but recommended a focus on pragmatics and comprehension because those areas have the greatest impact on

social and vocational success. Goals specific to a job placement should also be added to IEP. Ms. recommended use of materials by that address “social thinking” difficulties.

## **DISCUSSION**

### **FAPE**

The appropriateness of a challenged educational program under IDEIA is a two step inquiry: first, whether the school district complied with the procedural obligations established by the statute in formulating the educational plan at issue; and, second, whether the educational program developed through those procedures was reasonably calculated to enable the student to receive an educational benefit. Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 200-201 (1982). Although the educational benefit contemplated under this test must be more than de minimis, it also does not require that the educational program maximize the student’s potential. Instead, the program must provide the student with a “basic floor of opportunity” consisting of access to specialized instruction and related services. Rowley, 458 U.S. at 189. ; Cypress-Fairbanks Ind. Sch. Dist. v. Michael F., 118 F. 3d 245, 247-248.

In this case there is no issue regarding whether IDEIA’s procedural safeguards were followed in the design of IEP apart from an issue about an alleged breach in the statute’s confidentiality provisions (see discussion below). The evidence clearly demonstrated that parents were active, meaningful participants in the ARD meetings required by the statute and it’s implementing state regulations. Thus, the first prong of the two-step inquiry has been met.

In this jurisdiction, four factors have been utilized by courts in deciding whether an IEP is reasonably calculated to provide the student with a meaningful educational benefit under the IDEIA. These factors are: 1) the program is individualized on the basis of the student’s assessment and performance; 2) the program is administered in the least restrictive environment; 3) the services are provided in a coordinated and collaborative manner by the key “stakeholders”;

and, 4) positive academic and non-academic benefits are demonstrated. Adam J. v. Keller Ind. Sch. Dist., 328 F. 2d 804, 810 (5th Cir. 2003); Michael F., 118 F. 2d at 253.

The application of these factors to the evidence in this case demonstrates that educational program and placement at the Allen ISD did not adequately address her primary needs of acquiring and practicing pragmatic communication skills, social interaction, and, vocational skills in an appropriate setting with the sort of sufficient support and instruction recommended by the experts.

First, the transition services did not adequately address state regulatory requirements. State regulations require that the following issues, among others, must be considered in developing the student's IEP, and if appropriate, integrated into the IEP:

- A functional vocational evaluation;
- The availability of age-appropriate instructional environments;
- Appropriate circumstances for referring the student or parents to a governmental agency for services.

19 Tex. Admin. Code § 89.1055 (g) (5) (7) and (9).

Although an outside vocational assessment was offered at the February 16th ARD, it was abandoned when Mr. . opposed it. This was a mistake. When parents later voiced concerns about the benefit of the vocational exploration course, a functional vocational evaluation should have been revisited and conducted. It is clear, from post-high period, that maintaining and progressing in the workplace is a primary need for her, not simply in terms of providing her with vocational skills for independence, but also because the workplace provides her with an environment in which to learn, practice and utilize pragmatic language and social skills. As a young adult, these are most critical needs and the assessments by Dr. , Dr. , and all support this conclusion.

The availability of age appropriate instructional environments also does not appear to have been discussed in ARD meetings or adequately addressed by her program. Indeed, was quite isolated given the one-on-one structure of both her academic instruction and the provision of related services. She had virtually

no other age appropriate peers to interact with. She had been out of high school for two years and felt embarrassed and humiliated about having to return there to continue her education. made these feelings clear through her testimony and journals.

age, her vocational, social, and language needs, and, the multiplicity and complex nature of her various disabilities, when taken together, created circumstances that were certainly appropriate for a referral to any number of state or local agencies including the Texas Health and Human Services Commission (an umbrella agency that includes the Texas Department of Assistive and Rehabilitation Services and the Texas Department of Aging and Disability Services). See, 19 Tex. Admin. Code § § 89.1055 (g) (9) and 89.1100; Texas Health and Human Services Commission website, [www.hhsc.state.tx.us](http://www.hhsc.state.tx.us). In particular, there was scant evidence that any attempts were made by the various ARD Committees to determine whether other instructional settings, such as community colleges or technical schools were considered or consulted in developing educational progra That information was particularly relevant given that graduation plan contemplated those settings as post-high school objectives. It does not appear that representatives from other instructional settings were consulted or invited to the ARD meetings that occurred when returned to the Allen ISD for services.

Second, the nature of the instruction received on the high school campus in a one-on-one instructional arrangement was, in essence, a very restrictive setting to the extent that she was virtually isolated from other students without age appropriate peers and few opportunities for practicing pragmatic language and appropriate social interaction. Given the lack of age appropriate peers and her solitary status at the high school, the failure to investigate other instructional alternatives for is further support that the program was not adequately individualized nor administered in the least restrictive setting.

Third, the services were not provided by key stakeholders in a collaborative manner to the extent that representatives from relevant governmental agencies,

community colleges, or technical schools were not consulted and did not participate in the design of educational program. Coordination with potentially appropriate community resources was missing in the design of educational program.

Fourth, although made some progress on her academic goals, the evidence also showed that neither her social nor vocational needs were adequately met. She was not provided with the sort of guidance, support, and instructional approach recommended by Drs. and . For these reasons, I conclude that the overall program at Allen High School did not provide with the requisite meaningful educational benefit under the law. This issue is therefore resolved in Petitioner's favor. See, *Michael F.*, supra.

**Timeliness of Identification of as student with**

Petitioner did not meet her burden of proof that the school district failed to timely assess M. for. Although the evidence suggested that some "red flags" arose at various points throughout educational history, any claims that those assessments were untimely were outside the relevant one-year statute of limitations. 19 Tex. Admin. Code § 89.1151(c). Petitioner simply did not prove that the school district was dilatory in meeting assessment requests submitted by parents or in completing the agreed upon FIE when M. first returned to the school district for remedial services. The school district responded to parental requests for these assessments in a timely manner once the requisite written parental consent for each had been secured. See, 34 C.F.R. § § 300.532-536.

Furthermore, the evidence showed that the complex nature and intersection of various disabilities masked the discovery of her specifically. diagnostic complexity explains the difficulties that both school personnel and parents faced in attempting to understand and cope with her academic and social difficulties. Even with their collective professional backgrounds, parents initially focused on assessments for learning disabilities, including dyslexia and perceptual deficits. Therefore, this issue is resolved in the school district's favor.

### **Qualifications of School Personnel**

Petitioner failed to meet her burden of proof that the school district personnel who provided with educational and related services were not properly qualified under the law. *Schaffer v. Weast*, 126 S. Ct. 528, 537 (2005). The evidence showed that all the relevant personnel were duly licensed and certified. 19 Tex. Admin. Code § 89.1131 (a) (b). Furthermore, the fact that job coach was a paraprofessional is entirely lawful under state regulations. 19 Tex. Admin. Code §89.1131 (c). Therefore, this issue is resolved in favor of the school district.

### **Alleged Violations of Confidentiality Provisions**

Similarly, Petitioner failed to meet her burden of proving that school personnel violated confidentiality provisions of the IDEIA or the Family Educational Rights and Privacy Act (FERPA). There was virtually no credible evidence presented on this point and thus, this issue is resolved in favor of the school district. *Schaffer v. Weast*, supra. Furthermore, any allegations concerning violations of the Family Educational and Privacy Rights Act (FERPA) must be resolved by the procedures established under that statute and, as such, are outside the jurisdiction of a special education hearing officer in Texas. See, 20 U.S.C. § 1232g (f) (g); 34 C.F.R. § § 99.60-99.67. This issue is resolved in the school district's favor.

### **Attorney's Fees**

In Texas, special education hearing officers do not have jurisdiction to award attorney's fees to a prevailing party. Instead, those issues are resolved in an appropriate judicial forum. See, 19 Tex. Admin. Code § 89.1185 (m)(n). This issue is resolved in the school district's favor.

### **Compensatory Relief**

Compensatory educational services involve discretionary, prospective relief to address an educational deficit created by a school district's failure to provide a student with a disability with a free, appropriate public education over a given period of time. *Alexandra N. v. DeSoto Ind. Sch. Dist.*, 2005 U.S. Dist. LEXIS 15122 (N.D. Tex 2005). A number of circuits have agreed that compensatory

educational services may be provided prospectively to compensate for a past deficient program. *Reid v. Dist. of Columbia*, 401 F. 3d 516, 522 (D.C. Cir. 2005); *RG v. Fort Bragg Dependent Schs.*, 343 F. 3d 295, 308 (4th Cir. 2003); *Ridgewood Bd. of Educ. v. N.E.*, 172 F. 3d 238, 249 (3d Cir. 1999); *Bd. of Educ. of Oak Park v. Ill. State Bd. of Educ.*, 79 F. 3d 654, 656 (7th Cir. 1996); *Pihl v. Mass. Dept. of Educ.*, 9 F 3d 184, 188-189 (1st Cir. 1993); *Miener v. Missouri*, 800 F. 2d 749, 753 (8th Cir. 1986).

Compensatory services have been awarded to students over the age of 21 who have been denied a free, appropriate education under IDEA prior to their 21st birthday. See, *Bd. of Educ. of Oak Park*, 79 F. 2d at 660; *Lester H. v. Gilhool*, 916 F. 2d 865, 872 (3d Cir. 1998). The rationale of this rule is to cure the inadequacy of services provided before the student reached age 21. *Bd. of Educ. of Oak Park*, 79 F. 2d at 656; *Neshaminy Sch. Dist. v. Karla B.*, 25 IDELR 725 (D.C. Pa. 1997). This rule includes adult compensatory education as within the full range of equitable remedies. See, *Wayne Cnty. Regional Educat'l Serv. Agency v. Detroit Public Schools*, 30 IDELER 868 (D.C. Mich. 1999).

In case, the denial of a free, appropriate public education was a result of the following:

- Failure to seek information from or invite members of governmental agencies, community colleges, and/or technical programs to ARD meetings to assist in the development of an appropriate educational program of transition services in an instructional setting with age appropriate peers;
- Failure to conduct a vocational assessment; and,
- Failure to provide a program that focused on needs to acquire and practice pragmatic communications skills in a non-academic setting with the type of support and guidance recommended by Dr. , Dr. , and Sandra White.

is therefore entitled to receive the following compensatory relief that cures these deficiencies in the program that was offered to her last year:

- A functional vocational assessment;
- Information from and the participation of members of governmental agencies, area community colleges and/or local technical programs to an ARD meeting for the purpose of reviewing the vocational assessment as well as the FIE, other outside assessment data, and, the subsequent speech/language evaluation by;

- A revised IEP to addresses the recommendations and results of the functional vocational assessment and of the participating agencies, community colleges and/or technical program.
- A revised IEP to focus on counseling, vocational, and pragmatic speech/language goals to be provided by related service personnel with training and expertise in working with higher functioning persons with autism; and,
- Implementation of the revised IEP for the 2006-2007 school year.

Petitioner failed to meet her burden of proving that the other items of requested relief in her Complaint were appropriate in addressing the deficiencies in her program. *Schaffer v. Weast*, supra.

## Conclusions of Law

1. The school district did not provide with a free, appropriate public education during the spring semester of 2005 because it did not consider a functional vocational evaluation, the availability of age-appropriate instructional environments; or referral to a governmental agency for services in order to develop Individual Educational Plan, or to integrate those features into her educational plan and placement. 34 C.F.R. §§ 300.344, 300.347; 19 Tex. Admin. Code §§ 89.1055 (g) and 89.1100.
2. The school district identified as a student with in a timely manner. 34 C.F.R. §§ 300.533, 300.536; Tex. Educ. Code § 29.004.
3. School personnel were properly qualified within the meaning of the IDEIA and implementing state and federal regulations. 34 C.F.R. § 300.23; 19 Tex. Admin. Code § 89.1131.
4. Petitioner did not meet her burden of proving that the school district violated the confidentiality provisions of the IDEIA. *Schaffer v. Weast*, supra, 34 C.F.R. §300.127.
5. Petitioner's claims regarding attorney's fees and alleged violations of the Family Educational Rights and Privacy Act are outside the jurisdiction of a special education hearing officer in Texas. See, 34 C.F.R. § 99.22; 19 Tex. Admin. Code § 89.1185 (m) (n).
6. Petitioner's compensatory relief is an equitable remedy that is reasonably calculated to provide the educational benefits that likely would have accrued from the services M. was denied by the school district and may be provided in the form of adult education. See, *Reid v. Dist. of Columbia*, 401 F. 3d 516, 524-525 (D.C. Cir. 2005); *Alexandra N. v. DeSoto Ind. Sch. Dist.*, 2005 U.S. Dist. LEXIS 15122 (N.D. Tex. 2005).

## ORDERS

Based upon the foregoing findings of fact and conclusions of law, and upon review of the record in this case, it is hereby ORDERED that the Respondent school district shall, within 20 business days from the date the school district receives this Order, or by other mutual agreement of the parties, do the following:

1. Consult with the Texas Education Agency (and/or through its Regional Educational Resource Service Center) in order to identify and refer and her family to appropriate state governmental agencies under the Memorandum of Understanding and Coordination of Services to Disabled Persons, 19 Tex. Admin. Code § 89.110, to determine services that may be appropriate and available to through those agencies;
2. Arrange and provide an opportunity to conduct a functional vocational assessment of ;

It is further ORDERED that the Respondent school district shall, within 60 business days from the date the school district receives this Order, or by other mutual agreement of the parties, do the following:

1. Convene an Admission, Review & Dismissal Committee (ARD) for the purpose of reviewing the results of the functional vocational assessment and the speech/language assessment conducted by Sandra White.
2. Consult with representatives from local community colleges and/or technical programs in the relevant geographic area and invite those representatives to the ARD meeting for the purpose of securing information about the availability of age appropriate instructional environments for M. If representatives from local community college and/or technical programs are not able to attend the ARD, the school district shall consult with those representatives and secure that information to present to the ARD Committee;
3. Revise IEP to specifically address and integrate the recommendations of the functional vocational assessment and of representatives from local community colleges and/or technical programs, with the provision of related services of counseling and speech/language therapy as recommended by Dr. and Sandra White.
4. Implement the revised IEP for the 2006-2007 school year.

It is further ORDERED that Petitioner and her parents shall cooperate with the Respondent school district in complying with these Orders.

All other relief not specifically stated herein is DENIED.

SIGNED the 1st day of June 2006

/s/ Ann Vevier Lockwood  
Ann Vevier Lockwood  
Special Education Hearing Officer

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# DOCKET NO. 050-SE-1105

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION  
HEARING OFFICER  
FOR THE STATE OF TEXAS  
ALLEN INDEPENDENT  
SCHOOL DISTRICT  
RESPONDENT

## SYNOPSIS OF DECISION

- ISSUE:** Whether school district provided year old student with a free, appropriate public education when student returned to school district post-high school graduation. Student identified as student with.
- CITATION:** 34 C.F.R. §§ 300.344, 300.347; 19 Tex. Admin. Code §§ 1055 (g) and 89.1100.
- HELD:** For the student. Although student made some progress on academic IEP goals student's vocational, social, and speech/language needs were not adequately addressed in program that consisted of one-on-one instruction on high school campus with vocational exploration class at local church work site. School district did not consider or conduct a functional vocational assessment, the availability of age appropriate instructional environments or referral to a governmental agency in order to develop student's IEP or to integrate those features into student's educational program or placement.
- ISSUE:** Whether school district identified student as student with.
- CITATION:** 34 C.F.R. §§ 300.533, 300.536; Tex. Educ. Code § 29.004; 19 Tex. Admin. Code § 89.1151 (c).
- HELD:** For the school district. Any claims that identification of those disabilities should have occurred at earlier point in student's educational history were barred by applicable one year statute of limitations period. School district

responded in timely manner to parental requests for those assessments and the assessments were completed within the requisite time period. Student did not meet burden of proof that school district was dilatory in that regard.

**ISSUE:** Whether school personnel were properly qualified within the meaning of the IDEIA and implementing state and federal regulations.

**CITATION:** 34 C.F.R. § 300.23; 19 Tex. Admin. Code § 89.1131.

**HELD:** For the school district. Student did not meet her burden of proof on this issue. School personnel were properly licensed and certified under state law.

**ISSUE:** Whether school district violated confidentiality provisions of IDEIA.

**CITATION:** 34 C.F.R. § 300.127; *Schaffer v. Weast*, 126 S. Ct. 163 (2005).

**HELD:** For the school district. Student did not meet her burden of proof on this issue.

**ISSUE:** Whether Petitioner's claims that school district violated provisions of Family Educational Rights and Privacy Act (FERPA) and for attorney's fees are outside the jurisdiction of a special education hearing officer in Texas.

**CITATION:** 34 C.F.R. § 99.22; 19 Tex. Admin. Code § 89.1185 (m)(n).

**HELD:** For the school district. Complaints regarding violations of FERPA resolved through FERPA's own statutory provisions and not under IDEIA. Special education hearing officers in Texas have no jurisdiction over FERPA claims or for attorney's fees.

**ISSUE:** Whether Petitioner's claims for compensatory relief are limited to no more than one year of prospective relief.

**CITATION:** See, *Reid v. Dist. of Columbia*, 401 F. 3d 516, 524-525 (D.C. Cir. 2005) *Alexandra N. v. DeSoto Ind. Sch. Dist.*, 2005 U.S. Dist. LEXIS 15122 (N.D. Tex. 2005); 19 Tex. Admin. Code § 89.1170 (b) ("The hearing officer has the authority to ... make any other orders as justice requires ...").

**HELD:** For the school district in part and for the student in part. Compensatory relief is an equitable remedy that is reasonably calculated to provide the educational benefits that likely would have accrued from the services denied to the student. The relief ordered correlates to the services that should have been provided to student for previous school year.