

***, B/N/F	§	BEFORE A SPECIAL EDUCATION
***	§	
PETITIONER	§	
	§	
VS.	§	HEARING OFFICER
	§	
RIO HONDO INDEPENDENT	§	
SCHOOL DISTRICT	§	
RESPONDENT	§	FOR THE STATE OF TEXAS

FINAL DECISION OF THE HEARING OFFICER  
STATEMENT OF THE CASE

Petitioner, \*\*\*, by this next friend, \*\*\* (hereinafter Student or \*\*\*) brings this proceeding against Respondent Rio Hondo Independent School District (hereinafter RHISD or District) under the Individuals with Disabilities Education Act (hereinafter IDEA), 20 U.S.C. § 1400 *et seq.*

Petitioner alleges that Respondent denied him a free appropriate public education during the 2004-2005 and 2005-2006 school years based on the following claims:

1. Respondent failed to provide \*\*\* an appropriate reading program.
2. Respondent failed to accommodate \*\*\* Other Health Impairment (OHI) by counting him absent during numerous doctor visits and days he was sick.
3. Respondent failed to identify learning disabilities in the areas of reading and math.
4. Respondent failed to provide appropriate speech therapy for \*\*\*.

As relief, Petitioner seeks an assessment for learning disabilities and for an appropriate reading program, accommodations for \*\*\* OHI conditions, compensatory speech therapy, and one year compensatory services in the form of tutoring, individualized instruction, or a summer program.

PROCEDURAL HISTORY

Petitioner filed his request for a due process proceeding on June 13, 2005. Petitioner was represented by Christopher Jonas of Corpus Christi, Texas. Cynthia Buechler, with the Austin firm of Buechler & Associates, represented Respondent.

This proceeding was originally assigned to the Honorable Lucretia Dillard who contacted the parties in an attempt to schedule a prehearing conference. Due to scheduling conflicts, the Parties were unable to hold a prehearing conference until September 20, 2005. The first available hearing date was October 20, 2005, which extended the Final Decision due date to November 18, 2005. On October 4, 2005, the Parties requested a continuance of the October 20 hearing because Respondent had not received the necessary consent forms from Petitioner. The hearing was rescheduled for November 28, 2005, and the due date for the Final Decision was extended to December 30, 2005.

The Petitioner requested a continuance of the November 28 hearing date due to his attorney's health problems. The hearing was reset for January 24, 2006. On January 22, 2006, Petitioner requested a continuance of the January 24 hearing because his expert witness was unavailable. The hearing was rescheduled for April 13, 2006. The April 13, 2006 hearing was also rescheduled due to Petitioner's attorney's health problems.

In May 2006, due to scheduling conflicts with previous engagements, the Honorable Lucretia Dillard requested that the Texas Education Agency reassign this proceeding to another hearing officer. On June 16, the undersigned Hearing Officer was assigned to this proceeding. The hearing was rescheduled for August 11, 2006.

The due process hearing was held on August 11, 2006. Taking continuances into account, the deadline for the final decision was September 11, 2006. The Hearing Officer issued her decision on September 9, 2006.

#### FINDINGS OF FACT

1. \*\*\* is a \*\*\* year old student residing within the Rio Hondo Independent School District. RHISD is a political subdivision of the State of Texas and a duly incorporated independent school district. \*\*\* qualifies for special education services as a student with a Speech Impairment and Other Health Impairment. (Petitioner's Exhibit [PE]-4).
2. \*\*\* attends all regular education classes. In the 2003-2004 school years, \*\*\* passed all areas of his \*\*\* grade Texas Assessment of Knowledge and Skills (TAKS). During the 2004-2005 school year when \*\*\* was in \*\*\* grade, he attended regular education classes.
3. During the 2003-2004 school year, \*\*\* was to receive a total of 45 minutes of speech therapy per week which included 15 minutes of make-up time. In May 2004 and August 2004, the Admissions, Review, and Dismissal Committee (hereinafter ARDC or ARD Committee) provided for 50 minutes of Speech Therapy per week which included the make-up time. (PE-5, 8, 11).
4. During the November 2004 ARD meeting, it was determined that due to a misunderstanding over his therapy time, \*\*\* was not provided a full 50 minutes of therapy. The

Committee agreed to provide and did provide the therapy time \*\*\* had missed and continued to provide \*\*\* with 50 minutes of speech therapy per week, which included an additional 5 minutes of make-up time, bringing the total compensatory time to 20 minutes per therapy session. This was evident when the Committee agreed to make up lost therapy time. (PE-4).



5. \*\*\* passed all his \*\*\* grade classes in the 2003-2004 school year, passed all areas of the TAKS testing, and showed no signs of having learning disabilities. During the 2004-2005 school year, RHISD had no reason to suspect that \*\*\* had a learning disability in reading and that additional special education services were needed to address these disabilities.

6. In November 2004, \*\*\* was placed in Homebound Services. Following his \*\*\* surgery in one year, \*\*\* doctor and parents believed that his \*\*\* surgeries and his reoccurring medical problems necessitated this placement. The ARD Committee agreed with the recommendation and provided Homebound Services from November \*\*\* through the end of the school year, May \*\*\*. (PE-5).

7. The last Full and Individual Evaluation conducted was in May 2004 which included a speech assessment. The FIE recommended 30 minutes of speech therapy, but the ARD Committee agreed to provide 50 minutes of therapy per year which included make-up time for missed therapy.

8. In May 2005, the ARD Committee met to plan \*\*\* 2005-2006 \*\*\* grade school year. \*\*\* was placed in regular education classes and was provided with 45 minutes of speech therapy per week. A new speech assessment was not conducted when \*\*\* mastered only \*\*\* of the 7 speech goals. The Committee, however, decreased his therapy time. \*\*\* parents did not agree with the ARD's recommendation concerning speech therapy and accommodations for missed work. (PE-4).

9. During the 2004-2005 and 2005-2006 \*\*\*, and his extracurricular activities. Based on his report cards for these two years, \*\*\* missed anywhere from 13 to 47 school days. The pattern of his absences shows that \*\*\* misses certain classes more often than others. The number of full days \*\*\* actually missed is relatively low; though he did consistently miss certain class periods. (Respondent Exhibit [RE-]-7, 8, 9, 11).

10. On October 18, 2005, \*\*\* parent received a warning that \*\*\* was not in compliance with the compulsory attendance law. There was no adverse action taken against \*\*\* or his parents for his excessive absences. He received course credit for all his courses and is allowed to participate in school-related activities. No accommodations are needed to address \*\*\* OHI related absences.

11. The documents show that \*\*\* has difficulties completing his class work when he is absent, but a large percent of these absences could be avoided by limiting the non-illness related absences. If \*\*\* chooses to miss class for volunteer work or school-related activities, he is responsible for making up the work. No additional accommodations need to be provided for excessive absences.

12. In May 2006, after this hearing was filed, the ARD Committee met to plan his 2006-2007 school year. In addition to placing \*\*\* in regular education classes, the Committee provided 50 minutes of speech per week. There was no evidence that any of the 50 minutes included make-

up time. Although the ARD Committee found that \*\*\* had mastered \*\*\* of 7 goals, there was no credible evidence showing \*\*\* mastered \*\*\* of 7 goals.

13. There was no evidence showing that \*\*\* needed a reading assessment or that he experienced difficulties in reading. \*\*\* did not pass all areas of his \*\*\* grade TAKS, but this fact alone, in light of his previous successful TAKS and completion of his course credits for two previous years is insufficient reason to find that the District should have evaluated \*\*\*.

14. There is no evidence to suggest that the District failed to provide \*\*\* with an appropriate reading program.

15. Prior to the filing of this hearing request, RHISD had no reason to suspect that \*\*\* had a learning disability in reading. Although \*\*\* speech program had goals relating to reading, this goal was for fluency in reading and not for learning to read.

16. At the end of Petitioner's case, Petitioner voluntarily withdrew his complaint that the school should have evaluated him for a learning disability in math.

## DISCUSSION

### A. Standard of Review

The United States Supreme Court established a two-prong test for determining whether a school district provided a free appropriate public education. The first inquiry is whether the district has complied with IDEA procedural requirements. The second inquiry is whether the student's education program is reasonably calculated to confer an educational benefit. *Board of Education of Hendricks Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982).

Because IDEA does not provide a substantive standard defining the precise level of education required to provide a free appropriate public education, courts have defined the required education as "personalized instruction with sufficient services to permit the child to benefit educationally from that instruction." The educational benefit that an IEP is designed to achieve must be meaningful and likely to produce progress, rather than regression or trivial educational advancement. Although the educational benefit must be meaningful, schools are not required to maximize a child's potential or provide the best program. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3rd 245 (5th Cir 1997); cert. denied, 522 U.S. 1047 (1998).

The Fifth Circuit further delineated four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite educational benefits: 1) Is the educational program individualized on the basis of the student's assessment and performance; 2) Is the program administered in the least restrictive environment; 3) Are the services provided in a

coordinated and collaborative manner by the key stakeholders; and 4) Are positive academic and non-academic benefits demonstrated? *Id.* at 253.

## B. Identification of a Learning Disability

IDEA imposes an obligation on school districts to identify, locate, and evaluate all children with disabilities, who are in need of special education services, a so-called “child find” duty. A district’s duty to identify a child for IDEA special education eligibility is formulated in terms of a two-part analysis. The duty is triggered when the district has reason to suspect a disability and reason to suspect that special education services may be needed to address that disability. *Davonne B. V. Houston ISD*, No. 327-SE-596 (Texas H.O. Dec’n, 5/2/97). The “child find” duty arises with the district’s knowledge of facts tending to establish a “suspected” disability and need for special education services. In light of this duty, the issue is whether RHISD’s knowledge during the two relevant school years should have triggered a referral for IDEA assessment during this time period. The Hearing Officer’s obligation is not to determine whether MA would have been eligible during the two relevant school years, but rather, whether RHISD was on notice of a suspected eligibility and educational need in reading.

I find that the RHISD had no reason to suspect a reading disability and a consequent need of special education services. \*\*\* did have difficulties in reading, but the credible evidence establishes that his difficulties related more to his excessive absences than to a learning disability. Based on \*\*\* past school performance, RHISD had no factual bases to suspect a reading disability.

## C. Speech Program

Petitioner claims that RHISD decreased the time for his speech therapy without conducting an assessment or evaluation. Petitioner claims the therapy was reduced from 45 minutes to 30 minutes per week. RHISD claims that Petitioner’s speech therapy was for 30 minutes with an additional 15 minutes (for 2004-2005) and 20 minutes (for 2005-2006) for make-up sessions.

Upon reviewing the ARD documents dating back to the 2003-2004 school year, along with records showing the missed therapy time, I find that in 2003, \*\*\* was provided 30 minutes of speech therapy per week coupled with an additional 15 minutes of make-up time. In the 2004-2005 school year, \*\*\* was again provided 30 minutes of time, but the ARD Committee increased his compensatory time from 15 minutes to 20 minutes because \*\*\* needed to complete his make-up sessions.

In May 2005, the ARD Committee and the Parent disagreed over speech therapy time. The Parent was under the mistaken belief that \*\*\* was entitled to 50 minutes of therapy and that the Committee was reducing this amount without a basis for the decision. Under the circumstances of this case, no additional assessments were required.

## CONCLUSIONS OF LAW

1. Rio Hondo Independent School District (RHISD) is an independent school district duly constituted in and by the State of Texas, and is subject to the requirements of IDEA, 20 U.S.C. §1401, and its implementing federal and state regulations.
2. Residing within RHISD, Petitioner is currently eligible for special education services under the classifications of Speech Impairment and Other Health Impairment. 20 U.S.C. §1401; 34 C.F.R. §300.7(c)(9, 11).
3. Petitioner failed to carry his burden showing Respondent provided \*\*\* an inappropriate speech program. *Board of Education of Hendricks Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982).
4. Respondent had no reason to suspect the presence of a suspected IDEA disability and consequent educational need.
5. Petitioner failed to carry his burden to show his need for additional OHI accommodations.

## ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, this Hearing Officer hereby ORDERS that all relief sought by Petitioner is hereby DENIED.

Finding that the public welfare requires the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

SIGNED and ENTERED this 9<sup>th</sup> day of September 2006.

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Olivia B. Ruiz  
Special Education Hearing Officer

### **Notice to the Parties**

Under State Board of Education Rules, it is no longer necessary for a Party to perfect an appeal to state district court by filing a Motion for Rehearing. However, either Party may request, within ten days after the date of this Decision, specified additional or amended findings of fact or conclusions of law. 19 Tex. Admin. Code §157.8(n, o).



No. 348-SE-0605

\*\*\*, B/N/F

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PETITIONER

VS.

RIO HONDO INDEPENDENT  
SCHOOL DISTRICT

RESPONDENT

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER

FOR THE STATE OF TEXAS

SYNOPSIS

Issue: Whether Respondent failed to provide an appropriate reading program.  
Held: For Respondent. Petitioner failed to present any evidence concerning the appropriateness of his reading program.

34 C.F.R. §300.125 & 300.300

Issue: Whether Respondent failed to accommodate \*\*\* Other Health Impairment (OHI) by counting him absent during numerous doctor visits and days he was sick.  
Held: For Respondent. Petitioner failed to show he needed additional accommodations for his OHI eligibility.

34 C.F.R. §§300.300-300.313

Issue: Whether Respondent failed to identify a learning disabilities in the area of reading.  
Held: For Respondent. Respondent had no of facts tending to establish a “suspected” disability and need for special education services.

34 C.F.R. §§ 300.128 & 300.220

Issue: Whether Respondent failed to provide \*\*\* appropriate speech services.  
Held: For Respondent. Respondent provided \*\*\* with the necessary time to implement his speech program as approved by the ARD.

34 C.F.R. §§ 300.343(c)