

Student b/n/f Parent	§	SPECIAL EDUCATION
PETITIONER	§	
	§	
VS.	§	HEARING OFFICER
	§	
BAY AREA CHARTER SCHOOL,	§	
RESPONDENT	§	STATE OF TEXAS

DECISION OF HEARING OFFICER

This matter was presented to this Hearing Officer after Parent, the parent of the child, filed for a Due Process Hearing pursuant to the Individuals with Disabilities Education Act (“IDEA04”), 20 U.S.C. §1400 et.seq., on May 30, 2007.

On the 18th day of October, 2007, the petitioner and the respondent appeared at the Bay Area Charter School campus for a Due Process Hearing pursuant to IDEA04, and the hearing concluded on the same date.

Parent, the parent of STUDENT, (“the petitioner”) appeared in person and Pro Se, and announced ready.

Bay Area Charter School (“the respondent”) appeared Pro Se through its district representatives, Dr. ** (the superintendent) and ** (the elementary campus principal), and announced ready.

Issues Raised and Relief Sought

The petitioner raised three issues/complaints about the district in the Prehearing Conference held on June 20, 2007. More specifically, the petitioner alleges:

1. The district held an Admissions, Review, Decision (“ARD”) Committee meeting in 2004 knowing the parent was unable to attend;
2. The ARD Committee’s decision regarding compensatory services for the child were not appropriate; and
3. The district failed to comply with the requirement to send home paperwork regarding the child in Spanish, since the petitioner alleges the Spanish which she did receive was not understandable.

The petitioner sought the following relief from the outcome of the Due Process Hearing:

1. An order requiring the district to provide compensatory services in the areas of Mathematics and English.

The hearing began on October 18, 2007 and concluded on the same date. After hearing the testimony of the witnesses presented, reviewing the exhibits from both parties which were admitted into evidence, and weighing such evidence in light of current law, the relief requested from the petitioner is hereby DENIED.

HELD, for the respondent.

Findings of Fact

1. The parties each agree that the child is a ** grade student eligible for special education services under IDEA04 based upon his disability, Other Health Impaired – Attention Deficit Hyperactivity Disorder (“ADHD”). (See, Petitioner’s Exhibit #7, 23).
2. The child began attending school at Bay Area Charter School in the year 1999 for ** (See, Respondent’s Exhibit #2). The child later briefly enrolled in Clear Creek ISD due to transportation issues (See, Trial transcript, pp. 16-17)

but later transferred back to Bay Area Charter School in 2002. (See, Respondent's Exhibit #2).

3. The child was not enrolled in the Special Education program when transferred into Bay Area Charter School, and thus was not a special education student at Bay Area Charter School at that time. (See, Trial transcript, pp. 104-105).
4. The parent notified the school in 2002 that the child had behavioral problems. (See, Petitioner's Exhibits #2-3; Trial transcript, pp. 59, 61-62, 77).
5. The district made accommodations for the child so as to assist with any behavioral issues, but the child was not placed into the special education program. (See, Trial transcript, pp. 104-105).
6. The parent obtained a private evaluation of the child which showed the child eligible for special education services. (See, Petitioner's Exhibits #2-3). The parent alleges she shared that evaluation with the district (See, Trial transcript, pp. 59, 77), and the district denies it received the evaluation. (See, Trial transcript, p. 59).
7. In 2004, the district began the evaluation process to determine if the child was eligible for special education services. (See, Trial transcript, pp. 78, 84-85; 104-105). The district never finished the evaluation, and in December 2004 the parent removed the child from Bay Area Charter School and enrolled the child into the Clear Creek ISD, where the child remains enrolled to this date.
8. The parent filed a complaint with the Texas Education Agency ("TEA") which was filed under TEA Complaint No. 2005-0404. (See, Trial transcript, p. 87). The result of the complaint was an Order issued by the TEA which

awarded the child compensatory services and ordered Bay Area Charter School to convene an ARD Committee meeting to schedule the child compensatory services. (See, Trial transcript, pp. 105).

9. The district scheduled an ARD Committee meeting which included input from Bay Area Charter School personnel and from Clear Creek ISD personnel. (See, Trial transcript, pp. 105). The district initially checked with the parent to schedule a convenient date and time for the ARD Committee meeting, but the parent refused to attend due to the fact the district was going to have its attorney present at the meeting. (See, Petitioner's Exhibit #50; Trial transcript, pp. 45-47, 88).
10. The parent did not attend, but the ARD Committee meeting occurred in December 2006 and compensatory services were scheduled for the child, as per the TEA order. (See, Petitioner's Exhibit #55-62).
11. The parent speaks both English and Spanish but is more comfortable communicating in Spanish. (See, Trial transcript, pp. 53-54, 86). The parent never notified the district either orally or in writing that she failed to adequately understand English, and she never notified the district either orally or in writing that she needed an interpreter present at meetings. (See, Trial transcript, pp. 89-90).
12. From 2003 to the present, the child's scores on the Texas state assessments have continued to show progress. (See, Respondent's Exhibit #11-12).
13. In the May 2007, the petitioner filed this complaint with the TEA, raising the issues and relief listed above.

DISCUSSION - APPLICATION OF FACTS AND LAW

Petitioner's Issue No. 1 – The district held an ARD Committee meeting in 2004 knowing the parent was unable to attend.

The petitioner complains that the district held an ARD Committee meeting in 2004 knowing she was unable to attend. Such an allegation, if accurate, would amount to a procedural violation of the IDEA04. However, the Statute of Limitations in Texas is one year. 19 TAC §89.1151(c). This case was filed and received by the Texas Education Agency on May 24, 2007, therefore any violations of IDEA04 prior to May 24, 2006 are barred as a matter of law. Furthermore, no evidence was presented in this hearing that would demonstrate that the district held an ARD Committee meeting in the year 2004 where the parent was not in attendance.

A possibility exists that during the June 20, 2007 Prehearing Conference where the issues were presented by the petitioner to the district and to this hearing officer, the petitioner may have inadvertently stated this particular ARD Committee meeting occurred in 2004 when in reality she meant to say 2006. This hearing officer will make that assumption since only one ARD Committee meeting was held in the year 2006 involving Bay Area Charter School. This ARD Committee meeting was convened on December 15, 2006 as ordered by the Texas Education Agency, and this meeting falls well within the Statute of Limitations. The question remains whether or not the district held this ARD Committee meeting knowing the parent was unable to attend, thus violating the provisions of IDEA04.

Federal law states that “a decision by a hearing officer shall be made on substantive grounds based on a determination of whether the child received a free appropriate public education.” **20 U.S.C. §1415(f)(3)(E)(i)**. “In matters alleging a procedural violation, a hearing officer may find that a child did not receive a free appropriate public education only if the procedural inadequacies – (I) impeded the child’s right to a free appropriate public education; (II) significantly impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child; or (III) caused a deprivation of educational benefits.” **20 U.S.C. §1415(f)(3)(E)(ii)**. In this case, no procedural violation was committed by the district.

Dr. ** testified that the district attempted to coordinate a convenient date for the parent to attend this ARD Committee meeting, even though the child was enrolled in Clear Creek ISD and had not been enrolled in Bay Area Charter School since 2004. (See, Trial transcript, p. 104). The parent testified that she had originally indicated she would attend the ARD Committee meeting. (See, Trial transcript, p. 45). Sometime after this conversation, the parent notified the district she would not be attending the ARD Committee meeting since the district planned on having its counsel present. (See, Petitioner’s Exhibit #50, Trial transcript, p. 88). Because this meeting was mandated by the TEA, Bay Area Charter School proceeded to hold the meeting without the parent in attendance. (See, Petitioner’s Exhibits #55-62).

The parent has alleged the district held this ARD Committee meeting knowing the parent could not attend. The evidence presented in this case indicates the district held this ARD Committee meeting because the parent refused to attend. The parent had every

opportunity to attend the hearing but made the voluntary choice to abstain from attending. The petitioner has failed to meet her burden and this allegation must fail.

Petitioner's Issue No. 2 - The ARD Committee's decision regarding compensatory services for the child were not appropriate.

The petitioner alleges the compensatory services awarded by the ARD Committee in December 2006 were not appropriate. No evidence was presented at all by any witness as to whether or not the compensatory services awarded to the child in that ARD Committee meeting were appropriate. The petitioner failed to meet her burden and this allegation must fail.

Petitioner's Issue No. 3 - The district failed to comply with the requirement to send home paperwork regarding the child in Spanish, since the petitioner alleges the Spanish which she did receive was not understandable.

The petitioner alleges the district failed to comply with the requirement to send home documentation regarding the child in the Spanish language, since the paperwork sent to her in Spanish was not completely understandable. There was no evidence presented that such a requirement to send home paperwork in Spanish even existed. The petitioner herself testified that no such requirement existed. (See, Trial transcript, p. 92). The petitioner failed to meet her burden and this allegation must fail.

Conclusions of Law

1. The child is a student eligible for special education and related services under the provisions of IDEA04, and its related statutes and regulations.
2. Bay Area Charter School is the local education agency responsible for the providing the child with the free appropriate public education pursuant to

IDEA04, and is a legally constituted independent school district operating as a political subdivision of the State of Texas.

3. This hearing officer has jurisdiction over this matter.
4. The district did not commit a procedural violation by holding the December 15, 2006 ARD Committee meeting when the parent refused to attend.
5. The petitioner failed to meet her burden of proof that the ARD Committee's decision regarding compensatory services for the child reached on December 15, 2006 were not appropriate.
6. The petitioner failed to meet her burden of proof that the district failed to comply with the requirement to send home paperwork regarding the child in Spanish, since the evidence presented made it clear that no such requirement existed.

ORDER

Based upon a preponderance of the evidence and the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the relief requested by the petitioner is DENIED.

SIGNED this 31st day of October, 2007.

Tomas Ramirez III,
Special Education Hearing Officer

Statutes and Regulations Cited

20 U.S.C. §1400 et.seq.
19 TAC §89.1151(c)

TEA DOCKET NO: 281-SE-0507

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SYNOPSIS

ISSUE: Whether district violated the parent’s right to attend an ARD Committee meeting in December 2006 by holding the meeting knowing the parent could not attend.

HELD: For Respondent.

ISSUE: Whether the December 2006 ARD Committee’s decision regarding compensatory services for the child was appropriate.

HELD: For Respondent.

ISSUE: Whether the district failed to comply with the requirement to send home documentation on the child in Spanish that was understandable.

HELD: For Respondent.