

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

STUDENT, bnf

Parent,

Petitioner,

v.

HOUSTON INDEPENDENT

SCHOOL DISTRICT,

Respondent.

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DOCKET NO. 099-SE-0108

DECISION OF THE HEARING OFFICER

Procedural History

Petitioner, Student (“Petitioner,” or “Student”) brings this action against the Houston Independent School District (“Respondent,” “the school district,” or, “HISD”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

Student was initially represented in this case pro se by his mother, Parent. The school district has been represented throughout this litigation by its legal counsel Hans Graff, Assistant General Counsel for HISD. On January 31, 2008 Mr. Graff notified the hearing officer that Parent had apparently withdrawn Student from his current HISD campus. School district efforts to communicate directly with Parent and to set up a Resolution Session had not been successful.

The hearing officer contacted the parent by phone on February 6, 2008 who confirmed that she withdrew Student from HISD and was in the process of moving. During the phone conference Parent notified the hearing officer that Petitioner would be represented by legal counsel. On February 11, 2008 Robert Collier of Collier, Hudson submitted a letter of representation on Petitioner’s behalf.

A prehearing telephone conference was conducted with Mr. Collier and Mr. Graff on February 16, 2008. The parties identified the issues and items of requested relief. The hearing officer made a number of preliminary rulings dismissing Petitioner’s claims arising under Section 504 of the Rehabilitation Act of 1973 and Section 1983 of the Civil Rights Act. The parties agreed to conduct informal settlement negotiations and to continue and reset the due process hearing. The jurisdictional issues were formally dismissed in the First Interim Order and Revised Scheduling Order issued on February 16, 2008. Petitioner’s Request to Amend his Complaint was denied on March 4, 2008.

On March 18, 2008 Rabeea Sultan of The Sultan Law Firm substituted in as Petitioner’s counsel and represented Petitioner throughout the remainder of this litigation. Questions subsequently arose over Student’s enrollment in another public school district and settlement negotiations stalled. By March 26, 2008 both parties confirmed there was no prospect of a settlement and

agreed on the need to proceed to hearing. A prehearing telephone conference with counsel was conducted on April 2, 2008 to review and discuss hearing procedures. A due process hearing was conducted in this case on April 7-8, 2008. Both parties were represented by their counsel. The Decision of the Hearing Officer was due May 2, 2008 but extended until May 9, 2008 due to a computer malfunction for the Hearing Officer.

Issues

The issues for decision in this case are:

1. Whether the school district should have identified Student as a student with a disability for purposes of special education services under the Individuals with Disabilities Education Act (IDEA); specifically, whether Student should have been identified as a student with autism, Other Health Impairment, Speech Impairment and/or Learning Disabilities within the meaning of IDEA;
2. Whether the school district failed to conduct a Full Individual Evaluation (FIE) within the meaning of IDEA in a timely manner;
3. Whether the school district has the legal responsibility to conduct an FIE given Student's withdrawal from the school district and enrollment in another school district in January 2008; and,
4. Whether Petitioner's requests for moving expenses, medical expenses, and monetary damages are forms of compensatory relief available as a remedy under the IDEA.

Requested Relief

Petitioner requested the following items of relief:

1. The school district conduct an FIE to assess Student in all areas of suspected disability, including autism, Other Health Impairment, Speech Impairment and Learning Disabilities in order to determine his eligibility under IDEA for special education services;
2. Convene an Admission, Review & Dismissal Committee (ARD) meeting for the purpose of designing an Individual Educational Plan (IEP) for Student based upon the results and recommendations of the FIE;
3. Compensatory relief for failure to identify Student and failure to provide appropriate special education services, in the form of out of pocket expenses incurred by Student's mother including, moving expenses, attorney's fees, medical expenses (specifically, for those expenses arising from care and treatment provided by

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Student's psychiatrist Dr. **);

4. Unspecified monetary damages as compensatory relief for failure to timely identify Student and failure to provide special education services.

Findings of Fact

1. Student attended ** School for ** during the 2006-2007 school year and for ** grade during the current school year until his mother withdrew him from HISD on January 31, 2008. As of the date of the due process hearing Student was enrolled and attending school in the Conroe Independent School District (Conroe ISD). Conroe ISD was in the process of conducting an initial evaluation for special education services at the time of the hearing.

2. Student has a history of academic, communication and behavioral issues beginning at age ** when he was in ** class at ** School. Student's ** teacher, **, became concerned about Student's ability to communicate clearly. She conferred with the Assistant Principal, her grade level chair, and the speech therapist assigned to the campus about her concerns. She implemented various intervention strategies at their suggestion but they were not particularly successful. Although she characterized Student's skills in such ** activities as coloring, cutting, pasting, and in other fine motor activities as "below average" she also felt he might simply need more time to develop as he was a young child in his ** year of school.

3. However, by the second semester, the ** teacher continued to have difficulty understanding Student and initiated a speech referral process. She discussed the need for a speech referral with Student's mother who agreed and signed the requisite consent forms. The ** teacher submitted the speech referral to the Assistant Principal at **. However, the ** teacher also told Student's mother that the school district might not conduct an evaluation until he was in ** because he was so young and the speech deficit could simply be the result of a developmental issue that he would outgrow.

4. Over the summer the attendance boundaries for ** School were re-drawn and Student was re-zoned for ** School. He began ** at ** School in the fall. For the first five-six weeks of ** his teacher was **. The teacher, **, also initiated a speech referral for Student but left his teaching position at ** after the first grading period. ** was reassigned to take over as the ** teacher. ** did not feel the need to follow through on the speech referral because she felt she could understand Student's speech well enough.

5. Student performed "below average" when compared to his peers academically throughout his ** year. The ** teacher conducted both a math and language arts assessment three times a year and found that Student had not mastered ** grade level skills such as letter and number recognition, basic counting, sequencing a story, following directions, completing assignments, and had difficulty comprehending a short story read aloud. She also observed that he often wrote backwards and had a short attention span (both common in children his age). In **, Student

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engaged in inappropriate behaviors such as speaking out of turn, pushing in line, and, difficulty following directions. The teacher implemented some corrective consequences and proactive behavioral strategies and by November his behavior had improved.

6. However, by mid-February (the third six weeks of **) the ** teacher was concerned enough about Student's lack of academic progress to note on his progress report that she was considering recommending he be retained in ** if there was no "major improvement." By the end of ** Student had not demonstrated the academic improvement the teacher hoped for. It was her erroneous belief that school district policy prohibited a special education referral in ** and that the only approved referral in ** was for speech.

7. The ** teacher also was not aware that HISD can and does provide special education services to eligible ** students. She was also unsure as to whether a referral would be appropriate for Student given his age because young children often show growth and improvement over the summer. She therefore decided not to recommend retention in ** and believed he could be evaluated in ** grade for special education and provided with opportunities for support and special services as a ** grader.

8. Student's ** grade teacher, **, had 23 years of teaching experience. She taught every grade from 1st through 8th and has served as both a math and a reading specialist. She had been at ** since 2000 teaching first, third and Title I reading classes. She recognized almost immediately that Student performed below grade level and exhibited some extreme behaviors. He was frequently out of his seat, had difficulty paying attention, was very active in the classroom, and engaged in occasional fighting with peers. He often bothered other children who were working, threw crayons and pencils, crawled around on the floor under his seat, and failed to complete assignments. She tried changing his seat and using other behavioral interventions but his disruptive behaviors continued -- he got out of his seat, talked and sang at inappropriate times, had frequent outbursts, and threw crayons and pencils. He was frequently off task, failed to complete work and left the classroom without permission.

9. The teacher attempted a number of interventions. For example, once a week she kept the lowest performing students, including Student, in class for additional instruction while the remaining students went out. Although 1:1 instruction seemed to be of some benefit, Student had difficulty remembering what had been taught, poor listening comprehension, and did not participate in reading activities -- she characterized him as a "non-reader." Although there were a few other "non-readers" in her ** grade class Student was about the lowest performer and was failing ** grade. His handwriting was not legible and he was unable to transfer blackboard lessons to his notebook.

10. Student's behavior in ** grade became so problematic that it became necessary for the Dean of Instruction to frequently remove Student temporarily from the classroom. In addition, the Behavioral Adjustment Class teacher and aide were both called upon to temporarily remove Student from class. In sum, the ** grade teacher concluded that regular ** grade was "a little too

much for him” and that he needed some additional help beyond what could be provided in the regular classroom. She discussed the need to have Student evaluated with his mother who agreed.

11. By this time, Student’s mother had engaged the services of a private speech/language therapist and by the date of the hearing Student had been receiving private speech/language therapy for about a year and a half. The private speech/language therapist diagnosed Student with an expressive and receptive speech/language disorder and articulation disorder. The therapist worked with Student for about six months when she concluded that Student had some behavioral issues that needed to be addressed and recommended that Student’s mother have him evaluated by a psychologist or psychiatrist.

12. In addition, the therapist obtained consent from Student’s mother to notify the school district of her concerns. The therapist contacted the ** counselor by telephone in early September 2007. She shared her observations about Student’s language and behavioral development and urged the school district to conduct an evaluation. The ** counselor assured the therapist that the school district planned to initiate a full evaluation beginning with taking a parent history and conducting a vision and hearing screening. By November 2007 neither Student’s mother nor the therapist had received any word back from the school district about the status of the requested evaluation. The therapist wrote a letter to the staff at ** again urging that he be evaluated.

13. By October 4, 2007 the ** grade teacher submitted her concerns about Student to the Intervention Assistance Team (IAT). The IAT is a mechanism to support and assist teaching staff in coping with children exhibiting difficulty in the regular classroom and served as conduit for the special education referral process on the ** campus. The team is composed of several teachers at the ** campus along with other school staff such as an administrator, counselor and/or evaluation specialist. The IAT brainstorms with the teacher and designs interventions and strategies for the teacher to try in addressing academic and behavioral issues.

14. The IAT makes the final decision to refer a student on for special education evaluation. In making a special education referral decision the IAT interacts with the teacher and reviews and compiles the documentation necessary to make the referral decision. Although the IAT serves as a “gatekeeper” for special education referrals, the child’s prior history, severity of a disability, or previous requests for an evaluation can result in a quicker special education referral through the IAT. The IAT first met to discuss Student on October 24, 2007.

15. The IAT discussed Mrs. **’ concerns and recommended that she attempt a number of interventions and give them some period of time to work in order to gauge their effectiveness. The IAT also directed Mrs. ** to document behavioral data to support her concerns in a specific documentary format. In fact, the teacher had already compiled a significant amount of data in a notebook but that was deemed insufficient for purposes of tracking and evaluating his behavior and the impact of intervention strategies. During the month of October 2007 and into November

2007 Student continued to exhibit inappropriate behaviors and was disciplined on a regular basis.

16. The ** grade teacher implemented the intervention strategies and compiled behavioral data as directed but found the strategies were not particularly successful. The ** grade teacher felt that Student should have been evaluated earlier than ** grade based upon her own review of his educational record in **, the results of standardized tests, and two letters from Student's mother requesting an evaluation.

17. The ** principal met with Student's mother to discuss parental concerns about Student's academic and behavioral issues and her request that Student be evaluated. The principal explained the need to go through the IAT process and the need to attempt a variety of recommended strategies and interventions over a long enough period of time to measure their effectiveness before proceeding with a special education referral and evaluation. Student's mother signed a consent form for evaluation on November 11, 2007 although she would have signed one sooner had it been submitted to her. Student's mother was also concerned that Student had been inappropriately treated by some of the staff. The principal conducted an investigation but concluded there was no merit to the allegations and took no further action.

18. A second IAT meeting was conducted on December 5, 2007. The team discovered that the ** grade teacher had not used the correct form for documenting Student's behavior and the teacher's documentation was deemed insufficient for a referral. The team directed the teacher to transfer the data from one form to another in order to ensure objective, accurate data collection. In addition, the team recommended the use of a behavioral contract as a new intervention (although that too ultimately proved unsuccessful). The team wanted to see if Student's behavior was interfering with his learning and if the behavior could be controlled his academics might improve. A third IAT meeting was scheduled for December 20, 2007.

19. However, by December 7, 2007 the evaluation specialist assigned to ** was notified by campus administrators that Student's behavior issues had escalated and deteriorated. She decided to present the information to the CMDT, a multidisciplinary team of evaluation specialists and licensed school psychologists. The CMDT makes the final decision as to whether to proceed with a behavioral evaluation for special education purposes. Based on the information from **, the evaluation specialist recommended to the CMDT that Student be referred for a behavioral assessment for special education without waiting for the next IAT meeting.

20. By the end of 2007, based on recommendations from Student's pediatrician and the speech/language therapist, Student was evaluated by a psychiatrist and began receiving medical services. Student's mother notified the ** grade teacher that the psychiatrist recommended medication for Student but the teacher did not share this information with other ** school staff and did not know whether Student's mother had followed through on the physician's recommendation. ** administrators and evaluation staff did not become aware of the psychiatrist's involvement until January 2008 as a result of this litigation.

21. Student's mother sent another letter to the school district on January 8, 2008 requesting an evaluation unaware that at least the behavioral component of the evaluation had been initiated. On January 14, 2008 the school district hand delivered an invitation to Student's mother to attend a meeting scheduled for January 16, 2008 to discuss an intervention plan while Student went through the evaluation process. On the morning of January 16th, Student's mother telephoned the school to say she would be unable to attend the meeting but offered to stop by and sign whatever consent forms were necessary.

22. In addition, the licensed school psychologist (LSSP) needed to conduct a clinical interview and obtain parental consent in a meeting with Student's mother. The LSSP made several attempts to schedule that meeting but after January 16, 2008 had no further communication with Student's mother. Student's mother did not clearly understand that the evaluation process had begun and misunderstood the purpose and need for the meeting with school staff and the meeting with the LSSP. In frustration, and with continuing concerns that her son was being inappropriately treated by school staff, Student's mother withdrew him from HISD on January 31, 2008.

Discussion

Child Find

The school district has the legal responsibility to ensure that all children who are in need of special education and related services residing within its jurisdictional boundaries are identified, located and evaluated. *20 U.S.C. § 1400*; *34 C.F.R. § 300.111 (a) (1)(i)*. This requirement is known as "Child Find." Child find includes children who are suspected of having a disability and in need of special education even though they are advancing from grade to grade. *34 C.F.R. § 300.111 (c) (1)*. Under the IDEA's Child Find provision, the school district had an affirmative duty to identify and evaluate Student to determine whether he was a student with a "disability" within the meaning of IDEA and in need of special education services. The issue in this case is whether the school district met that duty in a timely manner. A special education Hearing Officer has sufficient authority to determine whether or not a student is eligible for special education and related services under IDEA. *Hacienda La Puente Unified Sch. Dist. v. Hong*, 976 F. 2d 487, 492 (9th Cir. 1992); *D.C. v. Dept. of Educ. State of Hawaii*, 46 IDELR 6 (D.C. Hawaii 2006).

Two Pronged Analysis

The IDEA requires a two pronged analysis for determining if a child should be referred and identified for special education under Child Find. First, the school district must have some reason to suspect that a child has a disability as defined by the statute. *See, 34 C.F.R. § 300.8 (a) (b) (c) (1)-(13)*. Second, the school district must also have some reason to suspect that the child is in need of special education and/or related services. *34 C.F.R. 300.8 (a)(b)*. Educational needs include all aspects of a student's education, including social skills, developmental skills and functional skills. *Venus Ind. Sch. Dist. v. Daniel S.*, 36 IDELR 870 (N.D. Tex. 2002).

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Furthermore, a child is a “child with a disability” if the child is age 3-9 and experiencing developmental delays in one or more the following areas: physical development, cognitive development, communication development, social or emotional development or adaptive development and who by reason of those delays needs special education and related services. *34 C.F.R. § 300.8 (b)*. In Texas, a referral for special education evaluation is required as part of the school district’s overall regular education referral or screening system for students experiencing difficulty in the regular classroom. *19 Tex. Admin. Code § 89.1011*.

The IAT Process

The IAT serves to support and assist teachers and staff in meeting the needs of children on their campus who are experiencing difficulty in the regular classroom. It collects and reviews academic and behavioral data in making the decision to refer a student for a special education evaluation. While certainly an admirable and often effective mechanism, the evidence showed that the implementation of the IAT process in this particular case was somewhat cumbersome, inefficient and served merely to unnecessarily delay Student’s referral for a special education evaluation.

The IAT should have initiated the referral for special education when the ** grade teacher brought her concerns to the team by mid-October 2007 instead of imposing additional interventions and documentary requirements and waiting until his behavior and academics deteriorated. Pre-referral interventions, while well intended, do not excuse Child Find violations. *Jamie S. v. Milwaukee Pub. Schs., 519 F. Supp. 2d 870, 898 (D.C. Wi. 2007)(school district’s hesitancy to pull special education referral “trigger”, even if done in good faith in attempting alternate methods of instruction did not meet needs of students in class action suit for failure to timely identify)*.

The IAT also apparently lacked accurate information about his academics and prior history; i.e., that he was failing ** grade, that both his ** and ** teachers had expressed concerns about his developmental delays and inappropriate behavior, that his mother had requested an evaluation during both ** and **, and that his outside private speech/language therapist recommended an evaluation to school district staff.

The facts established that Student’s inability to master age appropriate academic, behavioral, interpersonal, and communication skills support the conclusion that the school district had ample reason to suspect he had a disability and was in need of special education by the end of the first six weeks of ** grade. All of his teachers had concerns about his academic, communication, social and, behavioral skills and he was less and less able to keep up with his peers as he moved through the school system from ** to ** grade. By ** grade he was the lowest performing student in the class. Under these facts, the evidence showed that both prongs of the IDEA Child Find provision were met by early October 2007.

Initial Evaluation Requirements

IDEA states that *a request for an initial evaluation may be initiated by either a parent of a child or a public agency* to determine if the child is a child with a disability within the meaning of IDEA. 34 C.F.R. § 300.301 (a) (b). (*emphasis added*). Furthermore, the initial evaluation must be conducted within 60 days of receiving parental consent for the evaluation. 34 C.F.R. § 300.301 (c) (1) (i). The facts in this case show that Student's mother submitted repeated requests for an evaluation both orally and in writing to school district staff beginning in **, continuing on in ** and then again several times in ** grade. The private speech/language therapist also made a referral in the beginning of ** grade.

In the case of a suspected learning disability, a school district must promptly request parental consent to evaluate the child if, prior to a referral, a child has not made adequate progress after an appropriate period of time when provided with the appropriate instruction or *whenever a child is referred for an evaluation*. 34 C.F.R. § 300.309 (c) (1) (2) (*emphasis added*). Given Student's educational history (particularly with reading and language) and once Student's mother requested an evaluation, the school district had reason to suspect a learning disability and should have arranged to obtain parental consent and initiated the referral process. At the very least, the school district should have provided Student's mother with written notice of its decision to delay a special education evaluation in order to work through the IAT process first. Written notice must be given to the parent when the school district refuses to initiate the identification or evaluation of the child. 34 C.F.R. § 300.503 (a) (2)

Communications Issues Contributed to the Delay

The facts in this case establish that a variety of miscommunications and misunderstandings contributed to the delay in proceeding with Student's special education referral. Student's ** and ** teachers both erroneously believed there was a school district policy that prohibited referrals for special education for children in those grades. In fact, the evidence showed there is no such policy and that ** and ** children in HISD have been referred for special education and have received special education services. However, this misunderstanding led to a series of erroneous representations by the teachers to Student's mother that he could not be evaluated for special education when she raised concerns about his lack of educational and behavioral progress with them.

In addition, the failure to communicate and support the ** grade teacher in fulfilling the school district's IAT documentation protocol also contributed to the delay in Student's referral for special education. The ** grade teacher concluded Student needed to be evaluated within the first six weeks of school. She discussed her recommendation with Student's mother who supported the teacher's conclusion. The ** grade teacher compiled a substantial amount of data to support her conclusion in a notebook. However, that data did not meet the school district's required format for purposes of presenting the issue to the IAT.

This failure led to a delay in proceeding with the referral. The October 2007 IAT directed the ** grade teacher to attempt several interventions and to document her efforts in the required documentary format. Another miscommunication between the ** grade teacher and the IAT led to yet another delay when the teacher presented the data to the IAT in December 2007 but again not in the correct format. She was directed to complete another set of documents for referral purposes. By this time the entire fall semester of ** grade had been completed without any progress towards Student's referral for special education and both his academics and behavior had deteriorated.

The lack of communication between and among school staff and between the parent and the school meant that the IAT team did not have all of the relevant data before it when the initial referral was made in October 2007 by the ** grade teacher. Had the IAT been aware of Student's failing grades and prior parental and teacher concerns the referral decision could have been made sooner and an evaluation begun that Fall.

The need to secure "informed consent" from Student's mother in order to proceed with the psychological component of Student's initial evaluation also led to another misunderstanding. Student's mother did not understand the need for meeting with the school district's licensed psychologist for purposes of "informed consent" and that doing so was actually the clinical interview component of the psychological evaluation.

Finally, the evidence showed that a special education referral in HISD can be initiated quickly if the child's disability is severe, or if there is a history that establishes a suspected disability, or if there have been prior attempts to initiate the referral process. Certainly, these factors were all present by the fall semester of ** grade but the lack of effective communication, both internally between school district staff, and with the parent, led to a delay in proceeding with a special education referral for Student in a timely manner.

Limitations on Granting Appropriate Relief

As relief Petitioner requests that the school district conduct a Full and Individual Evaluation (FIE) for special education eligibility and services. However, the evidence establishes that as of the date of the hearing, Student was no longer enrolled as a student in HISD and that an FIE was underway in his new school district. Because he is now being evaluated by his current school district this request for relief is therefore moot. There is no longer a "live" or "active" controversy between the parties and no further relief that the Hearing Officer can award under the unique circumstances of this case. *See, Crown Point Cent. Sch. Dist., 46 IDELR 269 (SEA N.Y. 2006)(requested math evaluation completed and no longer a "live" controversy rendered the issue moot on appeal); Bd. of Educ. Montgomery Cnty. v. Khan, 44 IDELR 132 (D.C. Md. 2005)(no effective relief could be granted by Court where school district provided three months of compensatory education in summer school).*

Petitioner also requests compensatory relief in the form of reimbursement for medical and moving expenses incurred by Student's mother. Petitioner failed to present any evidence whatsoever on the cost or scope of the medical expenses that are the basis for Petitioner's request for relief. Petitioner therefore failed to meet his burden of proof in justifying this request. Furthermore, reimbursement for moving expenses is not an appropriate form of relief under IDEA. Although forms of equitable relief can be appropriate under IDEA, moving expenses based upon a parental decision to move out of the school district is not a form of appropriate equitable relief under IDEA and must therefore be denied. *Blanchard v. Morton Sch. Dist.*, 420 F. 3d 918, 921 (9th Cir. 2005)(*monetary damages for retrospective and non-educational injuries are not available under IDEA*).

Petitioner's request for an unspecified amount of monetary damages as compensatory relief for the school district's failure to timely evaluate and identify Student as a student in need of special education services must also be denied. A majority of the federal appellate courts have held that monetary damages are not appropriate forms of relief under IDEA. *See, e.g. Diaz-Fonseca v. Puerto Rico*, 451 F. 3d 13, 31 (1st Cir. 2006)(*"tort-like" money damages are not within the scope of appropriate relief under IDEA*); *Polera v. Bd. of Educ. Newburgh City Sch. Dist.*, 288 F. 3d 478, 483-486 (2nd Cir. 2002)(*touchstone of IDEA is the actual provision of a free, appropriate public education and monetary damages would be inconsistent with the statute*); *Sellers v. Sch. Bd. of Manassas*, 141 F. 3d 524, 527 (4th Cir.), cert. denied, 525 U.S. 871 (1998)(*"tort-like" damages inconsistent with IDEA's statutory scheme*); *Charlie F. v. Bd. of Educ. Skokie Sch. Dist.*, 98 F. 3d 989, 991 (7th Cir. 1996)(*the structure of the statute with its elaborate provision for educational services is inconsistent with monetary awards to children and parents ... damages are not relief that is available under IDEA*).

Finally, a special education hearing officer in Texas does not have the authority to award attorney's fees, although a claim for attorney's fees of a prevailing party may be submitted to a court of competent jurisdiction. 34 C.F.R. § 300.517.

Conclusions of Law

1. Respondent failed to initiate a referral and conduct an initial evaluation for special education eligibility and services of Petitioner in a timely manner during the current school year. 34 C.F.R. §§ 300.111, 303.301.
2. Respondent no longer has the legal responsibility to conduct a Full Individual Evaluation because Petitioner is no longer enrolled as a student within Respondent's jurisdictional boundaries and is currently enrolled in another public school district in Texas where an FIE is underway. Petitioner's request that Respondent conduct an FIE is therefore moot. 34 C.F.R. § 300.301; *Tex. Educ. Code* § 25.001 (b)(1); *Crown Point Cent. Sch. Dist.*, 46 IDELR 269 (SEA N.Y. 2006).

4. Petitioner's requests for monetary damages including moving costs and unspecified monetary damages are not appropriate forms of relief under IDEA. *See, Sellers v. Manassas, 141 F. 3d 524, 527, (4th Cir.), cert. denied, 525 U.S. 871 (1998).*

5. Although medical services may be an appropriate related service under IDEA, Petitioner did not prove by a preponderance of the evidence the amount of medical expenses allegedly incurred by Petitioner's mother or that they were a result of Respondent's failure to conduct an initial evaluation for special education. *34 C.F.R. § 300.34 (c) (5); Schaffer v. Weast, 546 U.S. 49 (2005).*

6. Petitioner's claim for attorney's fees is not within the authority of a special education hearing officer in Texas but may be submitted to a court of competent jurisdiction. *34 C.F.R. § 300.517.*

ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that Petitioner's requests for relief are hereby **DENIED**.

SIGNED the 9th day of May 2008

/s/ Ann Vevier Lockwood

Ann Vevier Lockwood

Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).