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|-------------------------|---|-------------------|
| Student                 | § | BEFORE A          |
| b/n/f Parents           | § | SPECIAL EDUCATION |
|                         | § | HEARING OFFICER   |
|                         | § |                   |
| V.                      | § | FOR THE           |
|                         | § |                   |
| CLEAR CREEK INDEPENDENT | § | STATE OF TEXAS    |
| SCHOOL DISTRICT         | § |                   |

ORDER OF DISMISSAL

On June 23, 2008, Respondent, Clear Creek Independent School District, (“District”) filed Respondent’s Motion for Summary Judgment requesting dismissal of the above styled and numbered due process matter. On July 2, 2008, Petitioner, \*\*, (“Student”), b/n/f \*\* (“Parent”), filed Petitioners’ Response to Respondent’s Motion for Summary Judgment and Motion for Hearing Officer to Find Resolution Agreement Null and Void. On July 7, 2008, Respondent filed Respondent’s Brief Regarding the Effective Date of the Application of Res Judicata. On July 8, 2008, a telephonic hearing on Respondent’s motion was held. Counsel for the parties argued their respective positions regarding the motion for summary judgment and the motion for the hearing officer to find the Resolution Agreement null and void.

**Arguments of Counsel**

Respondent argued that Petitioners’ issues are not ripe for adjudication since the District has not had an opportunity within the limitations period to complete its evaluation and convene an Admission, Review, and Dismissal (“ARD”) meeting to consider evaluation results and make an eligibility determination. In addition, Respondent argued that the issues in this matter are identical to those in a prior due process matter which was dismissed May 26, 2008 as a result of a Resolution Agreement entered into by the parties, and that the doctrine of res judicata bars the current due process hearing request. Respondent further argued that this hearing officer lacks jurisdiction to consider Petitioner’s motion to declare the Resolution Agreement null and void.

In support of the motion to declare the agreement null and void, Petitioner argued that the Resolution Agreement was unconscionable, lacked consideration and a meeting of the minds.

Petitioner further argued that, should the agreement be voided, there would be no issues of res judicata, and the one year limitation period would be applicable. Petitioner argued that, if the hearing officer denied the motion to void the agreement, the date of the Resolution Agreement should be the date from which the issues in this matter should be considered.

### **Factual Background**

Petitioner filed a request for due process hearing with the Texas Education Agency which was docketed as TEA Docket No. 167-SE-0308. A Resolution Session was held and the parties entered into a Resolution Agreement dated April 11, 2008 in which the District agreed to evaluate the Student. On April 16, 2008, the Parent signed consent for evaluation of the Student. Docket No.167-SE-0308 was dismissed with prejudice May 26, 2008. Petitioner filed this request for due process hearing on May 27, 2008.

### **Petitioner's Issues in This Request for Due Process Hearing**

In this request for due process hearing, Petitioner alleges that, from April 11, 2008, the District failed to timely evaluate and identify the Student as a child with a disability in need of special education. Petitioner complains that the District denied him a free appropriate public education, as well as other rights afforded eligible children under the Individuals with Disabilities Education Improvement Act 2004 ("IDEIA 04").

### **Statutory Timelines**

A District has 60 days from the date on which the district receives written consent for the evaluation to complete a written report of the Full Individual Evaluation ("FIE") of a student. 34 C.F.R. § 300.301; TEC § 29.004. Upon completion of assessments and other evaluation measures, an ARD meeting is held to review the evaluations and determine if a student is eligible to receive special education services. 34 C.F.R. § 300.306. The ARD meeting must occur within 30 calendar days from the date of the completion of the written FIE report. If the 30<sup>th</sup> day falls during the summer and school is not in session, the ARD committee has until the first day of classes in the fall to finalize decisions concerning initial eligibility determination, the Individualized Education Program ("IEP"), and placement unless the FIE indicates that a student needs extended school year services during that summer. TAC § 89.1050. Eligible students with disabilities are entitled to a free, appropriate public education ("FAPE") under the Individuals with Disabilities Education Improvement Act of 2004 ("IDEIA 04"). 34 C.F.R. § 300.101; TEC § 29.003.

## **Ripeness of Controversy**

Ripeness is a threshold issue that implicates subject matter jurisdiction. It emphasizes the need for a concrete injury for a justiciable claim to be presented, and focuses on when that action may be brought. Patterson v. Planned Parenthood of Houston & Southeast Tex., Inc., 971 S.W.2d 439, 442-44 (Tex. 1998). A case is not ripe if at the time a lawsuit is filed, a determination of whether a petitioner has a concrete injury depends upon events that have not yet occurred. Waco Indep. Sch. Dist. V. Gibson, 22 S.W.3d 849, 851-52.

Following the Resolution Agreement, the Parent gave written consent for the District to conduct a psychological evaluation and an FIE of the Student on April 16, 2008. The District had 60 days from that date in which to complete the FIE. Petitioner filed his request for due process hearing on May 27, 2008, prior to the expiration of the 60 days, and prior to the time that an ARD meeting must be held to determine eligibility. Whether Petitioner has a concrete injury depends upon events that have not yet occurred, specifically, completion of evaluations and an ARD meeting to determine eligibility for special education services. Since, at the time that Petitioner filed this request for due process hearing, the timelines for the District to complete the FIE and hold an ARD meeting had not expired, the undersigned hearing officer finds that this matter is not ripe for adjudication.

## **Decision of Hearing Officer**

Respondent's Motion for Summary Judgment is GRANTED, and, because the controversy is not ripe for adjudication, this due process hearing request is DISMISSED for lack of subject matter jurisdiction.

SIGNED this 10<sup>th</sup> day of July, 2008.

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Brenda Rudd  
Special Education Hearing Officer  
For the State of Texas