

No. 206-SE-0407

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N. D., b/n/f	§	Before a Special Education
V. D.	§	
Petitioner	§	
	§	
vs.	§	Hearing Officer
	§	
Spring Independent	§	
School District	§	
Respondent	§	For the State of Texas

Final Decision of the Hearing Officer

STATEMENT OF THE CASE

Petitioner, N. D., by his next friend, V. D., (hereinafter Petitioner, Student, or ND) brings this proceeding against Respondent Spring Independent School District (hereinafter Respondent or District) under the Individuals with Disabilities Education Act (hereinafter IDEA), 20 U.S.C. § 1400 et. seq.

Petitioner alleges that Spring ISD denied N. D. a free appropriate public education during the 2006-2007 school year based on the following claims:

1. The March 2007 Admission, Review, Dismissal (ARD) Committee (ARD) failed to develop appropriate transition services for Student to become a comic book artist after high school graduation; and
2. The March 2007 ARD Committee failed to provide a language-focused curriculum to address Student's below grade-level language development.

As relief, Petitioner seeks monetary damages, compliance with the following statutes: IDEA, Texas Child-Centered process, and No Child Left Behind, the development of new IEP goals, a new reading program, copies of Student's curriculum for use at home, assisted technology, a male one-on-one instructor, speech services, and affidavits from school personnel adhering compliance with the IDEA.

PROCEDURAL HISTORY

Petitioner filed an expedited request for a due process hearing on April 4, 2007. Petitioner appeared *pro se*, representing himself and his child, N.D. Janet Horton, with the Houston office of Bracewell & Giuliani represented Spring ISD.

On April 13, 2007, Respondent filed a motion challenging the sufficiency of Student's Complaint and his request for an expedited hearing. On April 15, Petitioner filed a response to the sufficiency challenge. On April 21, the Hearing Officer scheduled a prehearing conference for May 2, 2007, and the due process hearing for May 11-12, 2007. On April 26, the Respondent's attorney requested a continuance of the due process hearing. The request was granted, the hearing date was to be scheduled at the prehearing conference.

Two prehearing conferences were held; the first on May 2, 2007 and a second on May 8. During the May 8 prehearing conference, the due process hearing was scheduled for June 20-21. The 45-day Deadline was accordingly extended to July 21, 2007. On May 24, 2007, the Hearing Officer scheduled a May 30 in-person prehearing conference to assist Petitioner with general hearing preparation, witness questioning, and exhibit notebook preparation. On May 30, Petitioner failed to appear.

The due process hearing was held on June 20, 2007. Since Petitioner wholly failed to provide Respondent a list of potential witnesses and documents to be used at the hearing, the Hearing Officer sustained Respondent's objection to the introduction of any of Petitioner's documents or witnesses and limited Petitioner to presenting only his own testimony.

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At the conclusion of the hearing, the Hearing Officer requested the Parties to submit written closing arguments no later than July 12. Petitioner was allowed to file a Reply Brief no later than July 19. Both Parties timely submitted post-hearing briefs. On July 17, Petitioner asked for an extension to file his Reply brief which was granted. Petitioner filed his Reply brief on Monday, July 23, 2007.

Taking continuances into account, the deadline for the final decision is August 26, 2007. The Hearing Officer issued her decision on August 24, 2007.

FINDINGS OF FACT

A. 2005-2006 SCHOOL YEAR

1. During the 2005-2006 school year, N.D. attended sixth grade in the Spring Branch school district. N.D. qualifies as a student in need of special education services under the Autism and Speech Impairment classifications. (Respondent's Exhibits [RE] 2-5).

2. N.D. received a Full Individual Evaluation (FIE) in December 2005, including a psychological and speech assessment. The Oral and Written Language Scales showed that

N.D.'s oral expression, listening comprehension, and written expression to be the below average range compared to individuals of the same age. His scores for these tests were in the one percentile or below. The Clinical Evaluation of Language Fundamentals (CLEF-4) was administered to N.D. to assess his language skills deficiencies. The CLEF-4 helps identify individuals who lack the basic foundation of mature language use. N.D.'s CLEF-4 scores indicated the presence of a severe language disorder and a lower-than-average intellectual ability. (RE-2).

3. The Woodcock-Johnson test was administered to evaluate N.D.'s academic achievement in both reading and math. The reading tests measure basic reading skills while the math component measures mathematical knowledge and reasoning. Both score clusters showed that N.D.'s functional levels in these areas were in the low to very low range. A closer review of the subtests indicates that N.D. was functioning in the very low range in areas which require a higher level of analysis or independent thought analysis. In the areas requiring a higher level of thought processes, N.D. was. (RE 1-5).

4. The 2005 Speech evaluation indicated mild impairment in articulation and severe impairment in Language, specifically a severe expressive and receptive language delay. Based on the 2005 evaluation, N.D. continued to qualify for speech services. (RE 1-3, 5).

5. The 2005 psychological evaluation found N.D. a lack of age-appropriate skills such as independence, attendance to tasks for long periods of time, initiating interaction with others, and seeking help. Likewise, the behavior adaptive scales completed by the teacher and his parents demonstrated a lack of appropriate behavior in and outside of the classroom. In the Adaptive Behavior questionnaire, Street Survival Skills, which measures behavior in nine areas, N.D. had a severe deficit in areas such as functional signs, tool identification, domestic management, health, first aid and safety. In fact, a severe deficit was measured in all nine component areas of the questionnaire.

6. The 2005 FIE concluded that N.D. had a lower than average intellectual ability and that his level of intellectual functioning is consistent with his adaptive behavior which both show severe deficits. (RE 1-3).

7. In 2005, N.D.'s significant deficits manifested in many forms: he rarely initiated verbal communication, didn't express his needs, did not understand directives, was withdrawn, offered minimal eye contact, and had difficulty understanding and following social norms. He did not exhibit behavior problems, but N.D. did shut down, was oppositional, and refused to do challenging or less-favored tasks. He showed a strong preference for structure, routine and predictability. (RE 1-3).

8. In the 2005-2006 school year, his sixth grade, N.D. began attending middle school. He attended science, world cultures, art, and P.E. in general education classes, and resource classes for language arts and math. His resource instructional goals and objectives were on 3rd grade

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level in math, reading, and writing. An individual aide accompanied N.D. to all classes. As compared to students his age, N.D. functioned differently in regards to speech, language, nonverbal gestures, social skills, and communication behavior. (RE-4).

9. To help develop more language skills, the District provided with a computer-based program, My Reading Coach, a software program addressing phonics, phonemic awareness and comprehension. In addition, N.D. received reading assistance using the Wilson Reading Program, a multi-sensory sequential program to develop the skills needed to become a fluent reader. (Transcript [Tr.] p. 220-221).

10. Spring ISD implemented a transition plan for N.D. in 6th grade when he was 12 years old. The District used the 6th grade transition process as a means to train parents, students, and staff to *begin* focusing on long-term vocational goals and objectives. The 6th grade transition plan is not required by either federal or Texas law.

11. In the summer of 2006, N.D. attended a Structured Integrated Learning Class (SILC), a language-based social skills class developed specifically for high functioning students with autism. The class focused on expressive language, using language in social settings, and using language to express wants, desires, and needs. The summer program focused on developmentally appropriate social skills for transitioning to middle school. Students received instruction on specific social skills, followed by a discussion of these skills, role-playing the skills, and were provided opportunities to practice the skills throughout the day. The main purpose of this program was to teach students to generalize skills in various settings, such as the classroom, the gym, the cafeteria, and the hallways. Students engaged in role-playing everyday, a critical element to teaching the students to generalize the skills. (RE-37; Tr. p. 169-172).

12. At the beginning of the SILC program, N.D. did not interact with the teacher, her aide, or other students, but as he became familiar with the staff and students, N.D. joked with his peers, independently raised his hand to participate, and began touching (appropriately) others. The program staff saw a dramatic increase in appropriate behaviors and a decrease in N.D.'s inappropriate behaviors. Based on his success in the SILC, N.D. would do well in a program that emphasizes expressive language in both the academic and the social areas. (Tr. p.151).

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2006-2007 SCHOOL YEAR

13. During the 2006-2007 school year, N.D. was in seventh grade and attended Resource Reading, Math and Language Arts. He was in regular education for Art, P.E., Science and Social Studies, with IEPs for academic content. Both Science and Social Studies were co-taught by a regular and special education teacher. N.D. continued to utilize "My Reading Coach" and the Wilson Reading Program.

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14. During this school year, N.D. received 120 minutes per week of speech services comprised of one-on-one therapy and consultative/collaborative services in the classroom. Two therapists worked with N.D. and kept performance data on each goal. The speech therapy progress notes show he had made progress in answering content-based questions, increased interaction with teachers, students, and therapist, increased participation in class, and worked with a student partner.

15. N.D.'s goals were implemented by the speech therapist, classroom teachers, and his parents. The therapist and his teachers maintained extensive data on his progress for each goal and objective in his IEP. The teachers' charts show progress, albeit slow, on most speech goals that included expressive language skills, articulation, pragmatic and social language, and vocabulary. (RE-25-26, 31, 34-35).

16. N.D.'s speech IEP was modified in October 2006 in order to focus his program on expressive language skills, articulation, and social language as well as rate of speech. Again, the speech therapist, his teachers, and his parents were the implementers of this new speech program. A review of the therapist and teachers' data indicates slow progress on most of his goals and objectives. Nevertheless, it is evident from the data that by Spring 2007 semester, N.D. was using language more effectively to socialize and learn. By March 2007, he had mastered seven of eleven objectives, mostly those addressing expressive language skills. (RE-1; Tr. p. 108-111).

17. In March 2007, the ARD Committee held N.D.'s annual review. A new speech therapy IEP was developed which included 60 minutes of direct services and 60 minutes of collaborative services including classroom therapy with N.D. and his teachers. In developing this new speech program, the committee reviewed the extensive data on N.D.'s progress on each individual speech objective to make the appropriate changes to his speech program. The Committee reviewed his evaluations, his previous goals, and the percentage of mastery he had met on each individual goal.

18. The March 2007 objectives addressed N.D.'s need for expressive, receptive, and pragmatic speech. The collaborative therapy was recommended to increase N.D. classroom participation and his interaction with peers. The speech program developed by the March 2007 ARD was appropriate to address N.D.'s educational, social, and communication needs. (Tr. p. 112-114).

19. The March 2007 ARD Committee recommended full-time placement in the Structured Integrated Learning Classroom for the 2007-2008 school year. This classroom allows N.D. to learn pragmatic language, practice the language and skills in a variety of locations and with different people, and to begin generalizing these skills beyond the school environment. The SILC also provides N.D. with support he needs in his regular classes, such as retuning to the SILC for one-on-one support. (Tr. p.155-157).

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20. In order to improve on his academic and social skills, N.D. needs age-appropriate expressive and receptive speech. For the appropriate development of social skills and language skills, he needs exposure to a variety of environments and people. Such exposure to a variety of people under different circumstances presents the opportunity to develop and use different types of language and vocabulary, and fosters well-rounded language skills. (Tr. p. 115-116).

21. Given N.D.'s language deficits and needs, Petitioner's request for a one-on-one instructor to provide all of N.D.'s academic and social education is too restrictive.

22. The March 2007 ARD addressed transition services for N.D. Generally speaking a student goes through several developmental stages before developing career objectives. The first stage, the "fantasy stage", occurs between the ages of 11-12. During the fantasy stage most students want to be movie stars or professional athletes. The second stage, the "interest stage", occurs between ages 12-17 and centers around a student's interest. The third state which occurs around age 17 is the "reality stage", during which a student recognizes there are certain prerequisites, certain course requirements, or a certain education level to complete before embarking on a particular career. (RE-1, 56; Tr. p. 189-192).

23. Although not required by law, Spring ISD completed a functional vocation assessment on N.D. The speech therapist helped N.D. complete the student form of the assessment. The parents never completed or returned the Parent form. Prior to receiving the results of the assessment, N.D.'s father insisted that the District prepare his son for a career as a comic book artist. The District researched the requirements for such a career and purchased drawing books and software to assist in his drawing. Additionally, the District obtained information on various internships with a leading comic book company. (RE-1, 56; Tr. p. 199).

24. The parent's request for Spring ISD to prepare N.D. for employment as a comic book artist upon high school graduation is premature. The parent requested that N.D. have a one-on-one instructor for reading, math and art, and discontinue science, social studies and other classes. In effect, N.D. would spend all day with one person focusing only on math, reading, and art. Such a plan is too restrictive and violates the requirement of placing a student in the least restrictive environment. Moreover, the plan also does not allow the District the opportunity to prepare N.D. for a bachelor's degree which is also the parent's wish. Lastly, the parent's plan would seriously hamper N.D.'s need to learn to generalize his communication and socialization needs. (RE-56; Tr. p. 156, 177).

25. N.D. will have a career assessment, with a functional component, conducted in 9th grade and again in 11th grade. The career assessment is connected to a career link inventory, a program that matches a student's interest and careers. The assessment and the career link provide information about the educational requirements of careers and the sequence of course work for post-high school education preparation. In N.D.'s case, he will be best served at this stage of his life, by having all the high school requirements necessary to consider such a career. The District's 2007-2008 course recommendations are appropriate for N.D.

26. The March 2007 ARD Committee's proposal to place N.D. in the SILC is appropriate. N.D. needs an educational environment that focuses on language and socialization skills as well as providing a supporting structure and opportunities to learn, experiment, and generalize these skills. The SILC class provides all this. The parent's proposal for a one-to-one instructor would be a set back for the skills N.D. currently possesses.

DISCUSSION

I. STANDARD OF REVIEW

The IDEA entitles every student with a disability to receive a free appropriate public education (FAPE). 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 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).

Petitioner does not allege that Spring ISD violated any procedural guarantees of IDEA. Under the second prong, however, Petitioner alleges that Spring ISD did not provide his son an appropriate education because it failed to provide an appropriate transition plan and a language-focused curriculum.

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 delineated four factors to consider as indicators of whether an educational plan is reasonably calculated to provide the requisite 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.

II. TRANSITION PLAN

IDEA requires school districts to provide a free, appropriate public education to every student with a disability through age 21. It also requires that students receive appropriate transition services to prepare them for employment and independent living.

Texas regulations provide that the IEP in effect when the student turns 16 provides for transition services. Texas allows, but does not require, a transition plan as early as 14 years old or younger, if appropriate. The IEP transition plan must consider the student's interests and preferences as they relate to post-secondary education, vocational training, employment goals and objectives, adult services, independent living, community participation, interagency responsibilities, and a vocation evaluation. 20 U.S.C. §1412 (a) (1) (A) & (3); 34 C.F.R. §300.1(a), 300.29, 300.347 (a) 19 T.A.C. §89.1055(g).

N.D. was only 12 years old when his first transition plan was developed. After conducting a functional vocation program, Spring ISD proposed a transition plan that includes art and an extensive integrated language curriculum. Because N.D. was interested in becoming a comic book artist according to his parent, the ARD Committee developed a program that emphasizes academic and social communication skills while providing N.D. with the course requirements for entering college. However, the evidence showed that N.D. was unsure what he wanted to do after high school. He has a variety of interests, any of which he could discontinue before he graduates. The 2007-2008 eighth grade transition plan prepares N.D. to continue his art studies into high school and provides him the academic and language support to attend college upon high school graduation, a requirement for being employed as a comic book artist. The 2007-2008 transition plan is appropriate.

C. THE 2007-2008 PROPOSED PROGRAM IS APPROPRIATE

Applying the standards that define the elements of a free appropriate public education to Spring ISD proposed program, the Hearing Officer concludes that the 2007-2008 program is reasonably calculated to provide N.D. with a meaningful educational benefit.

Petitioner believes that Spring ISD is not focusing on N.D.'s reading and communication difficulties. He would like to see his son with a private one-on-one teacher who focuses exclusively on reading, math, and art. The Petitioner's proposal is too restrictive and would not provide N.D. the pragmatic language he needs to be successful after high school.

N.D. must expand his communication skills and learn to generalize them in a variety of environments and with a variety of people. Placing him with a single one-on-one teacher would severely limit N.D.'s opportunities to interact with people and use his communication skills. The proposed program, provided in a classroom environment, will support an extensive language program and the opportunities to use the skills he develops. The evidence established that N.D.'s

educational program proved successful in the ~~Summers~~summer 2006, it is therefore, reasonable to conclude that the program will to continue to provide an educational benefit to N.D. in the 2007-~~2008 school~~2008 school year. While the parent clearly believes that a one-on-one teacher will give N.D. more personalized attention and would be highly beneficial to him; the evidence, however, demonstrates that N.D. needs a structured classroom that is dedicated and sensitive to the behavior and academic issues associated with students on the autism spectrum.

The Hearing Officer finds that the 2007-2008 proposed program is individualized to address N.D.'s identified needs, and is provided in the least restrictive environment that would allow N.D. to achieve a meaningful educational benefit.

III. CONCLUSION

In conclusion, when Petitioner missed the disclosure deadline, he was not allowed to present any documents or witnesses. Petitioner's claims could have been denied solely on the basis he failed to present any evidence. However, his claims were not denied for this reason. Petitioner's claims were denied because the overwhelming credible evidence showed that N.D. is making educational progress under his IEP. His son's progress is not rapid as Petitioner wishes, but his son's program provides his son the communication, social and pragmatic skills he needs to develop his potential.

CONCLUSION OF LAW

1. Spring Independent School District (SISD) 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 Spring ISD, Petitioner is currently eligible for special education services under the classifications of Autism and Speech Impairment. 20 U.S.C. §1401; 34 C.F.R. §300.7(c) (1, 9).

3 Respondent's proposed 2007-2008 IEPs and placement for Petitioner were reasonably calculated to enable him to receive educational benefits under the standards enunciated in *Board of Education of Hendricks Hudson Central School District v. Rowley*, 459 U.S. 176, 102 S.Ct. 3034 (1982).

4 Respondent's proposed 2007-2008 transition plan is appropriate and exceeds both federal and state law requirements.

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SYNOPSIS

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~~ISSUE: RESPONDENT FAILED TO PROVIDE STUDENT AN APPROPRIATE EDUCATION PROGRAM BASED ON PRESENT LEVELS OF PERFORMANCE (PLOP).
HELD: FOR RESPONDENT. RESPONDENT PROVIDED PETITIONER EDUCATIONAL SERVICES BASED ON CURRENT ASSESSMENTS AND PERFORMANCE.
_____ 34 C.F.R. §§ 300.300 & 300.532~~

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~~ISSUE: _____ RESPONDENT FAILED TO IMPLEMENT STUDENT'S EDUCATION PROGRAM.
HELD: FOR RESPONDENT. WITH THE EXCEPTION OF A VIOLATION OF PETITIONER'S BIP, PETITIONER FAILED TO PROVE LACK OF IMPLEMENTATION.
_____ 34 C.F.R. §§ 300.347 & 300.552~~

~~ISSUE: WHETHER PETITIONER IS ENTITLED TO REIMBURSEMENT FOR A UNILATERAL PRIVATE SCHOOL PLACEMENT AT WESTVIEW SCHOOL.
HELD: FOR RESPONDENT. _____ RESPONDENT'S PROPOSED EDUCATIONAL PROGRAM FOR PETITIONER WAS REASONABLY CALCULATED TO PROVIDE PETITIONER WITH EDUCATIONAL BENEFIT IN THE LEAST RESTRICTIVE ENVIRONMENT UNDER THE STANDARDS OF BOARD OF EDUCATION OF HENDRICKS HUDSON CENTRAL SCHOOL DISTRICT V. ROWLEY, 459 U.S. 176, 102 S.Ct. 3034 (1982).
_____ 34 C.F.R. §§ 300.300 & 300.550~~

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~~ISSUE: WHETHER SCHOOL DISTRICT'S FIE WAS APPROPRIATE AND MET IDEA CRITERIA OR WHETHER STUDENT IS ENTITLED TO AN IEE.
HELD: FOR RESPONDENT. DISTRICT'S ASSESSMENT MET IDEA CRITERIA. VALID, WELL~~

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~~RECOGNIZED INSTRUMENTS WERE UTILIZED AS WELL AS OTHER SOURCES OF INFORMATION.
STUDENT IS NOT ENTITLED TO AN IEE AT PUBLIC EXPENSE.~~
~~34 C.F.R. §§ 300.502 & 300.532-300.534~~