

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
CORPUS CHRISTI INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner Student by next friend Parent (hereinafter referred to as “Petitioner” or “Student”) filed a Request for Special Education Due Process Hearing and Required Notice on September 17, 2009 pursuant to the Individuals with Disabilities Education Improvement Act 20 U.S.C. § 1400 et seq., (hereinafter referred to as “IDEIA”), against Respondent Corpus Christi Independent School District (hereinafter referred to as "Respondent" or "School District"). Petitioner was represented by attorney Christopher Jonas of Corpus Christi, Texas. Respondent was represented by Attorney Jose Martin of the law firm Richards, Lindsay & Martin of Austin, Texas. A telephone prehearing conference was held on October 7, 2009, at which time both parties waived their right to a final decision within forty-five (45) days of the date the written request for due process hearing was filed. [34 C.F.R. §300.511(c)] A due process hearing was held on Thursday, January 7, 2010, in Corpus Christi, Texas. Petitioner and Respondent requested numerous continuances due to schedule conflicts, and ultimately agreed on the hearing schedule, including post hearing briefing and the decision due date.

Petitioner’s Request for Special Education Due Process Hearing and Required Notice (“Complaint”) originally alleged that Petitioner, now *** grade Student in the District had been denied an appropriate reading program by Corpus Christi ISD because School District failed to fully implement an SRA reading program over the summer and during the school day throughout the current school year, as outlined by the requirements of the Admission Review and Dismissal Committee meetings (“ARDs”) held December 14, 2008. Petitioner also complained that Student was denied a free appropriate public education (“FAPE”) by Respondent’s plan to implement the SRA reading program ***. Petitioner asserted that

Respondent's plan is not appropriate and would not meet Petitioner's individualized needs as a special education student with a learning disability, who already attends a ***. Petitioner stated that Respondent has refused to reimburse Parent for the *** summer program Petitioner used after Respondent failed to implement an appropriate reading program.

Respondent filed a Response to the Complaint, asserting that Petitioner has received an appropriate education in accordance with the IDEA. Respondent maintains that School District provided Petitioner with a reading program as a part of Petitioner's school day, as well as a specialized *** intensive *** reading program, which generated significant progress during its 45-school-day trial period. Respondent states that Petitioner has made progress in reading despite Petitioner's Learning Disabilities, that Petitioner routinely passes Petitioner's classes, and that Petitioner was regularly promoted to the next school grade. Furthermore, Respondent claims to have offered to continue providing the *** *** intensive reading program during the current school year.

Respondent also denies Petitioner's claim that Respondent failed to provide an appropriate Extended School Year Services ("ESYS") reading program. Respondent states that Respondent's summer programming obligations to Petitioner were set forth in a Mediation Agreement reached by the parties. Respondent claims to have offered services pursuant to that agreement, but states that Petitioner rejected the public school services and opted instead to obtain a private reading program.

During the Prehearing Conference held October 7, 2009, the issues raised in the Complaint which remain at issue in this Due Process Hearing were defined as follows:

1. Respondent failed to provide an appropriate reading program for Petitioner and implement such a program at school as part of Petitioner's regular educational programming.

2. Due to Respondent's failure to implement an appropriate reading program that Petitioner requested, Petitioner has been forced to pay for *** services throughout the previous summer and the current school year in order to prevent regression.
3. Respondent has refused to implement an appropriate reading program while Parent continues to request an appropriate reading program.
4. Respondent failed to fully implement an SRA reading program over the summer and during the school day throughout the current school year after a successful trial basis of nine weeks, as a result of which Respondent claimed Petitioner made progress. Respondent proposes to use the SRA reading program ***.
5. Respondent's plan to implement the SRA reading program *** is not appropriate and would not meet Petitioner's individualized needs as a special education student with a learning disability who already attends a long school day.
6. Respondent has refused to reimburse Parent for the *** summer program Petitioner used after Respondent failed to implement an appropriate reading program.
7. Respondent has failed to implement appropriate ESYS.

As relief in this due process hearing, Petitioner requests that Respondent be ordered to do the following:

1. Provide an appropriately implemented education program to prevent regression.
2. Reimburse Petitioner for a private reading program at the *** for the school year 2009-2010 in the amount of \$1,548.00 for 260-280 hours.

3. Provide an appropriate reading program during Petitioner's education day for which Petitioner can make progress, after the completion of the 260-280 hours at the ***.
4. Provide one year of compensatory educational services or an amount of educational services deemed appropriate by the Hearing Officer.

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law.

II. Findings of Fact

1. Petitioner is a student who resides within School District. Student has been determined eligible to receive special education services as a student with specific learning disabilities in the areas of reading comprehension and written expression. Student has been determined to have dyslexia.

2. School District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing Student a free appropriate public education in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. § 1400, *et seq.*, and the rules and regulations promulgated pursuant to IDEIA.

3. Student attended *** grade at *** School in School District during the 2008-2009 School Year. Student's Texas Assessment of Knowledge and Skills ("TAKS") results reveal that Student tested below the standard in Reading in May 2008.

4. Parent enrolled Student in the *** during the summer of 2008 due to concerns that Student's program at school was inappropriate, and also because School District had not implemented an individualized remedial reading program for Student.

5. Petitioner and Respondent entered into a Settlement Agreement on July 17, 2008 which included the following terms:

- a) As compensatory services, the District agrees to provide Student with two one hour sessions of *** in reading each week during the 2008-2009 school year by a highly qualified special education certified teacher.

- b) As compensatory services, the District agrees to provide Student with *** in reading (and other areas of academic need) for four days a week, two hours per day for five weeks during the Summer of 2009. These services will be provided by a highly qualified special education certified teacher.

The July 17, 2008 Agreement did not define the reading program as an SRA reading program, and no ARD was required in connection with the summer program.

6. A Review ARD was convened on Student's behalf on August 12, 2008. The purpose of the ARD was to perform an annual review of the Student's assessments and Student's individualized educational program ("IEP) for the coming school year. The Admission, Review and Dismissal Committee ("ARDC") determined that Student met specific TEA and federal eligibility criteria to receive special education services for Specific Learning Disabilities.

7. The August 12, 2008 ARDC determined that Student's disability significantly interferes with Student's ability to meet general academic mastery levels in the following areas: Language Arts/English, Reading, Social Studies, Math and Science, and that Student was "In Progress" of reaching the IEP goals to "[r]ead with fluency and understanding in texts at appropriate difficulty levels," and to "[a]cquire an extensive vocabulary through reading and systematic word study."

8. The August 12, 2008 ARDC determined that Student would be provided with the following services: General Education classroom with extensive accommodations and modifications for all subjects, except ***, which would be provided in a Special Education classroom, and *** twice per week for 30 minutes, because Student cannot achieve the IEP goals in the general education setting alone.

9. Petitioner and Respondent executed a Mediation Agreement on November 30, 2008. In the Agreement, the School District agreed to provide an SRA reading program for 45 days, implementing the SRA program as part of Petitioner's reading language arts class. Additionally, School District agreed to provide Petitioner with *** SRA reading instruction sessions of one hour each, five days per week, with a certified teacher trained in SRA reading instruction. If Student failed to make progress with the SRA programming provided by Respondent, then School District would pay for *** reading services.

10. A Review ARD was convened on the Student's behalf on December 4, 2008. The ARDC determined that Student would receive *** SRA reading program for an hour daily, to implement the specific terms of the November 30, 2008 Mediation Agreement.

11. Student was enrolled in the SRA reading program during the school day and *** from approximately *** to ***. After completion of the 45 day SRA trial on ***, Student received the Language Arts resource instruction, but not the *** program from March 6, 2009 to the end of the school year.

12. At the beginning and after the completion of the 45 day SRA trial program, the Student was given the Slosson Oral Reading Test, the SRA Corrective Reading/Decoding Test, the Brigance Word Recognition, the STAR Reading Test, the BASIS Reading Comprehension, and the Brigance Passage Test. Student demonstrated increased mastery under the intensive *** SRA program, demonstrated by three years growth on the STAR computer test results, significant improvement on all testing instruments, and reading improvement in words per minute, a decrease in errors, and growth in fluency rate.

13. School District referred the Student for a private evaluation to assess current cognitive abilities. Student's most recent Psychoeducational Evaluation is dated March 4, 2009. The evaluation determined that Student has a learning disability in the area of written expression, and Student demonstrates weak written language abilities, placing Student in the *** Range. Student will not be able to remediate the skills in a regular classroom or in Inclusion setting setting, and needs a structured, sequential approach to student's written language problems.

14. Parent requested an ARD meeting in May of 2009. However, an ARD meeting was not scheduled for Student and did not occur until July 10, 2009, because of delay by School District.

15. During the summer of 2009, the Student was offered summer school, but did not attend. The Assistant Principal wrote Student's Parent on May 21, 2009 that Student was scheduled for ESYS from June 15-July 16, 2009. (R. 9) In a subsequent telephone conversation between Assistant Principal and Parent, Assistant Principal explained that the May 21, 2009 letter was sent to implement the July 17, 2008 Settlement Agreement. In that document, the District agreed to provide the Student *** tutoring in reading (and other areas of academic need) for four days a week, two hours per day for five weeks during the Summer of 2009. Student's Parent e-mailed Assistant Principal a request that Student's ESYS be continued through the ***. Parent requested an ARD meeting to discuss the ESYS and reading program, which was convened on July 10, 2009.

16. A Review ARD was convened on the Student's behalf on July 10, 2009 to consider Parent's request for a "tailor-made Reading program for Student with consistency."

17. Another Review ARD meeting was convened on the Student's behalf on August 21, 2009. The ARDC determined that Student had Specific Learning Disability in the areas of Reading Comprehension and Written Expression, and developed Student's IEP for the school year.

18. During the August 21, 2009 ARD, Student's SRA teacher reviewed Student's performance during the SRA trial. Teacher noted that Student exhibited frustration with decoding, but had excellent recall. Student did show improvement in fluency and decreased errors. Student showed growth in sight word reading, and in reading comprehension. Student also showed growth in vocabulary and comprehension. Student was able to participate and work hard in the *** reading program without regularly occurring difficulties with exhaustion or frustration.

19. The Student's August 21, 2009 ARDC proposed that the Student receive SRA as an *** reading program during the school year, because it is most effective as a *** intensive program. The SRA and method of instruction was shown to be the most effective methodology and setting during the 45 day trial period from *** to***. However, Student's Parent objected to the SRA *** proposal.

20. School District administered a Progress Report for the 2008-2009 School Year in for Reading Instruction /Tutoring, compiling data from a 45-day trial District reading program in the Spring of 2009. School District used several tests, including Decoding on December 8, 2008 and March 5, 2009; Basis Reading Comprehension on December 8, 2009 and March 4, 2009; Brigance Word Recognition on December 16, 2008 and February 27, 2009; and STAR Reading Test on April 4, 2008 and February 27, 2009, in order to get a broader range of information in which to evaluate Student. School District was please with Student's progress and indicated that Student's progress is what is to be expected in a year.

21. Parent objected to the School District's decision to continue the SRA program *** because of Parent's concern about ***, claiming that Student is "exhausted" and frustrated. Parent was also concerned about ***, and, consequently, Student was unable to participate in ***.

22. As a result of Parent's objection to Student's ARDC August 21, 2009 proposal for an *** SRA program, Student's Language Arts teachers incorporated a version of SRA into Student's Language Arts class. It is possible for the SRA program to be implemented in a small group or whole classroom setting and still retain some benefit as a corrective reading program. The Language Arts class cannot be devoted totally to implementing an intensive SRA program, because other curriculum requirements must also be addressed.

23. Respondent provided an SRA Progress Report for Student in Fall 2009. The benchmark data indicated that Student was making progress in Reading Comprehension, showing that in a test labeled Test Lesson 36, Student reached *** Fluency, and in a test labeled Test Lesson 39, Student reached *** Fluency. The Progress Report evaluated Student's progress throughout the 2007-2008 and 2008-2009 School Years.

24. On August 27, 2009, Respondent wrote Petitioner a letter enclosing the summary of the School District's Reading Specialist's review of the data generated by the *** and District's multiple reading assessments. The School District's Reading Specialist concluded that the data shows that the District's trial SRA reading program yielded progress for Student in the area of reading in just nine weeks. Some data indicated that Student had made very significant progress. School District further determined that the District would continue to implement the SRA reading program in Student's Language Arts class, in order to continue Student's progress during the 2009-2010 School Year.

25. Student made significant progress in reading skills during the fall of 2009, using the SRA program implemented for the small group in the Language Arts class. Student's scores indicated that, for the most part, student is working on an instructional/independent level to mostly independent, as of December 1, 2009, even on increasingly difficult skills.

26. Student requires an intensive reading program such as SRA to receive a FAPE, and that intensive, structure, sequential reading program may be implemented in the small group setting of the resource classroom or provided in an intensive *** program.

III. Discussion

In this case, Petitioner complained that School District failed to implement an appropriate reading program for a student with specific learning disabilities in reading comprehension and written expression, and dyslexia, thereby denying Student a free appropriate public education. Petitioner and Respondent resolved two previous disputes concerning Student's reading program, and had ultimately agreed in November, 2008, that School District would provide Student an individualized, structured, sequential reading program. At first, the SRA reading program was provided in two versions: One implemented in the setting of the Language Arts resource classroom, and the other, on a 45 day trial basis, in an intensive *** program. Student made meaningful educational progress in the 45 day trial period. After the conclusion of the 45 day trial, School District continued to implement the classroom program, but not the *** program. School District also tried to provide ESYS, but Parent did not allow Student to attend summer school, opting instead for *** services, especially after trying and failing to schedule an ARD to discuss the reading program.

When Petitioner did have in ARD in the summer to request a *** program, consistent with Student's ongoing *** experiences, School District balked because it was prepared to provide its own individualized, structured, sequential reading program. Then again, during the ARD to develop the IEP for the 2009-2010 School Year, Petitioner rejected School District's offer to continue the intensive *** reading program. Although Petitioner states that the reason for the refusal is concern with ***, that complaint is not supported by the fact that Student continues to receive ***. More importantly, even in the face of Petitioner's refusal of the intensive *** program, under which Student made substantial progress, School District does implement the SRA reading program in part in the Language Arts classroom, and Student continues to make educational progress. Where a school district offers a variety of educational services to provide a FAPE, and Student accesses only a portion of the educational services offered, but continues to make progress, Petitioner is not entitled to recovery because Respondent has provided FAPE. When School District implemented the individualized,

structured, sequential reading program that Student needed for FAPE, further enrichment of Student's educational programming was optional and not required for FAPE.

Finally, Respondent is not to be faulted for failing to provide the intensive educational programming during regular school hours. Student has a full schedule, and, in order to meet curriculum requirements in Language Arts, Student may access the more intensive *** program ***. During the trial period of the *** *** program, Student did well, and was not shown to have the difficulties predicted by Parent due to ***. Moreover, as Respondent pointed out, the *** program, which Parent prefers, is only provided ***. School District's accommodation of Student's educational needs insofar as possible during the regular school day, however, has allowed Student to make educational progress and not to be deprived of FAPE, even though Student does not access the *** program offered by School District. See *Loren F. v. Atlanta Indep. School. Sys.*, 349.F.3d 1309 (11th Cir., 2003) and *Doe v. Defendant I*, 898 F.2d 1186(6th Cir.-1990). In those decisions the 11th and 6th Circuits held that Parents should not be rewarded in due process hearings for their failure to access appropriately offered programs and services for their children.

IV. Conclusions of Law

1. Petitioner is a student in School District who is eligible for special education services based on a classification of specific learning disabilities because of specific learning disabilities in reading comprehension (dyslexia) and written expression. 20 U.S.C. §1401; 34 CFR §300.8; 19 TAC §89.1040.

2. Respondent has a responsibility to provide Student with a free appropriate public education ("FAPE"). 20 U.S.C. §1412; 34 CFR §300.17; 19 TAC § 89.1001.

3. Student's learning disability requires the implementation of an individualized structured, sequential reading program for the Student to receive a FAPE. Student received the

necessary reading program at all times after December 8, 2008, except when Petitioner refused such services, during the summer of 2009. 34 CFR §§300.22, 300.101.

4. Respondent and the ARDC developed an appropriate IEP for Student which included appropriate educational programming and related services for the 2009-2010 school year. 34 CFR §§300.17,300.22,300.34.

5. Respondent provided Student with a FAPE in the least restrictive environment for all of the 2009-2010 school year in a manner that included the key stakeholders. 34 CFR §300.17; *Board of Education v. Rowley*, 458.U.S. 176, 73L.Ed.2d 690, 102 S.Ct. 3034 (1982).; *Cypress-Fairbanks Indep. School Dist, v. Michael F.*, 118 F.3d 245 (5th Cir.—1997).

6. Petitioner was not entitled to reimbursement for private educational services or compensatory educational services when there was no showing of a denial of FAPE. 34 CFR §§ 300.17, 300.101; *Rowley, supra*; *Michael F., supra*.

V. Order

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is DENIED.

SIGNED in Austin, Texas this 1st day of March, 2010.

Gwendolyn Hill Webb
Special Education Hearing Officer

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SYNOPSIS

Issue: Did Respondent fail to provide a free appropriate public education to a student with dyslexia and specific learning disabilities in written expression and reading comprehension when provided an individualized structured, sequential reading program during the regular school day, but did not implement an intensive *** reading program during regular school hours?

Held: Where Petitioner and Respondent concluded Petitioner needed that individualized reading program, and Petitioner made educational progress with the structured, sequential reading program provided in the language arts classroom, Petitioner was not denied FAPE when School District did not implement the intensive *** program during the regular school day, and Student was shown to make meaningful educational progress.

Federal Citation: 34 CFR §§ 300.22, 300.34, *Bd. Of Educ. v. Rowley*, 458 U.S. 176, 73L.Ed.2d 690, 102 S.Ct. 3034(1982), *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d.245 (5th Cir. 1997), *Loren F. v. Atlanta Indep. School Sys.*, 349 F.3d 1309 (11th Cir. 2003).

Texas Citation: 19 TAC §89.1055 (a), (e).

Issue: Did Respondent fail to provide a FAPE to Student with dyslexia and specific learning disabilities when it offered a structured sequential reading program both during school hours in the language arts classroom and in an intensive *** program ***.

Held: Respondent did not deny FAPE when it implemented a structured sequential reading program both during the special education *** class, and in an intensive *** *** program, even though Petitioner objected to the length of Student's

school day and limited access to extracurricular activities under Respondent's proposal, and did not access the *** services.

Federal Citation: 34 CFR §§ 300.22, 300.34, *Bd. Of Educ. V. Rowley*, 458 U.S. 176, 73L.Ed.2d 690, 102 S.Ct. 3034(1982), *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d.245 (5th Cir. 1997), *Loren F. v. Atlanta Indep. School Sys.*, 349 F.3d 1309 (11th Cir. 2003).

Texas Citation: 19 TAC §89.1055 (a), (e).