

Student BNF	§	BEFORE A SPECIAL EDUCATION
Parent	§	
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR THE
	§	
ROYAL INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

Petitioner, Student by next friend Parent (hereinafter Petitioner or Student), brings this action against Respondent Royal Independent School District (hereinafter Respondent or RISD) under the Individuals with Disabilities Education Act (hereinafter IDEA), 20 USC §1400 *et. seq.*

Following the filing of a motion to dismiss by Respondent, Petitioner amended the issues to allege that Respondent has failed to provide a free appropriate public education during the 2003-2004 school year in the following particulars:

1. Student's reading IEPs, as developed and implemented, are not reasonably calculated to confer educational benefit under the standards of the IDEA, and do not comply with the prior orders issued in Docket No. 406-SE-0802;
2. Student is not receiving her education in the least restrictive environment, and in accordance with the prior orders issued in Docket No. 406-SE-0802, as her Physical Education class does not offer opportunities for inclusion with regular education students;
3. Respondent has failed to implement Student's social skills' IEPs; and
4. Respondent has failed to provide a free appropriate public education in accordance with the IDEA, and the prior orders issued in Docket No. 406-SE-0802, by placing Student in a classroom in which the student/teacher ratio is inappropriate to Student's educational needs and does not guarantee Student a safe learning environment.

For relief, Petitioner seeks the development and implementation of appropriate IEPs and placement in the Life Skills classroom that addresses the identified areas of concern. In addition, Petitioner seeks compensatory education for the relevant period.

Petitioner appears *pro se* in the instant action, through her next friend, Parent. Respondent is represented by Miles Bradshaw of Houston, Texas.

PROCEDURAL HISTORY

A prior due process was held concerning Student's special education program at Royal ISD in TEA Docket No. 406-SE-0802. The undersigned Hearing Officer issued a decision in that matter on June 25, 2003. The Hearing Officer hereby takes judicial notice of and incorporates herein by reference the full and final Decision and Order issued in Docket No. 406-SE-0802, including the Findings of Fact and Conclusions of Law.

Petitioner filed the instant request for hearing *pro se* on September 4, 2003, initially complaining of many of the same issues considered and decided in Docket No. 406-SE-0802. Following the filing of a motion to dismiss by Respondent on the grounds of *collateral estoppel* and *res judicata*, Petitioner amended the issues for due process to those identified above. The matter was set and reset for hearing and ultimately came on for hearing on December 12, 2003. By agreement, the parties filed post-hearing briefs on December 18, 2003 and the decision of the Hearing Officer is due on January 12, 2004.

FINDINGS OF FACT

1. Student is a *** year-old student in the *** grade at *** School in Royal ISD. Student lives within the jurisdictional boundaries of RISD, a political subdivision of the State of Texas and a duly incorporated school district.
2. Student is eligible for special education services under IDEA as a student with the disabling conditions of Mental Retardation (hereinafter MR) and Other Health Impairment for Attention Deficit Hyperactivity Disorder (hereinafter ADHD).
3. On June 25, 2003, in Docket No. 406-SE-0802, the undersigned Hearing Officer rendered a decision between the same parties as this action and ordered the following relief:

The parties are to convene an ARDC meeting within ten days of this Order, to review and revise Student's Reading IEP to reflect her current Levels of performance and to continue her intensive remedial instruction in reading; and to revise Student's placement for the 2003-2004 school year to provide for Student's inclusion in a non-academic elective or other school program that allows Student access to non-disabled peers.

4. Respondent convened Admission, Review, and Dismissal Committee (hereinafter ARDC) meetings on July 29 and August 12, 2003 to implement the Order and develop a program for Student for the 2003-2004 school year.
5. The ARDCs revised Student's reading IEPs to include two IEPs- a functional reading IEP and a secondary reading IEP with goals and objectives that reflect the range of Student's abilities and skill deficits. Student's revised IEPs are appropriate and comply with the

Hearing Officer's order to accurately reflect Student's levels of performance and continue her remedial instruction in reading.

6. During the 2003-2004 school year, RISD has implemented several reading programs with Student. Between the beginning of school and approximately early November 2003, Student continued to work on the Edmark intensive reading program from the prior years in areas she had not yet mastered. The Edmark program was an intensive computer based program oriented toward both decoding and comprehension skills. Student also worked on the Functional Edmark program, a site word program used by RISD to extend Student's skills beyond those developed by the Edmark computer program.
7. In early November 2003, RISD began implementation of the Reading Milestones program, a program selected for its intensive and comprehensive approach. The Milestones program provides sequential and structured lessons, and a structured approach that develops reading comprehension skills. The Reading Milestones program was selected, in large part, because of its suitability to the IEPs and needs of the higher functioning group of students in the Life Skills class, including Student. Student is working on the *** grade level of the Reading Milestones program.
8. RISD's use of the Edmark Reading Program, the Edmark Functional program, and the Reading Milestones program provide Student with intensive remedial instruction in reading.
9. Student's reading IEPs and program during the 2003-2004 school year to date are reasonably calculated to provide her with an educational benefit by improving and developing her basic literacy skills.
10. Student's schedule of services and her IEPs assigned her to the Life Skills environment for all academic areas and to the general education environment for P.E. and one non-academic elective, Art. This schedule of services complies with the Hearing Officer's orders in Docket No. 406-SE-0802 pertaining to the least restrictive environment.
11. Student's P.E. class from the beginning of the 2003-2004 school year until mid-November was comprised of approximately 15 students, 12 of whom had disabilities. Ten of the 12 students with disabilities were the students in Student's Life Skills class. This P.E. class did not provide Student with adequate opportunities for access to peers without disabilities, as it was essentially Student's Life Skill class, with 3 additional students.
12. Beginning in November 2003, RISD switched Student's schedule to place her in another P.E. class comprised of 19 students, 6 who have disabilities. In this class, Student has adequate opportunities to interact, work, and socialize with non-disabled peers.
13. RISD has fully implemented Student's social skills IEP through the work of ***, a licensed professional counselor. Ms. *** has met with Student's teachers during the 2003-2004 school year to consult about the implementation of the IEP, as well as with

Student to work directly on the IEP. Student's social skills IEP has been implemented throughout the day in the Life Skills classroom and in her regular education classes.

14. In Docket No. 406-SE-0802, the Hearing Officer found that Student needs instruction in a structured setting with as low a student/teacher ratio as possible. The Life Skills classroom during this 2003-2004 school year has 10 students with 3 assigned instructional personnel- 1 teacher and 2 aides. During many periods of the day, several of the 10 Life Skills students attend other classes outside of the Life Skills environment, resulting in an even lower ratio than 10:3. The student/staff ratio in the Life Skills class satisfies Student's educational needs and provides her with an appropriate learning environment.
15. Student has achieved passing grades in all subjects during the 2003-2004 school year, with grades ranging from *** to ***. Student has made reasonable educational progress during the first semester of the 2003-2004 school year.

DISCUSSION

The evidence presented shows that RISD is providing an appropriate program of special education instruction and services to Student that complies with both the Hearing Officer's orders in Docket No. 406-SE-0802 and the requirements of IDEA.

With regard to Student's reading program, RISD purchased and implemented two complimentary reading programs that address both Student's functional and secondary reading IEPs. This comprehensive reading instruction allows Student to progress and continue to develop literacy skills, while also developing the functional reading skills she needs. RISD is providing Student with a reading program that is reasonably calculated to provide her with an educational benefit.

Although Student's initial P.E. class did not provide her with adequate opportunities for interaction with non-disabled peers, her current P.E. class certainly satisfies this requirement. Respondent has remedied any shortcoming that may have existed in this area.

With respect to Student's social skills IEP and the student/staff ratios in the Life Skills classroom, the evidence conclusively demonstrates that RISD has satisfied its legal obligations in the implementation of this IEP and placement.

CONCLUSIONS OF LAW

1. Student is a student in the RISD who is eligible for special education services under the provisions of IDEA and its implementing regulations with the disability classifications of Mental Retardation and Other Health Impairment.
2. Respondent Royal ISD is an independent school district duly constituted in and by the state of Texas, and subject to the requirements of the IDEA and its implementing federal

and state regulations. RISD is Student's resident district and has the responsibility to provide her with a free appropriate public education. 20 USC §1401 (a)(18)

3. Student's Reading IEPs for the 2003-2004 school year have been developed and implemented in accordance with the Hearing Officer's order in Docket No. 406-SE-0802 and IDEA. The Reading IEPs are properly developed and reasonably calculated to confer educational benefit to Loren under the standards of *Hendrick Hudson Central School District v. Rowley*, 458 US 175 (1982)
4. Student is currently receiving her education in the least restrictive environment and in accordance with the Hearing Officer's order in Docket No. 406-SE-0802. *Daniel R.R. v. State Board of Education, et. al.*, 847 F. 2nd 1036 (5th Cir. 1989)
5. Respondent has properly developed and implemented Student's social skills IEP during the 2003-2004 school year. *Hendrick Hudson Central School District v. Rowley*, 458 US 175 (1982)
6. The student/teacher ratio of approximately 10:3 in the Life Skills placement is appropriate to meet Student's needs. *Hendrick Hudson Central School District v. Rowley*, 458 US 175 (1982)

ORDER

After due consideration of the record, the foregoing findings of fact and conclusions of law, this Hearing Officer hereby **ORDERS** that all relief sought by Petitioner is **DENIED**.

Finding that the public welfare requires the immediate effect of this Final Decision and Order, the Hearing Officer makes it effectively immediately.

SIGNED and **ENTERED** this 12th day of January 2004.

/s/ Lynn E. Rubinett

Lynn E. Rubinett

Special Education Hearing Officer

TEA DOCKET NO. 006-SE-0903

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v.	§	HEARING OFFICER FOR THE
	§	
ROYAL INDEPENDENT	§	
SCHOOL DISTRICT	§	
Respondent	§	STATE OF TEXAS

SYNOPSIS

Issue: Whether Student’s reading IEPs, as developed and implemented, are reasonably calculated to confer educational benefit under the standards of the IDEA, and comply with the prior orders issued in Docket No. 406-SE-0802?

Held: For Respondent. Student’s Reading IEPs for the 2003-2004 school year have been developed and implemented in accordance with the Hearing Officer’s order in Docket No. 406-SE-0802 and IDEA. The Reading IEPs are properly developed and reasonably calculated to confer educational benefit to Student under the standards of *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982).

Cite: 34 CFR §300.300; 300.346

Issue: Whether Student is receiving her education in the least restrictive environment, and in accordance with the prior orders issued in Docket No. 406-SE-0802?

Held: For Respondent. Student is currently receiving her education in the least restrictive environment and in accordance with the Hearing Officer’s order in Docket No. 406-SE-0802. *Daniel R.R. v. State Board of Education, et. al.*, 847 F. 2nd 1036 (5th Cir. 1989).

Cite: 34 CFR §300.550.

Issue: Whether Respondent failed to implement Student’s social skills’ IEPs?

Held: For Respondent. Respondent properly developed and implemented Student’s social skills IEP during the 2003-2004 school year.

Cite: 34 CFR §300.342

Issue: Whether Respondent failed to provide a free appropriate public education in accordance with the IDEA, and the prior orders issued in Docket No. 406-SE-0802, by placing Student in a classroom in which the student/teacher ratio is inappropriate to Student’s educational needs and does not guarantee Student a safe learning environment:

Held: For Respondent. The student/teacher ratio of approximately 10:3 in the Life Skills placement is appropriate to meet Student's needs.

Cite: 34 CFR §300.300.