

DOCKET NO. 121-SE-1203

GALENA PARK INDEPENDENT SCHOOL DISTRICT, PETITIONER	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER
	§	
Student BNF Parent, RESPONDENT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

PETITIONER

Ms. Maryland Hendrix
Director, Special Education
Galena Park Independent School District
14705 Woodforest Blvd.
Houston, Texas 77015

RESPONDENT

No appearance

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Statement of the Case

Petitioner, Galena Park Independent School District brought this action against Respondent, Student by his next friend, Parent pursuant to the Individuals with Disabilities Education Act (hereafter "IDEA"), as amended by the IDEA Amendments of 1997, 20 U.S.C. § 1400 *et seq.*, seeking an order overriding the lack of parental consent for Student's initial placement into special education.

This proceeding was initiated by Galena Park ISD on December 8, 2003, after Student's mother refused to give consent to Galena Park ISD for Student's initial placement into special education. A telephone prehearing conference was held in this matter on January 14, 2004. Despite prior notice, Student's mother failed to participate in the prehearing conference. This matter proceeded to hearing on January 26, 2004. Petitioner, Galena Park ISD, was represented at the hearing by its Special Education Director. Student's mother, although notified of the scheduled hearing date both by mail and by telephone, failed to attend or participate at the hearing in this matter.

Based upon the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law:

Findings of Fact

1. Student is an ***-year-old student in the *** grade who resides with his mother within the jurisdictional boundaries of Galena Park ISD.
2. Galena Park ISD is a political subdivision of the State of Texas and a duly incorporated independent school district located in Harris County, Texas. Galena Park ISD is responsible for providing Student with a free appropriate public education.
3. Student attended *** in Fort Bend Independent School District during the 1998-1999 school year. He was absent from school for 42 days but was assigned to the *** grade.
4. Student attended *** grade in Fort Bend Independent School District during the 1999-2000 school year. He was absent from school for 45 days and was retained in the *** grade. His reading level was considered to be the *** level.
5. Student attended *** grade at *** School in Galena Park ISD from September 18, 2000 to November 10, 2000, when his mother transferred him to *** School located in Houston Independent School District. He returned to *** School on January 3, 2001 and remained at this school until the end of the 2000-2001 school year. [T.42-43]. Staff and teachers at *** School became concerned about Student's inability to do *** grade work. They contacted Student's mother and attempted to refer Student for special education services, but were unable to convince her to give consent for a full and individual evaluation of Student.

6. During the 2001-2002 school year, Student attended *** grade at *** School in Galena Park ISD. Student's *** grade teacher modified his work and assignments and provided him with in-school tutoring services for 30 minutes per day. Additionally, he was placed into a dyslexia pull-out reading program for 45 minutes, three days per week. Student was not being successful with these modifications so his teacher sought and received additional assistance and recommendations for modifications to his regular educational program from the School District's Intervention Assistant Team (IAT). These additional services, including offering after-school tutorial services, were also unsuccessful.
7. In April, 2002, Student's teacher at *** School attempted to refer him for special education testing because he was failing all of his academic subjects, even with modifications. Student was having difficulty producing written work, had made poor progress acquiring basic reading skills, had poor attention and concentration and had difficulty following directions. [P. Exh. #10].
8. Student's mother met with the School District's Educational Diagnostician in May, 2002 and gave consent to the School District to conduct a full and individual evaluation of Student.
9. Student attended *** at the start of his *** grade year (2002-2003).
10. Student's full and individual evaluation was completed on October 3, 2002. On the Woodcock Johnson III Test of Cognitive Abilities, Student obtain a score of *** in Verbal Ability, a score of *** in Performance or Nonverbal Ability, a Cognitive Efficiency score of *** and an overall general intellectual ability score of ***. This placed Student in the moderately deficient range intellectually for his age. Additionally, Student's adaptive behavior functioning was low. He scored a *** on the Adaptive Behavior Composite from the Vineland. Regarding Student's achievement scores, they were quite low but commensurate with this intellectual functioning. In basic reading skills, Student was in the second percentile with a standard score of ***. His reading comprehension skills were below the .1 percentile with a standard score of ***. In math reasoning, Student was in the .4 percentile with a standard score of ***. Regarding Student's emotional and behavioral needs, Student was found to be compliant, cooperative, happy, and accepting of responsibility for his own actions. The only area of concern was his lack of attention and concentration and staying on task. [P. Exh. #9].
11. Student's mother transferred Student to *** School in Galena Park ISD toward the end of October 2002.
12. Student's mother agreed to attend a conference on October 22, 2002 with school personnel at *** School to review Student's assessment results, but failed to attend. Additionally, an ARD Committee meeting was scheduled for October 29, 2002 and Student's mother agreed to participate by telephone, but then failed to do so.
13. The October 29, 2002 ARD Committee proceeded without parent participation. The ARD Committee reviewed the assessment information and found Student eligible for special education and related services as a student with mental retardation. The ARD Committee agreed that Student should attend resource for reading/language arts and math for 12.5 hours per week and developed individualized goals and short term objectives for Student in these subject areas. [P. Exh. #7].
14. The *** School *** met with Student's mother on November 5, 2002 and reviewed with her the results of Student's full and individual evaluation and the October 29, 2002 ARD Committee determinations. Student's mother then visited Student's *** grade homeroom and the resource classroom. The *** then sought parental consent for Student's initial placement into special education, but his mother refused and wrote the following: "I don't agree with the issue 'Mental Retardation.' I don't feel the children should be label[ed] Mental Retardation, if they need more teachers, more summer opportunities and basically more benefits for extra late service care after

- school. It's not I don't appreciate the extra help, but before I decided (sic) I need to (sic) more background on the issue, before I sign." [P. Exh. #6].
15. Galena Park ISD scheduled another ARD Committee meeting in March, 2003, but Student's mother failed to attend.
 16. Student failed his *** grade classes and did not pass the TAKS in *** grade reading and math. He was retained in the *** grade.
 17. Student returned to *** School for the 2003-2004 school year.
 18. An ARD Committee meeting was held on September 2, 2003. Student's mother failed to attend. The ARD Committee found that Student remained eligible for special education services as a student with mental retardation and that he should receive reading, language arts and math instruction in the resource classroom, with the remainder of his subjects being provided in the general education setting. The ARD Committee also recommended that the District proceed with a request for a due process hearing because Student's mother failed to attend ARD Committee meetings and had failed to consent to Student's placement into special education.
 19. Despite numerous interventions and modifications, Student has not been successful in regular education. He remains significantly below his peers in basic reading skills, reading comprehension and math. Student requires individualized instruction, support services, small classroom settings and intensive educational services that can be provided only through special education if he is to make significant educational progress and achieve a free appropriate public education.
 20. Student qualifies for special education services as a student with mental retardation.
 21. Galena Park ISD initiated this due process hearing on December 8, 2003.

Discussion

The primary issue in this proceeding involves Galena Park ISD's request for an order from this Hearing Officer authorizing Galena Park ISD to provide Student with special education and related services despite the lack of parental consent for such services. Based on the evidence presented, I find that Galena Park has affirmatively established Student's eligibility for special education services as a student with mental retardation. Despite numerous interventions and modifications, Student has not been successful in regular education. He remains significantly below his peers in basic reading skills, reading comprehension and math. Examples of his classroom work submitted into the record of this proceeding, clearly support his teachers' testimony that he is incapable of performing grade level work and is in need of special education services. I find that Student requires individualized instruction, supplemental support services, small classroom settings and intensive educational services that can be provided only through special education if he is to make significant educational progress and achieve a free appropriate public education.

Student's mother disagrees with the provision of such services and declines to consent to Student's placement into special education. Accordingly, the legal issue presented is whether Galena Park ISD may utilize the due process hearing procedures of the IDEA to override this lack of parental consent for Student's initial placement into special education. I find that it can.

This legal issue has been previously addressed in at least two special education due process hearings in the State of Texas.¹ In the most recent decision addressing this issue, *Houston Independent School District v. Damian C., bnf Cristel C.*, Docket No. 034-SE-1002 (TX. SEA 2002), Special Education

¹ See *Houston Independent School District v. Damian C., bnf Cristel C.*, Docket No. 034-SE-1002 (TX. SEA 2002); *Galveston ISD v. William B.*, 36 IDELR 281 (TX. SEA 2002).

Hearing Officer Lynn Rubinett, in a well-reasoned decision, determined that although the IDEA is silent on the use of due process procedures to address the lack of parental consent for initial placement into special education, its general provision pertaining to due process hearings - 34 C.F.R. § 300.507 - allows schools to initiate due process hearings on any matter related to the identification, evaluation, educational placement, or provision of free appropriate public education to a child with a disability. She found, and I concur, that this provision may be used by School Districts seeking to override the lack of parental consent for placement of eligible students into special education. Specifically, she determined:

"Allowing schools to initiate due process hearings to override lack of consent to place eligible students into special education upholds the very premise of IDEA, which requires public educational agencies to identify and serve students with disabilities who need services."

Accordingly, I find that Special Education Due Process Hearing Officers have the authority pursuant to the IDEA to override the lack of parental consent for initial placement of students with disabilities into special education. 34 C.F.R. § 300.507.

Based on the evidence presented, I find that Student meets the IDEA's eligibility for special education and related services as a student with mental retardation and that he currently displays significant educational deficits and needs for special education services. I find that Student's need for such services is overwhelming and justifies an order authorizing the provision of special education and related services to him, despite the lack of parental consent for such services.

Conclusions of Law

After due consideration to matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. Student qualifies for special education services from Galena Park ISD as a student with mental retardation. 34 C.F.R. § 300.7.
2. Galena Park ISD, being Student's resident school district, has the responsibility of providing him with a free appropriate public education in the least restrictive environment. 20 U.S.C. § 1401; 34 C.F.R. §300.300.
3. Galena Park ISD may utilize the IDEA's due process hearing procedures to obtain an order overriding the lack of parental consent for Student's initial placement into special education. Special Education Due Process Hearing Officers have the authority pursuant to the IDEA to override the lack of parental consent for initial placement of students with disabilities into special education and order such placement. *Houston Independent School District v. Damian C., bnf Cristel C.*, Docket No. 034-SE-1002 (TX. SEA 2002); *Galveston ISD v. William B.*, 36 IDELR 281 (TX. SEA 2002); *Del Valle ISD v. Desmine S.*, Docket No. 213-SE-0301 (TX. SEA 2001); *Mountain Empire Unified School District*, 34 IDELR 220 (CA. SEA 2001).
4. To meet its obligation under the IDEA to provide Student with a free appropriate public education, Galena Park ISD may place and serve Student with special education services despite the lack of parental consent given Student's disability and need for special education and related services. 34 C.F.R. § 300.300, §300.340; *Yates v. Charles County Board of Education, et al.*, 212 F. Supp. 2d 470 (D. MD. 2002); Tex. Educ. Code § 29.005; 19 Tex. Admin. Code § 89.1050.

ORDER

After due consideration of the record and the foregoing findings of fact and conclusions of law, I ORDER that Student be immediately placed into special education, without parental consent, as a student with mental retardation and be provided with appropriate special education and related services

as determined by duly constituted ARD Committees of Galena Park ISD or other local educational agencies, as applicable, pursuant to law.

Finding that the public welfare requires the immediate effect of this Final Decision and ORDER, I hereby make it effective immediately.

SIGNED this 22nd day of February 2004.

/s/ James W. Holtz

James W. Holtz

Special Education Hearing Officer

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V.	§	HEARING OFFICER
	§	
Student, BNF Parent,	§	
RESPONDENT	§	FOR THE STATE OF TEXAS

SYNOPSIS

Issue: Whether School District may utilize the IDEA's due process hearing procedures to override the lack of parental consent for initial placement of a student with disabilities into special education?

Held: For the School District. The IDEA places the legal obligation on State and local educational agencies to provide students with disabilities with free appropriate public education. The IDEA envisions due process hearings as the procedural mechanism for utilization by parents and public educational agencies to address any matter relating to the identification, evaluation, educational placement, or the provision of free appropriate public education to a child with disabilities. The determination to override the lack of parental consent for initial placement into special education is an issue that falls within the parameters of the IDEA's due process hearing procedures. Special Education Due Process Hearing Officers have the authority pursuant to the IDEA to override the lack of parental consent for initial placement of students with disabilities into special education.

Cite: 34 C.F.R. Sec. 300.507; *Houston Independent School District v. Damian C., bnf Cristel C.*, Docket No. 034-SE-1002 (TX. SEA 2002); *Galveston ISD v. William B.*, 36 IDELR 281 (TX. SEA 2002); *Del Valle ISD v. Desmine S.*, Docket No. 213-SE-0301 (TX. SEA 2001); *Mountain Empire Unified School District*, 34 IDELR 220 (CA. SEA 2001).

Issue: Whether student with mental retardation eligible under the IDEA for special education and related services should be placed into special education without parental consent?

Held: For the School District. Evidence established that student qualified for special education services under the IDEA as a student with mental retardation and that attempts made to educate student in general education with supplemental services and modifications had been unsuccessful. Student requires the individualized instruction, supplemental support services, small classroom settings and intensive educational services that can be provided only through special education, if he is to make significant educational progress and achieve a free appropriate public education.

Cite: 34 C.F.R. §300.13