

DOCKET NO. 208-SE-0204

Student, B/N/F Parent's	§	BEFORE A SPECIAL EDUCATION
	§	
VS.	§	HEARING OFFICER
	§	
GOLIAD INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by his next friends and parents Parent and Parent (hereinafter "Petitioner" or "Student"), brought a complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, et seq., complaining of the Goliad Independent School District (hereinafter "Respondent" or "GISD").

Petitioner was represented by Christopher Jonas, an attorney in Corpus Christi. Respondent was represented by J. Erik Nichols, an attorney in the Houston office of Henslee, Fowler, Hepworth & Schwartz.

Petitioner's request for hearing was filed on February 17, 2004 and came on for hearing by order of the hearing officer on August 27, 2004. At the close of the hearing, counsel for the parties agreed that written closing arguments could be filed by September 7, 2004, and that this decision would be issued on or before September 17, 2004, in compliance with the forty-five day rule.

Petitioner alleged that GISD had failed to provide an appropriate educational placement for Student, that GISD did not develop an appropriate individual educational plan ("IEP") until Petitioner's counsel attended an admission, review and dismissal ("ARD") meeting, and that the

district failed to implement the IEP written for Student. As relief, Petitioner seeks compensatory educational services.

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

Findings of Fact

1. Student is a young man born in April *** who resides with his parents within GISD.
[Petitioner's Exhibit 3]
2. Student receives special education services based upon a learning disability. [Petitioner's Exhibits 2 and 7]
3. Student first received special education services within GISD in the fall of *** because of a speech impairment. In the spring of ***, he was dismissed from special education because he was no longer qualified as speech impaired. However, Student began receiving special education services again in May *** (his *** grade year) based upon a learning disability in written expression. [Petitioner's Exhibit 3]
4. Student has academic weakness in spelling and basic reading. Petitioner's parents are concerned about dyslexic characteristics that Student exhibits and evaluation data which indicate he is reading on a *** grade level. [Petitioner's Exhibit 3]
5. An independent educational evaluation ("IEE") for Student in May 2004 concluded that Student has dyslexia and has not been able to develop skills for decoding and encoding words. He also has problems with auditory discrimination skills. The evaluator in the IEE determined that Student has learning disabilities in reading and written expression and should have an educational program including "explicit, individualized, and multi-sensory instruction". Specifically, the evaluator concluded that Student could not be

successful in reading unless he had a reading program which included phonemic awareness instruction. [Petitioner's Exhibit 1]

6. Student's parents have been concerned about Student's poor reading skills and dissatisfied with his progress. Their counsel attended an ARD meeting for Student in July 2003 and an IEP was developed for Student which included instruction in all regular education classes, an opportunity for tutoring before and after school, and a class devoted to improving reading skills and preparation for the standardized test known as the Texas Essential Knowledge and Skills (TEKS) test. The ARD committee noted Student's problems with phonemic awareness and reading skills. [Petitioner's Exhibit 7]
7. Despite Student's problems in reading and written expression, Student has managed to demonstrate consistent educational progress and success in his grades in school and on standardized tests. Student mastered all objectives in reading on the Texas Assessment of Academic Skills (TAAS) test in the spring of 2002, his *** grade year. He also met the reading standard on the Texas Assessment of Knowledge and Skills (TAKS) test in May 2004, his *** grade year. Student's final grades in his *** grade year ranged from ***(***) to *** (***). [Respondent's Exhibits 43, 53 and 55]
8. ARD committees which convened for Student noted that he made consistent educational progress, and a full and individual evaluation ("FIE") in the summer of 2003 showed measured educational progress. [Petitioner's Exhibits 2, 3, 9 and 11]

Discussion

Student is a young man who has struggled with his learning disabilities and has failed to make the progress in reading that his parents believe is necessary and possible. An independent evaluation suggests that Student could make more significant progress with an intensive phonemic awareness remediation program. But because of Student's demonstrated abilities on

standardized tests and his performance in school, Petitioners failed to prove that he has been denied an opportunity in his special education program to make reasonable educational progress.

Conclusions of Law

1. Student is a student who is eligible for special education under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The educational program developed at GISD in the year before Petitioner sought relief in this matter provided a program reasonably calculated to enable him to receive educational benefit under the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982); Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997); 34 CFR 300.347; and 19 T.A.C. §89.1055.
3. Petitioner failed to meet its burden to prove that the educational program provided by the district for Student was inappropriate. Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED.

SIGNED this 17th day of September, 2004.

/s/ Lucius D. Bunton _____
Lucius D. Bunton
Special Education Hearing Officer

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	§	
VS.	§	HEARING OFFICER
	§	
GOLIAD INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the district failed to provide an appropriate educational program for Student.

CFR CITATIONS: 34 CFR 300.552

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.