

DOCKET NO. 227-SE-0303

STUDENT	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENTS	§	
	§	
VS.	§	HEARING OFFICER
	§	
DRIPPING SPRINGS INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by his next friends and parents Parents (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 Dripping Springs Independent School District (hereinafter "Respondent" or "DSISD").

Petitioner was represented by Elaine Roberts with the law firm of Bruckner Birch in Houston. Respondent was represented by Denise Hays and Evelyn Howard-Hand, attorneys in the Austin office of Walsh, Anderson, Brown, Schulze & Aldridge. Petitioner's request for hearing was filed on March 26, 2003, and originally assigned to another special education hearing officer. On August 27, 2003, the matter was transferred to the undersigned hearing officer.

The matter came on for hearing by agreement on January 8, 9, and 12, 2004. The parties filed written closing arguments on March 1 and agreed that this decision was to be issued on or before March 26, 2004, in compliance with the forty-five day rule.

Petitioner alleged that the district failed to provide a free appropriate public education to Student, that Student was placed in a private school because the district failed to provide an

appropriate placement, that the private school placement was appropriate for Student, and that the district should be required to reimburse Petitioners for the costs of the private placement.

The parties were ably represented by counsel knowledgeable in the law and all matters in controversy have been exhaustively litigated. Numerous experts testified; many witnesses were deposed; and the record includes thousands of pages of documents in hundreds of exhibits.

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 ** whose parents are residents of the Dripping Springs Independent School District. [Respondents Exhibit 1]

2. Student began receiving special education services at the age of ** and has had his educational program involving various eligibility criteria and diagnoses including autism, pervasive developmental disorder, a speech impairment and other health impairment based upon attention deficit hyperactivity disorder. [Petitioner's Exhibits 1-3, 6-10, 21, 23, 26, 27, 32 and 59 and Respondent's Exhibits 1, 2, 8, 9, 44, 46 and 47]

3. Student last attended school within the district during the 2001-2002 school year. During the course of the year, the district was working with an educational consultant on a behavior intervention plan ("BIP") developed in consultation with a behavioral consultant requested by Student's parents and a behavioral specialist retained by the district to do a functional behavioral assessment ("FBA") and make recommendations on Student's BIP. [Respondent's Exhibits 8, 25 and 44]

4. Student's parents were unhappy with some of the school personnel working with Student during the year and advised the district that they believe Student was regressing

behaviorally and academically. Student's parents believed that district personnel were not trained properly to work with Student. [Petitioner's Exhibits 40, 43, 44 and 47]

5. Student's parents maintain that the behavioral specialist used by the district as well as the outside behavioral consultants retained by the district agreed that Applied Behavioral Analysis ("ABA") was an essential part of Student's instruction. Student's parents believed that ABA was not appropriately and consistently employed in the district's efforts in Student's educational and behavioral instruction. [Petitioner's Exhibits 101, 104, 112 and 113 and Respondent's Exhibits 21, 56 and 77]

6. Student's parents complained that the district's behavioral plan was too punitive in nature and not effective because it was not appropriate for him. [Petitioner's Exhibits 73 and 126]

7. Student's parents complained that Student was not educated in the least restrictive environment and was denied appropriate access to non-disabled peers. [Petitioner's Exhibits 59, 64 and 145]

8. Student's parents contended that Student's assessment should have included dyslexia screening, but Student's educational assessment and evaluation and his progress show that they were appropriate and complete. [Respondent's Exhibit 80]

9. Student's parents believe that the district did not work collaboratively with an outside behavioral specialist retained to make recommendations for him. [Petitioner's Exhibit 211]

10. The BIP developed by admission, review and dismissal ("ARD") committees for Student during the 2001-2002 school year required specific monitoring of his behavior. The district did monitor the behavior appropriately and provided information to the consultants

working with them to ensure the effectiveness of his BIP. [Respondent's Exhibits 9, 10, 21 and 23]

11. ARD committees met for Student many times during the school year to consider Student's progress, new evaluations and assessments, and to revise his individual education plan ("IEP") and behavior intervention plan. [Respondent's Exhibits 8, 9, 12-14, 16 and 44]

12. Information compiled by the district indicates that Student's aggressive behavior decreased to some extent during the year and that he was making progress on his behavioral goals. [Respondent's Exhibits 23 and 24]

13. Student also demonstrated progress in reading, math, and social studies, and in working more independently. [Respondent's Exhibits 44 and 74]

14. Toileting was a part of Student's IEPs and he made progress during the year in toileting as well. [Respondent's Exhibits 24 and 46]

15. Student was enrolled by his parents in the **, a private school in the Houston area in June, 2002. Student did not attend the extended year services program offered by the district during the summer of 2002 and his parents did not notify the district prior to his enrollment in ** or his failure to show up for the summer services. [Respondent's Exhibits 68, 73, 109 and 128]

16. An ARD committee was convened for Student on July 30, 2002, and Student's parents requested that Student be placed in all mainstream classes. The committee did not reach a consensus because the other members of the committee did not believe that such a placement was appropriate. Instead, the other members of the committee recommended a self-contained placement based upon Student's previous performance in school and available assessment and information. [Petitioner's Exhibit 156]

17. Student did not return to the district but remained in the ** private placement until ** ceased business and became unknown as the ** or ** in February, 2003, and Student was enrolled in **. [Respondent's Exhibit 128]

18. The ** school and ** were restrictive settings with only children with disabilities. Student attended a class with only one other student in it who was four years younger than he. The placements did not provide their own occupational therapist or speech therapist but Student received some of these services paid for directly by his parents. [Respondent's Exhibit 128]

19. When Student was still within DSISD he had the opportunity to be with non-disabled peers through a program of reverse inclusion and attended mainstream science and social studies. [Respondent's Exhibits 13 and 92]

20. In August, 2003, the district convened another ARD committee for Student and developed an IEP for him with input from his private school teacher. [Respondent's Exhibit 103]

21. Student has continued in his private placement.

Discussion

Student and his family have struggled with numerous disabilities affecting his education. His parents worked with the district until they concluded that Student would be better served in a private placement.

Student's parents are entitled to reimbursement for private placement only if they can prove that the educational placement offered by the district at the time of the removal was inappropriate and that the private placement he attended is appropriate. One year prior to the filing of Petitioner's request for hearing, the district was in the midst of consultation and assessments to provide him with an appropriate IEP and BIP. Petitioner failed to meet its burden of proof to show that the district's placement was inappropriate.

Additionally, Petitioner failed to show that the private placement provided Student was appropriate.

Conclusions of Law

1. Student is a student who is eligible for special education and related services under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. The IEPs and related services developed as the educational programming for Student in the spring of 2002 provided a program which was reasonably calculated to enable him to receive educational benefit under the standard of Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982); 34 CFR 300.347; 19 T.A.C. §89.1055.

3. The educational program offered Student in the spring of 2002 and the program offered by the ARD committee in August 2003 are uniquely tailored to Student's educational needs, were based on competent and accurate assessment, and included measurable long-term goals and short-term objectives necessary for him to have an opportunity to make meaningful educational progress under the requirements of 34 CFR 300.347(a); 19 T.A.C. §89.1055; and 20 U.S.C. §1414(d). Houston ISD vs. Bobby R., 200 F.3d 341 (5th Cir. 2000) and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997).

4. Petitioner failed to meet their burden to prove that the educational programs provided by the district for Student are inappropriate. Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

5. Student's disabilities do not require placement for him in a private school, and Petitioner failed to meet its burden to prove that such a placement is required under the standard of Daniel R. R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989); 20 U.S.C. §1412(a)(5)(A); 34 CFR 300.552; and 19 T.A.C. §89.63.

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 26th day of March, 2004.

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

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SYNOPSIS

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

CFR CITATIONS: 34 CFR 300.552; 34 CFR 300.347; 34 CFR 300.347(a)

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.

ISSUE: Whether Petitioner's are entitled to reimbursement for private placement.

CFR CITATIONS: 34 CFR 300.552

TEXAS CITATION: 19 T.A.C. §89.63

HELD: For Respondent.