

Student <i>b/n/f</i>	§	BEFORE A SPECIAL EDUCATION
Parent,	§	
	§	
Petitioner	§	
	§	
V.	§	HEARING OFFICER
	§	
IRVING INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
Respondent	§	FOR THE STATE OF TEXAS

**DECISION OF THE HEARING OFFICER**

**Procedural History and Issues**

Parent, the mother of Student (“Petitioner”), requested this Due Process Hearing on May 21, 2004, under the Individuals with Disabilities in Education Act, 20 U.S.C. §1400 *et seq.*, (hereafter “IDEA”), complaining about the failure of Irving Independent School District (“Respondent” or “the District”) to provide Student with a free appropriate public education (FAPE). In the prehearing conference conducted on June 21, 2004, \*\*\*, Student’s maternal grandmother, appeared as Petitioner’s advocate; Respondent was represented by James W. Deatherage, of the law firm Jim Deatherage & Associates, P.C. During the prehearing conference the case was set for hearing and the issue was identified as follows:

Whether the Individualized Education Plan proposed by Respondent for the 2004-2005 school year, including the extended school year services for the summer of 2004, is appropriate.

As relief Petitioner requests that Student be placed in a private, residential treatment facility.

On July 1, 2004, the Hearing Officer convened the Due Process Hearing, which continued through July 2, 2004. \*\*\* represented Petitioner at the hearing. Jim Deatherage represented Respondent; he was assisted by Cindy Guy, legal assistant and educational consultant. Parent was present for the entire hearing. \*\*\*, special education coordinator for Irving ISD, served as the District representative during the hearing.

Testimonial and documentary evidence was received, and a transcript was made of the proceedings by a certified court reporter. The original Decision Deadline was July 5, 2004, but the parties agreed to extend the deadline until July 13, 2004, to provide the Hearing Officer additional time to prepare the decision.

## **Findings of Fact**

Based upon the matters of record and matters of official notice, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following findings of fact based on a preponderance of the evidence:

1. Student is an \*\*\*-year-old student residing with his parent within the geographic boundaries of Irving Independent School District. Student has been identified as a student eligible for special education services under the classification of autistic and speech impaired.
2. Student received services in the Preschool Program for Children with Disabilities (PPCD) in Irving ISD. During the 2000-2001 school year, Student was withdrawn from the Irving ISD when he was placed in the custody of the State of Texas. Student returned to Irving ISD in late March 2003, having previously been served by Wichita Falls ISD and Columbus ISD while in the custody of the State of Texas. When Student returned to Irving ISD he was placed in the care of his mother, but Department of Family and Protective Services retained the exclusive legal right to make educational decisions for Student until January 2004. In January 2004 the appropriate court with jurisdiction over Student decreed that Mother would have sole managing conservatorship with the right to make educational decisions for Student and to represent him in legal matters.
3. At the time Student returned to Irving ISD he was non-verbal, although he was able to communicate basic needs and desires by gestures and leading. Student also engaged in self-mutilating behavior, including biting, pinching, and scratching himself to an extreme extent. Student had bitten his lip so severely that plastic surgery was required. He also jerked his head backward rapidly, popping his neck strongly into extension. These behaviors had resulted in injuries to himself in a number of areas, so he required elbow extension splints, a C-collar, and a helmet. He was fed through a gastrostomy tube (G-tube). Student received treatment through Children's Medical Center of Dallas and was prescribed many medications. He required a weighted vest and used a weighted blanket to facilitate calmness and reduce the self-abuse. Student also received services through the Dallas Metro Service (MHMR).
4. An Admission, Review and Dismissal (ARD) committee met on March 18, 2003 while Student was still in the hospital, and developed an interim individualized educational plan (IEP) for Student with services to be provided temporarily at \*\*\* Transition Center until a complete individualized assessment could be conducted. The committee accepted the IEP provided from Columbus ISD for the interim program with services for Student to begin immediately at \*\*\* after discharge from the hospital.

5. Because \*\*\* did not have the equipment needed for Student when he first arrived, Mother loaned Student's equipment from home to the school until its equipment arrived a couple of weeks later.
6. Another ARD committee meeting was held on April 14, 2003, to establish goals and objectives for Student. The committee also developed an assessment plan, including evaluations for education, occupational therapy, and physical therapy. The committee discussed Student's speech therapy, health care, transportation needs, and his behavior. Additionally, the committee addressed the areas included in the autism supplement.
7. Dr. \*\*\* performed a functional non-standardized educational evaluation of Student for Irving ISD in May 2003. Her extremely detailed report provided detailed recommendations for teaching Student.
8. On May 28, 2003, the ARD committee met again, this time to review the evaluation from Dr. \*\*\*, to discuss extended school year services for the summer of 2003, and to develop an IEP for the 2003-2004 school year. A very large number of people attended this meeting, so many that a second page was needed to list all of them and their positions. Representatives from community organizations included someone from CASA Child Advocates, Dallas Metro Services, and the Department of Family and Protective Services. A number of family members also attended, including Student's mother, stepfather, both maternal grandparents, and an aunt. Mother was also represented by an attorney from Advocacy, Inc. Members from the District included persons from many areas: occupational therapy, speech therapy, assistive technology, adaptive P.E., health management, assessment, and physical therapy, as well as representatives from general education, special education, and administration.
9. Mrs. \*\*\*, Student's teacher, reviewed Student's condition when he started attending \*\*\*: He had open wounds, including a sore open-wounded lip; he did not eat or drink anything; he wore immobilizers ("no-no's"); he wore a C-collar as well as a weighted vest; he slept in an adult's lap. Mrs. \*\*\* then reported on Student's accomplishments. There was a decrease in the use of the immobilizers and dependence on adults to sit and walk. The school offered in-home training, but the parent declined.
10. The ARD committee also decided that extended school year services should be provided for Student to prevent regression. Because \*\*\* would be undergoing construction, the committee determined that the program for the summer would be provided at the Autistic Treatment Center (ATC) from June 9, 2003 until August 22, 2003. Two teachers from Student's school would go to the ATC for two days to help Student with the transition.

11. Student attended the ATC during the summer of 2003, and continued to make progress. The IEP developed by the ARD committee at the May 28, 2003, meeting formed the basis of ATC's program for Student.
12. Student returned to \*\*\* for the 2003-2004 school year, because of problems with Student on the bus. Mother requested an ARD committee meeting to address the transportation issue. The committee met on October 30, 2003, and a new target behavior was added to the behavior intervention plan. The committee also discussed Student's progress during the summer at the ATC, and the use of the big ball during physical therapy. The school again offered in-home training. Services during winter break were also discussed.
13. One important aspect of Student's IEP provided him the opportunity to spend time at \*\*\* School, a general education school \*\*\*. Student started going to \*\*\* to receive his medication from the school nurse there two times each week. He has progressed to spending more time at \*\*\* and has started interacting with some of the students there.
14. Other progress was seen for Student during the 2003-2004 school year. He started school saying only a few words, but had a vocabulary at the end of school of about 30 words. He started school sitting either in a bean bag chair or a teacher's lap, and has progressed to the point where he can now sit in a chair and work at a table. He no longer needs to wear the pressure garments all of the time, and now has been able to recognize when he needs the weighted blanket, ask for it and get it. He has gone from needing to grab on to a person when he or she walks up to now greeting the person appropriately. He can go to the playground and play on the equipment. He can walk by himself and knows when to stop at the designated point and return. He is able to feed himself instead of needing the G-tube. He started school in March 2003 working in a room alone with the teacher and a paraprofessional, and during 2003-2004 was in a real classroom with 6 or 7 other students. The self-abusive behavior at school was reduced to the point that it was virtually gone. He no longer required the C-collar and was able to wear a bandana instead. He has lunch in the cafeteria and interacts during the flag raising at school. He has mastered a number of the objectives on his IEP and has made good progress on many others. Thus, Student had received positive benefits.
15. During the May 19, 2004, ARD committee meeting, Student's IEP for 2004-2005 school year was developed, including the extended school year services for the summer of 2004. Mother agreed with the IEP but disagreed with the placement. She believed Student needed to be back at the ATC not only for the summer program, but also for the 2004-2005 school year. The District instead offered a half-day program at \*\*\* and in-home training for a half-day during the afternoons for the summer of 2004.
16. The goals and objectives contained in Student's IEP for the 2004-2005 school year were prepared based upon recent, individualized assessment of Student's

needs and his performance. The goals and objectives are specific and measurable. They address all areas of his needs and were developed in a coordinated manner by key individuals familiar with his needs. The IEP contemplated placement in the least restrictive environment, in that Student would spend time with non-disabled peers to the maximum extent possible. It also appears that Student's IEP was designed to provide positive academic and non-academic benefits.

17. Student had to be hospitalized in May 2004 following a serious incident with his behavior at home one night. Mother believes his behavior has gotten worse over the summer, but school personnel have not observed similar difficulties while he has been attending \*\*\* this summer.
18. Student's family has experienced extreme difficulty managing his behavior at home. Their primary reason for requesting residential placement for Student focuses on access to round the clock medical care and behavioral interventions.

### **Discussion**

As with almost every case involving special education services under the IDEA, we must refer to the United States Supreme Court in its decision, *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982). All handicapped students under the IDEA are entitled to receive a free, appropriate, public education (FAPE). Whether a school district has complied with its obligation to provide FAPE is a two-prong test: (1) the school district must comply with the procedural requirements of IDEA; (2) the school district must design and implement a program “. . . reasonably calculated to enable the child to receive educational benefits.”

Petitioner has not alleged any procedural violations, so the case turns on whether Irving ISD's program for Student is reasonably calculated to enable him to receive educational benefits. That question, in turn, must be guided by the test announced in *Cypress-Fairbanks Indep. School Dist. v. Michael F.*, 118 F.3d 245 (1997), *cert. denied*, 118 S.Ct. 690 (1998), where the Court approved the four-factor test developed by the District Court:

1. The program is individualized on the basis of the student's assessment and performance;
2. The program is administered in the least restrictive environment;
3. The services are provided in a coordinated and collaborative manner by the key “stakeholders;” and
4. Positive academic and non-academic benefits are demonstrated.

Student's family disagrees with the District's placement; they do not believe that positive benefits have been demonstrated. They believe Student can only receive benefit from a residential treatment setting. However, residential placement for reasons of medical and domiciliary care -- and not for educational purposes -- are not mandated by IDEA. Student's family emphasized repeatedly at the hearing they needed help for his behavior; no doubt, that is true. There is concrete evidence, though, that Student has made remarkable progress in the classroom. That progress has resulted from the IEP that the District developed and implemented for Student.

Moreover, we can not overlook the fact that residential treatment places the child in the most restrictive setting, and the law requires that he be placed in the least restrictive setting in which he can make educational progress. *Rowley* does not require the best program possible, but one that provides some educational benefit. If Student can receive some educational benefit in the classroom setting, then residential placement is not appropriate.

As an editorial comment, the Hearing Officer observes that this case demonstrates most of what is wrong with the health care system in our country. The law, on the other hand, does not require the school district to solve the family's dilemma in this case.

The facts in this case support a finding that Irving ISD developed an IEP that was reasonably calculated to enable Student to receive meaningful educational benefits for the 2004-2005 school year.

### **Conclusions of Law**

After due consideration of 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 is a student who is eligible for special education services under the IDEA as a child with autism and speech impairment. 20 U.S.C. § 1401 ( 3) (A ); 34 C.F.R. § 300.7 (c) (1), (11).
2. Petitioner bears the burden of proof with respect to his claims that Student was denied a free appropriate public education. *Tatro v. Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983), *aff'd*, 468 U.S. 883 (1984). Petitioner did not meet his burden of proof in this case.
3. With respect to Irving ISD's program developed for Student for the 2004-2005 school year, the IEP was reasonably calculated to enable him to receive educational benefits. The four factors set forth in *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997), are met.

**ORDER**

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the relief sought by Petitioner is DENIED. Finding that the public welfare requires the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

SIGNED this 12<sup>th</sup> day of July 2004.

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*Lucretia Dillard*

Special Education Hearing Officer

DOCKET NUMBER 320-SE-0504

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**Synopsis**

**Issue:** *Whether the Individualized Educational Plan proposed by Respondent school district for the 2004-2005 school year, including the extended school year services for the summer of 2004, is appropriate?*

**Held:** For the District.

**Citations:** *Hendrick Hudson Central School District v. Rowley*, 458 U.S. 175 (1982); *Adam J. v. Keller ISD*, 328 F.3d 804 (5<sup>th</sup> Cir. 2003); *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

20 U.S.C. § 1401  
34 C.F.R. § 300.13  
34 C.F.R. § 300.550