

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

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by her next friend and mother 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 Houston Independent School District (hereinafter "Respondent" or "HISD").

Petitioner was represented by Christopher Jonas, an attorney in Corpus Christi, Texas. Respondent was represented by Hans P. Graff with the Office of the School Attorney of the Houston Independent School District. Petitioner's request for hearing was filed on June 12, 2003, and came on for hearing by agreement of the parties on June 8, 2004. At the close of the hearing, the parties agreed to a schedule for the filing of written closing arguments and the issuance of the decision and the schedule was adjusted on a joint motion of the parties and the decision is issued on July 12, 2004, in compliance with the forty-five day rule.

Petitioner alleged that HISD has failed to provide an appropriate educational placement for Student before the district eventually moved her to a private placement. As relief, Petitioner requested compensatory educational services for the period of time the district denied her an appropriate program.

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 \*\*\* girl born in March, \*\*\*, who resides with her mother within HISD. [Petitioner's Exhibit (hereinafter "P.") 13]
2. Student was first evaluated by the district in 1994 for special education eligibility and the district determined that she met eligibility criteria as mentally retarded, auditorally impaired, speech impaired, visually impaired, and other health impairment, ("OHI") based upon a diagnosis of \*\*\* syndrome. [Respondent's Exhibit (hereinafter "R." 11]
3. \*\*\* syndrome involves birth defects in children including a \*\*\* or failure to close the \*\*\*, \*\*\* related to defects in the cranial nerves, heart defects, defects in the passages from the back of the child's nose to the throat restricting breathing through the nose, retardation of growth and development, genital or urinary abnormalities, and ear abnormalities and hearing loss. [P. 1, 2 and 3]
4. Student attended \*\*\* School within the district and received special education and related services which were agreed to at ARD meetings until Student's mother requested homebound services in September 2002. Student sometimes had behavior problems and missed school frequently because of illness. [P. 8 -16 and R. 11-18]
5. When Student's mother requested homebound services in September 2002, the admissions, review and dismissal ("ARD") committee developed an Individual Education Plan ("IEP") for Student which could be implemented in a homebound or hospitalization setting. The ARD committee also developed a Behavior Intervention Plan ("BIP") for Student but did not

call for it to be implemented in the homebound setting. And the committee members reached a mutual agreement at the ARD meeting. [R. 15]

6. In December 2002, Student came back to \*\*\* from her homebound placement and the ARD committee continued her placement at the \*\*\*. A behavior intervention plan was implemented and her IEP addressed her behavior, academic curriculum, and related services. [R.14]

7. An ARD committee convened in June 2003 to discuss Student's mother's concerns about her placement at \*\*\*. Student's mother did not believe that Student was making appropriate progress and had heard reports from other school personnel that Student was being mistreated in her placement. The committee discussed the concerns, noted Student's continuing absences from school, and discussed management of Student's medications by her psychiatrist. The committee could not reach an agreement as to placement for Student. [R.14]

8. Another ARD committee for Student was convened in September 2003. Student's mother did not attend the meeting, and the committee discussed problems with Student's behavior and determined that additional assessment was needed. [P.18]

9. An ARD committee met again in October, 2003, to do an annual review of Student's placement and discuss changing her placement. The committee agreed that Student continued to be eligible based upon a visual impairment, auditory impairment, speech impairment, OHI, as a deaf-blind student, and mental retardation. The committee conducted a functional behavioral assessment, developed goals and objectives, and created another behavior intervention plan. Based upon the committee's considerations, the ARD committee placed Student in a private placement called the \*\*\* Treatment Center. [R.8]

10. Student has done well at \*\*\* since beginning attendance there and Student's mother believes the placement is successful and appropriate.

#### Discussion

Petitioner contended that the district failed to move Student to the more restrictive setting of the residential placement in a timely manner. The evidence at hearing showed that the district sought to adjust Student's placement and maintain her in the least restrictive environment. When assessment showed Student needed a more restrictive setting, the district changed her placement.

#### 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 Student's educational program at HISD provided a program reasonably calculated to enable her to receive educational benefit under the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982), 34 CFR 300.347 and 19 T.A.C. §89.1055.
3. Petitioner failed to meet the burden to prove that the educational programs provided by the district are 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 12th day of July, 2004.

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

DOCKET NO. 331-SE-0603

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SYNOPSIS

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

**CFR CITATION:** 34 CFR 300.347.

**TEXAS CITATION:** 19 T.A.C. §89.1055

**HELD:** For Respondent.