

DOCKET NO. 010-SE-0904

STUDENT,

B/N/F Parent & Parent

VS.

EVERMAN INDEPENDENT

SCHOOL DISTRICT

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER

FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by her next friends and parents (hereinafter "Petitioner"), brought a complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, *et seq.*, -complaining of the Everman Independent School District (hereinafter "Respondent" or "EISD").

Petitioners appeared pro se. Respondent was represented by Cynthia Buechler, an attorney with the firm of Buechler & Associates, P.C. in Austin.

Petitioners' request for hearing was filed on September 8, 2004, and came on for hearing by agreement of the parties on April 5 and 6, 2005, in Everman. The parties were afforded an opportunity to file written closing arguments and agreed that the decision in this matter would be issued on or before Friday, May 13, 2005, in compliance with the provisions of the forty-five day rule.

Petitioners alleged that STUDENT was injured on one occasion by another student and on other occasions fell and was bruised while working with district staff. Petitioners alleged that STUDENT's placement by the district was unsafe for her, that the staff was not properly trained and supervised, that the district's failures in protecting her were in violation of her individual education plan ("IEP"), and that the district failed to provide appropriately measured goals and objectives for STUDENT. As relief, Petitioners seeks an order declaring that the district failed to provide STUDENT. with an appropriate educational placement and compensatory educational services to be provided in the home.

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

Findings of Fact

1. STUDENT is a student who has been served by the Respondent in special education placement based upon IDEA eligibility criteria of multiple disabilities. She resides with her parents in the EISD. [Petitioner's Exhibit 1 and Respondent's Exhibits 1-5, 7- 8, 12-14, & 18-20]

2. A full individual evaluation ("FIE") completed in January 2005 shows that STUDENT is orthopedically impaired, speech impaired and mentally retarded. [Respondent's Exhibits 18-20]

3. At the time of the evaluation in January 2005, STUDENT was *** years old and in the *** grade. [Respondent's Exhibit 18]

4. In October 2003, another student in STUDENT's class *** her. STUDENT was taken to the school nurse for evaluation and her parents were notified. She was taken home but STUDENT had no difficulty in returning to school. [Petitioner's Exhibit 1 and Transcript Pages 74 & 75 and Respondent's Exhibit 9]

5. Prior to STUDENT's being injured by the student, the offending student ***. The student had injured staff on a few occasions. Since the student's injury to STUDENT, he has ***. [Transcript Pages 76-78]

6. Following the incident, an admission, review and dismissal ("ARD") committee agreed that the student who injured STUDENT would not be in her class during the school year. [Respondent's Exhibit 12]

7. During extended service year ("ESY") in the summer of 2004, STUDENT received educational services. One day during ESY while STUDENT was being given mobility instruction, she ***, *** and ***. STUDENT was evaluated at the school and her parents were notified. [Transcript Pages 100-102]

8. After her injury *** during ESY, STUDENT continued with the ESY program and fully participated in it. [Transcript Pages 137 & 138]

9. At the request of STUDENT's parents, the district did a safety report to consider all aspects of STUDENT's educational placement. The independent report in December 2004 concluded that STUDENT was in a safe environment with appropriate supervision and instruction and properly-trained adults working with her. [Respondent's Exhibit 15]

10. An ARD meeting for STUDENT was held in August 2004. STUDENT's parents insisted that the student who injured STUDENT in the past could not be in STUDENT's classroom. STUDENT's parents agreed with all other aspects of her IEP including the instructional services, her goals and objectives, and her related services. The ARD committee offered to place STUDENT in a class at the high school rather than without the other student in the class and the ARD committee offered increased staff at the middle school and a placement with two rooms and a connecting door and to keep the other student and STUDENT in separate rooms. STUDENT's parents have refused the placement and have kept STUDENT at home receiving homebound services since that time. [Respondent's Exhibit 7 & 8 and Transcript Pages 73-75]

11. An ARD meeting conducted for STUDENT in November 2004 resulted in agreement by all ARD committee members including STUDENT's parents. STUDENT's IEP called for an educational placement continuing as had been designed by previous ARD committees. STUDENT was educated in a life skills class and received extensive related services ***. The ARD committee sought additional evaluation which was completed in January 2005. [Respondent's Exhibits 12-20]

12. The district has offered a one-on-one aide for STUDENT anytime that she is with the student who injured her. STUDENT's parents have also refused this offer from the district. STUDENT is not attending school. [Transcript Page 77 and Respondent's Exhibit 22]

13. Measurable goals and objectives in academic and life skills instruction have been included in STUDENT's IEPs. STUDENT's parents did not disagree at ARD committee meetings with the educational instruction and her goals and objectives. [Respondent's Exhibits 4 & 12]

14. Educational assessment and reports from STUDENT's teachers show that STUDENT has made measurable educational progress pursuant to her IEP. [Transcript Page 50 and Respondent's Exhibits 7, 8, 12, & 18]

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. EISD is the local education agency responsible for the provisions of STUDENT's free appropriate public education.
3. The IEPs developed for STUDENT by EISD in the 2003-2004 and 2004-2005 school years were properly developed by ARD committees and provided STUDENT with an educational placement and related services 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 300.552, and 19 T.A.C. §89.1055.
4. Petitioners failed to meet their burden to prove that the educational program provided by Respondent for STUDENT was inappropriate. Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

5. STUDENT's placement by the district involves a high degree of discretion and judgment by the multidisciplinary team in her ARD committee. Petitioner's claims about STUDENT's injuries do not give rise to a claim under IDEA. Willhauck v. Town of Mansfield, 164 F. Supp. 2d 127(D. Mass 2001).

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 May, 2005.

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

DOCKET NO. 010-SE-0904

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B/N/F Parent & Parent	§	
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VS.	§	HEARING OFFICER
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SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the district provided an appropriate educational plan for STUDENT.

CFR CITATIONS: 34 CFR 300.552

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.