

STUDENT,	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENT	§	
	§	
VS.	§	HEARING OFFICER
	§	
FORT BEND INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by her next friend 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 Fort Bend Independent School District (hereinafter "Respondent" or "FBISD").

Petitioner Parent appeared pro se. Respondent was represented by Jeffrey Rogers, an attorney with the firm of Feldman & Rogers in Houston.

Petitioner's request for hearing was filed on January 2, 2004, and came on for hearing by agreement of the parties and order of the Hearing Officer on January 18 and 19, 2005. 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 February 10, 2005, in compliance with the forty-five day rule.

Petitioner alleged that the Admission, Review and Dismissal ("ARD") committee meetings for Student were not properly conducted, that Student's educational program is based on faulty assessment, that the district has not timely developed an individual educational plan ("IEP") for Student, and that the district has failed to provide reimbursement for related services and assessment. Petitioner sought as relief reimbursement for related services and assessment,

an order requiring that an appropriate IEP and related services be developed and implemented for Student, that an appropriate assessment be completed for Student, and various reimbursements for out-of-pocket expenses including attorneys' fees and costs for a guardian ad litem for Student in another matter.

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. At the time of the hearing, Student was a \*\* year old student residing with her Parent and attending the \*\* grade at \*\* School within FBISD. Student's father was killed in an automobile accident in 1997. [Transcript Page 14]

2. Student has received special education and related services from the district based upon eligibility criteria of other health impairment and emotional disturbance. Student has been diagnosed with attention deficit disorder ("ADD") and delayed sleep phase syndrome.

[Petitioner's Exhibit Volume 1, Exhibit 2, 8, 9 and Respondent's Exhibits 7 & 8]

3. Delayed sleep phase syndrome is the term used to described Student's inability to be awake and alert during the morning hours when most students attend school. Student does not become awake and alert until much later during the day. [Transcript Pages 39-41]

4. Student has demonstrated the intellectual capacity and academic ability to perform in regular education classes. [Petitioner's Exhibits Volume 1, Exhibits 2, 4, 7-10, 12, & 14 and Respondent's Exhibit 8]

5. Student's academic performance has, however, suffered because of her excessive absences from school. The absences are caused by her sleep disorder, anxiety, and depression. Student's psychiatrist believes that the sleep disorder interferes with her ability to attend school during regular hours. [Transcript Pages 41, 270-274 and Respondent's Exhibit 22]

6. In the summer of 2003, Student's Parent requested residential placement for Student, but Student's ARD committee determined that it did not have assessment data to support residential placement. The ARD committee requested Parent's consent for a psychological evaluation, but Parent denied consent for some time. When her consent was finally authorized, Parent did not cooperate with the psychologist performing the assessment for several weeks. [Petitioner's Exhibit Volume 1, Exhibit 7]

7. When the psychological report was finally completed, an ARD committee convened in January 2004 to consider the report and, in accordance with the recommendations of the psychologist, the ARD committee recommended a residential placement for Student at the \*\*\* \*\*\*. [Respondent's Exhibit Volume 1 Exhibit 9]

8. After touring the \*\*\* \*\*\*, though, Parent concluded that it was an inappropriate placement for Student because of the low intellectual ability of most of the students at \*\*\*. Instead, Parent requested at a subsequent ARD committee meeting in February 2004 that Student be placed in the \*\*\* residential facility. Student's ARD committee agreed to place Student there. [Respondent's Exhibit Volume 1 Exhibit 10]

9. Student has not attended any residential facility since the ARD committees recommended her placement at a residential facility because Parent now believes that residential placement is inappropriate. Parent believes that Student should attend her regular \*\*\* school within FBISD, and Student has attended her local \*\*\* school within the district. [Petitioner's Exhibit Volume 1 Exhibits 12 & 13 and Transcript Pages 266-288]

10. The district contracted with a private tutoring center to provide tutoring and educational assistance for Student. The services were offered to Student after school and in the evenings because of her problems in going to school in the mornings. Student began receiving the services in November 2003. The records of the tutoring facility offered into evidence by

Petitioner show the Student attended the facility seventy-four times, and, though Parent sought reimbursement for transportation to the facility, the district did not provide it. Round-trip transportation to the facility is a distance of ten (10) miles. [Petitioner's Exhibit Volume 1 Exhibits 8, 9, 10 & 12 and Volume 2 Exhibit 5 & 6; and Transcript Page 314]

11. The district has provided counseling services for Student but the services have been supplemented by the Petitioner with additional psychological and psychiatric services. The district has paid for some of the private services afforded Student based upon their review of appropriate assessment data. [Petitioner's Exhibit Volume 1 Exhibit 5 & 7 and Transcript Page 355]

12. The district has continued to recommend residential placement at the \*\*\* facility for Student. [Petitioner's Exhibit Volume 1 Exhibits 12 & 13]

13. Student's psychiatrist, called by Petitioner as an expert witness, continues to recommend residential placement for Student. [Transcript Page 143]

#### Discussion

Though the Respondent and the Petitioner have sought to deal with Student's educational disabilities, the parties have not been able to agree about an appropriate placement for her. After Student's Parent asked for residential placement, an assessment was completed to determine whether or not residential placement is appropriate. A dispute between the parties in another matter complicated and slowed the district's securing the assessment. When they got it, the district offered a residential placement for Student because the psychologist doing the assessment recommended it. Student's Parent, however, did not like the residential facility which was proposed and asked for placement at another facility. The district offered to place Student at that facility, but now Student's Parent wants her to be educated at her local \*\*\* school. Student's psychiatrist, however, believes that residential placement is appropriate at this time.

During the dispute between the parties, the district offered educational services for Student and counseling services and tutoring services at a private tutoring center. The Petitioner proved that she is entitled to reimbursement for transportation to and from the tutoring center. But Petitioner failed to demonstrate that she is entitled to any further reimbursement or relief.

#### 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 Fort Bend Independent School District is the local education agency responsible for the provision of Student's free appropriate public education.
3. The IEPs developed for Student by FBISD since January of 2003 were properly developed by ARD committees and provided Student with an educational placement with related services (except for some transportation 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 and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055.
4. Petitioner failed to meet its 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. The educational placements for Student and the proposed educational placement for her are appropriate and in the least restrictive environment for her under the standard Daniel R. R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989).
6. The district is required to pay the cost of reimbursement for Parent's transportation of Student to tutoring services at a rate of \$0.35 per mile (the rate for mileage

reimbursement in the state of Texas) for ten miles of transportation for seventy-four visits to the tutoring center (a total of \$259.00). 20 U.S.C. § 1414(d)(1)(A) and 34 CFR 300.347(a)(3).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

1. The district will reimburse Petitioner transportation costs in the amount of \$259.00;
2. The district shall timely implement this decision within ten (10) school days in accordance with 19 T.A.C. §89.1185(q) and 34 CFR 300.514; and
3. To demonstrate their compliance with this decision, the Respondent shall furnish to the Texas Education Agency within fifteen (15) school days from the date of this decision documentation (with copies to Petitioner) demonstrating that the decision has been implemented or the district's plan for implementing the decision within the prescribed time line. The district shall include a signed assurance from the superintendent that the orders in this decision will be implemented.

All other relief requested by Petitioner is DENIED.

SIGNED this 10<sup>th</sup> day of February, 2005.

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

DOCKET NO. 148-SE-0104

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SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

**ISSUE:** Whether the district failed to provide reimbursement for transportation services for a related service for Student.

**CFR CITATION:** 34 CFR 300.347(a)(3)

**HELD:** For Petitioner.

**ISSUE:** Whether the district's previous and proposed placements for Student are appropriate educational programs with related services.

**CFR CITATIONS:** 34 CFR 300.552, 34 CFR 300.345, 34 CFR 300.503 and 34 CFR 300.505

**TEXAS CITATION:** 19 T.A.C. §89.1055 and 19 T.A.C. §89.1045

**HELD:** For Respondent.