

STUDENT. b/n/f PARENT, PETITIONER	§ § §	SPECIAL EDUCATION
VS.	§	HEARING OFFICER
FORT BEND ISD, RESPONDENT	§ §	STATE OF TEXAS

DECISION OF HEARING OFFICER

This matter was presented to this Hearing Officer after the parent of the child, filed for a Due Process Hearing pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 et.seq., on April 11, 2005.

On the 19th day of May, 2005, the petitioners and the respondent appeared at the *** School for a Due Process Hearing pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400 et.seq., and the hearing concluded on May 20, 2005.

Parents of Student, (“the petitioners”) appeared in person and Pro Se, and announced ready.

Fort Bend ISD (“the respondent”) appeared through its district representative, Lynne Guidry, and through its attorneys, Jeffrey L. Rogers and Amy Tucker, and announced ready.

Issues Raised and Relief Sought

The petitioners raised four issues/complaints about the district in the Prehearing Conference heard on April 22, 2005:

1. The treatment of the child in the Comprehensive Achievement Class (“CAC Unit”) by the teacher and principal;
2. Placement of the child in the *** by the Admissions, Review and Dismissal Committee (“ARD”), not being the Least Restrictive Environment for the child;
3. Retaliation by the teacher against the child; and
4. ARD members were coached into their votes prior to the convening of ARD meetings.

The petitioners sought the following relief from the outcome of the Due Process Hearing:

1. That an order be entered requiring the respondent to place the child into General Education classes with a Dedicated Aide; OR
2. That an order be entered requiring the respondent to transfer the child to another CAC Unit within the school district, but with some General Education classes with a Dedicated Aide; OR
3. That an order be entered requiring the respondent to pay for the costs of enrolling the child into a private school.

The hearing began on May 19, 2005 and concluded on May 20, 2005. After hearing the testimony of the witnesses presented, the exhibits from both parties which were admitted into evidence, and weighing such evidence in light of current law, the relief requested from the petitioners is hereby DENIED.

HELD, for the respondent.

Findings of Fact

1. The parties each agree that the child is a ** grade Student eligible for special education services under IDEA, and that the child is diagnosed as having Oppositional Defiant Disorder, Attention Deficit Hyperactivity Disorder, and is classified as Emotionally Disturbed.
2. The child began the ** grade school year in the Fall 2004 in General Education classes at *** School. There was no Dedicated Aide assigned to the child during this time.
3. While in the General Education setting, the child had serious behavioral problems in his classes, with the exception of his Math class with teacher ***. His behaviors included initiating physical aggression towards other students without cause, class disruptions, foul language being used in class, throws tantrums including kicking and screaming, and excessive office referrals (Trial transcript, pp. 13, 47, 56-57, 87, 108, 118, 155; See also, Respondent's Exhibits 6, 11, 12, and 13).
4. During this time period in the Fall 2004, the child was making academic progress. (See, Respondent's Exhibit 9).
5. An ARD meeting was convened on November 8, 2004 to address the behavioral problems of the child. Parent was present along with other members of the ARD. The ARD agreed to unanimously to place the child into the CAC Unit to address this child's unique needs. (See, Respondent's Exhibit 4).

6. Upon entering the CAC Unit, the child's behavior continued as before, with some testimony that the behavior actually deteriorated. (Trial transcript, pp. 108-109; *See also*, Respondent's Exhibit 11).
7. An ARD was called in February 2005 to address the continued behavioral problems with the child. Parent, was present for that meeting. The ARD decided that placement in the *** Alternative Placement Center would best address the unique needs of the child. The parent disagreed, and the parties decided to recess shortly thereafter to re-visit the issue at that time. (See, Respondent's Exhibit 3).
8. The ARD reconvened again on March 15, 2005 to discuss the placement of the child due to his continued behavioral issues. Parent was present at this ARD. After considerable discussion, the ARD agreed to a 2 week trial period for the child in one general education class with a Dedicated Aide. The class chosen was Math with ***. The ARD was to reconvene again in April 2005 to consider all data and make a decision about the child's placement. (See, Respondent's Exhibit 2).
9. During the trial period, the child did well in the Math class with the Dedicated Aide, but continued with his behavioral problems in his other classes. (Trial transcript, pp. 164-166, 178).
10. ARD reconvened again on April 6, 2005. Parent, was again in attendance. The ARD decided that the best placement to address the needs of the child was the *** at the *** Alternative Placement Center. The parent disagreed and filed for Due Process under IDEA.

11. No evidence was presented to support any retaliation claims by the teacher against the child, as raised by the petitioner.
12. No evidence was presented to support any claims the child was treated improperly by either the teacher, principal, or any other staff member in the CAC Unit.
13. No evidence was presented to support claims that the ARD members were coached into their votes prior to convening of the child's ARD meetings.

DISCUSSION - APPLICATION OF FACTS AND LAW

No Evidence as to Raised Claims

As there was no evidence presented by the petitioners as to the issues of retaliation by the staff towards the child, mistreatment of the child by staff, or the allegation that ARD members were coached into their votes prior to the convening of the ARD meetings, those matters shall not be addressed and cannot provide the avenue to the relief sought by the petitioners.

Placement of Child in *** – Least Restrictive Environment

The petitioners argue that placement of the child in the *** program at *** Alternative Placement Center is not appropriate, as it will concentrate on his behavior at the expense of his education. The petitioners further assert that *** is not the Least Restrictive Environment since the child demonstrated he can attend his General Education classes without problem so long as he is assigned a Dedicated Aide.

The petitioners presented no evidence to support their claim that the *** program will compromise the child's education. In fact, the only evidence on the *** program was that it was more structured than the CAC Unit in which the child was enrolled, it

contained more staff to students, had a significant amount of one-on-one teaching, and used positive reinforcement frequently. (Trial transcript, pp. 59, 61-62, 127, 130, 190-193, 211-216) The educational program and placement proposed by the school is presumed to be appropriate, and the petitioners bear the burden of proving otherwise. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983) *aff'd* 468 U.S. 883 (1984). In this case, the petitioners wholly failed to do so.

The petitioners also allege the *** program is not the Least Restrictive Environment for the child since he can attend his home campus in General Education classes with a Dedicated Aide and be successful. To prove their point, the petitioners rely on the undisputed testimony from all witnesses that the child was successful in the two week trial period in ***'s general education Math class in March 2005 (Trial transcript 42-43, 98, 159, 164, 177), while his behavioral problems continued during that time in the Content Mastery Class ("CMC") for his other subjects. (Trial transcript 163-166).

The fact that the child behaved like an average *** grade student (Trial transcript 186) while in ***'s Math class using a Dedicated Aide, however, does not demonstrate the child would have behaved properly in the other general education classes. The child had serious behavioral issues prior to the November 2004 ARD meeting in all of his general education classes, with the exception of his Math class with ***. (Trial transcript 108, 176, 181; *See also*, Respondent's Exhibit 11). Even without the Dedicated Aide in the Fall 2004, the child behaved appropriately in ***'s Math class. When asked if the Dedicated Aide was the reason for his good behavior during the two week trial period, *** testified "No, not really". (Trial transcript 182). ***, the Dedicated Aide who sat

with the child in the CMC class and in the Math class during the trial period, when asked her opinion as to why the child behaved in the Math class and not the CMC class, testified “he mentioned one time he likes math class.” (Trial transcript 167). The testimony seemed to be unanimous that the child made choices as to how he would behave. (Trial transcript 28, 131, 146, 178-179) As a case in point, ***, the assistant principal at *** School, testified that “the child chooses when he wants to do what is correct for him. Perfect case, (the child) would come down to the office and be out of control, but when it either comes time to go to math or to go buy at the store, then all of a sudden he shuts it off.” (Trial transcript 146) (emphasis added). The child never had a behavior problem in ***’s Math class. The fact that he had no problems during the trial period does nothing to prove his behavior would improve in the other classes with a Dedicated Aide.

The petitioners relief must be denied as a matter of law.

Conclusions of Law

1. The child is a Student eligible for special education and related services under the provisions of IDEA, and its related statutes and regulations.
2. Fort Bend ISD is the local education agency responsible for the providing the child with the free appropriate public education pursuant to IDEA, and is a legally constituted independent school district operating as a political subdivision of the State of Texas.
3. The child’s placement in the *** program is presumed to be appropriate and no evidence was presented to rebut that presumption in accordance with Tatro v. State of Texas, 703 F.2d 823 (5th Cir. 1983) *aff’d* 468 U.S. 883 (1984).

4. Placement of the child in the *** program does not violate the Least Restrictive Environment provisions of IDEA and its related statutes and regulations, as the program is designed to meet the unique needs of the child and is reasonably calculated to provide the child with an educational benefit.

ORDER

Based upon a preponderance of the evidence and the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the relief requested by the petitioners is DENIED.

SIGNED this 25th day of May, 2005.

Tomas Ramirez III,
Special Education Hearing Officer

Cases Cited

Tatro v. State of Texas, 703 F.2d 823 (5th Cir. 1983) *aff'd* 468 U.S. 883 (1984)

Statutes and Regulations Cited

20 U.S.C. §1400 et.seq.

TEA DOCKET NO: 258-SE-0405

STUDENT b/n/f PARENT,
EDUCATION
PETITIONER

§

SPECIAL

§

§

VS.

§

HEARING OFFICER

§

FORT BEND ISD,
RESPONDENT

§

§

STATE OF TEXAS

SYNOPSIS

ISSUE: Whether proposed IEP of placement by district of child in Structured Learning Center was appropriate under IDEA.

HELD: For Respondent.