

STUDENT b/n/f PARENTS., PETITIONERS	§ § §	SPECIAL EDUCATION
VS.	§	HEARING OFFICER
LYFORD ISD, RESPONDENT	§ §	STATE OF TEXAS

**DECISION OF HEARING OFFICER**

This matter was presented to this Hearing Officer after \*\*\*, the parents 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 27, 2005.

On the 15<sup>th</sup> day of November, 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 the same date.

Parents, parents of student, (“the petitioners”) appeared in person and through their attorney or record, Christopher Jonas, and announced ready.

Lyford ISD (“the respondent”) appeared through its district representative, \*\*\*, and through its attorney, Cynthia S. Buechler, and announced ready.

**Issues Raised and Relief Sought**

The petitioners raised four issues/complaints about the district in the Prehearing Conference heard on May 10, 2005:

1. The district denied the child a free, appropriate public education (“FAPE”) and violated his rights by requiring the child to travel a great distance from his neighborhood school in Lyford, Texas to the Regional School for the Deaf in Brownsville, Texas;
2. The district had not hired a Deaf Education Teacher to provide the child with his educational needs at his home school in Lyford, Texas;
3. The district failed to identify the child as visually impaired; and
4. The district violated its prior mediation agreement and had not hired an interpreter as required by that agreement.

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

1. That the district be required to hire a Deaf Education Teacher to instruct the child on his home campus in Lyford, Texas;
2. That the district be required to hire an interpreter to serve the needs of the child on campus in Lyford, Texas; and
3. That the district be ordered to test the child for visual impairment and provide whatever supplemental services are appropriate based upon the testing data to provide the child with FAPE.

The hearing began on November 15, 2005 and concluded on the same date. After hearing the testimony of the witnesses presented, reviewing 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 based upon his auditory impairment and speech impairment. The child is also diabetic and takes insulin several times a day through a pump attached to his abdomen. The child can suffer seizures, and has suffered \*\*\* seizures in the past, due to the sugar levels in his blood.
2. The child began receiving special education services when he was first enrolled in school at the age of \*\*\*. The ARD committee at his first school (in Raymondville ISD) recommended the child be placed in the Regional School for the Deaf in Brownsville, to which the parents disagreed. The child was then transferred to Lyford ISD where a similar recommendation was made. Again, the parents disagreed and the parents transferred the child to Corpus Christi for \*\*\* years, where he attended the Corpus Christi Regional School for the Deaf where they had an Oral communications program. At the conclusion of those \*\*\* years, the child was once again returned to Lyford ISD where his ARD committee placed him in the Regional School for the Deaf in Brownsville in 1999 where he remained taking all his classes until the Fall of 2005. (See, Trial transcript, pp. 122 - 124).
3. The child's trip to the Regional School for the Deaf in Brownsville takes between 45 minutes to one hour each way. (See, Trial transcript, pp. 97, 137, 187-188).
4. In May, 2004, the parties willingly entered into a mediation agreement regarding the child's placement and educational needs, after an ARD

committee had determined in March, 2004, that the child's continued placement would be in the Regional School for the Deaf. (See, Petitioner's Exhibit #10).

5. The mediation agreement required the district to have an employee trained in sign language for the educational needs of the child. It was the understanding of the district, and the parents, that the child would begin school in the Fall of 2005, thus allowing the district employee one year to become proficient enough to translate meaningfully and accurately for the child in sign language. (See, Trial transcript, pp. 302, 127, 131, 139).
6. In the Fall of 2005, the district agreed to have the child take all classes, with the exception of Reading and English, on his home campus in Lyford, Texas. The parties agreed that if the child did not do well that he would be transferred back to the Regional School for the Deaf. In order to accommodate the child with his classes at \*\*\* School, the district hired an interpreter for the child's classes. (Trial transcript, pp. 126-127).
7. Through the date of this hearing, the child has done very well in his classes at \*\*\* School, making the A/B Honor Roll. (See, Petitioner's Exhibit 21, Respondent's Exhibit #8).
8. The child, even though doing very well in his classes in \*\*\* School, has a \*\*\* grade reading level, (Trial transcript, pp. 293, 299, *See also*, Petitioner's Exhibit #2B and #5), and reads only at a basic level. (Trial transcript, p. 244). The child, by his own admission, states reading is a difficult subject for him, and something which he must try to catch up with. (Trial transcript, p. 102).

9. Teaching an auditorily impaired child how to read is very different from that of a child with normal hearing, and special training is required to understand these issues and methodologies in teaching such a child. (Trial transcript, pp. 108-109, 170-177, 217-221).
10. Lyford ISD has no Deaf Education Teachers or AI (Auditory Impaired) Certified Teachers on staff.
11. There is a severe shortage of sign language interpreters and AI Certified Teachers. (Trial transcript, pp. 128-129, 138, 153-155, 257). Lyford ISD attempted for several months to hire an interpreter but was unable to do so, until it ultimately hired a Level II interpreter from McAllen, Texas. (Trial transcript, pp. 128-130).
12. There was no evidence presented that the child's visual problems are a detriment to his education. In fact, the child testified that he can read the chalk board and text books without problems. (Trial transcript, p. 107). Furthermore, numerous witnesses testified the child is a good lip reader, which would indicate that his vision is in the normal range. (Trial transcript, pp. 101, 83, 226).

#### DISCUSSION - APPLICATION OF FACTS AND LAW

##### Lyford ISD violated the mediation agreement by failing to hire an interpreter

The petitioners complain that the district violated the May 11, 2004 mediation agreement because it failed to hire an interpreter for the child. A review of the document indicates that the district was to train one of its employees in sign language to assist the child. (See, Petitioner's Exhibit #10; Trial transcript, pp. 127, 131). When the district was

not able to train an employee, the district actually employed a Level II sign language interpreter, who would have been much more proficient at sign language than a one year trainee, to work with the child during his classes at \*\*\* School. (Trial transcript, p. 130). Thus, the district actually provided a more competent service to the child than originally agreed upon, and the complaint that the district failed to hire an interpreter is without merit.

The petitioners could argue, however, that the interpreter was not hired until after the filing of this Due Process Request. Such an argument, while factually correct, is not valid since both parties agree that the mediation agreement contemplated the child beginning classes at Lyford ISD in \*\*\* school. (Trial transcript, pp. 302, 131). \*\*\* school for the child did not begin until August 2005, several months after the petitioners filed their request for a Due Process hearing.

#### Lyford ISD failed to identify the child as Visually Impaired

The petitioners complain that the district failed to identify the child as visually impaired. No evidence was presented that the petitioners ever requested any testing for visual impairment prior to the filing of this suit. \*\*\*, the Director for the Wil-Cam CO-OP, testified that the parents had never asked for a visual assessment on the child prior to this suit being filed. (Trial transcript, pp. 135-136). The child himself testified that it was not difficult for him to read regular books and print. (Trial transcript, p. 107). Even though the child clearly has medical issues with his eyes, his vision is sufficient to enable him to receive instruction in his subjects without any visual aids. In other words, his vision does not impair his ability to learn. Visual impairment, by definition in the federal regulations, means “an impairment in vision that, even with correction, adversely affects

a child's educational performance." 34 C.F.R. §300.7(c)(13). According to the regulation's definition, the child does not have a visual impairment for special education law purposes.

Child denied FAPE by being required to attend Regional School for Deaf and by failing to hire a Deaf Education Teacher

The petitioners argue that the child has been denied a free, appropriate public education under IDEA because of the placement by the district, through the ARD committee, of the child in the Regional School for the Deaf in Brownsville, Texas. The petitioners argue that the drive is lengthy, between 45 minutes to 1 hour each way, and violates the child's rights. The petitioners are deeply concerned about the safety of the child on the bus due to his diabetes and the constant changing of the sugar levels in his blood, which can lead to seizures. It is also the petitioner's position, based upon their complaint raised in this suit, that the district should hire a Deaf Education Teacher to work with the child on his home campus in Lyford, Texas.

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 (5<sup>th</sup> Cir. 1983) *aff'd* 468 U.S. 883 (1984). Regional day schools are expressly authorized by IDEA. *Flour Bluff Independent School District v. Katy M.*, 91 F.3d 689 (5<sup>th</sup> Cir. 1996). Testimony was presented in this case that there is a shortage of sign language interpreters. (Trial transcript, pp. 137-138, 153-155). Common sense dictates that if there is a shortage of sign language interpreters, there must be an even greater shortage of Auditory Impaired Certified Teachers (AI Certified). AI Certified Teachers specialize in educating the hearing impaired child and are acutely aware of the learning problems of a hearing impaired child. To require school districts to employ such

a rare specialist to educate one child would be tedious, burdensome, and difficult. It is for this reason that regional day schools were established.

“IDEA expressly authorizes school districts to utilize regional day schools such as the one at issue here and we think the importance of these regional programs is obvious. Undoubtedly there are a limited number of interpreters, speech pathologists with backgrounds in deaf education, and deaf education teachers; and, by allocating these limited resources to regional programs, the state is better able to provide for its disabled children. Additionally, by placing these educators at regional centers, those centers are better able to provide further training for those educators and make substitutions for absent educators.”

*Flour Bluff ISD v. Katy M.*, 91 F.3d at 694.

The petitioners argue that the child could be educated at his home campus by using a Resource teacher or Special Education teacher with an interpreter. They point to the fact that the child’s current school schedule and his corresponding good grades, validates that this scenario would be successful. The child, since the beginning of the Fall 2005 school year, has been taking all his classes at the \*\*\* School, with the exception of Reading and English. At \*\*\* School the child is taking World Geography, Algebra I, AG Mechanics, Introduction Physics & Chemistry, and Office Clerk. He attends each of these classes with an interpreter provided by the district. The child has done very well in this setting as evidenced by his grades. (See, Petitioner’s Exhibit #21). At 12:50 p.m., the child then boards a bus and is driven to the Regional School for the Deaf in Brownsville for his Reading and English classes. The petitioners argue that the child should be allowed to take all his classes at \*\*\* School given his success. The district argues that he needs the specialists at the Regional School for the Deaf to continue making progress since his reading level is only that of a \*\*\* grade student.

It should be noted that the petitioners provided no evidence that the child's placement in the Regional School for the Deaf would not confer an educational benefit on the child, or that it was not appropriate. The main concern about the placement was the bus trip itself, which concern is dealt with briefly below.

The hurdles which a hearing impaired child must overcome when learning to read and write, are enormous. These issues are not easily understood by a person with normal hearing. For example, a child with normal hearing learns to read by "sounding out" letters, which sounds are familiar to him/her as a normal part of childhood. A hearing impaired child cannot learn in this manner. Such a child must be taught using other methodologies and techniques. AI Certified Teachers are specially trained at working with hearing impaired children, and have studied the techniques and methodologies which are most effective in educating these students. A regular teacher, whether a Special Education teacher or otherwise, cannot understand the complexities and difficulties a hearing impaired child will have in the classroom, especially when dealing with reading and writing. (See, Trial transcript, pp. 170-177, 217-221, 233-235, 270-271). To remove the child from an AI Certified Teacher and place him with a "regular" teacher, would most likely stagnate the educational growth of the child. (Trial transcript, pp. 179-180, 222). \*\*\*, the child's current AI Certified Teacher and a totally deaf individual himself, testified that if the child was doing well in \*\*\* School in his other subjects and he wanted to stay in \*\*\* School, he would respect what the child wanted. (Trial transcript, p. 239). But when asked if the child should be given the opportunity to take Reading and English in \*\*\* School, he responded "No. It'll be very difficult for him. It would be best to leave him where he's at." (Trial transcript, p. 239). The child

himself admits that reading is a difficult subject for him; something he must manipulate and try to catch up to. (Trial transcript, p. 102). According to his current teacher, Mr. \*\*\*, the child has only basic reading skills and needs a lot more practice. (Trial transcript, pp. 222-223, 244).

The petitioners are concerned that the trip from Lyford to Brownsville is too lengthy, whereas in the *Flour Bluff ISD v. Katy M.* case, the drive was a relatively short 10-15 minutes each way. While it is true that the drive takes between 45 minutes to 1 hour each way, testimony was also presented that the average drive for a student in Texas traveling to a regional day school is about 1 hour. (Trial transcript, p. 257). Thus, the child travels no more than the average deaf student travels to their regional day school.

Of a more pressing concern is the child's diabetes which can result, and has resulted, in seizures which leave the child unconscious. Since testimony was presented that the child self-injects himself with insulin several times a day to keep his blood sugar levels at the appropriate range, if the sugar level were to change resulting in a seizure during the bus ride to or from the school, the child could be in danger without medical attention. While no testimony was presented by the school as to whether or not their bus drivers are trained to deal with a medical emergency of this type on their bus, this hearing officer has no doubts that such training will, in fact, be provided if it has not already been so. The good news for the petitioners and the child is that all \*\*\* reported seizures occurred shortly after the child was diagnosed with diabetes, and the last occurred in the summer of 2002, almost 3-1/2 years ago. (Trial transcript, p. 86). It appears the child has become proficient at monitoring his sugar levels and keeping them under control.

Because the petitioners failed to overcome the presumption that the placement of the child in the Regional School for the Deaf in Brownsville is not appropriate, the relief sought 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. Lyford 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 Regional School for the Deaf in Brownsville is presumed to be appropriate and no evidence was presented to overcome that presumption in accordance with *Tatro v. State of Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983) *aff'd* 468 U.S. 883 (1984).
4. The district did not violate the provisions of IDEA by failing to hire a Deaf Education Teacher, since such specialists are available at the Regional School for the Deaf in Brownsville.
5. Placement of the child in the Regional School for the Deaf in Brownsville does not violate the Least Restrictive Environment provisions of IDEA and its related statutes and regulations, as the school is specifically authorized by law and is designed to meet the unique needs of the child and is reasonably calculated to provide the child with an educational benefit.

6. The district did not violate the mediation agreement of May 11, 2004, since it did, in fact, hire an interpreter to provide services to the child on the \*\*\* School campus.
7. The district did not violate the provisions of IDEA by failing to perform a visual assessment on the child, since the child does not meet the definition of visual impairment according to the federal regulations.

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 29 day of November, 2005.

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Tomas Ramirez III,  
Special Education Hearing Officer

Cases Cited

*Tatro v. State of Texas*, 703 F.2d 823 (5<sup>th</sup> Cir. 1983) *aff'd* 468 U.S. 883 (1984)  
*Flour Bluff Independent School District v. Katy M.*, 91 F.3d 689 (5<sup>th</sup> Cir. 1996)

Statutes and Regulations Cited

20 U.S.C. §1400 *et seq.*  
34 C.F.R. §300.7(c)(13)

TEA DOCKET NO: 280-SE-0405

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**SYNOPSIS**

**ISSUE:** Whether placement by district of child in Regional School for Deaf was appropriate under IDEA.

**HELD:** For Respondent.

**CITE:** *Flour Bluff ISD v. Katy M.* 91 F. 3d 689 (5<sup>th</sup> Cir. 1996), 34 CFR 300.7