

DOCKET NO. 321-SE-0505

**STUDENT, b/n/f PARENTS,
Petitioner**

§
§
§
§
§
§
§
§
§

BEFORE A SPECIAL EDUCATION

v.

HEARING OFFICER

**MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT, Respondent**

FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

STATEMENT OF THE CASE

STUDENT (STUDENT or Petitioner), through his next friends Parents, requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S. STUDENT §1400, et seq., as amended.

Petitioner alleged that Medina Valley Independent School District (MVISD) denied STUDENT a free appropriate public education (FAPE) by the following acts and omissions:

- 1) Failed to implement the individual educational program (IEP), including:
 - Failure to use the Picture Exchange Communication System (PECS) book consistently, which frustrated STUDENT and caused behavior problems;
 - Failure to provide age-appropriate materials;
 - Failure to use a daily schedule;
 - Failure to move student to new activities when he mastered current activities; and
 - Attempting to teach sign language in a manner beyond his cognitive and fine motor skill capabilities;
- 2) Failed to accurately document STUDENT's academic activities and progress in a daily log, and failed to provide adequate documentation of whether his IEP is being implemented;
- 3) Used an inappropriate and undocumented restraint by tying STUDENT to a chair;
- 4) Denied STUDENT a full instructional day by taking him early to the cafeteria and the bus;
- 5) Failed to collaborate with key stakeholders by misleading parents about class activities; and

6) Failed to carry out a mediated settlement agreement.

This Hearing Officer does not have jurisdiction under the IDEA to enforce a settle agreement, which is a contract enforceable by a court. Failure to carry out the settlement agreement was not an issue for hearing, except to the extent that actions or omissions pursuant to the settlement agreement were alleged to constitute a denial of FAPE on an independent basis.

As relief, Petitioner requested private educational placement and/or compensatory educational services to address communication and appropriate behavior. Petitioner also requested a functional vocational assessment; age-appropriate educational materials and rewards; documentation of classroom activities that accurately reflects the activities performed, the times they are performed, and evidence of progress or lack of progress toward IEP goals; provision of a full instructional day; prohibition of illegal restraints; training of the teacher in STUDENT's communication system prior to the beginning of the Fall 2005 semester; and adherence to the mediated settlement agreement.

Held, for Respondent.

PROCEDURAL HISTORY

Petitioner's request for hearing was received by the Texas Commissioner of Education on May 23, 2005, and was received by the Hearing Officer on May 25, 2005. Petitioner was represented by Karen Dalgish Seal, attorney at law. Respondent was represented by Holly B. Wardell, attorney at law.

The hearing was scheduled for June 24, 2005. A prehearing conference was held on June 9, 2005, and was transcribed by a court reporter. Petitioner requested a continuance due to a scheduling conflict. The continuance was granted and the hearing was reset to July 14 and 15, 2005. The Decision due date was extended accordingly.

Subsequently, Respondent submitted an unopposed motion for continuance to allow time to complete the mediation. The continuance was granted and the hearing was reset to August 9 and 10, 2005. The Decision due date was extended accordingly. Subsequently, the parties jointly requested a continuance to allow more time to complete the mediation. The continuance was granted and the hearing was reset to September 7 and 8, 2005. The Decision due date was extended accordingly.

In a mediated settlement agreement signed by the parties on November 12, 2004, Petitioner waived all causes of action against the district that arose on or before that date. At hearing, the Hearing Officer granted Respondent's request to limit relief to claims arising after November 12, 2004.

The hearing was held on September 7 and 8, 2005. The Decision due date was extended to October 10, 2005, to allow time for receipt and review of the transcript prior to the filing of closing statements. The Decision was issued on October 10, 2005.

FINDINGS OF FACT

1. STUDENT is a ***-year-old boy who currently attends *** School. He receives special education as a student with mental retardation and speech impairment. He has hypotonic cerebral

palsy and is nonverbal. His placement is an Adapted Learning Environment (ALE) classroom, which is a life-skills and functional academics classroom. During the 2004-2005 school year, he attended an ALE classroom at *** School, and was included in regular education art, P.E., and band with assistance from his one-on-one aide. He received related services of occupational therapy, physical therapy, speech therapy, and transportation.

2. STUDENT's most recent full individual evaluation was performed in May 2003. His evaluation indicates a functional age of ***. His IQ score is estimated to be ***, which falls in the severe range of mental retardation. Due to the severity of his cognitive disability, he requires much repetition to learn, and after he grasps a concept he may be required to relearn it at a later date. In a speech and language evaluation administered in April 2003, his receptive language scores indicated a receptive-language age equivalent of *** years, and an expressive-language age equivalent of ***.

3. An occupational therapy progress report from April 2005 reported that STUDENT "is highly distractible in the classroom . . . requires verbal and visual cues often to initiate and execute motor tasks including basic self help and fine motor tasks. Consistent repetition of steps of tasks is needed on a daily basis . . . Limited visual attention is noted . . . STUDENT is using a PECS schedule. He is also using a sentence strip but needs hand over hand assistance at times to pull the pictures off . . . He is dependent on verbal prompts at this time for many tasks in the classroom. Visual cues should be used to facilitate improved visual attention and independence with tasks." Petitioner's Exhibit 3 (P-3).

4. The ***-school ALE curriculum is geared for students with mental retardation and includes functional math, reading, science, social studies, pre-vocational skills, self-help skills, and life skills. The *** school ALE curriculum is similar but begins to phase in vocational skills. STUDENT's daily log of activities was developed using the basic ALE curriculum and his IEPs, as well as extensive input from his parents. The activities for students in his ***-school ALE classroom changed approximately every 20 minutes due to their short attention spans. STUDENT's ***-school ALE teacher taught him for three school years. She worked one-on-one with him daily and used PECS with him daily. She was trained in PECS for three days in January 2003.

5. The special education director met with the aides in the ALE classroom at least three times at the beginning of the 2004-2005 year to review each student's IEPs and behavior plans with them. The aides, including STUDENT's one-on-one aide, were provided copies of the IEPs. The group discussed how to fill out the daily logs. When the aides had questions, they had access to the ALE teacher, the campus special education coordinator, the diagnostician, and the special education director for information.

6. On August 15, 2004, Parent requested that the teacher inform her on a daily basis of "how much time is spent at each station, who he worked with, how much assistance was required, what was worked on, and how often stations were changed. I am including a timesheet that will help to capture this information. Please add sheets if there is not enough room . . . I would also like to know about breakfast, lunch, P.E., and art -- please include on the timesheet provided." P-

8.

7. On September 13, 2004, Parent and another parent jointly wrote a complaint letter to the ***-school principal alleging that IEPs were not being properly implemented and the daily logs provided were inadequate: "The Daily Instructional Logs should be modified to inform of quantitative accomplishments; for example, state the students' current baseline and what the success rate for that day was as compared to this baseline, percentages should be defined as "x" out of "y" times for "z" number of trials, etStudent" P-8.

8. During the 2004-2005 school year, STUDENT's parents were provided extremely lengthy and detailed daily logs of his activities, covering all aspects of his day and broken into 20-minute segments throughout the day. The special education director drafted the original daily log form, and it was revised several times at the request of the parents. Filling out the daily logs was very time-consuming and anxiety-provoking for the ALE teacher and aides. In addition to the daily logs, STUDENT's parents were provided report cards and three-week and nine-week progress reports.

9. Staff from Region 20 Educational Service Center (Region 20 ESC) observed the ALE classroom in September 2004. They commented that the ALE classroom was well-organized but suggested some changes in room arrangement, which the teacher implemented immediately. They also provided technical information about using the TEACCH system to provide structure in the classroom, and some technology information. Region 20 ESC staff met with ALE class parents and encouraged them to be patient and cooperative. During the 2004-2005 school year, Parent made four lengthy classroom observations and three or four shorter ones, including two at the very beginning of the year.

10. In a letter dated October 14, 2004, an assistant superintendent informed STUDENT's parents that an experienced special education teacher would consult with the ALE teacher once a week during the Fall 2004 semester to plan STUDENT's instructional activities, and would monitor the classroom and provide support two to three hours per week that semester; a campus administrator and the special education director would conduct a formal walk-through evaluation each week; campus administration would work with the ALE teacher to restructure communication about student progress; and a meeting would be held to discuss STUDENT's behavior intervention plan, attended by the school psychologist, diagnostician, ALE teacher, and campus administrative staff.

11. Due to parental concerns, the Admission, Review, and Dismissal Committee (ARDC) met on October 19, 2004, to review the IEPs and behavior plan. The committee recessed and the parties reached a mediated settlement agreement on November 12, 2004. The committee reconvened on November 22, 2004, and December 16, 2004, to revise the IEPs, behavior plans, and daily logs. The parents rewrote the IEPs pursuant to the settlement agreement. The revised IEPs contain numerous detailed short-term objectives. Many of the goals and objectives are ambitious given STUDENT's abilities, and may take several years to master. The revised behavior plans became effective on December 17, 2004, and the revised IEPs became effective on January 4, 2005. All are effective until January 4, 2006, unless the ARDC modifies them in the interim.

12. The Fall 2004 ARDC meetings determined that a behavior intervention plan (BIP) would be used prior to applying the behavior management plan (BMP). The BIP lists likely triggers and appropriate responses for various behaviors. For lying on the floor or aggressive behaviors such as scratching and biting, STUDENT is removed from his current activity for a few minutes of re-teaching pursuant to the BMP, using the PEC system or photos. The re-teaching procedure takes place outside the classroom and focuses on four "I will" statements or rules: I will sit in my chair; I will start my work; I will finish my work; and I will keep my hands to myself. During the re-teaching, STUDENT is reminded of the "I will" statements and the rewards for appropriate behavior, which are computer time, listening to music, or a short walk. The re-teach method has been very effective with STUDENT and has greatly reduced the number of incidents of lying on the floor. He also has made progress in keeping his hands to himself.

13. The Fall 2004 ARDC determined that STUDENT would begin attending regular band class with his aide in January 2005, with his time in the class gradually increasing from 15 minutes. He enjoyed band class and his attendance time increased to 30 to 45 minutes as his behavior improved in the band class.

14. A functional vocational assessment was performed by the ***-school ALE teacher, as requested by the ARDC in the October 19th, 2004, meeting.

15. On May 17, 2005, the ARDC met to consider extended school year (ESY) services. The ARDC continued STUDENT's pre-vocational program, IEPs, behavior plans, and speech therapy goals for eight weeks of ESY programming in June and July 2005. His one-on-one aide was instructed by the special education director and his ***-school ALE teacher that he would continue his program from the previous school year with the goal of preventing regression. She packed up many of STUDENT's activities and materials from the previous school year, including his PECS book and pre-vocational materials, took them to the summer school classroom, and used them with him there. In summer school he also had art projects, computer time, outside activities with the class, and life-skills activities including laundry, dishwashing, getting trays ready for breakfast and lunch, and cleaning up in the cafeteria.

16. STUDENT's Fall 2005 placement is in a *** school ALE classroom with six students, one teacher, and two assistants. At the beginning of the Fall 2005 semester, STUDENT was in a homebound placement by agreement of the parties until the first week of September 2005. At the time of the hearing on September 7 and 8, 2005, his class was located in a temporary classroom, awaiting the completion of remodeling work on their permanent classroom. The class had access to a homemaking classroom for cooking activities.

17. The communication IEP long-term goal is to develop communication skills using a total communication system, which includes PECS, simple signs, and verbal and nonverbal communication. STUDENT can shake his head to indicate "no," and he knows a hand signal for "yes." He sometimes says "wow," "alright," and "OK." He knows the environmental signs for stop, exit, and restroom, and is learning the environmental signs for telephone and policeman.

18. STUDENT made progress in using the picture exchange system in his PECS book,

which contains a sentence strip and pictures of various objects. He uses it to indicate that he wants a drink, computer time, to go to P.E., and to choose his foods in the cafeteria. He usually just picks up the picture card that indicates what he wants and needs to be reminded to use the card with the "I want" strip. He also indicates his needs and preferences by gestures. Due to the severity of STUDENT's cognitive disability, the ***-school ALE teacher simplified his use of the PECS book. Before he could use pictures with the "I want" strip, he first had to learn the meaning of the pictures. Some PECS activities are done hand-over-hand with him. In addition to PECS, other pictures are used to communicate with STUDENT, and he has a picture schedule for his day that was implemented in September 2004.

19. The PECS concepts used at STUDENT's level are not complicated, and staff can learn them from reading the manual or watching a video. PECS is a flexible system that can be modified easily for students with different abilities and needs. The PECS system does not have a mandatory training requirement, but the company has provided increasingly detailed training through the years and workshops are available through Region 20 ESSTUDENT STUDENT's one-on-one aide was shown how to use the PECS book when she began working with him, and was formally trained at Region 20 ESC in September 2004, after being scheduled to attend several other times. The parents, ***-school ALE teacher, and other classroom aides also were formally trained in the use of PECS. STUDENT's *** school ALE teacher is scheduled to receive formal PECS training when it is offered by Region 20 ESC in October 2005. In the meantime, the speech pathologist has worked with the teacher and other *** school staff to familiarize them with the system, and they have been provided the PECS manual and materials.

20. The life-skills IEP long-term goal is to learn self-care and daily living skills to enable STUDENT to live as independently as possible. The short-term objectives address personal hygiene and grooming; dressing himself; fine motor activities such as using clay and scissors; gross motor activities such as running and jumping; cooking, including retrieving one, two, or three food items such as eggs when directed to do so; using a picture recipe book to select foods; laundry; dishwashing; and wiping countertops.

21. STUDENT can feed himself but needs hand-over-hand help to cut food. He puts up his tray after he eats in the cafeteria. He does cleaning chores in the cafeteria such as wiping down tables. He has learned to wash his hands on his own in the bathroom. His ability to dress himself on his own has improved. He can zip a zipper, put on his shoes and socks, and dress himself. He can use the toilet with some assistance.

22. The ***-school ALE students left the classroom a short time earlier than non-disabled students to go to the cafeteria and to the bus, but they continued to receive life-skills training during these periods, such as practice crossing streets, and practice with environmental signs such as stop signs and exit signs. In the cafeteria STUDENT worked on IEP goals in life skills and communication while choosing his food, eating, and doing cleaning tasks.

23. STUDENT did not have a picture recipe book in the ***-school ALE class, but he had food pictures in his PECS book that could be used for cooking activities. Before he could use a picture recipe book, he needed to learn the pictures of various types of food, and to retrieve food items when asked to do so. His current IEP is effective until January 2006, and the cooking goals

and objectives are ongoing. He has access to a picture recipe book in his *** school ALE class.

24. The social skills IEP long-term goal is to interact with various types of people in various settings independently and appropriately. Short-term objectives include showing an ID card when asked his name, address, or phone number; following oral commands concerning life-skills activities; communicating feelings, wants, and needs using total communication methods; using and recognizing community signs for stop, go, sorry, bathroom, and exit; sharing; taking turns; and using the PECS system in the cafeteria to choose his food.

25. STUDENT's social skills improved during the 2004-2005 school year, as observed by his teacher, his one-on-one aide, the special education director, the special education coordinator, and others. He has improved in his greetings to others. He can shake hands politely as a greeting, and do high-five. He reduced aggressive behaviors such as hitting someone as a greeting. He is friendly and sociable with other students and with cafeteria staff, and is well-liked on the campus.

26. The pre-vocational IEP long-term goal is to complete assigned tasks in a specified amount of time to gain employability. The short-term objective is to complete assigned tasks from the ALE curriculum within a specified period of time, on a daily basis, including sorting by shape, color, and size. STUDENT mastered some pre-vocational activities during the 2004-2005 school year and moved on to other activities, but he sometimes revisits previously learned activities to refresh his memory, which is appropriate given the severity of his cognitive disability. He made progress in matching, sorting, and knowledge of colors. A color system was used to assign STUDENT's classroom tasks by placing a colored clip that he recognized on his jobs for the day.

27. The speech therapy IEP long-term goal is increased vocabulary use in all settings using total communication. The short-term objectives include the use of verb pictures, picture adjectives, the "wait" sign, the ID card, and the "I want" sentence strip and pictures in the PECS book. Other objectives are pointing to a picture of a police officer, and placing an object into a position that demonstrates understanding of "in," "on," "under," or "over."

DISCUSSION

Background

STUDENT is a ***-year-old student in the *** grade at *** School who has mental retardation, speech impairment, and cerebral palsy. He is instructed in the Adapted Learning Environment (ALE) classroom, a self-contained class that focuses on functional academics, basic life skills, social skills, and pre-vocational skills. He is included in a regular P.E. class and another elective. He receives related services of occupational therapy, physical therapy, speech therapy, and transportation.

STUDENT is nonverbal and has an approximate IQ score of ***, with a cognitive/functional age level of *** to *** years. Due to the severity of his cognitive disability, he requires much repetition to learn, and after he grasps a concept he may begin to lose that knowledge and need to relearn the same material at a later date. Many of his IEP goals and objectives reasonably may be expected to continue into subsequent years.

STUDENT uses a "total communication" system, which includes gestures, rudimentary

signs, pictures and photos, and verbal and nonverbal forms of communication. Total communication has been defined as "an instructional methodology employing a multimodal, multichannel method of instruction for speech, listening, language, and academic development . . . The philosophy of the methodology focuses on the use of any and all channels or modes of communication in order to reach effective two-way communication with a child." *Bonnie Ann F. v. Calallen ISD*, 20 IDELR 736, (S.D.Tex. 1993). No evidence was presented that school staff attempted to teach STUDENT sign language or any other type of communication at a level above his ability.

An important component of STUDENT's total communication is a picture exchange communication system, called PECS, which involves using pictures to communicate basic needs. The system is flexible and designed to meet the needs of students with various degrees of communication ability. STUDENT's ***-school ALE teacher modified the PECS system due to his cognitive ability. STUDENT's use of the PECS book at this time is limited to using a sentence strip that signifies "I want" and adding pictures of food and drink items and other things he might want, such as music or video. The aim is to add more pictures to his repertoire with practice. School staff were trained to use the PECS system, and the PECS book was used with STUDENT on a daily basis by various school staff members, as well as by his parents at home. Testimony indicates that the PECS system was usually used for food selection in the cafeteria but the PECS book was not used in the cafeteria for every single meal. Especially given that his communication mode is total communication as opposed to just the picture exchange system, any omissions in this regard were *de minimis* and were not shown to rise to the level of educational harm or a denial of FAPE. See *Bd. of EduStudent v. Rowley*, 458 U.S. 176 (1982); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

Educational Benefit; FAPE

The district's proposed educational program is entitled to a legal presumption of appropriateness. Petitioner bears the legal burden of proving that the educational program offered by the district is not appropriate. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983); *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 17 IDELR 990, (5th Cir. 1991); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000). Petitioner did not meet that burden on any issue in this case.

An appropriate placement under IDEA is one that enables a student to obtain "some benefit" from his education, and does not require that a student's educational potential be optimal or "maximized." *Bd. of EduStudent v. Rowley*, 458 U.S. 176 (1982). Schools are not required to provide all services from which a child might benefit. Rather, the district must provide personalized instruction with sufficient support services to permit the student to receive an "educational benefit," i.e., a program that is meaningful and is reasonably calculated to produce progress rather than regression or trivial educational advancement. *Rowley, id.*; *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Christopher M.*, 933 F.2d at 1291. MVISD has provided STUDENT with a FAPE.

Collaboration with Key Stakeholders

STUDENT's parents are entitled to meaningful participation in his education. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997). The record is replete

with examples of extensive collaboration between the parents and the school district. The ARDC met four times during the 2004-2005 school year to discuss STUDENT's program. Pursuant to a mediation agreement, the parents rewrote the IEPs and behavior plans in Fall 2004, and the ARDC accepted their revisions. The parents also requested and received changes to STUDENT's daily instructional log, and requested and received the removal of certain activities and materials from his classroom. In addition, several parent-staff conferences took place and STUDENT's mother was allowed to make lengthy observations of the classroom and cafeteria, with one observation lasting for an entire day.

IDEA regulatory language requires that parents of students with disabilities be provided information about IEP progress "at least as often" as parents of children without disabilities are informed of student progress, which implies that in some cases more frequent progress reports may be required. 34 C.F.R. Sec. 300.347(a)(7)(ii).

Petitioner alleged that the district failed to accurately document STUDENT's academic activities and progress in a daily log, and failed to provide adequate documentation of whether his IEP is being implemented. This allegation is wholly unsubstantiated. Petitioner did not demonstrate that the daily logs, report cards, or progress reports were inaccurate. An extremely detailed daily instructional log, covering virtually every aspect of his day and divided into 20-minute increments, was provided during the 2004-2005 school year. The parents complained that the log did not use the same language as the IEP and it was rewritten to satisfy them. The level of detail requested by the parents in the daily instructional log was burdensome and time-consuming (see Findings of Fact 6 and 7.) A sample daily log in Petitioner's Exhibit 9 is 18 pages long. A great deal of staff time and energy was spent creating and filling in the daily logs, and classroom staff were anxious about what they wrote and how it would be received by the parents. Even given that STUDENT is nonverbal, such excessive detail was not required to provide a FAPE.

Implementation of the IEP; Methodology Issues

STUDENT's parents were heavily involved in drafting his IEPs and essentially rewrote them to their satisfaction pursuant to the mediation agreement of November 2004. The revised IEPs are highly detailed. Petitioner does not challenge the appropriateness of the IEPs, but alleges that they were not fully implemented. The evidence does not support this allegation.

One of Petitioner's primary witnesses was an instructional aide who testified at length. The aide demonstrates a deep personal devotion to STUDENT, and it is undisputed that she works well with him, although she had no educational experience prior to working in the ALE classroom. She became STUDENT's one-on-one aide in Fall 2004 at the specific request of his parents. The credibility of her testimony is undermined by several factors, including the fact that it was internally inconsistent. Moreover, her testimony, including statements that she was not provided guidance on IEP implementation, that she was the only staff member who used the PECS book with STUDENT, and that he was restrained at a staff meeting were persuasively refuted by multiple credible eyewitnesses. Several of the aide's superiors testified that she had been less than candid in her dealings with them and had been reprimanded several times, and the evidence suggests that she had personal animus against the ***-school ALE teacher. Given all the above, her testimony about the actions of the ALE teacher and district administrative staff can be accorded very little if any weight.

Much of the parents' dissatisfaction seems to stem from a misunderstanding about the relationship between the IEP, the ALE curriculum, and the daily schedule of activities as reflected on the daily communication log. The daily log was not required to use the same language as the IEP, but it was amended at parental request to more nearly mirror the IEP wording. Apparently, Petitioner and the one-on-one aide share the misconception that a child's IEP is violated if he receives any instruction that is not explicitly spelled out in the IEP, even when the instruction is part of the classroom curriculum and/or a reasonable means of carrying out IEP goals and objectives.

For example, STUDENT's parents want him to learn to count, use money, and make a phone call, but at hearing Petitioner questioned instruction involving numbers because the IEP does not explicitly state that he is to learn numbers. STUDENT enjoys using the computer, especially with Riverdeep, a program that teaches basic number concepts at a preschool level. It is appropriate for STUDENT to use this software even though it is not specified in the IEP. Functional math is part of the ALE curriculum and STUDENT made some progress toward learning number concepts with the software. The computer also provides practice with fine motor, visual, and auditory skills.

Likewise, STUDENT has an IEP goal of learning to dress himself, for which he needs to understand instructions such as "Put your arm in the sleeve." Yet Petitioner complained that the daily log listed instruction on body parts, because the IEP does not explicitly state that body parts will be taught. Learning body parts is part of the ALE curriculum and is a perfectly reasonable methodology for achieving the IEP objective of teaching the student to dress himself.

Petitioner objected to the use of certain classroom materials and rewards, such as plastic farm animals, Mr. Potato Head, audiotapes of children's songs, and children's videos as not being age-appropriate for STUDENT. At parental request, the IEP was amended to specify the use of age-appropriate materials. The ALE teacher removed materials to which the parents objected in an effort to please them, although school witnesses testified that the materials were appropriate for STUDENT's developmental age and were effective teaching tools and rewards for him. The question of age-appropriateness is difficult to define when applied to a ***-year-old with a functional age of ***. This is another example of educational methodology where reasonable minds can differ.

Educational methodology generally falls within the discretion of the school district as long as the method chosen offers a FAPE. "A major part of the task of local and state officials in fashioning what they believe to be an effective program for the education of a handicapped child is the selection of the methodology or methodologies that will be employed." *Lachman v. Illinois State Board of Education*, 852 F.2d 290, 296 (7th Cir.), cert. denied, 488 U.S. 925, 109 S.Ct. 308, 102 L.Ed.2d 327 (1988). "[P]arents, no matter how well-motivated, do not have a right under the [Act] to compel a school district to provide a specific program or employ a specific methodology in providing for the education of their handicapped child." Id. at 297. "*Rowley* makes clear that 'once a court determines that the requirements of the Act have been met, questions of methodology are for resolution by the State.'" *Lachman*, 852 F.2d at 294.

The right of a parent to meaningful input and involvement does not constitute veto power over ARDC decisions or over teaching staff's day-to-day choices about the specific instructional methodology used to effectuate the IEP. The Fifth Circuit has ruled that parents do not have the right to dictate educational methodology or every detail of the student's educational program: "The right to provide meaningful input is simply not the right to dictate an outcome." *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5th Cir. 2003). Petitioner did not demonstrate that any teaching material or methodology used during the 2004-2005 school year denied STUDENT a FAPE. On the contrary, STUDENT made good progress with the materials and methodologies that were used.

Petitioner did not show a failure to implement the IEPs or behavior plans during or after the 2004-2005 regular school year or during the Summer 2005 ESY program, and no evidence suggests that STUDENT regressed during Summer 2005. Pursuant to an interim agreement, STUDENT was in a homebound placement for the first two weeks of the Fall 2005 semester. He began attending his *** school ALE placement shortly before the hearing commenced. Petitioner alleged that FAPE was denied because the ALE class was in a temporary location while a larger room was being remodeled. This arrangement is certainly less than ideal, but STUDENT had been in the temporary classroom only two days at the time of hearing, and Petitioner did not demonstrate a change in placement or denial of appropriate services by virtue of the temporary classroom. See *Veazey v. Ascension Parish School Bd.*, 42 IDELR 140 (5th Cir. 2005), *cert. denied* (U.S. 2005).

Petitioner's allegation that STUDENT did not receive a full educational day was unsubstantiated. The ALE students left the classroom a short time earlier than non-disabled students to go to the cafeteria and to the bus, but they continued to receive life-skills training during these periods, such as practice in crossing streets, walking in line, and using environmental signs such as stop signs and exit signs. STUDENT worked on several IEP objectives while in the cafeteria, related to choosing his food, feeding himself, and cleaning countertops. In addition, if the students were absorbed in a class project they sometimes took their classroom materials to the cafeteria and continued working on them there.

Conclusion

Virtually all witnesses, including his mother, testified that STUDENT made educational progress. He improved in social skills, life skills, pre-vocational activities, and general independence and confidence. Petitioner failed to show a denial of FAPE during the 2004-2005 school year, and STUDENT's current IEPs are reasonably calculated to provide an educational benefit and a FAPE.

CONCLUSIONS OF LAW

1. STUDENT resides in MVISD, a legally constituted independent school district within the State of Texas, and is entitled to special education services pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400, et seq., as amended. He receives special education and related services as a student with mental retardation and speech impairment.
2. The educational program proposed by the school district is presumed to be appropriate. As the party challenging the educational program proposed by the district, Petitioner bears the

burden of proof. Petitioner failed to meet the burden of proof in this case. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), aff'd 468 U.S. 883 (1984); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

3. MVIDS collaborated extensively and appropriately with STUDENT's parents. The parents were active participants in ARDC meetings and were heavily involved in the development of STUDENT's IEPs. *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

4. The right of a parent to meaningful input and involvement does not constitute a right to dictate educational methodology or the details of the child's educational program. *White v. Ascension Parish Sch. Bd.* 343, F.3d 373 (5th Cir. 2003); *Lachman v. Illinois St. Bd. of EduStudent* 852 D. 2d 290 (7th Cir. 1988), cert. denied, 488 U.S. 925 (1988).

5. STUDENT's parents were not denied adequate notice of his progress toward his IEP goals, and in fact were provided extremely lengthy and detailed daily logs of his activities, in addition to regular report cards and progress reports. Petitioner did not demonstrate that the daily logs, report cards, or progress reports were inaccurate. 34 C.F.R. Sec. 300.347(a)(7)(ii).

6. MVIDS provided STUDENT a FAPE. His IEPs and behavior plans, which are effective until January 2006, are appropriate. His IEPs and behavior plans were substantially implemented during the 2004-2005 school year and Summer 2005 ESY. Any failure to implement the IEP was *de minimis*. Petitioner did not demonstrate educational harm or loss from not having a picture recipe book prior to Fall 2005, or from occasionally choosing foods without the PECS system in the cafeteria, or from any failure to implement the IEPs or behavior plans. *Bd. of EduStudent v. Rowley*, 458 U.S. 176 (1982); *Adam J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804 (5th Cir. 2003); *Houston Indep. Sch. Dist. v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).

7. Petitioner failed to prove that STUDENT did not receive a full educational day, that school staff attempted to teach him sign language at a level above his capabilities, or that the district used materials or rewards with him that were not age-appropriate. *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), aff'd 468 U.S. 883 (1984); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

Tatro.

8. Petitioner failed to prove that an undocumented restraint took place during the 2004-2005 school year. 19 Tex. Admin. Code §89.1053; *Tatro v. State of Texas*, 703 F.2d 823 (5th Cir. 1983), aff'd 468 U.S. 883 (1984); *Houston ISD v. Bobby R.*, 200 F.3d 341 (5th Cir. 2000).

9. Petitioner did not demonstrate a change in placement or denial of appropriate services by virtue of the *** school ALE class being located in a temporary classroom at the beginning of the 2005 Fall semester. *Veazey v. Ascension Parish School Bd.*, 42 IDELR ***0 (5th Cir. 2005), cert. denied (U.S. 2005).

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 Petitioner is **DENIED**.

NOTICE TO THE PARTIES

This Decision is final and is appealable to state or federal district court.

SIGNED this 10th day of October, 2005.

Janis Herd

Janis Herd
Special Education Hearing Officer

DOCKET NO. 321-SE-0505

**STUDENT, b/n/f PARENTS,
Petitioner**

§
§
§
§
§
§
§
§
§

BEFORE A SPECIAL EDUCATION

v.

HEARING OFFICER

**MEDINA VALLEY INDEPENDENT
SCHOOL DISTRICT, Respondent**

FOR THE STATE OF TEXAS

SYNOPSIS

Issue 1: Did the district implement the student's IEPs and behavior plans and provide him a FAPE?

Held: For Respondent. STUDENT's IEPs and behavior plans, which are effective until January 2006, are appropriate. His IEPs and behavior plans were substantially implemented during the 2004-2005 school year and Summer 2005 ESY. In addition, Petitioner did not demonstrate that the IEPs were not implemented at the beginning of the current school year. Petitioner did not demonstrate educational harm or loss from not having a picture recipe book prior to Fall 2005, or from occasionally choosing foods without the PECS system in the cafeteria, or from any omission in IEP implementation. STUDENT was provided a FAPE and made educational progress.

Citation: 34 C.F.R. §300.350; 34 C.F.R. §300.13; 34 C.F.R. §300.300

Issue 2: Did the district accurately document STUDENT's academic activities and progress in a daily log, and provide adequate documentation of whether his IEP was being implemented?

Held: For Respondent. The parents were provided extremely lengthy and detailed daily logs of

STUDENT's activities, in addition to regular report cards and progress reports. Petitioner did not demonstrate that the daily logs, report cards, or progress reports were inaccurate.

Citation: 34 C.F.R. §300.347(a)(7)(ii)

Issue 3: Did district staff restrain STUDENT in an undocumented restraint at a staff meeting or at other times during the 2004-2005 school year?

Held: For Respondent. The testimony of several eyewitnesses established that STUDENT was not restrained during the staff meeting in question, and Petitioner presented no evidence of other undocumented restraints during the 2004-2005 school year or thereafter.

Citation: 19 Tex. Admin. Code §89.1053

Issue 4: Did district staff collaborate appropriately with the parents in the development of STUDENT's educational program?

Held: For Respondent. The district collaborated extensively and appropriately with STUDENT's parents. The parents were active participants in ARDC meetings and were heavily involved in the development of STUDENT's IEPs and behavior plans.

Citation: 34 C.F.R. 300.345

Issue 5: Did the district deny STUDENT a full instructional day by taking him early to the cafeteria and the bus?

Held: For Respondent. The ALE students left the classroom a short time earlier than non-disabled students to go to the cafeteria and to the bus, but they continued to receive life-skills training during these periods, such as practice in crossing streets, walking in line, and recognizing environmental signs such as stop signs and exit signs. STUDENT worked on several IEP objectives while in the cafeteria, including choosing his food, feeding himself, and cleaning countertops. In addition, the ALE students sometimes took class materials with them to work on in the cafeteria.

Citation: 34 C.F.R. §300.13; 34 C.F.R. §300.300