

CAUSE NO. 328-SE-0505

STUDENT bnf *** and *** PETITIONERS §	BEFORE A SPECIAL
v. §	EDUCATION HEARING
HUMBLE INDEPENDENT §	OFFICER OF THE
SCHOOL DISTRICT, RESPONDENT §	STATE OF TEXAS

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**FINAL DECISION**

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Statement of the Case

This is an action under the Individuals with Disabilities Education Improvement Act, 20 U.S.C. § 1400 *et seq.* The Petitioners are \*\*\* and \*\*\* as parents and next friends of their daughter student. They are represented by their attorney, Mr. Christopher L. Jonas of the Center for Special Education Law.

The Respondent is the Humble Independent School District. Attorneys Janet Little Horton and Susan K. Bohn of the law firm of Bracewell & Giuliani, LLP, represent Humble ISD.

The case was filed on May 27, 2005 and the original decision due date was July 11, 2005. The case was set for hearing several times but was postponed due to the schedules of the parties. Eventually there were four days of hearing -- February 15 and 16, and May 11 and 12, 2006. The agreed decision deadline is currently set for September 10, 2006.

Student is eligible for Special Education Services as a student with the disabilities of autism, mental retardation, and speech and language impairment.

Petitioners assert that Humble ISD denied student a FAPE in the 2005-2006 school year by failing to properly implement her IEP and by creating an unsafe school environment. They seek to have student placed in a private school.

After carefully considering the evidence, the argument of counsel, and the applicable law, I decide this case in favor of Humble ISD and deny all requested findings of fact and conclusions of law which are inconsistent with those stated below.

Findings of Fact

1. Student is a \*\*\* year old child with autism, mental retardation, and speech and language impairment.
2. Student resides at home with her parents in the Humble ISD.

3. Both parties concede that student is eligible for special education services and that Humble ISD is required by applicable law to provide student a FAPE.
4. Before moving to the Humble ISD, the Petitioners lived in \*\*\* where student attended both private and public schools. Student attended the \*\*\*School, a private school for autistic children, from 1998 to 2001. In October, 2001 the Petitioners enrolled her in a public school \*\*\*. A trainer from \*\*\* School went with student to \*\*\* School and her program at \*\*\* continued to be an extension of the \*\*\*program.
  
5. Mr. \*\*\* is a strong believer in the methods which the \*\*\* School used to work with student Mr. \*\*\*. says that student blossomed during the years she was in the \*\*\* program. In contrast, he regards student's progress in the Humble ISD as unacceptable.
  
6. Dr. \*\*\*, Ph.D., is certified as a behavior analyst by a national organization. Dr. \*\*\* was a consultant to the \*\*\* School and later its acting director while student was a student there. Dr. \*\*\* supervised the design and implementation of student's IEPs while she was at \*\*\* School and \*\*\* School. Mr. \*\*\* is a strong supporter of Dr. \*\*\* as well as being a strong supporter of the education and training that student received through the IEPs which Dr. \*\*\* designed.
  
7. When he moved student from Florida, Mr. \*\*\* essentially tried to transfer the \*\*\* program into the Humble ISD.
  
8. Humble ISD employs Ms. \*\*\* as a facilitator to work with education of autistic children. Ms. \*\*\* holds several Texas teacher certifications including one for working with autistic children. She has received extensive education and training in the various methods for working with autistic children, and has often lectured at regional, state, and national conferences for educators of autistic children. Mr. \*\*\* met with Ms. \*\*\* before he moved \*\*\* to Humble ISD and enrolled \*\*\* in the Humble ISD schools. He asked that Humble ISD continue to educate \*\*\* in the same manner as she was educated at \*\*\*. He asked Ms. \*\*\* to phone \*\*\* and talk to Dr. \*\*\* about student. He also asked her to obtain student's school records from \*\*\* and he signed releases to grant the \*\*\* schools permission to send those records to Humble ISD.
  
9. Humble ISD sent for the \*\*\* records and Ms. \*\*\* phoned \*\*\*to talk about student. Ms. \*\*\*talked to a \*\*\* staffer, \*\*\*, about student instead of speaking directly with Dr. \*\*\*.

10. Student enrolled in Humble ISD in February 2003 during the middle of her \*\*\* grade school year. Humble ISD assigned her to class at School. Mr. \*\*\* holds a college degree and a Texas certification as a special education teacher. Student completed her \*\*\* grade year (the 2002-2003 school year) in Mr. \*\*\* class using the same IEP that she had used at the \*\*\* School in \*\*\* with one exception. Some extra goals were added for speech therapy.

11. Although student had the same IEP as she had at \*\*\*, the teaching methods that Humble ISD used to work with student were not completely the same as those used at \*\*\*. The \*\*\* program combined elements of several methodologies for working with autistic children. It had an emphasis on ABA one-on-one discrete trial training. The Humble ISD program also combined elements of several methods for working with autistic children but it had an emphasis on TEACCH methodology. These are two overlapping but distinct methodologies used to work with autistic children. TEACCH mainly uses group-based instruction in a very structured class environment with a small teacher-student ratio rather than one-on-one instruction. ABA uses more lengthy and intensive one-on-one instruction.

12. Dr. \*\*\*, Ph.D., testified as an expert witness. She has conducted research and published a paper on the issue of whether either of these methods is clearly superior to the other method or to other methods commonly used to teach children with autism. She testified that some children respond better to the use of one method and some children respond better to the use of a different method (or to a mix of different methods). The proper mix can only be determined through trial and error working with individual autistic children. I found this testimony to be convincing and Dr. \*\*\* to be a credible witness.

13. Because of her severe autism and mental retardation and her speech and language impairment, student is a slow learner who needs repetition to learn. No particular teaching method has been proven to be more effective than any other teaching method in working with student.

14. On April 1, 2003, students ARD Committee met to adopt IEPs for student's \*\*\* grade school year (the 2003-2004 school year). The Committee considered a full individual evaluation (FIE) that Humble ISD had conducted on student after her arrival. The FIE was based in part on student's performance on the Universal Nonverbal Intelligence Test (the "UNIT"). It was based in part on an analysis of student's school records from \*\*\*, and was based in part on student's performance in Mr. \*\*\*'s class. The ARD Committee notes speak of student's difficulty in making the transition to Humble ISD; she was homesick for \*\*\*. The notes say that -- although student allegedly knew 25 signs when she came from \*\*\* -- she had not yet demonstrated all of them at school. The notes also say that Mr. \*\*\* said he would like Dr. \*\*\* consulted in development of student's IEP but that Dr. \*\*\* was then out-of-the-country. Mr. and Mrs. \*\*\* signed their agreement to the IEP for student's \*\*\* grade school year.

15. Student attended an extended school year program in the summer of 2003 which Mr. \*\*\* taught.

16. After teaching student the end of her \*\*\* grade year, in summer school, and most of her \*\*\* grade year, Mr. \*\*\* decided student needed another communication skill. He believed it would help increase student's communication ability to add a picture exchange communication system ("PECS") as an option student could use as another way to communicate. He demonstrated the proposed picture communication system to Mr. and Ms. \*\*\* the night before the annual ARD for student's \*\*\* grade school year (the 2004-2005 school year). Mr. and Ms. \*\*\* agreed to inclusion of the PECS communication system in student's \*\*\* grade IEPs.

17. At the end of student's \*\*\* grade year, school officials promoted student to \*\*\* grade in \*\*\* School and placed her in a life skills class for special education students with \*\*\* as her teacher. The life skills class is a class for special education students in which they work primarily on their communication and living skills. Ms. \*\*\* holds a special education certification and has completed roughly 200 hours of continuing education in special education courses since receiving her certification. In addition to her education and training and her work with special education students in the classroom, Ms. \*\*\* is familiar with the problems of special education students because she is the mother of a special education student. Ms. \*\*\* attended the ARD to develop the IEP for student's \*\*\* grade school year so that she could begin to get to know student. In addition, student and Mr. \*\*\* visited in Ms. \*\*\*s' classroom in the spring of 2004 to get student familiar with the new school and her new teacher for the coming school year.

18. Student again attended a Humble ISD extended school year program in the summer of 2004 which Mr. \*\*\* taught.

19. The ARD Committee met on September 15, 2004 to add to student's IEPs a component for twelve hours of in-home training for student's parents to learn to use the picture communication system that Ms. \*\*\* was teaching student in School. \*\*\* holds a Texas special education certification, an undergraduate degree in psychology and a master's degree as an instructional specialist in autism and pervasive developmental disorders. Ms. \*\*\* has extensive experience working with autistic children and their families. Humble ISD employs Ms. \*\*\* as a facilitator. Among her assignments, Ms. \*\*\* works on the design of home training programs for the parents of autistic children. Humble ISD assigned Ms. \*\*\* to design and teach the in-home training program for Mr. and Ms. \*\*\* to learn to use the picture communication system.

20. Ms. \*\*\* made several visits to the student home to teach the picture communication system to student's parents. Mr. \*\*\* did not take part in the trainings. During the trainings, student made several requests using the picture communication system. At one point student asked to swing using a picture of her swing to ask. On another occasion, student asked for apple juice using a picture to communicate her wishes. In what turned out to be Ms. \*\*\*'s final in-home training session to teach Ms. \*\*\* to use this system, Mr. \*\*\* came into the room, watched for a while, and asked about

teaching student American Sign Language. Mr. \*\*\* telephoned Ms. \*\*\* to cancel her next scheduled home training session with Ms. \*\*\* After that, Ms. \*\*\* tried several times to schedule more home training sessions with Ms. \*\*\* However, Ms. \*\*\* didn't return Ms. \*\*\*'s calls.

21. Ms. \*\*\* claimed at the hearing that she was never very interested in the picture communication system. This testimony is inconsistent with the school records and the testimony of other witnesses about their communications with Ms. \*\*\* Ms. \*\*\* testified that after supporting her husband's rejection of a picture communication system for student, Ms. \*\*\* asked Ms. \*\*\* for a picture of a swimming pool so student could use picture communication to let Ms. \*\*\* know when she wanted to go swimming. I find that at one time Ms. \*\*\* believed in and supported the use of a picture communication system for student

22. Mr. \*\*\* called for an ARD Committee Meeting on October 20, 2004. At the meeting, Mr. \*\*\* stated his strong dissatisfaction with the education which student had thus far received in the Humble ISD. He stated that student had regressed and had lost skills that she had in Florida. He demanded that Humble ISD educate student using the ABA one-on-one discrete trial training which she had used at \*\*\*. He stated that he didn't want student educated using the TEACCH method. He stated that he wanted Dr. \*\*\* involved in the design of students IEPs. He stated that he wanted student educated in American Sign Language. Mr. \*\*\* also demanded a college trained aide to work full-time with student on a one-on-one basis. Mr. \*\*\* gave the staff three weeks to get student's IEPs in order.

23. School district staff taking part in the ARD meeting said that they shared Mr. \*\*\*'s concern about student's progress and possible regression in Humble ISD. The staff agreed to set up ABA one-on-one discrete trial training sessions to work with student on her IEPs. Staff also agreed to contact Dr. \*\*\*. The staff and Mr. \*\*\* agreed to ask for an FIE to determine student's needs as the basis for a new IEP. The staff disagreed with teaching student American Sign Language. Staff stated its opinion that American Sign Language isn't suitable for working with autistic students and wouldn't be suitable for student.

24. Ms. \*\*\* knows sign language although not "American Sign Language" which is a specific form of sign language that is very different from spoken English in its sentence structure. The sentence structure is like the sentence structure in Spanish and unlike the sentence structure in English. Dr. \*\*\* testified that he and the staff he had at \*\*\* didn't know American Sign Language either. However, all of student's main teachers both at \*\*\* and at Humble ISD have had enough knowledge of signing and ability to sign to be able to teach student signing.

25. Following up on the October 20, 2005 ARD agreement, Humble ISD staff assigned Ms. \*\*\* the job of developing an ABA discrete trial one-on-one teaching system for \*\*\* Humble ISD also appointed a multidisciplinary team to create a new FIE for student and contacted Dr. \*\*\* to consult with the District on student's program. The one-

on-one ABA discrete trial training for student began in Ms. \*\*\* class on October 27, 2005.

26. Ms. \*\*\* designed the ABA discrete trial training for student Ms. \*\*\* trained \*\*\* and her two paraprofessional aides on the specifics of the program including how to train and test student, use of stimulus lists, and how to record the data collected. Ms. \*\*\* also helped Ms. \*\*\* analyze and summarize the data. Eventually the District hired a third paraprofessional for Ms. \*\*\* classroom to help work with student's ABA discrete trial training. The program design involved pulling student out of her regular classes for an hour each morning and an hour each afternoon. In the pull-out sessions, student worked on her signing skills one-on-one with a trainer in a room across the hall from her regular classroom. The trainer gave student a word or showed her an object or picture and then had student make the sign for it over and over until student had mastered the sign. The trainer recorded the number of trials and the prompting level student needed as she worked to master each sign or command. The staff recorded this data from October 27, 2004 (when these pull out sessions began) until the end of the school year. Ms. \*\*\* and the paraprofessionals rotated as student's trainer. At the beginning of each week, a report went home to student's parents showing her progress on the ABA discrete trial training for the week before.<sup>1</sup>

27. Each time student did not do a sign as requested, the trainer formed student's hand to show her how to make the sign. This training method was time-consuming and student had great difficulty working with this form of training. For example, to sign "drink", it took student 474 trials to get to the no prompt stage and 1350 more trials to master it. For the command, "water on", it took student 196 trials to get to the no-prompt stage and another 1500 trials for her to master this command. Because of the two hours a day of ABA discrete trial training and time taken out for other activities such as lunch, physical education, and working with therapists, student was out of Ms. \*\*\* classroom at least half a day every day. This limited the time teachers had to do other work with student on her IEP skills and student's time to interact with other students in the classroom. Ms. \*\*\* did not see any increase in student's use of independent signing in the classroom despite the amount of time student spent learning signing in the pull-out ABA training sessions.

28. It apparently took student more time to learn signs in the discrete trial sessions in Ms. \*\*\* class than it took her to learn signs in the \*\*\* program. One explanation for this is that the \*\*\* School discrete training program worked with student until she learned each sign correctly so it would be understood by other people who communicate in sign language. The \*\*\* program accepted "home signs" or "approximations" (idiosyncratic signs that would not be understood by other people who communicate in sign language).

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<sup>1</sup> This is a very simplified explanation of the data collection system. It was broken down to include a lot more detail than is described here as to how student. was performing on each trial. It is unnecessary to this decision that I include a more detailed explanation of how this data collection system worked.

29. The ARD Committee met again on November 30, 2004 to consider the progress on the agenda developed at the October 20, 2004 ARD. Staff reported they had set up the ABA discrete trial training as Mr. \*\*\* had requested. Staff reported that they had contacted Dr. \*\*\* and Dr. \*\*\* had agreed to come to Humble ISD to consult with staff on student's new IEPs as soon as he could work it into his schedule. Staff also reported the FIE was nearing completion. The ARD Committee agreed to delay completion of the FIE until after Dr. \*\*\*'s visit so the FIE could include Dr. \*\*\*'s input.

30. Mr. \*\*\* brought a list with him to the November 30, 2004 ARD meeting of the signs and skills student had displayed while in the \*\*\* program. \*\*\* prepared this list in January 2003 and sent it to Mr. \*\*\* in February 2003. However, Humble ISD was not given a copy. Humble ISD had requested a list of this type through \*\*\* while student was in Mr. \*\*\*'s class. It had also requested a list of this type through \*\*\*. The failure to provide the teachers with a list of student's signs and skills effectively prevented the teachers from systematically working on student's maintenance of those signs and skills.

31. Dr. \*\*\*'s visit took place in January 2005.

32. Dr. \*\*\* made a video showing his techniques for working with student during his January 2005 visit to \*\*\* School. That video has been spliced together with an earlier video which Dr. \*\*\* and his associates made with student while she was in the \*\*\* program. Dr. \*\*\* and his staff used such heavy prompting with student that it is impossible to tell how many signs student could have recognized or demonstrated without such heavy prompting.

33. The FIE assessment team ran a battery of tests to determine the level at which student functions both in general and compared to other children her age. When student scored as \*\*\* on the UNIT IQ test, the team gave student the Leiter test because it can measure \*\*\* than the UNIT IQ test can measure. Student then scored \*\*\* on the Leiter test. The team also gave other standardized tests such as tests measuring student's socialization skills and her ability to function in her environment. On most of these tests student tested as having the skill set of a one-and-a-half to two-and-a-half year old child. The team concluded that student had both severe mental retardation and severe autism and, in addition, has significant speech and language impairment. These findings and conclusions are consistent with the findings and conclusions in other assessments of student going back to 1998. I accept these findings as correct.

34. The FIE assessment team also found that student had regressed (lost some skills) between the 2003-2004 and the 2004-2005 school years. The team based this finding on an assumption that the tasks that student was doing and the manner in which her teachers graded her performance were the same in both \*\*\* School and \*\*\* School. However, Dr. \*\*\* later interviewed student's grade schoolteacher (Mr. \*\*\*) and her middle schoolteacher (Ms. \*\*\*). Dr. \*\*\* decided the apparent fall off in student's skills could be the result of differences in the way the teachers tested for student's skills and the way they graded her answers. For example, in working with student, Mr. \*\*\* would always arrange materials in a manner which made the correct answer to the problem

stand out. Ms. \*\*\*, on the other hand, would present the material in a random and neutral way. When Ms. \*\*\* presented the material in a manner that did not suggest the answer, student did less well on the material that she had with Mr. \*\*\*. Based on her interviews with Mr. \*\*\* and Ms. \*\*\*, Dr. \*\*\* decided that student displayed little or no regression between e \*\*\* school and \*\*\* school. I found Dr. \*\*\* to be a persuasive witness and I accept this explanation. Student may have (but did not necessarily) lose skills between her \*\*\* and \*\*\* school years in Humble ISD.

35. The FIE team found (and based on the evidence I also find) that student has shown a consistent pattern over her entire time in school of gaining and then losing skills from one testing period to the next. One can see an example of this in the \*\*\* reports of student's accomplishments. The \*\*\* reports show that a word or a skill would be on student's list of learned words or skills during one reporting period. In a later reporting period Threshold staff would place it back on the list of words or skills that student was trying to learn. This may be evidence that student either never really knew or acquired those words or skills to begin with. It may be evidence that student having learned or acquired them, later lost and had to relearn or reacquire them in the \*\*\* program.

36. The assessment team found that no particular method has been more effective in working with student than any other training method. (See similarly paragraph 13 above.)

37. Student displays certain "self-stim" behaviors (repetitive motor mannerisms common to autistic children). Student's self-stim behaviors interfere with student's capacity to receive teaching instruction. The ARD Committee asked the assessment team to find out the reason for, and to find a way to reduce, a \*\*\* which began after student enrolled in Humble ISD.<sup>2</sup> The assessment team suggested that this behavior might be reduced by giving student something to chew on like a soft candy or gummy bear or by just gently touching student's cheek when she is doing her \*\*\*. All the witnesses agreed (and I find) that this \*\*\* is one of the self-stim behaviors associated with student's autism.

38. Dr. \*\*\* wrote a report of his January visit. He based the findings and recommendations in his report, in part, on the assertion that Humble ISD hadn't been working to teach student sign language. All the other evidence related to the education that student has received since coming to Humble ISD contradicts the assertion that Humble ISD hasn't consistently worked to teach student sign language. I find that in fact Humble ISD worked with student on her signing skills from the first day that student arrived in the District.

39. Dr. \*\*\*'s recommendations included a recommendation that, for the next two years, student's teachers should teach her sign commands, or signs used to make requests (and not teach her any other forms of communication). Humble ISD staff and Humble ISD expert witnesses strongly disagreed with this recommendation. Instead, staff expressed the professional judgment that instead student's teachers should teach student a

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<sup>2</sup> As Mr. \*\*\* described this behavior, "student. acts as if she is going to \*\*\*."

"total communication system." Stated another way, student's teachers should encourage her to communicate in any way that she would try to communicate, whether it be pictures, signs, gestures or vocalizations. All the witnesses who testified for Humble ISD about how to strengthen student's communication skills embraced this total communication idea. I find from a preponderance of the evidence the total communication training proposed by Humble ISD offers the best potential for strengthening student's communication skills.

40. On February 22, 2005, the ARD Committee met on student's proposed IEP for student's \*\*\* grade year (the 2005-2006 school year). Among those taking part in the ARD, Mr. \*\*\* was present in person and Dr. \*\*\* attended by phone. The Committee reviewed the FIE and considered a proposed IEP for student's \*\*\* grade year. Mr. \*\*\* wanted the entire IEP to focus on teaching student sign language and life skills. He said the communication taught student should be 100% sign language and verbals. He didn't want pictures used with student. He disagreed with the IEP goals and the proposed mastery criteria for student's IEP. He wanted mastery criteria stating that student would be "performing the IEP tasks consistently and independently within a year" as opposed to mastery criteria recommended by Ms. \*\*\* which would have student performing the tasks "capably but inconsistently with physical prompts." Dr. \*\*\* agreed with the IEPs except that he also wanted student to achieve a higher level of mastery by the end of the school year. The staff resisted increasing the mastery criteria as requested by Mr. \*\*\* because staff felt that it was unrealistic given student's history of being unable to retain skills, her severe autism, her mental retardation, and her speech and language problems. Staff agreed to provide more data to Dr. \*\*\* before the Committee's next meeting and to try to arrange for Dr. \*\*\* to take part in the next ARD meeting by video conference. The Committee agreed that the then current IEPs would remain in place until after the next ARD meeting.

41. The ARD Committee reconvened on April 12, 2005, in a meeting limited to the issue of whether to place student in an extended school year program for the summer of 2005. The Committee unanimously agreed to do this. The Committee agreed that student's goals and objectives which had expired on April 1, 2005, would be extended until the next ARD meeting. Mr. \*\*\* brought a note to the meeting that reads as follows, student expresses herself best using individual signs of American Sign Language in English order. All individuals who work with M. must respect this form of communication. No other form of communication should be used with student without the permission of the entire IEP team." The ARD Committee didn't adopt the policy set out in the note.

42. The February 22, 2005 ARD meeting reconvened on May 24, 2005 to reconsider the IEPs for student's \*\*\* grade year (the 2005-2006 school year). Mr. and Mrs. \*\*\* were unable to come to agreement with the rest of the ARD Committee. Mr. \*\*\* signed the ARD document as being in disagreement with its recommendations. Mr. \*\*\* stated the only thing that he disagreed with the rest of the committee about was the mastery criteria for the IEPs.

43. The May 24 ARD meeting took place in the last week of student's \*\*\* grade school year. At the conclusion of the school year the student's withdrew student from the Humble ISD schools. Student didn't attend the Humble ISD extended school year program in the summer of 2005. She didn't reenroll in Humble ISD in the fall of 2005. The student's say they withdrew student from Humble Middle School because of safety issues and because they didn't agree with student's education plan. She hasn't since enrolled in another private or public school. \*\*\* testified at our hearing they have not developed any academic curricula for her. Instead, he says they are only teaching her life skills at home.

44. The safety issues involved two occasions on which student had raw vegetables at school. The first incident involved a raw carrot which \*\*\* thought that student put in her mouth on May 16, 2005. Ms. \*\*\* thought that student was holding it in her mouth when student left school and sent a note home to Mrs. \*\*\* telling her to check to see if student still had it in her mouth when student got home. Ms. \*\*\* found that student didn't have anything in her mouth and wrote Ms. \*\*\* to tell her that student didn't have the carrot in her mouth. Neither she nor Mr. \*\*\* contacted the school to express any concern about the incident. The second incident involved a piece of raw celery which student put into her mouth during a science project on May 24, 2005 (after student's ARD meeting). Ms. \*\*\* was unaware that student had it in her mouth. When student got home the parents found it in her mouth. They have since claimed that this was a life-threatening incident and that it would be too dangerous for student to return to school because of this incident. In August 2005, the school received a note from student's doctor which refers to this as a "life-threatening incident."<sup>3</sup>

45. Ms. \*\*\* knows CPR. Her classroom is \*\*\* to the school nurse's station with a \*\*\*. Humble ISD has developed emergency plans should a raw vegetable incident occur again when or if student returns to Ms. \*\*\* class. Before the second incident, the parents had never given the school a list of foods student shouldn't have but, in fact, had told the school that student could have anything she wanted from the school lunchroom.

46. The ARD Committee met a final time in November 2005. Mr. \*\*\* was seeking a private placement for student. He said that he might return student to school if the school placed student in another teacher's class instead of Ms. \*\*\* class. The Humble ISD staff representatives in the ARD meeting refused private placement and refused to transfer student out of Ms. \*\*\* class should she return to school.

47. Petitioners offered no evidence about any alternative placement which Mr. \*\*\* may be considering for student Dr. \*\*\* testified that \*\*\* School has changed its methodology in recent years so the program he conducted there is no longer available. There is no information in the record about where student might receive private schooling or what academic programs might be available for student at an alternative placement. There is no evidence in the record about what improvement any available alternative placement might offer over the program available at Humble Middle School.

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<sup>3</sup> When Humble ISD staff requested permission to talk to \*\*\*'s doctor about \*\*\*'s medical needs following receipt of this letter, Mr. \*\*\* refused permission.

48. The record evidence affirmatively shows (and I find) that the \*\*\*'s strongly supported the \*\*\* \*\*\*. regularly visited student's class at \*\*\*. However, they have at best been neutral toward the Humble ISD. Ms. \*\*\* regularly visited student's class at \*\*\*. Both of the student's took part in parent training there; and they worked with student at home to reinforce the information and skills she was learning at school. In contrast, the \*\*\*'s, although often invited to do so, have never visited student's classrooms at \*\*\* or \*\*\* School during \*\*\*'s regular class time. They have often been suspicious of and even hostile to school staff and unsupportive of staff initiatives to work with student to address her IEPs at \*\*\* School.

### Analysis

Humble ISD is only required to deliver services that are sufficient to provide a meaningful educational benefit to student. It is not required to provide her with the best possible education. See, Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203 (1982).

In this case, the student's assert that Humble ISD failed to provide student a FAPE by failing to properly implement student's IEPs. I have found no evidence in the record to support that charge.

Humble ISD properly implemented student's IEPs. IDEIA requires Humble ISD to make a good faith effort to help student achieve the measurable annual goals listed in her IEPs and to provide the accommodations, modifications and supports necessary for her to achieve success. 34 C.F.R. §300.323. The courts don't judge the sufficiency of IEPs in hindsight. Instead, they judge their sufficiency based on the information that was available to the ARD Committee at the time they wrote and adopted the IEPs. See O'Toole v. Olathe Unified School District No. 233, 144 F.3d 692, 701-02 (10<sup>th</sup> Cir. 1998); Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031, 1035, 1040 (3d Cir. 1993); and Roland M. v. Concord School. Commission., 910 F.2d 983, 992 (1<sup>st</sup> Cir. 1990). In this case the parents did not give the school information they had student's teachers were unable to provide the skill maintenance training they could have provided if they had known what signs and skills student. knew. It would be inappropriate to censure Humble ISD for these teachers inability to help student use and maintain signs and skills the teachers were unaware student knew.

As stated in the findings of fact, the special education teachers for student were college graduates who have certifications from the state of Texas in special education and who have training in sign language and experience working with autistic students. These teachers are supported by a strong central staff with a large amount of experience and expertise working with autistic children and their families. Student's teachers and other Humble ISD personnel and expert witnesses gave credible and detailed testimony supported by documentation to prove that Humble ISD has actively worked on all of student's IEP goals and that its personnel have made their best efforts to assist student achieve each goal, objective, and benchmark listed in her IEPs. Moreover, the Humble school staff has demonstrated an open-minded willingness to look at and implement

whatever teaching methods might prove most effective with student In addition, the District has employed trained paraprofessionals who (until the \*\*\*'s withdrew student from school) spent a good part of each day working with student on a one-on-one basis. Notwithstanding student's severe autism, mental retardation, and language and speech impairment, the evidence shows that student. has either made slow progress or has retained approximately the same skills with minimal regression since coming to the Humble ISD. Moreover, the evidence shows that student has a consistent pattern of learning and then losing skills throughout her school career regardless of the methodology used or the personnel who have worked with her.

The law is clear that Congress did not intend for the courts to interfere with school authority's exercise of discretion about the best methods to be used to instruct a student. County School Board of Henrico County v. Z.P., 399 F.3d 298, 308 (4th Cir. 2005); Deal v. Hamilton County Board of Education, 392 F.3d 840, 864-865 (6th Cir. 2004), cert. den. 126 S.Ct. 422 (U.S. 2005); J.P. v. W. Clark County Schools, 230 F. Supp. 2d 910, 934 (S.D. Ind. 2002). Further, so long as qualified personnel are assigned to work with a student, that student's parents are not entitled to dictate school personnel decisions. See B.V. v. Spring Branch Independent School District, TEA Docket No. 205-SE-0506 (2006); Bradley J. v. Lewisville Independent School District, TEA Docket No. 271-SE-0402, 102 LRP 17462 (2002); and Mark S. v. Hooks Independent School District, TEA Docket No. 021-SE-0904 43 IDELR 263 (2002). Applying that law to this case, the evidence in this record overwhelmingly shows that Ms. \*\*\* is an excellent teacher with the appropriate education and skills necessary to effectively work with student. It is inappropriate for the parents to negotiate returning student to Humble ISD conditioned on Humble ISD assigning a teacher other than Ms. \*\*\* to work with student.

Student's placement at \*\*\* School is appropriate and has provided student a FAPE. IDEIA does not require consideration of placement in a private school unless FAPE is denied in the public schools. Since student's placement at \*\*\* School is appropriate, there is no need to consider placement in a private school.

See Hale v. Poplar Bluff R-I Sch. Dist., 33 IDELR 268 (E.D. Mo. 2001) affirmed, 280 F.3d 831 (8th Cir. 2002). (If a school district has denied a FAPE to a special education student, then a special education hearing officer or review panel can tell the district what actions it must take to remedy the violation. There is no authority, however, under which a hearing officer or review panel can order a remedy when it finds there has been no denial of a FAPE. Once determined that the district has not violated the law, the hearing officer or review panel can not step in and tell the district how to perform functions delegated by law to the IEP team.

Recognizing the potential seriousness of the possibility that student might choke on food, I find and conclude that it is unlikely the school would allow student to eat a raw vegetable in the future now that the school has been warned of possible dire consequences that might result from student choking on raw vegetables. The possibility that such a choking incident might occur is not so great a hazard as to interfere with student receiving a FAPE or to justify her placement in a private school.

I do not have jurisdiction to declare student. truant and order her return to school. However, I strongly believe that it would be in student's best interest to get her back in a bona fide educational program at the earliest possible date.

CONCLUSION OF LAW

Humble ISD has provided student with a free and appropriate public education as required under the Individuals with Disabilities Education Improvement Act by properly implementing student's Individual Education Programs.

ORDER

IT IS HEREBY ORDERED that all relief requested is denied.

Entered at Austin, Texas on September 7, 2006.

Larry J. Craddock  
Special Education Hearing Officer  
for the State of Texas

CAUSE NO. 289-SE-0505

STUDENT bnf \*\*\* and \*\*\* PETITIONERS § BEFORE A SPECIAL  
v. § EDUCATION HEARING  
HUMBLE INDEPENDENT § OFFICER OF THE  
SCHOOL DISTRICT, RESPONDENT § STATE OF TEXAS

**SYNOPSIS**

Issue No. 1: Whether the district failed to provide the student with a FAPE by failing to properly implement her IEP, causing the student to regress in her education, and creating an unsafe school environment?

Held: For the District. IDEA doesn't require the District to educate using the teaching methods and teachers preferred by the parent. If a meaningful educational benefit is provided, IDEA is satisfied. Isolated incidents in which the student could have choked on raw vegetables do not justify her withdrawal from school or her placement in a private school.

Federal Citations: 20 U.S.C. § 1400; 34 C.F.R. §300.323; Board of Education of Hendrick Hudson Central School District v. Rowley, 458 U.S. 176, 203 (1982). O'Toole v. Olathe Unified School District No. 233, 144 F.3d 692, 701-02 (10<sup>th</sup> Cir. 1998); Fuhrmann v. East Hanover Board of Education, 993 F.2d 1031, 1035, 1040 (3rd Cir. 1993); and Roland M. v. Concord School. Commission., 910 F.2d 983, 992 (1<sup>st</sup> Cir. 1990). See also, County School Board of Henrico County v. Z.P., 399 F.3d 298, 308 (4th Cir. 2005); Deal v. Hamilton County Board of Education, 392 F.3d 840, 864-865 (6th Cir. 2004), cert. den. 126 S.Ct. 422 (U.S. 2005); and J.P. v. W. Clark County Schools, 230 F. Supp. 2d 910, 934 (S.D. Ind. 2002).

Texas Citations: B.V. v. Spring Branch Independent School District, TEA Docket No. 205-SE-0506 (2006); Bradley J. v. Lewisville Independent School District, TEA Docket No. 271-SE-0402, 102 LRP 17462 (2002); and Mark S. v. Hooks Independent School District, TEA Docket No. 021-SE-0904 43 IDELR 263 (2002).

Issue 2: Whether the student was entitled to private school placement?

Held: For the District. Since student's placement at \*\*\* School is appropriate, there is no need to consider placement in a private school because a hearing officer lacks authority to order a remedy such as a private placement where there has been no denial of FAPE.

Cite: Hale v. Poplar Bluff R-I Sch. Dist., 33 IDELR 268 (E.D. Mo. 2001) affirmed, 280 F.3d 831 (8th Cir. 2002).