

*** b/n/f ***	§	BEFORE SPECIAL EDUCATION
PETITIONER	§	
	§	HEARING OFFICER FOR THE
VS		
	§	
EDINBURG CONSOLIDATED	§	
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioner *** brings this appeal by her next friend *** and ***, pursuant to the Individuals with Disabilities Education Improvement Act 20 U.S.C. § 1400 *et seq.*, (hereinafter referred to as "IDEIA"), against Respondent Edinburg Consolidated Independent School District (hereinafter referred to as "Respondent" or "Edinburg CISD"). Petitioner student, by next friend *** (hereinafter referred to as "Petitioner" or "student"), filed a written request for a due process hearing which was received by the Texas Education Agency on July 8, 2005. Petitioner was represented by Attorney Fernando Mancías of The Law Offices of Fernando Mancías, PLLC of McAllen, Texas. Respondent was represented by Attorney Jacques Treviño of Gorena & Treviño of Edinburg, Texas. A telephone prehearing conference was held on July 27, 2005, at which time both parties waived their right to a final decision within forty-five (45) days of the date the written request for due process hearing was filed. [34 C.F.R. §300.511 (c)] A due process hearing was held on Thursday, April 6, 2006, in Edinburg, Texas. The parties agreed to file post-hearing briefs on or before May 1, 2006.

Petitioner alleges that *** has not received a free appropriate public education from Edinburg CISD and has not been taught what she needs to learn to succeed in life. Particularly, Petitioner faults Edinburg CISD for failing to prepare student for her chosen career as a *** teacher, and for failing to ensure that student was provided with instruction and equipment necessary to succeed in a higher education environment. Petitioner asserts that student can learn, but her learning has been limited due to Respondent's failure to provide FAPE.

Respondent contends that Edinburg CISD had provided student with a free, appropriate public education at all times in the least restrictive environment. Respondent also noted that student had some physical limitations as the result of a ***. Further, Respondent noted that student was taught in Braille, but had a *** reading comprehension level. Finally, Respondent noted that Petitioner should be limited in the time period for which claims can be made.

Based upon the evidence and the argument of counsel, the Hearing Officer makes the following findings of fact and conclusions of law.

II. Findings of Fact

1. *** is a *** year-old female student who resides within the Edinburg CISD.
2. Edinburg CISD is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing student a free appropriate public education in accordance with the Individuals with Disabilities Education Improvement Act, 20 U.S.C.A. § 1400, *et seq.*, and the Federal and state rules applicable to the education of individuals with disabilities.
3. *** is eligible for special education placement, programs and services as a student with visual impairment, speech impairment and other health impairment.
4. *** has never been diagnosed as a student with mental retardation. Although both intelligence scores and adaptive functioning have been consistently within the range***. *** performance IQ has not been assessed because of her ***.
5. *** has been diagnosed with ***, *** in both eyes and serious vision loss in her right eye, so that the student is legally blind. *** has had *** treatment on her right eye. There has been no evidence of progression or change in *** eye disease from reports in 2004 and 2005, other than post surgical, with no recurrence of ***. *** OHI designation is due to her need for asthma medication.
6. *** was born in McAllen and moved to Edinburg before her *** year in school. She has been attending *** since the second semester of her *** grade year, at age ***. *** parents asserted some problems with *** early schooling, such as failing to teach all classes in ***, not receiving computer equipment for home use as scheduled, being socially promoted for reasons of placement with age appropriate peers rather than educational competence, and an incident in the *** where she was placed behind an insulated screen where she could not hear and participate in classroom instruction, so that she would not disrupt other students. The incidents most complained of by *** parents occurred outside of any relevant time period before the request for due process hearing was filed.
7. *** has continued to attend the *** an out-of-district placement for Edinburg CISD to access the “holistic approach” to visual impairment education at the school and to have daily interaction with visually impaired peers, which is deemed essential to her self-esteem. *** returns home to visit her family in Edinburg every other weekend. Student will attend *** until she no longer is eligible to receive special education services at age 22. *** will age out the special education program of Edinburg CISD as of the end of the *** school year.
8. *** has had several Admission, Review and Dismissal committee meetings (“ARDs”), where her Individual Transition Plan was discussed. *** has expressed a desire to attend college and become a braille teacher. Her Individualized Education Program student’s parents fault her IEPs for not sufficiently preparing the student for the rigors of a college education.

9. The progress reports for the school year 2003-2004 detail *** educational program and progress for that school year. During that school year, *** earned *** total credits for courses in Math, Social Studies, Science/Health, Work Rel Self-Aware, Foods, and two Language Arts courses. Student also took classes in art and Tech Res/Reinforce ***. (First semester/second semester) grades were as follows: Language Arts - (***); Language Arts - (***); Math- (***); Social Studies (***); Science/Health (***); Tech Res/Reinforce (***); Work Rel Self-Aware - (***); and Art (***). IEP goals and objectives reported for the period March 1, 2004 through May 26, 2004 indicate that *** met educational objectives in Foods by preparing a variety of simple, healthy snacks, did not meet objectives in functional math skills related to banking and record keeping; met career education objectives by investigating job opportunities; did not meet recreation/leisure objectives related to exploring and pursuing new activities; did not meet conversation skills objectives related to asking questions and conversing; did not achieve orientation and mobility skills by soliciting assistance in various retail settings; and did not achieve word processing objectives, although it was noted that the student loves email and enjoys reading email received.

10. The progress reports for the school year 2004-2005 detail *** educational program and progress for that school year. During that school year, student earned a total of *** total credits for six courses in Exit (Experiences in Transition), along with Music/Choir and P. E. (First semester/second semester) grades were as follows: Exit [all six course credits] -(***); Music/Choir - (***); P.E. 3 (***); P.E. 4 (***). *** met all functional math skills objectives by gaining an awareness of banking and keeping records in her personal resource notebook. *** met Orientation and Mobility skills objectives related to seeking assistance in various retail settings. *** met career education goals by investigating job opportunities and routine manual job skills. *** explored and investigated recreational and leisure activities, including ice skating, and achieved her objectives in this area. *** achieved all objectives related to improving conversational skills. *** succeeded at all skills related to improving her word processing.

11. The progress reports for the school year 2005-2006 detail *** educational program and progress for that school year. As of the second *** period, student. had *** many of the skills necessary for independent living which were included in her IEP. Specifically, *** mastered *** out of *** Orientation and Mobility objectives *** of the *** Social *** Career Education objectives; *** of the *** Planning for Adult Future objectives; *** of the Functional Math objective related to using basic math operations to accomplish functional tasks; *** of the *** Personal Organization and Study Skills objectives related to developing personal organizational systems; ***out of *** Practical Language Arts objectives; *** of *** Independent Living Skills objectives; and *** of the Technology Skills goal related to using the Internet to investigate community, government and personal information. *** did *** in the goal of demonstrating confidence in her own decisions, values and beliefs.

12. A Comprehensive Vocational/Psychological Evaluation Report of student. was prepared on May 28, 2002. *** obtained a Verbal IQ of ***, within the borderline range, on the Wechsler Adult Intelligence Scale, Third Addition (WAIS-III), and a Verbal Standard Score of

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***** EDINBURG CISD**

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, within the average range, on the Cognitive Test for the Blind (CTB). The evaluator noted, “Overall, it appears *** performed better during subtests which student’s academic achievement was in the *** grade range in Braille Reading Recognition (), Oral Spelling (***), and Oral Arithmetic (***¹). Mild to Moderate *** in integration and coping were noted, including messy appearance, not ironing, and lack of financial management skills. *** demonstrated the greatest interest in clerical, laundry service and materials handling occupations. The evaluator concluded that *** predicted level of vocational functioning is within the Vocational Readiness/Transitional range, which includes those individuals who will need additional skills and training before entry level work in the community. The evaluator also concluded that student’s predicted range of functioning is within the Semi-Independent/Apartment range, including employment in community settings or training programs and likely requiring monitoring by a counselor.

13. A Full and Individual Evaluation prepared on April 29, 2002 details similar findings, showing *** acquisition of English in addition to the Spanish spoken at home, but still showing language deficits, with no age equivalency higher than *** in the Woodcock Language Proficiency-Revised for both English and Spanish subtests. Using the Woodcock Language Proficiency Battery-R, the evaluator noted that *** abilities to communicate her knowledge and to remember just imparted instructions are ***, and her performance of verbal reasoning is within the *** range. *** ability to discriminate speech sounds is above ***. Reading, writing and math operations were measured at the *** grade level and math reasoning was measured at the beginning *** grade level.

14. A neuropsychological report was prepared by Kevin ***, Ph.D. on January 12, 2005. *** test results on the Woodcock Johnson Tests of Cognitive Ability - 3rd Edition (WJC-III) showed similarity to previous testing results noted above, and also showed significant scatter in her test results. Dr. *** reviewed previous testing and concluded that *** was functioning in *** range for overall intellectual ability, with some mild, diffuse cognitive deficits. Dr. *** stated that “there is no cognitive limitation that would prevent *** from greatly improving her language skills.” *** stated that psychological factors are the primary cause of *** *** progress in academics, including a developed habit of lackadaisical mental effort, an undeveloped ability to apply herself intellectually, and a timid, sweet and immature personality, which elicits nurturing from adults, allowing her to escape demands. Dr.*** recommendations included an “attitude adjustment,” with a concerted effort to acquire more verbal communication skills. Dr. *** also referred to *** hope of becoming a *** instructor as “a pipe dream” given her current skills, but not unrealistic “if she developed the will to work her heart out to achieve that goal. Dr. *** did not address how a *** who has spent years in special educational programming, has limited independent living adaptive skills, and functions in the range of mental retardation could complete a college program and specialized training necessary for special education teaching any time in the foreseeable future.

15. Individual Transition Plan discussions for *** were undertaken in May 2002, March 2003, February 2004, February 2005, and January 2006. ***, her parents, and a *** Counselor participated in the discussions. Although *** and her parents continued to focus on

*** dream to become a special education teacher, including a focus on academics in her IEP, school personnel and her *** counselor attempted to have *** work toward MHMR programs, because of her functioning in the range of mental retardation. *** parents did not access MHMR because *** has never been determined to be eligible for special education based on mental retardation. Recently, *** parents acknowledged her likely difficulty in attending *** University, and were considering “****” as an option for further training, but as of the time of the hearing, no definite plans for *** after graduation from *** were in place, although *** continued to work with her counselor regarding her transition to adult life.

16. In the ARD/IEP Supplement, Graduation, *** ARD committee determined that as of approximately May 25, 2006, the *** would graduate and receive a high school diploma on the basis of no longer meeting eligibility requirements and completing the requirements specified in the IEP. *** parents were informed that the student’s eligibility for special education would end.

17. At present, *** family expects *** to return to Edinburg to live with her family, and her parents are hopeful she can obtain additional training to prepare her to earn a living in some meaningful way.

III. Discussion

In this case, *** is a *** year old student who has attended since age ***. In repeated assessments, *** has been determined to function in the range of mental retardation in verbal intelligence and adaptive functioning. Her high school special education program, extended *** years beyond the general education high school program, has been developed by multiple ARD committees convened over the years, to provide student with the tools needed to transition to adult living after ***. Although *** has not been successful in the functional academic program, her parents fault Edinburg CISD for failing to prepare *** for a college program and her chose career as a *** teacher. Unfortunately, *** and her parents’ aspirations are not realistic options. Given *** limited success in educational and academic settings, it is not the fault of Edinburg CISD that *** is unlikely to be successful in a college environment or a teaching capacity. *** has obtained the benefit of growing up with her peers who have similar disabilities and has grown into a young woman who is capable of living as an adult with some assistance and with several options for gainful employment. Other than noting that *** had “plateaued” in her academic achievement at approximately the *** level, and requesting academics beyond the functional level, Petitioner failed to specify current problems with *** educational program. Petitioner did not state that Respondent had failed to provide *** with appropriate assistive technology or related services or specific IEPs. Petitioner’s most vehement complaints involve conditions which occurred in Edinburg CISD before *** went to***.

Ultimately, neither Petitioner nor Respondent can be faulted because *** has not achieved a higher level of academic success, despite exposure to appropriate educational opportunities in the least restrictive environment. While *** future options are not unlimited, part of the continued personal growth which must occur with *** and family members is the recognition and acceptance of her real potential. *** adaptation to adult life in the future must

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involve taking advantage of the community resources available to her, and moving beyond the special education program of Edinburg CISD.

IV. Conclusions of Law

1. Petitioner *** is a student in Edinburg Consolidated Independent School District who is eligible for special education services based on her classification as a student with visual impairment, speech impairment and other health impairment. 20 U.S.C.A. § 1401(3)(A); 34 C.F.R. § 300.7(a)(1); 19 T.A.C. § 89.1040.
2. Respondent Edinburg CISD has a responsibility to provide student with a free appropriate public education. 20 U.S.C.A. § 1412; 34 C.F.R. §300.300; 19 T.A.C.§ 89.1001.
3. Petitioner failed to show that Respondent had failed to provide student with a free appropriate public education as required by law. Respondent showed that student had been provided with placement, IEPs and services designed to provide educational benefit and to prepare her for adult living after graduation from *** at age **. *Hendrik Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982); *Tatro v. State of Texas*, 625 F.2d 557 (Fifth Circuit - 1980).
4. *** is no longer eligible for special education because the student is outside the age range for special education services. *** was eligible to receive a high school diploma upon completion of her IEP and access to her adult counselor from **. 19 T.A.C. §89.1035; 19 T. A. C. §89.1070(2).
5. Petitioner did not request specific relief in the form of special education programs or services, but requested that the Hearing Officer to fashion appropriate relief.

V. Order

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is DENIED.

ISSUED this 31st day of May, 2006.

Gwendolyn Hill Webb
Special Education Hearing Officer

DOCKET NO. 375-SE-0705

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SYNOPSIS

Issue: Was *** year-old student with blindness, speech impairment and other health impairment entitled to unspecified relief as a result of achieving only an educational level equal to the *** grade in a functional academic program?

Federal Citation: 20 U.S.C.A. § 1412; 34 C.F.R. §300.300; 20 U.S.C.A. § 1401(3)(A); 34 C.F.R. § 300.7(a)(1); *Hendrik Hudson Central Sch. Dist. v. Rowley*, 458 U.S. 176 (1982).

Texas Citation: 19 T.A.C.§ 89.1001; 19 T.A.C. §89.1035; 19 T.A.C. § 89.1040; 19 T. A. C. §89.1070(2); *Tatro v. State of Texas*, 625 F.2d 557 (Fifth Circuit - 1980).

Held: *** who tested in the range of mental retardation, in addition to other disabilities was not deprived of a free appropriate public education simply because she failed to make academic progress at a high school equivalent even after years at the Texas School for the Blind and Visually Impaired. *** who requested no specific special education programming and who no longer met age criteria for special education could not continue to receive special education services from Respondent school district.