

STUDENT b/n/f ** and **, PETITIONER	§ § §	SPECIAL EDUCATION
VS.	§	HEARING OFFICER
MANSFIELD ISD, RESPONDENT	§ §	STATE OF TEXAS

DECISION OF HEARING OFFICER

This matter was presented to this Hearing Officer after ** and **, the petitioners and parents of the child, filed for a Due Process Hearing pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA04”), 20 U.S.C. §1400 et.seq., on April 20, 2007, complaining against Mansfield ISD, the respondent.

On the 8th day of October, 2007, the petitioners and the respondent appeared at the Special Education Department at Mansfield ISD for a Due Process Hearing pursuant to IDEA04. The hearing concluded on the 10th day of October, 2007.

** and **, parents of STUDENT, appeared in person and through their attorney of record, Myrna B. Silver, and announced ready.

Mansfield ISD appeared through its district representative, Jane Melms, and through its attorneys, Denise H. Anderson and Gigi Norman, and announced ready.

A stenographic transcript of the proceeding was made by Patricia Gaddis of Gaddis Court Reporting in San Antonio, Texas.

“The Rule” was invoked by Ms. Silver and all witnesses were admonished accordingly.

Evidence was presented through numerous documents and numerous witnesses,

and much evidence was admitted for background purposes only, since it exceeded the timeline in the Statute of Limitations.

Issues Raised and Relief Sought

The petitioners raised two issues/complaints about the district in the Prehearing Conference held on May 15, 2007:

1. Regarding transition – the district did minimal testing on the child to determine what the child needed, and instead provided the child with what was already available; and
2. The district denied the child a free, appropriate public education (“FAPE”) since its accommodations and modifications for the child were either insufficient or nonexistent in her classes, and there was minimal academic improvement.

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

1. That this hearing officer order the district to enroll the child in the Berkshire Hills Music Academy (“BHMA”), a school located in Massachusetts that specializes in children with Williams’ Syndrome, at the district’s expense.

The hearing began on October 8, 2007 and concluded on October 10, 2007. After hearing the testimony of the witnesses presented, reviewing the exhibits from both parties which were admitted into evidence, and weighing such evidence in light of current law, the relief requested from the petitioners is hereby DENIED.

HELD, for the respondent.

Findings of Fact

1. The parties each agree that the child is a ** grade student eligible for special education services under IDEA04 based upon the diagnosis of Williams' Syndrome. This condition is a rare, genetically based disorder that typically results in some degree of mental retardation and an affinity towards music. (Petitioner's Exhibit #8, p. 8).
2. This child has a love for music (See, Trial transcript, pp. 133-134, 164, 464, 573; See Also, Respondent's Exhibit #31, p. 1) and prior to the Fall 2006, had always structured her classes to include as much music as possible. (See, Trial transcript, pp. 164-166). This child's musical abilities are, in the estimation of this hearing officer, average. (See, Petitioner's Exhibit #37, video clips 1, 2, and 3). However, because of this child's love for music, music integrated into her curriculum would probably be most effective in her education. (See, Trial transcript, pp. 38-43).
3. In the Spring 2006, the child informed her parents she did not wish to enroll in Choir class for the upcoming 2006-2007 school year. (See, Trial transcript, p. 133). The child did not have good experiences in her prior Choir classes at her campus (See, Trial transcript, p. 367) and this is generally thought to be the reason for her decision. Later, a grievance was filed by the parents against **, the music director at the child's home campus. (See, Trial transcript, pp.191-192, 455).
4. In lieu of Choir, the child was enrolled in a Ready, Set, Teach class, a vocational class in the general education setting where the child was allowed

to be an assistant in a Music class for elementary children, in this case at ** Elementary. (See, Trial transcript, pp. 189-190; See Also, Petitioner's Exhibit #24, pp. 38-44; Respondent's Exhibit #12, p. 16). Very little appropriate support, if any, was provided to the child in this setting and she was not successful. (See, Trial transcript, pp. 190-191, 199-204, 673-674; See Also, Petitioner's Exhibit #24, p. 44). Shortly thereafter, the ARD Committee met and offered the child a Choir class at another campus, **. (See, Trial transcript, p. 204). Transportation was provided by the district to attend this class, and the child enrolled.

5. On December 3, 2006, **, the parent, sent a letter to the district formally requesting a Functional Capacity Evaluation ("FCE"), a Functional Vocational Evaluation ("FVE") and an Occupational Therapy ("OT") Evaluation. (See, Petitioner's Exhibit #22, pp. 1-2). On January 2, 2007, the parent sent another letter to the district withdrawing her request for the FCE for medical reasons. (See, Petitioner's Exhibit #18, p. 15). The district complied with the requests and the evaluation data was available in March and April 2007. (See, Petitioner's Exhibit #20, pp. 3-6).
6. By this time, the parents had already determined that the Berkshire Hills Music Academy was the best placement for the child, and had informed the district that they intended to enroll the child in BHMA in the Fall 2007, thus seeking reimbursement from the district for this placement. (Petitioner's Exhibit #24, p. 44; Petitioner's Exhibit #38, p. 1-2). During the Summer

2007, the parents sent the child to BHMA for two weeks to work on her music and get a feel for the campus. (See, Trial transcript, pp. 221, 307, 309).

7. On June 4, 2007, the ARD Committee met to schedule the child's classes and develop her IEP Accomodations and Transition planning goals. (See, Respondent's Exhibit #23, pp. 8-24; 37). The parents disagreed with the ARD Committee and no consensus was reached. (See, Respondent's Exhibit #23, p. 32). The main reason for not agreeing, according to the testimony of **, the parent, was that (a) the education at Mansfield ISD did not address the child's desires and wishes, and that (b) the vocational aspect of the education was not appropriate. (Trial transcript, p. 460).
8. Consequently, the parents enrolled the child in the BHMA program where she began in the Fall 2007. (Trial transcript, pp. 222, 374). She remains there to this date.
9. The curriculum received by the child at BHMA for the 2007-2008 school year is very similar to that curriculum developed by the June 4, 2007 ARD Committee and offered to the child for the 2007-2008 school year. Each offered Math, Life Skills, vocational class and music classes. (Compare, Respondent's Exhibit #23, p. 29 with Petitioner's Exhibit #27, p. 6). The techniques for teaching music were the same for both schools. (See, Trial transcript, pp. 601-608, 635, 720-721). BHMA, however, does try to incorporate more music into the other classes to help the student better learn. (See, Trial transcript, pp. 217-218; 284-287).
10. The vocational opportunities at BHMA are restricted to the music field, while

those at Mansfield ISD are much broader in scope. (See, Respondent's Exhibit #30 and Trial transcript, pp. 688, 691 compared to Petitioner's Exhibit #27, p. 6).

11. The child has no IEP goals and objectives at BHMA. (See, Trial transcript, p. 288).
12. BHMA is not an accredited school. (See, Trial transcript, p. 263).
13. BHMA has no Occupational Therapist, Speech Therapist, or Speech Pathologist on staff. (See, Trial transcript, p. 263).
14. There is currently no objective manner in which to gauge a child's progress, since no standardized assessments are administered at BHMA. (See, Trial transcript, pp. 287-288).
15. While enrolled at Mansfield ISD, the results on the state assessments administered to the child showed academic progress yearly. (See, Respondent's Exhibit #25). The standardized assessments taken by the child also showed academic progress. (Compare, Petitioner's Exhibit #3, pp. 1-2 to Respondent's Exhibit #11, pp. 4-6).

DISCUSSION - APPLICATION OF FACTS AND LAW

When a party seeks reimbursement from a school district for private placement, the petitioner bears the burden of proof in two areas: (1) the petitioner must present sufficient evidence to overcome the presumption that the IEP developed by the district was appropriate, and (2) the petitioner must also prove that placement in the private

school is appropriate. *Cypress-Fairbanks Indep. School Dist. v. Michael F.*, 118 F3d 245, 248 (5th Cir. 1997).

Issue No. 1 - Regarding transition – the district did minimal testing on the child to determine what the child needed, and instead provided the child with what was already available

The petitioners' complaint is largely lodged against the district based upon the transition services provided to the child. The petitioners allege that minimal testing was performed on the child to determine the child's needs in transition services, and only provided to the child services that were already available to the district. The evidence presented shows this allegation to be without merit.

The district administered the Campbell Interest and Skill Survey ("CISS") to the child on September 19, 2006 in order to gauge the child's vocational interests and skills. (See, Respondent's Exhibit #9, pp. 1-14). The district also conducted a Functional Vocational Assessment ("FVA") designed to assist in the development of the appropriate transition services for the child. (See, Respondent's Exhibit #21, pp. 1-6). Furthermore, the district completed a Full Individual Evaluation ("FIE") on the child in September 2006, which included the Woodcock-Johnson III Tests of Cognitive Abilities and the Woodcock-Johnson Test of Achievement. (See, Respondent's Exhibit#11, pp. 1-10). The district also conducted a formal adaptive behavior assessment on the child (See, Respondent's Exhibit #11, p. 5), and later, a music therapy evaluation. (See, Respondent's Exhibit #16, pp. 1-5). The regulations governing IDEA04 indicate that no single measure or assessment can be the sole criterion for determining an appropriate education program for a child. 34 C.F.R. §300.304(b)(2). In this case, the district used

multiple, research-based evaluations to gather the data necessary to develop the child's education plan, which includes the transition services. In contrast, the evidence presented shows BHMA used only one instrument, "The Skills Inventory" which was internally developed and not research-based, in their assessment in determining the child's education plan. (Trial transcript, pp. 221-222; 261-262; 289-290).

A transition plan must be based upon the child's needs, taking into account the child's strengths, preferences and interests. 34 C.F.R. §300.43(a)(2). In this case, the CISS indicated the child had vocational interests in animal care, performing arts, fashion, and child development. (See, Respondent's Exhibit #9, pp. 13). In the 2006-2007 school year since the child elected not to take Choir class, the child enrolled in the Ready, Set, Teach program, a general education vocational class, as an assistant in an elementary music class. However, there were very few, if any, appropriate supports for the child in this environment making it difficult for the child; she was withdrawn from that assignment shortly thereafter. Subsequently, the child was enrolled in the Community Based Vocational Instruction program ("CBVI"), a program for students with disabilities, and given a job as a music assistant in another elementary class at **. A job coach was assigned to her and went to the jobsite where she monitored her progress at work. (See, Respondent's Exhibit #30, pp. 1-18). The child was later rotated into another position in a Ross retail store where she continued working under the eye of a job coach. (See, Respondent's Exhibit #30, pp. 19-22). These vocational placements addressed some of the child's interests revealed by the data collected by the district and were successful. Throughout the summer 2007, the district also continued to seek vocational jobsites for the 2007-2008 school year that included working at a pet store (Trial transcript, p. 691),

an assistant to an activities director at Mansfield Activity Center (Trial transcript, p. 688), and as an assistant in a nursing home. (Trial transcript, pp.691). Furthermore, that same ARD Committee had a choir class and one-on-one music lessons scheduled for the child for the 2007-2008 school year. (See, Respondent's Exhibit #23, p. 29). All of the child's vocational interests were addressed by the district thus opening several doors for the child's future.

The program at BHMA limited any vocational opportunities to the music field, and there is no evidence that any other vocational opportunities were made available to the child. (See, Petitioner's Exhibit #27, p. 6). A professional career in the music field is extremely competitive and very few people succeed in this arena. To limit this child to this single field may not be in the child's best interest.

No evidence was presented that the transition services developed by the ARD Committee and offered to the child were not appropriate, other than the conclusory statements of the child's mother, ** (Trial transcript, pp. 460-463). To the contrary, the transition services offered by the district appear to be far more appropriate than those offered by BHMA since they are broader in scope and are based upon the data obtained from multiple evaluations and assessments of the child. The petitioners' challenge to the appropriateness of the child's transition services must fail since the petitioner was not able to demonstrate from a preponderance of the evidence that the transition services were not appropriate.

Issue No. 2 - The district denied the child a free, appropriate public education ("FAPE") since its accommodations and modifications for the child were either insufficient or nonexistent in her classes, and there was minimal academic improvement.

The parents allege the district denied the child FAPE since the accommodations

and modifications for the child were either insufficient or nonexistent in her classes, and there was minimal academic improvement. The parents do not allege they were denied FAPE because of a failure to comply with the procedural requirements of IDEA04, thus the analysis can be focused on whether the district provided the child with an education plan that was reasonably calculated to provide an educational benefit. Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982). A four-factor test was established by the Fifth Circuit in Cypress-Fairbanks Indep. School Dist. v. Michael F., 118 F3d 245, 253 (5th Cir. 1997) to determine whether or not a district provided a child with FAPE. Those factors are that (1) the program is individualized on the basis of the child's assessment and performance; (2) the program is administered in the least restrictive environment; (3) the services are provided in a coordinated and collaborative manner by the key stakeholders; and (4) the child demonstrates positive academic and non-academic benefits. When these four factors are applied, it is evident that the district provided the child with FAPE.

Was the program individualized on the basis of the child's assessment and performance?

When reviewing the evidence presented during this hearing, it is apparent to this hearing officer that the district tailored the child's IEP to the child's specific needs, performance levels, goals and interests. As mentioned above, in the Fall 2006 the district conducted a FIE to gauge the child's current levels of performance, conducted a CISS to determine the child's vocational interests, conducted a FVA, and a formal adaptive behavior assessment. In addition, the ARD Committee also considered the child's progress on her previous goals and objectives. This data, collectively, was used and considered by the ARD Committee to develop the child's IEP goals and objectives which

were established in the September/October 2006 ARD Committee meeting, as well as the instructional accommodations for the child. (See, Respondent's Exhibit #12, pp. 1, 23-38). Of particular interest is that the parents were in agreement with the IEP goals and objectives and reached consensus in this meeting. (See, Respondent's Exhibit #12, p. 41).

The ARD Committee formulated these goals, objectives and instructional accommodations to meet the specific individual needs of the child. (See, Respondent's Exhibit #12, p. 32). For example, because of the child's spacial difficulties, she was to be given preferential seating. Because of her poor handwriting, a word processor was made available to her. Because of the child's mobility problems, an accessibility plan was developed for her and a partner was to be assigned to assist her coming down the stairs during a fire drill. Because of her problems with self-advocacy, a social skills component was added to her schedule. The petitioners have not presented any evidence to show that the IEP was either randomly developed and was not based on the individual needs, performance, assessments, and interests of the child.

Was the program is administered in the least restrictive environment?

The evidence shows the child took her classes in her regular ** campus, with the exception of her Choir class which occurred on the ** campus. The majority of her classes were in the general education classroom setting, and she interacted regularly with non-disabled peers. No evidence was presented that the child's IEP was not administered in the least restrictive environment while at Mansfield ISD.

Were the services provided in a coordinated and collaborative manner by the key stakeholders?

The ARD Committee, made up of district personnel, outside agency

representatives and the parents (See, Respondent's Exhibit #12, p. 49), worked together to develop the child's education plan in the Fall 2006 and came to consensus on the different aspects of that plan. The child's IEP was implemented at Mansfield ISD by school personnel. These persons worked together to insure the IEP was administered accordingly. The parents provided information to district personnel regarding Williams Syndrome, which those persons reviewed. (Trial transcript, pp. 388-389, 483; Respondent's Exhibit #26, p. 2). District personnel worked internally amongst each other to assist in implementing the IEP. For example, training was provided to the child's math teacher so as to better understand and implement the child's accessibility plan, since math was the only upstairs class she had. (Trial transcript, pp. 398-399; 443; See Also, Respondent's Exhibit #14, p. 1). The Occupational Therapist worked with staff to address the child's mobility problems. (See, Petitioner's Exhibit #20, pp. 1-6). The services were provided in a coordinated and collaborative manner by the key stakeholders.

Did the child demonstrates positive academic and non-academic benefits?

Upon examination of the evidence presented, it is apparent the child received both academic and non-academic benefits from her education at Mansfield ISD. Regarding the academic benefits, the child demonstrated progress in her state assessment scores, her present levels of performance in her IEP goals and objectives, and in her standardized achievement assessments.

In the Spring 2005, the district administered the 6th grade SDAA-II in Reading to the child, and she answered 46% of the questions correctly. (See, Respondent's Exhibit #25, p. 8). The next year in the Spring 2006, the child took the more difficult Released

** grade TAKS in Reading and answered 52% correctly on this test. (See, Respondent's Exhibit #25, p. 12). The same progress was demonstrated in the area of Mathematics. In the Spring 2005, the child took the ** grade SDAA-II for Math and answered 37% correctly. (See, Respondent's Exhibit #35, p. 9). The next year in the Spring 2006, the child again took the more difficult Released TAKS for ** grade Math and answered 57% correctly. (See, Respondent's Exhibit #25, p. 12).

The child's IEP goals and objectives for the 2005-2006 school year showed she had ** grade strengths and ** grade weaknesses in her present levels of performance. (See, Petitioner's Exhibit #17, p. 8a). The next year, she showed ** grade strengths. (See, Respondent's Exhibit #12, p. 19).

The child also showed progress in her standardized achievement assessments. In the areas of Reading, Mathematics and Written Expression, the child was administered assessments to determine her present levels of performance. In the Spring 2004, the child took the Woodcock-Johnson III assessments. (See, Petitioner's Exhibit #3, p. 1). These were again administered in the Fall 2006. (See, Respondent's Exhibit #11, p. 6). A comparison of these scores shows that the child achieved the same range of "raw scores" on these assessments. Raw scores are based on a comparison of the student's correct answers with those of the correct answers of students across the country who took the same test at the same age level. See, *Bradley v. Arkansas Dept. of Educ.*, 443 F3d 965 (8th Cir. 2006) (See Also, Trial transcript, pp. 523-531). Thus, a consistent raw score demonstrates that the child is keeping up and learning at a similar pace to her age-equivalent peers across the country. See, *Bradley*. (See Also, Trial transcript, p. 530). In the Summer 2007, the child's parents took the child to the Salk Institute to participate in a

study involving children with Williams' Syndrome. (See, Petitioner's Exhibit #8, pp. 1-7). At the Salk Institute, the child was administered the WIAT assessment and her raw scores again remained consistent. (See, Petitioner's Exhibit #8, p. 2). The evidence demonstrates the child obtained an academic benefit while at Mansfield ISD.

It appears to this hearing officer that the child also received non-academic benefits while at Mansfield ISD. The child participated in UIL vocal competitions and in performances within the school (Trial transcript, p. 624), she worked at two different jobs while part of the CBVI program (See, Respondent's Exhibit #30), she participated in Choir class and had one-on-one voice instruction, and she grew socially at a similar rate to her age-equivalent peers. As part of the FIEs performed on the child in the Spring 2004 and the Fall 2006, the child was given a formal adaptive behavior assessment each time. The raw scores in these areas increased slightly, demonstrating progress in social skills at a slightly higher rate than her age-equivalent peers. (Compare, Petitioner's Exhibit #3, p. 1 with Respondent's Exhibit #11, pp. 5-6).

The petitioners have failed to meet their burden of proof that the child was denied FAPE. Since the ruling of this hearing officer is that the education plan developed by the ARD Committee at Mansfield ISD was appropriate and that the petitioners failed to meet their burden to overcome the presumption that the IEP was appropriate, there is no need to examine whether or not placement at BHMA is appropriate.

Conclusions of Law

1. The child is a student eligible for special education and related services under the provisions of IDEA, and its related statutes and regulations.

2. Mansfield ISD is the local education agency responsible for the providing the child with the free appropriate public education pursuant to IDEA, and is a legally constituted independent school district operating as a political subdivision of the State of Texas.
3. The transition services were appropriate as they were developed from a variety of assessments and were tailored to the child's individual needs, taking into account the child's strengths, preferences and interests.
4. The child's IEP as developed by the ARD Committee at Mansfield ISD is appropriate.

ORDER

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

SIGNED this 16th day of November, 2007.

Tomas Ramirez III,
Special Education Hearing Officer

Cases Cited

Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982)
Cypress-Fairbanks Indep. School Dist. v. Michael F., 118 F3d 245, 248 (5th Cir. 1997)
Bradley v. Arkansas Dept. of Educ., 443 F3d 965 (8th Cir. 2006)

Statutes and Regulations Cited

20 U.S.C. §1400 et.seq.
34 C.F.R. §300.304(b)(2)
34 C.F.R. §300.43(a)(2)

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	§	
VS.	§	HEARING OFFICER
	§	
MANSFIELD ISD, RESPONDENT	§	STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the district did minimal testing regarding transition services and provided only those services which were already available.

HELD: For Respondent.

ISSUE: Whether the district denied the child FAPE since its accommodations were either insufficient or non-existent, and whether the child made minimal academic progress.

HELD: For Respondent.