

DOCKET NO. 185-SE-0411

STUDENT	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENTS	§	
	§	
VS.	§	
	§	HEARING OFFICER
KLEIN INDEPENDENT SCHOOL	§	
DISTRICT AND	§	
CYPRESS- FAIRBANKS	§	
INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

ORDER GRANTING PETITIONER'S  
MOTION FOR SUMMARY JUDGMENT  
AND ORDER OF DISMISSAL

Statement of the Case

Student, by next friends Parents, (hereinafter “Petitioner” or “the student”) brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of the Klein Independent School District and Cypress-Fairbanks Independent School District (hereinafter “Respondent” or “Cypress-Fairbanks ISD”). Petitioner was represented by James Holtz, an attorney in Houston. Respondent Cypress-Fairbanks Independent School District was represented by Marney Collins Sims, an attorney with the Cypress-Fairbanks ISD. Respondent Klein Independent School District was represented by Jeffrey Rogers, an attorney in Houston. Petitioner’s Request for hearing was filed on April 27, 2011, and came on for hearing by agreement of counsel and order of the Hearing Officer on September 20 and 21, 2011, in the offices of the Respondent Cypress-Fairbanks ISD.

As the hearing began, Respondent Cypress-Fairbanks ISD’s motion to dismiss the district as a party was granted.

Petitioner reurged it motion for summary judgment. No ruling was made on the motion, and the matter proceeded to hearing.

After further consideration of the Petitioner's motion for summary judgment, the issues as stated by Petitioner's counsel at the hearing and in the pleadings [entitled "Petitioner's Objections and Reply to Respondents' Response to Petitioner's Motion for Partial Summary Judgment; Withdrawal of Issues and Motion for Summary Judgment"], the Hearing Officer must decide:

1. Whether Respondent Klein ISD is obligated to provide the student with an education in which the student's sign language is respected, used, and developed to an appropriate level of proficiency and whether the student is entitled to a certified interpreter for the deaf and hard of hearing rather than an uncertified language facilitator as the student receives instruction from teachers in core academic classes when the student's teachers are not proficient in sign language; and
2. Whether the Petitioner is entitled to summary judgment.

Petitioner alleges that Respondent Klein ISD is legally obligated to provide the student with an education in which the student's unique mode of communication is respected, used, and developed to an appropriate level of proficiency. Petitioner alleges that as a matter of law, IDEA's definition of a free appropriate public education incorporates a state educational standard which includes §29.301-315 of the Texas Education Code, commonly referred to as the "Deaf Education Bill of Rights".

Stipulations by counsel and uncontroverted evidence demonstrate that there is no issue of material fact in question and that this dispute may be determined as a matter of law. The student has auditory impairment; sign language has been a component of the student's communication since birth; and the student's parent has chosen the student's preferred mode of communication.

[Transcript Pages 23-29; Texas Education Code §29.301-315 and 20 U.S.C. §1402(9)]

The Hearing Officer made no ruling on Petitioner's motion for summary judgment prior to the hearing. Petitioner presented evidence concerning the student's placement and the parents' choice of selected communication.

Respondent Klein ISD presented persuasive evidence at the hearing that the student's placement was appropriate, the student did not require the method of communication chosen by the student's parent, and the student was successful in the student's current educational placement.

But the language of the Texas Deaf Education Bill of Rights as read within the context of IDEA obviates any need for inquiry into the propriety of what educational placement the student has been provided. Instead, as Petitioner insists, the question of law is whether or not the district has deferred to the student's parents' selection of the preferred mode of communication.

There is no factual dispute.

### ORDER

Accordingly, IT IS HEREBY ORDERED that Petitioner's motion for summary judgment is GRANTED and the student's educational placement must conform with the wishes of the student's parents under Texas Education Code §29.301-315.

Petitioner seeks no other relief and other claims are DISMISSED with prejudice.

SIGNED this 8<sup>th</sup> day of November, 2011.

/s/ Lucius D. Bunton  
Lucius D. Bunton  
Special Education Hearing Officer