

DOCKET NO. 131-SE-0210

STUDENT bnf PARENT § **BEFORE A SPECIAL EDUCATION**
§
VS. § **HEARING OFFICER**
§
ALIEF INDEPENDENT §
SCHOOL DISTRICT § **FOR THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

Student (hereinafter “the student”) through student’s next friend, Parent (Petitioner), requested a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 *et. seq.*. The Respondent is the Alief Independent School District.

The issues before the hearing officer were as follows:

1. Whether Respondent’s FIE is inappropriate;
2. Whether the student meets the eligibility criteria of Mentally Retarded;
3. Whether the student’s placement in a life skills classroom is inappropriate;
4. Whether the student’s current IEP is inappropriate;
5. Whether the District’s personnel improperly restrained the student and failed to give notice of restraint to the parent.

As relief, Petitioner sought the following:

1. An order for placement in a less restrictive environment;
2. Private school placement at public expense.

Held for Respondent.

PROCEDURAL HISTORY

Petitioner filed this request for hearing on February 8, 2010. No continuances were requested or granted. The due process hearing was held on March 25, 2010. Petitioner appeared pro-se, along with ***. The student appeared but, after a competency hearing, was deemed incompetent to testify. Erik J. Nicols represented the Respondent school district. Both parties submitted written arguments. The Decision was timely rendered and forwarded to the parties on April 23, 2010.

Based upon the evidence and argument of the parties, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The student resides within the geographical boundaries of the Alief ISD (AISD). AISD is responsible for providing the student with a FAPE. The student is eligible to receive special education and related services as a student with mental retardation and speech impairment.

2. On May 29, 2009, AISD completed a Full and Individual Evaluation. The multi-disciplinary team made assurances that the evaluation was conducted according to the procedures mandated by 34 C.F.R. 300.304(b) and (c). R-3-7.

3. Petitioner failed to produce any evidence or testimony that the evaluation was improperly administered or that the results were not reliable.

4. Prior to the completion of the FIE, the student was served under the category of Speech Impairment. School personnel requested that the three year reevaluation include cognitive, academic, psychological and speech/language assessments based on student's academic and behavioral difficulties during the 2008-2009 school year. R3. A psychological was requested to determine whether the student had autism or an emotional disturbance.

5. The FIE included measures of intelligence, adaptive behavior and academic performance. The District also administered a psychological evaluation and speech/language assessment. The ARD Committee determined that the student did not meet the criteria for emotional disturbance or autism, but continued to meet the criteria for speech impairment. According to the evaluation, the student's behavioral deficits are secondary to student's cognitive deficits and language delay. R3-23.

6. The student's Full Scale IQ on the Stanford-Binet Intelligence Scales, Fifth Edition was ***, reflecting moderately impaired or delayed intellectual functioning. Although there was a discrepancy between parent and teacher reporting of the student's adaptive behavior, the evaluator noted significant deficits in adaptive behavior. R3-9-12.

7. Teachers reported that the student was unable to recognize all of student's letters, unable to segment sounds in words, unable to recognize numbers, unable to write numbers without a written model, unable to write dictated letters, and also reported off-task and aggressive and disruptive behaviors. R3-11; R12. The student was also reported to frequently cry and have outbursts in class. Teachers also reported that student was unable to work independently. These observations were consistent with those reported by the student's biological father. RR-57-64.

8. The evaluator also administered the Kaufman Test of Educational Achievement, Second Edition (KTEA-II) and the Bracken Basic Concept Scale – Third Edition:Receptive (BBCS-3:R) and made informal observations of the student's skills. Academic testing indicates that the student is delayed in all academic areas and that student's academic performance is commensurate with student's cognitive functioning. R3-17.

9. The ARD Committee reviewed the FIE and concluded that the student meets the eligibility criteria for a student with Mental Retardation and Speech Impairment. R2; RR-129.

10. The credible evidence is uncontroverted that the student meets the eligibility criteria for a student with Mental Retardation and Speech Impairment.

11. Prior to the current IEP being implemented, the District attempted to use less restrictive interventions with the student with placement in a general education setting and small group and pull-out math and reading interventions. R3. The student's progress reports from the 2008-2009 school year reflect that the student was not successful in the general education setting, either academically or behaviorally. R12.

12. On June 3, 2009, the ARD Committee developed an IEP for the 2009-2010 school year based on the student's current assessment and present levels of performance. The IEP contains academic, speech and behavioral goals consistent with the needs identified in the FIE. The IEP also contains speech goals. R2. The parent presented no evidence that the IEP was not appropriate for the student.

13. On June 3, 2009, the ARD Committee determined that the student's IEP for the 2009-2010 school year should be implemented in the life skills classroom, with electives in the general education setting and speech therapy to be provided four hours per nine weeks. R2-26, 29. The mother agreed to the placement and the IEP during this ARD Committee meeting.

14. On September 18, 2009, the ARD Committee reconvened to review the student's progress. R1-20. Teachers reported that the student was becoming more independent when compared to the previous school year and was following directions more readily. Student was beginning to make progress and was showing less frustration than exhibited in the general education setting the previous year. R1-2. During the ARD Committee meeting, the mother voiced concerns about the placement, so the ARD Committee recessed for ten days in order to provide the mother with an opportunity to visit the classroom and to explore other options. When the ARD Committee reconvened, the parent notified the District that she rejected the Mental Retardation eligibility and the Life Skills placement. The District offered the parent an opportunity for an Independent Educational Evaluation and provided a Notice of Refusal of Action, along with a copy of her procedural safeguards. R1-4, 31, 35.

15. Petitioner failed to produce any evidence that the Life Skills placement was inappropriate for the student.

16. The student's Behavior Intervention Plan includes a contingency for therapeutic restraint. R2-11. Petitioner failed to produce any evidence that District personnel had improperly restrained the student or failed to provide notice to her that it had used restraint.

DISCUSSION

The parent's request for hearing revolves around a central disagreement over the child's evaluation and eligibility determination. The parent disagrees with the evaluation, not because of the manner in which it was conducted, but because of the conclusion reached by the evaluator, and ultimately the ARD Committee's determination that the student meets the criteria for a student with Mental Retardation. Additionally, the parent disagrees with the student's IEP and placement in the Life Skills classroom. However, the parent presented no evidence that the conclusions reached by the evaluator were not reliable or valid. Additionally, she presented no evidence that the IEP was not appropriate, and no evidence that the placement was not appropriate. The parent presented no evidence of improper or inappropriate restraints. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). Petitioner bears the burden of proving that it is not appropriate or that the District has not complied with the procedural requirements under the IDEIA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet this burden.

CONCLUSIONS OF LAW

1. The student is eligible for special education services as a student with a disability under IDEIA, 20 U.S.C. §1400 *et. seq.* and its implementing regulations.
2. The student meets the eligibility criteria for a student with mental retardation. 34 CFR 300.8(c)(6).
3. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). Petitioner bears the burden of proving that it is not appropriate or that the District has not complied with the procedural requirements under the IDEIA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet this burden with regard to any of the issues raised in her request for hearing.

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**.

Finding that the public welfare requires the immediate effect of this Final Decision and Order, the Hearing Officer makes it effectively immediately.

SIGNED this 23rd day of April, 2010.

Sharon M. Ramage
Special Education Hearing Officer

SYNOPSIS

Issue: Whether the student's 2009-2010 IEP was inappropriate?

Held: For the District. Petitioner wholly failed to meet the burden of proof under *Schaffer v. Weast*, 126 S.Ct. 528 (2005). The District developed an IEP for the student for the 2009-2010 school year that was designed to provide a meaningful educational benefit.

Citation: 34 CFR §300.320; 300.324.

Issue: Whether the student's placement in the Life Skills classroom was inappropriate?

Held: For the District. Petitioner wholly failed to meet the burden of proof under *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Placement in the life skills placement was appropriate based on the child's academic and behavioral needs.

Citation: 34 CFR §300.114.

Issue: Whether the student meets the eligibility criteria for a student with mental retardation?

Held: For the District. Petitioner wholly failed to meet the burden of proof under *Schaffer v. Weast*, 126 S.Ct. 528 (2005). The FIE was appropriately administered and the evaluator and the ARD Committee concluded that the student has significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior manifested during the developmental period, that adversely affects student's educational performance.

Issue: Whether the student's FIE was inappropriate?

Held: For the District. Petitioner wholly failed to meet the burden of proof under *Schaffer v. Weast*, 126 S.Ct. 528 (2005). The evaluation complied with the requirements of 34 CFR 300.304-306.

Citation: 34 CFR 300.304-306.

Issue: Whether the District personnel improperly restrained the student?

Held: For the District. Petitioner wholly failed to meet the burden of proof under *Schaffer v. Weast*, 126 S.Ct. 528 (2005). The student's IEP included a Behavior Intervention Plan which specified the contingency of therapeutic restraint. There was no evidence that improper restraints were used.

Citation: 34 CFR 300.324(a)(3).