

DOCKET NO. 025-SE-0913

STUDENT,	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENTS	§	
	§	
VS.	§	HEARING OFFICER
	§	
CONROE INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by student's parent and next friend (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 Conroe Independent School District (hereinafter "Respondent" or "the district").

Petitioner was represented by a parent of the student who is a licensed attorney in Texas. Respondent was represented by Amy Tucker, an attorney in the firm of Rogers, Morris & Grover, attorneys in Houston.

Petitioner's request for hearing was filed on September 18, 2013. The matter came on for hearing in Conroe by order of the Hearing Officer and agreement of the parties on November 7, 8, and 11, 2013. At the close of the hearing, both Petitioner and Respondent asked to extend the decision deadline in the matter to file written closing arguments. The parties filed written closing arguments on December 6 and agreed that this decision would be timely issued on December 20, 2013.

Petitioner alleged that the district failed to provide an appropriate education for the student, failed to utilize current evaluative data about special education eligibility for the student for occupational therapy services (as a related service) for the student, failed to reimburse the student's parents for private evaluations, and failed to provide appropriate training including a board certified behavior analyst

("BCBA") to district staff and to develop appropriate policies dealing with the student's Behavior Intervention Plan ("BIP"). Petitioner also claimed the district failed to provide compensatory educational services for time lost in the student's instruction because of the inadequacy of the Individual Education Plan ("IEP") and the failure to implement proper provisions in the IEP, failure to work collaboratively with the student's parents, and failure to implement corrective action ordered by the Texas Education Agency's complaint division.

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

#### Findings of Fact

1. The student resides with the student's parents and attends \*\*\* school within the district.

[Respondent's Exhibit 9]

2. The student received a full individual evaluation ("FIE") from the district in the 2011-2012 school year. [Petitioner's Exhibit 20 and Respondent's Exhibit 10]

3. The district concluded that the student was eligible for special education and related services based on eligibility criteria of autism, other health impairment and speech impairment.

[Petitioner's Exhibits 12-16 and Respondent's Exhibits 1-12]

4. An evaluation for occupational therapy services was completed in the fall of 2012 and reviewed at Admission, Review, and Dismissal ("ARD") committee meetings beginning in December of 2012 – and subsequent ARDs. The committee considered the evaluation (which they contracted for) and determined that the student did not have a need for educational purposes for occupational therapy ("OT") as a related service. [Petitioner's Exhibit 59 and Respondent's Exhibit 6]

5. The parents remained concerned about the student's occupational therapy needs and later contracted privately for another OT evaluation which was completed on November 16, 2012, and considered at subsequent ARD meetings. [Petitioner's Exhibit 140 and Respondent's Exhibits 1-9]

6. The evaluation in November 2012 stated: "It is recommended that (the student) receive Occupational Therapy intervention in the school in addition to modification in order to help (the student) succeed in (the student's) class as well as (the student's) daily life activities. [Respondent's Exhibit 140]

7. At subsequent ARD meetings, the district continued to refuse OT as a related service. [Respondent's Exhibits 1-9]

8. The parents also contracted for an independent evaluation by a Ph.D. psychologist familiar with special education issues which was paid for by the student's parents and later reviewed by ARD committees. [Petitioner's Exhibit 147]

9. The student's parents have been dissatisfied with the development and implementation of a BIP for the student and believe it has not been individualized.

10. ARD committees for the student considered all data produced by the district and outside evaluations provided by the parents. [Petitioner's Exhibits 1, 8, 9, 15, 16, 51, 70, 76, 90 and Respondent's Exhibits 1-10 & 16-17]

11. The district did not timely provide information on present levels of performance at one ARD meeting but such failure did not effect the development of an appropriate IEP. [Respondent's Exhibits 3 & 4 and Transcript Pages 395-398]

12. The student's ARD committees individualized the student's IEP to advance the student's annual goals, include issues of progress in the general education criteria, and provide for the provision of these services in placements where the student could advance with age-appropriate peers. [Petitioner's

Exhibits 1, 8, 15, 16, 21, 34, 70, 76, 83, 94 & 117; Respondent's Exhibits 1-9 & 18; and Transcript Pages 313-316 & 438-440]

13. The student's parents alleged that decisions for the ARD were made in Coordination of Services ("COS") meetings prior to ARD meetings and that the COS meetings predetermined decisions of the ARD committees. [Transcript Pages 542-543 & 623]

14. The credible testimony of the witnesses showed that the COS meetings did not determine the outcome of the COS meetings. [Transcript Pages 375-376 & 542-544]

15. The student has demonstrated need for behavioral intervention and planning for behavior problems. [Petitioner's Exhibit 147; Respondent's Exhibit 7; and Transcript Pages 40, 550-552]

16. The student's parents believe that the student was injured at school because of inappropriate planning and modifications. [Respondent's Exhibit 31 and Transcript Pages 605-606]

17. Data compiled by the district show credibly that the student's placement and modifications were successful and the student's behavior has improved. [Transcript Pages 46, 72 & 79-80]

18. The parties have agreed in ARD meetings that the student's placement has been in the least restrictive environment. [Respondent's Exhibit 7]

19. Though the student has exhibited problems with behavior, the credible evidence at the hearing showed the district's provision of educational and behavioral services has been successful. [Transcript Pages 485-498]

20. The student's academic performance shows that the student has demonstrated academic and non-academic benefits. The student's parents and the district do not agree as to the student's progress in reading, but the student mastered the grade level curriculum. [Respondent's Exhibit 19 and Transcript Pages 72, 323-326, 341 & 553]

21. Petitioners have suggested that the district compiled data which falsely showed academic progress when the student was not actually making such progress. The credible testimony at the hearing showed that the student did make such progress. [Transcript Pages 72, 323-326, 341 & 553]

22. The student demonstrated academic progress and progress in meeting behavioral concerns by completing assignments, attending to instruction, and lessening instances where the student occasionally could not comply. [Respondent's Exhibits 2-6 and Transcript Pages 326, 512 & 591-592]

23. The credible testimony of the witnesses and the documents presented by the district demonstrate that the district complied with procedural requirements in identifying, evaluating, and providing what is necessary for the student. [Petitioner's Exhibits 1, 8, 29, 50, 54-55, 87 & 117 and Respondent's Exhibits 1-9]

24. The district failed, however, to update the student's parents on an issue of the student's schedule at school but the student's educational program wasn't impacted by the district's failure. [Transcript Pages 309-312]

#### Discussion

Counsel for the parties both filed their closing arguments based on the standard of Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), which develops the Court's instruction involving 34 CFR 300.300, and 19 T.A.C. §89.1055.

Petitioner has the burden of proof to overcome the presumption in the law that the educational program developed and implemented by the district is appropriate. Schaffer v. Weast, 126 S.Ct. 528 (2005) and Tammany Parish School Bd., 57 F.3d 458 (5<sup>th</sup> Cir. 1995).

According to the Supreme Court's decision in Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982), the local education agency must establish for

the student a “basic floor of opportunity” with an educational program – including necessary related services – that will allow the student to make reasonable educational progress.

The Fifth Circuit has determined that the courts should look to the overall educational experience of the child, and that – if the experience is decidedly positive – the district is doing what the law requires. Houston Indep. Sch. Dist. v. Bobby R., 200 F.3d 341 (5<sup>th</sup> Cir.), cert.denied, 531 U.S. 817 (2000), and Klein Indep. Sch. Dist. v. Hovem, 690 F.3d 390 (5<sup>th</sup> Cir. 2012).

As the parties agree, the standard for the Petitioner prevailing in this proceeding is Michael F., supra.

The district showed that the student’s IEP was reasonably calculated to provide the student with a free appropriate public education (“FAPE”) because the IEP was individualized on the basis of the student’s assessment and performance; the program was administered in the least restrictive environment; the student’s program was provided in a collaborative and coordinated manner; and the student has shown positive academic and non-academic benefit.

Petitioner’s burden to prevail in these cases is high. Petitioner did not meet that burden.

#### Conclusions of Law

1. The student is eligible for special education under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The Conroe Independent School District is responsible for the provision of the student’s special education.
3. IDEA creates a presumption favoring an education plan proposed by a school district and places the burden of proof on the Petitioner challenging the plan. Schaeffer v. Weast, supra, Tammany Parish School Bd., 57 F.3d 458 (5<sup>th</sup> Cir. 1995), and Tatro v. Texas, 703 F.2d 823 (5<sup>th</sup> Cir. 1983).



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SYNOPSIS

**ISSUE:** Whether the district provided a free appropriate public education.

**CFR CITATIONS:** 34 CFR 300.552

**TEXAS CITATION:** 19 T.A.C. §89.1055

**HELD:** For Respondent.