

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

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by next friends and parents *** and *** (hereinafter “Petitioners” 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 Kingsville Independent School District (hereinafter “Respondent” or “the district”).

Petitioners’ request for hearing was filed on April 16, 2013. The case has involved difficult and time-consuming issues in proceeding to hearing. Claims originally brought by Petitioners which were not IDEA claims (a claim under Section 504 of the Rehabilitation Act of 1973 - 29 U.S.C. § 794, et seq., and another under Title II of the Americans with Disabilities Act, 42 U.S.C. §12132) were dismissed. Disagreements about settlement and mediation arose. Petitioners’ original attorneys learned of a conflict of interest in representing Petitioners several months into the development of the case (in February 2014) and moved to disqualify themselves as Petitioners’ counsel. Petitioners sought new counsel but found it difficult to secure representation. Petitioners’ new counsel – who completed the hearing – made her first appearance in May 2014. Four prehearing conferences were conducted in this matter.

The case came on for hearing in the offices of the Kingsville Independent School District in Kingsville, Texas on October 7, 8, and 9. Petitioners were represented by Yvonnilda Muñiz, an attorney in Austin. The district was represented by Jose Martín with the law firm of Richards, Lindsay & Martín in Austin.

At the close of the hearing, the parties jointly moved for an extension of the decision deadline to provide an opportunity to file written closing arguments. The deadline was again extended – on the joint motion of the parties – by two days to permit additional time for briefing.

The decision in this matter is timely issued in accordance with the law and the parties' agreement.

Petitioners alleged that the district did not properly or timely identify the student's educational disabilities, that the student's educational environment was unsafe because of an incident (or incidents) at school when the student was physically abused ***, that the district failed to provide an appropriate individualized education plan ("IEP"), failed to provide the education in the least restrictive environment, and failed to provide a free appropriate public education ("FAPE").

As relief, Petitioners sought an order requiring an independent review of the student's file, independent psychological and counseling evaluations, an independent functional behavioral assessment to develop a behavioral intervention plan ("BIP"), an order requiring training of district personnel, one year compensatory educational services, and strategies to implement this relief.

New counsel for Petitioners filed an amended request for hearing and Petitioners seek now an order compelling the district to retain a board certified behavioral analyst ("BCBA") (to be approved by the parents) to consult and train with the district in academic and behavioral programming and the drafting of an IEP for the student, two years of compensatory in-home training for the family, two years of compensatory parent training, three years of compensatory Extended School Year ("ESY") services, two years of compensatory educational services, and a formalized method of communication for the parents and the student's teacher.

At the beginning of the hearing, counsel for the parties agreed that the one-year statute of limitations applies in this case so that the claims for relief arising before April 16, 2012, are barred. 19 T.A.C. §89.1151(c). (Transcript Page 27)

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

Findings of Fact

Narrative of Educational Decisions

1. The student resides with the student's parents in the Kingsville Independent School District. [Petitioners' Exhibit 32; Transcript Page 166]
2. The student is the ***. *** autistic. [Transcript Pages 166 & 175]
3. The student was born in ***. [Petitioners' Exhibit 25; Transcript Page 167]
4. The student was identified as autistic and speech impaired in *** and was served in special education as autistic and speech impaired. The autism is severe with significant cognitive and communication impairments. The student is largely non-verbal but does respond to some speech and vocalizes in periods of stress. [Petitioners' Exhibit 25; Transcript Pages 289-290]
5. The student was served in self-contained life-skills class until leaving school in ***. [Respondent's Exhibit 3; Transcript Pages 119-122]
6. Before ***, the student's attendance at school was problematic. The student was absent as much as *** of the time. The student's parents testified that attendance problems were "significant." [Respondent's Exhibits 12 & 21; Transcript Pages 148-149, 231 & 430]
7. The parent reported to the district that the student woke on the morning of ***, crying and saying... "no school." The parents testified that this behavior was unlike any the student had exhibited before. [Petitioners' Exhibit 5; Transcript Pages 170-174]
8. Some providers of services for the student reported that the student's behaviors after ***, were marked by stresses which the student had not exhibited before. [Petitioners' Exhibit 87; Transcript Pages 248 & 269-270]
9. The student did not return to school for the remainder of the school year and has not come back to school. [Petitioners' Exhibits 30 & 31; Transcript Page 172]

10. The student's parent notified the school's diagnostician by email on ***, that the student was "terrified to go to school," that the parents were concerned about information related to them about an incident at school which could explain the student's anxiety, and that the student's private psychologist would work with them in making plans for the student's recovery. [Petitioners' Exhibit 5 & 8; Transcript Page 81]

11. Prior to ***, the last admission, review, and dismissal ("ARD") committee for the student was conducted on ***. The committee noted that the student was served as autistic and speech impaired and stated goals and objectives for the student's IEP. The committee completed an autism supplement for the student and found a need for ESY services. The committee determined that the student should take the State of Texas Assessment of Academic Readiness Alternate assessment ("STAAR-Alt"). The student's parent attended the ARD meeting and the meeting ended in agreement. [Petitioners' Exhibit 29]

12. Data used to develop goals and objectives for the student's IEP at the ARD was largely just teacher observation. No current assessment data was properly considered by the committee and the student's goals were vague and not objectively measurable. The IEP developed at this meeting was the IEP being implemented by the district from *** until the student left school on ***, and did not return. [Petitioners' Exhibit 29; Transcript Pages 128-129]

13. The next ARD committee for the student was convened on ***, to discuss the parent's concerns about the student's recent behaviors since ***. The parents reported that they were working to facilitate "rehabilitating" the student and focusing on "recovery." The school personnel asked the parents to bring the student back to school. The student's parents asked about homebound services and were told that the student could be eligible for homebound services if a physician concluded such services are necessary because the student is other health impaired ("OHI"). [Petitioners' Exhibit 8; Transcript Pages 63-64 & 365-367]

14. A functional behavioral assessment (“FBA”) was completed by the district which was dated ***. The ARD committee did not discuss the FBA at the meeting on ***. The FBA indicated three problems with the student’s behavior: 1) loss of self-control; 2) non-compliance; and 3) physical aggression. No BIP was included. An educational diagnostician for the district testified that the FBA and its summary were generated by input from the student’s teachers. [Petitioners’ Exhibit 30; Transcript Pages 71-72]

15. At that ARD meeting, the parents indicated that they wanted to get recommendations from their private providers before accepting homebound services but would try to take advantage of ESY services. The committee agreed to meet again in ***. [Petitioners’ Exhibit 8; Respondent’s Exhibit 11; Transcript Page 180]

16. The student did not attend ESY in ***. [Transcript Page 180]

17. The next ARD committee meeting did not occur until ***, despite numerous attempts to schedule the meeting. The student’s parents told the committee that the student had been diagnosed with *** and might not be able to attend school in the district. The committee again informed the parents that the student could receive homebound services if a physician would tell them the student was eligible for the services as OHI. [Respondent’s Exhibit 13; Transcript Pages 181, 318-319, 366-367 & 379-394]

18. Another ARD committee convened on ***. The parent’s disputed the district’s position at the meeting that there was no restraint or abuse of the student on ***. The committee received an OHI form completed by a physician for the student, and the eligibility criterion of OHI was added for the student in consideration of concerns about ***. The committee offered the parents four (4) hours of homebound services per week. Because the student’s parents said they were obtaining private occupational therapy, physical therapy and speech therapy, no related services were offered to the parents. [Respondent’s Exhibit 13; Transcript Page 91]

19. At the ARD committee meeting on ***, the parents challenged the decision that the student would take the STAAR-Alt as determined at the ARD in ***. The STAAR-Alt is generally given to students with severe cognitive impairments (such as this student) working on curricula which is highly modified. The parents stated that they objected to providing a modified curriculum to the student and disagreed with a provision in the state administrative code requiring a diploma under the minimum graduation plan to be given to students whose course work is modified. 19 T.A.C. §74.74(d). The parents were concerned that a modified curriculum for the student and the provision of the STAAR-Alt would limit the student's opportunities for college or post-secondary education. The parents also wanted the student placed at a lower grade level with age-inappropriate peers. The parents wanted the concerns about the STAAR-Alt, graduation issues, and class placement addressed before they would accept homebound services. [Respondent's Exhibit 13; Transcript Pages 370-374, 407-410 & 502]

20. The next ARD committee meeting was convened on ***. The parents attended with an attorney (one of the attorneys who was later disqualified in this litigation). The parents discussed maladaptive behaviors of the student which they related to the alleged restraint or abuse in ***. The district offered four (4) hours of homebound services which could be increased based on the student's needs. The parents agreed only to let the homebound teacher observe the student during the student's private speech therapy. Few observations were completed; the parents cancelled all others. The parents asked to delay an assistive technology evaluation – though the evaluation was overdue. There were no current present levels of performance available because the student was unavailable for assessment and the committee agreed that the homebound teacher would provide information on the levels at the next ARD committee meeting, if possible. Counsel for the parties agreed to discuss later when homebound services would start. The parents again raised concerns about the STAAR-Alt, modified

curriculum, and grade level placement. The committee agreed to seek clarification on these requirements. [Petitioners' Exhibit 32; Respondent's Exhibit 13; Transcript Pages 50-52 & 499]

21. On ***, the ARD committee reconvened to clarify issues involving modified curriculum, graduation plans, and options for post-secondary education with minimum plan graduates. The committee considered information from a private consultant at the meeting – as agreed with the parent's counsel. The consultant is an attorney employed by a regional education service center. The parents disagreed with the information from the consultant. The parents believed that the student would not be eligible – with a minimum plan based on modified curriculum – to participate in the Texas Grant Top 10% and would be ineligible for automatic admission into a state four-year university. The parents stated disagreement with state rules on minimum graduation plans based on modified curriculum. The parents said they wanted the student to ***. This was the last ARD meeting before the hearing. [Petitioners' Exhibit 32; Respondent's Exhibit 13; Transcript Page 354]

22. The student has not returned to school. [Transcript Page 199]

Issues Regarding Allegations of Abuse and the District's Response

23. The student's parent testified that the student woke up on *** screaming and trembling. The student repeatedly said: "no school" and did not go to school. [Petitioners' Exhibit 5; Transcript Pages 171-173]

24. The parent called the student's private psychologist later in the week and sought advice from him. In ***, the psychologist diagnosed the student with ***. The psychologist – with the student's pediatrician – supported the diagnosis provided to the district and accepted by the district at the first ARD meeting after the completed OHI form was given to the district. [Petitioners' Exhibit 31; Transcript Page 291]

25. The psychologist's progress notes *** noted more agitation and distress with the student. The student was very upset at the mention of "school." [Petitioners' Exhibit 87; Transcript Pages 292-295]

26. The student's parents have variously stated that they believe the student was abused in the classroom by restraints, by ***, having ***, or treated inappropriately in ***. The parents reported that they had been told that someone at the school had seen the abuse or ***. Credible testimony from school personnel – teachers in the classroom, in an adjoining class, supervisors, and administrators – showed that no abuse occurred with the student at school. [Respondent's Exhibit 23; Transcript Pages 155, 160, 228, 365, 420-421, 476-483 & 491-493]

27. The parents made no report to the department of Child and Protective Services ("CPS"). [Transcript Page 352]

28. The parents did not report allegations of the abuse to the Kingsville Police Department or another law enforcement agency even though they alleged other students had *** and that ***. [Transcript Pages 177, 203 & 355]

29. The student's parents testified that the student's relationship with the school is "broken." The parents also stated the student needs to be "rehabilitated"...and should be in a "clinical" setting before educational services can be properly provided. [Transcript Pages 192 & 400]

Discussion

The essential issue in the decision in this matter is whether the Petitioners met their burden of proof to show violations of IDEA.

Petitioners proved that the student was not educated appropriately under the IEP developed at the *** ARD, until the student left school on ***. Assessment data considered by

the ARD on ***, was inadequate and goals and objectives written for the student's IEP were vague and not measurable.

The student, though, has not attended school since ***, and the district has offered educational services and additional eligibility criteria as requested by the parents to serve the student.

The parents have refused to allow the student to attend school or have homebound services. The parents have raised issues about the appropriateness of modified curriculum for the student. The parents have focused on claims of abuse or improper restraint of the student at school on ***. The parents' claims are not supported by credible evidence.

The parties agreed that the one-year statute of limitations should be applied in this case.

Petitioners did not prove that the school failed to provide a safe environment for the implementation of the student's educational program in the relevant period of time – and did not prove that the claim as developed in the hearing could be a violation of IDEA.

Petitioners did not prove that the educational program offered by the district during the relevant period of time was inappropriate under the standards of IDEA.

All other claims which could be addressed are barred – with the stipulation of Petitioners – by the statute of limitations.

Conclusions of Law

1. The Kingsville Independent School District is responsible for providing special education and related services for the student under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. The student is eligible for special education as autistic, speech impaired, and other health impaired under the provisions of the law cited above.

3. Petitioners failed to meet its burden of proof to demonstrate a violation of IDEA under the standard of Schaffer v. Weast, 126 S.Ct. 528 (2005) or prove the district's proposed educational placement did not comply with the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982), 34 CFR 300.552, and 19 T.A.C. §89.1055.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioners is DENIED and all claims are DISMISSED with prejudice.

SIGNED this 10th day of December, 2014.

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

DOCKET NO. 194-SE-0413

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	§	
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	§	
KINGSVILLE INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the district demonstrated violations of IDEA and that the student's educational placement was appropriate.

CFR CITATIONS: 34 CFR 300.552

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.