

DOCKET NO. 238-SE-0415

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

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by next friend and parent *** (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 Edinburg Consolidated Independent School District (hereinafter "Respondent" or "the district").

Petitioner's request for hearing was filed on April 20, 2015. Petitioner was represented by Christopher Jonas, an attorney in Corpus Christi. Mr. Jonas was joined in the written closing argument by James Hollis, an attorney in San Antonio. Respondent was represented by Kevin O'Hanlon and Benjamin Castillo, attorneys with the firm of O'Hanlon, McCollom & Demerath in Austin and Edinburg.

The matter came on for hearing in Edinburg on June 19, 2015, by agreement of the parties and order of the hearing officer. At the close of the hearing, the parties jointly moved for an extension of the decision deadline in this matter so that counsel could file written closing arguments on July 27, 2015, and the decision would be timely issued on August 10, 2015.

Petitioner alleged the student's parents were not afforded opportunities for meaningful participation at admission, review and dismissal ("ARD") meetings for the student in March and April 2015, and that the student was not provided with a free appropriate public education in the

least restrictive environment. Specifically, Petitioner complained that the district did not include appropriate accommodations in the student's individual education plan ("IEP").

As relief, Petitioner sought an order requiring the district to provide the student a free appropriate public education in the least restrictive environment, reimbursement for private evaluations paid for by the student's parents, and unspecified compensatory educational services.

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 within the Edinburg Consolidated Independent School District. [Petitioner's Exhibits 2, 3, & 7; Respondent's Exhibits 4, 8 & 9; and Transcript Pages 12-13]

2. The student completed *** grade in the 2014-2015 school year. [Petitioner's Exhibit 5; Respondent's Exhibit 7; and Transcript Pages 12-13]

3. The student is eligible for special education based upon the criteria of autism and other health impairment ("OHI"). [Petitioner's Exhibits 7 & 9; Respondent's Exhibits 4, 5, & 8; and Transcript Page 14]

4. The student has been diagnosed with autism, ***, attention deficit disorder ("ADD"), and ***. [Petitioner's Exhibit 7-10; Respondent's Exhibits 4 & 5; and Transcript Pages 13-14]

5. The student has exhibited difficulties in social relationships, attention, and organizational skills. [Petitioner's Exhibits 7-9; Respondent's Exhibits 4 & 5; and Transcript Pages 14-15]

6. The student completed all courses with passing final grades and largely all “A’s” and “B’s” through *** grade. Many of the student’s courses were *** and ***. [Respondent’s Exhibits 7 & 9; and Transcript Pages 35-38]

7. The student has been promoted to *** grade. [Respondent’s Exhibit 7; and Transcript Page 38]

8. ARD committee meetings for the student were convened in March and April 2015. During the spring 2015 semester the student was failing courses in ***. The student’s academic problems involved poor organizational skills. [Petitioner’s Exhibit 3; and Transcript Pages 29-30 & 52]

9. At the March ARD committee meeting, the student’s parents requested one-to-one tutoring and additional accommodations in the student’s IEP. The committee adopted some of the proposed accommodations but not all of them. The meeting did not end in consensus and the ARD committee reconvened in April. [Petitioner’s Exhibits 3 & 12; Transcript Pages 3, 30-32 & 105]

10. In the April ARD committee meeting, the student’s parents again requested some accommodations for the student which the committee did not adopt. Accommodations requested by the student’s parent largely involved matters such as preferential seating and, according to the student’s parent, were so numerous that the parent could not recall them when testifying at the hearing. [Petitioner’s Exhibit 12; and Transcript Pages 33 & 43-44]

11. The student’s educational program did not include any changes to the curriculum standards for the courses. The student’s parents’ concerns did not involve requests for modifications – only accommodations. [Respondent’s Exhibits 7 & 9; and Transcript Pages 37]

12. The student’s parents were concerned that an aide which they called a “shadow” for the student was not provided to the student. [Petitioner’s Exhibit 12; and Transcript Pages 58-72]

13. The student was never assigned a shadow by an ARD committee but instead had an in-class support teacher. [Petitioner's Exhibits 5, 6, & 12; and Transcript Pages 109-110]

14. The student completed *** grade with all passing grades and was promoted to *** grade despite the ARD committee's decision not to adopt all of the accommodations requested by the student's parents. [Respondent's Exhibit 7; and Transcript Page 38]

Discussion

Petitioner has complained that the district did not provide the student with an appropriate educational placement with proper supports for the student's educational program. The evidence adduced at the hearing demonstrated that:

- a) the student's parent sought additional accommodations (not modifications to the curriculum) in student's IEP at ARD committee meetings in March and April 2015;
- b) the ARD committee adopted some, but not all, of the accommodations which were proposed by the student's parents;
- c) the student's parent participated in the ARD committee meetings in March and April 2015 seeking changes in the student's IEP;
- d) the student performed successfully in school and made sufficient educational progress to advance to *** grade; and
- e) Petitioner presented no evidence substantiating a claim for reimbursement for private educational evaluations.

Conclusions of Law

1. The Edinburg Consolidated Independent School District is responsible for properly identifying and evaluating the student for special education services. The district is required to provide the student with a free appropriate education in the least restrictive environment under the provisions of IDEA, 20 U.S.C. §§ 1412 and 1414; 34 CFR 300.301; and 19 TAC §89.1011.

2. The student is eligible for special education under the eligibility criteria of autism and other health impairment. IDEA, 20 U.S.C. §§ 1412 and 1414; 34 CFR 300.301; and 19 TAC §89.1011.

3. Petitioner 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), 34 CFR 300.523(a) or prove the district's 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.

4. The IEP for the student is reasonably calculated to provide a meaningful educational benefit because: a) the program is individualized on the basis of the student's assessments and performance; b) the program is administered in the least restrictive environment; c) the services are provided in a coordinated and collaborative manner by the key stakeholders in the program; and d) positive academic and non-academic benefits are demonstrated. Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, 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 Petitioner is DENIED and all claims are DISMISSED with prejudice.

SIGNED this 10th day of August, 2015.

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

DOCKET NO. 238-SE-0415

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

SYNOPSIS

ISSUE: Whether Petitioner met its burden of proof to demonstrate that the educational placement of the student was inappropriate.

CFR CITATIONS: 34 CFR 300.513(a) and 34 CFR 300.552.

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.