

STUDENT, B/N/F PARENT	§ § §	BEFORE A SPECIAL EDUCATION
VS.	§	HEARING OFFICER
HUNTSVILLE 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 Huntsville Independent School District (hereinafter “Respondent” or “the district”).

Petitioner’s request for hearing was filed on September 13, 2016. Petitioner was represented by Carolyn Morris, a lay parent advocate with Parent-to-Parent Connection in Lancaster, Texas. Respondent was represented by Paula Maddox Roalson and Christian L. Garcia with the offices of Walsh, Gallegos, Treviño, Russo & Kyle, P.C., in their office in Houston, Texas, and Oscar G. Treviño from the Austin office in that law firm.

The matter came on for hearing in Huntsville on December 14, 2016, in the offices of the district by agreement of the parties and order of the Hearing officer. At the close of the hearing, Respondent moved for an extension of the decision deadline so that written closing arguments could be filed; the parties agreed that the arguments would be filed on or before December 28, 2016, and agreed that the decision in the matter would be timely issued on or before January 13, 2017.

Petitioner alleged that the district was not providing the student with a free appropriate education in the least restrictive environment. Petitioner also alleged that Petitioner was entitled to an independent educational evaluation (“IEE”) at public expense. Petitioner later dropped its claim for an IEE.

During the course of the proceedings, Respondent filed a motion for partial dismissal of Petitioner’s original claims. In a previous request for hearing by Petitioner, the parties entered into a settlement agreement on March ***, 2016, the student was *** on that date, and Petitioner refused special education placement.

The student *** in the 2016-2017 school year. The student was found to be eligible for special education and placed in special education on September ***, 2016. Because all matters previously in controversy were resolved on March ***, 2016, and Petitioner released all claims against the district through that date, the Hearing Officer dismissed any claims arising on or before March ***, 2016. Only claims arising after that date were considered at this hearing.

As relief, Petitioner is seeking:

1. 1:1 (one-to-one) services for the student in the school setting for all academic instruction and *** services;
2. inclusion for the student in general education classes for more than ****% of the instructional day;
3. a meeting of the student's admission review and dismissal ("ARD") committee to consider the student's ***, taking into consideration the student's *** and all *** when determining the student's *** placement;
4. *** that run "parallel with the curriculum"; and
5. the provision of the student's progress reports on the individual education plan ("IEP") every three weeks to the student's parent.

At the beginning of the hearing, the parties sought introduction into evidence for a number of exhibits. Respondent's exhibits were admitted. Respondent objected to the admission of any exhibits of the Petitioner because they were not disclosed to Respondent by the due date for disclosure. Disclosure day for the parties was set by order of the Hearing Officer for December 6, 2016. Petitioner's advocate admitted exhibits to be disclosed to Respondent were not received until December 8, 2016. None of Petitioner's exhibits were admitted into evidence.

At the hearing, thirteen witnesses including the student's parent were called to testify.

The district contends that Petitioner has unreasonably protracted resolution of the case according to 10 Tex. Admin. Code §89.1185(m)(1).

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

Findings of Fact

1. The student lives with the student's parent and resides in the Huntsville Independent School District. [Respondent's Exhibit 18 and Transcript Page 205]
2. The student was born *** and is *** grade student eligible for special education and related services based on educational disabilities of autism, intellectual disability, and ***.

The student has received special education services from the district since ***. [Respondent's Exhibit 18 and Transcript Page 205]

3. The student's intellectual functioning is in the moderate range of intellectual disability and reads at the level of *** grade. The student's abilities in math include *** and *** and limited abilities to distinguish ***. The student can ***. [Respondent's Exhibit 18 and Transcript Pages 152-155]

4. The student was ***. The student did not *** until ***, and the student's parent agreed that the student would receive instruction in *** until an ARD committee was convened to review evaluation data and determine special education eligibility. [Respondent's Exhibits 11 & 18 and Transcript Pages 50-54 & 76-77]

5. An ARD committee for the student convened on September ***, 2016. The student's parent participated in the meeting. Educational evaluation and eligibility were considered, and the committee requested consent from the parent for additional evaluations of the student in speech/language/communication, assistive technology, ***, medical, assistive technology, occupational therapy, in home and parent training, cognitive, adaptive, physical therapy, counseling and emotional/behavioral areas. [Respondent's Exhibits 3, 16 & 18 and Transcript Pages 12-17, 27-28 & 55-58]

6. The student's parent refused consent for all evaluations proposed by the committee except for a *** assessment. The student's parent requested an IEE in all other areas proposed by the district. [Respondent's Exhibit 18 and Transcript Pages 51-58]

7. The district wrote a letter to the parent refusing IEEs for the student on September ***, 2016, and the student's parent later withdrew the request for IEEs. [Respondent's Exhibit 22]

8. The ARD committee for the student developed an IEP for the student on September ***, 2016, based upon information of the student's present levels of performance. The IEP included measurable goals for the student, ***, and ***. [Respondent's Exhibit 18 and Transcript Pages 6-10, 58-59 & 70-75]

9. The committee did not reach consensus in the ARD on September ***, 2016, on the student's educational placement. The district proposed a self-contained placement in *** setting for core academic subjects and general education classes with support for three *** classes. [Respondent's Exhibit 18 and Transcript Pages 62-62 & 118-119]

10. The district completed the additional *** assessment agreed to by the student's parent on October ***, 2016, and asked the student's parent to attend another ARD committee to review the assessment, update ***, and discuss ***. The student's parent stated that the parent would not be available for a meeting until January 2017. [Respondent's Exhibits 28 & 29 and Transcript Pages 118-119]

11. The ARD committee for the student on September ***, 2016, considered a continuum for educational placements for the student. The district determined that the student needed a placement in *** for core academic courses based upon available assessment and the student's present level of academic performance. The student's parent insisted on a general education placement for more than ***% of the time. The district personnel believed that academic placement in general education classes for core subjects exceeded the student's current levels of educational performance and would be educationally inappropriate. The district believed placement in general education would not allow the student to make appropriate educational progress. [Respondent's Exhibit 18 and Transcript Pages 41-46 & 64-67]

12. Witnesses at the hearing consistently and credibly testified that the student is making academic progress in the current educational setting. [Transcript Pages 132-137, 142-147, 157-162, 164-182 & 188-201]

13. Because the committee could not reach consensus with the student's parent, the committee offered the student's parent an opportunity to submit a written statement of disagreement, a recess of the committee, and a reconvening of the committee in ten days or less. The parent agreed to the recess but before the committee could reconvene, the student's parent filed this request for a due process hearing. The committee has not been able to reconvene the meeting. [Respondent's Exhibit 18 and Transcript Pages 53-56 & 68-71]

14. After the request for hearing was filed, the district held a resolution session. School district representatives attended together with the student's parent and parent advocate. The district offered the parent all relief requested in this due process hearing except for placement in all general education classes. The parent instead requested placement for the student in all general education classes for the full instructional day and reimbursement for advocacy fees. [Respondent's Exhibit 27 and Transcript Pages 78-81]

Discussion

The evidence at the hearing demonstrates a struggle in what the parent believes is appropriate for the student and what the district believes.

The law is clear, however, that the parent in this case bears the burden of proof to show that the district is not offering an educational program which can confer both academic and non-academic progress.

Petitioner failed to meet its burden.

Petitioner's actions in pursuing its request for hearing, however, do not constitute unreasonable protraction of litigation.

Conclusions of Law

1. The student is eligible as a student with educational disabilities for a free appropriate public education under the provisions of IDEA, 20 U.S.C. §1400, et seq., 34 CFR §300.301 and 19 T.A.C. §89.1011.

2. The Huntsville Independent School District is responsible for properly identifying, evaluating, and serving the student under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 CFR §300.301, and 19 T.A.C. §89.1011.

3. The district has developed an educational program for the student allowing the student an opportunity to make educational and non-educational progress in accordance 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 district's educational program is administered in the least restrictive environment in accordance with Daniel R.R. v. State Board of Education, 874 F.2d 1036 (5th Cir. 1989) and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR §300.300, and 19 T.A.C. §89.1055.

5. The district has reliably sought to deliver the student's educational program developed under the standard of Michael F., *supra*, and Daniel R.R., *supra* in that the program is individualized on the basis of the student's assessment and performance; the program is administered in the least restrictive environment; the services are provided in a coordinated and collaborative manner by the key stakeholders; and positive academic and non-academic benefits are demonstrated.

6. Petitioner failed to meet its burden of persuasion as established under Schaffer v. Weast, 126 S.Ct. 528 (2005).

7. Petitioner's claims have not been unreasonably protracted.

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 of Petitioner are DISMISSED with prejudice.

SIGNED this 13th day of January, 2017.

 /s/ Lucius D. Bunton

Lucius D. Bunton

Special Education Hearing Officer