

TEA DOCKET NO. 001-SE-0909

STUDENT	§	
b/n/f PARENTS	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
ALBA-GOLDEN	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

Appearances for Petitioner:

Pro Se Petitioner

Appearances for Respondent:

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Statement of the Case

The Petitioner (Student)¹ brings this action against the Respondent (District), under the Individuals with Disabilities Education Act (IDEA), as amended (20 U.S.C. §§ 1400 et seq.). The Petitioner complains that:

1. The Respondent provided the Petitioner allegedly inappropriate courses of study in the least restrictive environment, in particular a pull-out work program.
2. The Respondent provided the Petitioner an allegedly inappropriate individualized education program (IEP), in particular an IEP lacking annual goals for the resource room.

As relief, the Petitioner requests that the Respondent remove the Petitioner from the pull-out work program and add appropriate annual goals to the Petitioner's IEP.

Procedural History

The Texas Education Agency received the Petitioner's Due Process Complaint requesting a due process hearing on September 2, 2009. This Hearing Officer held a prehearing teleconference with the parties on September 4, 2009, and, among other things, addressed the stay-put placement of the Petitioner during the pendency of this case. The parties timely participated in a resolution session but were unable to resolve the Petitioner's complaints.

The due process hearing was conducted on October 16, 2009. All exhibits offered by the parties were admitted into evidence. During the hearing, the Petitioner was afforded a fair opportunity to offer and solicit evidence and testimony to satisfy the Petitioner's burden of persuasion as assigned under *Schaffer v. Weast*, 546 U.S. 49, 57 – 58 (2005).

¹ To protect the privacy of the Petitioner, the Petitioner is also referred to as "Student" in this Decision.

Findings of Fact

Based upon the testimony and evidence taken on the record in this proceeding, this Hearing Officer makes the following findings of fact:

1. The Student is a child with a disability under the IDEA. The Student qualifies as a child with mental retardation and speech impairment in need of special education. (Hr'g Tr. at 29; Pet'r Ex. 10 at 43; Resp't Ex. 2 at 31)
2. During the 2009-2010 school year the Student is ** years old and in the **grade in the District's ** school. (Hr'g Tr. at 94; Pet'r Ex. 9 at 13; Resp't Ex. 1 at 1)
3. On February 17, 2009, an admission, review and dismissal (ARD) committee for the Student met. All ARD committee members – including one of the Student's parents in attendance – signed in agreement. Among other things, the committee approved IEP annual goals for the Student for the 2009-2010 school year in the following subject areas: “vocational history;” “vocational math;” “vocational English;” and “vocational science.” Annual goals for 2009-2010 were also approved relating to “**” “education/training;” and “living skills.” Speech/language therapy goals for 2009-2010 were also approved. (Pet'r Ex. 9 at 114 – 20, 138; Resp't Ex. 3 at 103 – 09, 127)
4. On February 17, 2009, the ARD committee also addressed transition planning for the Student. Among other things, the committee adopted postsecondary goals that included a goal of “become employed at a participating employer for at least 15 hours a week.” Among other things, the committee recommended that transition services be provided through “Participation [in] a program of vocational exploration, assessment or training in a community-based work site under the direction of public school personnel.” (Pet'r Ex. 9 at 84 – 85, 109, 113; Resp't Ex. 3 at 73 – 74, 98, 102)
5. On February 17, 2009, the ARD committee agreed to the Student's participation in a ** program during the 2009-2010 school year. (Hr'g Tr. at 39; Pet'r Ex. 9 at 136, 138; Resp't Ex. 3 at 125)
6. On May 28, 2009, an ARD committee for the Student met. All ARD committee members – including one of the Student's parents in attendance – signed in agreement. Among other things, the committee adjusted the Student's schedule for the 2009-2010 school year to accommodate the Student's participation in the ** program twice a week. (Pet'r Ex. 10 at 62 – 63, 65; Resp't Ex. 2 at 51 – 54)
7. On August 26, 2009, an ARD committee for the Student met. The Student's parents attended; the Student did not attend. Among other things, the committee discussed the Student's work and academic schedule for the 2009-2010 school year. After discussion, the meeting was adjourned without mutual agreement. (Pet'r Ex. 9 at 14, 37 – 39; Resp't Ex. 1 at 2, 25 – 27)

8. The ** program is implemented two days a week in a retail **. (Hr'g Tr. at 83)
9. The Student's special education teacher implements the Student's IEP annual goals in the resource room by integrating them into resource room instruction. (Hr'g Tr. at 66 – 67, 72 – 75)

Discussion

Transition Services

The Petitioner's first complaint is that the Respondent has placed the Petitioner in a community-based ** twice a week as part of the Petitioner's educational program this school year. Under the IDEA, a written statement of transition services must be included in the IEP when a child turns **. ² Transition services may include instruction and community experiences. ³ In Texas ** the ARD committee must consider age-appropriate instructional environments as part of transition planning. ⁴

Here, the Petitioner's ARD committee identified part-time employment as a postsecondary goal and a retail store as an appropriate location for the Petitioner to gain relevant exposure and experience in the retail business. The Petitioner failed to meet its burden to demonstrate that either the employment goal or the method selected to help enable the Petitioner reach the goal was inappropriate.

In conclusion, the Respondent prevails on Claim No. 1.

Annual Goals

The Petitioner's second complaint is that the Respondent has failed to include annual goals for the Petitioner's placement in a resource room when the Petitioner is not at the community-based work site. Under the IDEA, a written statement of annual goals must be a part of a child's IEP. ⁵

Here, the Petitioner's IEP had annual goals and the Respondent established that they were integrated into the Petitioner's education while in the resource room. The Petitioner did not contest the special education teacher's testimony on this point.

In conclusion, the Respondent prevails on Claim No. 2.

² 34 C.F.R. § 300.320(b)(2).

³ 34 C.F.R. § 300.43(a)(2).

⁴ 19 Tex. Admin. Code § 89.1055(g)(7).

⁵ 34 C.F.R. § 300.320(a)(2).

Conclusions of Law

After due consideration of the foregoing findings of fact, this Hearing Officer makes the following conclusions of law:

1. The Respondent, Alba-Golden Independent School District, provided the Petitioner, appropriate courses of study in the least restrictive environment, including an appropriate ** program in a community-based work site. 34 C.F.R. § 300.320(b)(2); 19 Tex. Admin. Code § 89.1055(g)(7).
2. The Respondent, Alba-Golden Independent School District, provided the Petitioner, an appropriate IEP, including appropriate annual goals. 34 C.F.R. § 300.320(a)(2).

Order

Based upon the foregoing findings of fact and conclusions of law,

IT IS HEREBY ORDERED THAT:

1. All relief sought by the Petitioner shall be and is **DENIED**.

SIGNED this 13th day of November, 2009.

/s/ Steven R Aleman _____
Steven R. Aleman
Special Education Hearing Officer

Notice

Any party aggrieved by the findings and decision of this Hearing Officer has the right to bring a civil action seeking review in a state or federal court of competent jurisdiction. The party bringing the civil action shall have no more than 90 days from the date of this Decision to file the civil action. 20 U.S.C. § 1415(i)(2), as amended.

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SYNOPSIS

ISSUE 1: Whether the Respondent provided the Petitioner inappropriate courses of study in the least restrictive environment, in particular a ** program.

CITE: 34 C.F.R. § 300.320(b)(2); 19 Tex. Admin. Code § 89.1055(g)(7)

HELD: For the Respondent. Inclusion of a ** program was not inappropriate as part of the Petitioner's transition services.

ISSUE 2: Whether the Respondent provided the Petitioner an inappropriate IEP, in particular an IEP lacking annual goals for the resource room.

CITE: 34 C.F.R. § 300.320(a)(2)

HELD: For the Respondent. IEP annual goals were implemented in the ** program as well as in the resource room.