

DOCKET NO. 113-SE-0107

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

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT by next friends and PARENT and PARENT (hereinafter "Petitioner" or "A"), brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA04"), 20 U.S.C. §1400, et seq., complaining of the Leander Independent School District (hereinafter "Respondent" or "the district").

Petitioner's PARENT and PARENT appear pro se. Respondent was represented by Susan Graham in the Austin office of the law firm Walsh, Anderson, Brown, Schulze & Aldridge. Petitioner's request for hearing was filed on December 29, 2006, and came on for hearing by agreement of the parties on April 12, 2007. The parties filed written closing arguments and agreed that the decision in this matter would be issued timely on or before May 24, 2007.

Petitioners alleged that the district failed to provide an appropriate educational placement for \*\* and that the district failed to manage \*\*'s behavior so that it did not interfere with his educational program. As relief, Petitioners sought reimbursement for private placement for \*\* beginning in December 2006.

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

### Findings of Fact

1. Petitioner is a student residing with parents in the Leander Independent School District. [Petitioner's Exhibits 1 and Respondent's Exhibit 4, 8 & 14]

2. \*\* was born in \*\* and attended school within the district from \*\* through the fall of 2006 in the \*\* grade. [Petitioner's Exhibit 1 and Respondent's Exhibits 5 & 8]

3. \*\* was placed in special education in the spring of the \*\* grade year based upon an eligibility criterion of a learning disability in math calculations. [Respondent's Exhibit 5]

4. In April 2006, an admission, review and dismissal ("ARD") committee meeting was convened to consider the remaining portion of the student's \*\* grade year and placement at the beginning of the \*\* grade year. An individualized educational plan ("IEP") was developed for \*\* which included special education inclusion support in math, language arts, science, and social studies. Additionally, the student was provided access to content mastery, psychological services and counseling, and assistive technology. A behavior intervention plan ("BIP") was developed for \*\* to support on-task behavior, organizational skills, and completion of assignments. The student's parents participated in the ARD meeting and agreed with the decisions of the committee. [Respondent's Exhibit 5]

5. The student's parents were concerned about the student's progress in school and the amount of time \*\* required to keep up in class and do homework assignments. \*\*'s parents believed that \*\* needed smaller class sizes. [Petitioner's Exhibit 1]

6. Another ARD committee was convened for \*\* in September 2006, and the committee determined additional eligibility for special education based upon an additional eligibility criterion of other health impairment ("OHI") due to attention-deficit hyperactivity

disorder (“ADHD”). The student’s parents were present at the meeting and concurred with the decisions of the committee. [Respondent’s Exhibits 2 & 8]

7. During the fall of 2006 in the \*\* grade, \*\*’s IEP called for special education inclusion services, resource services and training in study skills, occupational therapy, and support for monitoring educational performance. [Respondent’s Exhibits 5 & 8]

8. During the \*\* and \*\* grade in the district, \*\* was enrolled in a gifted and talented program because of the student’s high intellectual abilities. [Transcript’s Pages 124-129 and Petitioner’s Exhibit 1]

9. The student’s parents expressed many concerns to the district about the need for consistency of implementing modifications under the student’s IEP. The district maintained that the modifications were being implemented properly, but the student’s parents continued to express their concern to the district and filed a complaint with the Texas Education Agency in November 2006. [Petitioner’s Exhibit 1 and Respondent’s Exhibits 10 & 18]

10. The student received a number of disciplinary referrals during the \*\* and \*\* grade years, but the student generally received in-school suspensions or lunch detention and could continue to do school work. The student was not suspended from school. The student’s BIP called for the student’s compliance with the student code of conduct and included goals for on-task behaviors and completion of assignments. [Petitioner’s Exhibits 1 and Respondent’s Exhibits 6 & 12]

11. \*\* passed all classes during the \*\* grade year. \*\*’s final grades for the first semester of the \*\* grade year were all passing. Though some grades were low, district officials believed that the low grades were attributable to \*\*’s failure to complete assignments. \*\* has problems with anxiety about grades and the issuance of progress reports and report cards. [Petitioner’s Exhibit 1 and Respondent’s Exhibit 1 and Transcript Pages 110 & 141-154]

12. \*\* completed the Texas Assessment of Knowledge and Skills (“TAKS”) exams during the \*\* and \*\* grade. The student’s performance met the standard in math and were commended performances in reading and science. [Respondent’s Exhibit 1]

13. \*\*’s parents believed that \*\* was not progressing appropriately in school considering the student’s intellectual abilities and the grades received. The parents believe that the school was failing to implement appropriate modifications for \*\*’s educational instruction. Another ARD committee meeting convened for \*\* on December 7, 2006, to address the parents’ concerns. The ARD committee added psychological services and increased counseling services for the student’s IEP, added assistive technology consultation services, and revised the student’s BIP to address the student’s social skills. [Respondent’s Exhibit 12]

14. The student’s parents refused the placement proposed by the ARD committee on December 7, 2006, and provided the committee with a written statement that \*\* was enrolling in a private day school. [Respondent’s Exhibit 12]

15. \*\* began attending a private religious day school upon withdrawal from the district. [Petitioner’s Exhibit 1 and Respondent’s Exhibit 14]

16. The private religious day school attended by the student does not provide special education services. But the student’s parents believe that the student is making good academic progress because of the educational programming of the school and a low student-to-teacher ratio. [Petitioner’s Exhibit 1]

### Discussion

The student's parents were unhappy with the student's placement within the district because of concerns about educational progress, grades, implementation of modifications, disruptive behavior, and class size. Because the student has high intellectual abilities, the student's parents believe that the student's performance should have been greater than it has been. The evidence at the hearing demonstrates that the student has made educational progress because of success in passing classes and sufficient or commended performances in TAKS exams. Though the student has had a few behavior problems, the problems are not so severe that they have interfered with the student's educational progress.

The student's academic performance could be better in a more structured setting with a low student to teacher ratio. But the issue for decision is whether or not the student has been provided an appropriate educational placement enabling the student to make reasonable academic progress. Petitioners failed to meet their burden of proof to show that \*\* has been denied a free appropriate public education.

### Conclusions of Law

1. \*\* is a student eligible for special education and related services under the provisions of IDEA04, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The Leander Independent School District is the local education agency responsible for the delivery of special education and related services for \*\*
3. The IEPs provided for \*\* within the district during the spring and fall of 2006 were properly developed, and they provided \*\* with an educational placement and related services reasonably calculated to enable the student to receive educational benefit under 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.\*\*C. §89.1055, and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.\*\*C. §89.1055.

4. Petitioner failed to meet the burden to prove that the educational program provided by Respondent for \*\* was inappropriate. Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED.

SIGNED this 23<sup>rd</sup> day of May, 2007.

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

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SYNOPSIS

**ISSUE:** Whether the district provided an appropriate educational placement for \*\*

**CFR CITATIONS:** 34 CFR 300.552 and 34 CFR 300.300

**TEXAS CITATION:** 19 TAC. §89.1055

**HELD:** For Respondent.