

STUDENT BNF, PARENTS,
Petitioner

VS.

HOUSTON INDEPENDENT SCHOOL
DISTRICT,
Respondent

§ BEFORE A SPECIAL EDUCATION
§
§
§ HEARING OFFICER FOR
§
§
§ THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

ATTORNEY FOR PETITIONER

Ms. Joyce Keating
Attorney at Law
1770 St. James Place
Suite 400
Houston, Texas 7756

ATTORNEY FOR RESPONDENT

Mr. Hans Graff
Assistant General Counsel
Houston Independent School District
3830 Richmond Ave.
Houston, Texas 77027

STUDENT, BNF, PARENTS, Petitioner	§ § § § § § § § §	BEFORE A SPECIAL EDUCATION HEARING OFFICER FOR THE STATE OF TEXAS
VS.		
HOUSTON INDEPENDENT SCHOOL DISTRICT, Respondent		

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner, STUDENT, by his next friends, Parents, brought this action against Houston Independent School District (hereafter "Houston ISD") pursuant to the Individuals with Disabilities Education Act (hereafter IDEA), as amended by the IDEA Amendments of 1997, 20 U.S.C. §1400 *et seq.*, to contest STUDENT's proposed educational placement in a self-contained classroom at the *** , a public school placement operated by the Harris County Department of Education. Petitioner seeks an alternative educational placement at the Monarch School, a private school located in Houston, Texas.

Procedural History

Petitioner filed this request for a due process hearing on April 29, 2005. A telephone prehearing conference with the parties was held on May 10, 2005, wherein the issues for hearing were identified. The parties requested a continuance of the May 23, 2005 hearing date due to scheduling conflicts. This request was granted and the hearing was rescheduled and held on June 27 and 28, 2005. The parties also agreed to extend the decision due date to July 30, 2005. Petitioner was represented by his legal counsel, Ms. Joyce A. Keating. Houston ISD was represented by its Assistant General Counsel, Mr. Hans Graff.

Based upon the evidence presented and admitted into the record of this proceeding, I make the following findings of fact and conclusions of law:¹

Findings of Fact

1. STUDENT is a * year-old Student who resides with his parents within the jurisdictional boundaries of Houston ISD. [Petitioner's Exhibit # 37, hereafter P. Exh. # ____].
2. Houston ISD is a political subdivision of the State of Texas and a duly incorporated independent school district located in Harris County, Texas.
3. STUDENT has autism with a secondary diagnosis of mental retardation and a mood disorder. [Hearing Transcript, page 41, hereafter, T. ____]. His most profound difficulties are his lack of communication skills and behavior. He is difficult to educate because of the nature and severity of his disabilities. [T. 119, 395-397].
4. STUDENT qualifies for special education services from Houston ISD as a Student with autism, other health impairment (asthma) and speech impairment. [P. Exh. #37].
5. STUDENT has *****.

¹ Findings of fact and conclusions of law are also contained in the Discussion section of this decision.

6. STUDENT has significant behavior problems due to difficulty in communicating his needs, due to sensory issues and his underlying mood disorder. [T. 349, 359-360]. He fails to comply with instructions, is self-injurious, physically and verbally aggressive, has echolalia, and is disruptive in the classroom. [R. Exh. #65].
7. In 2003, STUDENT's behavior began to worsen. He frequently became violent in his autism classroom setting at a *** school within Houston ISD. He began testing limits, often became agitated, and was resistant to entering his classroom. [T. 125-126].
8. ***, Ph.D. has been STUDENT's educational consultant and relationship trainer for over nine years. Dr. *** has a doctorate in Applied Developmental Psychology and is currently *** for the Monarch School. He has provided educational consultation to school districts, including Houston ISD, and has provided in-service training to Houston ISD and other school districts related to setting up classrooms for children with autistic-spectrum disorders. Dr. *** has expertise and training in the field of educating children with autism. [P. Exh. #12; T. 113-117]. Dr. *** helped develop and/or is a proponent of using teaching methodologies such as the Relationship Development Intervention model and the Development Individualization and Relationship (DIR) model for educating children with autism. These approaches involve educational programs crafted to address the core deficits of autism, which are social impairment, and the inability to regulate emotion in social situations. [T. 120-121]. The DIR model uses a relationship-based approach to support a child's development. "Development" represents the various levels, with the lowest level being the ability to regulate and the highest level being the ability to think for oneself. "Individualized" represents the individual processing differences, so each child, especially children in the autism spectrum, have a unique way of processing sensory input. "Relationship" infers that it is through relationships that people learn. [T. 103].
9. In January 2003, Dr. *** met with school district staff, including the Special Education Coordinator, and discussed possible placement alternatives that could effectively control STUDENT's behavior. [P. Exh. #12].
10. On March 17, 2003, an ARD Committee considered changing STUDENT's educational placement to a short-term behavior intervention training program at ***. *** is a residential placement. The ARD Committee determined that STUDENT needed a highly structured intensive program to control his behavior and agreed to a short-term residential placement at ***.
11. Subsequently, ARD Committees extended his residential placement at *** due to the nature and severity of his behaviors. [R. Exh. #72, 73 and 74].
12. STUDENT remained residentially placed at *** during the 2003-2004 school year. However, he did go home on weekends.
13. On May 10, 2004, the ARD Committee determined that STUDENT had made overall improvement at *** but recognized his need for continued residential placement during the 2004-2005 school year. [R. Exh. # 71].
14. By May 2004, STUDENT's parents began questioning whether he was making any educational progress at ***. [T. 205-210].
15. In July 2004, STUDENT was evaluated by ***, M.D., M.Ed., a Developmental Pediatrician. She found that he could perform for her academically at a kindergarten level and that he had some ability to read first-grade material, but without much comprehension. She noted that he had significant communication difficulties that caused him to become more anxious and that he would engage in repetitive behaviors when he did not understand the instructions. She opined that his behaviors were secondary to his communication difficulties. [T. 42-44].
16. Dr. *** saw STUDENT again on August 5, 2004. Having reviewed his academic competencies as reported in ARD Committee documents from January and May 2004, Dr. *** became concerned when she could not get him to perform academic tasks he had done previously, such as multiplication and regrouping with adding and subtracting. Additionally, she became concerned about the number and frequency of changes in his classroom teachers and aides and feared this was interfering with his learning. As a result, she wrote a letter to Houston ISD

and *** expressing her concerns and requesting that he be placed in a stable classroom. She opined that he had not made any academic progress and that it appeared that he had regressed. [T. 45-47; 53-57; P. Exh. #2].

17. Dr. *** was also of the opinion that STUDENT had not benefited educationally from the *** placement. He found no educational progress as measured by a Brigance test, and felt there was lack of achievement towards mastery of his IEP goals and objectives. He opined that STUDENT's school work was trivial and involved the same kindergarten level work he had done six to seven years before. [T. 127].
18. In July and August 2004, STUDENT's parent purchased certain academic computer programs and materials for STUDENT. The cost of these educational materials totaled \$637.30. [P. Exh. 13, 14, 15].
19. Houston ISD agreed to reimburse STUDENT's parent for the costs of these educational materials when she presented the receipts for payment. The receipts had not been presented as of the date of the hearing and STUDENT's parent has not yet been reimbursed for these costs.² [T. 295-296].
20. An ARD Committee meeting was held on December 8, 2004. STUDENT's educational consultant, Dr. ***, suggested increasing STUDENT's academic goals and objectives to a second grade level. STUDENT's behavior intervention plan was also addressed. The prioritized objectives were non-compliance, self-injurious behavior, physical aggression, inappropriate vocalizations and leaving the assigned area. The behavior intervention plan included positive reinforcers, clear expectations, verbal redirection, physical redirection, differential reinforcement, loss of reinforcers and compliance training. The ARD Committee reached mutual agreement regarding the behavioral goals and behavior intervention plan. [R. Exh. #70].
21. The ARD Committee developed STUDENT's IEP goals and objectives at its meeting on January 5, 2005. All parties agreed with the newly developed IEP goals and objectives. Dr. ***, STUDENT's educational consultant, also indicated he had no problem accepting the academic IEP. [R. Exh. #69, 71; T. 164-165].
22. On March 4, 2005 and March 30, 2005, the ARD Committee convened to address a parental request to return STUDENT to a day school facility in the Houston area so that he could live at home. He had done well on his home visits and over the Christmas holidays and the ARD Committee determined that he no longer needed residential placement. STUDENT's parents requested that he be educationally placed at the Monarch School. Houston ISD recommended placement in the life skills program at the **** campus. [R. Exh. 66, 67]. These ARD meetings were tabled to allow the school district staff, parents and the educational consultants to evaluate each of these proposed educational placements.
23. On May 17, 2005, the ARD Committee reconvened and developed STUDENT's IEP for the 2005-2006 school year. It included a behavior intervention plan and a behavior IEP with an annual goal of having STUDENT "demonstrate age-appropriate behavior which leads to functional independence in a less-restrictive setting through mastery of specified objectives." Data containing the number of STUDENT's behavioral incidents were listed and this information was used as the baseline upon which the behavioral objectives were developed. The objectives were designed to reduce the number of behavioral incidents in areas of compliance, self-injurious behavior, physical aggression, echolalia/repetitive speech and verbal aggression. His goals in the area of math were to develop an understanding and use of measurement at the ** grade level and to increase his math skills to the ** grade level. In reading, his goals were to comprehend information, develop an extensive vocabulary, read with fluency and understanding at the ** grade level and increase word identification. In language arts, his goals were to listen attentively and engage actively in a variety of oral language experiences at a ** grade level and to develop the foundations of writing at a ** grade level. His vocational IEP goal was to increase his vocational skills which lead to functional independence in a less-restrictive setting through mastery of specified objectives. These objectives included attending to familiar vocational tasks for 30 minutes with no more than 5 verbal prompts, follow steps of task termination with prompting, and indicate needs following classroom procedure (i.e. raising hand to ask for help, raising hand when finished) without prompting. His science/health/self-help goal was to increase his skills toward functional independence in a less restrictive setting through mastery of the

² Although this was identified as an issue for hearing, the evidence indicates it is not an issue in dispute. Houston ISD agreed to reimburse STUDENT's parents for these costs upon presentation of the receipts. Accordingly, since there is an agreement between the parties to reimburse these costs, this matter is deemed moot.

objectives. The objectives involved entering an area of traffic and stopping and looking both ways to ensure it is safe before proceeding, and performing hygiene tasks and ensuring the quality of the tasks. His recreation and leisure skills objectives included increasing his repertoire of recreation and leisure skills by one activity per week; demonstrating appropriate waiting for turns; identifying when it is his turn without prompting; and jumping rope five times when the rope is held by others. His communication goal included improving receptive language skills by increasing his receptive vocabulary, answering yes/no questions, answering “wh” questions, following two step verbal directions involving vocabulary concepts; increasing his expressive language skills by increasing his expressive language, making vocabulary associations, categorizing words/pictures, and speaking in four-word spontaneous and original phrases and sentences. Additionally, it included improving his social skills by responding appropriately to greetings and comments, initiating conversation with a partner using appropriate greetings and comments, taking turns in conversation, maintaining a topic of conversation with a partner, and transitioning from one conversation topic to another. Also, it included improving cognitive skills by increasing attention and concentration, understanding basic language concepts and sequencing a three-step event. [R. Exh. #65].

24. At the end of the May 17, 2005, ARD Committee meeting, Dr. *** presented his proposed general educational plan for STUDENT for implementation at the Monarch School. [R. Exh. #65].
25. STUDENT’s IEP, as developed at the May 17, 2005 ARD Committee for the 2005-2006 school year, including his behavior intervention plan, is based on his current level of performance and is reasonably calculated to provide STUDENT with an educational benefit.
26. No in-home training was proposed as part of STUDENT’s IEP by the May 17, 2005 ARD Committee because he remained in a residential setting. Instead, it indicated that an in-home training assessment would be completed if he were placed in a day-school placement, with the intention of convening a placement ARD. [R. Exh. #65, T. 366-367].
27. The program director at *** recommended that STUDENT be transitioned into a program with a low staff-to-student ratio, a small student population and with an emphasis on behavior and academics. The director indicated that STUDENT continues to display aggressive behaviors and was disruptive to other students and that the facility would need to have staff trained in restraint techniques to protect STUDENT from injuring himself and others. [R. Exh. #67].
28. The *** has two programs. One is a placement for students with behavior problems without significant cognitive impairments and it utilizes the “Boys Town” behavior intervention model. The other is the life skills component geared toward students with cognitive impairments who have behavior issues as part of their disabilities. The program includes students with autism and incorporates into the program each student’s unique IEP and behavior intervention plan. [P. Exh. #8, 9; R. Exh. #67]. The program is capable of implementing both STUDENT’s academic and life skill needs and all other components of his 2005-2006 IEP.
29. STUDENT’s proposed program in the life skills class at the *** would involve him transitioning between four separate classrooms where he would work on different curriculum issues. [T. 355]. All of his teachers would be certified special education teachers. [T. 414]. The program provides a small pupil-teacher ratio, visual schedules and other elements of the TEACCH.
30. The life skills class at the *** campus is an appropriate educational placement for implementation of STUDENT’s 2005-2006 IEP.
31. Monarch School is both a therapeutic and educational setting with psychologists and teachers working together in educating students. The school has a small student population, low staff-to-student ratio, and utilizes individualized education plans specific to each student. It has co-ed multi-aged classes with grade levels from kindergarten through twelfth. It was designed to serve children with neurological differences such as attention deficit disorder, learning disabilities, pervasive developmental disorders, Asperger’s Disorder, Tourette’s syndrome, seizure disorder and bi-polar disorder. [P. Exh. #5].

32. Monarch School is not a TEA accredited school, but as a private school, it is accredited by the Southern Association of Colleges and Schools. Not all of its teachers are certified special education teachers. [T. 160, 167, 414]. Not all of its staff is trained in restraint techniques. Instead, the School uses a pre-emptive strategy when possible and will send staff trained in restraint techniques as a last resort. [T. 461-462, 528].
33. STUDENT began receiving educational services at Monarch School during the summer of 2005. He is in its DIR intervention program two hours a week and, as of the date of the hearing in this matter, had been doing well in the program. [T. 153].
34. There is no peer-reviewed research or other information in the record to establish the validity or success rate of the educational methodologies for educating children with autism identified as the Relationship Development Intervention model and DIR model.
35. STUDENT is an extremely difficult student to educate due to his severe communication deficits and his non-complying, self-injurious, physically aggressive, verbally aggressive, and disruptive behaviors. To be successful educationally, he needs constant supervision, interaction, repetitive teaching, and immediate behavioral feedback from a highly trained and skilled teaching staff. The life skills program at the *** campus is capable of providing this type of program to STUDENT
36. Since April 29, 2004, STUDENT has made meaningful educational progress, particularly in learning to generalize skills among various staff and settings while residentially placed at ***. [T. 438-441]. He has shown some improvement in his skill levels in math, reading, listening, writing, vocational skills, expressive and receptive language skills, and self-help skills. [R. Exh. # 65].
37. ***, M.D. M.Ed. is a Developmental Pediatrician with expertise in treating and educating children with autism. Her opinion that the life skills program at the *** campus was inappropriate for STUDENT had to do with its methodology, not the substance of his IEP. [T. 64-65]. She did not observe the life skills program nor did she observe STUDENT's program at *** and therefore her opinion testimony concerning the inappropriateness of the *** placement and the *** is given limited weight.
38. *** is a speech and language pathologist who specializes in using the DIR methodology model in working with children with autism. She opined, based on the DIR model, that STUDENT needed at least 6 to 8 sessions daily of an integrated instructional experience, including a sensory motor program and continuous work to help him communicate so that he gains the experiences he needs to think, respond, and to regulate himself. *** also opined that he needs one-to-one instruction because he does not have the foundational skills to be able to benefit from group instruction. She indicated that she has been working with STUDENT this summer using the DIR model with her primary focus to get him to regulate himself, to remain engaged and to develop two-way communication. [T. 98, 104, 105, 107]. ***'s opinions are given limited weight since they are based on the DIR methodology model, the validity or reliability of which are not supported in the record of this proceeding.
39. ***, an educational consultant for Houston ISD and a former Special Education Director is an expert in the field of educating Students with autism. She reviewed STUDENT's IEP for the 2005-06 school year and opined that it could be implemented in the life skills program at the *** campus. [T. 385]. Her opinion was credible and given appropriate weight.
40. ***, a Psychologist with Houston ISD, visited the life skills program at the *** with *** and she opined that it was an appropriate educational placement for STUDENT Her opinions are credible and given appropriate weight.
41. STUDENT does not require a one-to-one student teacher ratio to achieve an educational benefit. The three-to-one student teacher ratio contained in his 2005-2006 IEP is appropriate.
42. STUDENT needs to learn how to deal with inconsistency and to be compliant in different settings and with different people. Reverting to a one-to-one student-teacher ratio would be a regression for him because he has been successfully working with several different teachers at the *** .

43. STUDENT would receive an appropriate communication system in the life skills program at the *** campus, being a system using pictures/symbols or using a visual schedule to assist him in understanding the environment, what was expected of him and what he was supposed to be doing. It is reasonably anticipated that this type of program would assist in decreasing his behaviors. [T. 362-363].
44. STUDENT's behavior IEP specifically identifies communication deficits as a function of his behavior and provides appropriate interventions for dealing with his behaviors. Moreover, his IEP contains communication goals and objectives to improve his receptive and expressive language skills, social skills and cognitive skills. His IEP also provides for 30 hours per week of special education instruction, including 1 hour of speech services, 4.2 hours of listening, and 4.2 hours of recreation and leisure training. STUDENT's IEP adequately addresses his communication needs.

Discussion

The primary issue in this proceeding is whether STUDENT's IEP proposed for the 2005-2006 school year is reasonably calculated to provide him with a free appropriate public education. *Bd. Of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 175, 206-7 (1982).

Petitioner contests the May 17, 2005 ARD Committee recommendation to transfer STUDENT from his residential facility to a self-contained life skills program designed primarily to educate children with autism, and seeks as an alternative placement, the Monarch School, a private school that uses an instructional methodology espoused by STUDENT's educational consultant.

Educational Methodology

Petitioner objects to the proposed life skills placement on the grounds that it uses an instructional methodology, being a hybrid of the TEACCH program, which, Petitioner claims, has been previously tried and shown not to be effective in providing STUDENT with any meaningful educational benefit. Instead, Petitioner contends that the Monarch School is capable of providing STUDENT with an appropriate IEP utilizing the Development Individualization and Relationship (DIR) model, which Petitioner claims, is a second generation innovative teaching methodology for children with autism.

In *Rowley*, the Supreme Court recognized that courts must not impose their views on education methods. The Court stated: "The primary responsibility for . . . choosing the educational method most suitable to the child's needs was left by the Act to state and local educational agencies in cooperation with the parents or guardian of the child." In *Lachman v. Illinois State Bd. Of Educ.*, 441 IDELR 156 (7th Cir. 1988), the court held that "*Rowley* leaves no doubt that parents, no matter how well motivated, do not have a right under the Act to compel a school district to provide a specific program or employ a specific methodology. . . ." In *Gill v. Columbia 93 School District*, 32 IDELR 254 (8th Cir. 2000), the court concluded: "Parents who believe that their children would benefit from a particular type of therapy are entitled to present their views at meetings of their child's IEP team, to bring along experts in support, and to seek administrative review. The statute set up this interactive process for the child's benefit but it does not empower the parents to make unilateral decisions about programs the public funds." In *L. T. v. Warwick School Committee*, 40 IDELR 253 (1st Cir. 2004), the court stated: "Autism is very difficult for parents, as well as teachers, to handle, and there are divergent theories as to the best treatment. . . . The *Rowley* standard recognizes that courts are ill-equipped to second-guess reasonable choices that school districts have made among appropriate instructional methods."

As case law indicates, educational methodology is an important component of an appropriate educational program for children with autism. The IEP team is responsible for determining and providing an appropriate instructional methodology reasonably capable of successfully implementing the child's IEP. The instructional methodology to be utilized in educating a Student should be identified and incorporated into a Student's IEP if it is an integral part of the IEP. *See, 1997 Amendments/Regulations on IEP Team Discussions*, 64 Fed. Reg. 12552 (3-12-99).

The crux of this case involves competing educational methodologies. To prevail in this matter, Petitioner must initially establish by a preponderance of the evidence that the methodology proposed by Houston ISD is inappropriate or otherwise incapable of successfully implementing his IEP. The instructional methodology proposed by Houston ISD includes components of the TEACCH program. Since there is a presumption in favor of the validity of Houston ISD's

proposed program, Petitioner has the burden of presenting sufficient evidence to establish why this instructional methodology is inappropriate. Secondly, since Petitioner is seeking placement at the Monarch School, he must also establish that his recommended methodology, the DIR model, is an appropriate instructional methodology reasonably capable of successfully implementing his IEP.³ See, *School Committee of Burlington v. Department of Education*, 471 U.S. 359, 369-70, 85 L. Ed. 2d 385, 105 S. Ct. 1996 (1985).

I find that Petitioner failed to meet either of these evidentiary burdens. Regarding the latter issue, I find a complete lack of evidence in this proceeding from which to make any determination concerning the appropriateness of the DIR model. In particular, the limited explanation of the DIR model contained in the record is not accompanied by any evidence supporting its reliability or validity. Accordingly, there is a lack of credible evidence in the record to establish that this model is an appropriate methodology for educating students with autism.

Substantive Claims

In attacking the TEACCH program and STUDENT's proposed IEP, Petitioner alleges that it did not provide for the one-to-one instruction STUDENT needs to recoup lost academic skills; it lacks an integrated communication strategy to address his severe communication disorder; and his behavior intervention plan does not adequately view his behavior as a component of his communication deficits. The gist of Petitioner's argument is that the TEACCH program is more focused on behavior control than developing and implementing a successful communication program for STUDENT. Moreover, Petitioner asserts that STUDENT has not made any meaningful educational progress under a similar TEACCH program at the *** and has actually regressed. As part of Petitioner's complaint, he alleges he has been denied a free appropriate public education since April 29, 2004, during his residential placement at the ***.⁴

Regarding the latter claim, I do not find a denial of a free appropriate public education during STUDENT's placement at the ***. STUDENT is an extremely difficult student to educate due to his severe communication deficits and his non-complying, self-injurious, physically aggressive, verbally aggressive, and disruptive behaviors. To be successful educationally, he needs constant supervision, interaction, repetitive teaching, and immediate behavioral feedback from a highly trained and skilled teaching staff. His primary areas of need are communication and behavior. STUDENT is ** years-old and these same areas of need have been targeted since he began school. STUDENT, due to the nature and severity of his disabilities, is not reasonably expected to make consistent and/or easily measurable educational progress. Appropriate progress for STUDENT is expected to be measured in small incremental steps. In fact, Petitioner's Developmental Pediatrician indicated she thought he would plateau around the ** year-old level and would be capable of mastering only up to ** grade level work. [T. 58].

The evidence establishes that STUDENT has made meaningful educational progress since April 29, 2004 under his program and placement at ***. The parties acknowledged that his behaviors, although significant, have improved to the extent that he no longer needs residential placement but can be returned to a day school program. Additionally, testimony from his special education teacher at *** confirmed that STUDENT has made educational progress, particularly in learning to generalize skills among various staff and settings. [T. 438-441]. Also, a review of his academic goals and objectives shows some improvement in his skill levels in math, reading, listening, writing, vocational skills, expressive and receptive language skills, and self-help skills. [R. Exh. # 65]. Therefore, I find that since April 29, 2004, STUDENT has made meaningful educational progress and achieved an educational benefit from his instruction at *** and has received a free appropriate public education. Accordingly, I find no merit in Petitioner's assertions that a similar TEACCH program at the *** has been unsuccessful in providing STUDENT with a meaningful educational benefit.

³ A presumption exists in favor of the educational program proposed by Houston ISD. Petitioner, being the party contesting the proposed IEP, has the burden of showing the inappropriateness of the proposed program by a preponderance of the evidence. This involves establishing that the educational program proposed by Houston ISD for STUDENT for the 2005-2006 school year is not reasonably calculated to provide him with a free appropriate public education. *Christopher M. v. Corpus Christi Indep. Sch. Dist.*, 933 F.2d 1285, 1291 (5th Cir. 1999); *Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.*, 23 IDELR 1041, 1042 (S.D. Tex. 1995).

⁴ The issues in this proceeding are subject to the limitations period of one year. Petitioner filed his request for hearing on April 29, 2005. Accordingly, claims of denial of a free appropriate public education prior to April 29, 2004 are barred by the applicable one year limitations period. 19 Tex. Admin. Code §89.1151(c).

Petitioner's evidence contesting the appropriateness of STUDENT's proposed life skills program consists of expert opinion testimony from ***, Petitioner's educational consultant, ***, M.D., Petitioner's Developmental Pediatrician and *** ***, a speech and language pathologist.

Dr. *** is the Program Director at the Monarch School. Also, he assisted in the development and/or is a proponent of using teaching methodologies such as the Relationship Development Intervention model and the Development Individualization and Relationship (DIR) model for educating children with autism. Dr. ***, as STUDENT's educational consultant, visited the *** campus on two occasions. His first visit mistakenly involved a tour of the program for students with emotional disturbances. His second visit involved a tour of the life skills program. Dr. *** gave a very critical assessment of the program based on this one observation. He did not observe any communication strategies or individual schedules for the students. He found the physical structure of the classroom to be disheveled. He did not observe staff taking any progress notes and he did not notice any planned transitioning when concluding the class and when students transferred to another class. He opined that he could not see how any goals of the students could be achieved in that classroom setting. He also observed the students after transferring to their next class. He observed excessive noise noting that music was being played in the background. He found the students working on low level individual tasks such as puzzles, putting golf tees into peg holes and coloring, but he did not notice any sequence of assignments. He opined that it was important for STUDENT to know what he needs to do, how long he needs to do it, and what comes next. [T. 138]. He indicated that he did not see any teaching of the students during his observation. As for communication strategies, he saw no individual schedules, no visual prompts for sequence of tasks and no pictures/symbols communicating sequence. Based on these observations, he opined that the program was an inappropriate setting for STUDENT because he did not observe "any dyadic work for peers to talk with each other", did not see a structure of instruction, did not see any instruction, or any attempts by the teacher to show him any instruction. [T. 140]. Specifically, Dr. *** testified: "I don't think that it is appropriate because it doesn't have the skill or the commitment to use the methodologies that are in place for students with autism. That's at a basic level. At a second level, the observations that I did gave me concerns about the implementation ability or the commitment of the institution so far to take an increasing number of students with autism without structuring the physical environment, without tailoring to the visual needs that the students have, and without setting up for better socialization and communication skills." [T. 145]. Dr. *** was also critical of the ARD Committee recommendation to maintain a one teacher to three student ratio for STUDENT. He opined that STUDENT initially needs one-to-one instruction to return him to the academic level he had attained prior to his residential placement and that it could then be followed by a transition to a higher student-to-teacher ratio program.⁵ Dr. *** also opined that the Monarch School was an appropriate educational setting for STUDENT. He noted that the Monarch program offers and is able to implement the one-to-one instruction necessary to return STUDENT to the academic levels he had previously achieved.

Dr. *** also visited the *** campus but she accompanied Dr. *** only on his first visit so she did not observe the life skills program proposed for STUDENT [T. 64-65]. Therefore, her opinion testimony concerning the inappropriateness of the *** placement is given limited weight. In fact, according to her testimony, her objections to this placement had nothing to do with STUDENT's proposed IEP, which she opined were appropriate. [T. 95]. Instead, it had to do with the methodology to be used in teaching the IEP. Her concern was that the life skills staff will view STUDENT as primarily a behavior problem as opposed to dealing with his behaviors from the point of view that they are the result of a communication disorder. [T. 95-96]. Dr. *** also opined that STUDENT should receive one-to-one instruction, at least initially, and was highly critical of the *** for not having previously provided STUDENT with such instruction.

*** is a speech and language pathologist who specializes in using the DIR methodology model in working with children with autism. She opined, based on the DIR model, that STUDENT needed at least 6 to 8 sessions daily of an integrated instructional experience, including a sensory motor program and continuous work to help him communicate so that he gains the experiences he needs to think, respond, and to regulate himself. Ms. *** also opined that he needs one-to-one instruction because he does not have the foundational skills to be able to benefit from group instruction. She indicated that she has been working with STUDENT this summer using the DIR model with her primary focus to get him to regulate himself, to remain engaged and to develop two-way communication. [T. 98, 104, 105, 107]. I find Ms. ***'s

⁵ One of the basis for this claim is Dr. ***'s assertion that when evaluating STUDENT in her office, she was unable to get STUDENT to perform math tasks he had previously mastered at ***. [T. 54-55]. However, the fact that Dr. *** was unable to replicate academic tasks that STUDENT could previously perform at *** does not confirm a loss of skills. Students with autism often have difficult replicating skills in different settings and for different individuals. [T. 325]. Even assuming the loss of such skill, it does not establish that his program has been inappropriate.

opinions to be of limited weight since they are based on the DIR methodology model, the validity or reliability of which are not supported in the record of this proceeding.

Although certain aspects of their testimony were given limited weight, Dr. ***, Dr. *** and Ms. *** were credible witnesses. However, I find their relevant testimony to have been effectively controverted by equally credible testimony from Houston ISD's witnesses.

Dr. ***, a Psychologist with Houston ISD, visited the *** life skills program with Dr. *** and she opined that it was an appropriate educational placement for STUDENT. Furthermore, she disputed many of Dr. ***'s criticisms and observations of the program. She stated the classrooms were not disorganized and that she observed visual schedules for the students. Additionally, she indicated there was not an excessive amount of auditory stimulation or excessive noise. [T. 356-357]. She found the behavior IEP developed for STUDENT by the ARD Committee was appropriate and was the same IEP *** had successfully used in reducing the number and intensity of his behaviors. As for the communication issues, she opined that STUDENT has communication problems that lead to behaviors but that not all of his behavioral issues are a result of his communication deficits. Some, she believed, could be related to other areas such as sensory deficits or a mood disorder. [T. 349, 359-360]. She also opined that STUDENT would receive an appropriate communication system at the ***, being a system using pictures/symbols or using a visual schedule to assist him in understanding the environment, what was expected of him and what he was supposed to be doing and that this type of program would decrease his behaviors. [T. 362-363]. She also disagreed with STUDENT needing one-to-one instruction. She noted that children with autism like routine and need structure but an important part of their learning curve is to increase their ability to generalize skills with other people. She stated that STUDENT needs to learn how to deal with inconsistency and learn to be compliant with different people and not just one person. She also opined that to revert to a one-to-one student-teacher ratio would be a regression for him because he has been working with several different teachers at the ***. [T. 325-326]. She further opined that the three-to-one student teacher ratio proposed in his IEP was appropriate. [T. 327-328].

Dr. *** acknowledged she had not visited the Monarch School, but based on her review of the information about the School and its program, her concern was that she did not see much of a behavioral component in terms of the type of interventions the School would use with STUDENT. She mentioned, for example, that she did not observe in the IEP proposed by Dr. *** any specific behavioral goals to address physical aggression or that identified the interventions that would be used. [T. 324]. She also noted that STUDENT still had a high frequency of behavioral problems and was concerned by the School's lack of staff trained in restraint techniques.

***, one of STUDENT's special education teachers at the ***, also visited both the *** life skills program and the Monarch School. He opined that both placements were capable of implementing STUDENT's proposed IEP and providing him with an appropriate program. [T.; 426-427]. He did, however, indicate some concern over the Monarch School's lack of staff trained in restraint techniques and whether the Monarch School could effectively handle STUDENT's behavior. Mr. *** was involved in developing and implementing STUDENT's behavior intervention plan and he noted that STUDENT will occasionally have an incident of aggression or of self-injurious behavior in which he becomes a danger to himself or others and he needs to be restrained. [T. 404-405, 428]. He also opined that the *** life skills program seems to be the more appropriate program for STUDENT because of its life skills component and because it had the capability of providing the academic instruction he needed. [T. 415].

***, the Program Director at ***, also visited both the *** life skills program and the Monarch School. She mentioned her concerns about whether the Monarch School was capable of dealing with STUDENT's significant behavioral issues because its admission criteria indicated that it did not accept children who posed a threat of harm to self or others. [T. 460]. She also testified that she did not observe any children at the school comparable to STUDENT. She also was concerned about the lack of staff trained in restraint techniques. [461-462]. At the *** campus, she found all the staff was trained in restraint techniques, and she observed the TEACCH methodology being utilized in the classrooms with visual schedules. She also observed that Students were working on tasks. She opined that the life skills class at the *** campus was the more appropriate placement for STUDENT [T. 468]. She also disagreed with STUDENT receiving one-to-one instruction, believing that would be a step backward for him. She indicated that he was receiving some one-to-one instruction when appropriate but, for many activities, he can perform them with one or more students present. She noted that the *** ratio was three students per one teacher and that STUDENT was being successful in that program. [T.

470-473]. She also indicated that STUDENT has made great strides in being able to transition between different teachers. [T. 472].

In analyzing the conflicting evidence, I give only limited weight to the testimony of Dr. ***. His opinions are primarily based on the DIR educational methodology, the validity and reliability of which is not supported by the record in this proceeding. Additionally, I give his testimony critiquing the life skills program limited weight since it was based on only one observation of limited duration. Moreover, I recognize that Dr. ***'s factual observations made during this visit were directly controverted by Dr. ***'s testimony. She accompanied Dr. *** on his visit and observed what she opined to be an appropriate educational placement for STUDENT

Additionally, I find no factual basis for the claim that the proposed program lacks an integrated communication strategy to address STUDENT's severe communication disorder or that his behavior intervention plan does not adequately view his behavior as a component of his communication deficits. STUDENT's proposed IEP recognizes he has significant communication deficits that adversely affect his behavior. His behavior IEP specifically identifies communication deficits as a function of his behavior and provides appropriate interventions for dealing with his behaviors. Moreover, his IEP contains communication goals and objectives to improve his receptive and expressive language skills, social skills and cognitive skills. His IEP also provides for 30 hours per week of special education instruction, including 1 hour of speech services, 4.2 hours of listening, and 4.2 hours of recreation and leisure training. Accordingly, I find that STUDENT's IEP adequately addresses his communication needs. Concerning the issue of STUDENT's need for one-to-one instruction to make up for his loss of previous academic gains, I find no credible support in the record for this level of instruction. The evidence established that STUDENT is capable of being appropriately educated in a class with a three student to one teacher ratio, the same ratio under which he is currently being successfully educated at ***.

Accordingly, STUDENT's IEP as developed at the May 17, 2005 ARD Committee meeting is appropriate and reasonably calculated to provide him with an educational benefit. His IEP can be effectively implemented in the life skills program at the *** campus. Therefore, I find that the educational program proposed by Houston ISD for STUDENT for the 2005-2006 school year is reasonably calculated to provide him with a meaningful educational benefit and a resulting free appropriate public education. *Bd. Of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 175, 206-7 (1982).

Conclusions of Law

After due consideration to matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. Petitioner has the burden of establishing by a preponderance of the evidence that the instructional methodology proposed by Houston ISD in educating STUDENT is inappropriate, that is, not reasonably capable of implementing his IEP to the extent necessary to provide him with a meaningful educational benefit. Additionally, Petitioner, in seeking the Monarch School placement, a private school placement, has the burden of establishing that the instructional methodology proposed by the Monarch School is an appropriate instructional methodology reasonably capable of successfully implementing STUDENT's IEP. *See, School Committee of Burlington v. Department of Education*, 471 U.S. 359, 369-70, 85 L. Ed. 2d 385, 105 S. Ct. 1996 (1985).
2. Petitioner failed to establish by a preponderance of the evidence that the instructional methodology proposed by Houston ISD in educating STUDENT was inappropriate. *See, School Committee of Burlington v. Department of Education*, 471 U.S. 359, 369-70, 85 L. Ed. 2d 385, 105 S. Ct. 1996 (1985).
3. Petitioner failed to establish by a preponderance of the evidence that the instructional methodology proposed by the Monarch School is an appropriate instructional methodology reasonably capable of successfully implementing STUDENT's IEP. *See, School Committee of Burlington v. Department of Education*, 471 U.S. 359, 369-70, 85 L. Ed. 2d 385, 105 S. Ct. 1996 (1985).
4. STUDENT's IEP as developed by the May 17, 2005 ARD Committee is appropriate. It is reasonably calculated to provide him with an educational benefit. *Bd. Of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 175, 206-7 (1982).

5. The life skills program at the *** campus is an appropriate educational placement for implementation of Student's IEP as developed by the May 17, 2005 ARD Committee. It is the least restrictive environment for implementation of his IEP. *Bd. Of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 175, 206-7 (1982); *Daniel R.R. v. State Bd. Of Educ.*, 874 F.2d. 1036 (5th Cir. 1989).

6. STUDENT made meaningful educational progress and has achieved an educational benefit from his instruction at *** since April 29, 2004 and has received a free appropriate public education. *Bd. Of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 175, 206-7 (1982).

7. Petitioner's claims of denial of a free appropriate public education prior to April 29, 2004 are barred by the applicable one year limitations period. 19 Tex. Admin. Code §89.1151(c).

ORDER

After due consideration of the record and the foregoing findings of fact and conclusions of law, I ORDER that all relief requested by Petitioner is DENIED.

Finding that the public welfare requires the immediate effect of this Final Decision and ORDER, I hereby make it effective immediately.

SIGNED this 30th day of July, 2005.

/s/ James W. Holtz

James W. Holtz
Special Education Hearing Officer

STUDENT, BNF, V. AND STUDENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
VS.	§	HEARING OFFICER FOR
	§	
HOUSTON INDEPENDENT SCHOOL DISTRICT, Respondent	§	
	§	
	§	THE STATE OF TEXAS

SYNOPSIS

Issue: Whether Student with autism received a free appropriate public education in his residential placement at the *** since April 29, 2004?

Held: For School District. Evidence indicated that Student had made meaningful educational progress in his residential placement at the *** and received a free appropriate public education. The parties acknowledged that Student’s behaviors, although significant, had improved to the extent that he no longer needed residential placement. The parties agreed he could be returned to a day school program. Additionally, testimony from his special education teacher at *** confirmed that Student made educational progress, particularly in learning to generalize skills among various staff and settings. Also, a review of his academic goals and objectives shows some improvement in his skill levels in math, reading, listening, writing, vocational skills, expressive and receptive language skills, and self-help skills. Accordingly, Student was found to have made meaningful educational progress and to have achieved an educational benefit from his instruction at *** since April 29, 2004. This constituted a free appropriate public education.

Cite: *Board of Educ. v. Rowley*, 458 U.S. 176 (1982).

Issue: Whether instructional methodology proposed by school district in educating Student was inappropriate?

Held: For School District: Petitioner’s expert testimony as to the inappropriateness of the school district’s proposed TEACCH methodology was given limited weight and controverted by school district’s expert and factual witnesses. Petitioner’s claim that the proposed program lacked an integrated communication strategy to address Student’s severe communication disorder and that his behavior intervention plan did not view behavior as a component of his communication deficits, were found to be without merit. The proposed IEP recognized that Student had significant communication deficits that adversely affected his behavior. His behavior IEP specifically identified communication deficits as a function of his behavior and provided appropriate interventions for dealing with his behaviors. Moreover, Student’s IEP contained communication goals and objectives to improve his receptive and expressive language skills, social skills and cognitive skills. His IEP also provided for 30 hours per week of special education instruction, including 1 hour of speech services, 4.2 hours of listening, and 4.2 hours of recreation and leisure training.

Cite: *Board of Educ. v. Rowley*, 458 U.S. 176 (1982).

Issue: Whether the Development Individualization and Relationship (“DIR”) instructional methodology proposed by Petitioner’s expert and utilized at the Monarch School for educating students with autism was appropriate?

Held: For School District: Petitioner failed to present evidence establishing the reliability and validity of the DIR model.

Cite: *Board of Educ. v. Rowley*, 458 U.S. 176 (1982);

Issue: Whether IEP recommending Student's placement in the life skills class at the *** campus for the 2005-2006 school year was appropriate?

Held: For School District: The life skills program at the *** campus is an appropriate educational placement for implementation of Student's IEP as developed by the May 17, 2005 ARD Committee. It is the least restrictive environment for implementation of his IEP.

Cite: *Bd. Of Educ. of Hendrick Hudson Sch. Dist. v. Rowley*, 458 U.S. 175, 206-7 (1982); *Daniel R.R. v. State Bd. Of Educ.*, 874 F.2d. 1036 (5th Cir. 1989).