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| STUDENT b/n/f Parents | § | SPECIAL EDUCATION |
| PETITIONER | § | |
| | § | |
| VS. | § | HEARING OFFICER |
| | § | |
| KLEIN ISD, | § | |
| RESPONDENT | § | STATE OF TEXAS |

DECISION OF HEARING OFFICER

This matter was presented to this Hearing Officer after Parents the parents of the child, as well as the child himself, filed for a Due Process Hearing pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA04”), 20 U.S.C. §1400 et.seq., on June 27, 2008, complaining against Klein ISD, the respondent. The child turned 18 years of age in **, and was thus an adult child at the time this suit was initiated.

Through motions and orders issued prior to this hearing date, the child was adjudicated the sole petitioner proceeding in this action, although the adult child subsequently executed a Power of Attorney in favor of his parents, thus allowing them to remain in the courtroom throughout the hearing as his agents.

On the 3rd day of December, 2008, the petitioner and the respondent appeared at the Special Education Department at Klein ISD for a Due Process Hearing pursuant to IDEA04. The hearing concluded on the 5th day of December, 2008.

STUDENT the adult child, appeared in person and through his attorney of record, Dorene Philpot, and announced ready.

Klein ISD appeared through its district representative, Dr. Mary Rosenburg and through its attorney of record, Jeffrey Rogers, and announced ready.

A stenographic transcript of the proceeding was made by Patricia Gaddis, a duly licensed court reporter, of Gaddis Court Reporting in San Antonio, Texas.

“The Rule” was invoked by Ms. Philpot and all witnesses were admonished accordingly.

Evidence was presented through numerous documents and numerous witnesses, and all was considered in light of current law and the two year Statute of Limitations period governing this case pursuant to a prior order issued in this case.

Issues Raised and Relief Sought

The petitioner raised numerous issues concerning the district in its Due Process Complaint, which the petitioner relied upon at the Prehearing Conference held on July 18, 2008. These issues can be summarized as follows:

1. The district denied the child a free, appropriate public education (“FAPE”) by failing to comply with numerous procedural requirements of IDEA04 as enumerated in the Due Process Complaint, pages 15-16.
2. The district denied the child FAPE by failing to “develop a special education plan, including and especially related services that were commensurate with his unique and individualized needs”. (Due Process Complaint, p. 15).

The petitioner outlined a litany of relief sought from the Due Process Hearing, the main matter listed below:

1. That this hearing officer order the district to “pay or reimburse (the petitioners) for all direct and indirect costs related to the ** School for the

school years of 2008-2009 and if necessary, 2009-2010". (See, Due Process Complaint, p. 19); and

2. Other matters as enumerated in the Due Process Complaint on pages 17-20.

The hearing began on December 3, 2008 and concluded on December 5, 2008. After hearing the testimony of the witnesses presented, reviewing the exhibits from both parties which were admitted into evidence, and weighing such evidence in light of current law, the relief requested from the petitioner is hereby GRANTED.

HELD, for the Petitioner.

Findings of Fact

1. The parties each agree that the child is a ** grade student eligible for special education services under IDEA04 based upon the diagnosis of a Learning Disability. (See, Petitioner's Exhibit #9, p. 174). The Learning Disability is in the area of written expression. (See, See, Trial transcript, pp. 43, 152, 242; Respondent's Exhibit #11, p. 7; Petitioner's Exhibit #14, p. 343; Petitioner's Exhibit #7, pp. 130-131). His problems include grasping phonetics, transferring his ideas from his head to the written paper, omitting words when writing, spelling, and writing legibly. (See, Trial transcript, pp. 118-119, 160-162, 281-282).
2. The district has known about the child's writing issues since at least 2002. (See, Petitioner's Exhibit #14, pp. 433-435; Petitioner's Exhibit #4, p. 86).
3. The child's IEP goals and objectives have been virtually identical since at least 2006. (Compare, Petitioner's Exhibit #8, p. 146 with Petitioner's Exhibit

#9, p. 178; See, Trial transcript, pp. 60, 172). Those goals were that the child was to pass his classes, and he was to use his speller. (Id.)

4. All parties agree that the child is highly intelligent and has passed all of his classes while at ** School and at ** School. (See, Respondent's Exhibit #15, pp. 1-2; Trial transcript, pp. 106, 241, 322-323, 338, 385-386, 580).
5. The child was not using his speller and the district was aware of it. (See, Petitioner's Exhibit #8, p. 164; Trial transcript, pp. 59, 395-396).
6. The child purposefully dropped his Economics class in the Fall 2007 in order to derail his graduation in May 2008, for the sole purpose of entering ** since that school would not take any persons who had already graduated from high school. (See, Trial transcript, p. 508; Respondent's Exhibit #2, p. 2).
7. ** specializes in highly intelligent children with language disabilities. (See, Trial transcript, pp. 179, 335).
8. ** utilizes the Lindemood-Bell teaching method which is a program using a multi-sensory approach to address problems with the auditory processing of language, such as the types of problems affecting the child in this case. (See, Trial transcript, pp. See, Trial transcript, pp. 138, 311, 366-367). This teaching method is a peer reviewed and scientifically based technique which has been the subject of studies. (See, Trial transcript, pp. 138-140, 355, 366-367).
9. While at ** School, the child did the vast majority of his writing work at home. (See, Trial transcript, pp. 283-284, 286-287, 500-501; Respondent's Exhibit #2, p. 2). This was accomplished by having the child use the services

of either his mother or his brother. (See, Trial transcript, pp. 500-501, 511-512).

10. The child passed all portions of the TAKS assessment exams through the ** grade. (See, Respondent's Exhibit #16, p. 1). From the ** grade forward, the child passed all portions of the TAKS assessment, but failed on 3 separate occasions the TAKS writing assessment. (See, Respondent's Exhibit #16, pp. 2-3; Trial transcript, p. 126). Without passing this assessment, the child could not graduate high school.
11. The child had such difficulty in writing that according to his writing teacher it could take him several hours to write a few sentences and several days to write a few paragraphs. (See, Trial transcript, pp. 96, 98).
12. ** School is located in Massachusetts and the child has been enrolled there since Summer 2008. (See, Trial transcript, p. 311). He resides at ** and is part of the residency program. (See, Trial transcript, pp. 624-625). The ARD Committee was notified of this potential development and disagreed with this placement (See, Trial transcript, pp. 608-610; Respondent's Exhibit #2, pp. 2, 4), even though no evidence was presented that anybody from Klein ISD investigated ** and its appropriateness for the child. The only evidence presented was from Dr. Mary Rosenberg who testified she did not know if any such investigation was done. (See, Trial transcript, p. 64). No evidence of any investigation of ** is noted in the ARD Committee documentation which dealt with this matter. (See, Respondent's Exhibit #1 and #2).

13. ** has a daily one-on-one tutorial session with the child working with his disability, employing the Lindemood-Bell method. (See, Trial transcript, pp. 311-312). All classes at ** are structured so that language skills are exercised during the course materials. (See, Petitioner's Exhibit #11, p. 233; Trial transcript, pp. 347-348).
14. The educational program at ** is appropriate to address the Learning Disability of the child in this case.

DISCUSSION - APPLICATION OF FACTS AND LAW

The issues raised in this proceeding challenge whether the district denied the child FAPE, and if so, does such a denial warrant a placement of the child in a private school setting. IDEA04 requires that as a condition of federal funding, the local education agency must provide the child with a free appropriate public education. *Adam J. v. Keller ISD*, 328 F.3d 804, 808 (5th Cir. 2003). In order to comply with this requirement, the district must comply with the procedural requirements of IDEA04 and must develop an individual education program ("IEP") tailored to the unique and individual needs of the child which is reasonably calculated to enable the child to obtain an educational benefit. *Adam J. v. Keller ISD* at p. 809. The petitioner raises a denial of FAPE on both procedural and substantive grounds.

Issue No. 1 – Did the district denied the child FAPE by failing to comply with procedural requirements of IDEA04 as enumerated in the Due Process Complaint?

The petitioner alleges numerous violations of the procedural requirements of IDEA04. In particular, the petitioner alleges the district failed to 1) provide the child

with highly qualified instructors; 2) hire, train or supervise staff that were capable of recognizing and serving the child's unique and individual needs; 3) effectively collaborate with key stakeholders, by predetermining prior to the ARD Committee, the educational plan for the child; 4) provide ongoing progress of the IEP goals in a timely manner; 5) provide ongoing progress of the IEP goals in an objectively verifiable manner; 6) report information regarding the success or lack of success of the child's IEP to the child and his family in an understandable, measurable, and quantifiable way; 7) provide the child non-academic and related services commensurate with his unique and individualized needs; 8) provide a transition plan commensurate with his unique and individualized needs; 9) consider or provide the child with information about non-academic services such as counseling, social work services and other related services and therapies; and 10) develop a special education plan which addressed the child's unique needs. (See, Due Process Complaint, pp. 15-16).

No evidence was presented during this proceeding that the child's instructors were not highly qualified, or that the district did not hire, train or supervise staff that was capable of serving the child's unique needs. Likewise, there was no credible evidence presented that the child was in need of non-academic services such as counseling and social work services. All the child's teachers who were asked testified the child interacted well with other students, participated in class discussions, and was socially functional. (See, Trial transcript, pp. 292-293, 651, 656-657, 661). The child's demeanor during the three day hearing was also pleasant and he did not appear to have social issues. There was also no evidence that any of the ARD Committee members had collaborated

prior to the ARD Committee meetings to predetermine the child's educational plan. These allegations are all without merit.

The petitioner also complains that the district failed to provide timely and objectively verifiable progress on the child's IEP goals, and that any such progress reported was not done in a measurable and understandable manner. The child's mother testified that the only time they received progress reports on the child's IEP goals and objectives was at the annual ARD Committee meetings. (See, Trial transcript, p.561). However, the child's IEP goal was that he pass his classes, and the child's mother admitted that report cards were being sent home throughout the year. (See, Trial transcript, p.608). Thus, the report cards and the progress reports would have been a constant gauging of the progress the child was making towards his IEP goal. Report cards are routine and are readily understood. This allegation, too, is without merit.

The petitioner further alleges that the district failed to create a transition plan for the child commensurate with his needs. IDEA04 states that a child's IEP must include, beginning no later than the first IEP to be in effect when the child is 16 and updated annually thereafter, (1) appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills, (2) the transition services (including courses of study) needed to assist the child in reaching those goals, and (3) beginning not later than 1 year before the child reaches the age of majority under state law, a statement that the child has been informed of the child's rights under this title, if any, that will transfer to the child on reaching the age of majority. 20 U.S.C. §1414(d)(1)(A)(VIII). It is without dispute that the child's IEP contained no postsecondary goals which were based upon

transition assessments as testified to by Dr. Mary Rosenberg, the district's representative at this hearing. (See, Trial transcript, p.47). A transition plan must be based upon the child's needs, taking into account the child's strengths, preferences and interests. 34 C.F.R. §300.43(a)(2). It must set measurable goals which are results-oriented. In this case, a Transition Services Supplement and an Individual Transition Plan was made part of the child's IEP but it contains only general information which does not satisfy the IDEA04 mandates. (See, Petitioner's Exhibit #8, pp. 159-160; Petitioner's Exhibit #9, p. 191; Respondent's Exhibit #4, p. 28; Respondent's Exhibit #5, p. 28). The Transition Services Supplement itself states "Transition services are a coordinated set of activities designed within a results oriented process that is focused on improving the student's academic and functional achievement to facilitate the student's movement from school to post-school activities." (See, Petitioner's Exhibit #9, p. 191). There were no such coordinated activities or goals in this child's IEP. (See, Petitioner's Exhibit #8 and #9; Respondent's Exhibit #4 and #5).

Lastly, the petitioner alleges the district failed to develop an IEP based upon the child's unique needs. That IDEA04 requires an IEP be crafted in light of the individual and unique needs of the child is undisputed. 20 U.S.C. §1414(d)(1)(A); See Also, Adam J. v. Keller ISD at p. 808. It is the fundamental requirement of IDEA04. In essence, every child is unique in their strengths and their weaknesses and the education program specific to them must be tailored to address their particular needs. The IEP developed for the child "need not be the best possible one, nor one that will maximize the child's educational potential; rather, it need only be an education that is specifically designed to meet the child's unique needs, supported by services that will permit him 'to benefit'

from the instruction.” *Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245, 247-248 (5th Cir. 1997); *Adam J. v. Keller ISD* at p. 808. IDEA04 guarantees only that the child will receive a “basic floor of opportunity” consisting of specialized instruction and related services which are individually designed to provide an educational benefit, *which must be meaningful and likely to produce progress.* *Cypress-Fairbanks ISD v. Michael F.* at p. 248 (emphasis added). By definition, the IEP must be a program that is specific to the child based upon the child’s needs, and it is the IEP that must be designed to provide a meaningful educational benefit to the child. Thus, it is the IEP that is to be scrutinized in a case such as this.

In this case, the child has a Learning Disability in the area of written expression. (See, Trial transcript, pp. 43, 152, 242; Petitioner’s Exhibit #14, p. 343; Petitioner’s Exhibit #7, pp. 130-131). This Learning Disability gives the child problems with spelling, phonetics, legible handwriting, omitting entire words when writing, and the ability to effectively transfer ideas from his mind to the paper. (See, Trial transcript, pp. 118-119, 160-162, 281-282). So difficult is the task of writing for this child that according to his writing teacher, **, it could take the child two to four days to write a single paragraph. (See, Trial transcript, p. 96). He further testified that it could take a week and a half to write one handwritten page. (See, Trial transcript, p. 98). The child’s mother testified that he cannot take a simple phone message. (See, Trial transcript, pp. 565, 621).

In February or March 2008, **, one of the child’s regular education teachers, saw for the first time the child laboring over a writing assignment in class. ** testified the child was having trouble getting his ideas to the page. So concerned was she that she

called the child's parents. (See, Trial transcript, pp. 280-282). This problem went unnoticed to ** prior to this incident because the child would not turn in his journal assignments which were typically done in class (See, Trial transcript, pp. 283-284), and the child did almost all his writing at home where he would receive help from his mother or his brother. (See, Trial transcript, pp. 283-284, 286-287, 500-501; Respondent's Exhibit #2, p. 2).

It is undisputed by all parties to this action that this child is highly intelligent. He reads very well and has no trouble comprehending the material he reads. (See, Trial transcript, pp. 112; Respondent's Exhibit #16, pp. 1-3). If this child were NOT a special education child with the rights and protections outlined in IDEA04, then this child would be required to pass all his classes and pass all portions of the state assessment exam (the TAKS) in order to graduate. In short, the child would have to pass his classes like all other children by making a 70% or better grade in his classes, and he would also have to take the TAKS exam without any accommodations and achieve a passing mark in all areas. However, this child IS a special education child afforded the protections of IDEA04. Even so, the child's IEP since 2006 has had the same goals and objectives: (1) pass all his classes with 70% mastery, and (2) use his speller. (Compare, Petitioner's Exhibit #8, p. 146 with Petitioner's Exhibit #9, pp. 178; See, Trial transcript, pp. 60, 172). The first goal listed in the IEP has nothing to do with the child's Learning Disability. It is a goal that is the same for all non-special education students who desire to graduate. The second goal is designed to help the child with his spelling problem, and this goal was not being met since all of the child's teachers had reported in an Occupational Therapy Re-Evaluation as early as 2006 that the child did not use the

speller. (See, Petitioner's Exhibit #8, p. 164; Trial transcript, pp. 59, 395-396).

Furthermore, such a goal is not measurable, in violation of IDEA04, and it does not address the core problems associated with this child's Learning Disability. Thus, this child went through the last two years of school at Klein ISD with essentially no goals and objectives different from a non-special education child. That being said, the child still made passing grades in his classes, but that was in spite of his IEP and not because of it. The district failed to develop and implement an IEP which was created to address the unique and individual needs of the child in order to provide the child with an educational benefit.

The failure to implement a transition plan and the failure to develop an IEP tailored to the child's unique needs amount to procedural violations of IDEA04. Pursuant to the language in IDEA04, the question remains whether (1) the failure impeded the child's right to FAPE, (2) the failure significantly impeded the parents' opportunity to participate in the decision making process regarding the provision of FAPE for the child, or (3) the failure caused a deprivation of educational benefits to the child. 20 U.S.C. §1415(f)(3)(E)(ii). As stated by the Fifth Circuit, after a finding that a procedural violation has occurred, the court must then determine whether the child's IEP as developed by the ARD Committee was reasonably calculated to enable the child to receive educational benefits. Adam J. v. Keller ISD at p. 809.

Did the procedural violations cause a deprivation of educational benefits to the child?

The child's writing while at Klein ISD was hardly legible and extremely difficult to follow as noted by the child's teachers. (See, Petitioner's Exhibit #8, p.163-164) **,

the child's English III teacher, told the Occupational Therapist that the child's handwriting was not legible to grade; **, the child's Theater Arts teacher, said the same thing. (See, Petitioner's Exhibit #8, p. 164). Writing samples from his initial classes at ** School demonstrate the child's writing skills (See, Petitioner's Exhibit #14, pp. 370-373), and in this hearing officer's opinion they are not good. The district knew that the child had serious writing problems, and ** was suspected by the district as far back as February 6, 2002. (See, Petitioner's Exhibit #4, p.86). This document is a Klein ISD Re-Evaluation report which noted the child "exhibits may symptoms consistent with a diagnosis of ** or a significant writing disorder." *Id.* ** testified that if the child used the Kurtweil program, he could write "tops" 6 sentences in forty minutes. (See, Trial transcript, p.289). Instead of dealing with the problem and its causes, the district encouraged the child to do his writing at home hoping the family would help the child. (See, Trial transcript, pp.286-287). The district knew the child's desire was to attend college after completion of high school. (See, Respondent's Exhibit #4, p.28; Trial transcript, pp.530-531.) To attend college without adequate writing skills would be extremely difficult. Most classes require pages of notes be taken during each class lecture and many exams are in essay format. Transition goals are results-oriented as codified in IDEA04. As the district's own Transition Services Supplement states, "Transition services are a coordinated set of activities designed within a results oriented process that is focused on improving the student's academic and functional achievement to facilitate the student's movement from school to post-school activities." (emphasis added) (See, Petitioner's Exhibit #9, p.191). There were no transition goals developed or implemented for this child to attain the result of improved academic or functional

achievement to assist the child in moving from high school to college. The same is true of the child's IEP. No goals or objectives were implemented to assist the child with his writing problems, his spelling problems (or the child's refusal to use the speller), his phonetic problems, his omission of words during writing, or his problems of moving ideas from his mind to the paper. The child was simply asked to pass his classes every year and to use his speller. Those were his IEP goals and objectives.

Did the child receive 'an educational benefit' from his IEP? It is this hearing officer's opinion that the answer to that question is "No" because the child's IEP, including the lack of a proper transition plan, failed to address the unique disabilities of the child. Did the child pass his classes and receive an educational benefit *from those classes*? Yes, but he received a benefit from those classes because of his high intelligence and family support, not because of his IEP.

The child easily passed all portions of his state assessment exam with the exception of the writing portion. He failed the writing portion on 3 separate occasions, and under his IEP he could not have graduated high school without passing it. The ARD Committee should have taken action to develop an appropriate IEP to address the child's unique disability from the start. Certainly by early 2002 when the district was made aware of "symptoms of ** or a significant writing disorder" (See, Petitioner's Exhibit #4, p. 86), the child's IEP should have been modified to provide services, goals and objectives to meet the child's needs. (However, this failure is not the basis of any relief granted in this Order as it is outside the Statute of Limitations period allowed in this hearing. The same is true for any other references to deficiencies which are outside of the two year Statute period.) When the ARD Committee in January 2004 recognized the

child's disability necessitated a "significant modification in curriculum and methods" (See, Petitioner's Exhibit #6, p. 122), the IEP should have been modified to address the child's needs. No such "significant modification" was done. Afterwards in 2005, when the child's teachers were reporting the child was not making adequate progress in writing (See, Petitioner's Exhibit #7, p. 131), the IEP should have been modified to address this problem. When the child's teachers continued reporting that the child was not using his speller as early as 2006 (See, Petitioner's Exhibit #8, p. 164; Trial transcript, pp. 59, 395-396), which was his second IEP goal, the ARD Committee should have met to work with the child on finding a solution to the child's spelling problems in another way. When some of the child's teachers, as noted in the December 6, 2006 Occupational Therapy Re-Evaluation, stated the child's handwriting is not legible to read or grade (See, Petitioner's Exhibit #8, p. 164), the IEP should have been modified to address this continuing problem. The IEP should have been modified to address the child's needs after the child failed the writing portion of the TAKS exam the first time in the Spring 2007. The same is true of the second and third time the child failed. Throughout all this time and with all this feedback, the ARD Committee did not modify the child's curriculum, the district's teaching methods, the child's goals or objectives. The district's response, as stated in an ARD Committee Re-evaluation meeting held on February 26, 2008, was the child "is doing well in school". (See, Petitioner's Exhibit #10, p.229). However, the Supreme Court clearly stated that just because a child is passing from grade to grade does not necessarily mean the child is receiving FAPE. *Hendrick Hudson Central School Dist. v. Rowley*, 458 U.S. 176, 203 (1982.) While passing grades is an important factor to consider when reviewing whether a child's IEP provided the child with FAPE (*Id.*), the

IEP must be examined in light of the child's particular disabilities. In spite of all these problems, the child continued with essentially the same IEP from the Fall of 2006 through May 2008 which failed to address the child's unique Learning Disability, and thus an educational benefit which was meaningful and likely to produce progress was not given to the child through his IEP.

In Cypress-Fairbanks ISD v. Michael F., the Fifth Circuit reviewed whether the district had provided the child a FAPE. In that case the child was eligible for special education services as Other Health Impaired – ADHD and he also had Tourette's Syndrome. The ARD Committee met in August 1992 to develop an IEP for the child. Due to some behavior problems associated with his disabilities, the ARD Committee met again two months later to supplement the child's IEP by adding a behavior intervention plan. Four months later, the IEP was modified because of the child's behavior and the child was placed in a self-contained behavior classroom for 3 subjects. These ARD Committee meetings continued, ultimately resulting in 8 ARD Committee meetings over a 16 month period, so that the child's IEP was constantly being modified based upon the child's reported progress and needs. The Fifth Circuit held that the district had provided the child a FAPE in compliance with IDEA in that case.

In Houston ISD v. Bobby R., 200 F.3d 341 (5th Cir. 2000), the child was eligible for special education services as a child with Dyslexia and with Attention Deficit Disorder, resulting in Learning Disabilities in the areas of reading, oral language, and written skills. An ARD Committee met in January 1994 to develop an IEP for the child's particular needs. At the time the district was having problems with personnel and the ARD Committee met again a few months later to modify the child's IEP to provide

compensatory services. The following school term, the district became aware that the child was learning better when information was presented in a multi-sensory fashion. As such, the ARD Committee held a meeting and agreed to modify the child's IEP so that the district would bring in a teacher who was skilled in administering an Alphabetic Phonics (AP) program, who would use this program for the child. This AP program targeted the child's unique Learning Disabilities. Later that school year, the ARD Committee met again and made 7 modifications to the child's IEP based upon the child's needs. The Fifth Circuit held that the district had complied with IDEA and provided the child a FAPE in that case.

In these cases, as well as the case of Adam J. v. Keller ISD, the districts regularly held ARD Committee meetings to modify the child's IEP based upon the latest developments, the child's progress and needs. New programs were administered, modifications were made, and other services were provided as dictated by the child's circumstances. In the present case, the ARD Committee failed to develop and modify the child's IEP to address his unique needs in spite of the evaluation data in its possession, failing TAKS scores, and teacher reports on the child's inability to write effectively and legibly. Even after all the data was provided to the ARD Committee as referenced above, the child's IEP goals and objectives were never modified and remained exactly the same from 2006 to 2008. (Compare, Petitioner's Exhibit #8, p. 146 with Petitioner's Exhibit #9, pp. 178; See, Trial transcript, p. 172). The child in this case was deprived of an educational benefit from his IEP.

Issue No. 2 – Is placement at ** School an appropriate placement for this child?

As indicated in the pleadings on file, the child seeks reimbursement for placement in the ** School, a private institution. When a party seeks reimbursement from a school district for private placement, the petitioner bears the burden of proof in two areas: (1) the petitioner must present sufficient evidence to overcome the presumption that the IEP developed by the district was appropriate, and (2) the petitioner must also prove that placement in the private school is appropriate. Cypress-Fairbanks ISD v. Michael F. at p. 248. Since it is the ruling of this hearing officer that the child's IEP was not appropriate as it failed to confer an educational benefit to the child as required by IDEA04, the issue of whether placement is appropriate for this child at ** School must be addressed.

Testimony was given by three witnesses regarding the program offered by ** School, as well as by the child and his mother. Dr. Rosenburg, the district's representative, admitted she was unaware of any investigation that was made of ** School by Klein ISD after being notified by the petitioner of his desire to enroll at **, and thus virtually no evidence was offered regarding the ** program by the district's witnesses.

** is a school which specializes in children with high IQs that have severe Learning Disabilities that are language based. (See, Trial transcript, pp. 179, 335.) Dr. ** testified as an expert for the petitioner. While this hearing officer did not find portions of Dr. **'s testimony to be credible due to speculation, conclusory statements, exaggeration, and a lack of knowledge regarding the latest regulations concerning the identification of Learning Disabilities under IDEA04, his testimony as to the Lindemood-Bell methodology of teaching was credible. ** School administers the Lindemood-Bell teaching methodology. (See, Trial transcript, pp. 138, 311, 366-367). Lindemood-Bell is

a peer reviewed, scientifically based methodology which has been the subject of studies over the past ten years. (See, Trial transcript, pp. 138-140, 355, 366-367). This program addresses the auditory processing of language in a multi-sensory approach through the use of the sight, sound and feeling senses.

**, the Academic Case Manager at **, described this program in detail and how it was applied to the ** student. (See, Trial transcript, pp. 314-316). **, a longtime teacher who happens to be certified in special education, is the child's one-on-one tutor at ** who also described the some of the aspects of the program as pertaining to this child. (See, Trial transcript, pp. 367-369). ** is structured so that each student in the school's standard program receives one-on-one tutoring to work specifically on that student's individual disabilities and weaknesses. (See, Trial transcript, pp. 311-312). All classes are structured to help develop the student's language skills utilizing multi-sensory methods. (See, Petitioner's Exhibit #11, p. 233; Trial transcript, pp. 347-348). The program is also highly individualized for each student. (See, Trial transcript, p. 333). This ensures the child will be working on his particular areas of weakness and need throughout the school year. ** has graduation requirements which must be satisfied by the student if he is to graduate. (See, Trial transcript, pp. 343-344). This child was admitted to a two year program at ** based upon his initial assessment at **, and ** believes that after completing the program, the child should be ready to attend college. (Trial transcript, pp. 339-340, 342).

The child in this case was admitted to ** to begin his studies in the Summer 2008. (See, Petitioner's Exhibit #11, p.233). His summer session consisted of two 45 minute one-on-one tutorials on a daily basis as well as some small classes. According to **, **

and ** documentation, the child made good progress over the summer program in dealing with his disabilities and continues to do well at the present. (See, Trial transcript, pp. 328-330, 367-368, 370; Petitioner's Exhibit #12, pp. 260-268, 351).

The child is part of the ** residential program. He lives on campus in the dormitories. The residential program consists of evening study hall on a daily basis, a Saturday school component, structured activities in the afternoons, and a community service component. (See, Trial transcript, p.352-353). The evening study hall has ** staff available to assist whatever student may need help with assignments or anything else. (See, Trial transcript, p.353). The Saturday school component is implemented approximately once per month and Saturday activities are considered mandatory. *Id.* This hearing officer heard the evidence regarding the child's social skills. This hearing officer did not find the child was in need of social skills training. However, ** is located in Massachusetts and the child necessarily must reside in that area in order to attend school there. No evidence was presented that the residential program at ** was excessive in any manner, and the activities in that program would be beneficial to the child.

This hearing officer finds the program and the placement at ** School to be appropriate for this child.

It was disclosed during the course of the hearing that two Houston area schools offer the Lindemood-Bell methodology employed at ** School (See, Trial transcript, p. 214), but the only testimony offered at the hearing was that such a placement in either of these schools would not be appropriate for the child. Dr. ** testified that these schools were using only aspects of the Lindemood-Bell methodology which when coupled with this child's high IQ made the setting inappropriate. (See, Trial transcript, pp.214-215).

These were the only reasons presented as to why this placement was not appropriate, and no evidence was offered by the district that such a placement would, indeed, be appropriate for the child. In essence, the district did not challenge the evidence submitted by the petitioner that these Houston area schools were not appropriate. As this hearing officer is constrained by the evidence presented as required by the Texas Rules of Civil Procedure which governs these proceedings, and since this hearing officer did not find the statement to be unbelievable or otherwise not credible, the evidence that the Houston area schools are not an appropriate placement for the child is accepted as true.

Conclusions of Law

1. The child is a student eligible for special education and related services under the provisions of IDEA04, and its related statutes and regulations.
2. Klein ISD is the local education agency responsible for the providing the child with the free appropriate public education pursuant to IDEA04, and is a legally constituted independent school district operating as a political subdivision of the State of Texas.
3. Klein ISD violated the procedural safeguards of IDEA04 by failing to implement a transition plan with appropriate transition goals and by failing to develop an IEP through the ARD Committee to address the individual needs of this child.
4. The IEP developed by the ARD Committee failed to confer an educational benefit to the child, which was meaningful and likely to produce progress.

5. The child's placement at ** School is appropriate.

ORDER

Based upon a preponderance of the evidence and the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the relief requested by the petitioner is GRANTED.

IT IS ORDERED that Klein ISD shall convene an ARD Committee meeting to develop a transition plan for the child with appropriate transition goals, and to develop an IEP based on the child's present levels of performance with appropriate goals and objectives targeting the child's disabilities.

IT IS ORDERED that Klein ISD shall reimburse the petitioner for the cost of tuition, books, fees, and the residential component associated with enrolling the child in the program at ** School from June 2008 through the time the child completes that program. However, the district shall not be liable for any costs associated with this program beyond May 2010. Based upon the testimony presented, the district shall reimburse the petitioner in the amount of \$66,630.00 which represents the moneys that the petitioner has paid to date. (See, Petitioner's Exhibit #14, p.412). IT IS ORDERED that this payment shall be made to the petitioner by Klein ISD within 30 calendar days from the date of this Order. All future payments made for these purposes shall be reimbursed by Klein ISD to the petitioner within 30 calendar days of being presented with an invoice.

IT IS FURTHER ORDERED that if the child meets the criteria for graduation at ** School by the end of the Summer 2009 and is no longer in need of further enrollment

at ** School, then Klein ISD shall not be obligated to reimburse the petitioner the costs associated with enrollment for the 2009-2010 school year.

SIGNED this 9th day of January, 2009.

Tomas Ramirez III,
Special Education Hearing Officer

Cases Cited

Hendrick Hudson Central School Dist. v. Rowley, 458 U.S. 176 (1982)
Cypress-Fairbanks Indep. School Dist. v. Michael F., 118 F.3d 245, 248 (5th Cir. 1997)
Adam J. v. Keller ISD, 328 F.3d 804, 808 (5th Cir. 2003)
Houston ISD v. Bobby R., 200 F.3d 341 (5th Cir. 2000)

Statutes and Regulations Cited

20 U.S.C. §1400 *et seq.*
20 U.S.C. §1414(d)(1)(A)(VIII)
20 U.S.C. §1415(f)(3)(E)(ii)
34 C.F.R. §300.43(a)(2)

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| PETITIONER | § | |
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| VS. | § | HEARING OFFICER |
| | § | |
| KLEIN ISD, | § | |
| RESPONDENT | § | STATE OF TEXAS |

SYNOPSIS

ISSUE: Whether the district violated the procedural requirements of IDEA04 by failing to develop a transition plan with appropriate transition goals crafted around the child's unique needs, and by failing to develop an appropriate IEP for the child.

HELD: For Petitioner.

ISSUE: Whether the district denied the child FAPE by having an IEP in place which failed to confer an educational benefit to the child.

HELD: For Petitioner.