

DOCKET NO. 017-SE-0915

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

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by the student’s parents and next friends (hereinafter “Petitioner” or “the student”) brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of the Pflugerville Independent School District (hereinafter “Respondent” or “the district”).

Petitioner was represented by Christopher Jonas, an attorney in Corpus Christi, Texas, and James Hollis, an attorney in San Antonio. Respondent was represented by Charlotte Salter, with the Austin office of the law firm Walsh, Gallegos, Treviño, Russo & Kyle, P.C.

Petitioner’s request for hearing was filed on September 21, 2015. After continuances of the hearing for good cause, the matter came on for hearing in the offices of the Pflugerville Independent School District in Pflugerville on December 15 and 16, 2015. The parties jointly moved for an extension of the decision due date to provide an opportunity for written closing argument. After two continuances granted on the joint motions of counsel to provide additional time to file their closing arguments, the decision in this matter is timely issued today.

Petitioner alleged the district has failed to offer a free appropriate public education (“FAPE”) for the student, the student’s education disabilities prevent placement within the district, that residential placement is required to provide the student with FAPE, that Petitioner is entitled to reimbursement for private evaluations provided to the district by the parents, reimbursement for

residential placement, and compensatory educational services which were denied the student for a year.

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

Findings of Fact

1. The student is ***.¹ [Petitioner's Exhibits 1, 3, 4, 7, 9, 10, 15, 16 & 17; Respondent's Exhibits 1, 6-15, 19-23 & 35; and Transcript Pages 8-9]

2. The student *** by Student's parents when Student was ***. [Petitioner's Exhibits 1, 3, 4, 7, 9 & 10; Respondent's Exhibits 5, 9, 10, 20 & 23; and Transcript Pages 8, 11 & 14]

3. The student's parents learned that *** which could lead to developmental risks. [Petitioner's Exhibits 3, 4 & 10; Respondent's Exhibits 3, 19-23 & 35; and Transcript Pages 8, 11 & 14]

4. When the child ***, Student had significant developmental delays in communication, socialization, motor skills, and emotional maturity. [Petitioner's Exhibits 3-5, 9, 10 & 13; Respondent's Exhibits 3, 5, 7, 9-11, 18-20 & 35; and Transcript Pages 15-18, 237-257, 264-265]

5. The student received services through the *** program in ***, then entered a *** in the ***. [Respondent's Exhibit 1 and Transcript Pages 24-28]

6. When the child was *** old, Student's parents ***. The student's relationship with *** because of Student's behaviors. [Petitioner's Exhibits 9 & 12 and Transcript Pages 32-33 & 186-187]

¹ The student's *** is considered in this matter because of its relationship to Student's conduct and Student's emotional, psychological and psychiatric conditions.

7. Student's behavior was described as "****" by psychologists. Student ***. Student ***. Student has attempted to ***. [Petitioner's Exhibit 9 and Transcript Pages 32-33 & 186-187]

8. Many mental health professionals have described in the student symptoms of *** which is diagnosed when found in children who have been ***. [Petitioner's Exhibit 12 and Transcript Pages 27, 104 & 399]

9. The student began attending school in *** in the *** ("****") in *** and continued there into Student's *** year. The student was eligible for special education and related services for emotional disturbance, specific learning disabilities, and speech impairment. Assessment data also considered the diagnosis of autism and other health impairment. [Petitioner's Exhibit 7; Respondent's Exhibit 6; and Transcript Pages 21-25, 81-84, 151-155 & 188]

10. At ***, the student made educational progress and passed from grade to grade until Student left ***. Student has average intellectual functioning. The student's individualized education program ("IEP") included goals in behavior, speech fluency and pragmatics, math, reading and counseling. The student received counseling as a related service. ***'s data showed that the student was successful in Student's educational placement while Student lived at home. [Petitioner's Exhibit 7]

11. The student's parents, however, testified that the student was not being successful at school. [Transcript Pages 44-48]

12. The student also was having trouble at home. The parents testified Student was non-compliant, was not responsible in Student's "personal self-care", and engaged in "sophisticated lying" while in Student's last year at home. According to the student's mother, "the family was being affected, but was being affected more so than usual." [Transcript pp. 44-45]

13. The student was removed from school by Student's parents and placed in ***, a private residential facility in ***, in ***. [Petitioner's Exhibit 4; Respondent's Exhibit 11; and Transcript Pages 33-34, 50-52, 61-68, 85-100 & 164-196]

14. The student remained at *** until *** when Student reached the ***. While at ***, the student was involved in *** and was ***. [Petitioner's Exhibit 7; Respondent's Exhibits 6 & 11; and Transcript Page 33]

15. The student's parents retained a consulting firm to search for residential placement facilities for the student and, on recommendation, placed the student at *** in **. Student resided at *** from *** until **. The student's parents learned that the student *** and they transferred Student to *** and neuropsychological assessment. [Petitioner's Exhibit 3; Respondent's Exhibit 9; and Transcript Pages 34-35]

16. The student's *** is complicated with elements of **. [Petitioner's Exhibits 3, 10, 12 & 15; Respondent's Exhibits 5, 7, 9-11 & 19-23; and Transcript Pages 32-35, 42, 62-63, 71-72, 113-116, 125-126, 188, 270, 282, 304-306 & 312-342]

17. Records from *** and *** do not indicate any problems with the student accessing Student's academic instruction. [Petitioner's Exhibits 4 & 5 and Respondent's Exhibits 7 & 11]

18. After Student's evaluation at the ***, the student was enrolled in ***, a residential facility in ***, on **. The student currently resides at ***, attends the *** grade, and attends **. *** is a private school operated by *** on a campus a few miles from the residential facility. [Petitioner's Exhibits 15-17; Respondent's Exhibits 8 & 10; and Transcript Pages 33-35 & 301-304]

19. *** is a residential treatment program offering specialized treatment, rehabilitation, and habilitation for persons with emotional, psychological, developmental or behavioral impairments. [***, R. 501-19 and Transcript Page 310]

20. *** requires residential programs to make education available to their residents and allows them the option of operating their own private schools. [***, R. 501-19-12(A)]

21. Upon Student's admission, *** developed a Master Treatment Plan including psychiatric treatment with individual, group and family therapy. The plan included seven different goals for the student in Student's treatment. One goal addressed education. The goal is that the student "continue to work towards *** and some form of *** education." [Petitioner's Exhibit 15]

22. *** is a small school with approximately *** students who are supervised continuously. Students are supposed to be in line-of-sight of an adult at all times. The students are to be monitored and kept on task throughout the school day. A therapist is on campus at all times. [Respondent's Exhibit 8 and Transcript Pages 206-212]

23. The student has made educational progress at ***. [Petitioner's Exhibit 15; Respondent's Exhibit 8; and Transcript Pages 304-306]

24. Representatives of *** testified at the hearing. One witness stated that the reason for the student's placement in the residential facility is treatment for *** and safety. The witness testified: "Student's *** is the largest portion of Student's treatment here at ***." [Transcript Pages 307 & 317-318]

25. The records from *** show that the student ***. The incident was reported to ***. [Petitioner's Exhibit 15 and Transcript Pages 313-317]

26. *** representatives testified that the student may be asked to leave if there are additional incidents of ***. [Transcript Page 319]

27. A neuropsychologist who evaluated the student prior to Student's enrollment at *** testified that the student struggles to manage Student's impulsivity, that Student's emotional intelligence is lower than Student's cognitive abilities, and that Student has very low daily living

skills and low socialization. The psychologist believes Student is autistic but Student's autism is atypical and Student has significant social and emotional delays. Student is impulsive, highly distractible, and is ***. The student needs help in managing Student's behaviors, and while capable of developing skills, Student is often incapable of generalizing Student's skills. The psychologist believes the student needs an environment where Student is safe and recommends a residential treatment center in which Student receive help for Student's myriad disabilities. The psychologist testified that the student's difficulties constitute "mental disorder"(s) according to the Diagnostic and Statistical Manual of Mental Disorder and believes that... "whatever we do for (the student) primarily is in response to a mental illness." [Transcript Pages 225-270 & 278]

28. While attending ***, the student's records showed that Student was making educational progress in academic instruction with intensive counseling services. Representatives of Pflugerville ISD observed the student at *** and ***. In reviewing the records at ***, however, there was no reference to an IEP from *** until sometime in the spring and there was no functional behavior assessment ("FBA") or behavior intervention plan ("BIP"). The district's observers present for several days did not report seeing specially designed instruction for the student and found the focus of the school's program was therapeutic services for the *** of the student. [Respondent's Exhibit 8 & 16 and Transcript Pages 368-383]

29. The student's family moved from the *** into the Pflugerville Independent School District in *** and notified the district that the student was in a residential placement *** but would need educational services upon Student's return home. [Petitioner's Exhibit 1 and Transcript Pages 341-342]

30. The district's special education staff met with the student's parents to discuss the student's needs and gathered information from the student's current placement and from ***. The district held an admission, review and dismissal ("ARD") meeting on ***. The district accepted

the student's current educational disability criterion of autism and made recommendations for an educational program for the student. [Respondent's Exhibit 2 and Transcript Pages 343-345]

31. After the ARD committee meeting, the district obtained consent from the student's parents to send a licensed specialist in school psychology ("LSSP"), a speech language pathologist, and the special education director to visit the *** and *** for a number of days in *** to observe the student and assess Student's current educational and residential programs. The special education director provided a memorandum of their findings to the district. [Respondent's Exhibit 16; Transcript pp. 344-381]

32. The district completed a full individual evaluation ("FIE") for the student in *** based on a review of record, parent interviews, and timely evaluations of the student. [Respondent's Exhibit 2 and Transcript Pages 382-387]

33. An ARD committee meeting was held on ***, and the committee proposed eligibility for the student based on eligibility criteria of autism and speech impairment. The student's parents attended the meeting but disagreed with the educational programming offered them and declined an opportunity to reconvene the ARD. [Respondent's Exhibits 2 & 34 and Transcript Pages 382-387]

34. The student's ARD committee proposed an IEP for the student with goals and objectives based upon current evaluation, a self-contained placement on a regular campus, use of resource for instruction, and related services of speech and assistive technology. The program was individualized on the basis of the student's assessment and performance; the services were to be provided in the least-restrictive environment; the services were to be coordinated in a collaborative manner by key stakeholders; academic and non-academic progress could be realized under the program. [Respondent's Exhibit 2 and Transcript Pages 381-390]

35. Petitioner's request for hearing was filed on September 21, 2015 – after the ARD meeting in *** and prior to the district's visit to the student's school and residential facility ***.

36. ***, the student's mother sent an email message to a staff member at the *** where the student was evaluated prior to Student's enrollment at ***. The message said in part: "Today I met with the school district in hopes to begin the conversation of what [the student's] program would look like if Student were to attend [name redacted] *** school starting ***. I had no intention other than beginning the conversation with the staff. They were very warm and welcomed any information I could share about [the student's] complexities. [Husband's name redacted] and I do not intend to enroll [the student] nor do we intend to bring Student home but PFISD (Pflugerville ISD) does not know this. We will be pursuing financial assistance through our school district eventually. Right now we are gathering information and beginning the communication with them.....Our family has developed healthy relationships and our home is calm ***. We cannot afford jeopardizing any of this." [Petitioner's Exhibit 3]

Discussion

The student presents with a myriad of complications. Student's history is sad and troubling and gives little reason to believe Student's psychological, psychiatric, and neurological situation will improve. Student has benefited with the attention and concerns of Student's parents and the resources available to Student in private residential facilities. But Student's inability to control Student's *** and inhibit Student's behavior is a danger to ***self – and a danger to others.

The Pflugerville ISD has been asked by residents of the district to provide a free appropriate public education for the student. The district has properly evaluated the student and offered a special education program with related services for Student.

The student's parents believe that residential placement is required for the student to access Student's educational program and seeks reimbursement for the private placement where the student resides.

The evidence presented at the hearing did not prove that the placement for which the parents seek reimbursement is an appropriate placement. The credible evidence shows that the program is a therapeutic program to treat the student's mental illness and does not provide Student with specially designed instruction for an appropriate education. Its purpose serves a medical purpose – not an educational one. The evidence shows that the parents' intent in their unilateral placement at *** is for therapeutic medical treatment. And Petitioners failed to prove that it is appropriate.

The parents chose to make a unilateral placement and then seek reimbursement, but they have not proven the student's unilateral place is appropriate. If the parent actually brought the student to school in Pflugerville ISD, an ARD could determine that an appropriate educational placement would have to be offered in a more restrictive setting – such as day placement or residential – but the district is presented only with the parents' unilateral inappropriate placement. The district sought to propose a placement in the least restrictive environment appropriate for the student's needs. If the proposal is found to be infeasible, then the district would have to provide a placement that is.

Under the standard of School Committee of Town of Burlington v. Massachusetts Department of Education, 105 S.Ct. 1996, 471 U.S. 359 (1985), parents may be entitled to reimbursement for the costs of a private placement if the private placement is an appropriate placement. The evidence presented by Petitioners supports the student's placement at *** as a medically therapeutic placement. Petitioners did not prove that the placement is educationally appropriate under the standards of IDEA.

The district has not had an opportunity to serve the student directly. But the district properly evaluated the student and has designed a placement for Student should Student be enrolled by the parents.

Petitioner failed to provide evidence justifying reimbursement for private evaluations.

Petitioner has failed to meet its burden of proof and does not prevail.

Conclusions of Law

1. The student is eligible for a free appropriate special education program under IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. The student's parents are residents of the Pflugerville Independent School District and the district is responsible for providing an appropriate educational placement for the student.

3. Petitioners are not entitled to reimbursement for private placement for the student under the standard of School Committee of Town of Burlington v. Massachusetts Department of Education, *supra*.

4. Petitioners did not prove that the district's proposed education plan is inappropriate. IDEA creates a presumption favoring the plan under the law and places the burden of proof on petitioners challenging the plan. Schaeffer v. Weast, 546 U.S. 49, 126 S.Ct 528 (2005); and Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

5. The educational program offered Petitioners met the standard required under Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055, because it is offered as individualized based on the student's assessment and performance, it can be administered in the least restrictive environment, the services can be provided in a coordinated, collaborative manner by key stakeholders, and positive academic and non-academic benefits can be demonstrated.

ORDER

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

SIGNED this 19th day of February, 2016.

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

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	§	
VS.	§	HEARING OFFICER
	§	
PFLUGERVILLE INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE NO. 1: Whether Petitioners are entitled to reimbursement for private placement for the student.

ISSUE NO. 2: Whether the district's proposed education plan is appropriate.

CFR CITATIONS: 34 CFR 300.300

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent