

DOCKET NO. 019-SE-0903

Student,	§	BEFORE A SPECIAL EDUCATION
B/N/F Parent	§	
	§	
VS.	§	HEARING OFFICER
	§	
UNITED INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by his next friend and mother Parent (hereinafter "Petitioner" or "Student"), brought a complaint pursuant to the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. §1400, et seq., complaining of United Independent School District (hereinafter "Respondent" or "the district").

Petitioner was represented by Christopher Jonas, an attorney in Corpus Christi. Respondent was represented by Beverly Rickhoff, an attorney with the firm of Escamilla & Poneck in San Antonio.

Petitioner's request for hearing was filed on September 15, 2003, and come on for hearing by agreement of the parties on December 18, 2003, in the offices of the United Independent School District in Laredo, Texas. At the close of the hearing, counsel agreed to file written closing arguments and agreed that the decision in this matter was to be issued on or before January 30, 2004, in compliance with the forty-five day rule.

Petitioner alleged that the district failed to provide a free appropriate public education to Student because Student was not educated in the least restrictive environment, the district failed to hold a manifestation admission, review and dismissal ("ARD") meeting for Student when required to do so, the district failed to implement appropriate modifications for Student, and the

district failed to develop and implement a behavioral intervention plan ("BIP") and provide counseling for him.

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. Student is a boy born in December *** who resides with his mother with in the United Independent School District. [Petitioner's Exhibit 3]
2. Student has received special education and related services in the district as a learning disabled and speech impaired student. [Petitioner's Exhibits 1, 3, and 5]
3. Student had done well in school and was largely a well behaved student through his *** grade year during the 2002-2003 school year. [Petitioner's Exhibits 2 and 6; and Respondent's Exhibits 2, 3, and 4]
4. At the beginning of his *** grade year in the 2003-2004 school year, Student's behavior was markedly changed. He was withdrawn and depressed and sometimes displayed inappropriate aggressive behavior. [Petitioner's Exhibits 6, 9, 10, 12, 13 and 15]
5. Student was referred for a psychological evaluation and an ARD committee met on November 5, 2003, to consider Student's situation and the psychological evaluation. The committee determined that Student was eligible for continued special education and related services based upon criteria of emotional disturbance and speech impairment. The committee developed a behavior intervention plan for Student and recommended that Student's placement be changed to a modification learning center for diagnostic purposes for a five week period. The committee also recommended related services of speech therapy, occupational therapy and therapeutic counseling. Student's mother was not

present for the meeting and Student's principal delivered the ARD documents to her.

Student's mother later signed the documents indicating her agreement with the proposals of the ARD committee, though she testified at the hearing that she did not understand that she was agreeing to a change of placement. [Petitioner's Exhibit 13; and Respondent's Exhibit 34]

6. Some of the changes in Student's behavior during the 2003-2004 school year have been attributed to changes in medication to deal with Student's medical and psychological conditions. [Petitioner's Exhibits 10 and 12-15; and Respondent's Exhibit 33]
7. During the 2003-2004 school year, Student was removed from his regular instructional setting for a total of nine days, but during those suspensions Student received all of the supports and services specified in his individual education plan ("IEP") for all but two of those days.

Conclusions of Law

1. Student is a student who is eligible for special education and related services under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.
2. The United Independent School District is the local education agency responsible for the provisions of Student's free appropriate public education.
3. The district's efforts in developing an educational program and related services for Student resulted in an individual education plans and related services in the least restrictive environment for him reasonably calculated to confer an educational benefit for him under the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982); 34 CFR §300.552; and 19 T.A.C. §89.1055.

4. The individual education plans and related services developed by the district for Student offered him an opportunity to make progress under the standard of Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997).
5. Petitioner failed to meet its burden to prove that the educational programs provided by the district for Student are inappropriate. Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

ORDER

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

SIGNED this 30th day of January, 2004.

/s/ Lucius D. Bunton

Lucius D. Bunton
Special Education Hearing Officer

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SCHOOL DISTRICT		§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the district failed to provide an appropriate education and a proper behavior intervention plan for Student.

CFR CITATIONS: 34 CFR §300.552

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.