

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

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by her 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 the Houston Independent School District (hereinafter "Respondent" or "HISD").

Petitioner appeared pro se. Respondent was represented by Hans P. Graff with the Office of the School Attorney in the Houston Independent School District.

Petitioner's request for hearing was filed on September 29, 2004, and came on for hearing by agreement of the parties on November 9, 2004. The parties were afforded an opportunity to file written closing arguments and agreed that the decision in this matter would be issued on or before December 14, 2004, in compliance with the forty-five day rule.

Petitioner alleged that the district failed to provide Student with an appropriate educational placement and educational services. Petitioner also alleged that the district failed to hold an admission, review and dismissal ("ARD") meeting when requested to do so. Petitioner also complained about an intra-district transfer from one campus to another and that the district failed to supervise Student properly and provide a safe school environment. Petitioner sought as relief an individual education plan ("IEP") with homebound services for one school 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. Student is a student born in ** who resides with her mother within the Houston ISD. [Petitioner's Exhibit 9]

2. Student has received special education services based upon eligibility criterion of emotional disturbance. [Respondent's Exhibits 11-16]

3. Student has exhibited problems with her visual perception and her behavior. [Respondent's Exhibit 1, 4 and 6-10]

4. Student has had behavior problems in school for a number of years and numerous absences from school. [Respondent's Exhibits 23 and 24]

5. In the spring of 2003, an ARD committee moved Student from her ** school campus to an alternative school because of escalating behavior problems including her failure to remain on campus during school. [Respondent's Exhibits 11 and 12]

6. Student's mother did not agree to the change in placement. [Respondent's Exhibit 14]

7. Student's mother did not want Student to attend the alternative school and Student attended the school for only a few days when her mother enrolled her in a charter school. [Transcript Pages 13 and 14 & Petitioner's Exhibit 9]

8. Student was re-enrolled in HISD in September 2004 and an ARD committee provided her with an IEP and modifications for her educational plan and counseling as a related service. [Petitioner's Exhibits 9 and 12]

9. Student's mother does not want Student to be educated at the alternative school and wants her placed on a regular school campus. [Transcript Pages 13-16]

10. HISD's current placement for Student is the alternative school which deals with adaptive behavior. [Transcript Pages 46-49 & Respondent's Exhibits 14-16]

11. Student's mother believes that the alternative school is not a safe environment for Student. After Student was re-enrolled in September, 2004, Student came to the campus of the alternative school and said that she wanted to begin school there. Student's mother, however, notified the school that she would not permit Student to attend school at that campus. Because Petitioner asserted that Student will not attend school and has not attended school, another ARD committee meeting has not been called since her re-enrollment in September. [Transcript Pages 71-73]

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 Houston Independent School District is the local education agency responsible for the provisions of Student's free appropriate public education and related services.

3. The IEPs for Student developed by HISD for the 2003-2004 school year and the 2004 fall semester were properly developed by ARD committees for Student and provided her with an educational placement with related services reasonably calculated to enable her to receive educational benefit under the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982) and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.347, and 19 T.A.C. §89.1055.

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

DOCKET NO. 036-SE-0904

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SYNOPSIS

ISSUE: Whether the district failed to provide an appropriate educational placement for Student.

CFR CITATIONS: 34 CFR 300.347

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.