

TEA DOCKET NO. 138-SE-1203

Student, b/n/f Parent	§	
	§	BEFORE A
Petitioner	§	SPECIAL EDUCATION
	§	
v.	§	HEARING OFFICER
	§	
HARLANDALE	§	FOR THE
INDEPENDENT SCHOOL DISTRICT	§	STATE OF TEXAS
Respondent	§	

FINAL DECISION OF THE HEARING OFFICER

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Appearances for Petitioner:

Parent (pro se)

Appearances for Respondent:

Wesley Johnson, Esq.  
Escamilla & Poneck, Inc.  
San Antonio, TX

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Statement of the Case

The Petitioner, Student, brings this action against the Respondent, Harlandale Independent School District (HISD), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400 et seq. The IDEA issues to be heard at the Due Process Hearing concern:

- The provision of an inclusion placement.
- The provision of a behavioral management plan/behavioral intervention plan (BIP).
- The provision of appropriate dispensing of medication.
- The provision of after-school tutoring.
- The provision of counseling services.
- The provision of instructional modifications and supports.
- The provision of a free and appropriate public education (FAPE).

The Petitioner requested the following relief at the due process hearing: (1) transfer of Student to another school district; (2) transportation for Student to another school district; (3) enforcement of a dress code policy; (4) restitution; and (5) reimbursement of case expenses.

Procedural History

On December 16, 2003, the Texas Education Agency (TEA) received the Petitioner's request for a Due Process Hearing. The TEA initially assigned the case to Hearing Officer James N. Hollis. On December 24, 2003, Hearing Officer Hollis issued a Scheduling Order. On January 27, 2004, Hearing Officer Hollis issued a revised Scheduling Order. On March 3, 2004, Hearing Officer Hollis issued an additional revised Scheduling Order. Among other things, the March 3, 2004 Order extended the decision due date to April 30, 2004.

Hearing Officer Hollis conducted Part I of the due process hearing in San Antonio, TX on March 30, 2004. Following Part I of the hearing, the TEA, in accordance with its regulations, assigned Hearing Officer Steven R. Aleman as a substitute Hearing Officer for the case.<sup>1</sup> Hearing Officer Aleman conducted Part II of the due process hearing in San Antonio, TX on April 6, 2004. The hearing record encompasses the testimony and exhibits from both Part I and Part II.

### Findings of Fact

This Hearing Officer makes the following findings of fact:

1. Student is a child with a disability. He enrolled as a \*\*\* grade student at \*\*\* School (\*\*\*), Harlandale ISD (San Antonio) in October, 2002.
2. On November 14, 2002, HISD held an admission, review and dismissal (ARD) committee meeting for Student. The ARD meeting recessed and reconvened and concluded on December 9, 2002. Resp't Ex. 3.
3. Among other things, the ARD committee conducted a functional behavioral assessment (FBA) and developed a BIP for Student.
4. Among other things, the ARD committee adopted instructional modifications and supports such as preferential seating; assignment directions in small, distinct steps; and oral cues and prompts.
5. Among other things, the ARD committee reviewed and arranged for the dispensing of medication for Student during the school day. (Resp't Ex. 24; Tr., vol. II, p. 200, l. 21 – p. 202, l. 2)
6. Among other things, the ARD committee considered and decided that there was no need for the related service of counseling. (Tr., vol. II, p. 203, l. 16 – p. 206, l. 15)
7. During the 2002-03 school year, Student's placement was resource and general education classes (with modifications and content mastery supports).
8. Student repeated a Spanish course and earned credit during summer school. (Tr., vol II., p. 178, l. 1 – p. 179, l. 12)

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<sup>1</sup> 19 Tex. Admin. Code § 89.1170(c).

9. During the 2003-04 school year, Student's placement is resource and general education classes (with modifications and content mastery supports). (Tr., vol. II, p. 188, l. 14 – p. 189, l. 15)
10. On September 29, 2003, HISD held an ARD committee meeting for Student. Resp't Ex. 4.
11. Among other things, the ARD committee continued instructional modifications and supports such as preferential seating; reduction of auditory distractions; assignment directions in small, distinct steps; oral cues and prompts for assignments; and repeated review. (Resp't Ex. 19)
12. Among other things, the ARD committee provided for Student to attend tutoring to complete assignments. (Resp't Ex. 4, 12)
13. Among other things, the ARD committee determined a need for and arranged counseling services for Student on both a group basis (Communities in Schools) and individual basis (appointments with licensed specialist in school psychology (LSSP)). (Resp't Ex. 4, 8; Tr. vol. I, p. 24, ll. 9, 12-20, p. 67, ll. 7-20)
14. Among other things, the ARD committee reviewed and updated the BIP for Student. (Tr., vol. II, p. 168, l. 23 – p. 173, l. 4)
15. Among other things, the ARD committee noted the medication needs of Student.
16. Student's educational needs include requiring prompting to get started with classroom work and support to follow through and complete tasks.
17. HISD has provided Student with appropriate modifications and supports to address Student's needs. (Resp't Ex. 18, 19, 20; Tr., vol. II, p. 285, l. 13 – p. 290, l. 2)
18. HISD has provided and implemented appropriate BIPs for Student. (Tr., vol. II, p. 285, ll. 6-12)
19. Student's helping teacher at the \*\*\* school is in communication with his classroom teachers and is ensuring that the feedback provided is taken into account in the individualized programming of services for him.

20. During Student's enrollment at \*\*\*, he has earned 7.5 out of 8 possible course credits. Student is currently on pace to graduate on schedule. (Resp't Ex. 12)
21. In the Fall, 2003 semester, Student passed all courses except speech. (Resp't Ex. 15; Tr., vol. II, p. 173, ll. 5-13, p. 177, ll. 7-11)
22. Student did not pass speech because he was absent from school and missed the course final exam. (Tr., vol. II, p. 179, l. 20 - p. 182, l. 3)
23. During the first 6-week grading period of the Fall, 2003 semester, Student was failing his business computer information systems (BCIS) class. HISD switched David's computer class teacher and Student passed the BCIS class for the semester. Resp't Ex. 4, 15; Tr., vol. II, p. 186, l. 4 – p. 188, l. 11)
24. Any lack of educational progress is on account of Student's attendance and tardiness problems. (Tr., vol. II, p. 194, l. 24 – p. 195, l. 10)
25. Student's tardiness and absences at \*\*\* have been a growing problem that has not responded to efforts by the school district to improve his arrival time at school. Improving his ability to get up in the morning and arrive at school on time has been a subject of school-based counseling. (Resp't Ex. 12, 13, 14, 19; Tr., vol. II, p. 195, l. 11 – p. 199, l. 4, p. 202, ll. 3-15)
26. Student has never been considered or referred to the district's disciplinary alternative educational program (AEP). (Tr., vol. I, p. 59, ll. 1-17)

### Discussion

#### Jurisdiction

The subject matter that a Special Education Hearing Officer may exercise authority over is confined to issues under the IDEA.<sup>2</sup> Here, the pro se Petitioner raised concerns in a wide range of areas. This Decision is limited to findings of fact and conclusions of law on those issues that implicate the school district's duties under the IDEA.<sup>3</sup>

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<sup>2</sup> 19 Tex. Admin. Code § 89.1151(a).

<sup>3</sup> The Hearing Officer acknowledges but declines to address the following topics in which the Petitioner made allegations and complaints during the due process hearing:

- sexual harassment of Student at school (Tr., vol. I, p. 10, l. 20 – p. 11, l. 3; p. 11, ll. 17-21; p. 38, l. 17 – p. 39, l. 1; vol. II, p. 106, l. 17 – p. 107, l. 3; p. 107, ll. 10-19)

## Statute of Limitations

In general, a Petitioner in Texas must bring any claim under the IDEA within one (1) year or forfeit the chance to raise a complaint.<sup>4</sup> In this case, therefore, the window of review covers the period since December 16, 2002 – one year from the date of the Petitioner’s filing with the TEA.<sup>5</sup> Student was in the \*\*\* grade during the 2002-2003 school year and is in the \*\*\* grade during the 2003-2004 school year. In considering the Petitioner’s IDEA allegations, I am obligated to limit the examination of Student’s education to the pertinent parts of these school years.

## Conduct of the Due Process Hearing

During the due process hearing, the pro se Petitioner raised some criticism about this Hearing Officer’s impartiality.<sup>6</sup> Any accusations of bias are unfounded and were addressed during the hearing.<sup>7</sup> The pro se Petitioner has some doubts about what actually happened at the hearing and has requested a copy of audiotapes of the hearing made by the court reporter. I will not authorize the duplication and release of the court reporter’s cassette tapes on three grounds: (1) the parties have been provided a copy of the official written verbatim transcript of the proceedings (Part I and Part II of the hearing); (2) the recordings contain personally identifiable

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- mental and emotional abuse of Student at school (Tr., vol. I, p. 10, ll. 2-6, ll. 17-19; p. 45, ll. 11-18; p. 66, ll. 21-25; vol. II, p. 107, ll. 6-10; p. 108, l. 21 – p. 109, l. 18)
  - district complicity in allowing Student’s association with a gang (Tr., vol. I, p. 9, ll. 6-11, ll. 18-23; p. 17, ll. 7-23; p. 37, ll. 16-21; vol. II, p. 105, l. 19 – p. 106, l. 4; p. 132, l. 16 – p. 133, l. 8; p. 144, ll. 2-8; p. 150, l. 17 – p. 151, l. 8)
  - interference by other relatives with the exercise of parental rights (Tr., vol. I, p. 69, ll. 7-14)
  - individuals impersonating school staff (Tr., vol. II, p. 106, ll. 5-15)
  - lunch and eating opportunities of Student at school (Tr., vol. I, p. 10, ll. 14-17; vol. II, p. 130, l. 22 – p. 131, l. 5)
  - changes in the personality and demeanor of Student (Tr., vol. I, p. 8, ll. 15-22; p. 9, ll. 15-16; p. 18, ll. 15-24)
  - changes in the clothing and hair styles of Student (Tr., vol. I, p. 8, ll. 22-25; p. 9, ll. 2-5; p. 17, l. 24 – p. 18, l. 7)
  - school policy on student showering at the end of gym class (Tr., vol. II, p. 218, l. 18 – p. 221, l. 7; p. 233, l. 16 – p. 234, l. 5)
  - the utilization of “mind control” over Student at school (Tr., vol. I, p. 11, ll. 21-23; p. 37, ll. 9-10; vol. II, p. 135, ll. 23-25)
  - the practice of witchcraft at Student’s school (Tr., vol. II, p. 275, ll. 17-23; p. 306, ll. 12-15)

<sup>4</sup> This rule is usually known as the statute of limitations. 19 Tex. Admin. Code § 89.1151(c).

<sup>5</sup> In this case there are no uncertainties about the dates of knowledge of the alleged actions serving as the basis for the IDEA issues raised.

<sup>6</sup> Tr., vol. II, p. 228, l. 1 – p. 229, l. 17; p. 258, l. 8 – p. 266, l. 25.

<sup>7</sup> *Id.*

information such as the full names of the Petitioner and his relatives that must be protected from disclosure; and (3) the audiotapes are the work product of the court reporter and are not subject to production.

#### 2002-2003 School Year

Student arrived as a \*\*\* at \*\*\* School in October, 2002. He transferred from Edgewood ISD in San Antonio. In Fall, 2002, HISD held two ARD committee meetings, considered Student's needs and delivered to him an appropriate placement and programming.

With regard to counseling for Student, the Petitioner's mother complains that counseling services were missing in the 2002-03 school year. The Petitioner failed to establish by a preponderance of the evidence that Student's ARD committee mistakenly left off such services. The record shows that the ARD committee discussed his IDEA eligibility as a student with emotional disturbance, listened to the mother's input and compared it to the school's impressions of Student and indicated that no such related service was necessary.

With regard to medications for Student, his mother argues that he has missed some doses of his medicine at school. There is not any conclusive proof that he ever missed any of his medications and no showing that he ever suffered any ill effects if in fact he had skipped a dose.

With regard to the Petitioner's grades, Student's mother complains in particular about a non-passing grade in Spanish class. Student was enrolled in Spanish class during the Fall, 2002 semester. The Respondent's position is that whether Student passed the course and whether HISD had any culpability for a failing mark are outside the statute of limitations. I find that even if these specific issues were not barred by the statute of limitations, the Petitioner would not prevail because Student was given an opportunity to repeat the class in summer school and earned credit. Overall, Student is making academic progress and, at least as of now, is still on track to earn enough credits to graduate on time.

#### 2003-2004 School Year

During the 2003-04 school year, Student has been a \*\*\* at \*\*\* School. In Fall, 2003, HISD held an ARD committee meeting, considered Student's needs and is delivering to him an appropriate placement and programming.

With regard to a BIP for Student, his mother complains that he does not have one or that HISD has not followed it. The Hearing Officer finds that contrary to the Petitioner's allegation, Student has always had a BIP, that it has been refined annually and implemented.

With regard to instructional modifications and supports, Student's mother complains that he does not get preferential seating in class. No testimony was ever elicited that demonstrated that where Student had to sit in class was a disadvantage to him. The Petitioner, thus, fails to carry his burden of proof on this issue.

With regard to inclusion, Student's mother seems to be under the impression that HISD does not offer inclusion. To this Hearing Officer, the real focus should be on whether Student is being provided an appropriate placement in the least restrictive environment. There was no proof during the hearing that Student is being illegally excluded from the mainstream environment or that his setting is not right for him. Indeed, he takes several general education classes with supports and has further interaction with general education students in such classes as physical education. While Student's mother alluded to him being moved to an alternative disciplinary placement, school staff testified that he has never been considered for or referred to AEP.

With regard to tutoring, Student's mother asserts that HISD should forcibly escort him to after-school tutoring sessions so that he can make up work from his many absences. I find that HISD is providing fair opportunities for Student to complete homework and missed classroom assignments. The school district has no obligation to force or coerce the student into attending tutoring sessions. There is nothing unique to these circumstances that would mandate that HISD go beyond what it has already offered to this pupil. Here, the fundamental requirement of the IDEA that schools make available FAPE to children with disabilities is being satisfied.

#### Conclusions of Law

After due consideration of the foregoing findings of fact, the Hearing Officer makes the following conclusion of law:

1. The Respondent, HISD, has not violated the IDEA in its placement of the Petitioner, Student
2. The Respondent, HISD, has not violated the IDEA in its provision and implementation of a BIP for the Petitioner, Student.
3. The Respondent, HISD, has not violated the IDEA in its dispensing of medication to the Petitioner, Student.
4. The Respondent, HISD, has not violated the IDEA in its provision of after-school tutoring to the Petitioner, Student.
5. The Respondent, HISD, has not violated the IDEA in its consideration and provision of counseling services to the Petitioner, Student.
6. The Respondent, HISD, has not violated the IDEA in its provision of instructional modifications and supports to the Petitioner, Student.

7. The Respondent, HISD, has not violated the IDEA in its provision of FAPE to the Petitioner, Student.

Order

Based upon the foregoing findings of fact and conclusions of law,

**IT IS HEREBY ORDERED THAT:**

1. All relief sought by the Petitioner shall be **DENIED**.

**SIGNED** this *29<sup>th</sup>* day of April, 2004.

/s/ Steven R Aleman

Steven R. Aleman

Special Education Hearing Officer

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SYNOPSIS

ISSUE 1: Whether Harlandale ISD failed to provide an inclusion placement for the Petitioner?

CITE: 34 C.F.R. §300.550

HELD: For the Respondent. The Petitioner's placement includes general education classes and opportunities to interact with general education students.

ISSUE 2: Whether Harlandale ISD failed to provide a BIP for the Petitioner?

CITE: 34 C.F.R. §300.520

HELD: For the Respondent. The Petitioner has had an appropriate BIP since enrollment in the district.

ISSUE 3: Whether Harlandale ISD failed to appropriately dispense medications to the Petitioner?

CITE: 34 C.F.R. §300.300

HELD: For the Respondent. The Petitioner failed to meet his burden of proof that he was ever denied his medications.

ISSUE 4: Whether Harlandale ISD failed to provide after-school tutoring for the Petitioner?

CITE: 34 C.F.R. §300.300

HELD: For the Respondent. The Respondent offered tutoring sessions to the Petitioner and is not required to compel the student to attend.

ISSUE 5: Whether Harlandale ISD failed to provide counseling services to the Petitioner?

CITE: 34 C.F.R. §300.300

HELD: For the Respondent. The Petitioner received counseling services upon a determination by the ARD committee that such a related service was required.

ISSUE 6: Whether Harlandale ISD failed to provide instructional modifications and supports to the Petitioner?

CITE: 34 C.F.R. §300.300

HELD: For the Respondent. The Petitioner receives appropriate classroom modifications and supports.

ISSUE 7: Whether Harlandale ISD failed to provide a free appropriate public education to the Petitioner?

CITE: 34 C.F.R. §300.300

HELD: For the Respondent. The Petitioner is making academic progress by earning course credits and passing grades. To the extent that the student failed or is failing a class, the student is responsible because of his absences and tardiness to class.