

Findings of Fact

1. Student is a ** student born in **, who resides with his mother within the Plano Independent School District. [Joint Exhibit 1, p. 1.]
2. Student attends the ** grade and receives special education and related services based upon an eligibility criterion of other health impaired (“OHI”) due to attention-deficit hyperactivity disorder (“ADHD”). [Joint Exhibits 6, 8, and 9].
3. As a part of Student’s educational programming, Student has a behavior intervention plan (“BIP”) to address problems with his behavior. [Joint Exhibit 5, page 3, and Joint Exhibit 6 page 3.]
4. Earlier in the year Student received a full individual evaluation including a psychological evaluation to determine whether he had emotional problems that led to his difficulties in conforming to school rules and expectations regarding attendance of classes, ability to complete homework, and ability to interact appropriately with students and teachers. It was determined that he did not. [Joint Exhibit 4, page 7.]
5. An admission, review, and dismissal (“ARD”) committee met for Student on February 23, 2004 to address some concerns about Student’s behavior. The committee considered numerous disciplinary referrals for Student accrued since he reentered the school in October 2003 of this school year and particular incidents involving his use of a cell phone during class and refusal to surrender it to school authorities and a second incident in which one of his teachers felt threatened by his behavior when he took the floor to threaten other students for “tattle telling” on him and then refused to return to his seat when his teacher requested that he do so. The February 23, 2004 manifestation determination was not completed because Student

who was now ** and on the ARD committee left the committee meeting. The ARD committee manifestation determination was rescheduled for March 1, 2004. [Joint Exhibit 6.]

6. The ARD committee for Student reconvened on March 1, 2004. The ARD committee meeting properly considered Student's behavior, Student's current IEP and its behavioral strategies and their applications, and Student's ability to understand the impact and consequences of his behavior in light of his disability. All of the ARD Committee except for Student determined that Student's disability did not impair his ability to control the behavior in question. Many of his activities were obviously preplanned and not the result of spontaneous action as they took place over a period of time. For example, on several occasions Student was disciplined by being sent to Saturday School. He did not attend and told Assistant Principal ** he was never going to serve his Saturday School discipline assignments. On another occasion, he substituted a fake cell phone for the one that authorities wanted to take up which obviously was not a spontaneous action on his part but one which he planned.

7. **, M.D., a board certified child psychiatrist, testified for Student. He testified that he only started treating Student on March 2, 2004, the day after the ARD hearing. He testified that Student is now under his care for ADHD and that he is attempting to prescribe medication for treating it and hopes and expects that it will get better. He had only limited information on Student's infractions of school rules and refused to speculate on whether Student's school disciplinary violations were a manifestation of his ADHD. In this regard, Dr. ** testified in part:

Q. [Ms. **] Do you think that a disciplinary action to remove Student from the mainstream and send him to a program for students with behavior issues would be appropriate at this time?

A. [Dr. **] I'm not sure I can answer that, because, of course, I don't have the other side of the story. But, I think that he's certainly salvageable and deserves a treatment plan; and that if he's improving, then I would hope that could be taken into consideration. (Transcript page 16).

8. Dr. ** agreed on cross examination that the behavior Student is being disciplined for might have nothing to do with his ADHD. (Transcript page 26.)

9. **, a licensed school psychologist, is very familiar with Student after having tested him and talked to him extensively and after having served on his ARD committee. She made a credible witness. She testified (and based in part upon her testimony I find) that Student's misbehavior for which he is being disciplined is unrelated to his ADHD and that he is an intelligent young man who understands the impact and consequences of his behavior and that his ADHD did not impair his ability to control the misbehavior for which he is being disciplined. (Transcript 64-70).

Conclusions of Law

1. Student is a student 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 Plano Independent School District is the local education agency responsible for the provision of Student's free appropriate public education.

3. The actions of the ARD Committee in conducting Student's manifestation determination and in recommending his transfer of Student to an alternate placement facility meets the

requirements of the applicable sections of the IDEA and its implementing regulations. 20
U.S.C. §1415(k); 34 CFR 300.523 and 300.524; and Texas Education Code § 37.004.

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 26th day of April, 2004.

/s/Larry J. Craddock
Larry J. Craddock
Special Education Hearing Officer

DOCKET NO. 248-SE-0304

STUDENT § BEFORE A SPECIAL EDUCATION
§
VS. § HEARING OFFICER
§
PLANO INDEPENDENT § FOR THE STATE OF TEXAS
SCHOOL DISTRICT §

SYNOPSIS

ISSUE: Whether an ARD committee for Student made an appropriate manifestation determination concerning the relationship between Student’s disability and his behavior and recommended proper discipline based upon its determination.

CFR CITATIONS: 34 CFR §300.523 and 34 CFR §300.524.

TEXAS CITATION: Texas Education Code §37.004.

HELD: For the School District