

TEA DOCKET NO. 307-SE-0505

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

FINAL DECISION OF THE HEARING OFFICER

Statement of the Case

The Petitioner, Student, by next friend, Parent, brings this action against the Respondent, Humble Independent School District (HISD), under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 et seq. The Texas Education Agency (TEA) received the Petitioner's request for a due process hearing on May 13, 2005. The Hearing Officer conducted a prehearing conference on May 24, 2005. During the prehearing conference, among other things, the parties agreed that the case would be submitted to the Hearing Officer for a decision without the need for an evidentiary hearing.¹ The Hearing Officer issued the First Interim Order that, among other things, identified the Petitioner's claim and requested relief and set a timetable for submission of written briefs and exhibits. The Petitioner's claim is that Humble ISD violated IDEA and/or state law in the assignment of Student to an interim alternative educational setting for 45 days. The Petitioner seeks as relief a declaratory judgment in its favor.

On May 27, 2005, the Petitioner's submission and supporting material was received by the Hearing Officer. On June 3, 2005, the Respondent's submission and supporting material was received by the Hearing Officer. On June 16, 2005, the Petitioner's rebuttal to the Respondent's submission was received by the Hearing Officer.²

Findings of Fact

Based upon the evidence submitted by the parties in this proceeding, I make the following findings of fact:

¹ Prehearing Teleconference, May 24, 2005. Tr. at 26-28.

² The Respondent submitted an objection to the Petitioner's rebuttal on the grounds that it was not timely filed. The Hearing Officer overrules the Respondent's objection. The Hearing Officer will grant the pro se Petitioner a small degree of latitude to comply with deadlines as an accommodation in this proceeding.

1. Student is a *** year-old child with a disability. During the 2004-05 school year, Student was a *** grader in middle school in HISD. During the school year, prior to May, 2005, Student had no disciplinary removals.
2. On or about Tuesday, April 26, 2005, Student participated in an incident involving the discharge of a weapon at home that resulted in the police arresting Student
3. County authorities placed Student in a juvenile detention facility from Wednesday, April 27, 2005 through Wednesday, May 4, 2005.
4. Student was absent from school to appear in court on Thursday, May 5, 2005.
5. HISD excluded Student from *** school on Friday, May 6, 2005.
6. HISD allowed Student to attend *** school on Monday, May 9, 2005.
7. Student's middle school assistant principal received written confirmation that county authorities were charging Student with a felony offense of deadly conduct for the April 26th incident on Monday, May 9, 2005. The assistant principal determined that such a felony charge was a violation of the student code of conduct (Class B: Mandatory Removal to the Discipline Program) that required Student be assigned to an interim alternative educational setting (IAES). The assistant principal verbally notified Student's parent – Parent – of the assignment of Student to the IAES.
8. On Tuesday, May 10, 2005, Student's parent – Parent – received a letter from HISD stating that Student was being removed to the IAES for 45 days because of the April 26th incident. The effective date of the removal to the IAES was Friday, May 13, 2005.
9. HISD excluded Student from *** school from Tuesday, May 10, 2005 through Thursday, May 12, 2005.
10. Student attended the IAES on Friday, May 13, 2005. Student also attended the IAES from Monday, May 16, 2005 through Wednesday, May 18, 2005.
11. Student had a court appearance on Thursday, May 19, 2005. The criminal charge against Student was reduced from a felony to a misdemeanor offense.
12. Student attended the IAES on Friday, May 20, 2005. HISD held an admission, review and dismissal (ARD) committee meeting pertaining to Student's removal to the IAES that day. HISD determined that Student would no longer be required to attend the IAES.

13. Student returned to middle school on Monday, May 23, 2005.

Discussion

The Petitioner's complaint is that HISD illegally imposed a 45-day removal to the IAES for Student. Specifically, the Petitioner argues that the school district acted outside of its authority with the imposition of a disciplinary punishment for off-campus conduct. Under IDEA, there are specific procedures for school districts to follow when disciplining children with disabilities. These procedures include the safeguards of time limits for certain removals, a manifestation determination review to examine any link between the child's disability and the misconduct before some changes in placement and expedited reviews by hearing officers. 20 U.S.C. § 1415; 34 C.F.R. §§ 300.519 et seq. In this case, given the sequence of events, I find that HISD did not violate the discipline provisions of IDEA.

The Petitioner's position is that the incident at home did not fall within the legal guidelines for a 45-day removal to the IAES and, therefore, sending Student to the IAES was incorrect. Under IDEA, a district may require a 45-day disciplinary change of placement under several different circumstances. For incidents involving weapons or illegal drugs at school or school-related functions, districts must follow the procedures under 34 C.F.R. § 300.520(a)(2). For other incidents involving a breach of the school's code of conduct, a 45-day removal to the IAES is allowable if districts follow the specified steps under 34 C.F.R. § 300.523.³ Here, the federal discipline regulation at 34 C.F.R. § 300.523 governs because the April 26th incident did implicate HISD's student code of conduct that calls for a 45-day transfer to a disciplinary placement; the April 26th incident would not be controlled by 34 C.F.R. § 300.520(a)(2)(i) because it did not involve a weapon at school or a school-related event.

I find that the district did start down the path of imposing a long-term disciplinary placement. During the course of pursuing this long-term disciplinary placement, HISD's actions were in compliance with the applicable IDEA regulations. First, HISD immediately notified Student's father, Parent, on the day the decision was made to remove Student to the IAES (May 9, 2005). This complied with 34 C.F.R. § 300.523(a)(1).⁴ Second, HISD convened an ARD committee meeting within 10 school days of the date the campus administrator decided to make the removal (May 20, 2005). At the May 20th ARD committee meeting, the need for a

³ A 45-day removal to an IAES would constitute a "change of placement" as defined in 34 C.F.R. § 300.519(a). A proposed change of placement not otherwise covered by 34 C.F.R. § 300.520(a)(2) falls under 34 C.F.R. § 300.523.

⁴ There is also a requirement under 34 C.F.R. § 300.523(a)(1) that the school provide a copy of the procedural safeguards notice to the family. While the documentation is unclear about whether a copy was handed over, it is clear that the parents requested a due process hearing on May 11th that was received by the TEA on May 13th. Thus, it is apparent that the parents had constructive knowledge of their rights.

manifestation determination review was nullified when the district decided to return Student to middle school. This complied with 34 C.F.R. § 300.523(a)(2).

HISD was responsible for Student missing a total of 10 days from middle school: May 6th; May 10th to May 13th; and May 16th to May 20th. Because the removal did not cumulate to more than 10 days, other requirements of the IDEA discipline rules in 34 C.F.R. § 300.520(b)(1) were not triggered.

HISD did not violate any provision of the Texas Education Code or the TEA regulations in assigning Student to the IAES.

In sum, HISD has the authority to make a 45-day removal to an IAES in situations other than weapon and illegal drug violations in school or at a school-sponsored function as long as it complies with the applicable IDEA discipline regulations. The Petitioner seems to place reliance on a district brochure that summarizes IDEA discipline requirements as restricting HISD's ability to send Student to the IAES.⁵ The standard to judge the district by is the body of IDEA law and not a summation of it in a pamphlet. The record here does not support a conclusion that the Respondent erred in its handling of Student's case.

Order

IT IS HEREBY ORDERED THAT:

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

SIGNED this 27th day of June, 2005.

/s/ Steven R. Aleman

Steven R. Aleman
Special Education Hearing Officer

⁵ The description of placements in an IAES in the district's notice of procedural safeguards is not inaccurate; the discipline options described, however, are merely a subset of all contingencies that might result in a removal to the IAES. While the parents apparently were not fully aware of this, there is no IDEA violation if, as here, the detailed federal discipline regulations were adhered to by the school.

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SYNOPSIS

ISSUE: Whether Humble ISD violated IDEA and/or state law in the assignment of Student to an interim alternative educational setting for 45 days.

CITE: 34 C.F.R. §§ 300.519 et seq.

HELD: For the Respondent. The school district did not violate applicable discipline procedures when it initiated a 45-day removal for a violation of the district's student code of conduct.