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# DOCKET NO. 205-SE-0506

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B/N/F\*\*\*&\*\*\*

PETITIONER

vs.

SPRING BRANCH INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

BEFORE A SPECIAL EDUCATION  
HEARING OFFICER  
FOR THE STATE OF TEXAS

## DECISION OF THE HEARING OFFICER

### Statement of the Case

This case was filed with the Texas Education Agency on May 9, 2006. The parties then had thirty days until June 8, 2006, to resolve this matter informally without going to a due process hearing and an additional 45 days or until July 23, 2006 for a hearing and a decision. The parties agreed to extend the decision due date until July 27, 2006.

Student is a \*\*\* year old student who is a \*\*\* in the Spring Branch Independent School District. She is eligible to receive special education and related services under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 et seq. as a student with a learning disability in math.

The Petitioner is student's mother and next friend. The Petitioner appears without an attorney. Attorney Jeffrey L. Rogers of the law firm of Feldman & Rogers, LLP, represents Spring Branch Independent School District.

The Petitioner's main contention is that Spring Branch ISD has failed to fully implement student's Behavioral Intervention Plan ("BIP") thereby denying her a

free appropriate public education ("FAPE"). In addition, Petitioner asserts that Spring Branch ISD has improperly referred student to authorities for truancy and has failed to call timely ARD Committee meetings within a reasonable time after requested by Petitioner.

Petitioner seeks a declaration that the BIP has been improperly implemented; asks that I order the School District to withdraw student's referral for truancy; and seeks attorney's fees. In addition she asks me to order that a named School District employee not attend future ARD meetings for student.

I previously ruled in a partial summary judgment order that I have no jurisdiction or authority to order attorney's fees<sup>1</sup>. I also ruled that I have no authority to interfere with the truancy referral<sup>2</sup>. I also ruled that I have no authority to interfere with the ISD's exercise of discretion on the issue of which of its employees it will send to student's ARD meetings so long as the ARD is staffed in compliance with IDEA requirements<sup>3</sup>.

<sup>1</sup>See Alan S. v. Ingram ISD, TEA Docket No. 219-SE-0204, 43 IDELR 124 (2004); T.D. v. Northside ISD, TEA Docket No. 234-SE-0305 & 235-SE-0305, 106 LRP 6651 (2005); and Jonathan H. v. Klein ISD, TEA Docket No. 376-SE-898, 29 IDELR 670 (1998). These decisions hold that special education hearing officers in Texas have no authority to order attorney's fees.

<sup>2</sup>Despite the ruling that I have no jurisdiction that would allow me to interfere with truancy referral, quite a bit of testimony at the hearing related to the truancy referral because the Petitioner raised a procedural issue about whether documents about B's disability should have accompanied the referral. A discussion of the truancy issue appears in the "Conclusions of Law" section of this decision.

<sup>3</sup>Special education hearing officers in Texas may look into whether school district staffs have appropriate qualifications to work with a child but have no authority to interfere with School District assignment of qualified personnel. See Bradley J. v. Lewisville Independent School District, TEA Docket No. 271-SE-0402, 102 LRP 17462 (2002); and Mark S. v. Hooks Independent School District, TEA Docket No. 021-SE-0904 43 IDELR 263 (2002).

Prehearing conferences were held by telephone on June 5, 23, and 26, 2006. The hearing was held on June 27, 2006 at the administrative offices of the Spring Branch Independent School District.

Petitioner called seven school district employees as witnesses. In addition, she testified herself during the course of her examination of other witnesses<sup>4</sup>.

<sup>4</sup>I allow pro se litigants to testify while examining other witnesses. This makes it as easy as I can make it for them to present their side of the case. I place the pro se under oath while he or she is cross-examining the other witnesses and allow the opposing side an opportunity to cross-examine the pro se party later by calling the pro se party to the stand. In its brief the District objects to my consideration of the testimony Petitioner gave while cross-examining the other witnesses. I overrule the District's objection to my allowing the pro se to testify in this manner. Nothing in the rules governing administrative hearings prohibits a hearing officer from placing the pro se under oath and then allowing the pro se to testify intermittently while the pro se is examining other witnesses. I have heard this practice discussed in CLE training for hearing officers and ALJs as a permissible practice when dealing with pro se litigants. I believe it to be a permissible practice and that it is within my discretion to allow it.

## Findings of Fact

1. As previously stated, student is a \*\*\* year old student who attends high school in the Spring Branch Independent School District. She is classified as a \*\*\* and is eligible for special education and related services as a student with a \*\*\*. There is no evidence that her absenteeism is connected to her \*\*\*.
2. In the 2005-2006 school year, student had numerous tardies and absences from her classes. She would frequently miss school altogether or come to school late, fail to arrive at her classes on time when going from one class to the next, and would leave school early in the day.
3. The ARD committee report of January 10 and January 24, 2006 is in evidence. It contains a behavioral intervention plan (BIP) drawn up by the ARD committee. A discipline contingency plan appears at pg. 13 of the ARD committee report. It reads in part:

"The ARD committee has reviewed school records and parent information and determined that the student has a history of . . . Truancy/tardiness/excessive absences."

Under the heading, "Truancy/tardiness/excessive absences" the ARD minutes show the following strategies checked:

- In-class time out for \_\_\_ minutes (The ARD committee checked this but left the number of minutes blank)
- Behavior conference with Teacher/Administrator/Counselor/ Psychologist/ Parent
- Detention maximum 2 days per event
- ISS/CDC/AEP \_\_\_ hours for 2 days maximum per event (The ARD committee checked this but left the number of hours blank)
- Referral to district attendance office (Truancy).

The discipline strategy, "Escorted class change," is on the preprinted form but it was not checked by the ARD committee. I don't find any significance to this<sup>5</sup>.

<sup>5</sup>It isn't a violation of IDEA. Cf., *Alex R. v. Forrestville Valley School*, 375 F.3d 603, 41 IDELR 146 (7th Cir. 2004), cert. den. 543 U.S. 1009 (there are few, if any, enforceable fixed legal standards regarding the content of a BIP). See similarly, *School Board of ISD No. 11 v. Renollett*, 440 F.3d 1007, 45 IDELR 117 (8th Cir. 2006).

4. The ARD committee was unable to reach a consensus on January 10 because the Petitioner disagreed with the strategy of referring student to the district attendance office for truancy. The committee reconvened on January 24, 2006 and adopted a BIP plan with Petitioner dissenting. The handwritten notes of the January 24 meeting read in part, "One of the positive reinforcements might be that Ms. \*\*\* would check on her attend (sic) on Thurs and then [student might] have lunch with Ms. \*\*\* on Friday. The committee agreed that this might be a positive reinforcer and Ms. \*\*\* said she would try this approach. Contact with Mr. \*\*\* would be encouraged and some time she should meet with him for an attendance contract."
5. The evidence shows the ARD Committee discussed Ms. \*\*\* phoning the Petitioner to report on student's attendance, but that Ms. \*\*\* only did that once. On the other hand, as student's attendance continued to get worse other school personnel called Petitioner and reported on attendance problems. Student was encouraged to meet with Mr. \*\*\* and, in fact, did so, but no attendance contract was ever agreed on between student and Mr. \*\*\* though they did discuss her attendance.
6. On one occasion, student was dropped off at school in the morning but never went to any of her classes. She was picked up in the community during school hours by the Houston police department that day.
7. After that incident, student's principal, Ms. .\*\*\*, began having adults escort student from class to class.
8. Before the escort was ordered, the School District contacted Petitioner by phone. Petitioner initially expressed support for the escort program. She stated that something needed to be done because student had been absent from home without Petitioner knowing where she was all the preceding weekend.

9. Petitioner now complains that an ARD should have been held before the escort procedure was implemented. She also complains that she requested an ARD on several occasions and no ARD was held. The School District confirms that Petitioner requested an ARD but Petitioner also specified that she didn't want special education coordinator, \*\*\*, to be in attendance at the ARD. She lost interest in calling an ARD when told that Ms. \*\*\* would attend any ARD held for student.
10. At some point, Petitioner requested a psychological evaluation and the School District requested an ARD to discuss the reasons that Petitioner wanted a psychological evaluation. Petitioner explained that she had transportation problems and could not participate in an ARD at that time. She requested that the paperwork for her to authorize psychological evaluation be sent to her from the school so that the evaluation could be set up expeditiously. She didn't return the ARD paperwork until after this case was filed and never pursued the ARD requested by the School District.
11. As truancy and absenteeism problems increased, the School District made a referral of student for truancy to the law enforcement officer employed by the School District. Petitioner has complained that paper work documenting student's \*\*\* was not forwarded to the officer with student's truancy referral as required by 20 U.S.C. § 1415 (k) (6) and 34 C.F.R. § 99.30 However, the officer is an employee of the School District and has access to these records. Therefore, the requirement that the documents be transmitted with the request is inapplicable.
12. Four days after the truancy referral, Petitioner filed this action requesting a due process hearing.

## **Conclusions of Law**

Truancy is defined in § 25.094 of the Education Code as a criminal offense (a misdemeanor). There is nothing in IDEA which prohibits a public school district from reporting a crime committed by a child with disabilities and, in fact, § 25.0951 of the Texas Education Code requires that school districts file a complaint against the student or parent of a truant child (or against both the parent and the child) if a student fails to attend school without an excuse on 10 or more days within a six month period during the same school year. It is unnecessary for school officials to comply with IDEA procedural safeguards, including notice and ARD Committee deliberation, before reporting crime committed by a student with a disability regardless of the child's eligibility classification and regardless of whether school discipline options were modified in the child's IEP. See 20 U.S.C. § 1415(k)(6)(A), as follows, "Nothing in this

subchapter shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability." See also *Christopher H. v. Northside Independent School District*, TEA Docket No. 106-SE-1297, 28 IDELR 1118 (1998); and *Pruett P. v. Conroe ISD*, TEA Docket No. 231-SE-0302, 102 LRP 17456 (2002). See similarly *In re P.E. C.*, \_ S.W. 3d \_ (Tex. App. San Antonio July 19, 2006 -- not yet reported in S.W.3d or LRP Reporter Systems), 2006 Tex. App. LEXIS 6161. The Petitioner has failed to prove that the School District has denied student a FAPE by failing to implement student's IEP. Instead, the record affirmatively demonstrates a good faith effort on the part of the School District to assist student to meet the goals of her IEP and BIP that has been frustrated by student's poor attendance.

There was no requirement that the School District hold another ARD before initiating the escort program.

### **Order**

After due consideration of the record, the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer ORDERS that the relief sought by Petitioner is DENIED.

SIGNED this 26th day of July 2006.

Larry J. Craddock  
Special Education Hearing Officer

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SCHOOL DISTRICT  
RESPONDENT

## SYNOPSIS OF DECISION

- ISSUE:** Whether the mother can recover attorney's fees?  
*Alan S. v. Ingram ISD*, TEA Docket No. 219-SE-0204, 43 IDELR 124 (2004); *T.D. v. Northside ISD*, TEA Docket No. 234-SE-0305 & 235-SE-0305, 106 LRP 6651 (2005); and *Jonathan H. v. Klein ISD*, TEA Docket No. 376-SE-898, 29 IDELR 670 (1998).
- CITATION:**
- HELD:** For the District.
- ISSUE:** Whether the District may refer the student to law enforcement authorities for truancy without violating IDEA?  
20 U.S.C. § 1415(k)(6)(A); *Christopher H. v. Northside Independent School District*, TEA Docket No. 106-SE-1297, 28 IDELR 1118 (1998); *Pruett P. v. Conroe ISD*, TEA Docket No. 231-SE-0302, 102 LRP 17456 (2002) and *In re P.E. C., \_ S.W. 3d \_* (Tex. App. San Antonio July 19, 2006 -- not yet reported in S.W.3d or LRP Reporter Systems), 2006 Tex. App. LEXIS 6161.
- CITATION:**
- HELD:** For the District.
- ISSUE:** Whether a hearing officer may order a school district employee who is otherwise qualified not to attend the student's ARD meetings?  
*Bradley J. v. Lewisville Independent School District*, TEA Docket No. 271-SE-0402, 102 LRP 17462 (2002); and *Mark S. v. Hooks Independent School District*, TEA Docket No. 021-SE-0904 43 IDELR 263 (2002).
- CITATION:**
- HELD:** For the District.
- ISSUE:** Whether IDEA was violated when the student was placed on escort from class to class by an adult to assure she arrived at classes on time without an ARD meeting first being called to amend the student's BIP?  
*Alex R. v. Forrestville Valley School*, 375 F.3d 603, 41 IDELR 146 (7th Cir. 2004), cert. den. 543 U.S. 1009; *School Board of ISD No. 11 v. Renollett*, 440 F.3d 1007, 45 IDELR 117 (8th Cir. 2006).
- CITATION:**
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