
DOCKET NO. 066-SE-1106

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

PETITIONER

vs. BEFORE A SPECIAL EDUCATION
HEARING OFFICER
FOR THE STATE OF TEXAS

HOUSTON INDEPENDENT

SCHOOL DISTRICT

RESPONDENT

DECISION OF THE HEARING OFFICER

Statement of the Case

***, by next friend and parent *** (hereinafter "Petitioner"), brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act ("IDEIA"), 20 U.S.C. §1400, et seq., complaining of the Houston Independent School District (hereinafter "Respondent" or "the district"). Petitioner appeared pro se. Respondent was represented by Hans P. Graff with the Office the School Attorney of the Houston Independent School District. Petitioner's request for hearing was filed on November 6, 2006, and came on for hearing by agreement of the parties and order of the hearing officer on February 16, 2007. The parties were afforded an opportunity to file written closing arguments, and, at the conclusion of the hearing, the parties agreed that the decision in this matter would be timely issued on or before Marc 16, 2007.

Petitioner filed a written closing argument. Respondent did not.

Prior to the hearing, Petitioner failed to disclose the names of any witnesses and failed to disclose any documentary evidence. At the hearing, the student's parent

*** testified and called two other witnesses to testify. Respondent did not object to the testimony of the witnesses.

At a prehearing conference, Petitioner alleged that the student's school records were not properly prepared and maintained, that transportation was not properly provided to the student, that the student was improperly suspended from school on a number of occasions, and that the district failed to provide the student with an appropriate educational placement. As relief, Petitioner sought an order sustaining the allegations.

At the hearing, Petitioner presented evidence about the student's placement and discipline. Evidence about denial of transportation and improper records was not presented.

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. *** is a student who resides with the student's parent in the Houston Independent School District. [Respondent's Exhibits 3 & 10]
2. The student was born in September *** and at the time of the hearing was attending the *** grade within the district. [Respondent's Exhibit 10]
3. The student began attending school within the district upon enrollment in the *** grade in the fall of 2004. [Respondent's Exhibits 2 & 3]
4. The student exhibited behavior problems in school and was referred for a full and individual evaluation ("FIE") while in the *** grade in the spring 2006. [Respondent's Exhibits 1, 2, 3 & 4]
5. The student struggled academically and behaviorally in the *** grade and in the *** grade. [Transcript Pages 36-40 & 51-55 and Respondent's Exhibits 2, 3 & 4]
6. The student's parent initially consented to an evaluation of the student, then withdrew consent, but consented again after the student was placed in a disciplinary placement in the *** grade. [Transcript Page 52 and Respondent's Exhibits 2, 3 & 4]
7. The evaluation of the student in April 2006 showed that the student met special education eligibility criteria for emotional disturbance. [Respondent's Exhibit 1]
8. An admission, review and dismissal ("ARD") committee met to consider the student's evaluation and placement in April 2006. The ARD committee developed an individualized education program ("IEP") for the student which included placement at an alternative school and counseling as a related service. [Respondent's Exhibit 5]

9. Five more ARD committee meetings for *** were convened in the fall 2006. The student's parent attended each ARD and was given a copy of procedural rights at each meeting. [Respondent's Exhibits 6-10]
10. At the beginning of the student's ***grade year an ARD committee was convened to discuss the student's placement. The student's parent objected to the student's continued placement in an alternative school behavior support class, but the other members of the ARD committee believed that the student still met eligibility criteria for emotional disturbance and that the student's placement in a behavior support class was appropriate. The committee did not reach mutual agreement and agreed to meet later in the month. [Respondent's Exhibit 7]
11. At the next ARD committee meeting during the first month of the *** grade, the committee reached an agreement with the student's parent for continued placement in the behavior support class. The ARD committee also agreed that the student could attend a music class of the student's choice. [Respondent's Exhibit 7]
12. Another ARD committee was convened in September 2006 because of the student's parent's concern about placement. The ARD committee considered continuing problems with the student's behavior. The student's parent disagreed with the placement, and the committee adjourned. [Respondent's Exhibit 8]
13. At the next ARD committee meeting in September 2006, the ARD committee agreed to continue placement in a behavior support class at another elementary school and provided counseling as a related service for the student. But the student's parent did not agree with the placement. [Respondent's Exhibit 9]
14. Another ARD committee meeting was convened at the end of September 2006 to discuss the student's educational program. The student's parent opposed continued placement for the student in a behavior support class. A behavior support class was not available at the student's home campus, and the student was placed at another campus with an appropriate class. The committee considered continuing problems with the student's behavior. And the student's parent indicated a refusal of educational services for the student. [Respondent's Exhibit 11]
15. Evaluation and assessment of the student demonstrate a need for behavioral interventions in order for the student to access and benefit from an educational program. [Respondent's Exhibits 1, 2, 3 & 11-18]

Discussion

The district and the student's parent cannot agree on the degree of difficulty that the student's behavior causes in the student's educational placement, but the evidence introduced at the hearing supports the district's position that the student needs behavioral supports in class in order to benefit from an educational program. Petitioner failed to meet the burden to prove that the student's

evaluation is inaccurate or that the student's educational placement is inappropriate.

Conclusions of Law

1. *** 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 provision of an appropriate educational placement for ***.
3. The current educational placement developed by the district for *** was properly developed by an ARD committee for *** and provides an educational placement and related services reasonably calculated to enable to the student to receive educational benefit under the standard of Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982), 34 CFR 300.552, and 19 T.A.C. §89.1055.
4. Petitioner failed to meet the burden to prove that the educational program provided by the district for *** was inappropriate. Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983).

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 16th day of March, 2007.

/s/ Lucius D. Bunton

Lucius D. Bunton

Special Education Hearing Officer

