

STUDENT <i>b/n/f</i>	§	BEFORE A SPECIAL EDUCATION
PARENT,	§	
	§	
Petitioner,	§	
	§	
V.	§	HEARING OFFICER
	§	
HOUSTON INDEPENDENT	§	
SCHOOL DISTRICT,	§	
	§	
Respondent.	§	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner, Student *b/n/f* Parent (“Student”), requested a Due Process Hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. §1400 *et seq.*, contending that Respondent, Houston Independent School District (HISD), denied Student a free, appropriate public education (FAPE) in the following particulars: that HISD was not following Student’s Individual Education Plan (IEP) and has harassed him by picking on him and calling him names. Student seeks an order from the Hearing Officer directing the harassment to stop and comply with the IEP. Conversely, HISD seeks an order from the Hearing Officer that the Admission, Review, and Dismissal (ARD) committee’s recommended placement be upheld.

Procedural History

On February 21, 2007, the Texas Education Agency (TEA) received Student’s Request for Due Process Hearing (the complaint), assigned the case Docket No. 159-SE-0207, and appointed the undersigned Hearing Officer to the matter. On February 23, 2007, the Hearing Officer sent the Initial Scheduling Order to the parties setting forth all applicable dates related to the Resolution Period and the Hearing. The Hearing Officer conducted a prehearing conference with the parties on March 27, 2007, during which time the issues were discussed, and a hearing schedule was established for April 16, 2007. A court reporter prepared a transcript of the prehearing conference and provided a copy to both parties.

Due to scheduling conflicts among the Hearing Officer, Respondent’s counsel, and some of the witnesses for Respondent, the hearing date was changed to May 7, 2007. The Due Process Hearing convened as scheduled on May 7, 2007. In attendance throughout the hearing for Petitioner were Student, Parent, and Grandparent. Respondent was represented by its counsel and its designated representative, the Special Education Director for the North Region. Petitioner called five witnesses; HISD also called five witnesses. HISD offered 23 exhibits into

evidence. Petitioner chose not to offer any documentary evidence. At the conclusion of the hearing the parties gave oral closing arguments to the Hearing Officer. The Decision Deadline was extended due to the rescheduling of the hearing from April 16 to May 7, in order to permit the preparation of the transcript and the findings of fact and conclusions of law. The Decision Deadline in this matter is June 14, 2007.

Findings of Fact

Based upon the matters of record and matters of official notice, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following findings of fact based on a preponderance of the credible evidence:

1. Student resides with his grandparent within the jurisdictional limits of Houston Independent School District. HISD is a political subdivision of the State of Texas and a duly incorporated independent school district.
2. Student currently receives special education services from HISD under the classification of emotionally disturbed (ED). Student first came to ** School in March 2006 as a transfer student, already receiving special education services.
3. Student's November 17, 2006 Individual Education Plan contemplated placement in general education classes for history and reading with a teaching assistant for the first 45 minutes of instruction and content mastery to complete the independent work. Student was to be placed in the Behavior Support Class (BSC) for English and math, and Student was to receive thirty minutes counseling per week.
4. Student has been diagnosed with Bipolar Disorder Not Otherwise Specified, with oppositional features. He has also been diagnosed with Attention Deficit/Hyperactivity Disorder, Combined Type. A full individual evaluation and psychological evaluation was performed in December 2004 by another school district. HISD's licensed specialist in school psychology conducted a consultation on Student in June 2006. HISD's psychologist's opinions were consistent with the December 2004 report of the other school district.
5. Student's teachers reported that when he first began classes at the school in the early spring of 2006 he "basically did what he needed to do." He may have had a few altercations, but nothing extreme.
6. During the 2006-2007 school year things changed dramatically for Student. Not only have the number of incidents increased, but so has the intensity. Some of the incidents involved fighting with other students; other incidents indicated disrespect for teachers and authority figures, primarily through Student's use of profanity. From September 8, 2006, until January 4, 2007, Student received over 21 discipline referrals. Behaviors reported include: shoving and fighting, exhibiting noncompliance, being disrespectful, being excessively noisy, using profanity, refusing to work, and leaving assigned area.

7. Student was hospitalized in the spring of 2007, and his parent believed his behavior had improved quite a bit since his release and the adjustment of his medication. Student's sibling testified that such change in behavior had been observed at home. However, the teachers and staff did not see any change in Student's behavior since his release from the hospital.
8. Two major incidents occurred at school the week before the due process hearing that clearly demonstrate that Student's behavior has not come under control. He hit another student, a girl, in the chest at school. The other child's parents were very unhappy, and the principal had a difficult situation on her hands. Additionally, he hit a pregnant teaching assistant on the wrist.
9. Another incident involving Student shows how disruptive he could be. ** School is adjacent to the North Region office for HISD. The Special Education Director for the North Region heard screaming and yelling and cursing, and observed Student in the parking lot being pursued by the staff trying to convince him to come back inside the building. She was concerned because the school is on a busy street, and was worried about someone running into the street in front of a car. On the second occasion like this, she went to the school to see if she could assist the principal. She went to talk to Student, and put her hand on his shoulder, telling him, "Come talk to me and let me know what's going on, what the problem is." Student's response was, "Do not touch me, bitch." The incident lasted an hour to an hour-and-a-half, and in the interim, "everybody" was out in the parking lot.
10. A number of less dramatic incidents occurred with Student whenever he wished to leave the classroom. He did things to disrupt the classroom so that the teacher would be forced to send him to the BSC room. He would use profanity or get upset, start speaking loud or whatever it would take. If he did not want to be in the BSC room he simply left.
11. The Admission, Review and Dismissal committee recommended that Student receive services at ** Alternative School, but Student's parent disagreed with that placement because it is more restrictive. ** has much smaller classes, and indeed does provide a much more structured learning environment. All of the teachers at ** are special education certified. ** has two associate psychologists on staff available at all times. There is a reflection room where students can go who have some type of outburst or inappropriate behavior, to have an opportunity to calm down. Perhaps most important of all, though, the doors at ** are locked for students' safety and security.
12. Student's parent has been very interested and cooperative with the school in attending to his educational program. However, the parent disagrees about the level of Student's behavioral problem at school. The parent believes the school would be more successful if the Behavior Intervention Plan (BIP) were followed more exactly.
13. The BIP dated September 27, 2006, for Student was modified on January 8, 2007, following the ARD committee's review of the psychological report and consultation

of HISD's psychologist. In the Functional Behavior Assessment (FBA) the following behaviors were indicated to be problematic for Student:

- Off task
 - Leaves assigned area
 - Incomplete assignments
 - Noncompliance
 - Disruption inside the classroom
 - Disruption outside the classroom
 - Emotional outbursts/tantrum
 - Defiance of authority
 - Negative verbalization
14. The FBA indicated the functions of the behavior were seeking power/control, gain attention/approval, express frustration/anger, and relieve fear or anxiety.
15. Although the ARD committee modified the BIP in January 2007, Student's behavior continued to be a problem at school during the spring semester. Parent believes the teachers did not properly implement Student's BIP, but the evidence points in the opposite direction. Student repeatedly left the classroom without permission, disrupted the educational process, and inflicted harm on others – both verbally and physically.
16. ** Alternative School is an appropriate placement for Student.

Discussion

Essentially, this is a placement case. Parent believes Student should function within the confines of the classroom with modifications supplied by a BIP, whereas the rest of the ARD committee members believe the BIP failed miserably. Student is not a bad kid; quite the contrary, he shows promise in several areas. However, the structure he needs cannot be provided by the approach tried so far, and a more restrictive environment would be appropriate in this instance. No more restrictive environment is available at **School, and therefore, another campus must be considered. The features of ** Alternative School make it appropriate for Student to make progress in the area of controlling his behavior and academic progress as well. Thus, ** is an appropriate placement in this case.

Conclusions of Law

After due consideration of matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. Student is eligible for special education services as a child who is emotionally disturbed. 20 U.S.C. §1401 (3) (A); 34 C.F.R. §300.7 (c) (4); 19 TEX. ADMIN. CODE § 89.1040 (c) (4).
2. HISD is required to provide Student FAPE.
3. HISD did not fail to provide FAPE to Student during the 2006-2007 school year. *See Cypress-Fairbanks ISD v. Michael F.*, 118 F.3d 245 (5th Cir. 1997).
4. Petitioner bears the burden of proof with respect Student's claims that Student was denied a free appropriate public education. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984). Petitioner did not meet Student's burden of proof in this case.
5. HISD bears the burden of proof with respect to the issue of placement of Student at ** Alternative School. HISD did meet its burden of proof with respect to this issue.
6. ** Alternative School is an appropriate placement for Student.

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the relief sought by Petitioner is DENIED. IT IS FURTHER ORDERED that the relief requested by Respondent is GRANTED.

SIGNED this 14th day of June 2007.

Lucretia Dillard
Special Education Hearing Officer