

DOCKET NO. 296-SE-0607
DOCKET NO. 049-SE-1006

STUDENT bnf § **BEFORE A SPECIAL**
EDUCATION §
PARENT §
VS. § **HEARING OFFICER**
§
HARRIS COUNTY §
DEPARTMENT OF EDUCATION § **FOR THE STATE OF TEXAS**

DECISION OF HEARING OFFICER

STUDENT (hereinafter “the student”) through his next friend, PARENT (Petitioner), requested a due process hearing pursuant to the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et. seq.*. The Respondent is the Harris County Department of Education (HCDOE).

Petitioner made the following complaints regarding the Respondent which were limited to events occurring after October 24, 2005:

1. Whether Respondent implemented counseling services as required by the student’s IEP.
2. Whether Respondent failed to release behavior records of the student as requested by the parent in October 2005 and January 2006 – said reports being of incidents in which the student received citations;
3. Whether Respondent notified law enforcement and court officials of the student’s special education status and provided them with his special education information on or about April 29, 2004, May 19, 2005 and June 7, 2006;
4. Whether Respondent improperly destroyed documents involving behavior of the student;
5. Whether Respondent falsified documents;
6. Whether Respondent failed to educate and provide student with a free appropriate public education in 2006;
7. Whether Respondent maintained a safe environment and adequately protected the student from others on or about April 4, 2006.

Petitioner also complained of the following acts and/or omissions which were alleged to have occurred between January and May of 2007.

8. Whether the Respondent failed to provide crisis counseling for the student;
9. Whether Respondent improperly reduced the student's counseling hours during the 2006-2007 school year;
10. Whether Respondent failed to provide counseling to the student during summer school;
11. Whether Respondent failed to develop a counseling plan and/or a Behavior Intervention Plan.

Respondent alleged that it is not a proper party to the case as it is a contract service provider for Houston ISD and that Houston ISD is ultimately the party responsible for providing the student a Free Appropriate Public Education ("FAPE") under IDEA.

Based on a careful consideration of the evidence and the arguments of the parties, I find that Respondent HCDOE is not a proper party under IDEA, and therefore Petitioner's claims should be DISMISSED.

PROCEDURAL HISTORY

Petitioner filed two requests for hearing which were consolidated. The matters were originally assigned to Special Education Hearing Officer James Holtz and reassigned to the undersigned Hearing Officer on August 15, 2007. Petitioner was represented by his parent, Pro Se. Todd Clark represented the Harris County Department of Education. Following a continuance for good cause, the hearing was held on September 25-26, 2007. The Decision due date was also extended for good cause to November 15, 2007. The Decision was timely rendered and forwarded to the parties.

Prior to hearing, Respondent filed a Motion for Summary Judgment, requesting a finding without a hearing that it was not a proper party to the case as it merely provided a placement and services for the student under a contract with the Houston Independent School District. Hearing Officer James Holtz denied the Motion for Summary Judgment and the matter proceeded to hearing with the undersigned Hearing Officer.

Based upon the evidence and argument of the parties, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. The student resides within the geographical boundaries of the Houston Independent

School District (hereinafter "HISD"). HISD is responsible for providing the student with a FAPE.

2. During the 2005-2006 school year and from January 2007 through the end of the 2006-2007 school year, the student attended **, a contract placement operated by the Harris County Department of Education (hereinafter "HCDOE"). The placement was made with the consent of the parent and at the recommendation of the ARD Committee.

3. The General Revenue Agreement between the HISD and the HCDOE for the 2005-2006 and 2006-2007 school years sets forth the conditions and terms under which the HISD contracted with HCDOE to provide services to certain HISD students.

4. The General Revenue Agreement provides that services provided under the Contract were to be provided with the consent of the parent.

5. The HCDOE is responsible for implementing the student's IEP and the provision of related services under the Contract. However, the HISD remains responsible for overseeing the implementation of the student's IEP and for providing an annual reevaluation of the appropriateness of the instructional arrangement.

6. Under the Agreement, HISD is responsible for conducting ARD Committee meetings and complying with the notice provisions of IDEA.

7. The Agreement specifically provides that the HISD and HCDOE are separate entities and that HCDOE is an independent contractor.

8. HCDOE does not enroll an independent student body. Rather, all students who receive services on their campuses remain enrolled in the placing District. In this case, the student was enrolled in HISD, but received services through **, the contract placement operated by HCDOE.

9. The Agreement specifically provides that it does not create third party beneficiaries or otherwise give any claim or right of action against any party to the Agreement.

10. HCDOE receives no federal funds to operate their schools. Rather, their revenue is derived from contractual payments from districts that engage their services.

DISCUSSION

Local Education Agencies ("LEA's"), by receiving funds under Part B of IDEA, are obligated to provide a FAPE to its students. 20 U.S.C. 1413(a); 34 C.F.R. §200.200-§300.201. While the LEA is responsible for the delivery of a FAPE to the students within its boundaries, it may elect to contract with another entity for the provision of special education services. However, when an LEA contracts with another agency, public or private, to provide special

educational services to its students, the contracting LEA remains responsible for the provision of FAPE by overseeing the implementation of the student's IEP and re-evaluating the appropriateness of the arrangement. *See* Tex. Educ. Code § 29.008(d). HISD contracted with HCDOE to provide special education services for certain students, including the student in the case at bar, by implementing the educational plan developed by the HISD at one of HCDOE's campuses. HISD representatives continually evaluated the appropriateness of the arrangement and did in fact oversee HCDOE's implementation of the student's IEP by making regular campus visits, scheduling and initiating ARD Committee meetings when necessary, and evaluating the appropriateness of the program for the student on at least an annual basis. The student was enrolled in HISD and in fact could not have enrolled in HCDOE as HCDOE has no independent enrollment.

The fact that HCDOE provides special education services to the student, and those services have an impact on the student's performance, does not result in HCDOE being ultimately responsible for the child's education under IDEA. Imposing this liability on a contract service provider, whether public or a private, would be contrary to public policy as it would potentially discourage public agencies that do not receive federal funds under IDEA from entering into contractual arrangements with school districts, thereby reducing resources available to students with disabilities. *See Fetto v. Sergi*, 181 F.Supp.2d 53 (D. Conn. 2001); *M.K. v. Sergi*, 2007 WL 988621 (D. Conn., March 30, 2007); 47 IDELR 214. Both IDEA and State law contemplates that a local education agency may contract with other service providers as a means of providing a FAPE to a student. However, the ultimate responsibility for the provision of FAPE rests solely with the local education agency. 20 U.S.C. §1412(a)(12)(B); Tex. Educ. Code § 25.086(a)(2)&(b); Tex. Educ. Code § 29.008(d). A local education agency is a public agency legally constituted within a State for either administrative control or direction of, or to perform a service function for, public schools in a city, county, township, school district, or other political subdivision of a state. 20 U.S.C. § 1401(19); 34 C.F.R. 300.28. HISD is charged with providing educational services for the students within its boundaries. HCDOE, on the other hand, has no independent enrollment for students within a specific geographical region. Rather, it serves only those students placed in its programs by school districts pursuant to a contract. HCDOE is not a local education agency as that term is defined under IDEA. HCDOE is not responsible for the provision of a Free Appropriate Public Education for the student in this case. Rather, it is responsible for implementing the student's IEP under a contractual agreement with the student's LEA, Houston ISD.

CONCLUSIONS OF LAW

1. The student is eligible for special education services as a student with disability under IDEA, 20 U.S.C. §1400 *et. seq.* and its implementing regulations.
2. The student's parent resides within Houston ISD, a legally constituted independent school district within the state of Texas that is responsible for providing the student with a Free Appropriate Public Education.
3. HISD, at all relevant times, was the entity responsible for providing the student

with a Free Appropriate Public Education. 20 U.S.C. §1401(19); 20 U.S.C. 1413(a); 34 C.F.R. §300.200-300.201.

4. HCDOE did not assume ultimate responsibility for providing the student with a Free Appropriate Public Education because of its contractual arrangement with HISD. Rather, HISD remained responsible at all times for overseeing the implementation of the student's IEP and providing the student with a Free Appropriate Public Education. Tex. Educ. Code § 29.008(d). *See also Fetto v. Sergi*, 181 F.Supp.2d 53 (D. Conn. 2001); *M.K. v. Sergi*, 2007 WL 988621 (D. Conn., March 30, 2007); 47 IDELR 214.

5. Respondent is not a proper party under IDEA, and therefore, Petitioner may not seek relief against Respondent in a due process hearing. Consequently, all claims in this matter shall be dismissed.

ORDER

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that all claims against Respondent shall be **DISMISSED** and the relief requested by Petitioner is **DENIED**.

Finding that the public welfare requires the immediate effect of this Final Decision and Order, the Hearing Officer makes it effectively immediately.

SIGNED this 15th day of November, 2007.

Sharon M. Ramage
Special Education Hearing Officer

SYNOPSIS

- Issue:** Whether a public agency that contracts with a local education agency to provide services and to implement a student's IEP is ultimately responsible for the provision of a Free Appropriate Public Education, and therefore a proper party under IDEA.
- Held:** For the Respondent. Respondent is not a local education agency under IDEA and therefore not a proper party. Although Respondent had a contractual arrangement with HISD to provide services to the student, the student resided within the boundaries of the HISD, and therefore, HISD, as the local education agency, remained responsible at all times for the provision of a Free Appropriate Public Education.
- Citation:** 20 U.S.C. §1401(19); 20 U.S.C. 1413(a); 34 C.F.R. §300.200-300.201; Tex. Educ. Code § 29.008(d)