

DOCKET NO. 028-SE-1007

Student bnf § **BEFORE A SPECIAL EDUCATION**
PARENT §
§
VS. § **HEARING OFFICER**
§
MESQUITE INDEPENDENT §
SCHOOL DISTRICT § **FOR THE STATE OF TEXAS**

DECISION OF THE HEARING OFFICER

Student (hereinafter “the student”) through his next friend, PARENT (Petitioner), requested a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act (IDEIA), 20 U.S.C. § 1400 *et. seq.*. The Respondent is the Mesquite Independent School District.

Student is an adult student and consented to representation by his mother in the due process hearing.

The issues before the hearing officer were (1) whether the student’s 2007-2008 IEP is inappropriate; and (2) whether the District failed to provide the student with a graduation plan.

Held for Respondent.

PROCEDURAL HISTORY

Petitioner filed this request for hearing on October 15, 2007. Petitioner was represented by his parent, Pro Se. Gary Grimes represented the Mesquite Independent School District. Following a continuance for good cause, the hearing was held on January 7, 2008. The Decision was timely rendered and forwarded to the parties.

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 Mesquite ISD. Mesquite ISD is responsible for providing the student with a FAPE. The student is eligible to receive special education and related services as a student with an emotional disturbance and other health impairment.

2. Petitioner failed to produce any testimony or documentary evidence pertaining to the issues identified for hearing. More specifically, Petitioner failed to produce any evidence or testimony that the 2007-2008 IEP is inappropriate and failed to produce any evidence or

testimony that the District failed to develop a graduation plan for the student. Petitioner has wholly failed to meet his burden of proof under *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

3. The student's placement is in a self-contained classroom at the Mesquite ISD Access Center, a placement that is available to certain students with behavioral issues as deemed appropriate by the ARD Committee.

4. The District developed the student's 2007-2008 IEP on May 16, 2007 which included a graduation supplement. (R-19). The IEP also included a supplement for transition services.

5. After school resumed in the Fall of 2007, the ARD Committee convened to address behavior concerns at school. The ARD Committee agreed that job skills training would be provided to the student with a job coach to visit the student on campus. No other substantive changes were made to the IEP or the student's placement at that time. According to **, the administrator for the student's campus, both IEP's were designed to provide the student with a meaningful educational benefit. The student made progress during the 2006-2007 school year, and the District anticipated that he would make progress under the current school year's IEP. (See testimony of **)

6. Within weeks after the development of the student's IEP in the Fall of 2007, the student was arrested for an assault which occurred in the classroom. Although the student was no longer incarcerated at the time of the hearing, he had not returned to school since October 3, 2007. The student was not subjected to school disciplinary action or a change in placement initiated by the District as a result of the assault. The student has not returned to school since the date of the assault.

7. To the extent the student's absences from school since October 3, 2007, currently prevent him from benefiting meaningfully from the instructional services being offered, this failure cannot be attributed to the District. The District's obligation under IDEA is to provide opportunity, not to guarantee educational progress to a student who fails to attend class and produce the necessary assignments. *Valerie L. v. Southwest Independent School District*, TEA Dkt. No. 169-SE-0203 (May 30, 2003); *Matthew L. v. Fort Bend ISD*, TEA Dkt. No. 188-SE-0104 (March 20, 2004). The IEP's developed at the May 2007 and September 2007 ARDC meetings provide such an opportunity. *Board of Education of the Hendrick Hudson School District v. Rowley*, 458 U.S. 176 (1982).

CONCLUSIONS OF LAW

1. The student is eligible for special education services as a student with a disability under IDEIA, 20 U.S.C. §1400 *et. seq.* and its implementing regulations.

2. The district's educational program is entitled to a legal presumption of appropriateness. *Tatro v. Texas*, 703 F.2d 823 (5th Cir. 1983). Petitioner bears the burden of

proving that it is not appropriate or that the District has not complied with the procedural requirements under the IDEIA. *Schaffer v. Weast*, 126 S.Ct. 528 (2005). Petitioner has wholly failed to meet his burden.

ORDER

Based upon a preponderance of the evidence and the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that 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 25th day of January, 2008.

Sharon M. Ramage
Special Education Hearing Officer

SYNOPSIS

Issue: Whether the student's 2007-2008 IEP was inappropriate and whether the District failed to develop a graduation plan for the student.

Held: For the District. Petitioner wholly failed to meet his burden of proof under *Schaffer v. Weast*, 126 S.Ct. 528 (2005). The District developed an IEP for the student for the 2007-2008 school year that was designed to provide a meaningful educational benefit and the IEP contained a graduation plan.

Citation: 34 CFR §300.320; and 19 T.A.C. §89.1055; 19 T.A.C. § 1070.