

DOCKET NO. 061-SE-1107

STUDENT,
B/N/F STUDENT

VS.

ALIEF INDEPENDENT
SCHOOL DISTRICT

§ BEFORE A SPECIAL EDUCATION
§
§
§ HEARING OFFICER
§
§ FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by next friend and parent (hereinafter “Petitioner” or “the student”), brought a complaint pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of the Alief Independent School District (hereinafter “Respondent” or “the district”).

Petitioner appeared pro se. Respondent was represented by Erik Nichols with the law firm of Feldman, Rogers, Morris & Grover in Houston, Texas.

Petitioner's request for hearing was filed on November 28, 2007, and came on for hearing by agreement of the parties and order of the Hearing Officer on February 4, 2008. At the conclusion of the hearing, the parties were offered an opportunity to file written closing arguments prior to the issuance of the decision. The parties filed closing arguments and agreed that the decision was to be issued on or before March 7, 2008.

Petitioner alleged that the district improperly placed the student in inappropriate alternative educational placement, that the district made procedural errors in making the placement, and that the district failed to provide the student with an appropriate educational placement.

As relief, the Petitioner sought an order declaring the student's educational placement inappropriate.

Based upon the evidence and argument, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. STUDENT is residing with the parent within the Alief Independent School District. [Respondent's Exhibit 1]

2. During the 2007-2008 school year the student attends ** grade within the district. [Respondent's Exhibit 1]

3. During the 2007-2008 school year the student was eligible for special education placement based upon eligibility criterion of other health impaired ("OHI"). The student's impairment is based upon attention-deficit disorder ("ADD"). [Respondent's Exhibits 1 and 7]

4. In November 2007, an assistant principal at the student's school discovered a notebook in which STUDENT had written threatening statements about other students. [Respondent's Exhibit 1]

5. The student's writings in the notebook were initially classified by the assistant principal as a terroristic threat – a level IV offense according to the Alief Independent School District code of conduct. [Petitioner's Exhibit 1 & Respondent's Exhibit 1]

6. After a discussion with the student's parent, the assistant principal classified the offense instead as a level III offense for writing a "hit list". [Transcript Page 16, Petitioner's Exhibit 1 & Respondent's Exhibit 1]

7. An admission, review, and dismissal ("ARD") committee meeting was conducted to consider the student's placement, disability, and the offense on November 28, 2007. The committee conducted a manifestation determination review ("MDR") and concluded that

STUDENT's conduct was not a manifestation of STUDENT's disability. The committee determined that the student would be placed in a disciplinary placement at the Alief Learning Center ("ALC"). [Respondent's Exhibit 1 & Transcript Pages 16-18]

8. The student's initial placement at ALC was for a period of thirty days but, because of the student's good behavior, the student's placement was reduced to fifteen days. [Transcript Page 57]

9. The student's parent sought placement instead within the student's campus in in-school-suspension. [Transcript Page 18]

10. The MDR at the ARD committee meeting in November 2007 considered whether or not the student's conduct was a manifestation of the student's disability. The committee determined that the conduct was not caused by and did not have a direct and substantial relationship to the student's disability. Additionally, the committee determined that the conduct was not the direct result of the district's failure to implement an individual education plan ("IEP").

11. The student's parent agreed that the student's behavior was not linked to the student's disability. [Transcript Page 38]

12. The disciplinary placement for the student was made according to the provisions of the district's student code of conduct. [Petitioner's Exhibit 1]

13. Petitioner's placement for the 2007-2008 school year was developed by an ARD committee in collaboration with the student's parent. [Respondent's Exhibit 2]

14. The student's educational records, report cards, and standardized testing demonstrate that the student has been making educational progress in her placement in school. [Respondent's Exhibits 1-13]

Discussion

Though the student's parent believes that the punishment for the student for the disciplinary infraction was too harsh, the Petitioner failed to present evidence that the district's actions in the manifestation determination review and disciplinary placement violated provisions of IDEA. Nor did the Petitioner present evidence that the student's educational placement was inappropriate under the provisions of IDEA.

Conclusions of Law

1. STUDENT is a student 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 Alief Independent School District is the local education agency responsible for the provision of an appropriate educational placement for STUDENT.
3. The district's IEP for STUDENT was appropriately developed and provides an educational placement and related services reasonably calculated to enable 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. After the district learned of misconduct by the student in November 2007, the district considered the conduct at an ARD committee meeting and made accurate and appropriate determinations about the conduct and the student's disability within the provisions of IDEA, 20 U.S.C., §1415(k)(I)-(II) and 34 CFR §300.530(e)(I).
5. Petitioner failed to meet Petitioner's burden to prove that the district's action was inappropriate or that the student's placement 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 6th day of March, 2008.

 /s/ Lucius D. Bunton
Lucius D. Bunton
Special Education Hearing Officer

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B/N/F STUDENT	§	
	§	
VS.	§	HEARING OFFICER
	§	
ALIEF INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE 1: Whether the district failed to provide an appropriate educational placement.

CFR CITATIONS: 34 CFR 300.552

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.

ISSUE 2: Whether the district made a proper determination in the manifestation determination review.

CFR CITATIONS: 34 CFR 300.530(e)(I)

HELD: For Respondent.