

DOCKET NO. 070-SE-1207

STUDENT, B/N/F D.T.	§	BEFORE A SPECIAL EDUCATION
	§	
VS.	§	HEARING OFFICER
	§	
SONORA INDEPENDENT SCHOOL DISTRICT	§	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 Sonora Independent School District (hereinafter "Respondent" or "the district"). Petitioner was represented by Debra Liva, a parent advocate of San Antonio, Texas. Respondent was represented by D. Craig Wood with the firm of Walsh, Anderson, Brown, Schulze & Aldridge, P.C. in San Antonio, Texas.

Petitioner's request for hearing was filed on December 13, 2007, and came on for hearing by agreement of the parties and order of the hearing officer on February 6, 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 agreed that the decision was to be issued on or before March 25, 2008. Petitioner filed a written closing argument.

Petitioner alleged that the student was improperly disciplined by the district and has not been provided with a free appropriate educational placement. As relief, Petitioner sought an order finding the student was improperly disciplined and an order providing for an appropriate educational placement.

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 a student residing with the student's parent within the Sonora Independent School District. [Respondent's Exhibits 5-11]

2. During the 2007-2008 school year the student has been attending the ** grade within the district. [Respondent's Exhibit 11]

3. During the 2007-2008 school year the student was eligible for special education placement based upon an eligibility criterion of specific learning disabilities. [Respondent's Exhibit 11]

4. Admission, review and dismissal ("ARD") committees met for the student in February 2007 and September 2007 and developed an individual education plan ("IEP") for the student with specific and measurable goals and objectives based upon the student's individual educational needs, current evaluation, and levels of performance. [Respondent's Exhibits 6 & 15]

5. A behavior intervention plan ("BIP") was developed for the student at an ARD committee meeting in November 2007. The ARD committee considered a functional behavioral assessment ("FBA"). Additionally, the committee conducted a manifestation determination review ("MDR") for the student because of misconduct by the student at school. [Respondent's Exhibit 16]

6. During the fall 2007, the student was insubordinate on a number of occasions and once through a rock at a teacher. [Respondent's Exhibit 16]

7. 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 the student's IEP. [Respondent's Exhibit 16]

8. The BIP for the student included a number of steps to be taken if the student engaged in misconduct or if the misconduct accelerated. [Respondent's Exhibit 15]

9. As a result of the student's insubordination and attempted assault of a teacher, the student was placed in in-school-suspension in accordance with the provisions of the student's IEP and BIP. [Respondent's Exhibit 15 & 16]

10. While attending school in the student's ** and ** grade years, the student demonstrated meaningful and measurable educational progress as evidenced by his report cards, state developed alternative assessments, and IEP progress reports. [Respondent's Exhibits 6-11 & 20]

Discussion

Though the student's parent maintained that the student was improperly disciplined and that the student was not provided with an appropriate educational placement, Petitioner failed to present evidence that the district's actions in the manifestation determination review and disciplinary placement violated provisions of IDEA. Additionally, the student's educational performance showed meaningful educational progress.

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. Sonora 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 considered misconduct by the student in the fall of 2007, the district considered the conduct in an ARD committee meeting and made appropriate and accurate 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 in developing the student's IEP or implementing 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 25th day of March, 2008.

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

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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.