

DOCKET NO. 182-SE-0409

STUDENT	§	BEFORE A SPECIAL EDUCATION
B/N/F PARENT	§	
	§	
VS.	§	HEARING OFFICER
	§	
KLEIN 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 Improvement Act (“IDEIA”), 20 U.S.C. §1400, et seq., complaining of Klein Independent School District (hereinafter “Respondent” or “the district”).

Petitioner appeared pro se. Respondent was represented by Jeffrey Rogers with the firm of Feldman, Rogers, Morris, & Grover in Houston. Petitioner’s request for hearing was filed on April 6, 2009. The matter came on for hearing by agreement of the parties and order of the hearing officer on May 28, 2009, in the offices of the district. Respondent filed a written closing argument, and the parties agreed that this decision would be timely issued on or before July 2, 2009, in accordance with the regulatory time-line.

Petitioner alleged that the district did not provide an appropriate notice for an admission, review, and dismissal (“ARD”) committee meeting because the notice was sent to an incorrect address. Petitioner further alleged that the district did not have a behavior improvement plan (“BIP”) in place during the previous two school years. Petitioner also alleged that the district failed to implement an individual education plan (“IEP”) for the student because the student was allowed to wander in the halls.

As relief Petitioner sought an order placing the student in the student's former educational placement prior to the implementation of a disciplinary placement for the student and compensatory educational services.

Based upon the evidence and argument of counsel, the hearing officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. The student was born in ** and resides with the student's parent within the Klein Independent School District. [Petitioner's Exhibit 1]

2. The student received special education and related services based upon eligibility criteria of a learning disability and emotional disturbance. [Petitioner's Exhibit 1 and Respondent's Exhibits 1 through 3]

3. An ARD committee meeting for the student was conducted on March 23, 2009, to conduct a manifestation determination review to consider whether or not some inappropriate conduct of the student had a direct or substantial relationship to the student's disabilities or whether the student's conduct was a direct result of the district's failure to implement the student's IEP. [Respondent's Exhibit 3]

4. The ARD committee meeting on March 23, 2009, concluded that the conduct in question did not have a direct and substantial relationship to the student's disabilities and was not the result of the district's failure to implement the student's IEP. [Respondent's Exhibit 2]

5. Because of the student's insubordination in class, the district sought to remove the student to an alternative educational placement and conducted a manifestation determination review before implementing the change in placement. [Respondent's Exhibit 2]

6. The district attempted to contact the student's parent prior to the ARD committee's manifestation determination review but was unable to make contact with the student's parent. The district personnel attempted to contact the student's parent by telephone and by mail. [Respondent's Exhibit 2]

7. The district used an old-or former-address in trying to reach the parent by mail. [Transcript Page 10]

8. The district was unable to reach the parent by phone because – according to the parent – the parent's home phone was disconnected and the parent's cell phone had been stolen. [Transcript Pages 11, 93, and 116]

9. The student's parent learned of the decision of the ARD committee on March 23, 2009, went to the student's school, talked with school personnel and asked that the manifestation ARD be "redone." [Transcript Page 76]

10. The student's principal offered to have another ARD committee meeting "right there on the spot" but the student's parent stated that the parent was unprepared at the time and wanted to come back another day. The principal explained that they could not "redo" the ARD but would convene another ARD committee meeting to reconsider the manifestation and action of the ARD committee. [Transcript Pages 36 and 37]

11. The parent was offered an opportunity to appear at an ARD on April 1, 2009, and was properly notified of the ARD committee meeting to reconsider the previous action of the ARD in its manifestation review. An ARD committee convened for that purpose on April 1, 2009, but the parent did not appear for the meeting. The ARD committee did not change its previous determinations and concluded that the disciplinary placement proposed for the student was appropriate. [Respondent's Exhibit 1 and Transcript Pages 36-39]

12. Because of the student's problems with behavior, a Behavior Intervention Plan ("BIP") was in place for the student for the 2007-2008 school year and the 2008-2009 school year. [Respondent's Exhibits 2, 4, and 7]

13. The student's BIP was implemented by the district and the student was afforded an opportunity to make educational progress. [Respondent's Exhibits 2, 4, 7, 8 and 9]

14. District personnel diligently sought to contact the student's parent through telephone calls and by contacting the parent's ex-spouse seeking help from the ex-spouse to contact the student's parent. The district did not succeed in reaching the student's parent prior to the ARD committee meeting on March 23, 2009, but offered the parent another ARD committee meeting to reconsider the ARD's previous action when the student's parent appeared at the school. [Transcript Pages 93 and 98]

15. The student's parent did not permit the student to attend the alternate educational placement, and the student has not returned to school. [Transcript Page 104]

Discussion

The student's parent believes that the district failed to provide appropriate notice for an ARD committee meeting dealing with the discipline of the student. The district, however, made appropriate efforts to contact the student's parent before the meeting and, after the meeting, offered another ARD committee meeting for the parent to attend for reconsideration of ARD decisions. Though the meeting was offered and took place, the parent did not participate in the meeting.

In complaining of the district's actions, the parent has the burden of proof to demonstrate that the district failed to follow the law in providing an appropriate educational placement for the student. The parent failed to meet the burden of proof.

Conclusions of Law

1. The student is 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 Klein Independent School District is the local education agency responsible for the provision of the student's free appropriate public education.
3. The district met its obligations to provide notice to the student's parent in dealing with the disciplinary matters at the ARD committee meetings on March 23, 2009 and April 1, 2009, under the provisions of 34 CFR 300.504 and 300.530.
4. The IEPs developed for the student – together with the behavior intervention plans – were reasonably calculated to confer an 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.
5. Petitioner failed to meet its burden to prove that the educational program provided by the district to the student is 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 2nd day of July, 2009.

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

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SYNOPSIS

ISSUE 1: Whether the district failed to provide appropriate notice to the student for an ARD committee meeting.

CFR CITATIONS: 34 CFR 300.504 and 34 CFR 300.530

TEXAS CITATION: None

HELD: For the district.

ISSUE 2: Whether the district provided an appropriate education placement for the student.

CFR CITATIONS: 34 CFR 300.552

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For the district.