

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. Student residing with the Parents within the Vidor Independent School District. [Petitioner's Exhibit 2 and Respondent's Exhibit 1]

2. The Student was born in ** and attended the ** grade within the district in the 2006-2007 school year. [Respondent's Exhibit 1]

3. During the 2006-2007 school year, STUDENT was eligible for special education placement based upon eligibility criteria of learning disabilities and other health impaired ("OHI"). The impairment for STUDENT as OHI is based upon attention-deficit hyperactivity disorder ("ADHD"). [Petitioner's Exhibit 2 and Respondent's Exhibits 1 & 6]

4. During the Student's ** grade year, Student's BIP addressed situations where Student becomes agitated. The plan included a provision that Student be sent to a counselor, a diagnostician, or assistant principal. The plan's strategies called for clearly defined limits and expectations. In both general education and special education, the plan called for social reinforcements, consequences, a cooling period, and private discussion about behavior. Student had a mastery criteria of ** in the plan. [Respondent's Exhibit 1]

5. School personnel involved with STUDENT were provided a copy of the BIP. [Respondent's Exhibit 2]

6. During the lunch period on **, STUDENT was involved with a behavior incident with an assistant principal. STUDENT was concerned about a disagreement with a teacher at school earlier in the day. Student asked to use the phone to call student's parent, but the assistant principal asked the student to calm down and wait before entering the office to call the Parent.

Student swore at the assistant principal; the assistant principal blocked the student's access to the office; and the student struck the assistant principal. [Respondent's Exhibit 3]

7. The student's parents testified that they believed that the student's BIP included – or should have included – a provision that the student be able to call them if the student believed such a call was necessary to prevent aggressive or assaultive conduct. The BIP did not. [Transcript Pages 26, 27 & 31]

8. The district notified the student's parents that the student was accused of a serious violation of the student code of conduct because of the incident on **and that a hearing was set to consider expulsion from school. [Respondent Exhibit 5]

9. The district consulted with a psychologist who is a licensed specialist in school psychology (“LSSP”) to consider whether or not the student's misconduct on ** was affected by the student's educational disabilities. The psychologist concluded that the conduct was not. [Respondent's Exhibit 6]

10. The student was suspended for the spring semester of 2007. [Respondent's Exhibit 7]

11. An admission, review and dismissal (“ARD”) meeting for the student met and considered the student's misconduct and a possible relationship between the conduct and the student's disabilities. The committee determined that the conduct in question was neither caused by nor had a direct and substantial relationship to the student's disabilities. The committee also determined that the district had properly implemented the student's individual education plan (“IEP”) and that the student's conduct in question was not a result of a failure to implement the IEP. The district provided access for the student for educational programming during the period of the student's expulsion. [Respondent's Exhibit 10]

12. The district also offered counseling services for the student but the student's parent refused the services. [Transcript Pages 89 & 90]

13. The student's parent requested home-bound services for the student at an ARD committee meeting convened to provide educational services during the period of the student's expulsion. The student's parent provided information from a physician recommending home-bound services. The recommendation was made on **, the date of the behavior incident resulting in expulsion. The ARD committee considered the information from the physician but the committee noted that the physician had previously provided information for the committee which had already been considered, and the committee – in reviewing all of the assessment for the student – determined that home-bound services were not appropriate. [Respondent's Exhibits 4 & 8]

Discussion

The student and the student's parents do not agree with the district's handling of the behavior incident resulting in expulsion. The student understood that the student's agitation could lead to escalated conduct and wanted to call the student's parents. The assistant principal involved in the incident did not immediately permit the student to make the call. The student's BIP, however, did not include a provision that the student be permitted to make such a call. And the evidence demonstrates that district personnel implemented the BIP which was properly developed at an ARD meeting based upon current assessment.

The student's concern about the incident led the parent to believe that the district did not properly consider the student's psychological condition, did not attempt to engage the student's parents appropriately in handling the incident, and failed to provide home-bound instruction as recommended by the student's physician. The evidence at the hearing demonstrated that while the district could have involved the parents more closely, the district followed the student's IEP

and BIP and gave due consideration to the parents' concerns and the opinion of the student's physician.

Conclusions of Law

1. 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 Vidor Independent School District is the local education agency responsible for the provision of an appropriate educational placement for student.

3. The educational placement and programming developed by the district for student at ARD committee meetings in the fall of 2006 and spring of 2007 were properly developed and provided 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. The determination by the student's ARD committee meeting in the manifestation review properly concluded that the misconduct in question was not caused by – and did not have a direct and substantial relationship to – the student's disability. The committee also found that the misconduct was not the direct result of the district's failure to implement the student's IEP. 34 CFR 300.530(e).

5. The ARD committee meeting for the student in February 2007 developed an appropriate plan for educational services for the student during the period of his expulsion. 34 CFR 300.530(d).

6. Petitioner failed to meet the burden to prove that the educational program provided by the district for the student 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 7th day of August, 2007.

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

DOCKET NO. 178-SE-0307

STUDENT, B/N/F PARENT	§	BEFORE A SPECIAL EDUCATION
	§	
VS.	§	HEARING OFFICER
	§	
VIDOR INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE 1: Whether the student's educational placement was appropriate during the 2006-2007 school year.

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).

HELD: For Respondent.

ISSUE 3: Whether the district's offer of educational services during the period of expulsion was appropriate.

CFR CITATIONS: 34 CFR 300.530(d).

HELD: For Respondent.