

DOCKET NO. 282-SE-0515

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

DECISION OF THE HEARING OFFICER

Statement of the Case

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

Petitioner filed its request for hearing on May 16, 2015, and sought an expedited hearing. Petitioner subsequently filed an amended request for hearing withdrawing the request for expedited hearing. The parties jointly moved for continuances of the decision date to pursue settlement discussions and mediation. When the parties failed to settle the matter, Petitioner filed a second amended request for hearing and asked that the hearing be expedited. By order of September 3, 2015, the matter was set for an expedited hearing within twenty (20) school days of the amended request for an expedited hearing.

The case came on for hearing in the offices of the district in San Antonio, Texas, on September 25, 2015, and this decision is timely issued on the tenth school day after the hearing.

Petitioner was represented by Karen Seal, an attorney in San Antonio, and Respondent was represented by Ricardo Lopez and Allen Keller, attorneys in the San Antonio office of Schulman, Lopez, Hoffer & Adelstein.

At the close of the hearing, the parties were offered an opportunity to file written closing arguments for the hearing officer, and they did so.

Petitioner alleged that the district had not properly evaluated and identified the student's educational disabilities, failed to provide a free appropriate public education ("FAPE") for the student, failed to provide appropriate transition planning, and improperly removed the student from the student's educational placement. As relief, Petitioner – in its second amended request for hearing – sought:

1. an order directing Respondent agency to take specific actions required by IDEA;
2. an order directing the Respondent agency to pay the cost of private education services at *** where the child can receive FAPE with transportation;
3. an order directing the Respondent agency to provide compensatory special education or related services in the form of transportation services; and
4. an order directing the Respondent agency to reimburse attorneys fees and/or costs.

In the alternative:

1. an order directing the Respondent agency to place the student in the *** school of the parent's choice and provide transportation;
2. an order directing the Respondent agency to devise measurable goals and objectives;
3. an order directing the Respondent to draft a Behavior Improvement Plan ("BIP") based on data collected over a period of time that is reviewed periodically and is measurable. It should include a specific system to reward positive behavior. The district should collect data;
4. district to provide FAPE;
5. district to provide appropriate assessments and comply with the recommendations from district's own assessments;
6. develop a plan that will replace the undesirable behaviors;
7. district to reimburse parents for all out of pocket expenses and attorneys fees;

8. district to teach the student math, reading, language, and writing skills in a manner that meets the child's learning needs;
9. district to develop a plan that teaches this student by the means that are most effective for the student; and
10. develop a realistic transition plan.

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 resides with the student's parent in North East Independent School District in San Antonio, Texas. [Respondent's Exhibits 1, 2 & 8; and Transcript Pages 11-12]
2. The student is eligible for special education and related services based on a primary eligibility of a specific learning disability and a secondary eligibility of Other Health Impairment ("OHI") for Attention Deficit-Hyperactivity Disorder ("ADHD"). [Respondent's Exhibits 1 & 8; and Transcript Pages 12 & 148]
3. The student was born *** and attended *** grade at *** campus within the district during the 2014-2015 school year. [Respondent's Exhibit 1; and Transcript Page 27]
4. On ***, the student ***. *** [Respondent's Exhibit 1-4; and Transcript Page 187]
5. Campus administrators investigated the incident by taking statements from students and school personnel and reviewed security videos of the incident ***. [Respondent's Exhibits 2-4; and Transcript Pages 95, 117-119 & 126]
6. As a result of the investigation, school personnel recommended a placement of *** days at the district's *** ("****") for a violation of the district's Student Code of Conduct. [Respondent's Exhibit 19; and Transcript Pages 17-19]

7. The student's parent was notified on ***, that the district would conduct a Manifestation Determination Review ("MDR") at an admission, review and dismissal ("ARD") committee meeting on ***, to consider the school's recommendation for placement of the student at ***. [Respondent's Exhibits 1 & 19; and Transcript Pages 17-20 & 228]

8. The MDR was held on ***. The student's parent attended. [Respondent's Exhibits 1 & 19; and Transcript Page 19]

9. The review sought to determine whether the student's behavior on ***, *** (1) was caused or had a direct and substantial relationship to the student's educational disabilities, or (2) was the direct result of the school's failure to implement the student's Individual Educational Program ("IEP"). The review concluded that neither factor was present. [Respondent's Exhibits 1 & 19; and Transcript Pages 80-81 & 117-120]

10. The district notified the student's parent that the student would be placed in *** for *** days. The student's parent withdrew the student from school *** and the student has not served any of the placement at ***. [Respondent's Exhibits 1, 19 & 22; and Transcript Pages 50-51 & 223]

11. In reviewing the evidence presented at the MDR, there were no indications of *** behavior involving the student prior to the incident ***. [Respondent's Exhibit 19; and Transcript Pages 79, 115-123, 158, 174, 184, 197, 200 & 217]

12. The evidence available to the committee at the MDR demonstrated that the district implemented the student's IEP and BIP. [Respondent's Exhibit 19; and Transcript Pages 10, 80, 119, 154-160, 173-174, 181-183 & 197]

13. The student's parent was present for the MDR and participated in the meeting. [Respondent's Exhibit 19; and Transcript Pages 19-20]

14. The student's parent testified that he anticipated an ARD meeting that would deal with planning for the next school year and did not understand that the meeting on ***, would deal with issues concerning the student's behavior and proposed change in placement. The notice provided to the parent for the meeting set out the purpose for the meeting and an explanation of the MDR. [Respondent's Exhibit 19; and Transcript Pages 17-23]

15. The student passed all courses in *** in the 2014-2015 school year and was promoted to *** grade. The student made meaningful educational progress on the student's goals and objectives in the student's IEP. [Respondent's Exhibit 10; and Transcript Page 51]

16. The student has expressed an interest in ***. The student's parent does not believe the student's education is adequately preparing the student ***. [Respondent's Exhibits 7 & 8; and Transcript Pages 25-27, 134-135]

17. The student's parent regularly attended ARD meetings for the student, participated in the meetings, and concurred with the decisions made at the meetings until the MDR. [Respondent's Exhibits 1, 7 & 8; and Transcript Page 51]

Discussion

An incident ***, resulted in *** and was caused by the student-Petitioner in this case. Before the incident, the student was making educational progress in school and performing well under the provisions of the student's IEP and BIP. When the incident occurred, the district investigated the circumstances of the incident and then considered at the MDR any relationship with the behavior and the student's disabilities and whether or not the student's IEP and BIP had been improperly implemented. The district's actions were based on applicable state and federal law. Petitioner failed to prove any violation of law. Petitioner also failed to present any evidence supporting claims for reimbursement or need for placement outside the school district.

The district's witnesses established the propriety of the district's action with credible testimony and documentation. Petitioner failed to meet its burden of proof.

Conclusions of Law

1. The North East Independent School District is responsible for providing special education and related services for the student under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations.

2. The student is eligible for special education and related services based on the eligibility criteria of specific learning disabilities and OHI.

3. Petitioner failed to meet the burden of proof to demonstrate a violation of IDEA under the standard of Schaffer v. Weast, 126 S.Ct. 528 (2005).

4. The IEP for the student is reasonably calculated to provide a meaningful educational benefit because: (i) the program is individualized on the basis of the student's assessments and performance; (ii) the program is administered in the least restrictive environment; (iii) the services are provided in a coordinated collaborative manner by the key stakeholders in the student's education; and (iv) positive academic and non-academic benefits are demonstrated. Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055.

5. The district properly conducted an MDR in considering an incident involving the student ***. The district properly determined that the student's behavior was not caused by and did not involve a direct and substantial relationship to the student's qualifying eligibility under IDEA – and the behavior was not the direct result of the district's failure to implement the student's IEP. The determinations were properly made in accordance with 34 CFR 300.530(e).

6. The student's removal to an alternative disciplinary placement complied with TEX. EDUC. CODE §37.006(a)(2)(B).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED and all claims are DISMISSED with prejudice.

SIGNED this 9th day of October, 2015.

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

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SYNOPSIS

ISSUE: Whether the district's determination in an MDR was appropriate.

CFR CITATIONS: 34 CFR 300.300 and 34 CFR 300.530(e)

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.