

DOCKET NO. 185-SE-0418

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

DECISION OF THE HEARING OFFICER

Statement of the Case

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

Petitioner was represented by Michael P. O’Dell, an attorney in Houston, Texas. Respondent was represented by Amy Tucker, an attorney with the firm Rogers, Morris & Grover, attorneys in Houston, Texas.

Petitioner’s request for hearing was filed on April 2, 2018. After continuances for good cause, the matter came on for hearing October 4 and 5, 2018, in the offices of the district in Conroe, Texas. The parties jointly moved for a continuance of the decision date at the conclusion of the hearing to permit the filing of written closing arguments and agreed that the decision would be timely issued on November 19, 2018.

A previous decision in an expedited matter involving the same parties docketed as No. 027-SE-1017 was issued on November 15, 2017, by the undersigned Hearing Officer. Petitioner alleged in that case that: 1) the district improperly predetermined the result of a Manifestation Determination Review (“MDR”) in considering a disciplinary change in the student’s placement, and 2) the district incorrectly determined whether the student’s conduct in the question was caused by, or had a direct and substantial relationship to, the student’s disability. In the decision, all relief

requested by Petitioner was denied and Petitioner's claims were dismissed with prejudice.

In this hearing, Petitioner sought to prove: 1) the individual education plan ("IEP") for the student developed at an admission, review, and dismissal ("ARD") committee meeting on October ***, 2017, did not provide the student with a free appropriate public education ("FAPE"); and 2) Petitioner is entitled to reimbursement for placement at a private school (***) when the student was withdrawn for the remainder of the 2017-2018 school year.

Respondent alleges that the IEP developed for the student was reasonably calculated to provide meaningful educational benefits for the student and the program did provide the student with FAPE. Respondent also alleges that the *** is not an appropriate placement for the student and the student's parent is not entitled to reimbursement for the placement.

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 *** years old in October 2017 and attended the *** grade within the district. The student was eligible for special education and related services as a student with Other Health Impairment ("OHI") based upon a diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD"). [Petitioner's Exhibit 1; Respondent's Exhibit 1; Transcript Pages 65 & 66]

2. The student attended school and resided in the district with the student's parent. [Petitioner's Exhibits 1 & 26; Respondent's Exhibits 1 & 5; and Transcript Page 215]

3. The student has had a history of behavioral and emotional problems and was initially qualified for special education as a student with an Emotional Disturbance ("ED"), but the student's performance in school changed and evaluation showed in 2014 that the student's *** and *** were "no more problematic...than for other students" of a similar age. [Petitioner's Exhibit 8, 17 & 18; Respondent's Exhibit 5; and Transcript Pages 82-84 & 204-206]

4. The district conducted a Review of Existing Educational Data (“REED”) in October 2017 and considered some failing grades for the student caused by failure to complete assignments. The student had no discipline referrals during the first two months of the school year and teachers considered the student “cooperative,” “respectful,” “on time for class,” and requesting “assistance when it is needed.” The student mastered all counseling goals and the committee determined counseling was no longer necessary as a related service. The student’s parent was a part of the review and did not request any additional evaluation. [Petitioner’s Exhibit 1; Respondent’s Exhibit 1; Transcript Pages 143-144]

5. A behavior incident in the spring of the student’s *** grade year resulted in an MDR. The committee determined that the behavior had no relationship to the student’s disability and was not caused by a failure to implement the IEP. The ARD committee for the student then addressed issues with the student’s performance in *** and *** and provided tutoring opportunities for the student. The student’s parent requested an independent educational evaluation (“IEE”) and was provided with the district’s information to secure the IEE. Though the student failed ***, the student passed the *** STAAR test and passed *** while attending private school at ***. [Petitioner’s Exhibit 16; Respondent’s Exhibits 3 & 7; and Transcript Pages 162-165 & 219-220]

6. The student passed the *** and *** STAAR tests and passed the *** STAAR test on a second try after completing the district’s STAAR Academy. [Respondent’s Exhibit 2; and Transcript Pages 137-138]

7. The previous decision of the Hearing Officer disposed of Petitioner’s claims concerning the propriety of a disciplinary change of placement based on a finding that the student ***. [See Decision in No. 027-SE-1017 and Petitioner’s Exhibit 26]

8. The student was placed in a Disciplinary Alternative Education Placement

("DAEP") after the conclusion of the MDR. The ARD committee then began extensive discussion concerning the student's educational programming. The committee determined that no new evaluation of the student was needed and the student's parent did not ask for any additional evaluation. The student's parent was asked to provide any information or concerns about the student's education and stated: "I have nothing to add right now." [Petitioner's Exhibits 1 & 28; and Respondent's Exhibit 1]

9. The ARD committee went on to discuss the student's Present Levels of Academic Achievement and Functional Performance ("PLAAFPs") considering the student's eligibility as OHI. The committee reviewed data and discussed the student's behavior, performance, grades, and STAAR results. The committee's information included teacher input noting good behavior, attention, and socialization. [Petitioner's Exhibits 1 & 28; Respondent's Exhibit 1; and Transcript Pages 61-70, 78-87 & 94-104]

10. The committee addressed the student's *** information, the student's goals and accommodations; study guides and concerns about ***; and elicited suggestions for changes from the student's parent. The student's parent consistently stated the parent had nothing to add and noted no disagreement. The testimony from the school personnel about the ARD deliberations was consistent and credible. [Petitioner's Exhibits 1, 23 & 28; Respondent's Exhibits 1; and Transcript Pages 61-110 & 112-167]

11. At the conclusion of the ARD committee meeting, the ARD leader asked if anyone had anything else to say. The student's parent said "no". The ARD deliberations were read aloud. All committee members noted their agreement to the ARD determinations except the student's parent. When asked why the parent disagreed, the student's parent replied the disagreement was with "the decision of the MDR." The committee offered to reconvene a meeting to discuss the disagreement but the parent declined the offer of a reconvened meeting. The parent then waived

the five-day notice to implement the new IEP with its goals and revised accommodations. Later the same day the parent requested the expedited hearing challenging the MDR and disciplinary removal. [Petitioner's Exhibits 1, 23 & 28; Respondent's Exhibit 1; and Transcript Pages 61-105]

12. The ARD committee developing the IEP for the student was composed of key stakeholders working in collaboration with the student's parent. The committee reviewed current levels of the student's educational performance and achievement and developed an educational plan for the student to be delivered in the least restrictive environment. [Petitioner's Exhibits 1, 16 & 28; Respondent's Exhibit 1; and Transcript Pages 9-167, 215-227 & 250-338]

13. An expert witness was called by Petitioner who is ***. The *** teaches in special education and testified that the district failed to analyze properly the student's academic and behavioral data. According to the expert, a proper analysis of the data could have been done which may have shown a need to develop a new plan for behavior interventions and academic strategies which could have resulted in better academic achievement. The witness testified that the information included in the district's PLAAFPs may not be accurate because the input from the student's teachers was inaccurate. Essentially, the expert said that the PLAAFPs may have been faulty and that they were inadequate in measuring the student's abilities and performance. The testimony of the expert was speculative and conjectural. And in light of the credible testimony of the district's personnel, her conclusions were not credible or probative. [Petitioner's Exhibits 31 & 32; and Transcript 168-214]

14. During the pendency of the expedited hearing, the student attended the DAEP assigned placement. The assignment was to be completed on October ***, 2017, but the student did not return to school. The student was enrolled in private school by the student's parent on October ***, 2017. [Petitioner's Exhibit 27; Respondent's Exhibit 9; and Transcript Pages 220-222]

15. The student's parent testified that the parent chose *** in *** because the school would accept the student, the summer schedule permitted the student's enrollment, and the school offered a *** program. The student attended the private school for the remainder of the 2017-2018 school year. The cost of the program and expenses was \$***. No other evidence supporting the propriety of the *** placement was presented. [Petitioner's Exhibit 40; and Transcript Pages 222-229]

Discussion

IDEA provides for the provision of a free appropriate public education for students who are eligible for its services. FAPE consists of personalized instruction with supporting services which permit the student to benefit educationally from the instruction. Board of Education of Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982); 20 U.S.C. §1414(a)(1)(C)(i).

The IEP to be afforded a student is a comprehensive plan developed with specific procedural requirements and includes a statement of the student's present levels of academic achievement and functional performance, a statement of academic and functional goals, and a description of how a student's progress toward meeting the goals will be measured. Endrew F. v. Douglas County School District, 137 S.Ct. 988 (2017); 20 U.S.C. §1414(d)(1)(A)(i)(IV).

Petitioner bears the burden of proof in challenging the educational program and placement offered by the district. Schaffer v. Weast, 126 S.Ct. 528 (2005).

Petitioner failed to meet its burden of proof.

Counsel for both parties argued that the legal issues in this case must be analyzed considering the standard of Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997). The Fifth Circuit in that decision ruled that a school's educational program has four fundamental requirements:

1. The program must be individualized on the basis of the student's assessment and

performance;

2. The program must be administered in the least restrictive environment;
3. The services must be provided in a coordinated, collaborative manner by the key stakeholders; and
4. Positive academic and non-academic benefits must be demonstrated.

In assessing the evidence adduced at the hearing, Petitioner failed to meet its burden of proof. The evidence shows that the program offered by the district for the student complies in every respect with the standards articulated in Michael F., supra. Petitioner failed in its claims on the propriety of the student's IEP.

Petitioner is also seeking reimbursement for the student's placement by the student's parent in a private school in ***. Reimbursement for such a placement is permitted only 1) when a parent proves the district failed to make FAPE available to the student, and 2) the private school placement is appropriate. Petitioner failed to prove either factor.

Petitioner is not entitled to relief.

Conclusions of Law

1. The student is eligible for a free appropriate special education program under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations, and is to be provided by the Conroe Independent School District.

2. The district's processes and efforts in designing an educational program for the student met the factors in 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; Andrew F. v. Douglas County School District, 137 S.Ct. 988 (2017); and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055.

3. Petitioner failed to prove either that the district's program was inappropriate or that

reimbursement for private school is warranted under the standards of Florence Cty.Sch.Dist. 4 v. Carter, 114 S.Ct. 361, 510 U.S. 7 (1993); 34 CFR 300.114(a)(2)(ii); School Committee of Town of Burlington v. Massachusetts Department of Education, 105 S.Ct. 1996, 471 U.S. 359 (1985); and 20 U.S.C. §1412(5); 34 CFR 300.132, 300.227, and 300.307(B).

ORDER

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

SIGNED this 19th day of November, 2018.

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

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SYNOPSIS

ISSUE #1: Whether the education program offered by the district in October 2017 was FAPE.

CFR CITATIONS: 34 CFR 300.552; 34 CFR 300.300

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.

ISSUE #2: Whether the parent is entitled to reimbursement for private placement.

CFR CITATIONS: 34 CFR 300.114(a)(2)(ii); 34 CFR 300.132; 34 CFR 300.227;
34 CFR 300.307(B)

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.