

DOCKET NO. 030-SE-1016

STUDENT, B/N/F PARENT	§ § §	BEFORE A SPECIAL EDUCATION
VS.	§	HEARING OFFICER
CEDAR HILL 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 “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 Cedar Hill Independent School District (hereinafter “Respondent” or “the district”).

Petitioner was represented by Carolyn Morris, a lay advocate with Parent-to-Parent Connection in Lancaster, Texas. Respondent was represented by Gwendolyn Driscoll and Jennifer M. Carroll, attorneys with the firm of Walsh, Gallegos, Treviño, Russo & Kyle, P.C., in their office in Irving, Texas.

Petitioner’s request for hearing was filed on October 14, 2016.

Petitioner alleged that the district failed to provide the student with a free appropriate public education (“FAPE”), failed to implement appropriately the student’s individual educational plan (“IEP”), failed to follow procedural safeguards, failed to identify the student’s educational disabilities, failed to provide an independent educational evaluation (“IEE”) requested by the student’s parent, and failed to provide special education counseling as a related service.

The district denies the allegations of the Petitioner and alleges that its educational evaluation of the student is appropriate.

As relief, Petitioner sought a finding that the student has been denied FAPE, that the district has failed to follow procedural guidelines, an award of compensatory educational services, and an independent evaluation at public expense.

The hearing was conducted on March 8 and 9, 2017, in the offices of the district. At the conclusion of the hearing, Respondent moved for an extension of the decision deadline so that the parties could file written closing arguments. With the agreement of the Petitioner, the parties were permitted the opportunity to file written arguments and the decision deadline was set for April 24, 2017. The Respondent filed a written argument; the Petitioner did not.

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 parents within the Cedar Hill Independent School District. [Petitioner's Exhibits 2, 3 & 6; Transcript Page 185]

2. In 2014, the student's parent requested a special education due process hearing involving the same parties. In that case, the Petitioner alleged the district failed to identify the student with the eligibility criterion of *** ("****"), failed to provide a behavior intervention plan ("BIP"), and failed to provide special education counseling for the student. The case went to hearing. A decision was entered by another hearing officer (not the undersigned) on October 31, 2014, in Docket No. 255-SE-0614. The decision found for the district on all issues and the Petitioner was denied all relief. [Respondent's Exhibit 4]

3. The student has been served in special education by the district based upon eligibility as a student with an other health impairment ("OHI") because of attention deficit and hyperactivity disorder ("ADHD"). [Respondent's Exhibit 8; Transcript Pages 70-71]

4. A counseling evaluation for the student was conducted on ***, 2014, but the student's parent did not provide information to the district's evaluator (despite several attempts by the evaluator) until early in *** 2014. The evaluation concluded that the student did not require counseling as a related service. [Respondent's Exhibit 5; Transcript Page 335]

5. An admission, review and dismissal ("ARD") committee for the student met on ***, 2015. The committee determined that the student continued to qualify for special education based upon the eligibility criterion of OHI because of the student's ADHD. The committee developed an IEP for the student with support for ***, ***, and *** and included goals for ***, ***, *** and ***, ***, ***, and ***. [Respondent's Exhibit 8; Transcript Pages 136-140]

6. At the ARD committee meeting on ***, 2015, the student's parent requested an evaluation for special education counseling, a functional behavioral assessment ("FBA") and a BIP. The district agreed to conduct the evaluations. The student's parent also requested that the ARD reconvene when all of the student's teachers could attend the meeting (being available for at least part of the meeting) to answer any questions the committee may have. The committee agreed. The meeting reconvened on ***, 2015, and the meeting ended in consensus. [Respondent's Exhibits 8 & 10; Transcript Pages 275-287]

7. The district completed a psychological evaluation of the student on ***, 2015. The evaluation included a counseling evaluation and an FBA. The evidence from the district showed that the evaluation was thorough and comprehensive. The licensed specialist in school psychology ("LSSP") utilized numerous sources of data including a variety of assessment tools and strategies to gather relevant information about the student's functional, developmental, and academic performance. The evaluation included a review of educational records, ***, information from the student's parent, information from classroom teachers, information from

the student, a vision and hearing screening, classroom observation, and various assessment tools.
[Respondent's Exhibit 10; Transcript Pages 273-275]

8. The LSSP and counselor in the evaluation did not use any single measure or assessment as the sole criterion for determining whether the student continued eligibility under OHI, whether the student displayed characteristics consistent with eligibility as a student with ***, and whether the student demonstrated a need for counseling as a related service.
[Respondent's Exhibit 10; Transcript Pages 274-289 & 337]

9. In the evaluation, the LSSP and counselor used technically sound instruments to assess the student. The assessments and evaluation materials used to do the evaluation were selected and administered ***. The student was evaluated *** by trained and knowledgeable personnel according to instructions provided by the producers of the assessment instruments which were valid and reliable for the purposes for which they were used. [Respondent's Exhibit 10; Transcript Pages 274, 284 & 337]

10. The student's parent and teachers did not report any significant emotional or behavioral concerns warranting further examination, and evaluation data did not show eligibility criteria for *** or show a need for counseling services. Rather, the evaluation showed behaviors consistent with the diagnosis of ADHD. [Respondent's Exhibit 10; Transcript Pages 274-276, 283-284 & 323]

11. An ARD committee for the student met on ***, 2015, to review the new evaluations of the student. The committee determined that the student continued eligibility for special education based upon OHI for ADHD and determined that the student did not require counseling services. The committee considered the student's behaviors and believed them to be consistent with issues of ADHD and set forth continuing accommodations for ***, ***, and *** to address them. The minutes of the meeting show that the student's parents agreed with the

student's placement and IEP. The parent had not yet determined, however, whether the parent agreed with the new evaluations. The committee did not determine any necessity to reconvene the committee about the question of the evaluations because of the agreement on placement and the student's IEP. [Respondent's Exhibit 11; Transcript Pages 77-78 & 140-144]

12. *** to assist with organization in completing the student's assignments. The student and *** taught how to ***, ***, ***. [Respondent's Exhibit 13; Transcript Pages 201 & 389-392]

13. An annual ARD committee for the student met on ***, 2016, to review the student's present levels of performance, evaluation data, and information on the successes and problems in implementing the student's IEP. Though there was some confusion in the parent's understanding of the student's *** for ***, the student confirmed ***. The student's parent, however, believed that the student was *** completing school tasks and requested another counseling evaluation. The committee agreed to recess the meeting so that the special education counselor and LSSP could join the committee when it reconvened. [Respondent's Exhibit 13; Transcript Pages 147-148]

14. The ARD committee reconvened on ***, 2016, after making several attempts to schedule the meeting with the student's parent. The parent did not agree to attend the meeting. The committee discussed the student's performance and educational needs and considered input from the LSSP and special education counselor. The committee agreed to continue the supports currently available to the student even though the student sometimes did not present for *** afforded to the student each day. The committee did not determine that further counseling evaluation was necessary. [Respondent's Exhibit 13; Transcript Pages 150-152 & 287]

15. The student has consistently demonstrated educational progress under the student's IEP. In the *** and *** grades, the student made passing grades in enrolled grade

level instruction. The student's scores on standard *** and *** grade standardized tests known as the State of Texas Assessment of Academic Readiness ("STAAR") show academic progress even though the student did not pass every test. The student's behaviors have also demonstrated no problems in performance or in accessing instruction. [Respondent's Exhibits 13-16 & 19; Transcript Pages 83-89]

16. The student's work and attendance in school have not shown any *** behavioral problems indicating a need for counseling evaluation or counseling services. The student's teachers did not provide any information for the ARD committees for the student which warranted a need for counseling. [Respondent's Exhibit 14; Transcript Pages 132-138, 153-154 & 374-376]

Discussion

The evidence adduced at the hearing shows that the student has been provided with an educational program which provides opportunity for meaningful academic and non-academic progress in school. The student's parent, however, believes that the student *** the student's success in school. The student's parent believes the district is not fairly accommodating the student's unique needs and is not providing the related service of special education counseling which should be a necessary element of the student's IEP.

The district, however, consistently relies on competent, conclusive data in its evaluation of the student and demonstrated that their evaluation of the student is proper, thorough, and in compliance with the law. The student's educational progress attests to the success of the educational program the district is affording the student.

Petitioner failed to meet its burden of proof to show that the district has failed to provide the student with a free appropriate public education.

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.

2. The student and the student's parent are residents of the Cedar Hill Independent School District, and the district is responsible for providing an appropriate educational placement and related services for the student. 20 U.S.C. §§1412 and 1414; 34 CFR 330.301; and 19 T.A.C. §89.1011.

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 district is not required to provide an independent educational evaluation at public expense for the student because its evaluation complies in all respects with the provisions of 34 CFR 330.502 (b)(1-3).

5. The student's educational plan meets 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.

6. The district's educational program for the student meets the standards articulated in Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 CFR 300.300, and 19 T.A.C. §89.1055; that is, the program is individualized based on the student's assessment and performance; the program is administered in the least restrictive environment; the services are provided in a coordinated collaborative manner by the key stakeholders in the student's education; and positive academic and non-academic benefits are demonstrated.

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 that all claims of Petitioner are DISMISSED with prejudice.

SIGNED this 24th day of April, 2017.

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

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B/N/F PARENT	§	
	§	
VS.	§	HEARING OFFICER
	§	
CEDAR HILL INDEPENDENT	§	
SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE #1: Whether the district is required to provide an independent educational evaluation at public expense for the student.

CFR CITATIONS: 34 CFR 330.502 (b)(1-3)

HELD: For Respondent.

ISSUE #2: Whether the district provided a free appropriate public education.

CFR CITATIONS: 34 CFR 300.300 and 34 CFR 300.552

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.