

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

DECISION OF THE HEARING OFFICER

Statement of the Case

The Klein Independent School District (hereinafter “the Petitioner” or “the district”) brought an expedited request for hearing pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, et seq., against a student and the student’s parent and next friend *** (hereinafter “Respondent” or “the student”). The district is seeking an order setting the student’s placement in a *** for forty-five (45) days as permitted in IDEA and required under 34 CFR 300.533.

The district was represented by Amy C. Tucker, an attorney in Houston with firm of Rogers, Morris & Grover, L.L.P. The Respondent, next friend of the student ***, appeared pro se.

The district’s request for hearing was filed on April 20, 2017. As an expedited request for hearing, the hearing was conducted on April 26, 2017, in the offices of the district and this decision is timely issued on May 10, 2017.

The district’s case was filed as an expedited hearing request pursuant to 20 U.S.C. §1415(k)(3) and 34 CFR 300.532. The district contends that maintaining the student in the student’s current education placement is likely to result in injury to the student or to others and requests an order changing the student’s placement to an appropriate interim alternative education setting for forty-five (45) school days.

Also, pending at this time, is a request for hearing filed against the district by the student's parent and next friend. That request is pending as Docket No. 096-SE-0117 styled ***, *b/n/f *** vs. Klein Independent School District*. Though the district moved for consolidation of the two hearings, the student's next friend objected to consolidation and the Hearing Officer denied consolidation. That hearing is currently set for May 17, 2017, and the student's next friend is alleging that the district has failed to provide the student with a free appropriate public education ("FAPE") in the least restrictive environment ("LRE").

At the hearing, the district called four witnesses to testify and documentary exhibits offered by the district were admitted into evidence. The Hearing Officer also admitted as evidence Hearing Officer Exhibit No. 1 which is the complete record of pleadings, order, correspondence, and copies of email which were included in the Hearing Officer's file as of the date of the hearing.

The student's next friend testified and called no other witnesses. The student's next friend offered no exhibits for admission. The hearing was completed within an hour.

The district filed a written closing argument. The student's next friend did not.

Based upon the evidence and argument of the parties, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. The student is *** (***) years old and attends the *** grade in the district. [Petitioner's Exhibit 1; Transcript Page 22]

2. The student resides with the student's parent in the Klein Independent School District. [Petitioner's Exhibit 1; Transcript Pages 43-44]

3. The student receives special education based upon eligibility criteria of *** and ***. [Petitioner's Exhibit 1]

4. The student began the *** grade in the current 2016-2017 school year in the *** (“***”) which is *** providing a smaller setting, greater structure, and more support ***. [Petitioner’s Exhibits 1 & 2; Transcript Page 13]

5. At the end of the *** grading period in the 2016-2017 school year, an admission, review, and dismissal (“ARD”) committee for the student determined that the student showed sufficient progress at *** to transition to a less restrictive placement at ***. [Petitioner’s Exhibits 1 & 2; Transcript Page 13]

6. Shortly after the student began attending school at ***, the student’s behaviors caused significant concern and the school’s ARD committee recommended that the student return to ***. The student’s parent disagreed with the recommended transfer and filed for a due process hearing on January 5, 2017. [Hearing Officer’s Exhibit 1; Petitioner’s Exhibits 1, 2 & 3; Transcript Page 13]

7. At the end of March 2017, the student had received approximately *** (***) disciplinary referrals at ***. [Petitioner’s Exhibits 1 & 3; Transcript Page 24]

8. The student *** and made *** – including ***, ***, ***, ***, and ***. [Petitioner’s Exhibits 1, 2 & 3; Transcript Pages 13 & 28]

9. The student also attempted to ***. The student ***, ***, and ***. ***. [Petitioner’s Exhibit 1; Transcript Pages 25, 27 & 43-44]

10. On March ***, 2017, school personnel ***. The student ***. The student ***. ***. The student received a disciplinary referral and the school began ***. ***. [Petitioner’s Exhibit 3; Transcript Pages 35-37]

11. On April ***, 2017, the student’s ARD committee met to conduct a manifestation determination review (“MDR”) considering the student’s behavior and placement. The committee determined that the district had implemented the student’s individualized education

program (“IEP”) and behavior intervention plan (“BIP”). The committee determined that the behavior was a manifestation of the student’s disabilities and agreed that the student needed “specialized behavioral supports to maintain” the student’s safety... “and the safety of others.” The committee recommended placement at ***. The student’s parent disagreed, and the district requested an expedited hearing to establish that continuing the student’s placement at *** is substantially likely to result in injury to the student or others. The district seeks an order affirming placement for the student at ***. [Petitioner’s Exhibits 1 & 3; Transcript Page 34]

Discussion

The evidence at the hearing showed that all parties are struggling with the student’s behavior: the student’s parent, the district, and the student. The district has sought to offer an educational program in the least restrictive environment at ***. While the student was briefly successful in both *** and ***, the student has not been able to be successful in a placement without the structure and support of ***.

The student’s parent is challenging the propriety of the student’s placement in an original request for hearing currently pending. The district has demonstrated that safety concerns for the student and others warrant an order now calling for the *** for the requisite forty-five (45) days.

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. Maintaining the student’s current educational placement is substantially likely to result in injury to the student or to others. 34 CFR 300.532(b)(2)(ii).
3. The student’s educational placement must be in an interim alternative educational setting. 34 CFR 300.533.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that the student's educational placement is the *** (***) for forty-five (45) days from the date of this order.

SIGNED this 10th day of May, 2017.

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

DOCKET NO. 183-SE-0417

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

SYNOPSIS

ISSUE #1: Whether maintaining the student's current educational placement is substantially likely to result in injury to the student or to others.

CFR CITATIONS: 34 CFR 300.532(b)(2)(ii)

TEXAS CITATION: None.

HELD: For Petitioner.

ISSUE #2: Whether the student's educational placement must be in an interim alternative educational setting.

CFR CITATIONS: 34 CFR 300.533

TEXAS CITATION: None.

HELD: For Petitioner.