

DOCKET NO. 247-SE-0510

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

DECISION OF THE HEARING OFFICER

Statement of the Case

Student, by next friend and legal custodian, 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 Killeen Independent School District (hereinafter "Respondent" or "the district").

Petitioner initially appeared pro se, but on the day of the hearing Dorene Philpot, an attorney in Galveston, made an appearance and represented Petitioner. Respondent was represented by Holly Wardell and Kelly Shook, attorneys with the Austin office of Schwartz & Eichelbaum, Wardell, Mehl & Hansen. Petitioner's request for hearing was filed on May 18, 2010, and came on for hearing by order of the Hearing Officer and agreement of the parties on August 12, 2010, in the offices of the district. The parties were afforded an opportunity to file written closing arguments and agreed that the decision in this matter would be timely issued on or before August 31, 2010, in accordance with the regulatory time-line.

Petitioner alleged that the district failed to comply with its obligations to evaluate and identify the student as a student entitled to special education and related services (commonly referred to as the "child find" obligation). Petitioner also alleged that the district has failed to provide the student with a free appropriate public education.

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 *** within the Killeen Independent School District. [Petitioner's Exhibit P. 66 (Note that exhibits admitted in behalf of the Petitioner have been page-numbered and will be referred to as one Exhibit); Transcript Pages 9, 74 & 76-79]

2. The student's biological mother and adoptive father serve in the military. At times the student has lived with them during a number of military transfers. [Transcript Pages 72 & 133-134]

3. The student attended *** different schools in the district since the *** grade year, has spent time intermittently in ***, and re-enrolled in the district in *** 2010 as a *** grade student. [Transcript Pages 44, 77 & 133-134]

4. During the last two school years (2008-2009 and 2009-2010) Petitioner was a student within the district for approximately *** school days. [Transcript Pages 103 & 134]

5. After attending the *** grade within the district for only *** school days, student's *** requested a full individual evaluation including a psychological assessment for the student. [Petitioner's Exhibit Page 8 and Transcript Page 104]

6. The request for the full individual evaluation ("FIE") was made on May 12, 2010, and the district presented a written notice of refusal to provide the evaluation and special education services on May 17, 2010. [Petitioner's Exhibit Pages 4-7]

7. The district reviewed academic records, the student's grades, disciplinary records, information from schools in ***, classroom observation and concluded that the student exhibited no suspected disability and needed no evaluation. [Petitioner's Exhibit Page 4, Respondent's Exhibit 3 and Transcript Pages 51, 106, 124 & 134]

8. During the 2009-2010 school year, the student passed all courses with one ***.
[Respondent's Exhibit 1]

9. During the 2008-2009 school year, the student received ***. [Petitioner's Exhibit 18]

10. Petitioner failed to pass the *** portion of the Texas Assessment of Knowledge and Skills ("TAKS") in 2010. [Respondent's Exhibit 3]

11. The student has consistently had problems in being successful in ***.
[Petitioner's Exhibit Pages 18 & 24-26]

12. The student's *** grade placement was based not on grade advancement but rather on an appeal. [Petitioner's Exhibit Page 63]

13. The student has demonstrated problems with anger and aggression and ***.
[Transcript Pages 73 & 84-85]

14. Shortly after the student enrolled in *** 2010, the student was placed in in-school suspension or campus probation until the end of the school year. [Petitioner's Exhibit Page 35]

15. The student's biological father *** and the student learned of *** about two years ago. The student's *** testified that the student exhibit physical aggression and anger at home with family members, at school, and elsewhere, and the student's *** believes the anger is atypical. [Transcript Pages 72-73]

Discussion

The student's last several years have been problematic because of many moves and difficult family circumstances. The student has demonstrated an ability to make academic progress in some areas but also has problems in *** skills. And the student has had problems with anger and aggression.

Considering the student's circumstances and performance, no clear conclusion can be made about special education eligibility. But sufficient factual information is available to indicate a need for evaluation.

Petitioner demonstrated a need for the district to evaluate the student for eligibility. Petitioner did not, however, prove that the student has been denied a free appropriate public education and is entitled to compensatory educational services.

Conclusions of Law

1. The Killeen Independent School District is responsible to identify and timely evaluate the student for eligibility under IDEA, 20 U.S.C. §1412(a)(3)(A); 20 U.S.C. §1412(a)(3)(C); 20 U.S.C. §1414(a)(1)(A); 34 CFR 300.301 and 19 T.A.C. §89.1011.

2. The district is responsible to Petitioner as a highly mobile student under provisions of 20 U.S.C. §1401(3), 1412(a)(3), and 34 CFR 300.111(c)(2).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that:

1. The district provide a full individual evaluation with a psychological assessment of the student;
2. Respondent shall timely implement this decision by making an offer of a plan to implement the decision within ten (10) school days; and
3. To demonstrate their compliance with this decision, the Respondent shall furnish to the Texas Education Agency within fifteen (15) school days from the date of this decision, documentation (with copies to Petitioner) demonstrating that the decision is being implemented within the prescribed time-line. The district shall include a signed assurance from the superintendent that the orders in this decision will be implemented.

All other relief requested by Petitioner is DENIED.

SIGNED this 31st day of August, 2010.

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

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SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the Respondent failed to provide a timely evaluation of the student under its child find obligations.

CFR CITATIONS: 34 CFR 300.301; 34 CFR 300.111(c)(2)

TEXAS CITATION: 19 T.A.C. §89.1011

HELD: For Petitioner.