

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

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by next friend and parent \*\*\* (hereinafter “Petitioners” 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 Aransas Pass Independent School District (hereinafter “Respondent” or “the district”).

Petitioners’ request for hearing was filed on January 20, 2015. Petitioners requested that the hearing be considered an expedited hearing pursuant to 20 U.S.C. §1415(k)(4)(B), 20 U.S.C. §1415(k)(5), Section 34 CFR 300.532 and 19 T.A.C. §89.1191. It was; and the hearing was conducted by agreement of the parties and order of the Hearing Officer on February 16, 2015, in Corpus Christi, Texas.

Petitioners were represented by Christopher Jonas, an attorney in Corpus Christi, and James Holtz, an attorney in Houston. The district was represented by Kelly Shook, an attorney in the Austin office of Walsh, Anderson, Gallegos, Green & Treviño.

At the close of the hearing, counsel for the parties agreed to file written closing arguments and concurred that the date for decision in this matter is March 2, 2015, in consideration of Petitioners’ request for an expedited hearing and within ten school days of the completion of the hearing.

Because a previous decision with the same parties was issued on December 15, 2014, by the undersigned Hearing Officer, the Hearing Officer in this matter ordered on February 4, 2015, that the only relevant facts in this hearing must concern allegations occurring after December 1, 2014 (the date of the last hearing).

Petitioner did not prevail in the last hearing. (Respondent’s Exhibit 4) Petitioner (at least up until today) has not appealed that decision though an appeal may be filed in either state or federal court within ninety (90) days after the date of the decision. 34 CFR §300.516; 19 T.A.C. §89.1185.

The Hearing Officer takes judicial notice of the previous decision – *STUDENT, b/n/f PARENT vs. Aransas Pass Independent School District; Docket No. 163-SE-0214*.

Petitioner sought a finding that the district timely failed to identify the student eligible for special education, that the district has denied a free appropriate public education (“FAPE”) for the student, that the district has improperly disciplined the student, assigned the student improperly to behavioral placements, and that the student is entitled to compensatory education services.

#### The Previous Decision

Though the Hearing Officer found that the student’s history within the district included some periods of special education eligibility and placements, numerous evaluations by the district and independent evaluations, the Hearing Officer determined that the student was not eligible for special education placement. The student was successful academically. The student’s behavior had been disruptive but the Petitioners failed to prove that the district failed to timely identify the student as a student in need of special education and related services. (See *STUDENT, b/n/f PARENT vs. Aransas Pass Independent School District; Docket No. 163-SE-0214*)

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 in the Aransas Pass Independent School District. [Petitioners’ Exhibits 6, 8 & 9; Transcript Page 11]
2. A psychiatrist (who testified at the last hearing) testified that the student – medically – has psychotic disorder NOS, Asperger’s disorder, and anxiety disorder NOS. [Petitioners’ Exhibit 1; Transcript Page 24]

3. The psychiatrist has seen the student once since December 1, 2014. [Petitioners' Exhibit 1; Transcript Page 24]

4. When the psychiatrist saw the student last, the appointment was for \*\*\* and included conversation with the student's parent. The doctor believed the student was "doing okay". Further: ... "I would say [the student] would need some type of special education. I could be wrong." [Petitioners' Exhibit 1; Transcript Pages 25 & 31]

5. The student has also been seen by a representative of the \*\*\*. The student receives coordination, respite service and advocacy. [Petitioners' Exhibit 5; Transcript Page 34]

6. The \*\*\*'s representative observes the student and sees the student at least once a month. The representative believes the student's education needs are not being met but does not have any licenses to make medical or educational diagnoses. [Petitioner's Exhibit 5; Transcript Pages 35 & 37]

7. A licensed psychologist who has also seen the student for a number of years believes the student is depressed and may qualify for special education as emotionally disturbed. No new evaluation has been conducted or performed since December 1, 2014. The psychologist testified at the first hearing and the testimony was considered in *STUDENT, b/n/f PARENT vs. Aransas Pass Independent School District; Docket No. 163-SE-0214*. [Petitioners' Exhibit 7; Transcript Pages 14 & 43-45]

8. The student has been placed in a disciplinary suspension after December 1, 2014, and placed in a disciplinary alternative education placement ("DAEP") for unacceptable social behavior and disruption. [Respondent's Exhibit 3; Transcript Pages 60-61]

9. The district considered a DAEP placement on December 17, 2014. The student was placed in DAEP on December 18, 2014, for 45 school days. The holiday break began. The student attended school in January, and the request for hearing was filed January 20, 2015. The student's parent requested a new admission, review and dismissal ("ARD") committee meeting for the student and the district declined. The student's parent presented no new information to the district. [Respondent's Exhibit 4; Transcript Page 65]

10. The student's parent requested further special education evaluation on January 7, 2015. The district declined the request. [Respondent's Exhibit 5; Transcript Pages 27-34 & 66]

11. The student has been making educational progress in the DAEP, is passing all courses, and has had no office referrals. [Respondent's Exhibit 1; Transcript Pages 74-75]

### Discussion

The student in this matter has exhibited problems in school but has continued to demonstrate educational progress and conform behavior sufficiently to continue that progress. The previous decision concerning the student is very recent. The credible evidence deduced at this hearing again does not demonstrate that the student should have been found eligible since the previous date for hearing on December 1, 2014.

Petitioners' burden in this litigation is high. Petitioners did not meet the burden.

### Conclusions of Law

1. Petitioners have the burden of proof to establish a violation of IDEA of the standard of Schaffer v. Weast, 126 S.Ct. 528 (2005).
2. Petitioners did not meet their burden of proof. Schaffer v. Weast, 126 S.Ct. 528 (2005).
3. Petitioners did not prove that the student's educational difficulties were sufficient to warrant special education and related services. Alvin Indep. Sch. Dist. v. A.D., 503 F.3d 378 (5<sup>th</sup> Cir. 2007); 34 CFR 300.8(c)(9).

### ORDER

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

SIGNED this 2<sup>nd</sup> day of March, 2015.

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

DOCKET NO. 145-SE-0115

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SYNOPSIS

**ISSUE:** Whether the student's educational difficulties were sufficient to warrant protection of special education and related services.

**CFR CITATIONS:** 34 CFR 300.8(c)(9)

**TEXAS CITATION:** 19 T.A.C. §89.1185

**HELD:** For Respondent.