

DOCKET NO. 058-SE-1013

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

DECISION OF THE HEARING OFFICER (EXPEDITED HEARING)

Statement of the Case

Student, by student's parent and next friend (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 Killeen Independent School District (hereinafter "Respondent" or "the district").

Student's complaint was an expedited request for hearing pursuant to 20 U.S.C. § 1415 (k)(4)(B) and 34 C.F.R. § 300.532(c).

Petitioner's request for hearing was filed on October 22, 2013, and came on for hearing on November 13, 2013. Both parties were afforded an opportunity to file written closing arguments. In accordance with 34 C.F.R. § 300.532(c) the hearing was conducted within twenty (20) school days of the request for hearing, and the decision is issued within ten (10) school days from the date of the hearing.

The student was represented by Carol Davis, a parent advocate appearing as an individual who is not an attorney but has special knowledge or training involving special education under the terms of the Texas Education Code ("T.E.C.") § 29.0162(a)(2). The Commissioner of Education has not yet adopted any additional requirements for the appearance of a lay advocate in accordance with T.E.C. § 29.0162(b). The lay advocate who originally filed the request for

hearing was disqualified under T.E.C. § 29.0162(b)(1) because the advocate is a former employee of the district. Ms. Davis appeared for the Petitioner instead. Respondent did not object to Ms. Davis's representation of Petitioner.

Respondent was represented by Holly Wardell, an attorney in Austin, with the firm of Eichelbaum, Wardell, Hansen, Powell, and Mehl.

Petitioner alleged that the student who had never been identified as eligible for special education should have been identified and served in special education and that the district's placement of the student in a disciplinary placement was improper.

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 and the student's next friend and parent reside within the respondent district. [Petitioner's Exhibit 17 and Respondent's Exhibits 1-8]
2. The student was born *** and attends school in the district. [Petitioner's Exhibits 1-7 and Respondent's Exhibits 1-8]
3. The student is attending *** grade in the district in the fall of 2013. [Petitioner's Exhibits 5-7, Respondent's Exhibit 3, and Transcript Pages 64-65]
4. The student passed all classes in school and has never been retained. [Respondent's Exhibit 7]
5. The student has generally maintained a B to C grade average. [Respondent's Exhibit 7]
6. The student has failed state assessment in math. [Respondent's Exhibit 7]

7. School personnel who administered the most recent testing for math assessment – and the student’s math teachers for grades *** and *** – testified credibly that the student’s low test scores on state assessment were not indicative of the student’s current levels of academic achievement but rather the student’s inattention to the testing. [Transcript Pages 149 & 158-161]

8. The student’s teachers for math instruction in grades *** and *** testified credibly that the student performs grade-level math work without a need for modifications or interventions. [Transcript Pages 106-108 & 163-164]

9. The student has been identified by the district on a number of occasions as being an “at risk” student indicating a potential need for extra tutoring or support. [Petitioner’s Exhibits 2, 5 & 7 and Respondent’s Exhibits 7 & 8]

10. Over half of the students within the district are considered “at risk” and the “at risk” determination neither indicates nor rules out eligibility for special education. [Transcript Pages 34 & 184-186]

11. The student’s behavior in school caused some concern within the last year for the school and the student’s parent. The student has *** and disregarded direction by school personnel. The district developed a behavior contract for the student in October 2013 and the student agreed to it. [Respondent’s Exhibit 5]

12. The contract noted that the student is subject to the district’s student code of conduct. The student’s behavior never involved inappropriate physical contact with other students or school personnel. [Respondent’s Exhibit 5]

13. The student did not comply with the conditions of the discipline contract and demonstrated additional acts of insubordination. The district placed the student in a disciplinary

alternative placement. The student's parent contested the placement and the dispute resulted in forty-five (45) day disciplinary placement. [Petitioner's Exhibit 6 and Transcript Pages 123-127]

14. Prior to the district's placement of the student in the disciplinary educational placement, the student's parent had never requested assessment for the student for special education and had never provided information to the district suggesting an educational disability. [Respondent's Exhibit 2 and Transcript Page 143]

15. School personnel testified consistently and credibly that there was no reason to suspect that the student had a need to be assessed for special education eligibility. [Respondent's Exhibit 9 and Transcript Pages 50 & 143]

Discussion

The student's parent maintains that the district should have known that the student may be eligible for special education and related services. Before the student was subject to a disciplinary educational placement, the student's parent alleges that the student should have been evaluated for special education. The student's parent was concerned because the student had failed some state assessment, had been considered "at risk", and needed some attention because of behavioral concerns.

The burden of proof in special education cases is on the Petitioner when the Petitioner alleges violations of IDEA. Petitioner failed to meet its burden.

A student who has not been identified as eligible for special education and related services – and who has violated a district's student code of conduct – does not have the protections afforded under IDEA unless the local education agency had knowledge that the student was a student with a disability before the behavior that triggered the disciplinary action.

According to 34 C.F.R. § 300.534(b), the district should have known of possible eligibility – before the behavior causing the dispute – if: (1) the parent expressed concern in writing to supervisory administrative personnel – or a teacher of the student – that the student needs special education and related services; (2) the parent requested an evaluation of the student pursuant to 34 C.F.R. § 300.300-311; or (3) a teacher of the student or other district personnel expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or other supervisory personnel.

Petitioner did not prove that the district violated these terms.

Conclusions of Law

1. The Killeen Independent School District is the local education agency responsible for the identification, evaluation and placement of the students in special education.
2. The district met its responsibilities under 34 C.F.R. § 300.534(b) for the student and the student's parent.

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief requested by Petitioner is DENIED.

SIGNED this 2nd day of December, 2013.

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

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SYNOPSIS

ISSUE: Whether the district met its responsibility of the identification, evaluation and placement of the student in special education.

CFR CITATIONS: 34 C.F.R. § 300.534(b)

HELD: For Respondent.