

DOCKET NO. 163-SE-0214

STUDENT, B/N/F PARENT	§ § §	BEFORE A SPECIAL EDUCATION
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 February 24, 2014. The matter was set for hearing and reset many times by agreement of the parties to accommodate the schedule of the parties and counsel. On October 28, 2014, Petitioner requested that the hearing be considered an expedited hearing pursuant to 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 December 1, 2014, 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 and Denise Hays, attorneys 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 December 15, 2014, in consideration of Petitioner’s amended request for an expedited hearing and within ten school days of the completion of the hearing. (Transcript Pages 43, 48, and 224)

Petitioners alleged that the student was removed from special education by the district on February \*\*\*, 2014, and that Petitioners disagree now with the decision of the admission, review, and dismissal (“ARD”) committee. Petitioners asserted that the district has failed to provide appropriate support services for the student, failed to recognize the educational eligibilities and services for the student guaranteed under IDEA, failed to provide a safe environment for the implementation of the student’s educational program, failed to provide a free appropriate public education (“FAPE”) for the student, and that the student has been disciplined inappropriately by the district.

As relief, Petitioners seek an order declaring that the district is in violation of IDEA for the reasons listed above and one year of compensatory educational services.

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. [Petitioner’s Exhibit 9; Transcript Page 34]
2. The student began school in the district in \*\*\* and received educational services under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794, et seq.) based upon autism. [Respondent’s Exhibit 27; Transcript Page 35]
3. The student has received services for approximately \*\*\* years from the \*\*\* as autistic but the parent did not make the district aware of these services for some time. [Transcript Pages 38-40]
4. The district considered a full individual evaluation (“FIE”) of the student on September \*\*\*, 2010. The committee also considered an independent psychological evaluation from June 2010 requested by the parent which diagnosed the student as autistic. The committee concluded that the student did not have a learning disability or emotional/behavioral deficits which qualified the student as

eligible for special education and related services. [Petitioner's Exhibit 26 & 28; Respondent's Exhibits 8, 24 & 25; Transcript Pages 87-89 & 92-96]

5. The independent psychological evaluation was conducted in June 2010 and the student was diagnosed as autistic. [Petitioner's Exhibit 26; Transcript Pages 92-96]

6. District personnel believe that the independent evaluation is inaccurate because the psychologist's observation of the student occurred when the student was not in school, that most of the information provided to the evaluator was from the parent, and that the student's teachers believed that the parent's reports were based on behaviors at home – not in school. [Respondent's Exhibit 8; Transcript Pages 24-25 & 92-96]

7. On August \*\*\*, 2010, an ARD committee for the student reviewed the evaluation and a functional behavioral assessment ("FBA") by an independent evaluator and qualified the student as autistic. The committee did not clearly develop a behavior improvement plan ("BIP") for the student. [Respondent's Exhibits 29 and 30; Transcript Page 210]

8. While the student was receiving educational services in special education the student received all services in the general educational setting. The student's goals in the individual education plans ("IEPs") for the student were educational. The student's guidance for behaviors was common for all students in the general education setting. [Respondent's Exhibits 6, 27-28, 30 & 32; Transcript Page 208]

9. A timely re-evaluation for the student was performed in May 2013 which concluded that the student's performance in school was successful and that the student had no educational need for special education. The student's behavior was considered and determined to be not indicative of a need for special education interventions. The committee dismissed the student from special education and the parent concurred with the decision. The student has not received special education since that time. [Respondent's Exhibit 7, 9 & 11; Transcript Pages 102-103]

10. However, the student's parent again asked for an independent evaluation. The district agreed to another evaluation and the parent chose the evaluator. [Respondent's Exhibits 12 & 13; Transcript Page 46]

11. The evaluation was conducted in December 2013 and January 2014. The evaluator concluded that the student does not need services in special education but could benefit from services under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794, *et seq.*). [Respondent's Exhibit 15; Transcript Pages 45-46]

12. An ARD committee in February 2014 considered the evaluation and the parent was invited to provide any other information about the student. The parent has not. [Respondent's Exhibit 1; Transcript Pages 39 & 218]

13. The parent again sought evaluation services privately and an evaluation was conducted in June 2014. The evaluator determined that the student has a mood disorder, a depressive disorder with psychotic features, and Attention Deficit Hyperactivity Disorder ("ADHD"). The evaluation did not address special education eligibility but the evaluator concluded that the student could "...be the type of student that would qualify for special education services." [Petitioner's Exhibits 12 & 17; Transcript Pages 57-63]

14. The student has been academically successful in school, has never failed a course, and has passed all areas of recent state assessment except one. [Respondent's Exhibits 1, 2 & 4; Transcript Pages 21-25 & 165]

15. The student has been disruptive in the classroom, threatening to teachers, and prone to \*\*\*. [Petitioner's Exhibit 5 & 16; Respondent's Exhibit 5; Transcript Pages 57-63]

16. The student was placed in \*\*\* and in \*\*\* several times in the fall semester of 2014. [Petitioner's Exhibits 5 & 16; Respondent's Exhibit 5; Transcript Pages 167-171, 180-187, 190-193 & 198-202]

17. The student was \*\*\* on \*\*\*, at the parent's request and \*\*\*. Reports from the \*\*\* indicated one day of agitated behavior, no psychotic symptoms \*\*\*, and the student "...did well most of the time." [Petitioner's Exhibit 15; Transcript Pages 44-46]

#### Discussion

The student in this matter has exhibited problems at school. The issue, though, is whether or not the student (during the year prior to the filing of the request for hearing) should have been afforded special educational services. 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 Petitioner is DENIED and all claims are DISMISSED with prejudice.

SIGNED this 15<sup>th</sup> day of December, 2014.

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

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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:** None.

**HELD:** For Respondent.