

DOCKET NO. 033-SE0619A

STUDENT/n/f PARENT, Petitioner

v.

PASADENA INDEPENDENT SCHOOL DISTRICT

Respondent

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

concludes that Student's conduct was not a manifestation of Student's disability, and therefore Student's disciplinary placement was proper.

A. Legal Representation

Student was represented throughout this litigation by Student's mother and next friend, PARENT. Respondent was represented throughout this litigation by David [REDACTED] and Hailey Janecka, of Thompson & Horton, Executive Director of Special Education

remained. The Order of Bifurcation was issued on June 20, 2019, and at that time this expedited matter, under 34 C.F.R. § 300.532 was assigned Docket No. 33SE0619A. Petitioner's remaining IDEA claims were assigned Docket No. 33SE0619B, and those will be addressed at a separate due process hearing on September 26 & 27, 2019.

2. Disqualification of Counsel

On the 3rd day of June 2019, Petitioner filed in this case a Motion to Disqualify Counsel for the Respondent District. Respondent was provided the opportunity to respond to the Motion, and the Respondent filed its Response July 12, 2019 in accordance with Order No. 2 of Docket No. 33SE0619A. On the 20th of July, 2019, Petitioner's Motion was denied.

3. Witness Subpoenas and Motion to Quash

On July 28, 2019, Petitioner filed two Motions for Subpoenas of witnesses for the due process hearing in this matter. The two subpoenaed individuals are minors and students in the District. On July 31, 2019, Respondent filed its Objection and /or Motion for Protective Order to issuance of Subpoena Compelling Attendance and Testimony of *** and ***.

13. All members of the ARD except for Student's parent agreed with the determination that the conduct in question for which student was disciplined

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer v. Weast*, 546 U.S. 49 (2005). Further, there is no

3. Student's conduct was not caused by and ~~did~~ have a direct and substantial relationship to Student's disability. Petitioner did not ~~not~~ Petitioner's burden of proving that the conduct was a manifestation of Student's disability. 34 C.F.R. § 300.530 (e)(1)(i). Tex. Educ. Code 37.04 (b); Schaffer v. Weast, 546 U.S. 49 (2005).

4. Student's alleged conduct was not a ~~direct~~ result of the District's failure to implement the Student's IEP. 34 C.F.R. § 300.530 (e)(1)(ii).

VII. ORDERS

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that all relief sought by Petitioner, including the appeal of the ~~manifestation~~ determination and disciplinary placement, is DENIED ~~and~~ Petitioner's claims are DISMISSED with Prejudice.

SIGNED August 29, 2019

Kimberlee Kovach

NOTICE TO THE PARTIES

The Decision of the Hearing Officer is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or district court of the United States. 20 U.S.C. §§1415(i)(2) and (f)(1).
Admin. Code § 89.1185(n).