

the least restrictive environment, and that the student should be removed from the DAEP and placed back in school.

As relief, Petitioner seeks an order returning the student to school, that BISD reimburse the student's guardians for expenses incurred in a four-day placement at a hospital, that the student be allowed to make-up without penalty any worked missed because of the student's placement, that the guardians be reimbursed for transportation expenses to the DAEP, that the guardians be reimbursed for the cost of providing lunch at the DAEP, that the district be required to develop a BIP for the student's individual education plan ("IEP"), and that the district provide an independent educational evaluation ("IEE") including a psychological evaluation.

During the course of the hearing, Petitioner withdrew any requests for reimbursement (Transcript Pages 192-193).

Respondent has sought summary judgment on three of Petitioner's claims as enumerated in the request for hearing:

- 1) Issue #1 "Whether the student's alleged behavior of *** was in violation of the Bland ISD student code of conduct;

10. No psychological evaluation was requested by the student's guardians before the

20. On November 12, 2009, a placement meeting was convened by the principal to discuss placement for the student. Present were the principal, the director of student services, and two teachers. Student's guardians were invited to the meeting and did not attend. District personnel determined that the student should be placed in DAEP for forty-five days. [Petitioner's Exhibit 12 and Transcript Pages 26-28]

21. The guardians were advised that they could appeal the placement decision. [Petitioner's Exhibit 12]

22. The student was placed in out-of-school suspension November 9-11, 2009. [Respondent's Exhibit 6 and Transcript Page 46]

23. The student's guardians did not appeal the DAEP placement to school officials. [Transcript Page 72]

24. The student did not begin attending the DAEP placement until December 1, 2009, after *** and the Thanksgiving holiday. [Transcript Pages 51, 72 & 222-223]

25. A manifestation determination ARD committee met on November 30, 2009. The committee determined that the student's IEP had been implemented, that there had been no behaviors in the past warranting the development of a BIP and that the conduct in question was not caused by or had a direct and substantial relationship to the student's disabilities. [Respondent's Exhibit 12]

26. The student's guardians did not agree with the determination of the committee. Counsel for the parties were present at the meeting. Petitioner's counsel and the guardians stated that they believed *** and that the student did violate the code of conduct. BISD and Petitioners could not agree on ***. Petitioners maintained that the student needed a BIP and that the behavior had a direct relationship to the student's disabilities. Because *** are allowed at school, the parties could not agree how *** and whether or not ***. The committee adjourned without agreement. [Respondent's Exhibit 12 and Transcript Pages 43-55 & 92-95]

27. The parties also could not agree whether or not the student ***, ***, ***,
[Transcript Page 78]

28. The student has been successful in the DAEP both academically and behaviorally.
The student's IEP is implemented in the placement. [Transcript Pages 148-149]

Discussion

The incident on November 6, 2009, with the student and *** at school fortunately did not result in any physical injury but the incident did create substantial disagreements with the parties. BISD made a disciplinary placement decision and considered at an ARD whether the student's disabilities had a direct and substantial relationship with the conduct in question or if the student's IEP had not been implemented. Petitioners seek findings and an order dealing with the determinations of the district in enforcing the student code of conduct. Petitioner's failed, however, to avail themselves of the protections in BISD policy in appealing the decision for discipline by school personnel. Respondent's maintain and have asked for summary judgment on three issues raised by Petitioner:

- 1) Issue #1 "Whether the student's alleged behavior of *** was in violation of the Bland ISD student code of conduct;
- 2) Issue #2 "Whether [Petitioner's] behavior during the incident in question in any way violated the Bland ISD student code of conduct; and
- 3) Issue #5 "Whether the manifestation determination ARD committee was involved in the decision to play [Petitioner] at the DAEP."

Petitioner asserts that the language of IDEA allows the hearing officer jurisdiction over these issues, but Respondent's summary judgment argument is meritorious. The issues under the hearing officer's jurisdiction do not involve the application of the district's student code of conduct. IDEA cannot be used as a tool to litigate a district's determination of its own student code of conduct. The remaining issues involve the procedures and substance of the manifestation

determination. Petitioner failed to prove that IDEA was violated in the district's handling of the student.

Conclusions of Law

1. Respondent is entitled to summary judgment dismissing Petitioner's claims in its request for hearing entitled Issues 1, 2, and 5. Jurisdiction of the hearing officer is limited to 19 T.A.C. §89.1151(a). The ARD committee under IDEA makes determinations regarding the identification, evaluation, educational placement, and the provision of FAPE to a student in special education and the Code of Federal Regulations at 34 CFR 300.507(a)(1) limits the issues of due process complaints to the provisions as stated in the Texas Administrative Code at 19 T.A.C. §89.1151(a).

2. Petitioner failed to meet its burden of proof to demonstrate that the district did not

DOCKET NO. 072-SE-1209

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

SYNOPSIS

ISSUE: Whether or not FAPE was provided.

CFR CITATIONS: 34 CFR 300.507(a)(1), 34 CFR 300.552 and 34 CFR 300.300

TEXAS CITATION: 19 T.A.C. §89.1151(a) and 19 T.A.C. §89.1055.

HELD: For the District.