

DOCKET NO. 207-SE-0409

STUDENT	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
V.	§	HEARING OFFICER FOR THE
	§	
FLOUR BLUFF	§	
INDEPENDENT	§	
SCHOOL DISTRICT	§	STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

The student, by next friend and parent (hereinafter “Petitioner” or “the student”), brought a complaint pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. §1400, *et seq.*, complaining of the Flour Bluff Independent School District (hereinafter “Respondent” or “the district”).

Petitioner was represented by Christopher Jonas, an attorney in Corpus Christi. Respondent was represented by Cynthia Buechler an attorney with the firm of Buechler & Associates in Austin. P

9. The psychologist noted as the student's strengths high intelligence, and excelling in reading, writing and math. The psychologist believed that the student's difficulties are with

completion, the ARD committee could consider eligibility for the student as OHI. The meeting ended in disagreement. [Respondent's Exhibit 2]

20. OHI forms from two physicians were received by the district shortly before Thanksgiving 2009. One indicates that the student meets the criteria for OHI based upon rheumatoid arthritis. [Respondent's Exhibit 7]

21. Another OHI form indicates that the student meets the OHI criteria based upon "hyper somnia, ADD, narcolepsy, rheumatoid arthritis." [Petitioner's Exhibit 5]

22. Prior to the hearing, the district had not had an opportunity to consider the OHI forms at another ARD meeting. The parent did not agree to attend an ARD meeting.

Discussion

Petitioner has the burden of proof to establish by a preponderance of evidence that the district violated the provisions of IDEA in some manner. Petitioner failed to meet its burden of proof.

Eligibility for special education is determined by both:

1. The student meeting eligibility criteria for a disability classification; and
2. The student's need, by rb Î i

Conclusions of Law

1. As the party challenging the district's decision on eligibility, the Petitioner failed to meet the burden of proof in this action. Schaffer v. Weast, 546 U.S. 49 (2005).

2. Petitioner failed to meet its burden of proof to show that the actions of the district in seeking to consider special education placement for the student violated IDEA under the standard of Tatro v. Texas, 703 F.2d 823 (5th Cir. 1983), 20 U.S.C. §1400, et seq., 34 CFR 300.8(a)(1), 300.0(c)(9) and 19 T.A.C. §89.1040(a) and §89.1040(c)(8).

ORDER

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

SIGNED this 20th day of January, 2010.

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

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SYNOPSIS

ISSUE: Whether the district failed timely to identify the student as eligible for special education.

CFR CITATIONS: 34 CFR 300.8(a)(1), 34 CFR 300.8(a)(1), 34 CFR 300.0(c)(9)

TEXAS CITATION: 19 T.A.C. §89.1040, 19 T.A.C. §89.1040(a), 19 T.A.C. §89.1040(c)(8)

HELD: For the District.