

**BEFORE THE DEPARTMENT OF EDUCATION
OF THE STATE OF ALABAMA**

MONTGOMERY COUNTY)	
BOARD OF EDUCATION)	
)	
PETITIONER,)	
)	
v.)	SPECIAL EDUCATION NO. 19-19
)	
X.J.)	
)	
RESPONDENT.)	

HEARING DECISION AND FINAL ORDER

I. PROCEDURAL HISTORY

This matter was filed by Petitioner on February 12, 2019, requesting an Expedited Disciplinary Due Process Hearing, and was assigned to this Hearing Officer by the Alabama State Department of Education on the same day. Following notice to the parties, this Hearing Officer conducted a prehearing conference call on February 19, 2019 to identify specific issues to be addressed during the hearing as well as other matters for consideration; Respondent did not answer this Hearing Officer’s call and did not respond to this Hearing Officer’s request to participate in said prehearing conference call via voice mail. A Prehearing Order was entered on February 25, 2019. Following notice to the parties, a final prehearing conference call was conducted on March 4, 2019 to address any remaining issues; again, Respondent did not answer this Hearing Officer’s call and did not respond to this Hearing Officer’s request to participate in said prehearing conference call via voice mail. A Due Process Hearing was convened March 11, 2019.

II. EXHIBITS ADMITTED INTO EVIDENCE

At the hearing, exhibits were submitted by Petitioner in an Exhibit Binder and accepted by this Hearing Officer. Respondent failed to appear for the hearing. These exhibits have been

examined by this Hearing Officer subject to the issue heard at the due process hearing and in the light of the testimony presented at said hearing. This Hearing Officer has examined the exhibits based upon the substantive nature contained therein for the purpose of making a decision in this matter. The documents and materials have been in the constant possession of this Hearing Officer until the rendering of this decision. Hereafter, they will be delivered to the Alabama State Department of Education.

A. PETITIONER'S EXHIBITS

1. Petitioner's Exhibit 1: Complaint for Due Process
2. Petitioner's Exhibit 2: 2018-2019 IEP
3. Petitioner's Exhibit 3: Minutes of 2018-2019 IEP Meetings
4. Petitioner's Exhibit 4: Functional Behavior Assessments and Intervention Plans
5. Petitioner's Exhibit 5: Learning Tree Request for Services
6. Petitioner's Exhibit 6: [REDACTED] 2018 Office Referral and Physical Restraint Incident Report
7. Petitioner's Exhibit 7: [REDACTED] 2018 Office Referral
8. Petitioner's Exhibit 8: [REDACTED] 2018 Office Referral and Physical Restraint Incident Report
9. Petitioner's Exhibit 9: [REDACTED] 2018 Physical Restraint Incident Report
10. Petitioner's Exhibit 10: [REDACTED] 2018 Physical Restraint Incident Report
11. Petitioner's Exhibit 11: [REDACTED] 2018 Behavior Tally Sheet and Physical Restraint Incident Report
12. Petitioner's Exhibit 12: [REDACTED] 2018 Behavior Tally Sheet, Physical Restraint Incident Report and On-the-Job Injury Reports

13. Petitioner's Exhibit 13: [REDACTED] 2018 Behavior Tally Sheet
14. Petitioner's Exhibit 14: [REDACTED] 2018 Behavior Tally Sheet
15. Petitioner's Exhibit 15: [REDACTED] 2018 Behavior Tally Sheet and Physical Restraint Incident Report
16. Petitioner's Exhibit 16: [REDACTED] 2018 Behavior Tally Sheet and Physical Restraint Incident Report
17. Petitioner's Exhibit 17: [REDACTED] 2018 Behavior Tally Sheet, Physical Restraint Incident Report and Office Referrals
18. Petitioner's Exhibit 18: [REDACTED] 2018 Office Referrals
19. Petitioner's Exhibit 19: [REDACTED] 2018 Behavior Tally Sheet and Physical Restraint Incident Report
20. Petitioner's Exhibit 20: [REDACTED] 2018 Behavior Tally Sheet, Physical Restraint Incident Report and On-the-Job Injury Report
21. Petitioner's Exhibit 21: [REDACTED] 2018 Behavior Tally Sheet, Physical Restraint Incident Report and On-the-Job Injury Report
22. Petitioner's Exhibit 22: [REDACTED] 2018 Behavior Tally Sheet and Physical Restraint Incident Report
23. Petitioner's Exhibit 23: [REDACTED] 2019 Physical Restraint Incident Report
24. Petitioner's Exhibit 24: [REDACTED] 2019 Behavior Tally Sheet and Physical Restraint Incident Report
25. Petitioner's Exhibit 25: [REDACTED] 2019 Behavior Tally Sheet and On-the-Job Injury Report

26. Petitioner's Exhibit 26: [REDACTED] 2019 Behavior Tally Sheet and On-the-Job Injury Report

27. Petitioner's Exhibit 27: [REDACTED] 2019 Behavior Tally Sheet and Physical Restraint Incident Report

III. BURDEN OF PROOF

The burden of proof in this matter is upon Petitioner as the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49 (2005); Ala. Admin. Code § 290-8-9.08(9)(c).

IV. STATEMENT OF FACTS AND SUMMARY OF THE TESTIMONY

This section is a summary of some of the pertinent facts presented to this Hearing Officer. These facts are not necessarily the only facts considered by this Hearing Officer in making this decision. This Hearing Officer has heard all of the testimony and has reviewed the transcript of said testimony. This decision is based on all testimony presented at the hearing as well as exhibits admitted into evidence during the hearing.

Petitioner was permitted to offer testimony by way of witnesses sworn under oath. Petitioner offered the testimony of School District Special Education Director, [REDACTED]. Respondent failed to appear for the hearing. The testimony has been recorded and transcripts will be delivered to the Alabama State Department of Education. The witness was examined and the weight given was based upon the substantive nature contained therein for the purpose of making a decision in this matter.

2018-2019 School Year:

Student is in the [REDACTED] grade and has an IEP with the eligibility category of [REDACTED]. [REDACTED] IEP provides that his Least Restrictive Environment is 40% to 79% inside of the regular education

environment. A Functional Behavior Assessment had been previously completed, and a Behavior Intervention Plan is part of the IEP.

Three IEP meetings were held during the current school year. On [REDACTED] 2018 the IEP Team met to discuss the Functional Behavior Assessment, Behavior Intervention Plan, and Occupational Therapy Assessment. On [REDACTED] 2018, the IEP Team convened to add a goal to the Behavior Intervention Plan related to self-control. The IEP Team also discussed a previous proposal to change Student's educational placement to a school where there is a behavior unit and [REDACTED] unit for students with [REDACTED]. On [REDACTED] 2019 the IEP Team convened to discuss a proposal to conduct a new Functional Behavior Assessment and subsequently write a new Behavior Intervention Plan due to Student's increasingly disturbing behaviors. However, [REDACTED] left the meeting before the proposal could be presented, and thus the district could not obtain consent to conduct the new Functional Behavior Assessment.

A Manifestation Determination Review was conducted on [REDACTED] 2019 after an assault by Student. The IEP determined that the behavior was not a manifestation of Student's disability and decided that Student would be assigned to the alternative school for 45 days. [REDACTED] appealed the disciplinary action, which was upheld. At the time of this due process hearing, [REDACTED] had not sent Student to the Alternative School, and a truancy officer had visited the home.

The Special Education Director testified that the District filed its request for a due process hearing because Student exhibited behaviors that were a substantial risk of injury to [REDACTED] and others in [REDACTED] current educational placement. Over the course of the school year, Student has exhibited serious behaviors, including [REDACTED]

[REDACTED]. The Special Education Director testified that school personnel are unable to control the

behaviors even with the use of positive behavior intervention strategies, redirection, and the provision of a cooling off place and that restraint was used as a last resort. Data was kept throughout the school year detailing the disturbing behaviors, office referrals for said behaviors, and staff injury reports.

V. ISSUE PRESENTED

The sole issue presented at the due process hearing was whether Student should be temporarily enjoined and restrained from attending [REDACTED] current educational placement.

VI. DISCUSSION OF THE ISSUE

The sole issue presented at the due process hearing was whether Student should be temporarily enjoined and restrained from attending [REDACTED] current educational placement. Petitioner requests that this Hearing Officer change Student's educational placement pursuant to *Honig v. Doe*, 108 S.Ct. 592 (1988) and 34 C.F.R. § 300.518. The Special Education Director testified that Student's current educational placement prevents the school district from providing a safe and productive educational environment to [REDACTED], does not allow the district to appropriately address [REDACTED] educational needs, that [REDACTED] behaviors are a danger to [REDACTED] and others, and that others will suffer immediate and irreparable harm if the placement is not changed. The Special Education Director testified that Student needs a placement outside of the school setting, including a day treatment program or a residential setting.

Having considered the testimony and exhibits, this Hearing Officer finds that, based upon the preponderance of the evidence, Student shall be temporarily enjoined and restrained from attending [REDACTED] current educational placement. The Stay Put provision of the Individuals with Disabilities Education Act of 2004 shall not be operable during the pendency of the temporary

restraining order pursuant to *Honig v. Doe*, 108 S.Ct. 592 (1988) and C.F.R. § 300.518. Student's educational placement shall be a day treatment program.

VII. SPECIFIC RULINGS AND CONCLUSIONS

- A. This Hearing Officer finds that, based upon the preponderance of the evidence, the Student shall be temporarily enjoined and restrained from attending [REDACTED] current educational placement for 45 school days. Student's educational placement shall be a day treatment program. Petitioner shall pay for this placement only if Student's [REDACTED] enrolls [REDACTED] in such services.
- B. This Hearing Officer finds that, based upon the preponderance of the evidence, the Stay Put provision of the Individuals with Disabilities Education Act of 2004 shall not be operable during the pendency of the temporary restraining order pursuant to *Honig v. Doe*, 108 S.Ct. 592 (1988) and C.F.R. § 300.518.

VIII. FINAL ORDER AND NOTICE OF APPEAL RIGHTS

This Hearing Decision constitutes a Final Order in this case. Any party dissatisfied with the decision may bring an appeal pursuant to 20 U.S.C. §1415(i)(2). The party dissatisfied with this decision must file a notice of intent to file a civil action with all other parties within thirty (30) calendar days of the receipt of this decision. Thereafter, a civil action must be initiated within thirty (30) days of the filing of the notice of intent to file a civil action. Ala. Admin. Code 290-8-9-.08(9)(c)(16).

SO ORDERED this the 1st day of April, 2019.


AMANDA DICKERSON BRADLEY
HEARING OFFICER