

Arkansas Department of Education
Special Education Unit

RE: Pulaski County Special School District

PETITIONER

VS. EH-17-28

**XXXXXXXX XXXXXX
as Parent and legal guardian of Student
XXXXXXXX XXXXXX**

RESPONDENT

HEARING OFFICER'S FINAL DECISION AND ORDER

Issues and Statement of the Case:

The Petitioner requested an expedited due process hearing alleging that if the Student remains in his current educational placement within the District that it is substantially likely to result in injury to the Student or others. The Petitioner is requesting an order changing the placement of the Student to an appropriate interim educational setting for not more than forty-five (45) school days.

Procedural History:

On April 24, 2017, a request to initiate an expedited due process hearing was received by the Arkansas Department of Education (hereinafter referred to as the "Department") from the Pulaski County Special School District (Petitioner) (hereinafter referred to as "District"), the school district responsible for the education of **XXXXXXXX XXXXXX** (hereinafter referred to as "Student") under the legal guardianship of **XXXXXXXX XXXXXX** (hereinafter referred to as "Parent"). The District requested an expedited hearing in accordance with 20 U.S.C. § 1415(k)(3) seeking an order to permit them to place the Student in an alternative educational setting for forty-five days.

The Department responded to the Petitioner's request by assigning the case to an impartial hearing officer and establishing the date of May 22, 2017, on which the hearing would commence

should the parties fail to reach a resolution prior to that time. An order setting preliminary timelines with instructions for compliance with the order was issued on April 28, 2017. The required resolution conference was waived by both parties. The Parent responded as ordered by providing a response to the District's complaints on May 4, 2017.

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended, and Arkansas Code Annotated 6-41-202 through 6-41-223, Robert B. Doyle, Ph.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing. The Parent was represented by Chad L. Cumming Jr., attorney of Little Rock, Arkansas and the District was represented by Jay Bequette and Cody Kees, Attorneys of Little Rock, Arkansas.

Findings of Fact:

Prior to the date on which the hearing commenced the Respondent notified the hearing officer through her attorney that she had decided to withdraw the Student from the District; however, no written assurance was provided to the District. Therefore, the hearing proceeded with both parties being represented as noted above. Neither the Student nor the Parent were in attendance.

Counsel for the Parent restated for the record the Parent's intention to withdraw the Student from the District and to provide home schooling. The District asked for assurance that the District would not be held liable in the future for the responsibility of implementing the child find obligations to the Student as well as any obligations to provide special education services.

No witnesses were asked to testify and the hearing was dismissed with the understanding that the Parent would be submitting the appropriate paperwork to withdraw the Student from the District.

Conclusions of Law and Discussion:

Part B of the Individuals with Disabilities Education Act (IDEA) requires states to provide a free,

appropriate public education (FAPE) for all children with disabilities between the ages of 3 and 21.¹ The IDEA establishes that the term “child with a disability” means a child with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance, orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities, and who by reason of their disability, need special education and related services.² The term “special education” means specially designed instruction.³ “Specially designed instruction” means adapting, as appropriate, to the needs of an eligible child under this part, the content, methodology, or delivery of instruction.⁴

The Department has addressed the responsibilities of each local education agency with regard to addressing the needs of all children with disabilities such as the Student in its regulations at Section 2.00 of Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education, 2008.

The jurisdiction of a hearing officer in IDEA due process hearings is confined to ruling on any matter that pertains to the identification, evaluation or educational placement of a child with a disability, and the provision of a free appropriate public education to the child within the meaning of the IDEA and Arkansas Code Annotated 6-41-202, et seq.⁵ The rules implementing the IDEA also describe the authority of a hearing officer in an expedited hearing. Specifically, 34 CFR 300.532 (b)

¹ 20 U.S.C. § 1412(a) and 34 C.F.R. § 300.300(a)

² 20 U.S.C. § 1401(3)(A)

³ 20 U.S.C. § 1402(29)

⁴ 34 CFR § 300.26(b)(3)

⁵ *Special Education and Related Services: Procedural Requirements and Program Standards*, Arkansas Department of Education (2008), Section 10.01.22.1

states that a hearing officer may "order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines [that] maintaining the current placement of the child is substantially likely to result in injury to the child or others."⁶

As it pertains to this case and the allegations presented by the District the Part B regulations state that the term "serious bodily injury" has the same definition found at Section 1365(h)(3) of the U.S. criminal code. 34 CFR 300.530 (i)(3). That provision defines serious bodily injury as bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.⁷

While there is no bright-line rule for determining whether a particular injury qualifies as serious bodily injury, hearing officers tend to consider factors such as the injured person's need for medical attention, the nature and extent of any pain the injured person suffered, and the duration of the harm.⁸ Given that the Parent in this case elected not to challenge the allegations put forward by the District the allegations must be accepted on face value.

Order:

1. The Student's withdrawal from the District hereby alleviates the District from any

⁶ See *White Bear Lake Area Schs.*, 113 LRP 28309 (SEA MN 05/13/13)

⁷ 18 USC 1365 (h)(3); 71 Fed. Reg. 46,722 (2006)

⁸ Compare, e.g., *Westminster Sch. Dist.*, 56 IDELR 85 (SEA CA 2011) (internal chest contusion resulting from head-butt amounted to serious bodily injury), with *In re: Student with a Disability*, 54 IDELR 139 (SEA KS 2010) (short-term dizziness, blurred vision, and pain that paraprofessional suffered as a result of knuckle raps to the head did not justify student's 45-day removal).

educational responsibility to the Student, including but not limited to homebound education, compensatory education, Extended School Year services (ESY) or any other services previously agreed to in any resolution agreements entered into by the parties pursuant to IDEA.

2. The Respondent will immediately upon receipt of this order, if not already done so, complete the required paperwork to withdraw the Student from the District and provide home school education to the Student for the remainder of the 2016-2017 school year.

3. Should the Respondent attempt to re-enroll the student into the District for the 2017-2018 school year, the Petitioner's request for an appropriate alternative placement is hereby granted.

IT IS SO ORDERED.



Robert B. Doyle, Ph.D.
Hearing Officer

May 31, 2017

Date