

SOAH DOCKET NO. 701-22-1356.IDEA
TEA DOCKET NO. 122-SE-0122

STUDENT, B/N/F PARENT and PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
v.	§	
	§	HEARING OFFICER FOR
KATY INDEPENDENT SCHOOL	§	
DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS
	§	

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

***, (Student) by next friends *** and *** (Parents, or, collectively, Petitioner) brought an expedited action against Katy Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401-1482, and its implementing state and federal regulations.

Student filed Student’s Request for an Expedited Due Process Hearing on January 13, 2022. The main issue in the case is whether Student’s conduct that formed the basis for the District’s disciplinary decision to change Student’s placement to a disciplinary alternative educational program (DAEP) was a manifestation of Student’s disability, and whether the District committed procedural errors during the January 12, 2022 Manifestation Determination Review (MDR) that resulted in denial of a free, appropriate public education (FAPE) to Student.

The Hearing Officer concludes Student’s conduct was not a manifestation of Student’s disability, making the District’s change in placement proper. The Hearing Officer also concludes that the District did not commit any procedural errors.

II. DUE PROCESS HEARING

The due process hearing was conducted on February 11, 2022. Petitioner was represented by Petitioner's legal counsel, Michael O'Dell. Student's parents, *** and ***, attended the hearing. Respondent was represented by its legal counsel, Alaina Smith and Kevin Christiansen. In addition, Dr. ***, Executive Director of Special Education for the District, attended the hearing as the party representative. The hearing was recorded and transcribed by a certified court reporter. The parties submitted timely written closing arguments on February 21, 2022.

III. ISSUES

A. Petitioner's Issues

Petitioner raised the following issues for decision in this case:

1. Whether the District committed procedural errors during the January ***, 2022, MDR resulting in a denial of FAPE.
2. Whether the District incorrectly determined that Student's conduct was not a manifestation of Student's disability.

B. Petitioner's Requested Relief

Petitioner seeks the following items of requested relief:

1. Order the District to not require Student to attend the DAEP until a new MDR has been held and all appeals have been completed.
2. Order the District to extinguish the DAEP placement because the conduct in question was a manifestation of Student's disability.

3. Order the District to delay holding an MDR or instituting the DAEP placement until a new full and individual evaluation (FIE) and functional behavior assessment (FBA) have been completed.
4. Order the District to offer a 10-day reconvene meeting for the MDR that ended in disagreement.

C. Respondent's Legal Position

The District generally and specifically denied all claims alleged and requested relief sought by Petitioner.

IV. FINDINGS OF FACT

1. Student is a ***-year-old *** grader at *** in the District. Student lives with Student's parents ***. Student is eligible for special education based on an other health impairment (OHI) of attention deficit hyperactivity disorder (ADHD).¹
2. Student's most recent comprehensive evaluation was Student's Full Individual and Initial Evaluation (FIIE), completed April ***, 2018. Student scored in the average or high average range in all cognitive areas. The primary areas of concern throughout the evaluations were Student engaging in off-task behaviors, not following instructions, lacking age-appropriate organization skills, and exhibiting anxiety. The accompanying psychological evaluation found that ADHD impeded Student's academic progress. The Conners Comprehensive Behavior Rating Scale (CBRS) was administered and Student received elevated scores across raters in the areas of attention and hyperactivity. The District received an OHI disability report form from Student's physician, dated April ***, 2018, confirming Student's ADHD diagnosis.²
3. ADHD is a developmental disorder associated with inattentiveness and/or hyperactivity. It presents with a range of impairment levels in different individuals that can change across a person's lifespan. Impulsivity and deficits in executive functioning are characteristics of ADHD. All adolescents typically struggle with impulse control and peer pressure, but

¹ Joint Exhibit (JE) 2 at 1; JE 17 at 13.

² JE 2 at 3, 9, 10; JE 3; JE 4.

adolescents with ADHD may struggle more. Children with ADHD may exhibit social immaturity compared to same-age non-disabled peers.³

4. On January ***, 2021, a Review of Existing Evaluation Data (REED) was completed in lieu of conducting a new evaluation, with the agreement of Student's mother, wherein it was found that additional evaluation data was not needed at that time to determine Student's eligibility or programming.⁴
5. Student's most recent annual Admission, Review, and Dismissal (ARD) Committee meeting was held on November ***, 2021, and ended in agreement. Student's instruction is provided in the general education setting with push-in support in *** minutes per week per subject). The ARD Committee adopted new annual goals for Student to self-monitor submitting assignments and self-advocate by utilizing Student's accommodations and requesting help when needed. Student's individualized education program (IEP) provides accommodations to adapt instruction and support organization and executive functioning, including checks for understanding, monitoring planner usage, chunking, extra time, providing notes, frequent breaks, positive feedback, preferential seating, and time reminders.⁵
6. During the ARD Committee meeting, Student's mother expressed concerns about Student's preparation for *** and developing appropriate study skills. Parent concerns included staying on task, sitting still, sustaining attention, acting before thinking, time management, task initiation, and task completion. Teachers reported concerns with using Student's ***, attention to task, and work avoidance. Parent and teacher concerns were also reported about academic progress and reading avoidance. Student did not meet expectations on the 2021 STAAR tests in ***. Student had earned passing grades in all of Student's courses during the first ***-week grading period of the Fall 2021 semester, but no longer had a passing grade in *** for the second ***-week grading period. Student had mastered one annual goal from Student's prior IEP related to not rushing through assignments, but had not mastered the other goal related to submitting assignments on time.⁶
7. The ARD Committee agreed to updated cognitive and achievement testing "to address reading and writing concerns" and a psychological consult "to address executive functioning concerns." Student's mother signed consent for these evaluations on the same

³ Transcript (Tr.) 21, 23, 25, 32-33, 49, 51, 144-45, 173.

⁴ JE 9.

⁵ JE 17 at 19-20, 22, 27, 32.

⁶ JE 16 at 3-5; JE 17 at 14-15; Tr. 120.

- day as the ARD Committee meeting. The due date for the updated assessments is March ***, 2022.⁷
8. On the ***, 2021, Student ***. Student ***. ***,” ***,”⁸
9. On ***, 2021, Student ***. ***. ***,⁹
10. That afternoon, Student was interviewed by Student’s assigned assistant principal and officers from the District’s police department **. Student denied **. Student denied having anything to do with ***,¹⁰
11. Later that evening, ***. ***. ***, ***,¹¹
12. On ***, 2021, Student received *** of out-of-school suspension (OSS). On the same date, the assistant principal recommended that Student serve a ***-day placement at the DAEP for conduct constituting **. The campus administration initially discussed seeking a 180-day DAEP placement, but ultimately recommended that the placement be limited to the current school year so Student could *** with Student’s peers on Student’s ***,¹²
13. The District held a discipline conference on December ***, 2021, with an administrator from another campus as the presiding officer. The assistant principal presented details about the incident. Student’s mother requested a shorter DAEP placement. Student apologized for Student’s actions, expressed remorse, and reiterated that Student did not intend ***,¹³
14. The disruption to the campus continued ***,¹⁴
15. The District was closed for winter break from December 17, 2021 to January 3, 2022.¹⁵

⁷ JE 15; JE 17 at 29.

⁸ JE 22 at 6; JE 25; JE 26.

⁹ JE 22 at 2, 7; Tr. 104-05.

¹⁰ JE 22 at 2-3; Tr. 87-89.

¹¹ JE 22 at 4-7.

¹² JE 32; JE 33; Tr. 94.

¹³ JE 27.

¹⁴ JE 27.

¹⁵ JE 35.

16. On January ***, 2022, the presiding officer issued her written decision following the discipline conference, determining that Student committed the conduct violation of *** and approving the recommended ***-day DAEP placement.¹⁶
17. The District noticed an ARD Committee meeting to conduct an MDR on January ***, 2022, then rescheduled to occur on January ***, 2022. The attendees for the meeting were an ARD facilitator, two campus assistant principals, two diagnosticians, two licensed specialists in school psychology (LSSPs), the counselor from the DAEP campus, a special education teacher, a general education teacher, a district-level special education administrator, the District’s general counsel, Parents, and an attorney for the family.¹⁷
18. At the ARD Committee meeting, Student’s assigned assistant principal reviewed the details of the incident. An LSSP reviewed information about Student’s disability from Student’s FIIE, REED, and most recent ARD meeting. The LSSP described the ways Student’s ADHD impacts Student at school through struggles with work completion, focus, and organization. The LSSP also reviewed Student’s current IEP and accommodations. Student’s discipline history was reviewed.¹⁸
19. Student began seeing a counselor outside of school on January ***, 2022. The private counselor submitted a letter that was reviewed by the ARD Committee stating that “[i]t is my professional opinion that Student’s lapse in judgment is related to difficulties Student experiences with impulsivity and other executive functioning deficits.” The family’s attorney shared that Parents believed Student’s behavior was a direct result of Student’s deficits in executive functioning.¹⁹
20. The ARD Committee discussed whether Student’s conduct was a manifestation of Student’s ADHD. The LSSP and the assistant principal both stated that they did not believe that the conduct was a manifestation. The LSSP did not believe the behavior was impulsive or the result of executive functioning deficits because it was done over multiple days and required completing many steps. Student’s mother disagreed and stated that she believed it was a manifestation of Student’s ADHD. The ARD Committee, including Parents, agreed that Student’s IEP had been implemented appropriately. Parents requested a 10-day reconvene ARD Committee meeting because of the disagreement, which the District denied.²⁰

¹⁶ JE 28.

¹⁷ JE 21 at 11.

¹⁸ JE 21 at 11-12.

¹⁹ JE 21 at 12; JE 36; Tr. 143-44.

²⁰ JE 21 at 12; Tr. 72-73, 160-63.

21. The ARD Committee discussed that Student did not have a behavior intervention plan (BIP) as part of Student's IEP and requested an FBA. The discussion was prompted by the District's understanding of a state law requiring schools to offer an FBA when a student with a disability is referred to the DAEP. Parents provided consent for the District to conduct an FBA.²¹
22. The school-based members of the ARD Committee had participated in a staffing meeting in advance of the January ***, 2022 meeting to go over the MDR process. During that meeting, the DAEP counselor reviewed Student's IEP and determined that it could be implemented at the DAEP. However, this was not discussed during the ARD Committee meeting with Parents and the DAEP counselor did not say anything during the ARD Committee meeting.²²
23. At some point after the MDR, Student began Student's DAEP placement. Since then, District special education administrators have been assigned to ensure that Student's IEP is being appropriately implemented at the DAEP. Students at the DAEP receive instruction through Edgenuity, an online curriculum platform, with the support of general education and special education teachers. Student's mother has raised concerns about Student's instruction at the DAEP and has been satisfied with the responsiveness of the DAEP principal to her concerns.²³
24. Petitioner appealed the associate principal's disciplinary determination to a district-level discipline hearing committee. On January ***, 2022, a hearing was held regarding that appeal. Following that hearing, the district-level hearing officer affirmed that Student had violated the Student Code of Conduct (SCOC) by ***, noted that a DAEP placement of up to one year is appropriate for this conduct, and approved the ***-day placement.²⁴
25. Prior to ***, Student's discipline history at school was not noteworthy. Student's only reported infractions in the current school year were for ***.²⁵

V. DISCUSSION

²¹ JE 20; JE 21 at 12; Tr. 168.

²² Tr. 63, 78-79, 99-100, 238-39.

²³ Tr. 129, 187-88, 197-99, 243.

²⁴ JE 29; JE 30.

²⁵ JE 31; Tr. 86.

Petitioner alleges that the District incorrectly determined that Student's conduct of *** was not a manifestation of Student's ADHD. Petitioner also alleges that there were various procedural issues with the January ***, 2022 MDR that resulted in a denial of FAPE to Student.

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the IEP and/or placement. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Indep. Sch. Dist. v. Todd L.*, 999 F.2d 127, 131 (5th Cir. 1993). There is no distinction between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009). The burden of proof in this case is on Petitioner to show the District violated the IDEA substantively or procedurally in conducting the MDR or determining that Student's behavior was not a manifestation of Student's disability.

B. Disciplinary Removals

School districts have the authority to discipline students with disabilities. However, when exercising this authority, a school district must:

- Follow its student code of conduct;
- Only impose discipline that is consistent with discipline imposed upon students without disabilities;
- When planning to change the student's placement as part of the discipline, determine whether the behavior that violated the student code of conduct was a manifestation of the student's disability; and
- Provide educational services during disciplinary removals that constitute a change in placement.

34 C.F.R. § 300.530. As discussed below, the District complied with these requirements. Student received a shorter DAEP placement than the SCOC authorizes for the infraction of ***. The MDR was legally compliant and Student has been provided educational services during Student's DAEP placement.

C. Manifestation Determination Review

Before disciplining a student for a violation of the SCOC and removing them from school for more than 10 days, a school district must determine whether the behavior is a manifestation of the student's disability. 34 C.F.R. § 300.530(e); Tex. Educ. Code § 37.004(b). In determining whether conduct is a manifestation of a student's disability, relevant members of the ARD Committee must review relevant information from the student's educational file, including the Student's IEP, evaluations, discipline history, and any relevant information provided by the parents. The MDR must then determine whether the conduct at issue was caused by or had a direct and substantial relationship to the child's disability. The MDR must also determine if the conduct at issue was a direct result of the school district's failure to implement the child's IEP. 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b). A parent who disagrees with a manifestation determination may file a due process hearing request to challenge the determination. 34 C.F.R. § 300.532(a).

1. Relationship Between Student's Disability and Conduct at Issue

The District appropriately determined Student's conduct was not caused by and did not have a direct and substantial relationship to Student's disability. During the MDR, the ARD Committee reviewed Student's FIIE, REED, school discipline history, IEP, information from Student's private counselor, and heard input from Parents and their attorney. As a result of Student's ADHD, Student has demonstrated trouble with focus and organization in the classroom. Student's IEP provides support in these areas to encourage work completion, attention to task, and

developing independence with organization. Student's decision to engage in the behavior at issue was not caused by and did not have a direct and substantial relationship to these documented areas of concern resulting from Student's ADHD.

Petitioner argues that Student's ADHD causes Student to act without thinking and impacts Student's social maturity, which led to the behavior at issue. Petitioner offered expert testimony on the symptoms and effects of ADHD on children and adults generally.²⁶ However, no evidence established that for Student, in particular, Student's ADHD reveals itself through a pattern of acting without regard for consequences, particularly at the level of ***. Student's mother expressed an opinion as a parent that Student does not consider the consequences of Student's actions. No psychological professional who has evaluated Student corroborated this to suggest that the behavior at issue was consistent with a disability-related pattern of failing to consider consequences before acting. Student's documented ADHD symptoms at school have been in the areas of attention to tasks, completing work, and lacking organization.

Petitioner is also critical of the MDR determination as too narrowly considering the temporal element of impulsivity. Petitioner argues that Student's behavior was still impulsive even though it unfolded over two days and required completing multiple steps. Even assuming that this behavior could still be considered impulsive, the evidence did not establish that Student's ADHD demonstrates itself through this type of alleged impulsivity. Prior to this incident, Student had no serious behavior issues at school, interacted appropriately with peers and adults, generally followed directions, and has good social skills. This behavior incident was a world away from what is known about Student's ADHD symptoms at school.

²⁶ Petitioner is critical of the testimony and opinions of the District LSSP who participated in the MDR because she had not evaluated Student, and therefore was in the same position as Petitioner's expert through only having reviewed Student's records. However, the District LSSP gave information at the MDR, and testimony at the hearing, based on the District's FIIE and data about Student's actual performance at school. In contrast, Petitioner's expert merely testified about ADHD symptoms and impacts generally and did not offer any conclusions based on a review of Student's evaluation, records, or actual performance.

Further, the standard for establishing a manifestation for the purposes of an MDR under the IDEA is a high bar, requiring a close correlation. All developing adolescents may struggle with impulse control and wanting to please peers. Adolescents make mistakes and may exhibit poor judgment at times, including violating the SCOC and criminal laws. Adolescents with ADHD may struggle more, and Student may indeed struggle more. However, showing a connection to ADHD is not sufficient to show that behavior was directly caused by or has a substantial relationship to an individual's ADHD for the purposes of an MDR. While no particular case is dispositive since ADHD manifests itself differently in different children and the facts of every case are different, it is instructive to consider instances when an MDR properly determined that conduct was a manifestation of ADHD²⁷ and when it was not.²⁸ Hearing officers and courts have consistently looked for a close connection between the ways the student's disability has manifested itself in the past at school and the behavior at issue in the disciplinary incident. The IDEA shields students with disabilities from the disciplinary consequences applicable to their non-disabled peers only

²⁷ *Killeen Indep. Sch. Dist.*, 021-SE-0919A, 120 LRP 8224 (TX SEA Dec. 19, 2019) (behavior was a manifestation of student's autism, emotional disturbance, and/or ADHD when it was consistent with years of documented behavior issues at school and the LSSPs at MDR agreed with the parent that the behavior was a manifestation); *Dist. of Columbia Pub. Schs.*, 115, LRP 16788 (DC SEA Feb. 3, 2015) (student's non-compliance with classroom instructions and classroom disruptive behavior was a manifestation of ADHD); *San Diego Unified Sch. Dist.*, 109 LRP 50626 (CA SEA July 29, 2009) (student's behavior was a manifestation of Student's ADHD when Student became involved as a middleman in a drug transaction during a passing period at school on a day when Student had not taken Student's ADHD medication).

²⁸ *Gloria V. v. Wimberley Indep. Sch. Dist.*, 2021 WL 770615, at *16 (W.D. Tex. Jan. 5, 2021), report and recommendation adopted in part sub nom. *Gloria V. as next friend of B.V. v. Wimberley Indep. Sch. Dist.*, 2021 WL 769663 (W.D. Tex. Feb. 26, 2021) (stealing an ATV was not sufficiently impulsive to be a manifestation of ADHD); *Fitzgerald v. Fairfax Cty. Sch. Bd.*, 556 F. Supp. 2d 543, 562 (E.D. Va. 2008) (student's history of making poor choices to impress Student's friends did not mean that Student's decision to conduct a weekend paintball raid on Student's school was sufficiently linked to Student's emotional disability to be a manifestation); *Pasadena Indep. Sch. Dist.*, 333-SE-0619A, 119 LRP 42545 (TX SEA Aug. 29, 2019) (some past impulsivity was not enough of a link between student's ADHD and present conduct to constitute manifestation); *Fowlerville Comm. Schs.*, 118 LRP 15761 (MI SEA Apr. 2, 2018) (student's behavior was "premeditated and not impulsive," and therefore not a manifestation of ADHD, when student engaged in conduct that required planning and multiple steps); *Liberty 53 Sch. Dist.*, 117 LRP 26090 (MO SEA June 27, 2017) (student "exhibited bad judgment" in "calculated decision" to bring to school a sock filled with coins and threaten another student with it, behavior was not consistent with ADHD symptoms exhibited at school); *Upper Darby Sch. Dist.*, 117 LRP 48405 (PA SEA Oct. 31, 2017) (no evidence that student "was impeded in using appropriate judgment in view of the rules," bringing a knife to school was not sufficiently related to executive functioning deficits stemming from ADHD).

when the conduct violation has a documented and close connection to the behavior the student has exhibited previously at school stemming from their disability. Here, the evidence established no connection between Student's conduct of *** and Student's documented ADHD-related struggles in the classroom with attention and organization. Given Student's behavior profile, discipline history, evaluation data, and IEP, the Hearing Officer concludes there is no causal or direct and substantial link between Student's ADHD and Student's conduct of ***.

2. Implementation of Student's IEP

During the MDR, the ARD committee concluded Student's conduct was not directly related to any failure to implement Student's IEP. There was no evidence presented to show that the District failed to provide Student with Student's special education supports and accommodations. The ARD Committee agreed that Student's IEP had been appropriately implemented. In sum, the evidence does not support a link between the District's implementation of Student's IEP and the conduct at issue.

3. Manifestation Determination Conclusion

If the MDR determines either that the conduct was caused by and had a direct and substantial relationship to the student's disability, or that the conduct was directly related to the failure to implement the student's IEP, then the behavior is considered a manifestation of the student's disability. 34 C.F.R. § 300.530(e)(2). Once the behavior is determined to be a manifestation of the student's disability, the school district must return the student from a disciplinary placement to the prior educational placement. 34 C.F.R. § 300.530(f)(2).

Since Student's conduct had no direct and substantial relationship to Student's disability or a direct relationship to a failure to implement Student's IEP, the conduct is not considered a

manifestation of Student's disability. Therefore, the District may place Student at the DAEP for this conduct. 34 C.F.R. § 300.530.

D. Procedural Violations

Petitioner alleges the District violated Student's procedural rights under the IDEA in various ways. Liability for a procedural violation only arises if the procedural deficiency impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003). None of these circumstances occurred here.

Petitioner complains that the District's general counsel acted inappropriately during the ARD Committee meeting. The evidence offered at hearing did not substantiate any of Petitioner's accusations about the general counsel's conduct. Petitioner complains that the same assistant principal who investigated the incident and presented this information to the ARD Committee also expressed his opinion that the behavior was not a manifestation and served as the District representative in the MDR. Petitioner offered no authority establishing how this was a violation of any procedural right protected under the IDEA. Investigating whether misconduct occurred is not dispositive on, or even influenced by, the questions that must be considered in an MDR. Further, Petitioner ignores that the assistant principal is not the administrator who ultimately made the discipline determination. The decision that Student committed the misconduct in question was made by the administrator from another campus who presided over the initial discipline conference. Neither the general counsel's nor the assistant principal's conduct violated the IDEA.

Petitioner complains that a 10-day reconvene was not offered when the MDR ended in disagreement. The only area of disagreement was the manifestation determination. A school district is not required to offer a reconvene meeting when the area of ARD Committee disagreement is over

an MDR determination. *See* 34 C.F.R. § 300.532(a) (“The parent of a child with a disability who disagrees with . . . the manifestation determination under § 300.530(e) . . . may appeal the decision by requesting a hearing.”); *see also* Questions and Answers on Discipline Procedures, 47 IDELR 227, at *5-6 (OSERS 2007) (advising that if the parents and the LEA “cannot reach consensus or agreement on whether the child's behavior was or was not a manifestation of the disability, the public agency must make the determination”). As such, the District’s refusal to provide a 10-day reconvene meeting was not a violation of the IDEA.

Petitioner complains that the ARD Committee did not have enough information to adequately conduct an MDR while the evaluations that had been requested in November 2021 were still pending. In making an MDR determination, committee members are required to review all relevant information in the student’s file. 34 C.F.R. § 300.530(e)(1). Petitioner did not meet Petitioner’s burden to show that updated cognitive and achievement testing, or a psychological consult to address executive functioning in the classroom, were necessary or relevant to assess whether Student’s conduct at issue was a manifestation of Student’s ADHD. The District’s decision to hold the MDR without this information did not violate the IDEA.

Petitioner complains that the MDR was held before Petitioner had exhausted the appeal of the discipline decision before the campus-level discipline hearing committee. Under the IDEA, the ARD Committee is responsible for determining the alternative disciplinary setting when a student with disabilities is removed for behavior that does not constitute a manifestation of their disability. 34 C.F.R. § 300.531. The evidence did not show that Student’s setting was changed by anyone other than the ARD Committee at the January ***, 2022 MDR. Petitioner did not meet Petitioner’s burden of establishing a procedural violation related to the appeal process.

Petitioner complains that the ARD Committee did not discuss whether Student’s IEP could be appropriately implemented in the DAEP. If a disciplinary removal constitutes a change of placement, the ARD Committee is responsible for determining appropriate services in the new

placement. 34 C.F.R. § 300.530(d)(5). Student receives all services and accommodations in a general education setting. The DAEP is a general education campus within the District. The evidence did not establish that the ARD Committee needed to change anything about Student's IEP in order for it to be implemented fully at the DAEP. Petitioner has offered no authority supporting an IDEA requirement that the ARD Committee specifically discuss the IEP implementation at the DAEP, even when no IEP changes are necessary for it to be implemented in the disciplinary setting. While it would have been best practice for the ARD Committee to discuss how Student's IEP would be implemented at the DAEP contemporaneously with the MDR, Petitioner did not meet Petitioner's burden to show that this was a procedural violation of the IDEA.

Petitioner has not met Petitioner's burden to show that any procedural violations occurred, let alone any that rose to the level of denying Student a FAPE. In this case, the District had the authority to impose discipline on Student. When it did so, the District followed its SCOC, did not impose a discriminatory punishment, conducted a legally compliant MDR before imposing the punishment handed down through the disciplinary process, and has offered Student appropriate services during Student's DAEP placement. As such, the disciplinary process followed by the District was consistent with the IDEA.

VI. CONCLUSIONS OF LAW

1. Respondent complied with the IDEA's procedural disciplinary requirements when it subjected Student to removal proceedings for violating the District's Student Code of Conduct and then conducted a manifestation determination review to ascertain whether the conduct that resulted in a disciplinary change of placement was related to Student's disability. 34 C.F.R. § 300.530.
2. Student's conduct on ***, 2021 had no direct and substantial relationship to Student's disability. Petitioner failed to prove the conduct was a manifestation of Student's disability. 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b).
3. The District has the authority under the IDEA to place Student at the DAEP for the conduct at issue. 34 C.F.R. § 300.530.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **DENIED**.

SIGNED February 25, 2022.



Jessica Witte
Special Education Hearing Officer
For the State of Texas

VII. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause 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 in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516(a); 19 Tex. Admin. Code § 89.1185(n).