

SOAH DOCKET NO. 701-22-2350.IDEA
TEA DOCKET NO. 205-SE-0422

STUDENT, B/N/F PARENT and PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
CLEAR CREEK 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 the Clear Creek Independent School District (Respondent or District) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401-1482 (IDEA), and its implementing state and federal regulations.

Petitioner filed the Request for an Expedited Due Process Hearing on April 6, 2022. It was received and docketed by the Texas Education Agency (TEA) as Docket No. 205-SE-0422 and Notice of Filing Request for a Special Education Due Process Hearing was issued on the same day. Petitioner has been represented throughout this litigation by Petitioner’s legal counsel, Michael O’Dell. Respondent has been represented throughout this litigation by its legal counsel, Amy Tucker.

The two main issues in the case are whether Student’s conduct that formed the basis for the District’s disciplinary decision to change Student’s placement to an interim alternative educational program was a manifestation of Student’s disability and whether Student’s conduct was a result of the District’s failure to properly implement Student’s Individualized Education Plan (IEP). The Hearing Officer concludes the behavior was not a manifestation of Student’s disability

and was not the result of the District's failure to implement Student's IEP. The District had authority to discipline Student in accordance with its Student Code of Conduct.

II. DUE PROCESS HEARING

The due process hearing took place virtually via Zoom on May 5, 2022. Petitioner continued to be represented by Michael O'Dell. In addition, Parents attended the due process hearing. Respondent continued to be represented by Amy Tucker. In addition, Dr. ***, Executive Director of Special Services for the District, attended the hearing as the party representative. The hearing was recorded and transcribed by a certified court reporter.

Both parties appeared in a timely manner for the expedited due process hearing and announced ready through counsel on the record. Once on the record, the Hearing Officer admitted all exhibits without objection. At the conclusion of the hearing, the parties requested an opportunity to file written closing briefs. Both parties filed written closing briefs in a timely manner. The decision of the Hearing Officer is due on May 19, 2022.

III. ISSUES

A. Petitioner's Issues

Petitioner raised the following IDEA issues for decision in this case:

1. Whether Student's Admission, Review, and Dismissal (ARD) Committee properly determined Student's behavior on ***, 2022, was not directly and substantially related to Student's disability.
2. Whether Student's ARD Committee properly determined Student's behavior on ***, 2022, was not the direct result of Student's school's failure to implement Student's IEP.

3. Whether Student’s ARD Committee violated Petitioner’s procedural rights under the IDEA.

B. Respondent’s Position

The District generally and specifically denies Petitioner’s issues and denies responsibility for providing any of Petitioner’s requested relief.

IV. REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to return Student immediately to Student’s home school from the Disciplinary Alternative Education Placement (DAEP).
2. In the alternative, order the District to conduct the Manifestation Determination Review (MDR) again.

V. FINDINGS OF FACT

1. Student is ***-year-old *** grade student who resides in the boundaries of the District. Student has attended *** since the beginning of the 2021-22 school year. Student attended school in *** during the 2020-21 school year before moving to Texas with Student’s family and transferring into the District in August 2021. Student receives special education and related services as a student with Autism and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD).¹
2. The District conducted Student’s triannual Full and Individual Evaluation (FIE) in February 2022. The evaluation recommended continuing Student’s eligibility as a student with ADHD and Autism. Student has high-functioning Autism and does not have issues with communication. Student has a good attitude, participates in class, and gets along well with Student’s teachers and peers. Student’s relative weaknesses are that Student has

¹ Joint Exhibit 2, page 2 (hereafter, J __ at __); J7, at 1; Transcript Page 24 (hereafter TR __).

trouble maintaining focus in a classroom setting, often getting up to use the restroom when Student does not need to do so or using Student's laptop for non-academic tasks.²

3. In February 2022, the District also conducted a Functional Behavioral Assessment (FBA). The sole behavior the FBA identified was also the sole behavioral issue Student was exhibiting at school: engaging in off-task behaviors to avoid doing Student's work. The District did not develop a Behavior Intervention Plan (BIP) to address that one particular behavior. The District did form two IEP goals aimed at Student focusing on Student's tasks and collaborating with Student's classmates on relevant academic topics. The IEP also provided a number of in-class accommodations with which Parents agreed to help Student remain on task, such as in-class redirection, maintaining eye contact with Student before introducing new tasks, having Student repeat instructions, seating Student near the teacher so Student could focus, and a number of others. All accommodations and services in the IEP were aimed at Student's performance in the classroom itself.³
4. On February ***, 2022, Student's ARD Committee met to discuss the results of the FIE and to make any necessary changes in Student's IEP. Student attends all Student's classes in a mainstream environment with 180 minutes per week of in-class support. Parents agreed with the FIE and its results. The ARD Committee meeting, however, ended in disagreement. Parents requested the IEP contain a writing goal and also requested the District provide a one-on-one aide to help Student focus during class. The District did not agree to those changes to the IEP.⁴
5. On ***, 2022, Student ***. Parents were not aware Student ***. ***. ***. The District suspended Student for *** school days so it could continue its investigation and convene an ARD Committee meeting. The District investigated the incident, including interviewing Student and other witnesses. Student admitted Student ***.⁵
6. According to the District's Student Code of Conduct, a student must be sent to the DAEP for *** school days if the student ***. Before determining whether to send Student to the DAEP, the District convened Student's ARD Committee for a MDR meeting on March ***, 2022. Parents were present at the meeting. There were seven District staff members in attendance, including an administrator, a Licensed Specialist in School Psychology

² J8 at 1-2, 20.

³ J5 at 10, 12, 17-18; J8 at 26.

⁴ J5 at 28, TR 59.

⁵ J2 at 2; TR 70-72, 77.

(LSSP) who could interpret evaluations, a general education teacher, and a special education teacher.⁶

7. In conducting the MDR meeting, the ARD Committee asked two questions. The first question was whether the conduct of *** was caused by or directly and substantially related to Student's disability. Student's LSSP reviewed Student's recent FIE with which Parents had agreed the previous month. The LSSP did not find any behaviors related to Student's disabilities that would indicate Student would ***. The second question was whether the behavior was the result of the District's failure to follow the IEP. The ARD Committee reviewed the IEP and determined the District had followed it.⁷
8. Parents argued that the District did not follow the IEP, because the District did not have a BIP or social skills classes for Student. According to Parents, if the District had those, the behavior would not have occurred. Those items were not present in Student's IEP. In fact, the IEP contained no accommodations or services that would have addressed Student's *** since all services and accommodations were designed for Student's time in the classroom. In addition, Parents alleged the decision to *** was impulsive, a direct result of Student's lack of impulse control due to Student's ADHD and Autism. Nothing in Student's recent FIE with which Parents had previously agreed during the February ***, 2022, ARD Committee meeting indicated Student lacked ability to control Student's impulses. Student's last day in DAEP was on ***, 2022, the day after the due process hearing. Student has returned to Student's home campus.⁸

VI. DISCUSSION

A. Disciplinary Removals

Petitioner challenges the District's removal of Student and the manifestation determination underlying Student's discipline. Petitioner requests the District's discipline of Student be set aside because it does not comply with the IDEA.

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

⁶ J2 at 1-2; TR 74-75.

⁷ J2; J11; TR 83.

⁸ J2 at 8; J3; J8; TR 92-97, 174.

- Follow its Code of Student 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 Code of Student 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

In this case, the District had the authority to impose discipline on Student. When it did so, the District followed its Student Code of Conduct, did not impose a discriminatory punishment, and conducted an MDR before imposing the punishment handed down through the disciplinary process. As such, the disciplinary process followed by the District was consistent with the IDEA.

B. Discipline Under District Student Code Of Conduct

The District Student Code of Conduct specifically prohibits ***. Student admitted to violating this prohibition and the evidence demonstrates Student did indeed *** at school on ***, 2022. Under the Student Code of Conduct, the District must send Student to DAEP for *** school days for that offense. The District sent Student to DAEP for *** school days, with Student’s last day there falling on ***, 2022. Student returned to Student’s home campus shortly after the hearing and before this decision is due. Thus, the District’s discipline of Student is consistent with its Student Code of Conduct.

C. Manifestation Determination

Petitioner asserts the District is prohibited from removing Student to DAEP for the incident that occurred on ***, 2022. The IDEA requires the ARD Committee to hold an MDR meeting

within 10 school days of any decision to change the placement of a child with a disability due to a violation of a Student Code of Conduct. In determining whether conduct is a manifestation of a student's disability, the ARD Committee must review all relevant information provided by the parent at the MDR meeting. The ARD Committee must then determine whether the conduct at issue was caused by or had a direct and substantial relationship to the child's disability. The ARD Committee must also determine during the MDR 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).

The incident in this case took place on ***, 2022. Within ten school days of that incident, on March ***, 2022, the District held an MDR meeting. All required members of Student's ARD Committee were present. 34 C.F.R. § 300.321(a). The District complied with the IDEA's procedural MDR requirements when it convened the MDR meeting within ten school days of the incident with all required personnel, including Parents.

1. Relationship Between Student's Disability and *, 2022 Conduct**

The District appropriately determined Student's conduct on ***, 2022, was not caused by and did not have a direct and substantial relationship to Student's disability. The MDR ARD Committee reviewed Student's February 2022 FIE, Student's school discipline history, Student's IEP, and sought and accepted direct input from Parents. Student receives special education for ADHD and Autism. According to Student's FIE with which Parents agreed at a February ***, 2022 ARD Committee meeting, Student has trouble maintaining focus in classes, particularly in the face of task demands. Nothing in Student's FIE indicates Student has difficulty controlling Student's impulses.

Student does not have prior disciplinary incidents in the District which indicate difficulty controlling Student's impulses. Petitioner did not present an evaluation or other evidence firmly establishing a link between Student's disabilities and Student's ***. Given Student's behavioral

profile and disciplinary history, this Hearing Officer concludes there is no direct and substantial link between Student's disabilities and Student's *** on ***, 2022.

2. IEP Implementation

The MDR ARD Committee also correctly concluded Student's conduct was not directly related to the failure to implement Student's IEP. Parents contend that if Student had a BIP and social skills classes, the incident would not have occurred. The only behaviors Student had previously displayed in school were difficulty staying on task and paying attention during classes. That was the behavior targeted by the February 2022 FBA. A BIP would have only targeted that behavior and would not have had an impact on the incident in question. Similarly, any social skills training would also have focused on helping Student remain attentive and engaged in appropriate classroom work. However, even if a BIP or social skills training could have prevented this incident, neither was part of Student's IEP. Nothing in Student's IEP could have prevented Student from ***. Petitioner also failed to present evidence of the District's failure to implement any portion of Student's written IEP.

Further, the accommodations and goals in the IEP only addressed Student's conduct during class. The incident in question involved *** outside of the classroom setting. No portion of the IEP addressed behavior outside of a classroom setting. Instead, the IEP focused solely on Student's work inside the classroom, where Student had Student's only issues. Therefore, the evidence does not support a link between the District's lack of implementation of Student's IEP and Student's conduct on ***, 2022.

3. Procedural Defects

In addition, Petitioner alleges the District failed to comply with its procedural obligations under the IDEA. The District suspended Student for *** days, investigated the incident, held an

MDR meeting within ten days of the incident with all required personnel present, reviewed Student's evaluations and IEP during the meeting, received and considered Parents' input, and then placed Student in DAEP in accordance with the District's Student Code of Conduct.

Petitioner argues the District did not sufficiently consider Parents' input. The IDEA contemplates a collaborative process between the school district and the parents. *E.R. v. Spring Branch Indep. Sch. Dist.*, 2017 WL 3017282, *27 (S.D. Tex. 2017), *aff'd* 909 F.3d 754 (5th Cir. 2018). The IDEA does not require a school district, in collaborating with a student's parents, to accede to a parent's demands. *Blackmon ex rel. Blackmon v. Springfield R-XII Sch. Dist.*, 198 F.3d 648, 658 (8th Cir. 1999). The right to meaningful input does not mean a student's parents have the right to dictate an outcome, because parents do not possess "veto power" over a school district's decisions. *White ex rel. White v. Ascension Parish Sch. Bd.*, 343 F.3d 373, 380 (5th Cir. 2003). Absent bad faith exclusion of a student's parents or refusal to listen to them, a school district must be deemed to have met the IDEA's requirements regarding collaborating with a student's parents. *Id.*

In this case, Parents gave their input during the MDR. They pointed to Student's impulsivity and to the lack of a BIP or social skills training. However, no evaluations presented during the MDR or during this due process hearing indicate Student has disabilities that cause Student difficulty with impulse control or that such impulsivity caused Student to ***. And whether a BIP or social skills training may or not have prevented the incident, neither of those was part of Student's IEP which the District had an obligation to implement. Thus, though it considered the input of Parents, the District properly concluded it must place Student in DAEP in accordance with its Student Code of Conduct. The behavior was not a manifestation of Student's disability and was not the result of the District's failure to implement Student's IEP with fidelity.

4. Manifestation Determination Conclusion

If the MDR ARD Committee determines either that the conduct was caused by or 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 Student's disciplinary placement to Student's prior educational placement. 34 C.F.R. § 300.530(f)(2).

Since Student's conduct on ***, 2022, had no direct and substantial relationship to Student's disability and was not the result of the District's failure to implement Student's IEP, the conduct is not considered a manifestation of Student's disability. Therefore, the District may discipline Student in accordance with its Student Code of Conduct. 34 C.F.R. § 300.530.

VII. CONCLUSIONS OF LAW

1. Respondent complied with the IDEA's procedural disciplinary requirements when it conducted a timely MDR meeting to determine whether the conduct in which Student engaged on ***, 2022, that resulted in a disciplinary change of placement was caused by or directly and substantially related to Student's disability. 34 CFR § 300.530.
2. Student's conduct on ***, 2022, had no direct and substantial relationship to Student's disability and was not the result of the District's failure to implement Student's IEP. Petitioner did not meet their burden 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 discipline Student for Student's conduct on ***, 2022. 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**.

SOAH DOCKET NO. 701-22-2350.IDEA
TEA DOCKET NO. 205-SE-0422

DECISION OF THE HEARING OFFICER

PAGE 11

All other relief not specifically stated herein is **DENIED**.

SIGNED May 19, 2022.



Ian Spechler
Special Education Hearing Officer
For the State of Texas