

DOCKET NO. 047-SE-1023A

STUDENT b/n/f PARENT
Petitioner

V.

**KLEIN INDEPENDENT
SCHOOL DISTRICT**
Respondent

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR THE

STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

Petitioner, *** (the student), by next friend, ***, (the parent), filed a complaint requesting an impartial due process hearing pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) on October 17, 2023 and sought an expedited hearing. The Respondent in the complaint is Klein Independent School District, (the district). The parties met in a resolution session on October 24, 2023, but failed to settle the matter. The matter was set for an expedited hearing within twenty (20) school days of the request for an expedited hearing. The case came on for hearing on November 15, 2023, using the Zoom platform, and this decision is timely issued on the tenth school day after the hearing.

Petitioner was represented by the parent, ***. Respondent was represented by Eric Nichols and Matthew Acosta, attorneys with Spalding Nichols Lamp Langlois, in Houston, Texas. The hearing was recorded and transcribed by Ann Berry, a duly certified court reporter,

Issues for the Expedited Hearing

1. Whether the manifestation determination made by the district for the student was appropriate under the Individuals with Disabilities Education Act (IDEA).
2. Whether the disciplinary placement of the student at the Disciplinary Alternative Education Program (DAEP) was appropriate under 34 CFR § 300.530(c).

Petitioner's Requested Relief

Petitioner requested the following relief:

1. An Order finding that the alleged conduct was a manifestation of the student's disabilities.
2. An Order that placement at the district's DAEP was inappropriate based on the student's disabilities; and
3. An Order directing the district to place the student in an appropriate placement for the remainder of Student's disciplinary placement.

Findings of Fact

1. The student is *** years old and resides with Student's Parent within the geographical boundaries of the district. The student currently attends *** and is eligible for special education as a student with an emotional disturbance and Other Health Impairment (OHI) due to Attention Deficit Disorder (ADHD). (R. 1, 3).
2. The *** associate principal observed the student in possession of ***. (R.17, Tr. 228 5-14).
3. In the associate principal's office, immediately following being caught in possession of ***, the associate principal observed the student pacing around the office and saying "****." (Tr. 208, 6-8, 16-18).
4. The Klein ISD Student Code Of Conduct (SCOC) provides that a student shall be removed from class and placed in a DAEP if the student commits the following, on or within 300 feet of school property: "c. ***." (J12-287)

5. The parent received notice on October ***, 2023, that an MDR meeting would be held on October ***, 2023. (P. 80; Tr. 97, 5-6)
6. A Manifestation Determination Review (MDR) was conducted for the student on October ***, 2023. (J4-094-108).
7. Those present at the MDR meeting were the parent; ***, Admission, Review and Determination (ARD) committee manager and educational diagnostician; ***, ***, assistant principal; ***, general education teacher; ***, special education teacher and ***, teacher; and ***, school psychologist. (J4-081)
8. The MDR addressed whether the possession of *** was caused by, or had a direct and substantial relationship to, the student's eligibility for Special Education for an emotional disturbance or OHI for ADHD or whether the conduct was the direct result of the district's failure to implement the student's IEP. The MDR also addressed disciplinary consequences for the student under the district's SCOC. (J4-089-09; Tr. 150 -164).
9. The MDR committee reviewed the statement of the *** associate principal who observed the student in possession of ***, the student's evaluation and diagnostic results, observations about the student, disciplinary information, teacher input, the student's IEP, and BIP, and information about the student's disabilities. The committee also considered the input of the student's Parent. (J4; Tr. 271 12-25; 272 7-13; 275 13-19; 277 8-20)
10. The student's Parent told the MDR that Parent believed the student's behavior was impulsive and the cause of Student's conduct and that the impulsivity was a manifestation of Student's disabilities. (J4-093; TR. 165 24-25, 166 1-2).
11. All members of the MDR committee, except the parent, agreed that the behavior of the student, possession of ***, was not a manifestation of Student's disabilities. (J4-081).
12. All members of the MDR committee, except the parent, agreed that the behavior, possession of ***, was not a result of the district's failure to implement the student's IEP. (J4-081).
13. A Change of Placement ARD meeting was held immediately following the MDR meeting. (J5).
14. Present at the Change of Placement ARD meeting were the parent; ***, ARD committee manager and educational diagnostician; ***, assistant principal; ***, general education teacher; and ***, special education teacher and ***, teacher. (J5-098).
15. The Change of Placement ARD committee ended in non-consensus with all members except the parent agreeing that the student's placement should be changed to the district's Disciplinary Alternative Educative Placement (DAEP) for a period of twenty (20) days. (J5-095-098).
16. The student was scheduled to begin placement at the DAEP on October ***, 2023. Placement at the DAEP was delayed, and the assistant principal placed the student in the *** classroom at *** pending DAEP placement because the student had a good relationship with the *** teacher. Consequently, the student spent 14 of the 20 days of Student's disciplinary period in the ***

classroom. When the DAEP placement became available, the student had six days left to serve in the DAEP disciplinary placement. (Tr. 195 9-15, 216 1-7; 298 1).

17. The student's Parent testified that Parent had concerns about the student's safety if Student was placed at the DAEP, including bullying of the student by Student's peers both during and after school hours, and that the student would drop out of school if placed at the DAEP. (P. 28; Tr. 94 1-25; 118, 11-13; 185, 23-25; 197-200; 249 21-22; 251 8-13; 252 3-15).

18. The student's Parent did not provide any type of expert opinion related to specific tangible harm that the student would experience if placed at the DAEP. (Tr. 214 10-14).

19. Based on the ARD's determination, the assistant principal made the decision to place the student at the DAEP based on the district's SCOC. (Tr. 203, 2-7).

20. The student attended one day at the DAEP, after which Student refused to attend any further days at the DAEP. (Tr. 298 1-3).

21. The placement of the student at the DAEP ***. (Tr. 298 4-6). The parent placed the student at *** where Student remained at the time of the due process hearing. (Tr. 67 23-25; Tr. 297)

DISCUSSION

The IDEA creates a presumption in favor of the education plan proposed by the school district, and as such, places the burden of proof at the due process level on the party challenging the IEP or seeking relief under the IDEA. This presumption applies in an expedited case in which a party seeks to overturn a student's Manifestation Determination Review (MDR) and disciplinary placement. *Cypress-Fairbanks Indep. Sch. Dist.*, Dkt. 172-SE-0318A (TX SEA 2018).

Manifestation Determination Review

Generally, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. 34 CFR § 300.530(c). However, a disciplinary change in placement that would exceed 10 school days of a student with a disability who receives special education

services may only be made by an ARD Committee after conducting an MDR (34 CFR § 300.530(d), and the child must:

- (i) Continue to receive educational services, as provided in § 300.101(a), so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP; and
- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 CFR § 300.530(d).

In conducting the MDR, an MDR committee is required to review all relevant information in the student's educational file, including the IEP, teacher observations, and any relevant information provided by parents. 34 CFR § 300.530(e)(1).

The evidence in this case shows that the MDR committee complied with these requirements. It reviewed the student's Full Individual Evaluation ("FIE"), teacher input, information about the student's disabilities, Student's FBA, BIP, previous disciplinary records, and considered the input of the student's Parent as required by 34 CFR § 300.530(e)(1). In sum, the evidence demonstrated that the district conducted an appropriate MDR in accordance with 34 CFR § 300.530(e).

Petitioner challenges the district's MDR committee's finding that the student's alleged conduct, possession of ***, was not caused by or had a direct and substantial relationship to Student's disabilities. Petitioner had the burden to prove the student's conduct was caused by or had a direct and substantial relationship to Student's disabilities or was a result of the failure of the district to implement the student's IEP. *Schaffer v. Weast*, 126 S.Ct. 528 (2005).

Petitioner failed to carry Student's burden. Petitioner offered no expert evidence to prove the direct relationship between the student's disabilities or to show that Student's *** was an impulsive act. Without such evidence, the testimony of the student's Parent that the behavior was impulsive is insufficient to prove that the behavior was a manifestation of Student's disabilities.

Furthermore, Petitioner failed to carry Student's burden that the student's behavior was a result of the district's failure to implement the student's IEP. During the MDR, the ARD committee reviewed all relevant documents related to implementation of the student's IEP and concluded that the student's conduct was not directly related to any failure by the district to implement Student's IEP. The ARD Committee agreed that Student's IEP had been appropriately implemented. The evidence does not support a link between the district's implementation of the student's IEP and the conduct at issue.

Appropriateness of the Placement

Petitioner failed to carry Student's burden of proving that disciplinary placement in the DAEP was not appropriate. Although the student's Parent did report to the district that Parent believed that placement at the DAEP would not be a safe environment for the student, that the student feared bullying by Student's peers at the DAEP, and that after serving only one day of Student's disciplinary time at the DAEP, the student ***, Petitioner failed to provide any type of expert opinion related to specific tangible harm that the student would experience if placed at the DAEP. Because the alleged conduct was not shown to be a manifestation of Student's disabilities, the district was permitted to apply the relevant disciplinary procedures to the student in the same manner and for the same duration as the procedures would be applied to a student without disabilities. 34 CFR § 300.530(c). Therefore, placement of the student at the district's DAEP, at which Student served only six days, was appropriate.

CONCLUSIONS OF LAW

1. Student is eligible for a free appropriate public education under the provisions of IDEA, 20 U.S.C. § 1400, et.seq., 34 C.F.R. § 300.301 and related statutes and regulations, and the Klein Independent School District is obligated to provide it to Student.

2. Petitioner failed to meet Petitioner's burden to prove that the MDR conducted by the district regarding the student's alleged misconduct was improper. 34 C.F.R. § 300.530
3. Petitioner failed to meet Petitioner's burden to prove the student's misconduct was a direct result of the district's failure to implement the student's IEP. 34 C.F.R. § 300.530
4. Petitioner failed to meet Petitioner's burden to prove that the district's MDR placement of the student at the district's DAEP was erroneous. 34 C.F.R. § 300.530
5. Petitioner failed to meet Petitioner's burden of proof to establish a violation of IDEA or a denial of FAPE. *Schaffer v. Weast*, 546 U.S. 49 (2005).

ORDER

Based upon the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that all relief sought by Petitioner, including the appeal of the manifestation determination and disciplinary placement, is **DENIED** and that all Petitioner's claims are **DISMISSED** with Prejudice.

SIGNED on December _____, 2023.

Sandy Lowe
Special Education Hearing Officer
For the State of Texas

NOTICE TO THE PARTIES

The Decision of the Hearing Officer 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 district court of the United States. 20 U.S.C. §§1415(i)(2) and (3)(A); 19 Tex. Admin. Code § 89.1185(n).