

STUDENT, <i>B/N/F</i> PARENT, Petitioner,	§	BEFORE A SPECIAL EDUCATION
	§	
V.	§	HEARING OFFICER
	§	
KLEIN INDEPENDENT SCHOOL DISTRICT, Respondent.	§	FOR THE STATE OF TEXAS

FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER

**I.
STATEMENT OF THE CASE**

On January 26, 2023, Student, *b/n/f Parent*, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Klein Independent School District (“Respondent” or “District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). On January 27, 2023, TEA assigned this matter to me as the Special Education Hearing Officer (“SEHO”) and sent a copy of the Complaint and Notice of Filing to Respondent.¹ Petitioner’s pivotal issues involves Respondent’s alleged failure to conduct an appropriate Manifestation Determination Review (“MDR”), to find that the Student’s action was caused by, or had a direct and substantial relationship to, Student’s disability or was the direct result of the District’s failure to implement Student’s Individualized Education Plan (“IEP”). As such, these claims required the implementation of the expedited due process procedures under 34 C.F.R. §300.532(c) and 19 TEX. ADMIN. CODE §89.1191.

PETITIONER’S ISSUES:

The following issues are applicable solely to this Expedited Case:

1. Whether the District failed its duties under the MDR when it determined that Student’s *** was a weapon, as defined by IDEA;
2. Whether the District failed to consider Student’s disciplinary history;
3. Whether Student’s conduct was caused by, or had a direct and substantial relationship to, the Student’s disability or was the direct result of the District’s failure to implement Student’s IEP.

¹ In Petitioner’s initial Complaint, Petitioner asserted some claims related to disciplinary actions Respondent has taken against Petitioner. Petitioner also asserted claims under the regular-track provisions of IDEA. When presented with the option of bifurcating the case, Petitioner filed a new regular-track case, styled *Student, b/n/f Parent, v. Klein Independent School District*; 160-SE-0123. These regular-track issues were dismissed from Docket No. 157-SE-0123 and assigned a new case number. The new regular-track case continues under the timeline set out during the prehearing conference and is not part of this Decision.

B. PETITIONER'S REQUESTED RELIEF:

Petitioner asks the SEHO to render the following relief:

1. A finding that the District denied Student a free, appropriate public education ("FAPE"),
2. An Order terminating Student's placement at the Discipline Alternative Education Program ("DAEP") and returning Student to the regular education classroom;
3. An Order for the District to provide training to all administrators and relevant staff regarding discipline and students with disabilities;
4. An Order for compensatory educational services;
5. An Order for the District to produce all videos or photographs the District reviewed in determining that Student's actions were not a manifestation of Student's disability;
6. An Order for the District to provide all statements the District reviewed in its MDR; and
7. An Order for any relief that the SEHO deems appropriate or which is recommended by Student's experts and evaluators.

II. PROCEDURAL HISTORY

Petitioner filed Petitioner's Complaint on January 26, 2023. This Complaint contained allegations regarding disciplinary actions as well as substantive and procedural matters. The undersigned contacted the Parties to inquire whether the issues should be bifurcated. Petitioner stated that Petitioner would be filing a second Complaint related solely to the substantive and procedural matters, which was accomplished on January 27, 2023. Accordingly, all substantive and procedural matters were dismissed from Docket No. 157-SE-0123, leaving only the disciplinary issues in this case.

On January 28, 2023, Respondent filed its Notice of Appearance of Counsel. On January 29, 2023, the undersigned Special Education Hearing Office ("SEHO") issued Order No. 1: Initial Scheduling Order of the Special Education Hearing Officer in an Expedited Docket No. 157-SE-0123, which established the following timelines in compliance with IDEA: February 7, 2023: Prehearing Conference ("PHC"); February 23, 2023: Disclosure Deadline; March 2, 2023: Due Process Hearing; and March 23, 2023: Decision Deadline.

On February 7, 2023, the Parties convened the PHC. In attendance were the following: (1) Ms. Patricia Freeze, Petitioner's advocate; (2) Mr. Matt Acosta, Respondent's counsel; (3) the undersigned SEHO; and (4) the court reporter, who made a record of the PHC. The Parties discussed the issues and confirmed the previously set timelines in this expedited matter.

On February 13, 2023, Petitioner's counsel filed its Notice of Appearance, joining Petitioner's advocates in this case.

The Due Process Hearing:

The Parties made their Disclosures timely. The SEHO convened the Due Process Hearing via Zoom on March 2, 2023, and completed the expedited hearing that same day. The Parties' Exhibits were admitted; the Parties called a total of five witnesses, who presented direct testimony and who were cross-examined.

During the Hearing, Petitioner was represented by (1) Mr. Mark Whitburn, Petitioner's counsel; (2) Mr. Eric Nichols and Mr. Matt Acosta, Respondent's counsel. Also in attendance throughout the Hearing were (3) Mr. Louis Geigerman and Ms. Patricia Freeze, Petitioner's Advocates; (4) Ms. ***, Petitioner's Mother; (5) Ms. ***, Ph.D., Executive Director of Special Programming for the District; and (6) Ms. ***, LSSP with the District. At the conclusion of the Hearing, the Parties and SEHO confirmed that the Decision would be due under the expedited timelines, which is March 23, 2023. The Parties agreed to submit Closing Arguments by March 15, 2023, which was accomplished.

Under the expedited timelines, this Decision is rendered timely on March 23, 2023.

III. RESOLUTION SESSION

The Parties convened the Resolution Session on February 2, 2023, but did not settle.

IV. FINDINGS OF FACT ²

1. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student is a ***-year-old *** who is in the *** grade; Student attended *** during the 2022-2023 school year [Jt.5]. Student qualifies for special education and related services as a student with Autism ("AU") and an Emotional Disturbance ("ED") [Jt. 2].

Student's 2017 FIE:

3. Student was assessed for special education and related services when Student was in the *** grade in October 2017. Student's Full and Individual Evaluation ("FIE") determined that Student has Autism ("AU") and an Emotional Disturbance ("ED") [Jt.2.15].
4. The FIE reported that Student previously had demonstrated cognitive functioning in the superior range [Jt.2.6]. Accordingly, Student did not need academic support during the 2017-18 school year.

² References to the Due Process Hearing Record are identified as follows: "T.#.#" refers to the one-volume Court Reporter's Transcription of testimony made on March 2, 2023, and the specific page, and line numbers contained therein; "Jt.#.#" refers to the Joint Exhibits by Exhibit number and page; "P#.#" refers to Petitioner's Exhibits by number and page; and "R#.#" refers to Respondent's Exhibits by number and page.

5. A Functional Behavior Assessment (“FBA”) was conducted and found that Student was exhibiting three primary target behaviors that interfered with Student’s learning:
 - a. physical aggression (hitting, kicking, scratching, biting, destroying property, *etc.*);
 - b. noncompliance (refusing to comply, ignoring, complaining, *etc.*); and
 - c. elopement (running away from adults, leaving classroom).

Based upon the data gathered, the primary function of all three behaviors was hypothesized to be escape.

Student’s 2020 Triennial Evaluation:

6. The District conducted Student’s triennial evaluation and issued the Report on October ***, 2020 [Jt.2.002]. The Admission, Review, and Dismissal Committee (“ARDC”) reviewed existing evaluation reports, including evaluations and information provided by the parents, current classroom-based assessments, and observations by teachers and related service providers.
7. The ARDC determined that additional assessments were needed: an FBA and an Adaptive Behavior Assessment [Jt.2.002].
8. The Adaptive Behavior Assessment was conducted to assess the effectiveness with which Student functions within the natural and social demands of Student’s environment and to determine probable strengths and weaknesses, which impact Student’s ability to access the general education curriculum. “Adaptive behavior” refers primarily to the effectiveness with which a person copes with the natural and social demands of Student’s environment. This assessment indicated that Student met most of the social and physical demands of the environment. Likewise, Student’s adaptive behavior was consistent with Student’s measured level of cognitive functioning [Jt.2.006 &009].
9. The FBA was conducted to help understand the function of Student’s behavior. When indicated, a Behavior Intervention Plan (“BIP”) is developed to provide strategies and interventions when behavior problems interfere with a Student’s ability to learn, when behavior problems interfere with the learning of others, when the Student is removed to a disciplinary setting for more than ten consecutive days in a school year, or before making a disciplinary change of placement.
10. Student was referred for an FBA because Student was receiving special education services as a student with AU and ED. Student received behavior support through the *** on campus, which provides direct, daily scheduled behavior and social skills instruction designed to assist students in developing and generalizing appropriate and beneficial skills within the educational setting [Jt.2.015].
11. The results of the FBA suggested that Student would benefit from the implementation of a BIP to support Student’s behavioral needs [Jt.2.021]. The targeted behavior was identified as Student’s difficulty with appropriately coping with frustration, which may negatively impact Student’s work production or result in Student’s complete refusal to do work in class. When Student became overwhelmed and upset, Student would often shut down and begin exhibiting signs of frustration, such as *** [Jt.3.025].

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12. The function of this behavior was hypothesized to be escape or avoidance of nonpreferred tasks or other frustration triggers [Jt.3.025]. Included in the FBA was the parent's reported concern that academic demands, especially ***, are the primary triggers of Student's frustration, as well as difficulty expressing ***self and coping with Student's feelings. The *** teacher also reported academic demands as the primary cause of Student's emotional challenges, which result in Student's becoming frustrated and/or shutting down. The FBA identified the antecedents as (1) request to start work; (2) given opportunities for peer comparison based on performance (leveling up opportunities); (3) assignments involving ***; and (4) noncompliance [Jt.2.018].

Student's 2020 Annual ARDC Meeting: October *, 2020**

13. Student's ARDC convened Student's annual ARD on October ***, 2020. Due to the Covid-19 Pandemic, the meeting was conducted via ZOOM. The parent attended via ZOOM.
14. The ARDC noted that Student continued to maintain high grades in Student's academics and therefore, no academic goals were developed. During school year 2018-19 Student maintained all As; during school year 2019-20 Student earned ***. Student achieved a *** on Student's 2019 *** STAAR exam [Jt.2.010].
15. The ARDC also noted that Student had made significant strides during the 2019-20 school year in behavior and social interactions with peers and adults [Jt.3.24]. Student had three coping skills goals: to aid Student (1) in frustrating situations; (2) in transitioning into tasks that have already started; and (3) in transitioning back into Student's schedule after a removal [Jt.3.024]. The ARDC discontinued those three coping skills goals and reconfigured them into one goal focused on providing Student a step-by-step visual to work through frustrating situations and to utilize an appropriate coping skill response [Jt.3.025]. Student had shown more of a willingness to talk through frustrations with Student's teachers but continued to struggle with accepting help and using coping strategies when Student was frustrated [Jt.3.024]. Student had mastered Student's goal of demonstrating appropriate peer interactions by maintaining appropriate tone and personal space [Jt.3.024].
16. The ARDC developed two behavioral goals aimed at aiding Student in developing coping strategies without refusing and/or crying, and aiding Student to identify Student's feelings, the cause and identify/utilize a coping strategy in response. The ARDC also developed a counseling goal, which provided for twelve counseling sessions [Jt.3.030].
17. Student did not receive any disciplinary referrals during the 2020-21 school year.

School Year 2021-22:

18. On September ***, 2021, Student's ARDC met for Student's annual ARD [Jt.4.053]. The Committee reviewed Student's goals and BIP, noting that Student socialized with adults and peers in class, participated in discussions, and took redirection for behavior. Student's behavior weaknesses were grounded in utilizing Student's pre-taught strategies. Student continued to be frustrated when Student could not recognize the size of the problem as well as accepting help when frustrated with academic work [Jt4.055]. Student's parent had no objections to the proposed Plan.

19. During the 2021-22 school year, Student received specialized social, emotional, and behavioral support forty-five minutes per day. This support was provided through the District's "****." This Program provides special education services designed to promote the acquisition of social communication and generalization of social behavior skills [Jt.4.70-71]. Student received no behavioral referrals during the 2021-22 school year.
20. On May ***, 2022, Student's ARDC meet to plan Student's 2022-23 school year. The ARDC agreed to support Student through the istrict's *** ("****") program because the *** was no longer offered at Student's school. Student's parent did not want Student transferred to another school where *** was offered [Jt.5.108].
21. *** is a specialized behavior/social/emotional support program that promotes the acquisition of social communication and generalization of social behavior skills [Jt.5.103]. The aim of *** is to reduce student target behaviors by teaching prosocial replacement behaviors and decrease challenging behaviors using evidence-based behavior principle.
22. The ARDC assigned Student forty-five minutes per week of pull-out services in ***; one hundred twenty minutes per week of in-class support for emotional/behavioral/social monitoring; and thirty minutes one time every three weeks counseling services to help Student develop coping skills [Jt.5.103-4]. The ARDC reached mutual agreement [Jt.5.109].
23. The BIP's target behavior addressed Student's difficulty in appropriately coping with frustration, which may negatively impact Student's work production or result in Student's complete refusal to do work in class. When Student becomes overwhelmed and upset, Student will often shut down and begin exhibiting signs of frustration, such as ***. This may also escalate to verbal aggression (***, etc.) [Jt.5.113].

School Year 2022-23:

24. During the first several months of the 2022-23 school year, Student received support in Student's IEP from ***, as documented through ***'s Daily Behavior Cards [Jt.10 & 11; T.244]]. Meticulous daily recordings were maintained every period of every day Student was in school [T.244]. The target goal for every Student is eighty-five percent [T.247].
25. During the 2022-23 school year, Student received five discipline referrals [Jt.8].
 - a. On November ***, 2022, Student received two referrals: (1) Student was ***; Student received *** [Jt.8.158];
 - b. Also on November ***, 2022, Student ***; Student received *** [Jt.8.157];
 - c. On December ***, 2022, Student ***; Student received no disciplinary action but for a "reboot" with Student's *** teacher [Jt.8.157];
 - d. On January ***, 2023, Student was ***; Student received *** [Jt.8.157];

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- e. On January ***, 2023, the District received notice that Student had ***; Student received *** pending the completion of an MDR; on February ***, 2023, Student received on-campus DAEP placement rather than a formal hearing as required for expulsion [Jt.8.157].
26. On January ***, 2023, Student's ARDC convened an MDR to review Student's **. The MDR Committee consisted of Student's parent, a District Representative, Student's General Education Teacher, Student's Special Education Teacher (*** Teacher), as assessor, Student's Advocate, and an LSSP [Jt.6].
27. Student's advocate and parent argued that the *** incident was a manifestation of Student's disabilities in that (1) Student does not like it when other people are looking at Student; and (2) Student often has difficulty in understanding the "why" behind a lot of explanations [Jt.6.124].
28. Student's *** teacher explained that in working through the *** incident with Student, she asked Student why Student **. Student responded that Student knew that Student was not supposed to *** [Jt.6.124].
29. Student's *** teacher also explained that threats of harm are not a pattern of Student's behavior. Student's Daily Behavior Cards for school year 2022-23 indicate one incident where Student **. Further, during this time period there had been only three days where Student failed to meet Student's 85% target [Jt.5.130].
30. The MDR Committee reviewed Student's current FIE; Present Levels of Academic and Functional Performance; information from teachers, school records, including permanent records, group/individual achievement records; discipline records, information from parents, and IEP/BIP goals, and placement [Jt.6.127].
31. Based upon this review, the school based members of the MDRC determined that Student's *** was not caused by, or had a direct and substantial relationship to, Student's AU and/or ED disabilities [Jt.6.131]. Student's conduct was not a manifestation of Student's disability because the possession of *** are not a pattern of Student's behavior [Jt.6.130].
32. Also, based upon this review, the school based members of the MDRC determined that Student's *** was not the direct result of the District's failure to implement Student's IEP/BIP [Jt.6.131].
33. Student's parent and advocate disagreed with this ruling. Student's parent filed a Request for Due Process Hearing shortly after the MDR concluded.
34. Prior to Student's enrolling at the DAEP, Student's parent withdrew from the District; Student remains unenrolled [Jt.8.156-57].
35. The ARDC conducted an appropriate manifestation determination [Jt.6].
36. Student failed to prove that *** could not be used as a weapon.
37. Student failed to prove that Student's *** to school was a manifestation of Student's disabilities.

38. Student failed to prove that Student's *** to school resulted from the District's failure to implement Student's IEP and BIP.

V. DISCUSSION

A. Burden of Proof:

There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir.2009).The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the plan. It is well-settled that a party challenging the district's eligibility determination or offer of services under IDEA bears the burden to prove that the child has been denied a FAPE. *Schaffer v. Weast*, 126 U. S. 528 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d at 754, 762-63 (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252; *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010).

B. Manifestation Determination Review:

IDEA provides that when a district decides to change a disabled student's placement because of a violation of a code of student conduct, the student's ARDC must determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or was the direct result of the district's failure to implement the student's IEP. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e). If the behavior is determined not to be a manifestation of the student's disability, then the student may be disciplined in the same manner and for the same duration as would apply to children without disabilities. 20 U.S.C. §1415(k)(1)(C); 34 C.F.R. §300.530(c). If the behavior is determined to be a manifestation of the student's disability then, with limited exceptions, the ARDC must either modify any existing BIP or conduct an FBA and develop a BIP. 20 U.S.C. §1415(k)(1)(F); 34 C.F.R. §300.530(f). A child with a disability who is assigned to a DAEP must continue to receive education services to enable the child to continue to participate in the general education curriculum and to make progress on Student's goals. 34 C.F.R. §300.530(d). The student must receive, where appropriate, an FBA and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur.

The MDR is an important discipline procedure under the IDEA. It is an evaluation of a student's misconduct to determine whether that conduct is a manifestation of the student's disabilities. It must be performed within ten (10) school days of the change in placement that stemmed from an IDEA-eligible student's violation of a code of conduct. 34 C.F.R. §300.530(e).³

The MDR should be conducted by the district, the parents, and relevant members of the student's ARDC, as determined by the parents and the district. 34 C.F.R. §300.530(c). The MDR must involve a review of all of the relevant information in the student's file, including the student's IEPs, teacher observations, and any other relevant information provided by the parents. 34 C.F.R. §300.530(e). While parents have the right

³ A "change of placement" occurs when the district removes the IDEA-eligible student from Student's current educational placement for more than ten (10) consecutive school days. 34 C.F.R. §300.536.

to invite additional participants to the MDR, they do not have the right to veto a district's choice of team members or the MDRC's determination that the student's misconduct is unrelated to Student's disability. *Fitzgerald v. Fairfax County Sch. Bd.*, 50 IDELR 165 (E.D. Va. 2008).

1. The MDR Committee Correctly Found That Student's Action Was Not Caused By, or Had a Direct and Substantial Relationship to, the Student's Disabilities.

The MDRC should analyze whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e). If the behavior is determined not to be a manifestation of the student's disability, then the student may be disciplined in the same manner and for the same duration as would apply to all students. In this case, Student's *** is not a manifestation of Student's AU and ED disabilities.

a. Correlation Between Student's Disabilities and the Conduct Involved:

Student qualifies for special education as a student with AU and ED. Student's 2020 FIE reported that Student demonstrated cognitive functioning in the superior range and adaptive behavior in the moderately high and adequate ranges. Student's *** teacher reported that Student's behavior concerns were (1) managing frustration and utilizing coping skills "in the moment" and re-entering the schedule; (2) when frustrated being rational and listening to the teacher's interventions.

As part of its 2020 reevaluation, the District conducted an FBA. The purpose of an FBA is to help understand the function of a student's behavior and provide strategies for the BIP. Included in the FBA were the parent's and teacher's concerns that academic demands, especially ***, are the primary triggers of Student's frustration, as well as difficulty expressing ***self and coping with Student's feelings.

The FBA identified Student's primary behavior concern as difficulty appropriately coping with frustration, which may negatively impact Student's work production or result in Student's complete refusal to do work in class. The FBA identified the antecedents as (1) a request to start work; (2) opportunities for peer comparison based on performance (leveling up opportunities); (3) assignments involving writing; and (4) noncompliance.

The IEP and BIP developed in 2020, and continued to school year 2022-23 with minor adjustments, included two measurable annual goals designed to enable Student to be involved, and make progress, in the general education curriculum. The ARD committee adopted the BIP to support Student's behaviors that the ARD committee, including Parent, determined had impeded Student's learning and/or the learning of others.

Student's FBA, IEP goals, and BIP established no connection between Student's *** and Student's disabilities. Likewise, Student's five disciplinary actions earned in school year 2022-23 fail to establish a connection between Student's behavior and the *** incident. The FBA did not indicate any behaviors that are the same as, or substantially similar to, Student's ***. Nothing and no one indicated that Student would engage in the pre-planning and execution of ***. Student acknowledged that Student ***. Student likewise knew that *** was prohibited. This behavior deviated significantly from any "in the moment" frustration previously exhibited or documented.

Petitioner's expert asserted that the conduct in question was a manifestation of Student's disabilities.

This expert testified that Student would be unable to form age-appropriate friendships because of Student's AU. The expert testified that the alleged "many incidents" in which Student was *** would increase the likelihood of Student's impulsive reactions as these would justifiably make Student feel threatened in general around other students.

Student's expert failed to take into consideration the fact that Student did have friends at school; Student had a very close connection to Student's *** teacher; and that Student routinely brought objects to school to show and share with Student's friends.

Further, the expert failed to consider that Student's disabilities had never manifested in the type or severity of ***. Student's decision to *** was neither an impulsive act nor representative of any of Student's prior actions. The record, including evaluations, IEPs, IEP progress reports, and discipline reports, lacks any indication of such behavior because it never occurred.

The standard for establishing a manifestation for the purposes of an MDR under IDEA is a high bar, requiring a close correlation between the disability and the conduct. Simply showing a connection to the disability is not sufficient to show that the behavior was directly caused by, or has a substantial relationship to, a student's disability. *Katy Indep. Sch. Dist.*, 122 LRP 20430 (TX SEA Feb. 25, 2022).

Hearing officers and courts have consistently looked for a causal 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. *See Katy Indep. Sch. Dist.*, 122 LRP 20430 (TX SEA Feb. 25, 2022); *see also, Killeen Indep. Sch. Dist.*, 021-SE-0919-A (TX SEA Dec. 19, 2019) (the student's IEP, BIP, and FBA focused on curtailing the same type of behavior as the conduct at issue in the MDR, which demonstrated that the conduct was a manifestation of the student's disability).

The bottom line is this: The IDEA's limit on disciplinary consequences for students with disabilities applies "only when the conduct violation has a documented and close connection to the behavior the student has exhibited previously at school stemming from their disability." *Katy Indep. Sch. Dist.*, 122-SE-0122 (TX SEA Feb. 25, 2022). No such connection obtains here.

2. The MDR Committee Correctly Found That Student's Action Did Not Directly Result from the District's Failure to Implement the Student's IEP.

The second, separate question in the manifestation analysis is whether the conduct in question directly resulted from the district's failure to implement the student's IEP. 34 C.F.R. § 300.530(e)(1)(ii). The ARD committee, as part of considering this prong, must review all relevant data, the disciplinary conduct, IEPs, BIP, teacher observation, and any other relevant information provided by the parent. 34 C.F.R. § 300.530(e)(1).

As set forth above, Student's MDRC reviewed all relevant information in ascertaining whether the District failed to implement Student's IEP and BIP. Student's *** teacher presented evidence to support such implementation, especially through her use of the Daily Behavior Cards. During Student's time at the District, Student received only three scores below the required eighty-five percent score. Aside from this, Student failed to present any evidence that Student's IEP and BIP were not being implemented.

Where school districts have engaged in action that is contradictory to the strategies in the existing IEP and BIP, Hearing Officers have determined that the student's conduct was the direct result of the District's failure to implement the IEP. See *Ysleta Indep. Sch. Dist.*, 134-SE0122 (TX SEA Mar. 21, 2022). In *Ysleta*, the student's BIP provided for access to a quiet, non-threatening, non-stimulating place. However, the student was denied access to the location for over forty-five minutes and denied the opportunity to cool down. The Hearing Officer deemed these actions to be contradictory to the BIP.

In this case, Student's violation of the Student Code of Conduct was Student's ***. Student's BIP did not address behavior of this type. Student's IEP and BIP that were in effect at the time of the *** incident were created at the May ***, 2022, annual ARD. That BIP relied on the FBA from October ***, 2020. See *Clear Creek Indep. Sch. Dist.*, 205-SE-0422 (TX SEA May 19, 2022) (concluding that the LEA did not fail to implement the IEP, resulting in a manifestation determination because even if a BIP or other strategies could have prevented the behavioral incident, neither the BIP nor other strategies were part of the student's IEP).

3. Student Failed to Establish That the * Was Not a Weapon.**

Student argues that the *** does not qualify for the "weapon" exception contained in 20 U.S.C. § 1415(k)(1)(F). Student argues that the ***. It is thus not an object used for or readily capable of causing death or serious bodily injury.

The IDEA allows a district to place a student with a disability in an interim alternative education setting for up to forty-five days if the student carries or possess a weapon at school, on school premises, or at a school function. 34 C.F.R. 300.530(g)(1).

The IDEA adopts the definition of "weapon" provided in the U.S. Criminal Code. 34 C.F.R. 530(i)(4). That provision defines the term "dangerous weapon" as a weapon, device instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of causing death or serious bodily injury. "Serious bodily injury" means bodily injury that involves (1) a substantial risk of death; (2) extreme physical pain; (3) protracted and obvious disfigurement; or (4) protracted loss or impairment of a bodily member, organ, or mental faculty.

In *Student with a Disability*, 50 IDELR 180 (SEA VA 2008), the hearing officer determined that although the student had not configured metal awls into a pen casing, the awls could have been used as weapon that would undoubtedly injury Student's victims.

In the instant case, there was no evidence regarding whether the *** could be used as a prohibited weapon. However, the fact that Student recognized that Student would get into trouble for bringing it to school and that Student intended to *** presumes that *** was a weapon.

VI. CONCLUSIONS OF LAW

1. The District is a local education agency responsible for complying with IDEA. 20 USC § 1400 *et seq.*
2. Student bears the burden of proof on all issues raised under IDEA at the due process level. *Schaffer*

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v. Weast, 546 U.S. 49, 126 S.Ct. 528, 535-537 (2005). IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times.

3. The District complied with IDEA's procedural disciplinary requirements when it conducted an MDR to ascertain whether Student's conduct, which resulted in a disciplinary placement, was related to Student's disabilities. 34 C.F.R. § 300.530.
4. The District complied with IDEA's procedural disciplinary requirements when it conducted an MDR to ascertain whether Student's conduct, which resulted in a disciplinary placement, resulted from the District's failure to implement Student's IEP and/or BIP. 34 C.F.R. § 300.530.
5. Student's conduct, which resulted in a disciplinary referral, was not caused by, or had a direct and substantial relationship to, the student's disability, or was the direct result of the district's failure to implement the student's IEP. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e).
6. Student's conduct, which resulted in a disciplinary referral, was not the direct result of the District's failure to implement the Student's IEP and/or BIP. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e).
7. Student failed to prove that the *** was not a weapon. 34 C.F.R. §300.530(i)(4).

**VII.
ORDER**

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Student is DENIED.

SIGNED this the 23rd day of March 2023.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).

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