

SOAH Docket No. 701-24-04953
TEA Docket No. 080-SE-1123

**Before the
State Office of Administrative
Hearings**

—
**STUDENT, By Next Friends PARENT and PARENT,
Petitioner**

v.

**Cuero Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

*** (Student), by next friends *** and *** (Parents or, collectively, Petitioner), filed a request for an expedited due process hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA). The Complaint was received by the Texas Education Agency (TEA) on November 9, 2023, with notice issued by TEA on November 10, 2023. The Respondent to the Complaint is the Cuero Independent School District (Respondent or the District).

The main issue in this case is whether Student violated either the Texas Education Code or the District Student Code of Conduct. The Hearing Officer concludes Student did not violate either. Because Student can only be removed from Student's educational placement for a violation of the District Student Code of Conduct under the IDEA, Student must be returned to Student's placement immediately.

I. DUE PROCESS HEARING

The due process hearing was conducted on December 13, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by their attorney, Mark Whitburn. Parents and Student were also present. ***. However, Parents ***.¹

Respondent was represented by its legal counsel, Trevor Hall and Jill Williams. In addition, Dr. ***, Superintendent of the District, attended the hearing as the party representative. Both parties filed timely written closing briefs on January 4, 2024. The Decision in this case is due on January 16, 2024.

II. ISSUES

A. PETITIONER'S ISSUES

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

¹ Joint Exhibit (J) 2.

1. Whether the District held a timely and appropriate manifestation determination review (MDR) hearing with sufficient opportunity for all key stakeholders to offer input into the decision.
2. Whether the District appropriately concluded the behavior in question was not directly and substantially related to Student's disability.
3. Whether the District failed to consider mitigating circumstances and the facts related to the incident in question before placing Student in a disciplinary alternative education program (DAEP) for violating Chapter 37 of the Texas Education Code and the District's Student Code of Conduct.

B. RESPONDENT'S POSITION

Respondent generally and specifically denies Petitioner's issues and denies responsibility for providing any of Petitioner's requested relief.

III. REQUESTED RELIEF

A. PETITIONER'S REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to place Student on Student's home campus immediately.
2. Order the District to provide any other relief the Hearing Officer finds appropriate.

IV. FINDINGS OF FACT

1. Student is ***years old and resides in the District. Before Student's withdrawal from the District on October ***, 2023, Student was *** at ***, where Student was enrolled solely in general education classes. Student is eligible for special

education and related services as a student with other health impairment (OHI) for attention deficit hyperactivity disorder (ADHD).²

2. Student does not have a behavior intervention plan (BIP). Student does not have a need for one, because Student does not have any behavior issues. Student does not have a prior record of receiving any discipline. Student's individualized education program (IEP) also does not contain any goals related to behavior, because Student does not have any behavioral issues on which Student needs improvement. Due to Student's ADHD, Student occasionally struggles with paying attention and turning in Student's work on time. Student also struggles to make new friends and feels more comfortable with people with whom Student is already familiar.³
3. Student is enrolled in all *** and is a ***. In Student's ***, Student has received nearly all As on Student's year-end report cards, with only three B-range grades since the 2020-21 school year.⁴
4. On October ***, 2023, the District contracted with a third party to bring a ***. ***. When District administrators ***. They also discovered ***. Student was not present in the ***.⁵
5. All of the ***. The ***, ***, ***

² J1, at 1, 4; J5; Petitioner's Exhibit (P) 4, at 11.

³ Transcript (Tr.) 39-40, 63, 94-95, 126.

⁴ J1, at 4; J10; Tr. 125-26.

⁵ J8, at 7; Tr. 19.

***. Student had borrowed ***.⁶

6. When questioned by school officials, Student stated Student did not know there were ***. District personnel testified that they had no evidence Student had any knowledge Student's ***. On October ***, 2023, the District informed Parents it would be removing Student to a DAEP.⁷
7. On November ***, 2023, the District held an MDR Committee meeting to determine whether Student could be removed to a DAEP due to Student's *** under Chapter 37 of the Texas Education Code and the District Student Code of Conduct. The meeting was held six school days after the decision to remove Student to a DAEP. Parents and Student attended the meeting. Among other attendees, the District had a special education teacher, a general education teacher, a diagnostician, a meeting facilitator, and an administrator present.⁸
8. The Committee members did not consider whether Student had any idea Student's ***. When Student and Parents attempted to explain that the ***, the diagnostician informed them this was not "relevant" to the MDR and would not be discussed.⁹
9. Committee members were not willing to hear or consider any evidence that Student had not actually ***. They refused to discuss the incident itself, instead stating they were only holding the MDR to

⁶ P5; P6; P9; Tr. 51, 84.

⁷ Tr. 51, 84.

⁸ J8, at 5; Cuero Independent School District Student Code of Conduct, page 3, *available at* www.cueroisd.org/cms/lib/TX50010845/Centricity/Domain/90/code%20of%20conduct%2023-24.pdf; Cuero Independent School District 2023-24 Academic Calendar, *available at* www.cueroisd.org/cms/lib/TX50010845/Centricity/Domain/27/Cuero%20ISD%202023-2024%20Calendar.pdf.

⁹ J3, at 1; J5; J8, at 5-6; Tr. 32-34, 46, 53-55, 106-07.

consider whether Student's *** was directly and substantially related to Student's disability and/or whether it was caused by the District's failure to implement the IEP.¹⁰

10. Committee members, who were not willing to discuss the incident itself or whether it violated the Texas Education Code or the Student Code of Conduct, were also not willing to consider the possibility that *** could be directly and substantially related to ADHD. Committee members testified at the due process hearing that they could foresee no circumstances in which that would be possible. The MDR Committee concluded that Student's behavior was not caused by or directly and substantially related to Student's disability and was not a result of the District's failure to implement the IEP.¹¹
11. The District decided to remove Student to a DAEP for 100 school days, with the possibility of reducing that time to 90 school days if Student had "successful days" in DAEP. That length of removal was consistent with discipline given to students without disabilities found to ***. Parents withdrew Student instead of sending Student to a DAEP. Student has not attended DAEP and is not attending school in the District, choosing instead to be homeschooled.¹²

V. DISCUSSION

A. DISCIPLINARY REMOVALS

Under the IDEA, 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;

¹⁰ J3, at 1; J5; J8, at 5-6; Tr. 32-34, 46, 53-55, 106-07.

¹¹ J3, at 1; J8, at 5-6; Tr. 32-34, 46, 53-55, 106-07.

¹² J3, at 1; J5; J8, at 5-6; Tr. 32-34, 46, 53-55, 106-07.

- 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.

B. MANIFESTATION DETERMINATION REVIEW

An MDR Committee must convene 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 or the Texas Education Code. The MDR Committee must review all relevant information provided by the parent. The MDR 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 MDR Committee 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 student who disagrees with an ARD committee’s manifestation determination may file a due process hearing request to challenge the determination. 34 C.F.R. § 300.532(a).

The District convened an MDR Committee meeting on November ***, 2023. The meeting was held within ten school days of the decision to remove Student to a DAEP. The District had all required personnel present for the meeting. 34 C.F.R. § 300.530(e)(1). The MDR Committee considered the two questions it was required to consider during the meeting: whether the conduct in question was caused by or had a direct and substantial relationship to Student’s disability and

whether the conduct in question was the result of the District's failure to implement the IEP. *Id.* The MDR Committee concluded that neither Student's disability nor the District's failure led to Student's ***.

Petitioner did not provide sufficient evidence that the District erred in that analysis. While District personnel did testify that there were no foreseeable circumstances in which there could be a link between ADHD and ***, Petitioner did not present any evidence that they were wrong. Petitioner pointed to Student's inattention resulting from Student's ADHD potentially resulting in failure to ***. Petitioner did not present any experts, evaluations, or other evidence making that causal connection. Additionally, Petitioner did not present any evidence regarding the District's failure to implement Student's IEP.

C. FAILURE TO CONSIDER WHETHER STUDENT'S BEHAVIOR VIOLATED TEXAS LAW AND/OR THE STUDENT CODE OF CONDUCT

While failing to *** was not related to Student's disability, the MDR Committee explicitly refused to consider whether Student had any intent to *** in the first place. District personnel found no evidence that Student knew that Student's ***. This was not taken into consideration during the MDR Committee meeting even though the Committee was required to consider all "relevant" information presented by Parents and Student. 34 C.F.R. § 300.530(e)(1). Student's Parent attempted to

explain and show the Committee ***, but the diagnostician stopped Parent and said the Committee would not consider that information.

While the MDR Committee did not consider evidence about the underlying offense during the November ***, 2023 MDR Committee meeting, a school district is only allowed to remove students who violate a student code of conduct to a DAEP. 34 C.F.R. § 300.530(b-c). A hearing officer reviewing an MDR Committee decision in an expedited due process hearing may consider all factors involved in an individual case, including whether a violation of the student code of conduct or Chapter 37 of the Texas Education Code took place at all. 34 C.F.R. § 300.530; *Letter to Ramirez*, 60 IDELR 230 (OSEP 2012).

In this case, Student did not violate the Texas Education Code or the Cuero Independent School District Student Code of Conduct. Under the Texas Education Code, a Student may be expelled if the student ***. Tex. Educ. Code § 37. ***. Similarly, the District's Student Code of Conduct prohibits ***.¹³ *** Tex. Health and Safety Code § ***. ***. *Gilley v. Collins*, 968 F.2d 465, 468-69 (5th Cir. 1992).

¹³ Cuero Independent School District Student Code of Conduct, ***, available at www.cueroisd.org/cms/lib/TX50010845/Centricity/Domain/90/code%20of%20conduct%2023-24.pdf.

Student, who has no prior disciplinary history and an exemplary academic record, *** of which Student was unaware and which ***. The ***. The District presented no evidence connecting Student to the *** or establishing Student was even aware ***. In fact, District personnel admitted they had no reason to believe Student was aware the ***. At no time did Student voluntarily *** as that term is defined. *See id.* Therefore, Student did not commit any violation of the Texas Education Code or the District's Student Code of Conduct.

Student did not violate the Texas Education Code or the District's Student Code of Conduct. *See Id.* Under the IDEA, a student may only be removed to a DAEP for violating a student code of conduct. Therefore, Student may not be removed to a DAEP for this incident. 34 C.F.R. § 300.530(b-c); *Letter to Ramirez*, 60 IDELR 230 (OSEP 2012). If Student chooses to reenroll in the District, Student must be immediately returned to Student's placement at ***.

VI. CONCLUSIONS OF LAW

1. Respondent complied with the IDEA's procedural disciplinary requirements when it conducted a timely MDR Committee meeting with all required personnel on November ***, 2023, to ascertain whether the conduct that resulted in a disciplinary change of placement was directly and substantially related to Student's disability and/or the result of the District's failure to implement Student's IEP. 34 CFR §300.530.

2. Student's lack of awareness of ***, did not have a direct and substantial relationship to Student's disability and was not the result of the District's failure to implement the IEP. 34 C.F.R. § 300.530(e); Tex. Educ. Code § 37.004(b).
3. Student did not ***and thus did not violate the District's Student Code of Conduct or the Texas Education Code. Tex. Educ. Code § 37. ***; Tex. Health and Safety Code § ***.
4. Because Student did not violate the Texas Education Code or the District's Student Code of Conduct, the District may not remove Student to a DAEP. 34 C.F.R. § 300.530(b-c); *Letter to Ramirez*, 60 IDELR 230 (OSEP 2012).

ORDER

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are **GRANTED**. Student did not commit a violation of the Chapter 37 of the Texas Education Code or the Cuero Independent School District Student Code of Conduct. Student thus cannot be removed from Student's educational placement to a DAEP. If Student reenrolls in the District, the District shall immediately place Student at *** in accordance with the schedule of services in Student's IEP. All other relief not specifically stated herein is **DENIED**.

Signed January 16, 2024.



Ian Spechler
Special Education Hearing Officer
For the State of Texas