

SOAH Docket No. 701-24-10329.IDEA
TEA Docket No. 165-SE-0224

Before the State Office of Administrative Hearings

**STUDENT, by next friend PARENT,
Petitioner**
v.
**North East Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

*** (Student), by next friend *** (Parent or, collectively, Petitioner), brought an expedited action against the North East Independent School District (Respondent or the District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1400-1482, and its implementing state and federal regulations. The main issue in this case is whether the District improperly placed Student in the disciplinary alternative education program (DAEP).

The Hearing Officer concludes the District properly placed Student in the DAEP because Student's conduct was neither caused by, nor had a direct and substantial

relationship to Student's disability. It also was not the result of the District's failure to implement Student's Individualized Education Program (IEP). Therefore, the conduct is not considered a manifestation of Student's disability.

I. DUE PROCESS HEARING

The due process hearing was conducted on February 29, 2024, via the Zoom videoconferencing platform. Petitioner was represented throughout this litigation by Parent, ***, in Parent's *pro se* capacity. Respondent was represented throughout this litigation by its legal counsel, Chris Schulz with Schulman, Lopez, Hoffer & Adelstein, LLP. Justin Wood, with Schulman, Lopez, Hoffer & Adelstein, LLP, appeared as co-counsel. In addition, ***, the Director of Specialized Instruction and Supports for the District, attended the hearing as the party representative.

The parties offered four joint exhibits. Petitioner offered six separately disclosed exhibits, four of which were admitted without objection. Petitioner withdrew two exhibits due to duplication with joint exhibits and offered Parent's testimony.

Respondent did not offer separate exhibits. Respondent offered the testimony of a District licensed specialist in school psychology (LSSP). The hearing was recorded and transcribed by a certified court reporter. The Decision in this case is due March 21, 2024.

II. ISSUES AND REQUESTED RELIEF

A. Petitioner's Issue

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

Whether the District improperly placed Student in the DAEP.

B. Petitioner's Requested Relief

Petitioner confirmed the following item of requested relief:

Order the District to not place Student at the DAEP.

III. FINDINGS OF FACT

1. Student is *** years old and resides within the boundaries of the District. Student is eligible for special education services under the criteria of autism and speech impairment. At the time of the behavior in question, Student was a *** grader at *** in the District.¹
2. On December ***, 2021, the District conducted a review of existing evaluation data (REED). Student's language abilities were below the average range of functioning. In response to the Behavior Assessment System for Children, Third Edition (BASC-3), Parent noted concerns with Student's ***. At

¹ Joint Exhibit (JE) 1 at 3-4; JE 2 at 1-2; JE 4 at 1.

school, Student was often ***, and had trouble presenting new ideas to others or sharing personal experiences. Student's teacher did not report any behavioral concerns, and Student had no discipline or office referrals.²

3. The District conducted a full individual and initial evaluation (FIE) on February ***, 2022. Student's receptive and expressive language deficits interfered with the auditory comprehension of language as well as Student's ability to share attention, seek information, solicit help, make requests, and verbally relate to personal narratives. The deficits also interfered with Student's ability effectively and efficiently make Student's needs known and participate in classroom discussion, collaborative learning, and joint interactive play to the same extent as Student's peers.³
4. On February ***, 2023, Student's admission, review, and dismissal (ARD) committee met for Student's annual ARD committee meeting with a parent in attendance. Student transitioned from one activity to another appropriately. Student's disability did not impact Student's behavioral performance. Student received instruction in the general education classroom with direct support and modified curriculum. Student's IEP included goals in reading, language arts, math, and speech, along with multiple accommodations across subjects, and the autism supplement. Student was making progress in all areas including social behavior. The meeting ended in agreement.⁴
5. Student's ARD committee convened on October ***, 2023. Student's Parent attended and reported concerns that Student does not ask for help, is struggling, and needs additional supports. The District suggested creating a social story to help Student self-advocate at home and in school. The committee added additional accommodations and updated state assessment

² JE 2 at 8, 10, 12-23.

³ JE 4 at 1; Transcript (TR) at 34-35.

⁴ JE 3 at 1, 8, 10, 11-15, 17, 25.

testing accommodations to Student's IEP. The meeting ended in agreement.⁵

6. On October ***, 2023, during class, ***. Student corroborated the story during Student's interview with campus administration. Student's parents were contacted, and Student was assigned to in-school suspension (ISS) for *** days pending a conference with the principal and the District hearing officer.⁶
7. On the same day, the District sent notice of the manifestation determination review (MDR) ARD committee meeting to Student's parents and Student's Parent indicated she would attend by signing the notice. During a phone call on October ***, 2023, Student's Parent notified the campus coordinator parents would not attend the MDR ARD committee meeting.⁷
8. Parent unenrolled Student from the District on October ***, 2023. Due to the incident, Student's teachers completed pupil personnel student status check forms, which rated Student's attitude, participation in class, and behavior. Seven out of eight teachers indicated Student's behavior was satisfactory with one saying it needed improvement. The only negative behavior comment related to attentiveness, and the common concern was Student does not complete work.⁸
9. An MDR ARD committee convened on November ***, 2023. Before the meeting started, the committee attempted to reach Student's parents by telephone and left a voicemail. Student's parents did not attend due to Student's Parent working and Student's Parent assisting Student with online school. The

⁵ Petitioner's Exhibit (PE) 4; JE 3 at 24-25.

⁶ JE 1 at 7.

⁷ JE 1 at 24-26; JE 3 at 23.

⁸ PE 5; JE 1 at 9, 16-23.

committee reviewed Student’s qualifying disabilities, Student’s FIE from 2022, Student’s behavior history, Student’s current IEP, previously provided information from Student’s parents, and teacher reports. Student did not have a history of behavioral concerns or discipline referrals; Student struggled with social communication. The incident was discussed. Teachers in the meeting reported that Student was “super quiet” and “not a problem,” but Student struggled with homework and getting work completed timely. The District representative notified the committee that Parent indicated Student ***. The representative indicated there is no evidence of ***.⁹

10. The MDR ARD committee determined the behavior was not caused by, and did not have a direct and substantial relationship to, Student’s disabilities of autism or speech impairment. Additionally, the committee determined the behavior was not the direct result of a failure to implement the IEP. The committee agreed to conduct a functional behavior assessment (FBA) targeting *** due to the incident.¹⁰
11. On November ***, 2023, the District sent a letter to Student’s parents informing them of the MRD ARD committee decision to assign Student to the DAEP for *** days to begin on November ***, 2023, for ***, a violation of the District Student Code of Conduct.¹¹
12. Student’s former *** teacher wrote character letters on Student’s behalf for this hearing. Both indicated Student is quiet, has difficulty expressing ***self, is well-behaved, and not violent.¹²
13. At hearing, Parent acknowledged that the incident occurred, and Student violated the District Student Code of Conduct. Parent acknowledged Student did not have a history of *** or behavior issues.¹³

⁹ JE 3 at 23-24; JE 4 at 1-2; TR at 16.

¹⁰ JE 1 at 31; JE 3 at 24; JE 4 at 2.

¹¹ JE 1 at 2.

¹² PE 6.

IV. DISCUSSION

Petitioner alleges the District improperly placed Student in the DAEP and requests the District not assign Student to the DAEP for the incident.

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the IEP and/or placement. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2005). 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 in determining that Student's behavior was not a manifestation of Student's disability.

B. 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;
- only impose discipline that is consistent with discipline imposed upon students without disabilities;

¹³ TR at 9, 15.

- 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 the IDEA disciplinary requirements. The District followed its Student Code of Conduct, did not impose a discriminatory punishment, and conducted a proper MDR ARD committee meeting before imposing the punishment handed down through the disciplinary process. As such, the disciplinary process followed by the District was consistent with the IDEA.

C. Manifestation Determination Review

Prior to disciplining a student for a violation of the student code of conduct and removing them from school for more than 10 days, a school district must conduct an MDR ARD committee meeting and determine if the behavior is a manifestation of the student's disability. 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b). In determining whether the conduct is a manifestation of a student's disability, relevant members of the MDR ARD committee must review relevant information from the student's educational file, including the student's IEP, teacher observations, and any relevant information provided by the parents. The MDR ARD 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 parent who disagrees with an MDR ARD committee's 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 the Conduct at Issue

The District correctly determined that Student's conduct on October ***, 2023, was not caused by, and did not have a direct and substantial relationship to, Student's disability. During the MDR ARD committee meeting, the members reviewed Student's FIE, current IEP, school discipline history, information from Student's teachers, and the input previously provided by Student's parents. As a result of Student's autism and speech impairment, Student struggles with understanding social cues and is hesitant to ask for help. Student did not have a behavior intervention plan because Student had never had behavior issues or discipline referrals. All of Student's teachers indicated Student was kind, quiet, and mainly struggled with turning in assignments on time. This same sentiment was expressed by Student's own character letters. No evidence was presented that Student's autism or speech impairment was related to the conduct at issue. Student's *** was unexpected, and Student has no history of *** even when Student misunderstands social cues. The credible evidence established no connection between Student's conduct of *** and Student's disability.

Petitioner acknowledges that the behavior occurred, that Student violated the District's Student Code of Conduct, and that Student never had issues like this in

the past. Petitioner asks this Hearing Officer to determine that the DAEP placement is not appropriate for Student due to Student's autism and Parent's concern Student will regress emotionally and academically if placed there. While the Hearing Officer empathizes with Parent's concerns, Petitioner presented no evidence to support Petitioner's claims that the DAEP placement is inappropriate for Student or that it may cause Student harm in some way.

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 autism and speech impairment and Student's conduct of ***.

2. Implementation of Student's IEP

During the MDR ARD committee meeting, the 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 District agreed to conduct an FBA after the incident, but this was not due to a failure to implement Student's IEP. 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 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).

Because Student's conduct was not caused by, or have a direct and substantial relationship to, Student's disability, and did not have a direct relationship with a failure to implement Student's IEP, the conduct at issue is not considered a manifestation of Student's disability. Therefore, the District may place Student at the DAEP for the conduct. 34 C.F.R. § 300.530.

V. CONCLUSIONS OF LAW

1. Respondent complied with the IDEA's procedural disciplinary requirements when it subjected Student to removal proceedings for violating the District 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 CFR §300.530.
2. Student's conduct on October ***, 2023, 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); *Schaffer*, 546 U.S. at 62.

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 March 21, 2024.

ALJ Signature:



Kasey White
Presiding Administrative Law Judge

VI. 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. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).