

DOCKET NO. 027-SE-1017

STUDENT, B/N/F PARENT	§ § §	BEFORE A SPECIAL EDUCATION
VS.	§ §	HEARING OFFICER
CONROE INDEPENDENT SCHOOL DISTRICT	§ §	FOR THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

Statement of the Case

STUDENT, by next friend and parent *** (hereinafter “Petitioner” or “the student”), brought a complaint pursuant to the Individuals with Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400, et seq., complaining of Conroe Independent School District (hereinafter “Respondent” or “the district”). The request was expedited according to 20 U.S.C. §1415(k)(3) and 34 C.F.R. §300.532.

Petitioner appeared pro se. The district was represented by Amy C. Tucker, an attorney in Houston with the law firm of Rogers, Morris & Grover, L.L.P.

Petitioner’s request for hearing was filed on October 3, 2017, and came on for hearing on November 1, 2017, in the offices of the district in Conroe, Texas. Both parties filed written closing arguments and this decision is timely issued on November 15, 2017.

Petitioner alleged that: 1) the district improperly predetermined the result of a Manifestation Determination Review (“MDR”) in considering a disciplinary change in the student’s placement, and 2) the district incorrectly determined whether the student’s conduct in question was caused by, or had a direct and substantial relationship to, the student’s disability.

Petitioner made no claim that the conduct in question was the direct result of the district’s failure to implement the student’s individual education plan (“IEP”).

As relief, Petitioner sought an order invalidating the determination of the MDR and the disciplinary change in placement.

Based upon the evidence and argument of the parties, the Hearing Officer makes the following findings of fact and conclusions of law:

Findings of Fact

1. The student was born in *** and qualifies for special education and related services as a student with Other Health Impairment (“OHI”) based upon a diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”). [Petitioner’s Exhibit 1; Respondent’s Exhibit 1; Transcript Pages 12-13]

2. The student attends the *** grade and resides with the student’s parent in the Conroe Independent School District. [Petitioner’s Exhibit 1; Respondent’s Exhibit 1; Transcript Page 171]

3. Because of an incident in *** 2017, an MDR was conducted in conjunction with an admission, review and dismissal (“ARD”) committee meeting for the student on ***, 2017. [Petitioner’s Exhibit 1; Respondent’s Exhibit 1; Transcript Pages 202-203]

4. The MDR addressed disciplinary consequences for the student for ***. [Respondent’s Exhibits 1 & 18; Transcript Pages 202-203]

5. When the student was ***, the student’s assistant principal asked the student for a written statement. The student chose to make the statement ***. The student admitted to ***. The student stated the intention was to ***. The student stated that ***. [Respondent’s Exhibit 6; Transcript Pages 203-204]

6. The district administration recommended that the student be expelled for *** pending an MDR to address the student’s conduct in conjunction with the student’s disability. The student’s parent appealed the disciplinary assignment in a separate proceeding and a hearing

officer amended the disciplinary decision probating the terms of the expulsion pending a completion of *** day placement in a disciplinary alternative education program (“DAEP”) and successfully completing *** days in school without a major disciplinary referral. If the student completes the *** day DAEP assignment and *** school days successfully, the expulsion order is to be null and void. [Respondent’s Exhibit 26]

7. The district held a meeting with relevant staff to prepare for the MDR. They reviewed the student’s current evaluation data, disciplinary record, statement to the assistant principal, and information from the student’s teachers and assistant principal. The staffing did not make a decision as to the ultimate issue of manifestation. [Transcript Pages 13-17, 62-63, 113, 197, & 202-204]

8. Prior to the ARD meeting and MDR on ***, 2017, an educational diagnostician prepared a draft version of ARD documents for consideration of the committee. Some of the drafted documents were projected on a screen for the discussion of the committee. The student’s parent complained that the drafted documents showed that the decision for MDR was predetermined. The educational diagnostician stated that the drafts had been made to facilitate discussion and that no determination had been made prior to the meeting. [Petitioner’s Exhibit 11; Respondent’s Exhibit 24; Transcript Pages 111-114]

9. The committee discussed the student’s disability and how it manifests itself for the student. A licensed specialist in school psychology for the district stated that the student’s *** is the primary concern for interference in the student’s educational effort. The committee believed the student’s actions of *** demonstrated a ***. [Respondent’s Exhibit 1; Transcript Pages 137, 212-213, 244-246 & 254-257]

10. The student’s parent was in attendance at the meeting but provided little input, declined requests to share information, and did not indicate disagreement with the committee’s

determinations until the ARD documents were presented for signature. [Petitioner's Exhibit 5; Transcript Pages 63, 97, 139, 206 & 248-249]

11. The student's parent believes the committee gave insufficient weight to issues with *** and avers that the student sought *** to address the disability. The student's parent presented an expert witness in support of the idea the student's problems with *** inhibited the student's ability to prevent the conduct at issue. [Petitioner's Exhibit 1; Transcript Pages 190-192]

12. The district's personnel – including staff directly evaluating the student and working with the student – offered credible testimony demonstrating that the conduct in question could not reasonably be considered *** and that the student's issues with *** were not manifesting in the student's conduct. [Petitioner's Exhibit 11; Transcript Pages 132, 212-213, 244-246 & 254-257]

Discussion

Petitioner believes that the MDR for the student was improper because the decision of the committee was predetermined prior to the MDR determination on ***, 2017. Petitioner further believes that the MDR's conclusion was in error because the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability.

To prevail in these claims, Petitioner has the burden to demonstrate that the district's actions did not comply with the law. Schaffer v. Weast, 126 S.Ct. 528 (2005). Petitioner did not meet this burden.

Petitioner failed to prove that the district's staffing prior to the MDR made a predetermination as to the ultimate issue and failed to prove that the parent was not permitted to participate in the decision-making process.

Petitioner further failed to prove that the MDR determination was in error. The student's disability did not have a direct and substantial relationship with the conduct involved nor directly cause the conduct.

Conclusions of Law

1. The student is eligible for a free appropriate special education program under the provisions of IDEA, 20 U.S.C. §1400, et seq., and related statutes and regulations, and is to be provided by the Conroe Independent School District.

2. The district's processes in making decisions about educational placement for the student accorded with the requirements articulated in Board of Education of the Hendrick Hudson School District v. Rowley, 458 U.S. 176 (1982), 34 C.F.R. §300.552, and 19 T.A.C. §89.1055; Andrew F. v. Douglas County School District, 137 S.Ct. 988 (2017); and Cypress-Fairbanks ISD v. Michael F., 118 F.3d 245 (5th Cir. 1997), 34 C.F.R. §300.300, and 19 T.A.C. §89.1055, and the district's determinations were appropriate under 34 C.F.R. §300.530 and Tex. Educ. Code §37.004.

3. The district did not predetermine the student's disciplinary placement before a proper MDR nor prevent the student's parent to participate in the decision-making process. Deal v. Hamilton County Board of Education, 392 F.3d 840 (6th Cir. 2003), and Rockwall Independent School District v. M.C., 2014 WL 112642573 (N.D. Tex. 2014).

ORDER

Based on the foregoing findings of fact and conclusions of law, IT IS HEREBY ORDERED that all relief sought by Petitioner is DENIED and Petitioner's claims are DISMISSED with prejudice.

SIGNED this 15th day of November, 2017.

/s/ Lucius D. Bunton
Lucius D. Bunton
Special Education Hearing Officer

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CONROE INDEPENDENT SCHOOL DISTRICT	§	FOR THE STATE OF TEXAS

SYNOPSIS

ISSUE: Whether the district's processes in making decisions about educational placement for the student accorded with the requirements of law.

CFR CITATIONS: 34 C.F.R. §300.552 and 34 C.F.R. §300.300

TEXAS CITATION: 19 T.A.C. §89.1055

HELD: For Respondent.