

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT,
bnf Parent,
Petitioner,**

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v.

DOCKET NO. 289-SE-0811

**LEWISVILLE INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

DECISION OF THE HEARING OFFICER (EXPEDITED HEARING)

Introduction

Petitioner, Student bnf Parent (“Petitioner” or “Student”) brings this action against the Respondent Lewisville Independent School District (“Respondent,” or “the school district”) under the Individuals with Disabilities Education Improvement Act, as amended, 20 U.S.C. § 1401 et. seq (IDEA) and its implementing state and federal regulations.

Party Representatives

Student was represented pro se throughout this litigation by student’s father, Parent assisted by Debra Liva, parent advocate. Respondent was represented by its legal counsel Nona Matthews with the law firm of Walsh, Anderson, Brown, Gallegos & Green. ***, Executive Director of Special Education, served as the school district’s party representative.

Resolution Session and Mediation

The parties waived the Resolution Session and attempted mediation on September 20, 2011 but were not successful in reaching an agreement.

Procedural History

This case has a somewhat convoluted procedural history. The initial request for hearing was filed against the school district as the sole Respondent on August 30, 2011. Following two insufficiency challenges Petitioner submitted a First Amended Complaint on September 21, 2011 and a Second Amended Complaint on October 12, 2011.

Petitioner joined the Denton County Juvenile Justice Alternative Educational Program (DCJJAEP) as a party to this lawsuit for the first time in student’s First Amended Complaint and again in student’s Second Amended Complaint. The DCJJAEP filed a Motion to Dismiss both amended complaints. The DCJJAEP was dismissed as a party to this litigation by written order issued on October 25, 2011.

It was not until the insufficiency challengers were cured and a prehearing telephone conference was conducted on October 13, 2011 that it became clear Petitioner was appealing manifestation determination and disciplinary placement decisions as well as asserting a number of other claims related to student’s educational program under IDEA.

Bifurcated Hearing

Under the IDEA a parent can appeal disciplinary decisions in an expedited due process hearing. The expedited hearing procedure has a much shorter timeline than the hearing provisions for resolution of other IDEA claims. 34 C.F.R. § 300.532 (c). The case was bifurcated by written order issued on October 19, 2011 into two separate hearings. The expedited hearing was set for November 8-9, 2011 and the hearing on the remaining IDEA issues was set for December 19-20, 2011. This Decision resolves only those issues that fall under the expedited hearing provisions of the IDEA.

Parent Advocate's Role

Student's initial hearing request was submitted and signed by Debra Liva, the parent advocate. Student's father submitted a written statement on September 19, 2011 confirming the set of activities he wished Ms. Liva to fulfill in assisting him with the hearing process. The school district later challenged Ms. Liva's participation when it filed its Objection To and Motion to Enjoin Petitioner's Advocate's Unauthorized Practice of Law (Motion to Enjoin) on October 31, 2011.

Petitioner filed an Objection to the Motion to Enjoin. The issue was resolved at the beginning of the expedited hearing. The advocate was permitted to remain in the hearing room and provide whatever assistance Student's father requested including conducting direct and cross examination of witnesses and handling exhibits. The Motion to Enjoin was denied.

Issues for the Expedited Hearing

The issues for the expedited hearing are as follows:

1. Whether the manifestation determination made by the school district for an alleged drug offense was appropriate under the Individuals with Disabilities Education Act (IDEA);
2. Whether the disciplinary decision made by the school district to place Student at the DCJJAEP was appropriate under IDEA; and,
3. Whether the school district failed to ensure Student's procedural rights under IDEA were protected in making the disciplinary decision and manifestation determination decisions at issue in this case;

An issue related to whether the DCJJAEP should have accepted Student was resolved prior to the expedited hearing when the DCJJAEP was dismissed as a party to this lawsuit. An issue over application of the "stay put" rule was resolved in a written order issued on October 16, 2011 - - Student remained in the disciplinary placement until student completed student's assigned time there. *See, 34 C.F.R. § 300.533 (When an appeal has been made of a disciplinary decision or manifestation determination the child must remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period specified, whichever occurs first, unless the parent and school district agree otherwise).* Student was scheduled to return to student's home campus a few days prior to the beginning of the expedited hearing.

At the beginning of the expedited hearing the parties agreed that Issue No. 3 was simply a broader description of the issues stated in Issue Nos. 1 and 2. Issue No. 3 does not include any claims involving procedural rights under the school district's regular education disciplinary grievance procedures. (Tr. Vol. I., pp. 9-15). Such claims are outside the jurisdiction and authority of a special education hearing officer in Texas.

Findings of Fact

1. Student is currently in the *** grade at *** School and eligible for special education as a student with a learning disability. At the time of the events leading up to the disciplinary decisions at issue Student's learning disabilities were identified in the areas of reading comprehension and math reasoning. (Petitioner's Exhibits 6 and 7)(referred to hereafter as "P. Ex. ____")(Respondent's Exhibit 3) (referred to hereafter as "R. Ex. ____"). More recently student has also been identified with a learning disability in written expression. (Transcript, Volume I, p. 43)(referred to hereafter as "Tr. Vol. I, p. ____")(R. Ex. 17).
2. Student also has ***, initially identified by *** in December 2004. Since that time student has received accommodations for student's ***. (R. Ex. 1, 7, 12) (Tr. Vol. I, pp. 37, 42). Student also has *** and had surgery in *** that involved ***. (Tr. Vol. I, pp. 37, 246).
3. On ***, 2011, an assistant *** school principal *** that Student was possibly under the influence and/or in possession of an illegal substance. (Tr. Vol. I, p. 79). The assistant principal and a campus resource officer conducted an investigation which included a search of Student's backpack. ***. ***. (Tr. Vol. I. pp. 81-82)(R. 23 and 24).
4. Student was questioned by the assistant principal. Student cooperated with the investigation and provided a written statement which included incriminating language. (Tr. Vol. I, pp. 82-83)(R. Ex. 23). The assistant principal also obtained additional witness statements as part of the investigation that corroborated the misconduct. (Tr. Vol. I, p. 84)(R. 23). No drug test was administered nor were any drugs or drug paraphernalia found on Student during the investigation. (Tr. Vol. I, p. 106).
5. Student was placed into the in-school suspension class (known as ***) pending further investigation. Student's father was notified. Student was then suspended for *** days and a Level I expulsion hearing was set for ***, 2011. (Tr. Vol. I, p. 85)(R. Ex. 23). The *** school principal served as the hearing officer. (Tr. Vol. I, pp. 134-135). The principal determined that Student violated the Student Code of Conduct by ***. (Tr. Vol. I, p. 135). The disciplinary decision was based on Student's written statement, the statements of other witnesses, and, ***. (Tr. Vol. I, p. 112).
6. Student was expelled to the Denton County Juvenile Justice Alternative Education Placement (DCJJAEP) for *** for a total of 45 days. Student's start date at the DCJJAEP was to be ***, 2011. Upon successful completion of the disciplinary placement Student would be eligible to return to *** school. (Tr. Vol. I, p. 86)(R. Ex. 23). A charge form was completed under school district policy for students scheduled for expulsion. (Tr. Vol. I, p. 85).
7. The original charge form included a mistake in its wording – rather than stating Student was being charged with "****" (which was the correct wording) the initial charge form stated that Student was being charged with ***. ***. (Tr. Vol. I, pp. 135-136, 144)(R. Ex. 22 and 23).
8. It would not have made any difference in the disciplinary consequence whether Student was ***. (Tr. Vol. I, pp. 150-154). ***. (Tr. Vol. I, p. 152). ***. (Tr. Vol. I, pp. 152, 154).
9. The *** school principal contends he sent a corrected charge form to Student's father a day or two after the expulsion hearing once the error was discovered. (Tr. Vol. I. pp. 135-136, 142, 147, 155). Student's father denies receiving the corrected charge form. (Tr. Vol. I, pp. 246-247). Student's father asked the *** school principal if student could serve student's disciplinary time at a drug treatment facility (The Excel Center) rather than at the DCJJAEP. This request was refused. (Tr. Vol. I, p. 131).

10. A manifestation determination review (MDR) ARD was conducted on ***, 2011. Student was placed into the in school suspension room for the period of time between the expulsion hearing and the MDR ARD. (Tr. Vol. I, pp. 136-137)(R. Ex. 13). The ARD reviewed Student's eligibility as a student with a learning disability and the investigative record. The MDR ARD also conducted a Functional Behavior Assessment. (Tr. Vol. I, p. 91)(R. Ex. 13).
11. The FBA consisted of a review of Student's discipline records, attendance records, teacher input forms, and assessments compiled by the special education counselor. (Tr. Vol. I, p. 91)(R. Ex. 13 and 23). Between October 2010 and January 2011 Student received three referrals for insubordination and two referrals for profanity. Other referrals were for a dress code violation, skipping school, and one classroom disruption. (R. Ex. 23).
12. Student's emotional history, including a *** were not considered by the ARD in making its manifestation determination. (Tr. Vol. I, p. 119). The school district members of the MDR ARD concluded the misconduct at issue had no direct or substantial relationship with Student's learning disabilities in reading comprehension or math reasoning. (Tr. Vol. I, pp. 72, 74-75, 88-89) (R. Ex. 23).
13. The MDR ARD also considered whether the misconduct was a result of a failure to implement Student's IEP. The MDR ARD confirmed student had been receiving the services specified in student's IEP including special education counseling. Although student was failing two classes student had also been passing student's tests – student was simply missing some work. The teacher felt Student would pass student's classes if student turned in the missing work. (Tr. Vol. I, p. 89).
14. Students without disabilities who *** are placed at the DCJJAEP. School district members of the MDR ARD concluded Student's expulsion to the DCJJAEP was therefore appropriate. (Tr. Vol. I, p. 120). Student's father and the parent advocate disagreed with this conclusion. (Tr. Vol. I, pp. 94)(R. Ex. 13).
15. Student's placement at the DCJJAEP was to begin on ***, 2011. However, Student's father withdrew student from school before *** and student did not begin serving student's assignment to the DCJJAEP as planned. (Tr. Vol. I, p. 86). Unfortunately, student's withdrawal from school also meant Student did not receive academic credit for the *** 2011 term. (Tr. Vol. I, pp. 87, 94, 138-139). Student did enroll in the DCJJAEP *** and completed student's assigned time. Student returned to student's home *** school campus on ***, 2011. (Tr. Vol. I, pp. 87, 124, 140).
16. Student's father is a single parent and has been raising Student and an older sibling on his own for the past *** years. (Tr. Vol. I, p. 241). Student's sibling *** (Tr. Vol. I, pp. 270-271). Student has a difficult relationship with student's mother. At the time of the due process hearing they were not on speaking terms. *** (Tr. Vol. I, pp. 252-253).
17. In *** 2010, Student was involved in an altercation with ***. Student was distraught over the incident ***. Student was ***. (Tr. Vol. I, pp. 256-257). Student has strong feelings and emotions about student's relationship with student's mother. At home student also expresses strong anger towards both student's father and sibling and is extremely moody. (Tr. Vol. I, pp. 259-260). Student *** when serious problems arose with student's mother. Student has since ***. (Tr. Vol. I, p. 264).
18. Student's father discovered student was using drugs in *** 2011. The *** is a chemical dependency rehabilitation center. Student's father placed student there for treatment in *** 2011. (Tr. Vol. I, pp. 205-206, 218)(R. Ex. 18). Student received additional drug rehab treatment at *** 2011 following the disciplinary action in ***. (Tr. Vol. I, pp. 251-252)(P. Ex.3).

19. Student was referred for a special education counseling evaluation in May 2010 by student's father. He was concerned about student's behavior and emotional state at home. He also reported the *** 2010 *** and a recent ***. (Tr. Vol. I, p.202)(R. Ex. 8). Student qualified for special education counseling on the basis of ***. (Tr. Vol. I, pp. 170-171)(P. Ex. 5) (R. Ex. 9). Student received individual special education counseling for 20 minutes per session each week during the 2010-2011 school year. (Tr.Vol. I, pp. 163, 207) (P. Ex. 2). The special education counselor was aware Student ***. (Tr. Vol. I, pp. 167-168).
20. Student declined to discuss the *** with the special education counselor and, at that point, appeared stable. Instead, the two of them focused on student's counseling IEP goals for the 2010-2011 school year. (Tr. Vol. I. pp. 168-169, 178). Those goals included identifying self-defeating behaviors, consequences, positive alternatives, healthy coping strategies and identifying positive and negative feelings. (Tr. Vol. I, p. 191)(P. Ex. 8) (R. Ex. 8).
21. Student's father consulted with the counselor from time to time during the 2010-2011 school year. He contacted her when he had concerns. He was proactive in attempting to secure help for Student. (Tr. Vol. I, pp. 197-198, 210-211, 214)(R. Ex. 18). The school district referred Student's father to family counseling programs. The special education counselor also provided him with some parenting advice and recommended a number of parenting books. However, Student's father did not find these resources particularly helpful. (Tr. Vol. I, pp. 197-198, 208-209, 228, 267-268)(P. Ex. 2) (R. Ex. 18).
22. The special education counselor did not see any chronic, emotional issues at school; instead most of the issues Student processed in counseling were related to issues outside of school. (Tr. Vol. I, pp. 172, 174). Student did not present in a way that suggested student might *** during the 2010-2011 school year. The school district has a *** but the counselor saw no signs in Student that warranted following it. (Tr. Vol. I, p. 183).
23. Despite significant issues outside of school Student was able to function during the school day. Student made progress in student's classes and was able to exhibit appropriate behaviors. Student had peer relationships and in general student's mood and behavior were appropriate at school. (Tr. Vol. I, p. 200). Although Student sometimes exhibited oppositional behavior there was nothing that rose to the level of significance for the special education counselor or reason to suspect student might be a student with an emotional disturbance. (Tr. Vol. I, p. 201, 222, 228).
24. Student discussed student's drug use and the *** 2011 drug treatment program with the special education counselor although student was initially somewhat guarded about the extent of student's drug use. (Tr.Vol. I, pp. 218-220) (P. Ex. 2) (R. Ex. 18). Student met with the special education counselor following the drug offense investigation, ***, and processed feelings of anxiety over the investigation. (Tr. Vol. I, pp. 220-221).
25. Student's father and the parent advocate disagreed with the MDR determination and took the position that the ARD did not have sufficient information to consider whether Student might be a student with an emotional disturbance and whether the misconduct was caused by or related to that disability. Student's father and advocate requested an evaluation before proceeding further with any disciplinary decisions. (Tr. Vol. I, pp. 70, 254).
26. Although the MDR ARD proceeded with its decision to discipline Student with placement at the DCJJAEP it also agreed to conduct an updated Full, Individual Evaluation (FIE) including a psychological. (Tr. Vol. I, p. 54)(R. Ex. 14). The school district agreed to the updated FIE as a good faith gesture and attempt to work cooperatively with Student's father who was clearly frustrated by the disciplinary decision and

placement. (Tr. Vol. I., pp. 55, 58). Student's father submitted a signed consent form for the FIE on May 31, 2011. (Tr. Vol. I., p. 95)(R. Ex. 14).

27. The FIE could not be completed within the time frame established by the *** 2011 ARD. Student was not available for the assessment during *** 2011 because student was receiving treatment for student's drug issues at ***. (Tr. Vol. I., pp. 55, 117)(P. Ex. 31). There was a communication breakdown between Student's father and the school district that interfered with an exchange of information with ***. The requisite parental consent to contact *** was either never requested of the parent or was not provided by the parent to the school district. (Tr. Vol. I., pp. 56, 258, 323-324).
28. Student was excused from *** at the DCJJAEP due to student's ***. (Tr. Vol. I., p. 51)(P. Ex. 1). Student was assigned to *** instead. (Tr. Vol. I., pp. 52, 96) (R. Ex. 16). Transportation to and from the DCJJAEP was provided by the school district. (Tr. Vol. I., p. 97)(R. Ex. 16). Student was enrolled in the same core academic classes student was scheduled to take at the *** school for the fall semester of 2011-2012. (Tr. Vol. I., pp. 52, 93)(R. Ex. 12). Student also continued to receive special education counseling at the DCJJAEP. (Tr. Vol. I., pp. 93-94). Student developed a good relationship with both the special education counselor at the *** school and the special education counselor at the DCJJAEP. (Tr. Vol. I., pp. 102).
29. The FIE was ultimately completed when Student enrolled at the DCJJAEP ***. The FIE report was dated ***, 2011. (Tr. Vol. I., pp. 55-56, 95, 97) (R. Ex. 17). The FIE confirmed Student continued to meet eligibility criteria for special education as a student with a learning disability but did not meet criteria as a student with an emotional disturbance. (Tr. Vol. I., p. 100)(R. Ex. 17).
30. An annual ARD for Student was conducted on ***, 2011 a few days prior to student's return to the *** school campus. (Tr. Vol. I., pp. 124, 140). The purpose of the annual ARD was to review the FIE and plan for student's transition back to the regular *** school campus. (Tr. Vol. I., pp. 101, 140-141). The supervisor from the DCJJAEP participated in the *** ARD. The supervisor reported Student made good progress at the DCJJAEP, was passing all student's classes, and completed all assigned work. (Tr. Vol. I., p. 101).

DISCUSSION

Changes in Placement for Disciplinary Purposes

School personnel may remove a child with a disability who violates a code of student conduct from student's current placement to an appropriate interim alternative educational setting, another setting, or suspension for no more than 10 consecutive school days. A student may also be removed for no more than 10 consecutive school days for separate behavioral incidents. 34 C.F.R. § 300.530 (b). A change in placement occurs if the student is removed from his or her current educational placement for more than 10 consecutive school days or if the child has been subjected to a series of removals that total more than 10 school days a year. 34 C.F.R. § 300.536.

Significantly, for disciplinary placements that exceed 10 school days, a student with a disability may be disciplined in the same manner and for the same duration as applied to students without disabilities who commit the same violation if the behavior at issue is *not* a manifestation of the student's disability. 34 C.F.R. § 300.530 (c). Students who knowingly possess, use, sell, or solicit the sale of illegal drugs or a controlled substance may be removed to an interim alternative setting for up to 45 school days. 34 C.F.R. § 300.530 (g).

Manifestation Determination ARD

The IDEA requires an ARD 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. The ARD must review all relevant information in the student's file, including the child's IEP, teacher observations, and any relevant information provided by the parent. The ARD must then determine whether the conduct at issue was caused by or had a direct and substantial relationship to the child's disability. The ARD 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)*.

Evidence Supports MDR Determination

The credible evidence showed that the MDR ARD reviewed the requisite information in order to reach its conclusion that Student's conduct *** was not caused by or had a direct and substantial relationship to student's learning disabilities in reading comprehension and math reasoning.

The evidence also showed Student and student's father are both coping with some significant family issues. It is clear Student continues to benefit from special education counseling. Student exhibited a string of negative behaviors throughout the 2010-2011 school year. The special education counselor was aware of family issues, Student's drug use, and of ***. I agree with Student's father that the drug offense created an opportunity for both parent and school to consider whether Student needed an evaluation to explore student's emotional and behavioral needs.

In fact, the school district agreed to the parental request for such an evaluation at the MDR ARD. However, I cannot conclude that the MDR ARD was wrong when it determined Student's learning disabilities did not cause or were substantially related to student's behavior in ***. Indeed, the FIE ultimately confirmed student was not a student with an emotional disturbance within the meaning of the IDEA.

The credible evidence established that Student was able to function and appeared stable at school. Although student could be oppositional student's behavior did not rise to the level of significance that suggested an emotional disability. The focus of many of Student's school counseling sessions addressed issues outside of school. Finally, the evidence showed the school district implemented Student's IEP. Therefore, the school district was justified in reaching the manifestation determination at issue.

Drug Offense an Exception to MDR Requirement

Furthermore, a school district may remove a student to an interim alternative educational setting for up to 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student knowingly *** while at school, on school premises, or at a school function. *34 C.F.R. § 300.530 (g)*. Therefore, even if the school district should have initiated an evaluation to determine whether Student was a student with an emotional disability before making the MDR determination, it was within the law in placing student at the DCJJAEP.

DCJJAEP Appropriate Placement

Finally, the evidence showed that the DCJJAEP was an appropriate placement. Student received instruction in student's core academic classes as well as special education counseling. Student was not required to *** but was instead provided with a ***. Student was provided with transportation. Student completed student's assignment at the DCJJAEP successfully and has since returned to the regular *** school campus.

I find insufficient evidence to suggest that the school district's exercise of its discretion in this particular case was not lawful under IDEA. While Petitioner's claims as to whether student received FAPE while at the DCJJAEP are Decision of the Hearing Officer (Expedited Hearing)

still pending, Petitioner did not meet petitioner's burden of proving that the disciplinary placement itself was inappropriate given the behavior at issue. *See, Shaffer v. Weast, 546 U.S. 49 (2005).*

Under the unique circumstances of this case, the school district was not required by IDEA to allow Student to serve student's disciplinary assignment at a drug treatment facility (as student's father requested) but instead imposed a disciplinary consequence rationally related to the behavior at issue in the lawful exercise of its discretion. *See, 34 C.F.R. § 300.530 (a).*

Students without disabilities who violate the student code of conduct by *** are, under school district policy, placed at the DCJJAEP because of the serious nature of the offense. Student's placement at the DCJJAEP was therefore appropriate under the IDEA. *34 C.F.R. § 300.530 (g).*

Conclusions of Law

1. The school district's manifestation determination for Petitioner's alleged drug offense was appropriate under the Individuals with Disabilities Education Act (IDEA). *34 C.F.R. § 300.530 (e).*
2. Petitioner did not meet petitioner's burden of proving that the school district's disciplinary decision to place student at the Denton County Juvenile Justice Alternative Education Program was inappropriate under IDEA. *34 C.F.R. § 300.530 (g); Shaffer v. Weast, 546 U.S. 49 (2005).*
4. The school district ensured Petitioner's procedural rights under IDEA were protected in making the disciplinary decision and manifestation determination decisions at issue in this case. *34 C.F.R. § 300.530 (a) (c) (e) (g).*

ORDERS

Based upon the foregoing findings of fact and conclusions of law, the respective arguments of the parties, and the record it is therefore **ORDERED** that Petitioner's claims regarding the manifestation determination and disciplinary placement decision and placement at issue in this expedited hearing are **DENIED** and that Petitioner's claims for relief related to those claims are also **DENIED**.

SIGNED the 22nd day of November 2011.

Ann Vevier Lockwood
Special Education Hearing Officer

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. *19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a) (b).*

**BEFORE A SPECIAL EDUCATION HEARING OFFICER
STATE OF TEXAS**

**STUDENT,
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v.

DOCKET NO. 289-SE-0811

**LEWISVILLE INDEPENDENT
SCHOOL DISTRICT,
Respondent.**

SYNOPSIS (EXPEDITED HEARING)

ISSUE:

Whether school district's manifestation determination that *** school student's drug offense was not caused by or substantially related to student's learning disabilities was appropriate under Individuals with Disabilities Education Act.

HELD:

For the school district. School district convened manifestation determination ARD and reviewed the requisite information in order to reach its conclusion. Student's conduct in *** in violation of student code of conduct was not caused by or had a direct relationship to student's learning disabilities in reading comprehension or math reasoning.

Disciplinary issue created an opportunity for parent and school to consider whether student needed evaluation to explore emotional and behavioral needs given history of significant family issues and evidence of a drug problem

However, school district was justified in reaching the manifestation determination at issue where student was able to function and appeared stable at school. Although student could be oppositional at times student's behavior did not rise to level of significance to suspect student had an emotional disability. Evidence also showed school district implemented student's IEP. School district agreed to conduct an FIE at parental request, including a psychological, that ultimately confirmed the student was not a student with an emotional disability within the meaning of the IDEA.

34 C.F.R. §§ 300.530 (b) (c) (e); Tex. Educ. Code § 37.004 (b).

Furthermore, student's behavior in *** while at school, on school premises, or at a school function meant school district had the discretion to remove the student to an interim alternative educational setting for 45 days without regard to whether the behavior was a manifestation of student's disability.

34 C.F.R. § 300.530 (g).

ISSUE:

Whether student's placement in the local juvenile justice alternative education program was appropriate under IDEA.

HELD:

For the school district. Student did not meet burden of proving the disciplinary placement was inappropriate. Drug offense meant school district not required to make a manifestation determination and could discipline student with learning disabilities in the same way a student without a disability would be disciplined for the same drug offense. School district's view that *** at school a serious offense with placement at local juvenile justice DAEP (rather than at outside, private drug rehab facility that parent requested) was proper exercise of school district's discretion under IDEA.

34 C.F.R. § 300.530 (a) (g); Shaffer v. Weast, 546 U.S. 49 (2005).