

**SOAH DOCKET NO. 701-23-09423.IDEA
TEA DOCKET NO. 140-SE-0123A**

STUDENT, B/N/F PARENT, Petitioner	§	BEFORE A SPECIAL EDUCATION
	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
TEXAS LEADERSHIP PUBLIC SCHOOLS, Respondent	§	THE STATE OF TEXAS
	§	
	§	

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

*** (Student), by next friend *** (Parent or, collectively, Petitioner), brought an expedited action against Texas Leadership Public Schools (Respondent or District) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401-1482, and its implementing state and federal regulations.

Student filed a Request for an Expedited Due Process Hearing (Complaint) on January 6, 2023. Because the Complaint raised allegations involving disciplinary action as well as issues that are not subject to the expedited hearing procedures under the IDEA, the Hearing Officer bifurcated the case in Order No. 1. This decision concerns only the disciplinary issues alleged in the Complaint. The non-disciplinary issues will be heard under a separate cause number.

The issue in the case is whether the District incorrectly determined Student’s excessive unexcused absences were neither a manifestation of Student’s disability nor the result of the District’s failure to properly implement Student’s Individualized Education Program (IEP). The Hearing Officer concludes Student’s conduct was not a manifestation of Student’s disability and was not the result of the District’s failure to implement Student’s IEP. The Hearing Officer thus concludes that the

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District's decision to expel Student was appropriate under the IDEA.

A. Legal Representatives

Student was represented throughout this litigation by Student's authorized non-attorney representative, Carolyn Morris of Parent-To-Parent Connection Advocacy. The District was represented throughout this litigation by its legal counsel, Christopher Schulz with the law firm of Schulman, Lopez, Hoffer & Adelstein, LLP.

II. DUE PROCESS HEARING

The expedited due process hearing was conducted on February 6, 2023. Petitioner continued to be represented by Carolyn Morris. In addition, Parents attended the due process hearing. Respondent continued to be represented by Christopher Schulz, who was assisted by co-counsel Maia Levenson. In addition, Dr. ***, Assistant Superintendent for Texas Leadership Public Schools, attended the hearing as the party representative. The hearing was recorded and transcribed by a certified court reporter. The Hearing Officer's Decision is due on February 22, 2023.

III. ISSUES

A. Petitioner's Issue

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

Whether the District incorrectly determined Student's behavior was neither a manifestation

of Student's disability nor a result of the District's failure to follow Student's IEP.

IV. REQUESTED RELIEF

Petitioner requested the following item of relief:

Order the District to reverse the disciplinary decision to expel Student for excessive unexcused absences.

V. FINDINGS OF FACT

1. Student is ***-year-old, *** grade student who attended school at the *** campus in the District until November ***, 2022. Student is currently not enrolled in school. Student receives special education and related services as a student with Emotional Disturbance and Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD). Until this school year, Student also qualified as a student with a Speech Impairment, but Student's receptive, expressive, and pragmatic language, articulation, voice, and fluency skills now fall within the average range when compared to age-matched peers. Student thus no longer meets eligibility criteria for a speech or language Impairment. Outside of school, Student likes to read books, ***.¹
2. During the 2018-19 school year, Student attended school in *** Independent School District (*** ISD), where Student resided at the time and still resides today. During the 2019-20, 2020-21, and 2021-22 school years, Student was homeschooled by Parent. Student enrolled in the District at the beginning of the 2022-23 school year in August 2022. Student was initially evaluated and found eligible for special education in *** ISD in 2016. *** ISD last conducted a Review of Existing Evaluation Data (REED) in January 2018. Upon enrollment in August 2022, the District conducted a new Full Individual Evaluation (FIE) and completed the evaluation on September ***, 2022.²

¹ Respondent's Exhibit 2, pages 1-2, 4, 30 (R_, at _); R3, at 30; Transcript, Page 88 (TR _).

² R2, at 4-9; R3.

3. According to the September 2022 FIE, Student struggles with paying attention and staying on task. Student fidgets in Student's seat, gets out of Student's seat without permission, and is easily distracted. The function of Student's behavior is escaping tasks. Nothing in the District's evaluation indicated Student could not attend school or otherwise recommended Student would benefit from a reduced school day.³
4. As part of the evaluation, evaluators interviewed Parent. Parent indicated Student does not exhibit depressive behaviors or anxiety more often than other children Student's age but noted Student can "at times" be withdrawn or sad. She also did not think Student was more aggressive or hyperactive than other children Student's age but reported Student acts without thinking at times and Student is in constant motion. Parent did not mention anything about Student's inability to attend school because of Student's disabilities.⁴
5. On ***, 2022, Student had an incident in which Student ***. The District conducted a Manifestation Determination Review (MDR) on September ***, 2022, and Student's Admission, Review, and Dismissal (ARD) Committee unanimously agreed that the behavior was a manifestation of Student's disability. The District thus did not remove or expel Student. Instead, the District conducted a Functional Behavioral Assessment (FBA) and developed a Behavior Intervention Plan (BIP). Based on the FBA, the BIP addressed four behavioral areas of concern: getting out of Student's seat without permission, becoming easily distracted and not staying on task, fidgeting in Student's seat and distracting others, and verbal/physical aggression. The FBA and BIP did not address Student's inability to attend school, because that was not a behavior Student had ever demonstrated.⁵
6. On or about September ***, 2022, Student ***. Student was *** on September ***, 2022, and the *** indicated that Student could attend school with no restrictions. However, after September ***, 2022, Student never again attended school in the District. The District was prepared to serve Student, but Student never returned to school.⁶

³ R2, at 22-24.

⁴ *Id.*

⁵ R4, at 1-3; R5.

⁶ TR 35, 41; R12, at 20-21.

7. On September ***, 2022, five days after Student was ***, the District received a five-line letter from *** who claimed to be Student's ***. The letter stated that, "as of September ***, 2022," Student could no longer attend school due to ongoing ***. The letter recommended homebound services. Student had attended school from September ***, 2022, in direct contradiction to the ***'s letter. The ***'s letter also contradicted the *** instructions the *** sent to the District, which stated Student could attend school without restrictions. Further, Student told District personnel Student enjoyed attending school, which contradicted the ***'s assertion that Student was incapable of attending school.⁷
8. Given the contradictory recommendations, the District reached out to the *** for further clarification about Student's ability to attend school. The *** spoke with the District and confirmed, as it had written in its ***, that Student could attend school with no restrictions. Despite several attempts, the District could not reach the ***. Parent promised to help the District get in touch with the ***, but this never occurred.⁸
9. The District's Student Code of Conduct provides that the District has discretion to expel a student who fails to attend school without an "acceptable excuse" more than three times in a four-week period. Student did not attend school again after September ***, 2022. The only "excuse" offered by Student was the brief letter with incorrect dates from a *** with whom no one from the District was able to speak. The District thus decided to proceed with an MDR.⁹
10. In October 2022, the District attempted to work with Parent to schedule an ARD Committee meeting to discuss Student's absences. The meeting would also serve as an MDR to determine if Student's unexcused absences were caused by or directly and substantially related to Student's disabilities. On October ***, 2022, Parent told the District that she could meet on November ***, 2022. The District scheduled an ARD Committee meeting for that day.¹⁰

⁷ R6; R12, at 20; TR 79, 110.

⁸ TR 76.

⁹ R1, at 15; TR 15-16.

¹⁰ R9; R10; R11; R12.

11. The District sent Parent a Notice of the ARD Committee meeting on October ***, 2022, and a follow-up email about the meeting on November ***, 2022. Parent nonetheless did not attend. She never indicated to the District she would be unable to attend. The date of the meeting was the date Parent had requested. The ARD Committee—based on the District’s Licensed Specialist in School Psychology’s (LSSP’s) assessment that Student had no disability-related reason not to attend school, the observations of Student’s teachers who noted Student enjoyed attending school, the FIE, and the *** instructions that Student could attend school without restrictions—concluded Student’s absences were not directly and substantially related to Student’s disability and were not the result of the District’s failure to implement Student’s IEP.¹¹

VI. DISCUSSION

A. Disciplinary Removals

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;
- 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.

In this case, the District had the authority to discipline Student. When it did so, the District followed its Student Code of Conduct that gave it the discretion to expel a student with

¹¹ R12, at 20-21.

excessive unexcused absences. The District conducted an MDR and determined there was not a disability-related reason for Student's absences. The District made every effort to ensure Parent would be present for the MDR, but Parent did not attend and did not offer an explanation for her absence. As such, the disciplinary process followed by the District was consistent with the IDEA and the District had the authority to expel Student.

As discipline for a violation of the Student Code of Conduct, a school district may remove a student with a disability from Student's current educational placement for more than ten days for behavior that is not a manifestation of the student's disability. 34 C.F.R. § 300.530(c). In this case, once the District determined that Student's absences were not caused by or directly and substantially related to Student's disability or by the District's failure to implement Student's IEP appropriately, it had the authority to impose the expulsion.

B. Manifestation Determination ARD

The IDEA requires an ARD Committee to convene within 10 school days of any decision to change the placement of a child with a disability due to a violation of the Student Code of Conduct. The ARD Committee must review all relevant information provided by the parent. The ARD 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 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 ARD Committee's manifestation determination may file a due process hearing request to challenge the determination. 34 C.F.R. § 300.532(a).

1. District's Decision to Change Student's Placement

On November ***, 2022, the District held the MDR based on Student's excessive absences. Prior to that date, the District did not expel Student for Student's excessive absences. The District thus complied with the IDEA's procedural MDR requirements when it convened the MDR prior to removing Student for more than ten school days.

2. Relationship Between Student's Disability and Excessive Absences

The District determined Student's absences were not directly and substantially related to Student's disabilities. Prior to September ***, 2022, Student attended school daily and expressed that Student enjoyed school. When Student was *** on September ***, 2022, the *** stated Student could attend school without restrictions. The District was able to follow up with *** for more details and felt assured Student could attend school. To the extent Petitioner could argue the *** is what caused Student's inability to attend school, the *** disagreed. The District's own LSSP also found no disability-related reason Student could not attend school.

Nothing in Student's evaluations—including the interview with Parent—demonstrated, or even hinted, that Student might have difficulty attending school. The FBA identified four problematic behaviors Student exhibits. Inability to attend school, however, was not one of those behaviors. Thus, Student's ARD Committee appropriately determined Student's disability was not related in a direct and substantial way to Student's unexcused absences.

3. Implementation of Student's IEP

The District also found Student's excessive absences were not the result of its failure to implement Student's IEP. The District's FIE did not find Student's disability would cause excessive absences. The District's FBA also did not find excessive absences to be an area of behavioral

concern. Thus, nothing in the IEP addressed unexcused absences.

Student's IEP had reasonable accommodations, IEP goals related to behavior, and a BIP designed to address behavioral concerns. Whether the IEP was designed appropriately to meet Student's unique needs is outside the scope of this Decision. What is relevant to this Decision is that the District did not have an opportunity to implement the IEP from September *** - November ***, 2022, because Student did not attend school. There were no special provisions in Student's IEP designed to induce Student to attend school, because attendance was not an issue while Student attended school in the District or previously in *** ISD. Thus, the unexcused absences cannot be blamed on the District's failure to implement Student's IEP.

4. Manifestation Determination Conclusion

If the 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).

In this case, the District properly determined the absences were not related to Student's disability and were not the result of its failure to implement Student's IEP. Thus, the District could expel Student in accordance with its Student Code of Conduct.

VII. CONCLUSIONS OF LAW

1. Respondent complied with the IDEA's procedural disciplinary requirements when it

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subjected Student to expulsion proceedings for violating Respondent's Student Code of Conduct and then conducted an MDR to ascertain whether the conduct that resulted in a disciplinary change of placement was related to Student's disability. 34 C.F.R. § 300.530.

2. Student's unexcused absences were not caused by or directly and substantially related to Student's disability and were not the result of the District's failure to implement Student's IEP. 34 C.F.R. § 300.530(e); Tex. Educ. Code § 37.004.

ORDER

Based upon the foregoing findings of fact and conclusions of law, Petitioner's requests for relief are hereby **DENIED**. The District may expel Student in accordance with its Student Code of Conduct.

SIGNED February 22, 2023.



Ian Spechler
Special Education Hearing Officer
For the State of Texas