

SOAH Docket No. 701-25-03505.IDEA
TEA Docket No. 053-SE-1024A

Before the State Office of Administrative Hearings

**STUDENT, by next friend
PARENT,
Petitioner**

v.

**West Orange-Cove Consolidated Independent School
District,
Respondent**

FINAL DECISION

I. STATEMENT OF THE CASE

Student (Student), by next friend Parent (Parent or, collectively, Petitioner), brings this action against the West Orange-Cove Consolidated 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 Student violated the

Student Code of Conduct and whether the conduct in question was caused by, or had a direct and substantial relationship to, Student's disability.

The Administrative Law Judge (Judge) concludes that Student violated the Student Code of Conduct and that Student's conduct was neither caused by, nor had a direct and substantial relationship to, Student's disability. Also, Student's conduct was not the result of the District's failure to implement Student's individualized education program (IEP). Therefore, the conduct at issue was not a manifestation of Student's disability, and the District properly assigned Student to the Disciplinary Alternative Education Program (DAEP).

II. DUE PROCESS HEARING

The expedited due process hearing was conducted on November 15, 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 attorneys Rebecca Bailey and Andria Miller with Thompson and Horton LLP. *** Assistant Superintendent of Student Services for the District, attended the hearing as the party representative. In addition, *** a District-contracted licensed specialist in school psychology (LSSP) attended as the District's expert.

The parties offered six joint exhibits, and all were admitted. Petitioner offered seven separately disclosed exhibits, and all were admitted without objection.

Petitioner offered the testimony of the campus principal, a District student safety officer, a campus assistant principal, a District educational diagnostician, and Parent.

Respondent offered eleven separately disclosed exhibits, and all were admitted without objection. Respondent offered the testimony of a campus counselor, the District Assistant Superintendent for Student Services, and a District-contracted LSSP. The hearing was recorded and transcribed by a certified court reporter. The Decision in this case is due December 6, 2024.

III. ISSUES

A. PETITIONER'S ISSUES

Petitioner raised the following issues for decision in this case:

1. Whether the District properly determined Student's conduct was not caused by, or did not have a substantial relationship to, Student's disability.
2. Whether Student's conduct was a direct result of the District's failure to implement Student's IEP.

B. RESPONDENT'S POSITION

The District generally and specifically denied Petitioner's factual allegations and legal claims and denied responsibility for providing any of Petitioner's requested relief.

IV. PETITIONER'S REQUESTED RELIEF

Petitioner seeks the following items of relief:

1. Order the District to remove Student's placement in the DAEP.
2. Order the District to provide a new functional behavior assessment (FBA).

V. FINDINGS OF FACT

1. Student is a *** grader. Student began receiving special education services in ***grade as a student with emotional disturbance (ED). Student has not attended school since Student's assignment to the DAEP.¹
2. The District completed a full and individual evaluation (FIE) for Student on October ***2021. The evaluation was a three-year reevaluation to determine if Student continued to need special education services as a student with ED. The evaluation concluded Student displayed difficulties controlling Student's negative behavior under normal circumstances. Student was rude and argumentative when Student did not get Student's way or when asked to do things Student did not want to do. At the time, Student had several disciplinary referrals for issues such as hitting other students, stealing, disrupting class, and non-compliance.²
3. The FIE indicated that Student took medication for attention deficit hyperactivity disorder (ADHD). Despite the medication, Student moved constantly, talked excessively, fidgeted in Student's seat, and interrupted others.³
4. The 2021 FIE included an FBA. The FBA identified an antecedent strategy which suggested that Student should be monitored frequently and consistently in all structured and unstructured school settings. The FIE also made the following recommendations for Student's Admission, Review, and Dismissal (ARD) committee: allow Student to feel Student has some control by providing options in the order of tasks; provide hands-on activities as much as possible to keep Student engaged; use the "chunking" strategy for

¹ Joint Exhibit (JE) 3 at 1; Respondent's Exhibit (RE) 1 at 16; Transcript (Tr.) at 238; JE 1 at 7; RE 1 at 1.

² JE 1 at 1, 7, 22.

³ JE 1 at 22.

independent assignments; ***, Student should have a designated area or room where Student can go to calm feelings of frustration with adult guidance and supervision; and adults can remind Student to make positive choices and change behaviors.⁴

5. An ARD committee met on September *** 2024, for an annual review. Parent and Student attended the meeting. Student's IEP included present levels of academic achievement and functional performance, classroom accommodations, State of Texas Assessments of Academic Readiness test accommodations, a behavior intervention plan (BIP), an annual goal each for English, math, and behavior, and *** services. The committee also determined that Student would be educated in the general education setting with inclusion and behavior supports. The meeting ended in agreement.⁵
6. Student's IEP stated that Student's disability of ED impacts Student's learning throughout the curriculum. Student displays inappropriate types of behaviors or feelings under normal circumstances. Student is frequently inattentive and off task during instruction. Student's behaviors result in missed instructional time leading to incomplete assignments and decreased performance.⁶
7. During the ARD committee meeting, the District conducted a review of existing educational data. The committee determined new evaluations were needed including cognitive and achievement testing, and a psychological evaluation.⁷

⁴ JE 1.

⁵ JE 3, 13.

⁶ JE 3 at 6.

⁷ Tr. at 146.

8. Student's BIP from September *** 2024, included the following interventions: ***; designated area – provide a designated area for Student during unstructured periods of the day; first this, then that – follow less desirable tasks with more desirable tasks and make completion of the first task necessary for the second; positive reinforcement – ***.⁸
9. The ***. It is also where Student checks in and out with Student's case manager twice a day. Students can earn rewards and have access to positive behavior intervention supports in the room.⁹
10. On September ***, 2024, Student had a disagreement with another student in a hallway on campus. When the assistant principal arrived, Student was visibly upset. The assistant principal talked to Student about making good choices, and Student left him in "a good mind state."¹⁰
11. After the conversation with the assistant principal, Student went to the counselor's office and admitted Student had a verbal altercation in the hallway with a group of girls. Student was agitated when Student arrived in the counselor's office. Student told the counselor Student wanted to fight but did not because Student had too much to lose ***. The counselor helped Student calm down and discussed ways to diffuse tense situations with

⁸ JE 3 at 20; Tr. at 189.

⁹ Tr. at 188-89.

¹⁰ Tr. at 113, 115-17.

other students. The bell rang for lunch, and Student left the counselor's office in a calm and composed manner.¹¹

12. After leaving the counselor's office, Student went to lunch in the cafeteria and was involved in a fight with one of the same students ***.¹²
13. Due to the fight, Student went to the emergency room, and the clinician recommended Student not attend school from September 30 through October 4, 2024. Student's pediatrician thereafter completed a homebound eligibility form and recommended homebound instruction from October 1 through October 31, 2024.¹³
14. A District police officer used a restraint on Student to separate Student from the other student. A campus administrator notified Parent two days later. Meanwhile, Student was suspended for three days pending the investigation of the fight.¹⁴
15. Student's ARD committee met on September *** 2024, for the manifestation determination review (MDR). Parent attended the meeting. The MDR ARD committee reviewed Student's psychological evaluation, FBA, FIE, BIP, discipline referrals, the cafeteria video of the incident, and Parent information. Student's three-year reevaluation was due, and the committee agreed to include an FBA in the reevaluation. The committee also agreed that Student's BIP would be updated as needed. Finally, the committee determined that the

¹¹ RE 4; Tr. at 175, 182.

¹² JE 2; JE 6; Tr at 21, 250-51.

¹³ Petitioner's Exhibit (PE) 6 at 5; PE 7.

¹⁴ JE 2 at 9, 11; Tr. at 12.

conduct in question was not caused by, or did not have a direct and substantial relationship to, Student's disability, and that it was not a result of the District's failure to implement Student's IEP. Parent disagreed.¹⁵

16. At the beginning of the MDR ARD committee meeting, Parent questioned the monitoring of the cafeteria at the time of the incident. The District noted that Student had the opportunity to leave the situation prior to the fight. The District acknowledged that Parent did not receive a copy of the restraint documentation on the day of the incident, that Parent was not timely notified of the restraint, and that monitoring in the cafeteria would be adjusted for the safety of all students.¹⁶
17. On September ***, 2024, the District hand-delivered a letter to Parent with notice of Student's assignment to the DAEP (Notice) for *** days beginning September ***, 2024. The Notice explained that Student violated the Student Code of Conduct for fighting (defined as mutual combat between two or more students using blows of force to overcome the other student) and included a Notice of Suspension for three days effective September ***, 2024.¹⁷
18. The Notice also included a DAEP placement form completed by the assistant principal. According to the form, the discipline committee considered Student's intent and disciplinary history, determined that Student's behavior was not self-defense, and found that Student's disability did not substantially impair Student's ability to appreciate the wrongfulness of Student's conduct.¹⁸
19. The District determined that the fight was mutual combat and not self-defense on Student's part. A student's conduct is considered self-defense when the student has no other choice. The District determined in this instance that Student had a choice to walk away.¹⁹

¹⁵ JE 2 at 5, 6, 8.

¹⁶ JE 2 at 5; PE 1; PE 2; Tr. at 194, 196.

¹⁷ JE 4; RE 6 at 20.

¹⁸ JE 4 at 6.

¹⁹ Tr. at 109; 194.

20. Parent appealed the DAEP placement decision, and the appeal was denied.²⁰
21. Student's case manager log from ***. Student does not have a history of fighting ***.²¹
22. Student's ARD committee met on October *** 2024. The purpose of the meeting was to discuss Student's services, Student's ongoing eligibility, and homebound services. The committee also discussed Student's BIP, and Parent indicated Parent did not have any suggestions or concerns. The committee determined Student's BIP was appropriate.²²

VI. DISCUSSION

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.

²⁰ RE 8 at 6-10.

²¹ RE 5; RE 9; Tr. at 18.

²² RE 1 at 16; Tr. at 165.

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;
- 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.

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

The IDEA requires an ARD committee to convene within ten 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 in the student's file—including the student's IEP, teacher observations,

and any relevant information provided by the parent—and 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 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 in this case complied with these regulatory requirements. The ARD committee convened within the ten-day statutory period to complete an MDR. During the MDR, committee members reviewed Student’s FIE, current IEP, school discipline history, information from Student’s teachers, and input provided by Parent. Based on its review, the committee determined that the conduct in question was not a manifestation of Student’s disability, and Parent disagreed.

1. Relationship Between Student’s Disability and the Conduct at Issue

The District correctly determined that Student’s conduct on September ***, 2024, was not caused by, and had no direct and substantial relationship to, Student’s disability. Student is eligible for special education as a student with ED. Under the IDEA, an emotional disturbance means a condition that exhibits one or more characteristics, including inappropriate behaviors or feelings under normal circumstances over a long period of time and to a marked degree, and that adversely affects the student’s educational performance. 34 C.F.R. § 300.8(c)(4). The inappropriate behaviors exhibited by Student and addressed in Student’s BIP included off-

task behavior and refusal to follow adult authority. Aggression was not one of the behaviors identified in the FBA or included in Student's BIP. ***. None of them were related to fighting or having issues with other students.

Moreover, Student talked with two District staff members prior to the fight and mentioned that, although Student was upset, Student realized fighting would put Student's preferred activities of *** at risk. Student was calm when Student left each of the staff members. In the cafeteria, Student had time to walk away from the fight and instead chose to talk back to the other student, prepare for the fight by removing Student's jacket, and stand ready for a fight with Student's hands on Student's hips as the other student approached Student. This behavior supports the District's conclusion that the fight was not related to Student's disability of ED because Student contemplated the risks of Student's actions, chose not to walk away or go to the PASS classroom, and Student's argument was with another Student and not an authority figure.

Petitioner nonetheless argues that, if Student does not act appropriately under normal circumstances, Student cannot be expected to act appropriately under what Parent refers to as abnormal circumstances like fighting. This argument misses the mark. Whether a student displays inappropriate behavior under normal circumstances is determinative of the ED eligibility inquiry—not a disciplinary determination. The inquiry for purposes of this proceeding focuses on Student's behavior and asks whether Student's conduct on September 23 was caused by, or directly and substantially related, to Student's ED (as manifested in Student's case through

off-task behavior and refusal to follow adult authority). Furthermore, Parent did not express any concerns with Student's BIP in effect at the time of the incident.

Given Student's behavior profile, discipline history, evaluation data, and IEP, the Judge concludes there is no causal or direct and substantial link between Student's ED and Student's conduct of fighting.

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. Parent, on the other hand, argues that Student's FBA indicated Student should be monitored frequently and consistently in all structured and unstructured school settings and that the fight was a result of the district not following the FBA. This monitoring, however, is listed under the antecedent strategies of the FBA and was not included in the evaluator's recommendations, nor was it included in Student's BIP. Parent's argument reflects a misunderstanding of the relationship between the FBA and Student's BIP. The only behavior interventions that must be implemented are the ones that are reflected in the finalized BIP and included in the IEP.

The District implemented Student's IEP as evidenced by Student's daily check-ins and check-outs with Student's case manager. The conflict resolution and cool off interventions of Student's BIP were implemented as well when Student talked with the assistant principal and the counselor prior to the fight. The PASS room was also always open to Student to utilize as Student's designated area during unstructured periods of the day.

Parent also contends that the number of welfare check-ins with Student's case manager were excessive and indicate a need for Student's IEP to be updated. However, whether or not Student's IEP is appropriate is not an issue in this expedited case.

Petitioner presented no evidence 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 the evidence showed that Student's conduct was not caused by, or had no direct and substantial relationship to, Student's disability, and had no 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.

VI. 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 C.F.R. § 300.530.
2. Petitioner failed to prove that Student's conduct on September ***, 2024, had a direct and substantial relationship to Student's disability or that the conduct at issue was the direct result of a failure to implement Student's IEP. 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b).
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 request for relief is **DENIED**.

Signed December 6, 2024.

ALJ Signature:



Kasey White
Presiding Administrative Law Judge

VII. NOTICE TO THE PARTIES

The Decision of the Administrative Law Judge in this case is a final and appealable order. Any party aggrieved by the findings and decisions made by the Judge 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), .516; 19 Tex. Admin. Code § 89.1185(n).