

DOCKET NO. 064-SE-1024

STUDENT b/n/f PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioners	§	
	§	
v.	§	
	§	HEARING OFFICER FOR
	§	
KLEIN INDEPENDENT SCHOOL DISTRICT,	§	
Respondent	§	
	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. Statement of the Case

Petitioners, Student b/n/f Parent (collectively, Petitioner), filed a request for an expedited impartial due process hearing (the Complaint) pursuant to the Individuals with Disabilities Education Act (IDEA) and its implementing state and federal regulations. The Complaint was received by the Texas Education Agency (TEA or Agency) on the 25th day of October 2024, and the Notice of Filing of Request for a Special Education Due Process Hearing was issued by TEA on October 25, 2024. The Respondent to the Complaint is the Klein Independent School District (hereinafter District or Respondent).

The primary issues in this expedited case are whether the District violated provisions of the IDEA, and particular, the issues concern whether the Student’s conduct that formed the basis for the District’s disciplinary action, that being the decision to change the Student’s placement to a Disciplinary Alternative Educational Program (hereinafter DAEP), was a manifestation of the Student’s disability or the result of the District’s failure to properly implement the Student’s Individual Education Plan (IEP) and specifically Student’s Behavior Intervention Plan (BIP). The hearing officer concludes that the Student’s conduct was not a manifestation of Student’s disability, and thus the District’s placement is upheld.

II. Issues

A. Petitioner's Issues

Petitioner alleges that the District violated the IDEA with regard to the conclusion of the Manifestation Determination Review (MDR) and the following issues are to be determined at the expedited due process hearing:

- Whether the District, through the ARD MDR committee, appropriately determined that the Student's conduct was not a manifestation of, or had a direct and substantial relationship to the student's disabilities or the result of the District's failure to implement Student's IEP; and
- Whether the District failed to comply with procedural obligations under the IDEA and related laws.

B. Petitioner's Requested Relief

The Petitioner, in the Complaint, requested that the hearing officer overturn the District's ARD MDR committee's decision and determine that the Student's conduct was a manifestation of Student's disability and the result of the District's failure to follow Student's BIP.

C. Respondent's Issues and Legal Position

The District filed a Response to the Complaint and entered a general denial as well as noting that some of the issues raised in the Complaint were outside of the limited scope of an expedited due process hearing.

III. Procedural History

Upon filing of the Complaint, the Agency assigned the matter to this hearing officer, who then issued the Initial Expedited Procedural Scheduling Order on October 26, 2024. After the Pre-hearing Conference (PHC), the case then proceeded to hearing on November *** 2024, as originally scheduled. A more detailed procedural history is set forth below in Section D, noting all the preliminary matters addressed by the parties and the hearing officer. Post-hearing Orders are detailed in Section F.

A. Representatives

Petitioner was represented throughout the case by Petitioner's Parent, ***, Petitioner Pro Se. The Respondent District was represented by Mr. Matthew Acosta and Mr. Erik Nichols of Spalding, Nichols, Lamp, Langlois.

B. Mediation

The parties did not participate in mediation, although they did participate in a resolution session on October***, 2024, but no agreement was reached. Due to the time constraints in this expedited case, they declined to participate in mediation.

C. Continuances

As this matter was filed and proceeded as an expedited matter, there were no continuances requested or granted in this case.

D. Preliminary Matters

The PHC was conducted on November ***, 2024 in accordance with the schedule set forth in the Initial Scheduling Order, and at that time the parties noted that they declined to participate in mediation. The parties also agreed that the due process hearing would be limited to only those issues within the jurisdiction of an expedited hearing, that being the appeal of the MDR. The deadlines and procedures for the expedited hearing were reviewed, and the Order reflecting same was issued on November *** 2024.

Thereafter, and pursuant to the Expedited Scheduling Order, the parties timely made their respective disclosures. Joint Exhibits were filed without Objection. The Petitioner filed one Exhibit that was admitted without Objection. The District also submitted Exhibits and Petitioner filed Objections to Respondent's Exhibits 1, 2, 6, and 10. The Objection for Respondent's Exhibit 1 was overruled, and it was admitted. The remaining Respondent's Exhibits were admitted subject to the Respondent demonstrating relevance during the hearing.

E. The Due Process Hearing

In accordance with the Scheduling Order, the expedited due process hearing was then conducted on the Zoom platform on November***, 2024. The Petitioner continued to be Pro Se, and the Respondent District continued to be represented by its counsel Matthew Acosta and Erik Nichols of Spalding, Nichols, Lamp, Langlois. Also present during the hearing were *****Executive Director of Special Programs for the District and***, Director of Special Education for the District.

F. Post-Hearing Matters

Upon completion of the evidentiary due process hearing on November***, 2024, but prior to the formal closure of the hearing, the parties acknowledged the expedited nature of the proceeding. In light of the District's calendar, the Decision Due Date of December 10, 2024, and the hearing transcript completion, the time for the submission of post-hearing briefs was set by agreement for December 3, 2024, and an Order so stating was issued November 19, 2024. Respondent timely filed its Closing Brief, and Petitioner did not file a Brief, but provided a Closing Statement at the conclusion of the hearing.

IV. Findings of Fact*

1. The Student resides with Student's Parent within the boundaries of the Klein Independent School District [hereinafter KISD or District], is *** years old, with a birth date of***, and was in the ***grade at *** School in the District during the time frame addressed in this case.¹
2. Student had been enrolled in the District since at least 2016, as an evaluation was conducted in 2016, dated February ***, 2016. A psychological evaluation was done thereafter in 2017, and a re-evaluation completed May ***, 2018.²
3. The Student was eligible for special education with an emotional disturbance (ED). Student's IEP in effect at the time relevant in this case was established during the annual review ARD on March ***2024.³
4. The Student's IEP provided for time in the *** classroom, which is designed to assist those students who need *** interventions and emotional support.⁴
5. The District conducted a psychological evaluation of the Student during the spring of 2024, and it was completed on May ***, 2024.⁵

**References to the Due Process Hearing Record throughout this section are as follows: Citations to Petitioner's Exhibits and Respondent's Exhibits are designated with a notation of "P" or "R" respectively, followed by the exhibit number or letter and page number. Citations to Joint Exhibits are designated with a notation of "J", and followed by the exhibit number and page number. Citations to the transcript are designated with a notation of "T" followed by the page number.*

¹ J.1; J.4.

² J.9.

³ J.1.

⁴ J.1; R.11:4.

⁵ T.26; J.2

6. ***, a District school psychologist or Licensed Specialist in School Psychology (LSSP) with twenty-five years of experience, assessed the Student by completing a comprehensive psychological evaluation. The intent of the evaluation was to update the Student's emotional, social, and behavioral areas.⁶
7. ***testified that in completing this evaluation, she used a number of tools for the assessment. These included a review of Student's special education records dating back to 2016, current teacher input and information, as well as interviews and rating scales.⁷
8. She noted that while she did conduct observations of the Student, she did not observe the incident that is the subject of the disciplinary action. She also stated that during the Student's ***grade year, and the beginning of this year, there was no documentation for any physical aggression toward adults.⁸
9. ***also conducted a Functional Behavioral Assessment (FBA) of the Student and testified that it showed Student's poor compliance with adult directives, poor frustration tolerance and poor tolerance with peer interactions.⁹
10. The evaluation confirmed that the Student qualified for special education with an Emotional Disturbance (ED), and ***noted that the Student's behavior consisted primarily of poor compliance with adult directives and low frustration tolerance. These situations often resulted in dysregulation and avoidance behaviors such as verbal statements and shutting down.¹⁰
11. The Student's records, however, show that the Student did demonstrate physical aggression as well as verbal aggression in response to adult requests for compliance with directives. This was in March of 2023, which would have been toward the end of the *** grade. These antecedents were the same as with other avoidance behaviors. Also in the record was documentation of early behaviors of aggression, and physical aggression toward others was noted as a target behavior in 2020. Further, physical aggression with peers was noted during spring 2024.¹¹
12. A revision to the annual ARD meeting was held on May***, 2024, at which time additional services were added to the Student's IEP, and the Student's Parent was in agreement with the IEP. These included additional support time in Math and Science.¹²

⁶ T. 26-27; J.2.

⁷ T.27-29.

⁸ T. 44.

⁹ T. 30.

¹⁰ T. 31, 38.

¹¹ J. 2:7-8, 10, 12.

¹² T.10, 15-16; J.3:8, 16-20.

13. During the May***, 2024 meeting the ARD committee also revised the Student’s BIP to address the Student’s difficulty with complying with directives as well as Student’s poor frustration tolerance.¹³
14. The testimony and record demonstrate that the Student most often demonstrated avoidance behavior, and often this included a history of elopement. This occurred when Student was directed to do school work and when Student thought the work was too long or too difficult. ***also noted that the Student would engage in poor frustration tolerance and emotional dysregulation in order to escape the demand on Student.¹⁴
15. ***also noted that prior to the incident in question, the Student had no write-ups for aggression directed toward adults since Student has been attending the ***school.¹⁵
16. On September ***, 2024, an incident occurred that served as the basis for the Student’s disciplinary placement and this hearing.¹⁶ The specific nature of the events, however, are somewhat unclear.
17. The Student’s *** teacher, ***sent an email to the Student’s Parent within just a couple hours of the incident. In the email, the teacher stated that the Student that morning was upset due to having to take a test, and Student was throwing things around the classroom. She also stated that Student *** and *** a touch board.¹⁷
18. ***email to Parent also stated that the Student then left the *** room and returned two more times. Upon Student’s last return, Student was ***, and the teacher called for administrative back-up. According to ***email, the Student then *** her out of the way as Student was leaving the room.¹⁸
19. ***email also stated twice that she was recommending a freeze in the *** rather than any disciplinary suspension.¹⁹
20. At the time of the incident, some de-escalation techniques were utilized by ***as well as other District staff.²⁰
21. Confusion exists as to whether the *** teacher was in the way and blocking the Student’s exit from the classroom. More specifically, as noted in her email to Student’s Parent shortly after the incident*** stated that the Student “***out of the way”, implying that she was in

¹³ T.35-36, 38; J.3:16-20.

¹⁴ T.11, 13-14, 34, 36, 52, 55.

¹⁵ T. 44-45.

¹⁶ T.9; J.5; P.1.

¹⁷ P.1.

¹⁸ P.1.

¹⁹ T.10; P.1.

²⁰ P.1; R.4, 7.

the way. The same statement is in the discipline write up with unknown inserts in one of the reports.²¹

22. Other statements, however, allege that Student had room to pass, and ***noted that as part of the MDR, ***modeled the way she was standing in the doorway, and noted that the Student had room to pass. Other statements submitted by Respondent noted that the Student was upset and engaged in a number of aggressive behaviors.²²
23. ***also discussed the MDR as she was present during it and concluded that the behavior in question was not a manifestation of the Student's disability or the result of the District's failure to implement Student's IEP, including Student's BIP. She noted that Student's patterns of behavior did not include aggression toward adults. The Student's Parent however, had reported that Student's behavior had a tendency to result in physical aggression.²³
24. No witnesses to the incident were called by either party to testify at the due process hearing.
25. A report of the campus administration stated that the Student violated the Klein ISD Student Code of Conduct by committing an *** on an employee and therefore Student was expelled. A campus conference on the issue was to be held October ***, 2024.²⁴
26. The District also scheduled the Student's MDR for October *** 2024, and notified Student's Parent on October ***, 2024.²⁵
27. According to***, during the MDR, the teacher*** explained the incident, and demonstrated how she was standing in the doorway.²⁶
28. At the MDR ARD meeting, the committee considered the disciplinary issue, and reached a decision that the conduct in question was not a manifestation of, or substantially related to, Student's disability or the direct result of the District's failure to implement the IEP. The Student's Parent disagreed with the determination.²⁷
29. As evidenced by Respondent's Exhibit 9, on October ***, 2024, ***, Executive Director of Student Services for the District, held an evidentiary hearing to determine the if the

²¹ J.5: 11, 18.

²² T. 56-57; P.1; J.6:2. R.4.

²³ T.43-44.

²⁴ R.3

²⁵ J.4.

²⁶ T.56-57.

²⁷ J.5.

expulsion should be upheld. She decided that the discipline should be modified and changed from an expulsion to a 45-day placement in the District's DAEP.²⁸

30. There was nothing presented showing what evidence Ms. *** considered in making her determination.
31. The Student's Parent testified that during the incident, Student was merely trying to escape, and elopement has always been a target behavior, that *** was in the way, and that Student did not intend to ***, but rather needed to leave the room.²⁹
32. Testimony from ***, the District's *** teacher at the DAEP noted that she would be able to implement the Student's IEP while Student was attending the DAEP.³⁰
33. Evidence also showed that the Student has not enrolled in or attended the District DAEP. Further, the Student is no longer enrolled in the District.³¹

V. Discussion

The following discussion reviews the legal standards that govern the considerations and issues brought forward in this case.

A. Burden of Proof

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. The burden of persuasion or proof falls upon the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Teague Ind. Sch. Dist. v. Todd L.*, 999 F. 2d 127, 131 (5th Cir. 1993). No distinction has been established between the burden of proof in an administrative hearing or in a judicial proceeding. *Richardson Ind. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n.4 (5th Cir. 2009).

In terms of the application of the approach, the Fifth Circuit went on to establish that a presumption exists "in favor of a school system's educational plan, placing the burden of proof on the party challenging it". *White ex Rel. White v. Ascension Parish Sch. Bd.* 343 F.3d 373, 377 (5th Cir. 2003); *Teague* at 132. This expedited case seeks to overturn the District's MDR finding and the Student's disciplinary placement. The burden of proof is on Petitioner.

²⁸ R.9.

²⁹ T.11-12.

³⁰ T.61-62.

³¹ T.19, 61-62.

B. Disciplinary Removals Under the IDEA

Under the IDEA, a change in placement to an alternative educational setting must afford a student with a disability who receives special education certain procedural and substantive rights. While school districts have the authority to discipline students with disabilities, in doing so, a school district must follow its code of student conduct and impose only discipline consistent with that imposed upon students without disabilities. A district must also consider each matter, making a case-by-case determination. 34 C.F.R. §300.530. In addition, when changing a student's placement for disciplinary purposes, the district must first determine if the alleged conduct that violated the code of student conduct was a manifestation of the student's disability or the result of the district's failure to implement a student's IEP. Further, if the disciplinary placement is made, the district must provide special educational services in the alternative placement. 34 C.F.R. §300.530.

C. The Manifestation Determination Review

If students who qualify for special education violate the code of conduct of the local education agency (LEA) or commit an act that would be disciplined, that they are entitled to a review in order to determine whether that conduct was a manifestation of that student's disability or the result of the district's failure to implement the IEP. Thus, a change of placement of a student with a disability who receives special education services may only be made by an ARD committee after conducting a manifestation determination review within ten school days of any decision to change a student's placement. 34 C.F.R. §300.530 (e); TEX. EDUC. CODE §37.004 (a)-(b). More specifically, the ARD committee must:

(1). ...review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine:(i) If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) If the conduct in question was the direct result of the LEA's failure to implement the IEP..

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.. 34 C.F.R. §300.530 (e). Should the ARD committee determine that the conduct in question was a manifestation of the student's disability, then the ARD committee must either modify any existing BIP or conduct a functional behavioral assessment (FBA) and develop a BIP. 34 C.F.R. §300.530 (f).

In addition, the MDR process must involve a review of all of the relevant information in the student's file, and the IDEA provides that considerations with regard to the appropriateness of the change in placement may include any unique circumstances on a case-by-case basis. 34

C.F.R. §300.530(a). Further, if a child with a disability is assigned to a DAEP, then the LEA must assure that the student receives educational services so to participate in the curriculum and make progress on the student's goals.

D. Due Process Review of the MDR

Finally, the IDEA provides that the parent of a child with a disability may appeal a disciplinary placement or manifestation determination decision through the due process hearing procedures. 34 C.F.R. §300.532 (a). The statute further provides that the due process hearing be an expedited one, as is the case in this matter. The statute also provides that when a parent appeals the MDR, a hearing officer shall make a determination regarding whether the conduct is a manifestation of the student's disability.

VI. Analysis

In this case, the District determined that that the Student committed an assault on an employee of the District, specifically***, the Student's BASE teacher. The District determined that the conduct or the assault was a violation of the District's Student Code of Conduct, and imposed expulsion. As the Student was receiving special education services, Student is entitled to a MDR. The following examines the issues presented in this case, considering the evidence and the applicable law.

First, as noted earlier, the burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Schaffer v. Weast*, 546 U.S. 49 (2005). This expedited case seeks to overturn the Student's ARD Committee MDR finding and resulting disciplinary placement. The burden of proof is on Petitioner. Petitioner contends that the MDR was in error, urging that the Student's conduct was a manifestation of Student's disability.

An initial consideration is that no claims of procedural violations were made with regard to the process of conducting the MDR. As noted, School districts may discipline students with disabilities, including removal to a disciplinary alternative educational setting (DAEP). The question here is whether the ARD MDR committee erred in its decision that the Student's behavior was not a manifestation of Student's disability. The evidence presented at the hearing must be considered in making that determination. And the evidence was unclear, as no witness who was present at the time of the incident testified at the hearing. Petitioner's contention is that the Student was merely trying to elope and that the teacher was in the way. Clearly, elopement is one of Student's common target behaviors. Further, while testimony noted that aggression toward adults was not part of the Student's pattern of behavior, in the email to Student's Parent, Student's teacher noted numerous aggressive acts such as ***.

But again, no witness who was present during the incident testified, although the teacher's email did note that the Student pushed and shoved her out of the way. However, as the burden is on the Petitioner, there was not sufficient evidence to overturn the ARD MDR committee's decision. Therefore, the evidence was insufficient to determine that the disability was a manifestation of Student's disability or whether the District failed to implement the Student's BIP.

As required by the IDEA, the District in this matter convened the Student's ARD Committee to consider the disciplinary placement in light of Student's disability. In conducting the MDR, the ARD committee, with the exception of the Student's Parent, answered no to both questions, thereby determining that the conduct was not a manifestation. The IDEA also provides that, when making a change in placement, school personnel may consider any unique circumstances on a case-by-case basis. 34 C.F.R. §300.530 (a). ***, a longtime District employee, testified that all of the evidence was in fact considered by the ARD MDR committee, and no evidence was presented demonstrating otherwise.

Petitioner also asserted that the conduct in question was a direct result of the District's failure to implement the Student's IEP. Yet, no evidence was presented showing that the conduct in question was the result of the District's failure to implement the Student's BIP. No evidence was presented of what specifically or generally the District failed to do so to establish that the District failed to implement the Student's IEP, and specifically BIP.

As the conditions in paragraph 34 C.F.R. §300.530(e) have not been met, then the conduct is not a manifestation of the Student's disability. As the District has already imposed the placement in the DAEP, its decision is upheld.

VII. Conclusions of Law

1. This Student is eligible for a free appropriate public education under the provisions of IDEA, 20 U.S.C. §1400, et seq., 34 C.F.R. §300.301 and 19 TEX. ADMIN. CODE §89.1011.
2. The Klein Independent School District is responsible for properly identifying, evaluating, and serving students under the provisions of IDEA, 20 U.S.C. §§1412 and 1414; 34 C.F.R. §300.301, and 19 TEX. ADMIN. CODE §89.1011.
3. Respondent complied with the IDEA's procedural requirements when it conducted the manifestation determination review to ascertain whether the Student's conduct that resulted in a disciplinary change of placement was related to the Student's disability or the failure to implement the Student's IEP. 34 C.F.R. §300.530.
4. Petitioner, as the party challenging the District's MDR finding, failed to meet the burden of proof on the claims asserted in this case, as the burden is on the party seeking relief.

Schaffer v. Weast, 546 U.S. 49 (2005). *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984).

5. Petitioner failed to meet the burden of proof in establishing that the conduct in question was a manifestation of the Student's disability or the direct result of the District's failure to implement the IEP. 34 C.F.R. §300.530(e)1; 34 C.F.R. §300.530(e)2.

ORDERS

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, Petitioner's request for relief is DENIED.

All other relief not specifically stated herein is DENIED.

Signed this 10th day of December 2024.

Kimberlee Kovach

Special Education Hearing Officer for the
State of Texas

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. 19 Tex. Admin. Code §89.1185(n); Tex. Gov't Code, § 2001.144(a)-(b)(g).