

SOAH Docket No. 701-24-18032.IDEA

TEA Docket No. 302-SE-0524A

**Before the
State Office of Administrative
Hearings**

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

v.

**School of Science and Technology,
Respondent**

FINAL DECISION

*** (Student), by next friend *** (Parent or, collectively, Petitioner), brings this action against the School of Science and Technology (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 the Student violated the Student Code of Conduct and whether the conduct in question was caused by, or had a direct and substantial relationship to, the Student's disability.

The Administrative Law Judge concludes Student did violate the Student Code of Conduct and the District properly expelled Student because Student's conduct was neither caused by, nor had a direct and substantial relationship to, Student's disability. The conduct also was not the result of the District's failure to implement Student's individualized education program (IEP). Therefore, the conduct is not a manifestation of Student's disability.

I. DUE PROCESS HEARING

The expedited due process hearing was conducted on August 14, 2024, via the Zoom videoconferencing platform. Student was represented throughout this litigation by Student's legal counsel, Holly Terrell of the Law Office of Holly Terrell, PLLC. Parent also attended the hearing. The District was represented throughout this litigation by its legal counsel, Chris Schulz with Schulman, Lopez, Hoffer & Adelstein, LLP. In addition, ***, the District's Director of Special Education, attended the hearing as the party representative.

The parties offered joint and separately disclosed exhibits. The parties jointly offered 6 exhibits. Petitioner offered 19 exhibits, and all were admitted without objection. Petitioner offered testimony of Student's private licensed psychologist, the District Director of Special Education, a District-contracted Licensed Specialist in School Psychology (LSSP), and Student.

Respondent offered 5 exhibits, and all were admitted over various objections. Respondent offered testimony of the campus assistant principal/Dean of Students.

The hearing was recorded and transcribed by a certified court reporter. Both parties filed written closing briefs. The Decision in this case is due August 28, 2024.

II. ISSUES AND REQUESTED RELIEF

A. PETITIONER'S ISSUES

Petitioner raised the following issues for decision in this case:

1. Whether the District failed to conduct a proper manifestation determination review (MDR) meeting because Student did not violate the Student Code of Conduct.
2. Whether the District properly determined Student's conduct in question was not caused by, or did not have a substantial relationship to, Student's disability.

B. PETITIONER'S REQUESTED RELIEF

Petitioner requested an order requiring the District to reverse Student's expulsion.

III. FINDINGS OF FACT

1. Student is *** years old and enrolled in the District as a *** grader. Student is eligible for special education services under the criteria of autism.

Before Student's withdrawal from the District on January ***, 2024, Student was a *** grader at the School of Science and Technology.¹

2. The District conducted a full and individual evaluation (FIE) in 2018. The FIE used the Woodcock-Johnson IV tests for cognitive abilities, and Student's general intellectual ability was a ***, which is in the average range. The FIE indicated Student had difficulty interacting with Student's peers and lacked the ability to communicate Student's needs in a manner others could understand. Student had trouble relating to other children emotionally, was lacking socially, and used immature language.² No concrete examples were provided for these conclusions.
3. The District conducted a review of existing evaluation data (REED) in 2021. The REED relied on the FIE from 2018 and determined no new evaluations were needed and Student did not need a functional behavior assessment (FBA) because Student's behaviors were deemed appropriate for a Student on the autism spectrum.³
4. Student's admission, review, and dismissal (ARD) Committee met on April ***, 2022, for an annual review. Parent attended and agreed to the IEP. Student exhibited strengths in making eye contact, working with older people/adults, standing up for Student's rights, finishing work with reminders, using time wisely, and treating others with respect. Student had needs in working with kids Student's own age (student prefers to work alone), asking questions, getting to school on time, and accepting help.⁴
5. Student's April ***, 2022 IEP did not include any goals for behavior, any behavior/social skills accommodations, or a behavior intervention plan (BIP). Student was educated in the general education setting.⁵

¹ Petitioner's Exhibit (PE) 13; Joint Exhibit (JE) 4 at 1; JE 5 at 1; Transcript (Tr.) at 212-13.

² JE 1 at 1, 10; JE 2 at 3-4.

³ JE 2 at 2, 4.

⁴ JE 3 at 1, 5, 18, 20.

⁵ JE 3 at 9-11, 14.

6. Student's ARD Committee met on April ***, 2023, for an annual review. Parent attended, expressed no concerns, and agreed with the Committee. Student's strengths and needs remained the same as the previous ARD Committee meeting. Again, Student had no goals for behavior, no behavior/social skills accommodations, and no BIP. Student continued to be placed in the general education setting.⁶
7. The ARD Committee reviewed the autism supplement. Parent indicated Student can generalize skills across settings and that no In-Home, Community-Based, or Parent/Family Training was needed. The Committee agreed Student can follow the campus Code of Conduct without modifications and accommodations. Student was also making social behavioral progress with the typical staff-to-student ratio.⁷
8. Student had two previous discipline incidents—***.⁸
9. On November ***, 2023, Student ***. Student ***." On the same day, Student ***. Student ***:

⁶ JE 4 at 1, 9, 12-13, 16 - 20, 22.

⁷ JE 4 at 25 - 26.

⁸ Respondent's Exhibit (RE) 1.

***⁹

10. On November ***, 2023, Student ***. ***. The District investigated the incident and took a written statement from Student. The Dean of Students conferenced with ***.¹⁰
11. On November ***, 2023, after school, the Dean of Students was made aware ***. ***. The District began an investigation which included reviewing ***. They did not speak to Student about these allegations.¹¹
12. On the same day, the District sent out a notice to all Parents/Guardians, which stated the District was aware of a recent ***.¹²
13. Student was suspended on November ***, 2023, pending the investigation. The following day, the District's discipline committee met to determine Student's discipline. The discipline committee considered the ***. The committee

⁹ PE 10; RE 3 at 4-6.

¹⁰ RE 2 at 1, 4, 8-33.

¹¹ Tr. at 2545, 257, 260, 264, 273; RE 3.

¹² PE 6.

considered Student's actions along with the Student Code of Conduct and decided expulsion was appropriate.¹³

14. On December ***, 2023, the District sent Parent a letter stating expulsion was recommended for Student's violation of the Student Code of Conduct for the following offenses: ***. The letter notified Parent a hearing would be held at a future date and time after the MDR ARD Committee meeting. The Student Code of Conduct does not define ***.¹⁴
15. Student provided the District with an affidavit dated December ***, 2023. In the affidavit, Student explained that Student's ***. Additionally, Student claimed ***. Student admitted Student was ***.¹⁵
16. Student's affidavit also referred to ***. According to the affidavit, Student ***.¹⁶
17. The District held an MDR ARD Committee meeting on December ***, 2023. Parent and Student attended with their attorney. Other attendees included the Dean of Students, a special education coordinator, a District-contracted LSSP, a general education teacher, a special education teacher, a regional special education coordinator, the Director of Special Education, and the District's attorney. The District-contracted LSSP reviewed Student's FIE from 2018; Student's REED from March 2021; all the ***; Student's April

¹³ Tr. at 262-64, 269, 304.

¹⁴ PE 11; JE 6.

¹⁵ PE 10.

¹⁶ PE 10.

***, 2023 IEP; Student’s discipline records; the administration investigation records; and had conversations with Student’s teachers. As for information provided by Parent for the committee’s consideration, the MDR paperwork states only that “Parent disagrees” with no further explanation.¹⁷

18. The District-contracted LSSP determined ***. Student stated at the MDR ARD Committee meeting that Student did not ***. The LSSP reviewed several ***. The LSSP did not speak directly with Student about the intention of ***.¹⁸
19. The MDR ARD Committee determined Student’s behavior was unrelated to Student’s disability of autism, Student’s IEP was being implemented at the time of the incident, and Student did not need an FBA. The LSSP concluded ***.¹⁹
20. The LSSP indicated if Student had issues with saying inappropriate things, it would be noted as “non-verbal or verbal communication difficulties” or “adult or peer socialization difficulty” in Student’s IEPs. Student has no problems with socialization, emotionalization, or behavior. And Student had no teacher infractions or write-ups.²⁰
21. On January ***, 2024, Student’s attorney submitted an appeal of the District’s expulsion decision.²¹

¹⁷ JE 5 at 2, 4 – 8; Tr. 104-111.

¹⁸ Tr. at 135, 138-39, 140-43, 206.

¹⁹ JE 5 at 1-2; Tr. at 143, 181-82.

²⁰ Tr. at 148, 160, 185.

²¹ RE 4.

22. At the hearing, Student's private psychologist stated that, due to Student's autism, Student can ***.²²
23. During the hearing, Student admitted ***, and it happens currently "every now and then."²³

IV. DISCUSSION

A. BURDEN OF PROOF

The burden of proof in a due process hearing is on the party seeking relief. *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.

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;

²² Tr. at 21, 31.

²³ Tr. at 221-22.

- 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 Student Code of 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

Prior to disciplining a student for a violation of the student code of conduct and removing them from school for more than 10 days, a school district must conduct an MDR ARD Committee meeting and determine if the conduct is a manifestation of the student's disability. 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b). In determining whether the conduct is a manifestation of a student's disability, relevant members of the MDR ARD Committee must review relevant information from the student's educational file, including the student's IEP, teacher observations, and any relevant information provided by the parents. The MDR 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 MDR ARD Committee's manifestation determination may file a due process hearing request to challenge the determination. 34 C.F.R. § 300.532(a).

1. RELATIONSHIP BETWEEN STUDENT'S DISABILITY AND THE CONDUCT AT ISSUE

The District correctly determined that Student's conduct (***) on November ***, 2023, was not caused by, and did not have a direct and substantial relationship to, Student's disability. During the MDR ARD Committee meeting, the members reviewed Student's FIE, current IEP, school discipline history, information from Student's teachers, and the input provided by Student's parent. It is unclear exactly which incidents the MDR ARD Committee considered because the Dean of Students and the District-contracted LSSP testified about ***; however, the MDR ARD Committee paperwork only lists the ***. Student did not have a BIP or any behavior goals in Student's IEP because Student had no behavior issues. While Student did have two prior discipline incidents (***), neither one was related to ***. Student's FIE from 2018 and the REED from 2021 indicated Student used ***; however, this is based on data from when Student was *** and neither evaluation indicated any issues with verbal communication or socialization deficits. Additionally, none of Student's current IEPs or teachers indicated any difficulty with social or emotional behavior. Student's

private psychologist stated Student *** due to Student's autism. However, the conduct in question is not an instance of ***. Student admitted Student was ***. Student's *** was unexpected, and Student has no history of ***. The credible evidence established no connection between Student's conduct of *** and Student's disability.

Given Student's behavior profile, discipline history, evaluation data, and IEPs, the Administrative Law Judge concludes there is no causal or direct and substantial link between Student's autism and Student's conduct of ***.

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. Petitioner presented no evidence to show that the District failed to provide Student with Student's special education supports and accommodations. In sum, the evidence does not support a link between the District's implementation of Student's IEP and the conduct at issue.

3. WHETHER STUDENT'S BEHAVIOR VIOLATED THE STUDENT CODE OF CONDUCT

The IDEA and its implementing regulations permit a school district to remove a student with a disability from their current educational placement when the student

violates the district's code of student conduct. 20 U.S.C. § 1415(k)(1); 34 C.F.R. § 300.530(b)-(c). In reviewing an MDR ARD Committee decision in an expedited due process hearing, the administrative law judge may consider whether a violation of the code of conduct took place at all. 34 C.F.R. § 300.530; *Letter to Ramirez*, 60 IDELR 230 (OSEP 2012).

Petitioner argues that Student did not violate the Student Code of Conduct because Student did not ***. According to Petitioner, Student was ***." Unfortunately, even though ARD Committees are required to consider all "relevant" information presented by parents and students during an MDR, the ARD Committee in this case did not address the issue of Student's intent. 34 C.F.R. § 300.530(e)(1). Moreover, it was unclear from District personnel who testified during the hearing why the Committee failed to do so or why Student was not interviewed during the investigation into the incident.

Ultimately, however, Petitioner's distinction is not persuasive. Under the District's Student Code of Conduct, a student may be expelled for "****." The word *** is not defined in the Code of Conduct or in the Student and Parent Handbook, but the common definition is "****."***, Oxford Learner's Dictionaries (10th ed. 2024). Regardless of whether Student intended to ***, Student did intend to ***. Additionally, Student admitted Student wanted to ***. Student's actions were ***;

therefore, the credible evidence supports the conclusion that Student violated the Student Code of Conduct.

Finally, this Administrative Law Judge does not address the *** because, based on the documentation, the MDR ARD Committee did not consider the “***”.

4. MANIFESTATION DETERMINATION CONCLUSION

Because Student’s conduct was not caused by, or did not have a direct and substantial relationship to, Student’s disability, and did not have a direct relationship with a failure to implement Student’s IEP, the conduct at issue is not a manifestation of Student’s disability. Therefore, the District may expel Student for the conduct. 34 C.F.R. § 300.530.

CONCLUSIONS OF LAW

1. Respondent complied with the IDEA’s procedural disciplinary requirements when it subjected Student to removal proceedings for violating the 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 CFR §300.530.
2. Student’s conduct on November ***, 2023, had no direct and substantial relationship to Student’s disability. Petitioner failed to prove the conduct was a manifestation of Student’s disability. 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b); *Schaffer*, 546 U.S. at 62.
3. The District has the authority under the IDEA to expel Student 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 August 28, 2024.

ALJ Signature(s):



Kasey White
Presiding Administrative Law Judge

IX. NOTICE TO THE PARTIES

The Decision of the Administrative Law Judge 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); 34 C.F.R. §§ 300.514(a), 300.516; 19 Tex. Admin. Code § 89.1185(n).