

SOAH Docket No. 701-24-25261.IDEA  
TEA Docket No. 402-SE-0824

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# **Before the State Office of Administrative Hearings**

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**Student., by next friend Parent.,  
Petitioner**  
**v.**  
**Spring Branch Independent School District,  
Respondent**

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## **FINAL DECISION**

### **I. STATEMENT OF THE CASE**

Student. (Student), by next friend Parent (Parent and, collectively, Petitioner), brings this action against Spring Branch Independent School District (SBISD, 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.

Petitioner filed a Request for a Due Process Hearing on August 30, 2024. The main issue in this case is whether the conduct that formed the basis for the District's

decision to change Student's placement to a disciplinary alternative education program (DAEP) was a manifestation of Student's disability. The Administrative Law Judge (Judge) concludes that Student's conduct was not a manifestation of Student's disability, making the District's placement proper.

## **II. DUE PROCESS HEARING**

The due process hearing was conducted on September \*\*\*, 2024, and it was recorded and transcribed by a certified court reporter. Petitioner was represented by Parent. The District was represented by its legal counsel, Erik Nichols and Matthew Acosta with Spalding Nichols Lamp Langlois. The District's Executive Director of Special Education, \*\*\*, attended the hearing as the party representative.

The parties submitted eight joint exhibits which were admitted without objection. Petitioner did not disclose any separate exhibits or witnesses. Respondent submitted two exhibits which were admitted without objection.

Parent testified on behalf of Petitioner. Respondent called the following individuals to testify: the Assistant Principal of \*\*\*, the Assistant Principal of the District's DAEP, and \*\*\*, a Licensed School Psychologist (LSP) with the District. \*\*\* was identified as an expert in psychology in the school setting and in reviewing and interpreting assessments and evaluations.

The parties filed written closing briefs on October 7, 2024, and the Decision is due October 15, 2024.

### **III. ISSUES**

#### **A. PETITIONER’S ISSUE AND REQUESTED RELIEF**

The sole issue in this case is whether the District properly concluded during a manifestation determination review (MDR) by Student’s Admission, Review, and Dismissal (ARD) committee that Student’s conduct from the prior school year in another school district was not a manifestation of Student’s disability. Petitioner requested an order returning Student to Student’s home campus.

#### **B. RESPONDENT’S POSITION**

The District generally and specifically denied Petitioner’s claim that the disciplinary placement was improper and that Student is entitled to the relief requested.

### **IV. FINDINGS OF FACT**

1. Student is a \*\*\*grade student who resides in SBISD with Student’s Parent and \*\*\*. Student attended school in\*\*\*) during the 2023-2024 school year and transferred to SBISD on or about May \*\*\*, 2024.<sup>1</sup>
2. \*\*\* completed Student’s triennial reevaluation along with a written report in January 2022. The evaluation indicated that Student had difficulty controlling Student’s behavior, demonstrated “a great deal of disrespect” for adults, threatened other students, was involved in physical fights, harassed and teased other students verbally, and was destructive with classroom and other students’ property. The evaluation also determined that Student continued to be eligible for special education as a student with \*\*\*and a specific

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<sup>1</sup> Joint Exhibit (JE) 1 at 1; JE 2 at 14, 17; JE 4 at 1; Respondent’s Exhibit (RE) 1 at 1.

learning disability in \*\*\* A functional behavior assessment (FBA) was completed on April \*\*\* 2022, and a behavior support and intervention plan (BSIP) was developed to address Student's behavioral needs.<sup>3</sup>

3. Student's 2023-2024 individualized education program (IEP) included goals for academic performance in written expression, \*\*\*It also included two behavior goals aimed at improving Student's ability to self-regulate by following directions and using calming strategies when frustrated.<sup>4</sup>
4. During the 2023-2024 school year, Student had \*\*\* reported disciplinary incidents that resulted in \*\*\* days of out-of-school suspension, \*\*\* days of in-school suspension, and a \*\*\*-day placement in a DAEP.<sup>5</sup>
5. In November and December 2023, Student received out-of-school suspensions for \*\*\*, being disrespectful to staff, \*\*\*, and making derogatory and \*\*\*. In December and January of 2024, Student received in-school suspensions for \*\*\*and failing to follow staff directives.<sup>6</sup>
6. On February \*\*\* 2024, \*\*\*convened Student's annual ARD committee meeting and completed an MDR of the behavior identified above. \*\*\*s MDR determined that Student's conduct was not caused by, and did not have a direct and substantial relationship to, Student's disability. The MDR further

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<sup>2</sup> JE 1 at 3, 6, 11-12; JE 2 at 28; Transcript (Tr.) at 31-32.

<sup>3</sup> JE 2 at 15.

<sup>4</sup> JE 2 at 9-10.

<sup>5</sup> JE 3.

<sup>6</sup> JE 2.

determined that Student's conduct was not the direct result of a failure to implement Student's IEP.<sup>7</sup>

7. Student received another out-of-school suspension in March 2024 for failure to comply with directives given by the principal and a \*\*\*-day out-of-school suspension related to an incident that occurred in April. Student entered Student's \*\*\*. Student refused to listen to the classroom teacher and \*\*\*. In addition to the three-day suspension, Student was placed in the DAEP for \*\*\* days—from April \*\*\*to May \*\*\*2024.<sup>8</sup>
8. On May \*\*\*, 2024, Student \*\*\*. Student's conduct was considered \*\*\* under \*\*\* student code of conduct and resulted in a \*\*\*-day out-of-school suspension as well as another DAEP placement—this time for \*\*\* days. Student served the suspension but not the \*\*\*-day disciplinary placement. \*\*\*scheduled a meeting to review Student's conduct, but the meeting did not take place.<sup>9</sup>
9. \*\*\*last day of school for the 2023-2024 school year was June 5, 2024.<sup>10</sup>
10. Parent enrolled Student in SBISD on May \*\*\*, 2024. Student started \*\*\*grade in SBISD on the first day of school—August 15, 2024.<sup>11</sup>
11. SBISD held a transfer ARD committee meeting on August\*\*\*, 2024, to discuss Student's special education and related services. The District recommended that Student receive comparable services to those Student received from \*\*\*, including instruction from the \*\*\*teacher in a strategic

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<sup>7</sup> JE 2, 29, 31; JE 4 at 2.

<sup>8</sup> JE 3 at 3.

<sup>9</sup> JE 3 at 4; JE 5 at 8; Tr. at 22.

<sup>10</sup> JE 7.

<sup>11</sup> JE 7; RE 1; JE 8; Tr. at 15.

reading class and in-class support for \*\*\*Parent agreed with the District's recommendations.<sup>12</sup>

12. The District convened another ARD committee meeting on August\*\*\*, 2024, to complete an MDR of Student's conduct from the previous year that resulted in the \*\*\*-day DAEP placement recommended by \*\*\*The committee members in attendance included Parent, a general education teacher, a special education teacher, an educational diagnostician, the campus principal, and an assistant principal.<sup>13</sup>
13. The MDR considered Parent's input and reviewed relevant information, including Student's January 2022 evaluation, April 2022 FBA, disciplinary records, and IEP. Based on their review, District members of the MDR determined that Student's behavior was not substantially or directly related to Student's specific learning disability and was not the result of a failure by \*\*\* to implement Student's IEP. Accordingly, the District endorsed following through with the 45-day disciplinary placement recommended by\*\*\*. Parent disagreed, arguing that Student had already served a \*\*\*-day suspension as punishment for the conduct at issue and that \*\*\*failed to implement Student's accommodations.<sup>14</sup>
14. The District reconvened the MDR on August\*\*\*, 2024, to address issues related to the MDR process that were not discussed during the previous meeting. In addition to the individuals who attended the August \*\*\*meeting, the August \*\*\* MDR included a special education teacher from the District's DAEP, the DAEP's assistant principal, and\*\*\*, a psychologist and LSP for the District.<sup>15</sup>
15. \*\*\*discussed the MDR process, and the District's educational diagnostician reviewed Student's evaluation and IEP. The campus assistant principal reviewed Student's discipline records and behavior at \*\*\*as well as Student's behavior at SBISD. Student's teachers provided information on their

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<sup>12</sup> JE 4 at 2-5.

<sup>13</sup> JE 5.

<sup>14</sup> JE 5 at 4, 8; Tr. at 22.

<sup>15</sup> JE 6 at 6.

observations of Student's behavior in the classroom, and Parent provided input.<sup>16</sup>

16. \*\*\*noted that Student's evaluation was current and had been performed by another Texas school district. She further testified that, based on the evaluation and additional information reviewed, neither she nor the committee suspected any other disabilities that required an evaluation prior to completing the MDR. In addition, nobody—including Parent—had requested an evaluation.<sup>17</sup>
17. District members of the MDR committee once again concluded that the conduct giving rise to the disciplinary placement was not a manifestation of Student's disability. The committee also determined there was no evidence in the documents provided by \*\*\*or information from Parent showing \*\*\*failed to implement Student's IEP.<sup>18</sup>
18. The District continued to recommend the \*\*\*-day DAEP placement, with the caveat that Student would be eligible to return to campus after \*\*\* days with good behavior. Parent disagreed with the placement.<sup>19</sup>
19. The District offered to conduct an FBA, and Parent refused consent. Parent left the meeting before it ended and prior to the conference scheduled with DAEP staff to discuss Student's services and accommodations in the DAEP setting. The committee discussed these issues in Parent's absence and determined that the DAEP would be able to provide Student's \*\*\*and special education services and implement Student's IEP.<sup>20</sup>
20. At the time of the hearing, Student had served \*\*\* of the \*\*\* days. Prior to Student's removal from campus, Student was placed in in-school suspension. Student

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<sup>16</sup> JE 6 at 8; Tr. at 35.

<sup>17</sup> Tr. at 32, 40-41, 44.

<sup>18</sup> Tr. at 37-38.

<sup>19</sup> JE 6 at 8; Tr. at 22, 49.

<sup>20</sup> Tr. at 48.

received the special education services and accommodations identified in Student's IEP during Student's suspension and has received them while attending the DAEP.<sup>21</sup>

21. When a student from another district transfers into SBISD without having completed a disciplinary placement, SBISD upholds the placement. This policy is set forth in its Student Code of Conduct (SCOC).<sup>22</sup>

## **V. 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 and 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 therefore on Petitioner to show that SBISD violated the IDEA in determining that Student's behavior was not a manifestation of Student's disability.

### **B. DISCIPLINARY REMOVALS**

School districts have the authority to discipline students with disabilities. Under the federal regulations, when a school district exercises this authority, it must:

- follow its student code of conduct;
- only impose discipline that is consistent with discipline imposed upon students without disabilities;

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<sup>21</sup> JE 6 at 8; Tr. at 16, 22-23, 38-39, 48.

<sup>22</sup> RE 2 at 34; Tr. at 22.



- 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, SBISD complied with federal and state law and acted in accordance with the practices identified in its SCOC. The August 2024 MDR was legally compliant, and SBISD has been providing Student with \*\*\*and special education services and accommodations during Student’s DAEP placement.

### **1. SBISD’s Student Code of Conduct**

Under state law, if a student withdraws from a school district before completing a disciplinary placement, the district Student transfers into may continue the placement. Tex. Educ. Code § 37.008(i). Consistent with this law, SBISD’s SCOC dictates that it must honor disciplinary placements by other school districts in the state that have not been completed upon a student’s enrollment. In addition, SBISD’s SCOC identifies \*\*\* requiring placement in a DAEP for up to 60 days. Thus, the evidence shows that SBISD followed its SCOC and that the discipline imposed on Student is consistent with the discipline imposed on students without disabilities who engage in the same behavior.

Petitioner contends, however, that Student’s DAEP placement is improper because Student did not violate SBISD’s SCOC.<sup>23</sup> As a threshold matter, this position

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<sup>23</sup> Petitioner’s Closing Brief at 6.

overlooks the law cited above which allows school districts to enforce prior disciplinary placements by other school districts, thereby preventing students from transferring between school districts in order to avoid such placements.

Petitioner does not dispute that Student's conduct on May \*\*\* violated \*\*\* SCOC. Student argues instead that \*\*\*failed to hold "due process meetings for [Student's] DAEP referral."<sup>24</sup> To the extent Petitioner is referring to the conference and hearing contemplated by Texas Education Code § 37.009, this Judge has no authority over those proceedings. Her authority is limited to actions arising under the IDEA. *See* 34 C.F.R. §§ 300.507, 300.532. Under the IDEA, the ARD committee is responsible for determining the alternative disciplinary setting when a student with a disability is removed for behavior that does not constitute a manifestation of their disability. 34 C.F.R. § 300.531. The evidence establishes that this is precisely what happened here: Student's setting was changed by Student's ARD committee in SBISD when the MDR concluded on August \*\*\*2024.<sup>25</sup>

## **2. Manifestation Determination Review**

The question then becomes whether the ARD committee properly determined that Student's conduct was not a manifestation of Student's disability. Conduct is considered a manifestation of a student's disability when the conduct was caused by, or had a direct and substantial relationship to, the student's disability or if the conduct was the direct result of a school district's failure to implement the student's

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<sup>24</sup> Petitioner's Closing Brief at 6.

<sup>25</sup> If, on the other hand, Petitioner intended to complain that \*\*\*ISD somehow violated the IDEA in making a disciplinary determination related to Student's conduct on May \*\*\*, 2024, that issue is not before the Judge in these proceedings. *See* Complaint; Order No. 2 at 2; Prehearing Tr. at 6-13 (Sep. 17, 2024).

IEP. 34 C.F.R. § 300.530(e)(1); Tex. Educ. Code § 37.004(b). These determinations must be made within 10 school days of a decision to change the placement of the student and must be made by the school district, the parent, and relevant members of the ARD committee. C.F.R. § 300.530(e); Tex. Educ. Code § 37.004(b). The committee must review all relevant information in the student's file, including the student's IEP, teacher observations, disciplinary history, and parent information.

Student transferred into SBISD with \*\*\* school days left in the 2023-2024 school year. SBISD held an ARD committee meeting at the beginning of the new school year to review Student's IEP and then convened meetings on August \*\*\* and August \*\*\*2024, to complete an MDR of the conduct which led to the \*\*\*-disciplinary placement recommended by \*\*\*ISD. During the August \*\*\* meeting, the ARD committee considered Student's evaluations, Student's IEP, and disciplinary records as well as teacher and parent input. The District then convened another ARD committee meeting on August \*\*\* with additional staff members—including DAEP representatives and a District LSP—to review the disciplinary placement further.

**a) The Relationship Between Student's Disability and the Conduct at Issue**

Based on the information it reviewed, the ARD committee determined that Student's conduct was neither caused by, nor had a direct and substantial relationship to, Student's disability. Petitioner failed to offer any evidence that calls into question the validity of the committee's determination. Instead, Petitioner raised a host of perceived procedural violations which are discussed in greater detail below.

**b) Implementation of Student's IEP**

The record is also devoid of any evidence indicating that Student's conduct was the direct result of a failure to implement Student's IEP.

**c) Manifestation Determination Conclusion**

Accordingly, Petitioner did not meet Student's burden of showing that Student's conduct was caused by, or had a direct and substantial relationship to, Student's disability. Nor did Petitioner present any evidence to suggest that the conduct was a direct result of \*\*\* failure to implement Student's IEP. Student's conduct, therefore, is not considered a manifestation of Student's disability, and the District was permitted to place Student in the DAEP. 34 C.F.R. § 300.530.

**C. PROCEDURAL VIOLATIONS**

Petitioner argues at length in Student's Closing Brief that the MDR was procedurally flawed.<sup>26</sup> Liability for a procedural violation arises only if the procedural deficiency impeded Student's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of FAPE, or caused a deprivation of educational benefit. 34 C.F.R. § 300.513(a)(2); *Adam J. ex rel. Robert J. v. Keller Indep. Sch. Dist.*, 328 F.3d 804, 812 (5th Cir. 2003). None of these circumstances occurred here.

First, Petitioner argues that the District should have evaluated Student before completing the MDR. Student's evaluation, however, was current when the MDR

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<sup>26</sup> Petitioner's Closing Brief at 3-6

was held, and Student's triennial evaluation is not due until January 2025. Moreover, the District's expert testified that there was no reason to suspect additional disabilities that would require an evaluation prior to completing the MDR, and Parent did not request one. The District's decision to hold the MDR without first conducting some type of evaluation did not violate the IDEA.

Next, Petitioner maintains that the District failed to fulfill its transportation obligations when it placed Student at the DAEP. Notably, SBISD's SCOC states that the District does not provide transportation to and from the DAEP. Furthermore, Student does not appear to receive transportation as a related service under Student's IEP. Because the District was not required to provide transportation, it did not violate the IDEA by failing to do so.

Petitioner then contends that Student was removed from the classroom and placed in in-school suspension in violation of the IDEA's stay-put provision. The stay-put provision, however, does not apply to disciplinary removals. 34 C.F.R. § 300.533. Student's placement in in-school suspension and removal to the DAEP pending this decision therefore did not violate the IDEA.

Petitioner goes on to claim that SBISD stopped providing Student with Student's accommodations. This claim is not supported by the testimony of District staff who reported that Student was and is receiving the services and accommodations identified in Student's IEP. Petitioner failed to introduce any evidence that controverts this testimony.

Finally, Petitioner levels a number of other accusations against the District, including allegations that District staff members engaged in collusion, harassment,

retaliation, and intimidation.<sup>27</sup> Conclusory statements made in closing arguments, however, are not evidence—and assuming without deciding that these allegations are somehow relevant to the issue for decision in this case—none of them are supported by the record.

In sum, Petitioner failed to show that any procedural violations occurred, let alone that any violations occurred which rose to the level of denying Student a FAPE. The evidence shows that the District had the authority to impose discipline on Student. When it did so, the District followed federal and state law, did not impose a discriminatory punishment, conducted a legally compliant MDR before imposing the punishment handed down through the disciplinary process, and has offered Student appropriate services during Student’s DAEP placement. As such, the disciplinary process followed by the District adhered to the IDEA.

## **VI. CONCLUSIONS OF LAW**

1. Respondent complied with the IDEA’s procedural disciplinary requirements when it conducted manifestation determination reviews on August \*\*\* and August\*\*\*, 2024, to ascertain whether the conduct that resulted in a disciplinary change of placement was related to Student’s disability or failure to implement Student’s IEP. 34 C.F.R. § 300.530.
2. Petitioner failed to prove that Student’s conduct on May \*\*\*, 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.

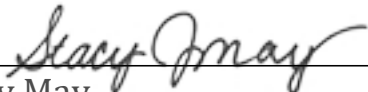
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<sup>27</sup> Petitioner’s Closing Brief at 2, 4, 7.

**ORDER**

Based upon the foregoing findings of fact and conclusions of law, Petitioner's request for relief is **DENIED**.

Signed October 15, 2024.

  
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Stacy May  
Administrative Law Judge  
For the State of Texas

**VII. NOTICE TO THE PARTIES**

The Final Decision 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. § 300.516(a); 19 Tex. Admin. Code § 89.1185(n).