

STUDENT, <i>B/N/F</i> PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner,	§	
V.	§	HEARING OFFICER
BREHAM INDEPENDENT SCHOOL DISTRICT,	§	
Respondent.	§	FOR THE STATE OF TEXAS

**FINAL DECISION OF THE SPECIAL EDUCATION HEARING OFFICER IN AN
EXPEDITED DUE PROCESS PROCEEDING**

**I.
STATEMENT OF THE CASE**

On April 14, 2025, Student, *b/n/f* Parent, (“Petitioner” or “Student”) filed a Complaint with the Texas Education Agency (“TEA”) against Brenham Independent School District (“Respondent” or “District”), requesting an impartial Due Process Hearing, pursuant to the Individuals with Disabilities Education Improvement Act of 2004 (“IDEA”). Petitioner’s concerns related to whether Respondent conducted an appropriate Manifestation Determination Review (“MDR”), to find that the Student’s action was caused by, or had a direct and substantial relationship to, Student’s disability, or whether Petitioner’s conduct was the direct result of the District’s failure to implement Student’s Individualized Education Plan (“IEP”). As such, these claims required the implementation of the expedited due process procedures under 34 C.F.R. §300.532(a)-(c); and 19 TEX. ADMIN. CODE §§89.1151(c) & 89.1191.

A. PETITIONER’S ISSUES:

1. Whether Student’s placement in the Disciplinary Alternative Education Placement (“DAEP”), related to the April 3, 2025, phone incident, was inappropriate or excessive; and
2. Whether the District provided Student with appropriate educational services during Student’s placement in the DAEP.

B. PETITIONER'S REQUESTED RELIEF: Petitioner asks the SEHO to order the following relief:

1. Overturn Student's current DAEP placement and order the District to return Student to Student's current IEP educational placement;
2. Expunge Student's DAEP records related to the April 3, 2025, incident; and
3. Order the District to refrain from retaliation.

**II.
PROCEDURAL HISTORY**

Petitioner's April 14, 2025, Complaint focused on one (1) disciplinary incident, which occurred on April 3, 2025, and it involved an incident on school property. Respondent was investigating a report that Petitioner was involved in the sale of *** at school, which is a violation of the "Student Code of Conduct" [R8.20]. Petitioner refused to allow the Respondent to search Student's person and Student's phone [R.3.1].

On April 15, 2025, the undersigned issued the Initial Scheduling Order, which scheduled the hearing and attendant deadlines in compliance with IDEA's expedited timelines: Prehearing Conference ("PHC"): April 29, 2025, at 10:30 a.m.; Disclosures: May 1, 2025; Due Process Hearing: May 8, 2025; and Decision: May 22, 2025.

On April 22, 2025, Respondent filed its Motion Challenging Petitioner's Entitlement to an Expedited Due Process Hearing. The substance of the Respondent's Motion was to challenge the sufficiency of Petitioner's Complaint pursuant to 34 C.F.R. §300.508(b), (d), & 300.532(b). Finding that a challenge to the sufficiency of a complaint is not provided in the expedited rules, on April 27, 2025, the undersigned denied Respondent's insufficiency challenge.

On April 29, 2025, the Parties convened the PHC. In attendance were the following: (1) Petitioner's Parent; (2) Mr. Matt Acosta, Respondent's counsel; (3) the SEHO; and (4) the court reporter, who made a record of the PHC. The Parties discussed the issues and jointly requested that the expedited hearing be continued to a date within the expedited timelines so that the Parties could convene their scheduled mediation previously set on the Disclosure Deadline of May 1, 2025. Finding good cause, the undersigned agreed to extend the hearing and decision deadlines while remaining in compliance with the statutory expedited timelines. On May 4, 2025, the undersigned issued Order No. 3, which rescheduled the hearing and attendant deadlines as follows: Disclosure Deadline: May 7, 2025; Due Process Hearing: May 14, 2025; and Decision Deadline: May 31, 2025.¹

¹ The expedited rules mandate that an expedited due process hearing must occur within twenty (20) school days of the date the complaint is filed; the hearing officer must render a decision within ten (10) school days after the hearing. 34 C.F.R. §532(c)(2). In this case, the twentieth (20th) school day following Petitioner's April 14, 2025, complaint filing is May 14, 2025, the new hearing date agreed upon by the Parties. Between May 14, 2025, and the end of school year 2024-25, there are only seven (7) school days. It does not appear that *** offers summer school, which renders the tenth (10th) school day from the May 14, 2025, hearing to be August 15, 2025. The SEHO agreed to issue the Final Decision in this case on, or before, May 31, 2025.

The Due Process Hearing:

The Parties were instructed to make their Disclosures and Witness Lists by 5:00 p.m., May 7, 2025. Respondent timely disclosed its Disclosures, Witness List, and the Joint Exhibits. Petitioner timely disclosed Student's Witness List but failed to meet the deadline for filing Student's Disclosures. Accordingly, Petitioner was not allowed to file Student's Disclosures due to objections by Respondent. However, all of Respondent's Disclosures and the Joint Exhibits were admitted into evidence, and Petitioner was able to use all of these documents during the hearing.

On May 14, 2025, the Parties convened, and completed, the Due Process Hearing. Petitioner was represented by Parent. Respondent was represented by Mr. Eric Nichols and Mr. Matt Acosta, of the law firm Spalding Nichols Lamp Langlois. Also in attendance throughout the Hearing were the Student, and Ms. ***, Respondent's Special Services Director.

At the conclusion of the Hearing the undersigned informed the Parties that they could file a written Closing Brief, if they desired, by 5:00 p.m., May 23, 2025. Both Parties submitted their briefing timely.

Under the expedited timelines, this Decision would not be due until August 15, 2025. However, the SEHO guaranteed that the Final Decision would be rendered on, or before, May 31, 2025. This Final Decision is issued timely on May 31, 2025.

III. RESOLUTION SESSION

The Parties convened the Resolution Session on either April 17 or 18, 2025; the Parties did not settle their issues at this Session. The Parties convened a mediation on May 1, 2025, which did not result in settlement.

IV. FINDINGS OF FACT ²

1. The District is a political subdivision of the State of Texas and a duly incorporated Independent School District responsible for providing FAPE under IDEA and its implementing rules and regulations.
2. Student is a ***-year-old *** who attends *** within Respondent's jurisdiction [Jt.3].
3. Student qualifies for special education and related services as a student with a Specific Learning Disability ("SLD") (in the areas of reading comprehension, math problem-solving, written expression, and listening comprehension) and an Other Health Impairment ("OHI") for attention-deficit/hyperactivity disorder ("ADHD") and asthma [Jt.6].

² References to the Due Process Hearing Record are identified as follows: "T.##" refers to the one-volume Court Reporter's Transcription of testimony made on May 14, 2025, and the specific page and line numbers contained therein; "Jt.##" refers to the Joint Exhibits by number and page; "R.##" refers to Respondent's Exhibits by number and page. There are no references to Petitioner's Exhibits as they were filed late and Respondent objected to their admission.

School Year 2024-25:

4. On September ***, 2024, Student's Admission, Review, and Dismissal Committee ("ARDC") convened Student's annual ARD. Student's ARDC continued Student's eligibilities as established through Student's March ***, 2022, Full and Individual Evaluation ("FIE") [Jt.3.16]. The ARDC noted that Student's next FIE was due on March ***, 2025 [Jt.3.16].
5. Following a March ***, 2024, Functional Behavior Assessment ("FBA"), Student's ARDC added a Behavior Intervention Plan ("BIP") and support from a program called *** [Jt.3.16]. Student's September ***, 2024, ARDC continued these programs.

Student's IEP called for in-class support for *** (***) minutes, *** per week, in English, Social Studies, Science, and Math, and implemented direct *** services for two-hundred forty ("240") minutes per month [Jt.3.6].³

6. Student's Parent participated in the September ***, 2024, ARDC meeting via telephone. The September ***, 2024, ARDC reached consensus [Jt.3].
7. Student received a disciplinary referral on April 3, 2025, based upon an incident that occurred on school premises ("the subject violation"). Another student accused Student of selling a *** on school grounds, and stated communication between them and Student were on Student's mobile phone under "****." Student's principal requested that Student turn over Student's phone so he could investigate the other student's claim. Student and Student's Parent refused to turn over Student's phone. The principal then requested that Student allow him to search Student's person, to which Student and Student's Parent objected and refused [R.3].
8. The District concluded that Student's conduct was a violation of the Student Code of Conduct [R.8], which resulted in Student's placement in the DAEP [R.8.20]. On April 4, 2025, the District assigned Student three (3) suspension days and thirty (30) days to DAEP [Jt.7.24].

April *, 2025, MDR:**

9. On April ***, 2025, Student's ARDC convened an MDR [Jt.7]. Student and Student's Parent declined to attend this ARDC meeting.
10. The ARDC reviewed Student's evaluations, records, academic history, current academic performance, teacher reports, observations, prior disciplinary referrals, current IEP and placement, as well as Student's behaviors in fall 2024-25 [Jt.7.24].
11. The ARDC determined that Student's conduct was not caused by or had a direct and substantial relationship to Student's disabilities [Jt.7.25]. The ARDC further determined that Student's conduct was not the direct result of the District's failure to implement Student's IEP [Jt.7.25].

³ The PASS program in education is a highly structured special education class designed for students with significant emotion and behavioral challenges. The primary goal of PASS is to improve students' social skills, coping mechanisms, and overall academic success by focusing on teaching appropriate behaviors and providing a supportive learning environment.

12. The ARDC confirmed Student's placement in the DAEP for thirty (30) days starting on April ***, 2025, [Jt.7.25; Jt.8.13].
13. The April ***, 2025, ADRC developed IEP services to be implemented during Student's DAEP placement [Jt.7].
14. As of the date of the Due Process Hearing, May 14, 2025, Student was attending DAEP.
15. The ARDC conducted an appropriate manifestation determination review [Jt.24-25].
16. Student failed to prove that refusing to turn over Student's mobile phone and subsequent refusal to be searched was a manifestation of Student's disabilities.
17. Student failed to prove that refusing to turn over Student's mobile phone and subsequent refusal to be searched resulted from the District's failure to implement Student's IEP and BIP.
18. Student's conduct was a violation of the District's Student Code of Conduct. This violation constituted a disciplinary offense requiring placement at the DAEP [R.8.20].
19. Student failed to prove that the District did not implement Student's IEP during Student's placement at DAEP.

V. DISCUSSION

A. Burden of Proof:

There is no distinction between the burden of proof in an administrative hearing and a judicial proceeding. *Richardson Indep. Sch. Dist. v. Michael Z.*, 580 F.3d 286, 292 n. 4 (5th Cir.2009). The IDEA creates a presumption favoring the education plan proposed by a school district and places the burden of proof on the student challenging the plan. *Schaffer v. Weast*, 546 U.S. 49; 126 S.Ct. 528, 35-537 (2005); *Tatro v. State of Texas*, 703 F.2d 832 (5th Cir. 1983), *aff'd*, 468 U.S. 883 (1984); *E.R. v. Spring Branch Indep. Sch. Dist.*, 909 F.3d 754 at 762-63 (*citing Cypress-Fairbanks Indep. Sch. Dist. v. Michael F.* 118 F.3d at 252); *R.H. v. Plano Indep. Sch. Dist.*, 607 F.3d 1003, 1010-11 (5th Cir. 2010). Accordingly, Student had the burden of proof in this case.

B. Manifestation Determination Review:

IDEA provides that when a district decides to change a disabled student's placement because of a violation of a code of student conduct, the student's ARDC must determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or was the direct result of the district's failure to implement the student's IEP. 34 C.F.R. §300.530(e); TEX. EDUC. CODE §37.004(b). If the behavior is determined not to be a manifestation of the student's disability, then the student may be disciplined in the same manner and for the same duration as would apply to children without disabilities. 34 C.F.R. §300.530(c). If the behavior is determined to be a manifestation of the

student's disability, then, with limited exceptions, the ARDC must either modify any existing BIP or conduct an FBA and develop a BIP. 34 C.F.R. §300.530(f).

The MDR is an important discipline procedure under the IDEA. It is an evaluation of a student's misconduct to determine whether that conduct is a manifestation of the student's disabilities. It must be performed within ten (10) school days of the change in placement that stemmed from an IDEA-eligible student's violation of a code of conduct. 34 C.F.R. §300.530(e).⁴

The MDR must involve a review of all of the relevant information in the student's file, including the student's IEPs, teacher observations, and any other relevant information provided by the parents. 34 C.F.R. §300.530(e). The standard for establishing a manifestation for the purposes of an MDR under IDEA is a high bar, requiring a close correlation between the disability and the conduct. Simply showing a connection to the disability is not sufficient to show that the behavior was directly caused by, or had a substantial relationship to, a student's disability. *Katy Indep. Sch. Dist.*, 122 LRP 20430 (TX SEA Feb. 25, 2022).

Student qualifies for special education and related services as a student with an SLD in the areas of reading comprehension, math problem-solving, written expression, and listening comprehension and an OHI for ADHD and asthma [Jt.6]. At the time of the subject disciplinary incident, Student had an appropriate IEP and BIP, PASS accommodations, and an FBA completed on March ***, 2024, which addressed Student's work refusal and the inability to maintain attention to tasks [Jt.1.23].

1. The MDR Committee Correctly Found That Student's Action Was Not Caused By, or Had a Direct and Substantial Relationship to, the Student's Disabilities.

During the April ***, 2025, MDR, the ARDC reviewed Student's evaluations, including an FIE and REED, school discipline history, Student's IEP and BIP, academic history, current academic performance, teacher reports, and observations [Jt.7.24]. The review of the prior school discipline history revealed that Student accumulated multiple disciplinary infractions during school year 2024-25, most of which dealt with Student's tardiness, truancy, insubordination, and being out of class. In November 2024, Student was assigned to the DAEP for twenty-five (25) days for possessing a *** [Jt.8.6]. Student's November ARDC determined that Student's possession of a *** was a violation of the Student Code of Conduct; it was not a manifestation of Student's disabilities, and such possession did not result from the District's failure to implement Student's IEP.

The April ***, 2025, MDR determined that Student's refusal to provide Student's mobile phone to an administrator and refusal to allow an administrator to search Student's person constituted a violation of the Student Code of Conduct. This is not the same violation that Student committed in November 2024 when Student was actually found in possession of a ***.

The bottom line is this: The IDEA's limit on disciplinary consequences for students with disabilities applies "only when the conduct violation has a documented and close connection to the behavior the student has exhibited previously at school stemming from Student's disability." *Katy Indep. Sch. Dist.*, 122-SE-0122 (TX SEA Feb. 25, 2022). No such connection obtains here.

⁴ A "change of placement" occurs when the district removes the IDEA-eligible student from Student's current educational placement for more than ten (10) consecutive school days. 34 C.F.R. §300.536.

2. The MDR Committee Correctly Found That Student's Action Did Not Directly Result From the District's Failure to Implement the Student's IEP During School Year 2024-25.

The second, separate question in the manifestation analysis is whether the conduct in question directly resulted from the district's failure to implement the student's IEP. 34 C.F.R. § 300.530(e)(1)(ii). The ARDC, as part of considering this prong, must review all relevant data, the disciplinary conduct, IEPs, BIP, teacher observation, and any other relevant information provided by the parent. 34 C.F.R. § 300.530(e)(1).

Student did not allege the issue that the District failed to implement Student's IEP prior to, or at the time of, the incident; Student presented no evidence in support of this second prong. Accordingly, the MDRC correctly determined that Student's violation did not directly result from the District's failure to implement Student's IEP.

3. The District Implemented Student's IEP During Student's DAEP Placement.

Student provided no evidence in support of this issue. To the contrary, the District's witnesses testified under cross examination and established that Student's IEP was implemented in Student's DAEP placement. The DAEP special education teacher testified that instructional work and accommodations were provided to Student in compliance with Student's IEP [T.37.40-41]. The District provided this teacher's Tracking Sheets and DAEP detailed service notes outlining services provided to Student [R.5 & 6]. This same teacher confirmed that all teachers at the DAEP had access to Student's IEP [T.42].

Where school districts have engaged in action that is contradictory to the strategies in the existing IEP and BIP, Hearing Officers have determined that the student's conduct was the direct result of the District's failure to implement the IEP. *See Ysleta Indep. Sch. Dist.*, 134-SE0122 (TX SEA Mar. 21, 2022). In this case, no evidence supported a finding that the District failed to implement Student's IEP during Student's DAEP placement.

**VI.
CONCLUSIONS OF LAW**

1. The District is a local education agency responsible for complying with IDEA. 20 USC §1400 *et seq.*
2. Student bears the burden of proof on all issues raised under IDEA at the due process level. *Schaffer v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 535-537 (2005). IDEA creates a presumption that a school district's decisions made pursuant to the IDEA are appropriate and that the party challenging the decisions bears the burden of proof at all times. *Id.*
3. The District complied with IDEA's procedural disciplinary requirements when it conducted an MDR to ascertain whether Student's conduct, which resulted in a disciplinary placement, was related to Student's disabilities. 34 C.F.R. §300.530.
4. The District complied with IDEA's procedural disciplinary requirements when it conducted an

MDR to ascertain whether Student's conduct, which resulted in a disciplinary placement, resulted from the District's failure to implement Student's IEP and/or BIP. 34 C.F.R. §300.530.

5. Student's conduct, which resulted in a disciplinary referral, was not caused by, or had a direct and substantial relationship to, Student's disability. 34 C.F.R. §300.530(e); TEX. EDU. CODE §37.004(b).
6. Student's conduct, which resulted in a disciplinary referral, was not the direct result of the District's failure to implement the Student's IEP and/or BIP. 34 C.F.R. §300.530(e).
7. Student did not prove that the District failed to implement Student's IEP during Student's DAEP placement.

VII. ORDER

Based upon the record of this proceeding and the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the relief requested by Student is DENIED.

SIGNED this the 31st day of May 2025.

Deborah Heaton McElvaney
Special Education Hearing Officer

NOTICE TO THE PARTIES

The Decision issued by the Hearing Officer is final, except that any party aggrieved by the Findings and Decision made by the Hearing Officer, or the performance thereof by any other party, 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. A civil action brought in state or federal court must be initiated not more than 90 days after the date the Hearing Officer issued her written Decision in the Due Process Hearing. 20 U.S.C. §§1415(i)(2) and (3)(A) and 1415(l).