

SOAH DOCKET NO. 701-22-0095.IDEA
TEA DOCKET NO. 009-SE-0921

STUDENT, B/N/F PARENT & PARENT,	§	BEFORE A SPECIAL EDUCATION
Petitioner	§	
	§	
v.	§	HEARING OFFICER FOR
	§	
NORTH ZULCH INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent	§	THE STATE OF TEXAS

DECISION OF THE HEARING OFFICER

I. PROCEDURAL HISTORY

Student, by next friend Parent & Parent (Student or, collectively, Petitioner), filed a request for an expedited due process hearing against the North Zulch Independent School District (Respondent or District) on September 9, 2021, with notice issued by the Texas Education Agency (TEA) on September 13, 2021, alleging claims under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401-1482 (IDEA) and its implementing state and federal regulations.

The issues presented in the case concern whether Student’s conduct that formed the basis for the District’s disciplinary decision to change Student’s placement to a Disciplinary Alternative Educational Program (DAEP) was a manifestation of Student’s disability, whether Student’s conduct was a result of the District’s failure to properly implement Student’s Individualized Educational Plan (IEP), and whether the District improperly determined that the device in Student’s possession was a weapon.

The hearing officer concludes Student’s conduct on August ***, 2021 was not a manifestation of Student’s disability. The District properly determined the device was a weapon

and the Student's change in placement to a DAEP is in accord with the District's Student Code of Conduct.

A. Legal Representatives

Petitioner was represented throughout this litigation by Petitioner's legal counsel, Andrea Koch, Jennifer Swanson, and Kevin Shields with The Shields Law Firm, LLP. Respondent was represented throughout this litigation by its legal counsel, Andrew Tatgenhorst and Rebecca Bailey with the firm Thompson & Horton, LLP.

II. DUE PROCESS HEARING

The due process hearing was held on October 7, 2021, via the Zoom videoconference platform. Petitioner continued to be represented by Petitioner's legal counsel, Andrea Koch, Jennifer Swanson, and Kevin Shields. Respondent continued to be represented by its legal counsel, Andrew Tatgenhorst and Rebecca Bailey. In addition, ***, Superintendent for the District, attended the hearing as the party representative. The hearing was recorded and transcribed by a certified court reporter. The hearing officer's decision is due on October 25, 2021.

III. ISSUES

A. Petitioner's Claims and Relief Sought

Petitioner raised the following legal issues for decision:

1. Whether Student's Admission, Dismissal, and Review (ARD) Committee appropriately determined the alleged conduct (possession of a weapon) was not a manifestation of Student's disability.

2. Whether Student's Admission, Dismissal, and Review (ARD) Committee failed to find that the alleged conduct was the direct result of the District's failure to implement the Student's IEP.
3. Whether the District improperly determined that the device was a weapon under 18 U.S.C. § 930.

Petitioner seeks the following relief:

1. Findings that the District failed to properly determine that the alleged conduct was a manifestation of Student's disability, that it was caused by the District's failure to implement Student's IEP, and that the DAEP placement was improper.
2. Order the District to return Student to Student's previous placement immediately.
3. Order the District to provide to Student an appropriate IEP in the Least Restrictive Environment (LRE) that complies with all the procedural and substantive requirements of the IDEA and Texas special education laws. Included but not limited to additions of eligibility areas, accurate present levels of academic achievement and functional performance, placement, related services, accommodations, modifications, goals/objectives, appropriate teaching methodologies, and/or evaluations in all areas of suspected disability or need, potentially including one or more IEEs, and anything else deemed appropriate by the hearing officer.
4. Order the District to reimburse Student's Parents for cost associated with providing educational and psychological services incurred due to the District's failure to provide Student with FAPE.
5. Order the District to provide Student with compensatory educational services commensurate with the denial of FAPE.
6. Any relief that the hearing officer deems appropriate or which is recommended by Student's experts and evaluators, including but not limited to compensatory educational services and training staff who work with Student on the violations of law found by the hearing officer.

B. The District's Legal Position

The District generally and specifically denies the allegations and maintains it properly conducted the Manifestation Determination Review hearing and has provided Student a FAPE consistent with its obligations under the IDEA.

IV. FINDINGS OF FACT

1. Student is *** years old and is in the *** grade at *** in the District, where Student enrolled in May 2020. Student is eligible for special education services as a student with a Specific Learning Disability (SLD) and an Other Health Impairment (OHI) for Attention Deficit Hyperactivity Disorder (ADHD).¹
2. Prior to Student's eligibility for special education services under the IDEA, Student received accommodations under Section 504 of the Rehabilitation Act of 1973 related to the diagnosis of ADHD and a Learning Disability in Basic Reading Skills, Reading Comprehension, Math Problem Solving, and Math Calculation.²
3. The District completed an Initial Full Individual Evaluation (FIE) for Student on September ***, 2020. A Review of Existing Evaluation Data (REED) meeting was completed on October ***, 2020. The Section 504 committee concluded Student's disabilities adversely affect Student's educational performance and that Student needs special education services, so an initial Admission, Review, and Dismissal (ARD) meeting was also held on October ***, 2020. The ARD committee determined that Student has an academic and behavioral need for accommodations to mitigate ADHD behaviors and learning disabilities, so a Functional Behavioral Assessment (FBA) was requested. The ARD committee accepted the FIE request that Student qualified for special education services.³
4. On December ***, 2020, the District completed an updated FBA of Student. The behaviors indicated by Student's teachers were that Student ***. There were no reported concerns from teachers that Student had pervasive or continuous behaviors that interfered with learning or social functioning in the classroom.⁴
5. Student struggles with *** completing assignments daily, taking responsibility for Student's schoolwork, Student's actions***. Student's strengths include volunteering in

¹ Transcript (TR) at 182; Joint Exhibit (JE) 1 at 000002.

² JE 16 at 000273.

³ JE 1 at 000001; JE15 at 000269-272.

⁴ JE 1 at 000033-000034; TR at 298.

- class, participating in class discussions, and demonstrating appropriate peer and teacher interactions.⁵
6. Student receives therapy outside of school ***. Student is ***. Student's teachers or special education coordinator did not see Student exhibit *** in the school setting.⁶
 7. On January ***, 2021, the District convened a revision ARD meeting to review the completed FBA from December 2020. The ARD committee determined that Student engaged in two behaviors that interfered with learning: ***. Student's ARD committee provided Student with the ability to move around within the classroom, private discussions about behavior, pull out supports, reminders of expectations, reminders to stay on task, and preparations for changes in routine/schedule.⁷
 8. On May ***, 2021, the District convened an annual ARD Committee meeting for Student. Student's ARD Committee determined a continued need for academic and behavioral accommodations such as ***.⁸
 9. Student's Individualized Education Plan (IEP) goals address making inferences and using evidence to support understanding of reading passages, communicating mathematical ideas, reasoning, and their implications using multiple representations when given charts and/or formulas and a calculator, and completing assignments on time in each subject with a passing average. Student's IEP also provides for in-class support in ***. Student also receives academic support check-in for ***.⁹
 10. On August ***, 2021, which was the *** instructional day of school, Student was in possession of *** at school that the District initially characterized as ***. Student's parent provided information that ***. ***.¹⁰
 11. On August ***, 2021, the Assistant Principal received a report that Student brought *** to school and ***.¹¹

⁵ JE 1 at 000052; JE 2 at 000063-000064.

⁶ JE 14 at 000260; TR at 185; 251; 280; 294-95; 297-299.

⁷ JE 14 at 000259-000260; JE 6 at 00133.

⁸ JE 2 at 000074-000075; TR at 286-287.

⁹ JE 2 at 000072-000075; 000081.

¹⁰ Respondent's Exhibit (RE) 4 at 000033-000034; TR at 96-98;139-140.

¹¹ TR at 130-131.

12. On August ***, 2021, the District began an investigation by taking written statements from *** different students who had information about the incident and reviewing video footage of the incident. The students reported ***. Despite ***. Several other students were able to ***. ***. Student denied having *** or weapon in Student’s possession at school or *** or weapon.¹²
13. Student was placed in Out-of-School Suspension (OSS) for three days under the District’s Student Code of Conduct while the District continued its investigation.¹³
14. On August ***, 2021, the District convened a disciplinary meeting with Student’s parents, who brought *** used by Student *** along with *** in an effort to show it was not ***.¹⁴
15. The District has adopted a Student Code of Conduct and published it in the District Student Handbook. Under the Student Code of Conduct, the District prohibits students from possessing a weapon or a “look-alike” weapon that is intended to be used as a weapon or could reasonably be perceived as a weapon at school. The District may recommend DAEP placement for Students who possess a weapon or a “look-alike” weapon at school.¹⁵
16. Student’s discipline history prior to the August ***, 2021 incident included reported incidents of ***.¹⁶
17. On September ***, 2021, the District convened a MDR ARD Committee meeting to determine whether Student’s behavior of possessing a weapon and *** with that weapon at school on August ***, 2021 was a manifestation of Student’s disability. The ARD Committee participants included Student’s parents, the Principal, the Assistant Principal, a special education teacher, a general education teacher, a diagnostician, a Licensed Specialist in School Psychology, and an ARD facilitator.¹⁷
18. The MDR ARD Committee considered evaluation and diagnostic results, including Student’s September 2019 FIE, September 2020 FIE, Student’s 2020 FBA, Student’s current IEP, Student’s discipline history, information provided by Student’s parents, including information related to Student’s outside therapy services for ***, and information about ***. The committee also considered witness statements about the

¹² RE 4 at 000024-000032; TR at 131, 138.

¹³ TR at 92; JE 12 at 000208.

¹⁴ TR at 203-204.

¹⁵ JE 12 at 000200, 000210; Petitioner’s Exhibit (PE) 4.

¹⁶ RE 2 at 000005-000015.

¹⁷ JE 6 at 000132.

- incident from the Assistant Principal. The MDR ARD committee concluded Student's conduct on August ***, 2021 was not caused by or not directly and substantially related to Student's disability. The MDR ARD committee also concluded the conduct was not a direct result of the District failing to implement Student's IEP.¹⁸
19. Following the MDR, campus administration recommended a 45-day placement for Student at the Disciplinary Alternative Education Program (DAEP) for possessing a weapon at school *** with the weapon beginning on September ***, 2021. Student received credit for the three days of OSS already completed.¹⁹
 20. Student's 2020 FIE reports that Student has difficulty with focusing, staying on task, and acting with impulsivity.²⁰
 21. Student's possession of a weapon at school and *** on August ***, 2021 was not directly and substantially related to Student's disability of ADHD. The behaviors Student displayed by possessing *** at school, ***, and then denying the behavior took place is not related to Student's struggles with focusing, staying on task, or impulsivity.²¹
 22. Student's conduct on August ***, 2021 was not related to the District's failure to implement Student's IEP. At the time of the incident, the District was providing Student with inclusion support in ***. Student was allowed to *** and there were no missing assignments during the *** week of school.²²
 23. Student was in possession of a weapon on August ***, 2021, *** Student used *** which was readily capable of causing serious bodily injury.²³

V. DISCUSSION

A. Disciplinary Removals

¹⁸ JE 6; JE 18 TR at 269-272.

¹⁹ JE 10.

²⁰ JE 1 at 000004.

²¹ JE 1 at 000004; RE at 000024.

²² JE 2 at 000074; 000081; JE 7 at 000151; JE 18 at 1:44:20; TR at 289-290.

²³ TR at 276-277.

Petitioner challenges the District's actions as to Student's change of placement to the DAEP for possessing a weapon and the manifestation determination underlying Student's discipline. Petitioner requests the District's discipline of Student be set aside because it does not comply with the IDEA.

Under the IDEA, school districts have the authority to discipline students with disabilities. However, when exercising this authority, a school district must:

- Follow its Code of Student 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.

In this case, the District had the authority to impose discipline on Student. When it did so, the District followed its Student Code of Conduct, did not impose a discriminatory punishment, and conducted a manifestation determination review before imposing the punishment handed down through the disciplinary process. As such, the disciplinary process followed by the District was consistent with the IDEA.

B. Discipline Under District Student Code of Conduct

The District Student Code of Conduct specifically prohibits the possession of a weapon at school. The evidence clearly shows Student possessed the weapon at school *** on August ***, 2021. Under the Student Code of Conduct, the District may remove a student from the regular

classroom to a DAEP for this conduct. Thus, the Districts discipline of Student is consistent with its Student Code of Conduct.

C. Manifestation Determination

Before disciplining a student for a violation of the Student Code of Conduct and removing him or her from school for more than 10 days, a school district must determine whether the behavior is a manifestation of the student's disability. 34 C.F.R. §300.530(c). Petitioner challenges Student's removal to DAEP, contending Student's conduct on August ***, 2021, was related to Student's disability and, therefore, the District is prohibited from removing Student from school for that conduct.

The IDEA requires a school district to convene an MDR ARD Committee meeting within ten school days of any decision to change the placement of a child with a disability due to a violation of a Student Code of Conduct. 34 C.F.R. § 300.530(e)(1). In determining whether conduct is a manifestation of a student's disability, the school district, the parent, and relevant members of the ARD Committee (as determined by the parent and the school district) must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parent to determine whether the conduct was caused by, or had a direct and substantial relationship to, the student's disability, or was a direct result of the school district's failure to implement the student's IEP. 34 C.F.R. § 300.530(e)(1)(i-ii). The composition of the MDR ARD Committee is limited to "relevant members" and may include a subset of the student's ARD Committee. *Fitzgerald v. Fairfax County Sch. Bd.*, 556 F. Supp. 2d 543, 552-553 (E.D. Va. 2008); 34 C.F.R. § 300.530(e)(1).

On August ***, 2021, the School District held a disciplinary hearing and determined Student violated the District's Student Code of Conduct when Student possessed a weapon at school. Within ten school days of this determination, the School District convened a MDR ARD

committee meeting. The District complied with the IDEA's procedural MDR requirements when it convened the MDR ARD committee meeting fewer than ten school days after the initial disciplinary hearing was conducted.

1. Relationship Between Student's Disability and August *, 2021 Conduct**

The District appropriately determined Student's conduct on August ***, 2021, was not caused by and did not have a direct and substantial relationship to Student's disability. The MDR ARD committee reviewed Student's September 2019 and September 2020 FIE's, Student's 2020 FBA, Student's school discipline history, Student's IEP, witness statements about the conduct, and information from Student's parents related to Student's outside therapy services and emotional difficulties. Student has an identified SLD in the areas of basic reading skills, reading comprehension, math problem solving, and math calculation. As a result of Student's SLD, Student struggles with ***. Student's decision to possess a weapon at school *** is not directly and substantially related to Student's SLD. Petitioner presented no evidence connecting Student's struggles with reading and math to Student's possession of a weapon at school.

Student is diagnosed with ADHD and has a hard time focusing, staying on task, and acts with impulsivity, typically with ***. Student tends to ***. Petitioner argues Student's ADHD, specifically impulsivity and other emotional struggles, are connected to Student's possession of a weapon. However, the evidence shows Student's teachers never witnessed Student exhibit any signs of ***. Student ***. Student ***. This conduct was not impulsive.

Moreover, prior to August ***, 2021, while Student displayed some behavioral issues at school, they involved ***. Given Student's behavioral profile in the September 2020 FIE of difficulty with focus, staying on task, impulsivity, and disciplinary history, there is no direct and substantial link between Student's ADHD and emotional struggles and Student's possession of a weapon at school.

2. IEP Implementation

The MDR ARD Committee also correctly concluded Student's conduct was not directly related to the failure to implement Student's IEP. Petitioner argues that the District failed to allow Student to ***, failed to notify Student's parent of missing assignments, and the District pulled Student's inclusion support, thus Student's conduct on August ***, 2021 was a direct result of the District's failure to implement the IEP. However, Petitioner failed to show how this failure to implement was a direct cause of Student's conduct of possessing a weapon at school. In addition, based on the credible testimony of District personnel Student was able to ***, Student did not have any missing assignments, and there was inclusion support in the classroom. In sum, the evidence does not support a link between the District's implementation of Student's IEP and Student's conduct on August ***, 2021.

3. Manifestation Determination Conclusion

If the MDR ARD committee determines either that the conduct was caused by and 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).

Since Student's conduct on August ***, 2021, has no direct and substantial relationship to Student's disability, the conduct is not considered a manifestation of Student's disability. Therefore, the District may remove Student's placement to DAEP for this conduct. 34 C.F.R. § 300.530.

4. Definition of Weapon Under IDEA

The IDEA adopts the definition of weapon in 18 U.S.C. § 930(g)(2). That provision defines the term dangerous weapon as “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket-knife with a blade of less than 2½ inches in length.” 34 C.F.R. § 300.530(i)(4).

Serious bodily injury means bodily injury that involves: (1) A substantial risk of death; (2) Extreme physical pain; (3) Protracted and obvious disfigurement; or (4) Protracted loss or impairment of a bodily member, organ, or mental faculty. 34 C.F.R. § 300.530(i)(3) (incorporating 18 U.S.C. § 1365(h)(3) by reference).

Here, Student’s DAEP placement was based on possession of a weapon at school – ***. Based on the documentary evidence provided by Student’s parents and the testimony of District personnel, *** met the applicable definition of a weapon in that it was readily capable of causing serious bodily injury in the form of extreme physical pain. As such, Student’s DAEP placement was appropriate under the IDEA.

VII. CONCLUSIONS OF LAW

1. Respondent complied with the IDEA’s procedural disciplinary requirements when it subjected Student to placement at DAEP 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 CFR §300.530.
2. Student’s conduct on August ***, 2021 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).
3. The *** that Student possessed at school met the definition of a weapon under the IDEA. 34 C.F.R. § 300.530(i)(4) (incorporating 18 U.S.C. § 930(g)(2) by reference).

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ORDER

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.

All other relief not specifically stated herein is **DENIED**.

SIGNED October 25, 2021.



Yvonne Patton
Special Education Hearing Officer
For the State of Texas

VIII. NOTICE TO PARTIES

The Decision of the Hearing Officer 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. 300.516(a); 19 TEX. ADMIN. CODE § 89.1185(n).