

**DOCKET NO. 297-SE-0720A**

**STUDENT, B/N/F PARENT,  
Petitioner**

v.

**LIFE SCHOOL,  
Respondent**

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**BEFORE A SPECIAL EDUCATION**

**HEARING OFFICER FOR**

**THE STATE OF TEXAS**

**DECISION OF THE HEARING OFFICER**

**I. PROCEDURAL HISTORY**

Student, \*\*\*, b/n/f Parent (collectively Petitioner) brought an expedited action against the Life School Charter School (Respondent or District) under the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1401-1482 (IDEA) and its implementing state and federal regulations.

Student filed Student's Request for an Expedited Due Process Hearing (the Complaint) on July 20, 2020, received and docketed by the Texas Education Agency (TEA) as Docket No. 297-SE-0720. Upon review of the Complaint, the hearing officer determined some of the allegations qualified for an expedited due process hearing, while other allegations did not. Accordingly, the hearing officer bifurcated the case, creating two dockets under which the Complaint would be processed. Docket No. 297-SE-0720A was created for the allegations requiring expedited processing, while Docket No. 297-SE-0720B was created for the allegations that do not qualify for an expedited hearing. This decision addresses only the allegations that qualify for an expedited hearing.

The main issue in the case filed by Student is whether Student's conduct that formed the basis for the School District's disciplinary decision to \*\*\*, was a manifestation of the Student's disability.

The Hearing Officer concludes Student's conduct on \*\*\*, 2020 was not a manifestation of Student's disability. The District may \*\*\* Student in accord with the District's Student Code of Conduct.

#### **A. Legal Representatives**

Petitioner has been represented throughout this litigation by Petitioner's legal counsel, Josh Norrell of the Norrell Law Office. Respondent has been represented throughout this litigation by its legal counsel, Chris Schulz and Jasmine Grant with the law firm of Schulman, Lopez, Hoffer & Adelstein, LLP.

### **II. DUE PROCESS HEARING**

The due process hearing was conducted on September 3, 2020 via the Zoom videoconference platform. Petitioner continued to be represented by Petitioner's legal counsel Josh Norrell. In addition, Student and Student's Mother, \*\*\*, attended the due process hearing. Respondent continued to be represented by its legal counsel, Chris Schulz and Jasmine Grant. In addition, \*\*\*, Director of Special Education for the district, attended the hearing as the party representative. The hearing was recorded and transcribed by a certified court reporter.

### **III. ISSUES**

#### **A. Petitioner's Issues**

Petitioner raises the following IDEA issues for decision in this case:

1. Manifestation Determination: Whether Student's conduct, which formed the basis for the School District's disciplinary decision to\*\*\*, was a manifestation of Student's disability; and
2. Placement: Whether Student's \*\*\* should be reversed.

**B. Respondent's Issues**

The District raises the following issue:

1. Whether the decision by the District's Manifestation Determination Review (MDR) Admission, Review, and Dismissal (ARD) committee that Student's behavior was not a manifestation of Student's disability should be affirmed.

**IV. REQUESTED RELIEF****A. Petitioner's Requested Relief**

1. Reverse the District's disciplinary decision to \*\*\*.

**B. Respondent's Requested Relief**

1. Affirm the School District's disciplinary \*\*\*.

**V. FINDINGS OF FACT**

1. Student is \*\*\* year old child enrolled in a charter school operated by the District. Student is eligible for special education services as a student with a Specific Learning Disability (SLD).<sup>1</sup>
2. The District completed a Full Individual Evaluation (FIE) of Student on May \*\*\*, 2019. The FIE evaluators concluded Student met eligibility criteria for a SLD. Student demonstrated a pattern of strengths and weaknesses in the areas of math calculation and reading fluency. Student displays an unusually large difference between Student's actual performance and Student's expected performance in these areas. Student does not achieve adequately for Student's age in the areas of reading fluency skills and math calculation. As the result of Student's SLD, Student may have difficulty recognizing patterns, reading graphs and charts, attending to visual detail, recalling visual information, recognition of spatial orientation of objects, site word acquisition, using charts and graphs while reading,

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<sup>1</sup> Joint Exhibit (JE) 2 at 1.

- comprehension of text involving spatial concepts, number alignment during computation, spelling site words, and spatial planning during writing tasks.<sup>2</sup>
3. Student struggles with complex math problems, independent reading assignments, completing homework assignments, following written instructions, and organizational skills. Student's strengths include following oral instructions, grasping new skills, perception skills, oral reading assignments, reading comprehension, and writing skills.<sup>3</sup>
  4. Student is diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). Prior to Student's eligibility for special education services under the IDEA, Student received services under Section 504 of the Rehabilitation Act of 1973 related to this diagnosis. Student has a short attention span, acts without thinking, but meets the standards of personal independence and social responsibility expected of Student's age and cultural group.<sup>4</sup>
  5. Student receives \*\*\*. Student's \*\*\* addresses issues with self-esteem, decision-making, negative attention seeking, and independence.<sup>5</sup>
  6. The District convened an Admission Review and Dismissal (ARD) committee meeting for Student on May \*\*\*, 2019, following the completion of Student's initial FIE. Student's ARD committee determined Student met eligibility criteria for a SLD in the areas of reading fluency and math calculation and needs special education services to address Student's SLD. The ARD committee also determined Student's behavior did not impede Student's learning or the learning of other students.<sup>6</sup>
  7. Student is capable of completing assignments, interacts appropriately with peers and adults, respects authority, follows directions, and has good social skills. Student struggles with organizational skills, completing tasks, and with reliability.<sup>7</sup>
  8. Student's Individualized Education Plan (IEP) goals address applying mathematics to problems arising in everyday life and reading text with grade level vocabulary. Student's ARD committee provided Student with extra time to complete assignments, extra time on exams, oral exams upon Student's request, small group testing, reteaching of difficult concepts, and reminders to stay on task. The District provided Student with \*\*\* minutes of inclusion support in both English Language Arts and Math.<sup>8</sup>

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<sup>2</sup> JE 1 at 23-26.

<sup>3</sup> JE 1 at 21.

<sup>4</sup> JE 1 at 1, 9, and 16.

<sup>5</sup> Petitioner's Exhibit (PE) 1.

<sup>6</sup> JE 2 at 1 and 17.

<sup>7</sup> JE 2 at 4.

<sup>8</sup> JE 2 at 8-10 and 15.

9. On \*\*\*, 2020, Student was \*\*\*. Student \*\*\*. Student admitted to \*\*\*.<sup>9</sup>
10. 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 \*\*\*. The District categorizes \*\*\* related conduct as a “serious offense.” Students who commit serious offenses\*\*\*.<sup>10</sup>
11. On \*\*\*, 2020, the District held \*\*\* hearing, which Student and Student’s Mother both attended. During this hearing, Student admitted to \*\*\*.<sup>11</sup>
12. Student’s discipline history prior to \*\*\*, 2020 included \*\*\* and no other disciplinary conduct.<sup>12</sup>
13. On \*\*\*, 2020, the District conducted a MDR ARD committee meeting to determine whether Student’s behavior of \*\*\*, 2020 was a manifestation of Student’s disability. The participants in this meeting considered Student’s May 2019 FIE, Student’s school discipline history, Student’s IEP, and information from Student’s Mother related to Student’s \*\*\* services. The MDR ARD committee concluded Student’s conduct on \*\*\*, 2020 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. The MDR ARD committee determined Student’s behavior on \*\*\*, 2020 was unrelated and inconsistent with any of Student’s prior behavior at school.<sup>13</sup>
14. The District conducted a second \*\* hearing on \*\*\*, 2020 following the MDR ARD committee meeting. The District decided to \*\*\* for \*\*\*.<sup>14</sup>
15. The District also \*\*\*.<sup>15</sup>
16. Student’s \*\*\*, 2020 was not directly and substantially related to Student’s SLD in reading fluency and math calculation. Student’s \*\*\* conduct is not related to Student’s struggles with complex math calculations, independent reading, or written instructions. Student’s

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<sup>9</sup> JE 5 at 3, 5, and 8; Respondent’s Exhibit (RE) 1.

<sup>10</sup> JE 6 at 64-66.

<sup>11</sup> RE 1.

<sup>12</sup> JE 7.

<sup>13</sup> JE 4; and TR at 153-155.

<sup>14</sup> JE 5; and TR at 23-24 and 31.

<sup>15</sup> TR at 23-24 and 31.

conduct on \*\*\*, 2020 is not directly and substantially related to Student's struggles with organizational skills, completing tasks, and with reliability.<sup>16</sup>

17. Student's conduct on \*\*\*, 2020 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 English and Math and with the necessary assignment and exam accommodations.<sup>17</sup>

## VI. DISCUSSION

### A. Disciplinary Removals

Petitioner challenges the District's \*\*\* and the manifestation determination underlying Student's discipline. Petitioner request 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

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<sup>16</sup> JE 1 at 21; JE 2 at 4.

<sup>17</sup> JE 2.

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 \*\*\*. Student admits to violating this prohibition and the evidence clearly indicates Student did indeed \*\*\* on \*\*\*, 2020. Under the Student Code of Conduct, the District may \*\*\* for this conduct, which the District characterizes as a serious offense. The evidence also indicates the District has \*\*\* for other students involved in \*\*\* offenses. Thus, the Districts discipline of Student is consistent with its Student Code of Conduct and consistent with the discipline of other students in the District involved in similar conduct.

### **C. Manifestation Determination**

Before 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 determine whether the behavior is a manifestation of the student's disability. 34 C.F.R. §300.530 (c). Petitioner challenges Student's\*\*\*, contending Student's conduct on \*\*\*, 2020 was related to Student's disability and, therefore, the District is prohibited from removing Student from school for that conduct.

The IDEA requires a MDR ARD committee meeting within 10 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. In determining whether conduct is a manifestation of a student's disability, the MDR ARD committee must review all relevant information provided by the parent. The ARD committee must then determine whether the conduct at issue was caused by or had a direct and substantial relationship to the child's disability. 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. Edc. Code § 37.004(b).

On \*\*\*, 2020, the School District held a disciplinary hearing and determined Student violated the District's Student Code of Conduct when Student \*\*\*. 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 \*\*\* hearing was conducted.

### **1. Relationship Between Student's Disability and \*\*\*, 2020 Conduct**

The District appropriately determined Student's conduct on \*\*\*, 2020, was not caused by and did not have a direct and substantial relationship to Student's disability. The MDR ARD committee reviewed Student's May 2019 FIE, Student's school discipline history, Student's IEP, and information from Student's Mother related to Student's \*\*\* services and emotional difficulties. Student has an identified SLD in the areas of reading fluency and math calculation. As a result of Student's SLD, Student struggles with complex math problems, independent reading assignments, completing homework assignments, following written instructions, and organizational skills. Student's decision to \*\*\* 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 \*\*\*.

Student is also diagnosed with ADHD and has a short attention span and acts without thinking. Petitioner argues Student's ADHD and other emotional struggles are connected to Student's \*\*\*. However, the evidence shows Student meets the standards of personal independence and social responsibility expected of Student's age, interacts appropriately with peers and adults, respects authority, follows directions, and has good social skills. Moreover, prior to \*\*\*, 2020, Student displayed no behavioral issues at school and was only disciplined for \*\*\*. Given Student's behavioral profile and disciplinary history, this hearing officer concludes there is no direct and substantial link between Student's ADHD and emotional struggles and Student's \*\*\*.

## 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. There was no evidence presented to show the District failed to provide Student with extra time to complete assignments, extra time on exams, oral exams upon Student's request, small group testing, reteaching of difficult concepts, or reminders to stay on task. In addition, the District provided Student with \*\*\* minutes of inclusion support in both English Language Arts and Math, as required by Student's IEP. In sum, the evidence does not support a link between the District's implementation of Student's IEP and Student's conduct on \*\*\*, 2020.

## 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 \*\*\*, 2020, has no direct and substantial relationship to Student's disability, the conduct is not considered a manifestation of Student's disability. Therefore, the School District may\*\*\*. 34 C.F.R. § 300.530

## VII. CONCLUSIONS OF LAW

1. Respondent complied with the IDEA's procedural disciplinary requirements when it subjected Student to \*\*\* 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 \*\*\*, 2020 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 District has the authority under the IDEA to \*\*\* for Student's conduct on \*\*\*, 2020. 34 C.F.R. § 300.530

### 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 September 18, 2020.**



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**Steve Elliot**  
**Special Education Hearing Officer**  
**For the State of Texas**