

DOCKET NO. 165-SE-0119

STUDENT B/N/F PARENT,
Petitioners

v.

DENTON INDEPENDENT SCHOOL DISTRICT,
Respondent

§
§
§
§
§
§
§
§
§

BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

THE STATE OF TEXAS

manifestation of Student's disability, it originally imposed a disciplinary placement in the Disciplinary Alternative Education Program (DAEP) of forty-five days.

The hearing officer concludes that the District held a proper Manifestation Determination Review (MDR) and followed all procedures in finding that Student's conduct was not a manifestation of Student's disability, and therefore Student's disciplinary placement was proper.

B. Legal Representation

Student was represented throughout this litigation by Student's parent and next friend, ***. Respondent was represented throughout this litigation by Gigi Driscoll, of Walsh, Gallegos, Trevino, Russo & Kyle.

C. Resolution Session

The parties in this matter met in a Resolution Session on the 7th day of February, 2019, and no agreement was reached.

D. Preliminary Matters

The Initial Expedited Scheduling Order set the 14th of February, 2019 for the Prehearing Conference and Monday, February 25, 2019 as the date for the Due Process Hearing. At the time designated for the Prehearing Conference, the parties convened for a telephonic pre-hearing conference. Present at the pre-hearing conference were Petitioner ***, and Ms. ***, assisting the Petitioner; Ms. Gigi Driscoll, for the Respondent District; as well as the undersigned Hearing Officer. The Conference was recorded and transcribed by a duly certified court reporter, Gay Denton for Ann Berry.

II. DUE PROCESS HEARING

The Due Process Hearing was conducted on the 25th

IV. FINDINGS OF FACT

Based upon the evidence submitted and the argument of the parties, the

The burden of proof in a due process hearing is on the party challenging the proposed IEP and placement. *Id.*, 546 U.S. 49 (2005). This expedited case seeks to overturn Students MDR finding and disciplinary placement. The burden of proof is on Petitioner. Petitioner contends that the MDR was in error, urging that the conduct was caused by, or had a direct and substantial relationship to the Student's disability. Petitioner also contends that the placement is improper generally.

B. Disciplinary Removals Under IDEA

A change in placement to an alternative educational setting must afford the

4. Additional Considerations

Additional meetings and reviews were conducted by the District during its thorough review of all evidence and considerations in making its decisions, and concluding that Student will received FAPE in the DAEP. It is also clear that deference, based upon the expertise and exercise of judgment by school authorities, should be afforded the school District.

137 S.Ct. 1001; (2017).

VI. CONCLUSIONS OF LAW

1. Student is eligible for a free appropriate public education under the provisions of IDEA, 20 U.S.C. 1400, et. seq., 34 C.F.R. 300.301 and related statutes and regulations, and such is to be provided by the Denton Independent School District.

2. Respondent District complied with the requirements of IDEA when it imposed discipline in response to the Student's alleged ***. The District timely convened and conducted Student's MDR to determine if the alleged conduct was caused by or had a direct and substantial relationship to the Student's disability or was the result of the District's failure to implement Student's IEP in compliance with the relevant procedural and substantive requirements of the IDEA. 20 U.S.C. 1415(k); 34 C.F.R. 300.530(a) – (f).

3. Petitioner did not meet Petitioner's burden. Petitioner failed to carry the burden of proof to establish a violation of IDEA or a denial of FAPE. , 546 U.S. 49 (2005).

