

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

DECISION OF THE SPECIAL EDUCATION HEARING OFFICER IN EXPEDITED CASE

I.
STATEMENT OF THE CASE

STUDENT *b/n/f* PARENT (“Petitioner” or “Student”) filed a Request for Expedited Due Process Hearing (“Complaint”) with the Texas Education Agency (“TEA”), requesting an Expedited Due Process Hearing pursuant to the Individuals With Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. §1400 *et. seq.* Petitioner asserted multiple issues in Student’s Complaint, only a portion of which are subject to the expedited hearing rules and regulations. The sole issue for consideration in the Expedited Due Process Hearing concerns Petitioner’s appeal of the Manifestation Determination (“MD”) made by Petitioner’s Manifestation Determination Review Committee (“MDRC”) on August ***, 2019. The MDRC found that Petitioner’s misconduct, ***, was neither a manifestation of Student’s disabilities nor a result of the District’s failure to implement Student’s individualized education program (“IEP”) or Student’s behavior intervention plan (“BIP”). Petitioner disagrees, asserting that Student’s resulting assignment to Respondent’s Disciplinary Alternative Educational Program (“DAEP”) for forty-five (45) days was a prohibited change in placement; as such, Respondent has deprived Petitioner of a free, appropriate public education (“FAPE”).

II.

On August 27, 2019, Respondent filed a Response to Com Partial Dismissal. The basis for the Motion to Bifurcate related Complaint, which included (1) issues about the placement of P §300.531, *i.e.*, disciplinary change in placement, and (2) general issues program.

School Year 2018-19:

4. Student attended *** through early Fall 2018 (R.5.30). Student enrolled in NEISD in October 2018 and was assigned to Student's home school, *** (R.5.1 & 33). Student's Parent informed the District that although Student had been evaluated for AU in 2016, Student did not qualify for special

topics;

- d. Reduce occurrence of off-topic comments by teaching how to make appropriate comments;
and
- e. Teach

18. Regarding classroom strategies, the BIP called for the following: set easily obtainable daily goals; offer choices; praise behaviorally appropriate students; provide nonverbal signal for appropriate behavior; planned ignoring of minor inappropriate behavior; and verbal reminders (R.3.1).
19. The BIP called for a reward system involving the Premack Principle, ³ positive reinforcers, and earned activities and privileges (R.3.1).
20. The BIP called for social skills training using the following supports: help student to use language (communication system) to label and communicate feelings; provide direct instruction in pro-social behaviors; teach alternative behaviors; and coach in problem-solving situations (R.3.2).
21. The BIP provided a list of consequences that were reasonably calculated to improve Student's behavior: review consequences before behavior escalates; signal nonverbal disapproval; ask Student to practice an appropriate response; allow peer pressure; withhold earned activities/privileges; offer Student a choice of changing Student's behavior or going to a cooling off area; and teacher-initiated cooling off period (R.3.2).
22. Student was successful during the 2018-19 school year. Student passed all of Student's classes and was promoted *** (R.7).

The * Incident: **, 2019**

23. On **, 2019, Student attended **. ** (T.167.20-168.5). ** (T.167.24-168.9). ** (T.168.14-16).
24. Student was in the classroom of a redirection teacher (T.166.4-20). The redirection teacher works with children to improve social skills and coping strategies (T.166.23-167.3).
25. There were ** students in the classroom, including Student. There were also three (3) adults in the classroom: the redirection teacher, a special education paraprofessional, and a partner teacher (T.169.15-170.3).
26. Student was compliant with all school rules between **. Student did not display any negative or impulsive or distracted behaviors (T.177-16-25).
27. ** (T.172.2-10) (R.10). **. ** (T.173.2-15).
28. **. ** (T.173.16-174.3). ** (T.174.8-14). ** (T.174.5-17).
29. ** (T.174.3-4) (R.10).
30. **. **. ** (T.174.23-176.1).

³ The Premack Principle can be used when one wants a child to do something, but the child finds the behavior undesirable. This Principle makes it easier to do an unpleasant activity by putting a pleasant activity right after it. An example of its use is: "if you want a piece of cake, you need to eat all of your peas." The child knows that accessing the reward is contingent upon completing the task. If the child still refuses to eat the peas, the child does not get the cake. The child is given the power to earn or lose the reinforcer.

31. ***. *** (T.176.7-16).
32. Student answered truthfully when asked if Student had ***. Student explained that *** (T.177.5-9) (R.10). Student's Mother was informed of the incident and met with the school administration to discuss the problem and the possible consequences for Student's violation of the Student's Code of Conduct (R.10).
33. On August ***, 2019, Student's mother met with school administration and was informed that because Student had ***, Student was being recommended for placement in the DAEP for forty-five (45) days (R.11).
34. Also on August ***, 2019, Student met with the school's Licensed Specialist in School Psychology ("LSSP"). Student explained to her that Student ***. Student confirmed that Student *** (R.4.30).
35. The school principal referred Student's case to the Pupil Personnel Services to conduct a Disciplinary Conference. The hearing was conducted on ***, 2019. Student testified to the Hearing Officer that Student would never *** at home because Student would get in trouble and that Student ***. The Hearing Officer ordered Student to be placed in the DAEP but deferred such placement until Student's MDRC could convene (T.18.19-25) (R.9).

The August *, 2019 MDRC Meeting:**

36. On August ***, 2019, Student's ARDC convened the mandatory MDR related to Student's false alarm. During this August ***, 2019, MDR, the Committee reviewed Student's current evaluation: Student's January ***, 2019, FIE (R.4.1).
37. The MDRC reviewed information from Student's IEP and BIP in the areas of reading, speech and related services, written expression, math, behavior, functional performance, science, and social studies (R.4.2-4).
38. The MDRC reviewed information from Student's Mother, who stated Student did not understand the ramifications of *** until after she explained it to Student (R.4.23).
39. The MDRC reviewed information from Student's Mother, who stated that the District was not implementing Student's IEP and BIP (R.4.23). Student's Mother failed to provide an example of such failure to implement.
40. The MDRC reviewed and adopted an additional goa(or)6.9(m)7.1(a5 Tc 0.31 033)10(add10(eh())7.1(a5 Tc ns)14(

43. The MDRC agreed to the following placement criteria (R.4.23):
- a. Student will be placed in a setting in which Student can participate in the general curriculum and continue to receive services and modifications, including those described in Student's current IEP, that will enable Student to meet the goals set out in the IEP;
 - b. Student will be placed in a setting that will include services and modifications designed to address the behavior that resulted in the DAEP placement;
 - c. Student's placement was determined by a Hearing Officer and Student's disciplinary action was determined using procedures applicable to students without disabilities. Student's special education and disciplinary records were given to the Pupil Personnel Services Hearing Officer who will be responsible for making the final determination regarding the disciplinary action and the consequences to follow. ⁴
44. Student's *** is a serious offense. Texas Penal Code ***.
45. The evidence supports a finding that Student knowingly ***.
46. The evidence does not support a finding that Student's conduct, ***, was caused by, or had a direct and substantial relationship, to Student's disabilities.
47. The evidence does not support a finding that Student's conduct, ***, was the direct result of the District's failure to implement Student's IEP and/or BIP.

IV. DISCUSSION

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. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. §300.530(e.30(e.e10(oes)13.9(

to enable the child to continue to participate in the general education curriculum and to make progress on Student's goals. 34 C.F.R. §300.530(d). The student must receive, where appropriate, an FBA and behavioral intervention services and modification that are designed to address the behavior violation so that it does not recur.

A. Basics of an MDR Appeal:

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).⁶

The MDR should be conducted by the district, the parents, and relevant members of the student's ARDC, as determined by the parents and the district. 34 C.F.R. §300.530(c). 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. (h)10(e)le by tda inFcenD 3 >>BDC /TT2 1 Tf -13.16

of Student's unusual behaviors, ⁷ Student's *** does not evidence the type of behavior consistently shown by Student. When Student ***, Student knew what it meant ***; Student was inspired to ***; and Student knew Student could get in trouble for ***. Student relayed this information to the school's administrator prior to the arrival of Student's Mother. This incident occurred without any anger, frustration, impulsion, or agitation. Student made the decision ***, knowing what it meant, and knowing Student could get into trouble. This act cannot be linked to Student's AU disability.

b. Question 2: Implementation of Student's IEP:

The second question in the MDR asks: Was the conduct in question a result of the district's failure to implement the student's IEP? 20 U.S.C. 1415(k)(1)(E)(i). Again, in reaching an answer to this question, the MDRC must review all relevant data, details of the incident, IEPs, BIPs, teacher observation, and any other relevant information provided by the Parent. Notwithstanding the many strategies and supports provided to Student under Student's IEP and BIP, the sole concern voiced by Student was the MD must be set aside because Student's teacher failed to implement one (1) behavior strategy: she failed to ***.

In addressing Student's behavior, Student's redirection teacher instructed Student to *** Student complied. This shows the teacher's use of redirection, reminder to stay on task, and verbal reminder for targeting off-task behavior. Clearly, this was appropriate.

When Student made Student's ***, again Student's redirection teacher told Student to *** Student complied without anger, frustration, or agitation. It was not until the Student ***.

Student has difficulties due to Student's AU and SI disabilities. But Student is bright, Student works on grade-level TEKS, Student's teachers like Student, and Student is able to engage in conversation when Student feels safe. Student does not manifest harmful behaviors towards Student's peers and teachers. Student is able to describe some feelings and to understand the requirements under the Student Code of Conduct. The evidence does not support a finding that Student's behavior resulted from the District's failure to implement Student's IEP and/or BIP.

**V.
CONCLUSIONS OF LAW**

1. Student's August ***, 2019, MDRC conducted a comprehensive and appropriate MDR, pursuant to 20 U.S.C. §1415(k)(1)(E) and 34 C.F.R. §300.530(e). Student's *** was not caused by, or had a substantial relationship to, Student's disabilities. Student's *** was not the result of the District's failure to implement Student's IEP and/or BIP.

**VI.
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.

⁷ *** (R.5.3 &12).

SIGNED this the 8th day of October 2019.

Deborah Heaton McElvaney
Special Education Hearing Officer