
B. PETITIONER'S REQUESTED RELIEF:

Petitioner asks the SEHO to render the following relief:

1. A finding that the District denied Student a free, appropriate public education ("FAPE"),
2. An Order terminating Student's placement in the District Alternative Education Program ("DAEP") and returning Student to the regular education classroom;
3. An Order for the District to provide training to all administrators and relevant staff regarding discipline and students with disabilities;
4. An Order for compensatory educational services;
5. An Order for the District to produce all videos or photographs reviewed by the District determining that Student's actions were not a manifestation of disability;
6. An Order for the District to provide all statements the District reviewed in its MDR; and
7. An Order for any relief that the SEHO deems appropriate or which is recommended by Student's experts and evaluators.

II.
PROCEDURAL HISTORY

Petitioner filed Petition Complaint on January 26, 2023. This Complaint contained allegations regarding disciplinary actions as well as substantive and procedural matters. The undersigned contacted Parties to inquire whether the issues should be bifurcated. Petitioner stated that he would be filing a second Complaint related solely to the substantive and procedural matters, which was accomplished on January 27, 2023. Accordingly, all substantive and procedural matters were dismissed from Docket No. SE0123 leaving only the disciplinary issues in this case.

On January 28, 2023, Respondent filed its Notice of Appearance of Counsel. On January 29, 2023, the undersigned Special Education Hearing Office ("SEHO") issued Order No. 1: Initial Scheduling Order for Expedited Docket No. SE0123, which established the following timelines in compliance with IDEA: February 7, 2023: Prehearing Conference ("PHC"); February 23, 2023: Disclosure Deadline; March 2, 2023: Due Process Hearing; and March 23, 2023: Decision Deadline.

On February 7, 2023, the Parties convened the PHC. In attendance were the following: (1) Patricia Freeze, Petitioner's advocate; (2) Mr. Matt Acosta, Respondent's counsel; (3) the SEHO; and (4) the court reporter. A record of the PHC was made. The Parties discussed the issues and confirmed the previously set timelines in this expedited matter.

On February 13, 2023, Petitioner's counsel filed its Notice of Appearance, joining Petitioner's advocate in this case.

The Due Process Hearing:

The Parties made their Disclosures timely. The SEHO convened the Due Process Hearing via Zoom on March 2, 2023, and completed the expedited hearing that same day. The Parties' Exhibits were admitted and the Parties called a total of five witnesses, who presented direct testimony and were cross-examined.

During the Hearing, Petitioner was represented by Mark Whitburn, Petitioner's counsel; Mr. Eric Nichols and Mr. Matt Acosta, Respondent's counsel. Also in attendance throughout the Hearing were (3) Mr. Louis Geigerman and Ms. Patricia Freeze, Petitioner's Advocate; (4) Mr. [REDACTED]'s Mother; (5) Ms. [REDACTED], Ph.D., Executive Director of Special Programming for the District; and (6) [REDACTED] with the District. At the conclusion of the Hearing, the SEHO confirmed that the Decision would be due under the expedited timelines, which is March 23, 2023. The Parties agreed to submit Closing Arguments by March 15, 2023, which was accomplished.

Under the expedited timelines, this Decision is considered final on March 23, 2023.

III. RESOLUTION SESSION

The Parties convened the Resolution Session on February 14, 2023, to settle.

IV. FINDINGS OF FACT

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 [REDACTED]-year-old [REDACTED] who is in the [REDACTED] grade; Student attended [REDACTED] during the 2022-2023 school year. Student qualifies for special education and related services as a Student with Autism ("AU") and an Emotional Disturbance ("ED") [Jt.2].

Student's 2017 FIE:

3. Student was assessed for special education and related services when Student was in the [REDACTED] grade in October 2017. Student's Full and Individual Evaluation ("FIE") determined that Student has ("AU") and an Emotional Disturbance ("ED") [Jt.2.15].
4. The FIE reported that Student previously had demonstrated cognitive functioning in the superior range [Jt.2.6]. Accordingly, Student did not need academic support during the 2017 school year.

² References to the Due Process Hearing Record are identified as follows: "T.#.#" refers to the Reporter's Transcription of testimony made on March 2, 2023, and the specific page contained therein; "Jt.#.#" refers to the Joint Exhibits, Exhibit number and page; "P.#.#" refers to Petitioner's Exhibits by number and page; and "R.#.#" refers to Respondent's Exhibits by number and page.

12. The function of this behavior was hypothesized to be escape or avoidance of nonpreferred task or other frustration trigger. 3.025] Included in the FBA was parent's reported concern that academic demands, especially, are the primary trigger of Student's frustration, as well as difficulty expressing self and coping with Student's feelings. The teacher also reported academic demands as the primary cause of Student's emotional challenges, which resulted in Student's becoming frustrated and/or shutting down. The FBA identified the antecedents as (1) request to start work; (2) given opportunities for peer comparison based on performance (leveling up opportunities); assignments involving; and (4) noncompliance [de 2.018].
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19. During the 2022 school year, Student received specialized social, emotional, and behavioral support forty-five minutes per day. This support was provided through the District's program provides special education services designed to promote acquisition of social communication and generalization of social behavior skills [Jt.5.107]. Student received no behavioral referrals during the 2022 school year.
20. On May^{***}, 2022, Student's ARDC meet to plan Student's 2022-23 school year. The ARDC agreed to support Student through district's^{***} ("****") program because there was no longer offered at Student's school. Student's parent did not want Student transferred to another school where^{***} offered [Jt.5.108].
21. **** is a specialized behavior/social/emotional support program that promotes the acquisition of social communication and generalization of social behavior skills [Jt.5.103]. The purpose of student target behaviors by teaching prosocial replacement behaviors and decrease challenging behaviors using evidence-based behavior principle.
22. The ARDC assigned Student fifty minutes per week of pull-out services in ****; one hundred twenty minutes per week of in-class support for emotional/behavioral/social monitoring; and thirty minutes one time every three weeks counseling services to help Student develop coping skills [Jt.5.103-104]. The ARDC reached mutual agreement [Jt.5.109].
23. The BIP's target behavior addressed Student's difficulty appropriately coping with frustration, which may negatively impact Student's work production or result in Student's complete refusal to do work in class. When Student becomes overwhelmed and upset, Student will often shut down and begin exhibiting signs of frustration, such as^{***}. This may also escalate to verbal aggression, etc. [Jt.5.113].

School Year 2023:

24. During the first several months of the 2022-23 school year, Student received support from Student's IEP from ****, as documented through Student's Daily Behavior Counts [Jt.10 & 11; T.244]. Meticulous daily recordings were maintained every period of every day Student was in school [T.244]. The target for every Student is eight percent [T.247].
25. During the 2023 school year, Student received five discipline referrals [Jt.8].
 - a. On November^{***}, 2022, Student received two referrals: (1) Student received **** [Jt.8.158];
 - b. Also on November^{***}, 2022, Student received **** [Jt.8.157];
 - c. On December^{***}, 2022, Student received no disciplinary action but for a "reboot" with Student's **** teacher [Jt.8.157];
 - d. On January^{***}, 2023, Student was **** Student received **** [Jt.8.157];

38. Student failed to prove Student's *** to school resulted from the District's failure to implement Student's IEP and BIP.

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*, 580 F.3d 286, 292 n. 4 (5

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This expert testified that Student would be unable to appropriate friendships because of Student's AU. The expert testified that the alleged "many incidents Student was" would increase the likelihood of Student's impulsive reactions as these should justifiably make Student feel threatened in general around other students.

Student's expert failed to take into consideration the fact that Student did have friends at school. Student had a very close connection to Student's teacher; and Student routinely brought objects to school to show and share with Student's friends.

Further, the expert failed to consider that Student's disabilities had never manifested in the type of severity of Student's decision to "Was neither an impulsive nor representative of any Student's prior actions. The record, including evaluations, IEPs, IEP progress reports, and disciplinary reports, lack indication of such behavior because it never occurred.

The standard for establishing a manifestation for the purposes of an MDR under IDEA is a high one requiring a close correlation between the disability and the conduct. Simply showing a connection to a disability is not sufficient to show that the behavior was directly caused by, or has a substantial relationship to a student's disability. *Katy Indep. Sch. Dist. v. LRP 20430 (TX SEA Feb. 25, 2022).*

Hearing officers and courts have consistently looked for a causal connection between the ways a student's disability has manifested itself in the past at school and the behavior at issue in the disciplinary incident. See *Katy Indep. Sch. Dist. v. LRP 20430 (TX SEA Feb. 25, 2022)*; also, *Killeen Indep. Sch. Dist. v. SE0919A (TX SEA Dec. 19, 2019)* (the student's IEP, BIP, and FBA focused on curtailing the same type of behavior as the conduct at issue in the MDR (the MDR demonstrated that the conduct was a manifestation of the student's disability)).

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 the student's disability." *Katy Indep. Sch. Dist. v. SE0122 (TX SEA Feb. 25, 2022)*. No such connection obtains here.

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.

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 committee, as part of considering this prong, must review all relevant data, the disciplinary conduct, IEP, teacher observation, and any other relevant information provided by the parent. 34 C.F.R. § 300.530(e)(1)(ii).

As set forth above, Student's MDRC reviewed all relevant information in ascertaining whether the District failed to implement Student's IEP. Student's teacher presented evidence to support such implementation, especially through her use of the Daily Behavior Checklist. During the MDR, Student received only three scores below the required eight score. Aside from this, Student failed to present any evidence that Student's IEP and BIP were not being implemented.

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