

SOAH Docket No. 701-24-04953
TEA Docket No. 080-SE-1123

**Before the
State Office of Administrative
Hearings**

—
**STUDENT, By Next Friends PARENT and PARENT,
Petitioner**

v.

**Cuero Independent School District,
Respondent**

DECISION OF THE HEARING OFFICER

*** (Student), by next friends *** and *** (Parents or, collectively, Petitioner), filed a request for an expedited due process hearing (Complaint) under the Individuals with Disabilities Education Act (IDEA). The Complaint was received by the Texas Education Agency (TEA) on November 9, 2023, with notice issued by TEA on November 10, 2023. The Respondent to the Complaint

The main issue in this case is whether Student violated either the Texas Education Code or the District Student Code of Conduct. The Hearing Officer concludes Student did not violate either. Because Student can only be removed from Student's educational placement for a violation of the District Student Code of Conduct under the IDEA, Student must be returned to Student's placement immediately.

I. DUE PROCESS HEARING

The due process hearing was conducted on December 13, 2023. The hearing was recorded and transcribed by a certified court reporter. Petitioner was represented by their attorney, Mark Whitburn. Parents and Student were also present. ***. However, Parents ***.¹

Respondent was represented by its legal counsel, Trevor Hall and Jill Williams. In addition, Dr. ***, Superintendent of the District, attended the hearing as the party representative. Both parties filed timely written closing briefs on January 4, 2024. The Decision in this case is due on January 16, 2024.

II. ISSUES

A. PETITIONER'S ISSUES

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

¹ Joint Exhibit (J) 2.

1. Whether the District held a timely and appropriate manifestation determination review (MDR) hearing with sufficient opportunity for all key stakeholders to offer input into the decision.
2. Whether the District appropriately concluded the behavior in question was not directly and substantially related to Student's disability.
3. Whether the District failed to consider mitigating circumstances and the facts related to the incident in question before placing Student in a disciplinary alternative education program (DAEP) for violating Chapter 37 of the Texas Education Code and the District's Student Code of Conduct.

B. RESPONDENT'S POSITION

Respondent generally and specifically denies Petitioner's issues and denies responsibility for providing any of Petitioner's requested relief.

III. REQUESTED RELIEF

A. PETITIONER'S REQUESTED RELIEF

Petitioner requested the following items of relief:

1. Order the District to place Student on Student's home campus immediately.
2. Order the District to provide any other relief the Hearing Officer finds appropriate.

IV.

consider whether Student's *** was directly and substantially related to Student's disability and/or whether it was caused by the District's failure to implement the IEP.¹⁰

10. Committee members, who were not willing to discuss the incident itself or whether it violated the Texas Education Code or the Student Code of Conduct, were also not willing to consider the possibility that *** could be directly and substantially related to ADHD. Committee members testified at the due process hearing that they could foresee no circumstances in which that would be possible. The MDR

explain and show the Committee ***, but the diagnostician stopped Parent and said the Committee would not consider that information.

While the MDR Committee did not consider evidence about the underlying offense during the November ***, 2023 MDR Committee meeting, a school district is only allowed to remove students who violate a student code of conduct to a DAEP. 34 C.F.R. § 300.530(b-c). A hearing officer reviewing an MDR Committee decision in an expedited due process hearing may consider all factors involved in an individual case, including whether a violation of the student code of conduct or Chapter 37 of the Texas Education Code took place at all. 34 C.F.R. § 300.530; Letter to Ramirez, 60 IDELR 230 (OSE0 S (5J f0)Te1 (atn)3y-0.012 Tc 4.016 Tw 4(th)2Code3
