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Pennsylvania
Special Education Hearing Officer

DECISION

Child's Name: DC

Date of Birth: XX-XX-XXXX

Date of Hearing: February 4, 2010

CLOSED HEARING

ODR No. 00640-09-10 AS

Parties to the Hearing:

Ms. Bonnie O'Mahony
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Hermitage School District
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Representative:

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Ms.

and

Ms.

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Date Record Closed: February 4, 2010
Date of Decision: February 18, 2010
Hearing Officer: Cathy A. Skidmore, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

“Student” (Student) is a 17-year-old eligible student of the Hermitage School District (District). On October 1, 2009, the District was informed that Student and several other ninth-grade students had violated certain provisions of the District’s discipline code. Following an investigation, Student was suspended and the District commenced expulsion proceedings. On January 15, 2010, a manifestation determination meeting was held and the team determined that Student’s conduct on October 1, 2009 was not a manifestation of his disability. Student’s parent and guardian (hereafter collectively “parents”) disagreed and requested a hearing, which was held on February 4, 2010. For the reasons set forth below, I agree with the District that Student’s conduct on October 1, 2009 was not a manifestation of his disability.

ISSUES

Whether Student’s conduct on October 1, 2009 was a manifestation of his identified disability?

FINDINGS OF FACT

1. Student was born on [XX-XX-XXXX] (Notes of Testimony (N.T.) 275; School District Exhibit (SD) 1) Student is a resident of the Hermitage School District (District). (SD 1)
2. The District conducted an initial evaluation of Student for special education when he was in third grade and issued an Evaluation Report (ER) in March 2004. The ER recognized Student’s diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) as the basis for finding him Other Health Impaired (OHI), and also identified him as eligible due to a learning disability in reading. It was also determined that Student needed speech/language support. (SD 1)
3. Student began receiving special education services that third grade year and for some period of time also had therapeutic support staff (TSS) services. (N.T. 225, 227-28; SD 1)

4. Student was re-evaluated in March 2007 during sixth grade. Parental input described Students' needs to include following instructions and staying focused, as well as assessment of his behavior and specifically his temper. Teachers reported that Student exhibited behavioral weaknesses in listening appropriately, asking questions when necessary, demonstrating problem solving skills, keeping an accurate assignment book, completing assignments accurately, and working appropriately. Teachers also identified academic weaknesses in Student's written and oral language skills. Student was again identified as eligible for special education on the bases of a specific learning disability in reading as well as OHI due to his ADHD diagnosis. (N.T. 229; S 1)
5. In the March 2007 re-evaluation report (RR), the District's school psychologist provided the results of the Behavior Assessment System for Children, Second Edition (BASC-2), which uses subscales and composite scores to measure both adaptive and problem behaviors. Three of Student's teachers completed the BASC-2 teacher rating scales. One teacher rated Student in the at-risk range for all five of the composite areas: externalizing problems, internalizing problems, school problems, the behavioral symptoms index, and adaptive skills. Another teacher rated Student in the at-risk range on the internalizing problems composite and in the clinically significant range for the other four composite areas. The third teacher rated Student in the at-risk range for only one composite area, that of school problems. (S 1)
6. The District's school psychologist noted in the RR the variability in the scores of the three teachers on the BASC-2 rating scales, and determined that an average score would provide the best global view of Student. Using average scores, Student was rated in the at-risk range on the behavioral symptoms index composite and in the clinically significant range on the externalizing behaviors composite. It was noted that Student required individual guidance and assistance to complete assignments, and it was also suggested that Student demonstrated problem behaviors with authorities at school in order to "save face" with "student's peers which indicated a need to enhance his social and communication skills. The school psychologist concluded that Student had more difficulty with behavioral issues than attention or learning problems and recommended a functional behavioral assessment and development of a behavior plan to decrease academically maladaptive behaviors and increase academically adaptive behaviors through self-monitoring and self-regulation. (N.T. 219-23, 243; S 1)
7. In order to address Student's behavioral needs, the District implemented a school-wide behavior support system but later introduced classroom interventions with Student which were responsive to his individual interests. These interventions were developed through consultation of the school psychologist and Student's learning support teachers. Specifically, the District rewarded Student for demonstrating positive behavior including his interactions with teachers and work completion. Reinforcement in the form of extra time with the computer or in the gym was successful with Student in sixth grade. (N.T. 223-25, 241-42)

8. An Individualized Education Program (IEP) developed in April 2008 when Student was in seventh grade recommended that speech and language support be discontinued. That IEP identified needs for reading fluency as well as improvement in self-monitoring, self-regulation, classroom behavior, interactions with teachers, and communication skills. Goals addressed completion of assessments and assignments with a score of 70% or better and independent use of study skills strategies. Learning support services were to be provided for 4 hours per week for reading, music, and study skills. A number of program modifications and items of specially designed instruction were also included. The IEP team determined that Student exhibited behaviors that impeded his learning or that of others but did not include any type of individual behavior plan in this April 2008 IEP. (Parent Exhibit (P) 3)
9. During the 2008-09 school year when Student was in eighth grade, he received the following disciplinary referrals:

September 9, 2008	Late to homeroom
September 17, 2008	Held another student's agenda book
October 8, 2008	Late to homeroom
October 29, 2008	Skipped activity period
October 29, 2008	Shot a paper clip at another student and would not sit on bus
October 30, 2008	Skipped activity period
November 5, 2008	Skipped activity period
November 10, 2008	Refused to do assignment
December 18, 2008	Threw books on floor, attempted to leave classroom without permission, refused to be seated, kept talking with other students
January 8, 2009	Claimed bus was late but teacher check found no buses late
January 9, 2009	Claimed bus was late but teacher check found no buses late
January 15, 2009	Late to homeroom, slammed door when told to get pass
January 29, 2009	Late to homeroom
February 23, 2009	Told bus driver to shut up on two occasions
March 3, 2009	Disrupted health class, put head down in class
March 23, 2009	Refused to do classwork and showed disrespect in class
April 3, 2009 ¹	Told teacher to shut up, refused to leave gym when asked

A variety of disciplinary actions were taken following these incidents, the most serious of which resulted in a total of 5 days of in-school suspension, 2 days of out-of-school suspension, and 10 days' detention.

(N.T. 148-52; P 4)

¹ This incident is described at pp. 15 and 17 of P4 but is undated; however, the testimony indicated the date was April 3, 2009. (N.T. 151-52, 165)

10. A new IEP was developed in April 2009. In this IEP, the team determined that Student did not exhibit behaviors which impede his learning or that of others. Teachers did report that Student was often unfocused in class, was inattentive, and did not do assigned work but did complete homework and study for tests in the learning support room. As before, needs were identified in reading fluency, self monitoring, self regulation, classroom behaviors, and interactions with teachers. This IEP included goals for completing assessments in academic classes with a score of 70% or better, independent use of study skill strategies, self-monitoring of 6 identified positive behavior habits, and reading fluency. Program modifications and items of specially designed instruction were again included and Student would attend a corrective reading class instead of music with his activity period/study hall spent in the learning support room. (SD 2)
11. Student's April 2009 IEP was the program implemented at the beginning of ninth grade, the 2009-10 school year. Student's learning support teacher would work with Student daily and monitor his progress on all of his goals except reading fluency which was and is addressed in the reading intervention program. Student's learning support teacher also has been the co-teacher in Student's English literature and algebra classes. (N.T. 170-75, 182-88, 200, 207-11)
12. In September of the 2009-10 school year, Student received the following disciplinary referrals:

September 3, 2009	Late with no pass
September 11, 2009	Late with no pass
September 17, 2009	Late with no pass
September 29, 2009	Late with no pass

Student received one day of detention for these four occurrences which the District considered to be one disciplinary incident.

(N.T. 206-07; P 4 p. 28)
13. Student's ninth grade learning support teacher observed Student's refusal to do assignments, and other teachers reported to her that Student was unprepared for class and refused to participate. The learning support teacher worked with Student on completing assignments and being prepared for classes. She also had had Student in fifth grade and believed that Student was less impulsive in ninth grade than he had been in fifth grade. (N.T. 175-78, 197)
14. During the afternoon of October 1, 2009, the high school principal was notified by two school guidance counselors that accusations of [Redacted incident giving rise to discipline]. (N.T. 106, 139-41)
15. The police were contacted and they conducted an investigation [Redacted]. (N.T. 141-44, 158; SD 7)

16. An informal disciplinary hearing was held on October 1, 2009. Student was charged with violating the District discipline code in the following particulars: [Redacted charges giving rise to discipline]. (SD 7, 8; P 4 pp. 29-32, 34, 37-43)
17. [Redacted incident.] (N.T. 141-42; SD 7)
18. The District obtained copies of school surveillance videotapes taken on October 1, 2009 by four separate cameras, which depict several areas of the high school where Student and the other students involved are seen moving in and out of camera range throughout various hallways and stairwells after the end of the school day. (N.T. 106-38) There is no audio on the videotapes. (N.T. 135-36) The portions of the videotapes which include Student and the other students involved in the incident of October 1, 2009 encompass time frames beginning at 2:15 p.m. through 2:34 p.m. (N.T. 133)
19. On January 7, 2010, Student received a disciplinary referral for using the “f” word in the gym and received one day of suspension. (P 4 p. 44)
20. On January 13, 2010, the District provided notice to the parents that it would hold a formal hearing on January 20, 2010 regarding the charges against Student and to consider his expulsion/suspension from school. The District alleged that, on October 1, 2009, [Redacted behaviors]. (P 1)
21. On January 15, 2010, the District convened a manifestation determination meeting which was attended by the high school principal, the director of administrative services for the District, Student’s learning support teacher, a school psychologist, counsel for the parents, and counsel for the District. The parents were not able to attend but did provide input and, as noted, were represented at the meeting by counsel. The team reviewed Student’s current IEP, considered observations by Student’s learning support teacher, and had input from the parents with respect to whether Student displayed behaviors which impeded his learning or that of others. Student’s learning support teacher noted that in the 2009-10 school year, Student had been demonstrating problems with class participation, completing assignments, focusing and paying attention, but had not displayed any other problematic behaviors. The parents’ input stated that they had concerns about Student’s temper and believed that Student does display behaviors that impede his learning or that of others. Additionally, the team discussed Student’s disciplinary records for eighth and ninth grades. The team determined that Student’s disability did not cause or have a direct and substantial relationship to the conduct on October 1, 2009, and that the conduct on that date was not the direct result of a failure to implement Student’s IEP. The team thus concluded that the conduct in question was not a manifestation of his disability. The parents did not agree with this conclusion. (N.T. 155-56, 194-98, 229-32, 234-37; SD 3)
22. On January 15, 2010, the District filed a due process complaint notice seeking an expedited hearing as requested by the parents based on their disagreement with the manifestation determination.

23. A due process hearing convened on February 4, 2010 and concluded that same date.² Testimony was presented on behalf of the parents as well as the District. The parents introduced five exhibits and the District introduced eight exhibits. The evidence included, without objection, the playing of the surveillance videotapes with narration by the high school principal. (N.T. 106-38) The videotapes were not marked as an exhibit.

DISCUSSION AND CONCLUSIONS OF LAW

At the outset, it is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Bd. of Educ.*, 435 F.3d 384, 392 (3d Cir. 2006). Accordingly, the burden in this case rests with the parents who requested the hearing after they disagreed with the manifestation determination.³

The Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1401 *et seq.*, and its implementing regulations provide for specific protections to eligible students who are facing a change in placement for disciplinary reasons.

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine--

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

² This hearing officer received the transcript on February 8, 2010.

³ It merits mention that the parents in this case were not able to be present for the due process hearing on February 4, 2010 for the very understandable reason that their work schedules did not permit their attendance. N.T. 7. The parents did not request that the hearing be continued or rescheduled, or otherwise object to convening on February 4, 2010 without their presence. I draw not the slightest adverse inference from the parents' absence, and would further note that the parents were very capably represented by counsel at the hearing.

20 U.S.C. § 1415(k)(E)(i). *See also* 34 C.F.R. § 300.530(e). If it is determined that the conduct in question had either the causal relationship with the disability or was a result of the failure to implement the child's IEP, the conduct "shall be determined to be a manifestation of the child's disability." 20 U.S.C. § 1415(k)(E)(ii). Additionally, if the conduct is determined to be a manifestation of the child's disability, the District must take certain other steps which generally include returning the child to the placement from which he or she was removed. 20 U.S.C. § 1415(k)(F).

Under Section 1415(k)(E)(i)(I), the clear language requires a determination that the conduct be "caused by" or have a "direct and substantial relationship to" the child's disability. A review of the Conference Committee Report when IDEA was last amended and reauthorized in 2004 provides some guidance on this determination:

The Conferees intend that in order to determine that the conduct in question was a manifestation of the child's disability, the local educational agency, the parent and the relevant members of the IEP team must determine the conduct in question be the direct result of the child's disability. It is intention of the Conferees that the conduct in question was caused by, or has a direct and substantial relationship to, the child's disability, and is not an attenuated association, such as low self-esteem, to the child's disability.

H. Rep. No. 108-779, at 225 (2004).

There is no question in this case that Student has been identified as a child with ADHD and has received special education services by reason of that classification based on the disability category of OHI at least since he was in third grade.⁴ (Finding of Fact (FF) 2, 3, 4) According to the DSM-IV, the essential features of ADHD are:

- A. Persistent pattern of inattention and/or hyperactivity-impulsivity that is more frequently displayed and is more severe than is typically observed in individuals at comparable level of development.
- B. Some hyperactive-impulsive or inattentive symptoms must have been present before seven years of age.
- C. Some impairment from the symptoms must be present in at least two settings.
- D. There must be clear evidence of interference with developmentally appropriate social, academic or occupational functioning.
- E. The disturbance does not occur exclusively during the course of a Pervasive

⁴ There has been no contention that Student's learning disability is implicated in the manifestation determination in this case. (N.T. 264)

Developmental Disorder, Schizophrenia, or other Psychotic Disorders and is not better accounted for by another mental disorder.

American Psychiatric Association (2000). *Diagnostic and Statistical Manual of Mental Disorders*, Fourth Edition, Text Revision. Washington, DC: Author.

Student's most recent evaluation, the RR issued in March 2007, reflected parental concerns with Student's behavior in the following areas: following instructions, staying focused, and controlling "student's" temper. (FF 4) Teachers reported behavioral weaknesses in listening appropriately, asking questions when necessary, demonstrating problem solving skills, and completing work and assignments appropriately. (FF 4). The BASC-2 results reflected depressed scores for adaptive behaviors and elevated scores for problem behaviors, which the District addressed through both a school-wide behavior support plan and individualized positive reinforcement for appropriate behavior. (FF 5, 6, 7)

Student's 2008 and 2009 IEPs both identified Student's needs in self-monitoring, self-regulation, classroom behavior, interactions with teachers, and communication skills. (FF 8, 10) The District addressed these needs primarily in the learning support classroom. (FF 7, 13) During the 2008-09 school year, Student received numerous disciplinary referrals which ranged from tardiness and missed classes to work refusal to disruption of classes and disrespect of school personnel, with only two incidents which might be considered even mildly violent (shooting a paper clip at another student and throwing books on the floor). (FF 9) Student attended school for approximately one month during the 2009-10 school year before the October 1, 2009 incident, and the only disciplinary referrals related to "student's" tardiness for class on four occasions. (FF 12)

The parents' expert, a certified school psychologist and certified school counselor who also has a private counseling practice, has maintained a professional focus on the diagnosis and symptoms of ADHD (N.T. 29-33; P 2) and is clearly extremely knowledgeable about this disorder. He has not, however, ever met, observed, or spoken with Student, nor has he spoken with Student's parents or teachers. (N.T. 49, 71-73) This expert did review Student's ERs from 2004 and 2007, his 2008 and 2009 IEPs, grades, and disciplinary referral forms for the 2008-09 school year, and the January 15, 2010 manifestation determination worksheet in this case. (N.T. 36-38) Student's expert opined that Student did have ADHD of the combined type, which is commonly exhibited by "problems with behavioral intervention, hyperactivity, lack of focus, [and] poor emotional regulation" which "lead to a pattern of behavior where there is very poor social awareness because of a lack of social attention, a lack of ability to integrate information from the environment and very poor emotional regulation." (N.T. 41) This witness also reviewed the results of the BASC-2 reports in the 2007 RR, and opined that Student exhibited extreme weaknesses in social skills, hyperactivity, attention problems, adaptive skills, and adaptability. (N.T. 45-46)

The parents' expert also concluded that Student's conduct on October 1, 2009 "would be a manifestation of a di[s]inhibited,⁵ deregulated, socially [] inadequate or non-adept young person, socially unskilled." (N.T. 47) This witness was also asked a hypothetical question on whether a student who was "constantly at motion, being restless and fidgety would be a manifestation of ADHD," to which he responded in the affirmative. (N.T. 53-54; *see also* N.T. 55) The expert then opined in a further hypothetical question that a student's willingness to serve as a lookout for two peers, in order to secure affiliation or friendship, would also be a manifestation of ADHD. (N.T. 55-57) Additionally, he opined that inappropriate touching is a form of inappropriate social contact which demonstrates Student's impulsivity and poorly developed social skills. (N.T. 58) Finally, the parents' expert gave an opinion that Student's conduct over the course of the 2008-09 school year and first month of the 2009-10 school year similarly are manifestations of Student's ADHD. (N.T. 62-64, 97-99)

By contrast, the District presented the testimony of the school psychologist who authored the RR in 2007 and provided a different interpretation of the BASC-2 results. This witness also has solid credentials including an extensive background in behavior therapy and services and is a certified school psychologist. (N.T. 216-18) He reviewed Student's 2007 RR and explained that the BASC-2 scores revealed a high degree of variability, opining that the composite index scores, and particularly the behavioral index score, provided a better overall picture of Student. (N.T. 219-21) This witness explained that after a review of the composites and the individual scores, Student was presenting as an at-risk student whose conduct problems were more of a contributing factor to the externalizing problems composite than hyperactivity and aggression. (N.T. 220-21) The school psychologist also was a member of the manifestation determination team and agreed with the conclusion that the conduct of October 1, 2009 was not a manifestation of Student's disability. (N.T. 229-32, 235-37)

I find the testimony of both experts to be highly credible. The parents' expert, who possesses impressive credentials in his field and particularly in his focus on ADHD symptoms and diagnosis, provided a thorough explanation of his opinion of whether Student's conduct on October 1, 2009 constituted a manifestation of Student's disability. There is, of course, necessarily some disadvantage in that this witness did not have the opportunity to meet or observe Student in any setting, and his opinion was based primarily on application of his very complete understanding of and familiarity with ADHD to what he could glean from Student's records. To his further credit, this expert was careful to craft his opinion using language which was necessarily generalized rather than specific and particular to Student's individual personality and characteristics. This hearing officer can fully understand and appreciate the difficulty or impossibility in arranging for a more complete expert assessment of Student and the manifestation determination given the circumstances. Nevertheless, this expert's opinion must be evaluated in light of that reliance on generalities.

The District's school psychologist's testimony was also credible and included some advantage in that he had had an opportunity to evaluate Student in 2007 and was involved in the development of behavioral interventions with Student's learning support teachers following that

⁵ The transcript contains a few typographical errors, and this hearing officer is reasonably confident that the word used by this witness was "disinhibited."

re-evaluation. (FF 5, 6, 7) Although continued disciplinary referrals over the course of the 2008-09 school year might suggest that the behavioral interventions were not wholly responsive to “student’s” needs for self-monitoring, self-regulation, classroom behavior, and interactions with teachers, there is no specific data or other information in the record as to previous school years to enable any analysis of the behavior plan in place. The absence of such evidence is not problematic, however, since the precise issue presented is whether Student’s particular conduct on October 1, 2009 was a manifestation of “student’s” disability.

It does merit mention that some of the incidents which resulted in disciplinary referrals during the 2008-09 school year, such as the October 29, 2008 incident involving the shooting of a paper clip at another student, the December 18, 2008 incident involving throwing books on the floor, and telling a teacher on April 2, 3009 to “shut up,” (FF 9) could be characterized as impulsive. Nevertheless, the evidence indicates that impulsivity was not one of Student’s particular behavioral characteristics at the beginning of the 2009-10 school year. (FF 13) Even the parents’ expert, who suggested that Student had “problems with behavioral intervention, hyperactivity, lack of focus, [and] poor emotional regulation,” and exhibited “a pattern of behavior where there is very poor social awareness because of a lack of social attention, a lack of ability to integrate information from the environment and very poor emotional regulation,” as well as social ineptitude, restlessness, and fidgeting (N.T. 41, 47, 53-54), did not describe Student’s October 1, 2009 conduct as impulsive except with respect to the allegations of [Redacted behaviors]. (N.T. 50, 58) Additionally, the facts that the entire incident took place over a period of nearly 20 minutes and in several locations at the high school strongly suggest that the conduct in question was not impulsive.

The parents contended during the hearing that the District improperly focused its manifestation determination on whether Student knows right from wrong. (N.T. 15) There was evidence presented that the team did give consideration to whether Student knows right from wrong and whether “student” understands the consequences of his actions. (N.T. 197-98, 212) The parents presented further evidence that while Student may understand right from wrong, he also has some inability to understand or appreciate the consequences of his actions. (N.T. 58-62) A child’s ability to understand whether behavior is wrong is unquestionably a relevant consideration in a manifestation determination, and I do not conclude from this record that the conclusion reached here was based upon an incorrect standard or framework.

All of the evidence taken as a whole supports the conclusion that Student’s ADHD is manifested in school by problem behaviors described as academically maladaptive, and that he continues to need improvement in self-monitoring, self-regulation, and appropriate interactions with teachers while also enhancing his social and communication skills. (FF 6, 8, 10, 13) The record also demonstrates that Student has needs in developing appropriate social awareness and adaptive skills, controlling his temper, and improving focus and attention. (N.T. 41, 45-46, 58; FF 4, 5, 6, 13) The conduct which prompted the disciplinary action against Student does not relate to a lack of social awareness, or an inability to integrate environmental information or control his temper, or to his lack of focus and attention in class. The fact that Student, like most if not all adolescents, undoubtedly places a priority on maintaining peer relationships simply does not lead to the conclusion that his actions on October 1, 2009 bear a *direct and substantial* relationship to his disability. 20 U.S.C. § 1415(k)(E)(i)(I) (emphasis added).

The other inquiry is whether the conduct is the direct result of the District's failure to implement Student's IEP. The IEP in place on October 1, 2009 had been developed on April 7, 2009, which is after the last disciplinary referral of the 2008-09 school year. (SD 2) The record shows that the conduct in question occurred after the end of the school day, and there was no evidence to conclude that his IEP had not been properly implemented that day or at any time since the school year began. Student's sole disciplinary referral for the 2009-10 school year related merely to four instances of tardiness and, while the October 1, 2009 incident occurred only one month into the school year, there is nothing in this record to suggest that the District was not properly providing him with his special education program, including behavioral interventions, pursuant to the current IEP. Accordingly, I conclude that the conduct in question was not a direct result of the District's failure to implement Student's IEP. 20 U.S.C. § 1415(k)IE)(i)(II).

It may well be that Student will require changes to his IEP including a behavior plan. In that case, the District may be well advised to consider some of the recommendations for behavior intervention and behavioral support offered by the parents' expert. (N.T. 65-70) Nevertheless, any claims in that regard are not before this hearing officer at this time. Counsel for the parents also made a reference during closing remarks to an independent educational evaluation, which is similarly not an issue at the present time. The parents are free to file any other claims related to Student's right to a free, appropriate public education that they wish to pursue.

CONCLUSION

For the foregoing reasons, I am cannot conclude that Student's conduct on October 1, 2009 was caused by Student's disability, or that it was directly and substantially related to his disability, or that it was the direct result of the District's failure to properly implement Student's IEP. I find that the record supports the District's manifestation determination.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, it is hereby

ORDERED that:

1. Student's conduct on October 1, 2009 in violating the District's disciplinary code was not caused by or directly or substantially related to his disabilities.
2. The Student's conduct on October 1, 2009 in violating the District's disciplinary code was not the direct result of the District's failure to properly implement Student's IEP.
3. The District properly determined that Student's conduct on October 1, 2009 was not a manifestation of Student's disabilities.

Cathy A. Skidmore

Cathy A. Skidmore
Hearing Officer

Date: February 18, 2010

ODR File No. 00640-09-10 AS