

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania Special Education Hearing Officer
Final Decision and Order

OPEN HEARING
ODR File Number: 21300-18-19KE

Dates of Hearing:
10/30/2018

Child's Name: R. N. **Date of Birth: [redacted]**

Parent: [redacted]
Counsel for Parents: None

Local Education Agency: Wilson School District
2601 Grandview Blvd
West Lawn PA 19609

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Date of Decision: November 13, 2018

Hearing Officer: James Gerl,
Certified Hearing Official

DECISION

DUE PROCESS HEARING

21300/18-19KE

BACKGROUND

The parent requested an expedited hearing challenging the expulsion of the student. In view of the foregoing, I find in favor of the District.

PROCEDURAL HISTORY

A status conference by telephone conference call was convened on Tuesday, October 23, 2018. At the conference, the parent was advised that parent had a right to hire a lawyer to represent the parent. Parent acknowledged that the parent understood this point, but stated that parent would proceed without legal counsel. The school district's Motion to Dismiss for failure to state a claim was denied, but the parent was asked by the hearing officer to provide further clarity as to the issues and allegations raised by the complaint, and the parent complied. Because of the expedited nature of a due process hearing involving the topic of discipline, the hearing officer denied the

district's motion to continue the hearing because a witness/LEA representative had a scheduling conflict. No extensions of the decision due date were considered or granted.

The expedited due process hearing for this matter was convened on Tuesday, October 30, 2018. The hearing was open. Both parties presented an oral closing argument at the end of the due process hearing.

All arguments submitted by the parties have been considered. To the extent that arguments advanced by the parties are in accordance with the findings, conclusions and views stated below, they have been accepted, and to the extent that they are inconsistent, they have been rejected. To the extent that the testimony of various witnesses is not in accordance with the findings as stated below, it is not credited.

Personally identifiable information, including the names of the parties and similar information, has been omitted from the text of the decision that follows. FERPA 20 U.S.C. § 1232(g); and IDEA § 617(c).

ISSUE

Did the school district violate the provisions of IDEA that require that the educational placement of a student with a disability not be changed as punishment for conduct that is a manifestation of his/her disability?

FINDINGS OF FACT

Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact:¹

1. The Student is a late-teen-aged student who is eligible for special education under the category of specific learning disability. (T of mother; S-4; S-1; S-2).

2. The student wants to do well in school. Student hopes to one day become a veterinarian. (T of family resource specialist; S-2)

3. An IEP was developed for the student on September 27, 2017. The IEP included a behavior goal which stated that “given teacher support and redirection to task... (the student) will access and implement coping strategies to reduce frustration and reengage in learning activity... and comply with staff directions...” The IEP also

1. ¹ (Exhibits shall hereafter be referred to as “P-1,” etc. for the parent’s exhibits; “S-1,” etc. for the school district’s exhibits; references to testimony at the hearing is hereafter designated as “T” of _____).

includes a reading goal that given a grade level reading prompt and question, the student would accurately answer questions, getting at least 75% on three consecutive prompts over a five week period. The IEP also included a number of modifications and specially designed instruction to help the student achieve goals. (S-1; T of school psychologist)

4. The student was reevaluated by the district on November 2, 2017. The student was administered the WISC-V and received a full-scale IQ of 80 which placed Student in the low average range. The student's general ability index was 78, at the 7th percentile range which is Very Low. On the WIAT-III, the student received average scores in total reading and basic reading and below average scores in reading comprehension and fluency, written expression, mathematics and math fluency. The student had severe discrepancies that qualified as specific learning disabilities in the areas of math calculation. Student also had substantially below grade level scores on reading comprehension and math problem solving. On the BASC-3, the student received mostly average Student did, however, receive at-risk concerns on the teacher rating scales of the assessment instrument with regard to developmental social disorders, resiliency, withdrawal, adaptability, social skills and leadership scales, but no composite scores on the BASC-3 were elevated to the at-risk level and no scores were elevated to the clinically significant level. (S-2)

5. The progress monitoring for the student during the 2017-2018 school year indicates progress with regard to both IEP goals. Concerning the behavior goal, the

student made progress using coping strategies to reduce frustration levels. Concerning the reading goal, the student also made progress. When the student was in class, Student was able to successfully answer prompts. (S-3; T of emotional support teacher)

6. The school district's emotional support classroom requires less academic rigor. To avoid student frustration, there is very little homework. Throughout the day, the teacher implements social skills instruction. The teacher provides immediate feedback. When an improper behavior occurs in the emotional support classroom, the teacher utilizes the behavior as a learning tool, asking the students to consider what went wrong; what other options the individuals involved might have had; what other decisions might have been made; etc. Behavior incidents become teaching moments. The emphasis is on behavior support. The student to teacher ratio is approximately 4 to 1. (T of emotional support teacher)

7. As a result of the student's behavioral progress, as well as improvement on the student's academic goal, the student requested more time in regular education classes and outside of the emotional support classroom. The IEP team agreed and the student spent less time in the emotional support classroom thereafter. Even with this change, the student was permitted to and sometimes did go to the emotional support classroom, or the office, instead of the student's regularly scheduled class, if the student needed support or time to cool down. (T of emotional support teacher; S-4)

8. An IEP was developed for the student on September 27, 2018. The IEP includes a goal for coping strategies to reduce frustration and reengage in learning activity and comply with staff directions. The IEP also includes a reading goal. The modifications and specially designed instruction portion of the IEP requires repeated and restated directions and verbal reminders from school personnel of appropriate behaviors and expectations. The IEP provides that when the student feels frustrated or stressed, Student can self-advocate and ask for a break to cool off. The student was also able under the IEP to go to the office, counseling or the behavior support classroom until the student has control of the student's behavior. The IEP places the student in the regular education classroom for four hours per day or approximately 57% of the school day. (S-4)

9. During the first half of the 2017-2018 school year, the student received numerous disciplinary writeups, detentions and two suspensions for behavior, including cutting class, coming late to school, being disrespectful and/or noncompliant. The student was suspended for one day on September 27, 2017 for walking out of an in-school suspension without permission. The student was suspended for five days on November 14, 2017 for refusing to remove a hat. Upon further investigation, the school district realized that what the student was wearing was [redacted]. As a result, the suspension for wearing a "hat" was revoked and the student was permitted to wear

the garment, if Student so chose, in the future. (S-8; S-6; T of student; T of vice principal)

10. Prior to the incident that is the subject of this dispute, the student had only one serious disciplinary incident during the current school year. Student was suspended for five days on September 19, 2018 for disrespectful/discourteous behavior and inappropriate language. The student was given a disciplinary writeup for leaving a classroom without permission. Student then called the teacher a “bitch” and ripped up the disciplinary writeup slip. (S-8; S-6)

11. The student engaged in a fist fight with another student on October 4, 2018. The fight began with a series of text messages the day before that included making plans on where to fight the next day. (T of vice principal; T of student; T of student’s sister; S-5; S-12)

12. On October 4, 2018 at about 8:30 a.m., the vice principal was alerted that Student appeared to be upset walking from a gym locker. Student then entered the cafeteria and challenged the security guard’s right to ask questions. The security guard stated that he/she needed to ask as many questions as he/she needed to and that Student needed to stop being a “smartass”. (T of vice principal; T of student; S-5; S-12)

13. The vice principal observed the Student exit the restroom, and proceeded to walk next to the student and ask Student to come to the office so that they could

talk about what was going on and why Student was upset. The student ignored the vice principal's request. (T of vice principal; T of student; S-5; S-12)

14. [Details of the incident redacted] (T of vice principal; T of student; T of student's sister; S-5; S-12)

15. The vice principal had been trained in restorative justice and restorative practices, and the vice principal employed the principles of restorative practices during the October 4, 2018 incident by using a calming voice with the student and by attempting to redirect the student. (T of vice principal; S-12; S-5)

16. On October 5, 2018, the school district sent the parent a notice of a manifestation determination review team meeting to be held on October 9, 2018 at 8:00 a.m. (S-7; T of district's supervisor for secondary special education)

17. On October 9, 2018, a manifestation determination review committee met. Present were the student's mother, the district's supervisor of secondary special education, who was the LEA representative, the emotional support classroom teacher, who was a special education teacher, the district's school psychologist, the vice principal who witnessed the fist fight and an additional assistant principal who helped break up the fight. The committee reviewed the conduct concerning the October 4, 2018 fist fight. (S-8; T of school psychologist; T of emotional support teacher; T of vice principal; T of supervisor secondary special education; T of mother)

18. The student's mother asked whether the text messages from the other student could be considered bullying. The vice principal responded by noting that the text messages were communications between the two to set up a time and place for the fight and not bullying. (S-8; T of mother; T of school psychologist; T of vice principal)

19. The team reviewed the student's IEP and the November 2017 reevaluation of the student. The team reviewed the student's disciplinary record, including a large number of incidents during the first half of the 2017-2018 school year for a variety of inappropriate behaviors and then improvement with increased support so that during the current school year Student had only one serious disciplinary incident. (S-8; T of emotional support teacher; T of vice principal; T of supervisor secondary special education)

20. The manifestation determination review team examined the student's progress on the student's IEP goals and determined that Student had made good progress on the goals and that the IEP was being implemented. The observations of four teachers that had been collected by the school psychologist in telephone conversations the day before the meeting were also considered at the meeting. (S-8; T of school psychologist; T of supervisor secondary special education)

21. The emotional support teacher noted his observation that the student does good work when in class; that the student had advocated to move into higher level classes and that the student is pleasant in class. (S-8; T of emotional support teacher)

22. The student's mother questioned whether the student's ability to disengage when angry might have affected Student's behavior. The vice principal responded that he attempted to redirect the student to go to the office at least 10 times before the fight began, as required by the student's IEP. (S-8; T of school psychologist; T of mother)

23. The MDR team concluded that the student's physical attack and fist fight with another student was not directly caused by Student's specific learning disability. The team further concluded that the student's conduct was not a direct result of a failure to implement the IEP. The conclusion of the MDR review team was that the student's conduct was not a manifestation of Student's disability. All team members agreed with the conclusion except the student's mother. (S-8; T of school psychologist; T of emotional support teacher; T of vice principal; T of supervisor secondary special education; T of mother)

24. The conduct of fist fighting is not a manifestation of the student's disability. The student's conduct in conducting a fist fight with another student was not caused by the student's specific learning disability. (record evidence as a whole)

25. The school district implemented the student's IEP. A failure to implement the IEP was not a cause of the student's behavior. (record evidence as a whole)

26. On October 16, 2018, the school board for the school district held an expulsion hearing and decided to expel the student. (S-9; T of the district’s secondary special education supervisor)

27. On October 23, 2018, the school district issued a NOREP changing the student’s placement to an alternative school that could implement Student’s IEP. (S-11; T of the district’s secondary special education supervisor)

28. As of the date of the due process hearing, it appears that the student had not yet attended the alternative school. (S-11; T of district’s supervisor of secondary special education; T of director of pupil services)

CONCLUSIONS OF LAW

Based upon the arguments of the parties, all of the evidence in the record, as well as independent legal research by the hearing officer, the hearing officer makes the following conclusions of law:

1. The special education laws provide that a student with a disability may not be punished by means of a change of educational placement for conduct that is a manifestation of his/her disability. Individuals with Disabilities Education Act (hereafter sometimes referred to as “IDEA”), 20 U.S.C. Section 1400 *et seq.*, § 615(k); 34 CFR § 300.530(f); 22 Pa. Code § 14.143.

2. When a local education agency decides to change the educational placement of a child with a disability because of a violation of a code of student conduct, it must within 10 school days convene a manifestation determination review meeting with the local education agency, the parent and relevant members of the student's IEP team. The manifestation determination review team is to 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 or substantial relationship to the child's disability; or

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

IDEA § 615(k)(1)(E); 34 C.F.R. Section 300.530.

3. If the manifestation determination review committee determines that either of the two prongs of the test should be answered in the affirmative, the school district may not change the student's educational placement. If the answer to both questions is no, the student may be disciplined in the same manner and for the same duration as children without disabilities. 34 CFR § 300.530(c).

4. Where a parent challenges a manifestation determination review with a due process complaint, there must be an expedited hearing within 20 school days after the filing of the complaint and a decision within ten school days of the hearing. 34 CFR § 300.532(c); Letter to Gerl 51 IDELR 166 (OSEP 2008).

5. The student's conduct in engaging in a fist fight in the instant case was not directly caused by Student's disability, a specific learning disability.

6. The student's conduct in this case, engaging in a fist fight, was not the direct result of a failure by the school district to implement the student's IEP.

7. The manifestation determination team properly concluded that the student's conduct in engaging in a fist fight was not a manifestation of Student's disability.

8. The school district has complied with the special education laws and regulations in disciplining the student for the violation of the code of student conduct in this case.

DISCUSSION

IDEA provides specific special protections regarding student discipline because prior to the passage of the predecessor of IDEA, school districts often misused disciplinary measures in order to exclude children with disabilities from the public

school classroom altogether. Honnig v. Doe, 484 U.S. 305, 324, 108 S. Ct. 592, 559 IDELR 231 (1988).

The key protection provided by the law is the requirement that students with disabilities cannot be punished by means of a change of educational placement for conduct that is a manifestation of his/her disability. IDEA § 615(k); 34 CFR § 300.530(f); 22 Pa. Code § 14.143. Thus, when a change of placement of a student with a disability is contemplated because the student violated a student code of conduct, a school district must convene a manifestation determination meeting. IDEA § 615(k)(4); 34 CFR § 300.530(e).

In the instant case, the school district convened a properly constituted manifestation determination review team, and it correctly concluded that the student's behavior in question was not a manifestation of Student's disability. The team specifically determined that the student's conduct in engaging in a fist fight with another student was not caused by, and did not have a substantial relationship to, the student's specific learning disability. In addition, the MDR team concluded that the student's IEP had been implemented and that the student's conduct was not a result of failure to implement the student's IEP. Clearly, the fist fight was not a manifestation of the student's disability.

The student's mother actively participated during the MDR meeting, bringing up the possibility that Student's conduct had resulted from bullying and/or whether the student's inability to disengage when angry could have affected Student's behavior in this instance. The vice principal responded to the mother's questions by citing relevant facts.

At the due process hearing, the mother additionally contended that the student did not receive sufficient emotional support, or that the district did not believe that Student required emotional support. The record reflects, however, that the student spent a great deal of time in the emotional support classroom the previous school year, but was spending less time in the emotional support classroom during this school year because of a desire to concentrate more on academics and because of Student's success in the emotional support classroom. Despite the change, however, the student's most recent IEP provided that the student could go to the emotional support classroom, or the office or to the counsellor, whenever the student felt a need to cool down. The evidence reveals that the student was aware of these options and took advantage of them during the current school year. The district provided substantial emotional support services to the student. The argument is not supported by the evidence in the record.

The mother also testified that the student had been targeted for mistreatment by the staff at the school the whole time that the student attended that school. The parent did not offer any evidence to support this claim, and the evidence in the record does not support the claim.

At the hearing, the parent attempted to raise additional arguments beyond the scope of the due process complaint as clarified in the prehearing conference call. For example, the parent raised the issue as to whether expulsion was too strict of a sanction for the student's conduct. As was discussed during the telephone status conference before the hearing, all such issues are not properly before the hearing officer and were not considered in writing this decision. 34 CFR § 300.511(d).

CONCLUSION

It is concluded therefore that the determination by the manifestation determination review team was correct and consistent with all of the evidence in the record. The student's conduct was not a manifestation of Student's disability or of any failure on the school district's part to implement the IEP. Accordingly the school district was free to discipline the student as it might discipline a regular education

student and the record evidence does not establish any violation of IDEA or the federal regulations or the Pennsylvania statutes or regulations concerning special education.

ORDER

Based upon the foregoing, it is HEREBY ORDERED that all of the relief requested in the due process complaint is hereby denied. The complaint is dismissed.

ENTERED: November 13, 2018

James Gerl

James Gerl, CHO
Hearing Officer

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he has served the foregoing DECISION by emailing a true and correct copy thereof to the following:

[redacted]