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

CLOSED HEARING

ODR File Number:
22406-18-19

Child's Name:
J.L.

Date of Birth:
[redacted]

Parents:
[redacted]

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Hearing Officer:
James Gerl, CHO

Date of Decision:
March 10, 2020

BACKGROUND

A due process complaint was filed by the grandparents/guardians, who are the "parents" of the student under the Individuals with Disabilities Education Act. Although different issues were asserted in the due process complaint, at the outset of the hearing, counsel for the grandparents/guardians announced that the grandparents/guardians would be challenging alleged denials of FAPE pertaining to manifestation determination review team conclusions from the 2017–2018 school year, from the 2018–2019 school year and the length of a student's stay in an interim alternative educational setting. Normally, the party requesting a due process hearing may not raise issues at the hearing that were not listed and raised in the due process complaint unless the other party agrees otherwise. See 34 C.F.R. § 300.511(d). In the instant case, the school district agreed to permit the newly raised issues to be heard during the already convened hearing session rather than force the parent to file a new complaint and reconvene the hearing at a later date. Accordingly, the issues raised by counsel at the due process hearing were heard and are considered herein.

The grandparents/guardians contend that the school district denied a free appropriate public education to the student by incorrectly concluding that the student's conduct was not a manifestation of the student's disabilities at a May 31, 2018 manifestation determination review meeting. The guardians also contend that the school district denied a free appropriate public education to the student by placing the student in an interim alternative educational setting [for possessing a weapon at school] in excess of 45 school days. The guardians/grandparents also contend that the school district denied a free appropriate public education to the student by reaching an incorrect conclusion at the December 3, 2018 manifestation determination review meeting. I find in favor of the school district on all three issues.

PROCEDURAL HISTORY

The parties agreed that there was no challenge to the student's current placement, and the parties stipulated that the student's current educational program was not in dispute. In view of the fact that the allegations raised for the first time at the due process hearing concerning disciplinary issues involving the student did not involve current placement issues, but rather allege past denials of a free appropriate public education, the hearing officer concluded that an expedited due process hearing was not required for this case. Counsel for both parties agreed. (NT 14-19).

The parties compiled the administrative record in this case in two sessions. Four witnesses testified during the first hearing session. Only because the student's grandmother, who is one of the student's legal guardians, was not able to attend the first hearing session because she was in the hospital, was a second hearing session necessary. Counsel for both parties jointly proposed that the testimony of the grandmother be taken by telephone. The hearing officer allowed the joint request that the grandmother be permitted to testify by telephone for the second session of the hearing. The parties offered joint exhibits, which were designated school district's Exhibits 1 through 25, all of which were admitted into evidence herein. Counsel also agreed to a number of stipulations of fact. After the hearing, counsel for each party presented written closing arguments/post-hearing briefs and proposed findings of fact.

All arguments submitted by the parties have been considered. To the extent that the 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 therewith, they have been rejected. Certain arguments have been omitted as not relevant or not necessary to a proper determination of the material issues as presented

herein. 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).

ISSUES PRESENTED

The following three issues were presented by the due process complaint as revised at the outset of the due process hearing:

1. Whether the guardians/grandparents have proven that the student was denied a free appropriate public education as a result of an inappropriate manifestation determination review on May 31, 2018?
2. Whether the guardians/grandparents have proven that the school district denied a free appropriate public education to the student by extending a 45-day interim alternative educational setting placement?
3. Whether the guardians/grandparents have proven that the student was denied a free appropriate public education because of an inappropriate manifestation determination review on December 3, 2018?

FINDINGS OF FACT

Based upon the parties' stipulations of fact at the due process hearing, the hearing officer makes the following findings of fact.

1. The student is a resident of the school district.
2. The student is identified as a student with a disability and is eligible for special education services under IDEA.
3. The school district is a recipient of federal funds.

4. On June 1, 2018, the student was placed in the school district's cyber academy to begin a 45-day placement [for a weapons violation]. This placement continued until June 15, 2018. The 45-day placement resumed at the beginning of the 2018-2019 school year, from August 27, 2018 until November 7, 2018, at a school operated by the Intermediate Unit.

5. The student returned from the 45-day alternative placement to the school district on November 9, 2018. The student attended at a district high school until November 27, 2018. This time period totaled eight (8) school days when accounting for weekends and the Thanksgiving holiday.

6. On or about November 27, 2018, the student sent a text message to a peer stating, [redacted)].

7. On November 28, 2018, the student was removed from the district and taken into custody by the county juvenile probation department. Following the student's detention in a county facility, the student subsequently was court placed at an out of district youth facility from January 29, 2019 until March 28, 2019. On January 28, 2019, the district expelled the student from attendance at the district for a period of one year [redacted].

8. On March 29, 2019, the student was released from the court ordered placement and returned to residency in the district. In view of the student's expulsion, the district convened an IEP team meeting to propose an alternative educational program through the school operated by the Intermediate Unit, where the student continues to be educated.

9. The student's current educational programming is not in dispute.

    a. Based upon the evidence in the record compiled at the due process hearing, the hearing officer makes the following findings of fact.[1]

10. The student's date of birth is [redacted]. (S-9; S-18).

11. Both grandparents, who filed the due process complaint on behalf of the student, are the student's legal guardians. (S-11 at p. 53; S-24; NT 5; S-1; S-7; S-13; S-18; S-20).

12. The student was found eligible for special education by the school district under the school district under the category of specific learning disability in listening comprehension. The student has been diagnosed by a child psychiatrist with autism spectrum disorder (PDD), NOS, ADHD and a specific learning disability. (S-1; S-2).

13. On February 9, 2018, the school district issued a reevaluation report for the student. The district found that the student continued to be eligible for special education as a student with autism, a specific learning disability, other health impairment and a speech language impairment. A functional behavioral assessment was conducted as part of the February 2018 reevaluation report, and the assessment identified the student's problem behaviors as avoidance of school work; mumbling profanity; engaging in verbal threats/racial slurs; physical aggression or refusing to do work. (S-8; NT 68-69; 164-165).

14. An IEP was developed for the student on February 13, 2018. The IEP placed the student in the general education classroom for

[1] (Exhibits shall hereafter be referred to as "P-1," etc. for the parents' exhibits; "S-1," etc. for the school district's exhibits; references to page numbers of the transcript of testimony taken at the hearing is the hereafter designated as "NT___").

approximately 81% of the day. The IEP has goals for math and reading. The IEP includes a positive behavior support plan for the student, as well as a number of modifications and specially designed instruction. The IEP includes speech language therapy as a related service requiring one 30 minute group session two times per month. The IEP notes the student's discipline history during the current school year and states that the student presents with age-appropriate social and pragmatic skills at this time. (S-9).

15. On May 23, 2018, the student [brought a weapon to school]. [redacted]. (S-10; NT 43, 107, 137-140).

16. Prior to the May 23, 2018, incident, the student had had prior suspensions totaling 15 days, cumulatively. The school district sought to suspend the student for five additional days for the incident involving the [weapon]. (S-10; NT 90-91).

17. A manifestation determination review meeting was convened on May 31, 2018. Present at the meeting were both of the student's grandparents/legal guardians, a community-based behavior specialist, the school psychologist who ran the meeting, the dean of students, the student's case manager and a special education supervisor. (S-10).

18. At the beginning of the manifestation determination review meeting, the grandparents/guardians and the community-based behavior specialist thought that the student's conduct was a manifestation of the student's disabilities. During the meeting, the participants discussed the nature of the student's disabilities and how they manifest themselves and the specific circumstances under which the student brought a [weapon] to school. As a result of the discussion, the grandparents and the behavior specialist changed their minds and, by the end of the meeting, all participants agreed that while the

conduct may be somewhat related to the student's autism and ADHD, the conduct was not caused by or in direct or substantial relationship to the student's disability. All participants signed the manifestation determination review form indicating that they agreed that the conduct was not a manifestation of the student's disability. (S-10; NT 96-98, 105-107, 165-166).

19. The manifestation determination review team discussed the implementation of the student's IEP and determined that the student's IEP was being followed. (S-10 at p. 4).

20. The school psychologist who led the manifestation determination review meeting employed a deliberate approach to the manifestation determination review. Although the school psychologist did not ask all of the "guiding questions" on the manifestation determination review form, there was a robust discussion of the student, the student's disabilities, the student's conduct and the relationship, if any, between these items. (NT 58-60, 78-80).

21. At the manifestation determination review meeting, the guardians mentioned a diagnosis of opposition defiant disorder. The school district representatives had not received any information concerning this diagnosis. On the same day as the manifestation determination review meeting, the school district requested permission to reevaluate the student in light of this discussion, and the reevaluation included a proposed psychiatric evaluation of the student to obtain further information on this alleged diagnosis. The student's legal guardians/grandparents refused to consent to the psychiatric evaluation. (S-10; S-12; NT 75-76, 108, 133-135).

22. The student's conduct [redacted] was not a manifestation of the student's disabilities. (record evidence as a whole).

23. After the May 31, 2018 manifestation determination review team meeting, the school district decided to place the student in an interim alternative educational setting for 45 school days. Due to the timing of the incident being near the end of the school year, the interim alternative educational setting placement was split between an Intermediate Unit school and the school district's cyber program. (S-13 at p. 2; S-20; NT 142-148).

24. The 45-school day interim alternative educational setting placement began on June 1, 2018 at the district's cyber program until the end of the 2017-2018 school year. The placement resumed at the beginning of the 2018-2019 school year at the school operated by the intermediate unit. Toward the end of the 45-day period, the school principal met with the student's grandfather concerning the interim alternative educational setting placement. The student's grandfather and the principal agreed that the student would return to the high school at the start of the second marking period. In total, the student attended the interim alternative educational placement for 61 school days. (S-13 at p. 2; S-20; NT 142-148).

25. On or about November 27, 2018, the student sent a text message to a peer stating, [redacted]. The incident was investigated by the school district's dean of students, who verified the facts. As a result of the conduct, the student was suspended for 10 days. (S-15; NT 51, 75, 99).

26. A manifestation determination review team meeting was held for this incident on December 3, 2018. Attending the meeting were both of the student's grandparents/legal guardians, the school psychologist, who led the meeting, the supervisor of special education, the director of pupil services, and the student's case manager. (S-15; NT 74).

27. The participants at the meeting discussed the student, the facts of the incident involving the student, the nature of the student's disabilities and how those disabilities impacted the student. The student knew that making threats was inappropriate and the student understood the consequences of the student's actions. The school psychologist who led the meeting used a thoughtful and thorough process, but the school psychologist did not ask all of the "guiding questions" on the manifestation determination review form, instead focusing upon whether the conduct was a manifestation of the student's disabilities. The team invited the student to the meeting to discuss the student's conduct. At first, the student's grandparents/guardians disagreed with other team members that the student's conduct was not a manifestation of the student's disabilities, but after the discussion at the meeting, the grandparents/guardians agreed with all other team members that the student's conduct did not have a direct and substantial relationship to the student's disabilities. By the end of the meeting, all team members checked the box on the form that the conduct was not a manifestation of the student's disabilities. In addition, the manifestation determination review team considered whether the behavioral incident was a direct result of the school district's failure to implement the IEP and determined that the student's IEP was being followed. (S-15; NT 50-65, 74-81, 109-113, 160-169).

28. The student's conduct [redacted] was not a manifestation of the student's disabilities. (record evidence as a whole).

29. Immediately following the December 3, 2018 manifestation determination review meeting, an IEP team meeting was convened. Because the student had been placed in an out of district juvenile facility at this point, no changes were made to the student's IEP. (S-16 at p.2).

30. On January 28, 2019, the school district expelled the student for one year. (S-17; NT 147).

31. The out of district facility from which the student was released on March 28, 2019 is a juvenile facility for court placed youth. An IEP team meeting was convened on March 27, 2019. (S-16; S-18; NT 28-29).

32. On June 25, 2019, the grandparents/legal guardians filed the instant due process complaint. (S-25).

CONCLUSIONS OF LAW

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

1. The special education laws provide that, in general, 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. § 1400, et seq., § 615(k); 34 C.F.R. § 300.530(f); 22 PA Code § 14.143. The unique circumstances of a student with a disability must be considered on a case-by-case basis in such circumstances. IDEA § 615(k)(1)(A); 34 C.F.R. § 300.530(a).

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 convene a manifestation determination review meeting. IDEA § 615(k)(1)(E); 34 C.F.R. § 300.530(e).

3. Under Pennsylvania law, once a student with a disability has met the threshold of 15 days of disciplinary removals, additional removals constitute a change of placement. 22 Pa. Code § 14.143.

4. An exception to the general rule that a student with a disability may not have his/her educational placement changed because of conduct that is a manifestation of the disability is that, regardless of manifestation, a local education agency may remove a student to an interim alternative educational setting for not more than 45 school days, if the child:

    1) Carries a weapon to or possesses a weapon at school, on school premises or at a school function;

    2) Knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school, on school premises or at a school function; or

    3) Has inflicted serious bodily injury upon another person while at school, on school premises or at a school function.

    For purposes of this section, weapon is given the same meaning as dangerous weapon under Section 30 of Title 18 of the United States Code. 34 C.F.R. § 300.530(g) and (h).

5. The definition of "dangerous weapon" is a weapon, device, instrument, material or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocketknife with a blade of less than two and half inches in length. 18 U.S.C. § 930(g)(2); 34 C.F.R. § 300.530(g), (h) and (i)(3).

6. The student's grandparents are the student's legal guardians, and, therefore, are the student's "parents" for purposes of IDEA. 34 C.F.R. § 300.30(a).

7. The United States Supreme Court has developed a two-part test for determining whether a school district has provided a free appropriate public education (hereinafter sometimes referred to as "FAPE") to a student with a disability. There must be

    1) a determination as to whether the school district has complied with the procedural safeguards as set forth in IDEA and

    2) an analysis of whether the individualized educational plan is reasonably calculated to enable a child to make progress in light of the child's circumstances.

    Endrew F. by Joseph F. v. Douglas County School District RE-1, 580 U.S. ____, 137 S. Ct. 988, 69 IDELR 174 (2017); *Board of Educ, etc. v. Rowley*, 458 U.S. 178, 553 IDELR 656 (1982); *KD by Theresa Dunn and Joseph Dunn v. Downingtown Area School District*, 904 F.3d 248, 72 IDELR 261 (3d Cir. 2018).

8. The grandparents/legal guardians have not demonstrated that the school district denied a free and appropriate public education to the student because of the manifestation determination review team determination on May 31, 2018.

9. The grandparents/guardians have not demonstrated that the school district denied a free and appropriate public education to the student by keeping the student in the interim alternative educational setting for 61 school days.

10. The grandparents/guardians have not demonstrated that the school district denied a free and appropriate public education to the student because of the manifestation determination review team determination on December 3, 2018.

DISCUSSION

Whether the guardians/grandparents have proven that the student was denied a free appropriate public education as a result of an inappropriate manifestation determination review on May 31, 2018?

On May 23, 2018, the student brought a [weapon] to school and showed it to other students. The student's grandparents/guardians contend that the school district denied FAPE to the student by disciplining the student for this conduct which they contend was a manifestation of the student's disabilities.

The manifestation determination review meeting was substantively and procedurally appropriate. The record evidence makes it clear that the student's guardians/grandparents and a community behavior specialist who was working with the student disagreed with the manifestation determination review conclusion at first, but after a thorough discussion during the meeting, all present, including the guardians and the behavior specialist, agreed that the student's conduct was not a manifestation of the student's disabilities.

The student's guardians have not proven that the May 2018 manifestation determination was out of compliance with legal requirements.

In its post-hearing brief, the parents contend that the school district waited too long to conduct the manifestation determination review contending that the student had already had 20 days of suspension prior to the manifestation determination meeting. The record reflects, however, that the student had had 15 days of total disciplinary removal as of the date of the student's conduct on May 23, 2018. It is true that the additional suspension for the conduct on May 23, 2018 would have pushed the student over the threshold, but a manifestation determination review was conducted once the student exceeded the 15-day threshold. The parents do not contend that previous disciplinary removals constituted a pattern which would result in a change of placement and the conduct for the previous incidents was clearly quite different. Thus, the school district complied with the legal requirements by conducting a timely manifestation determination review. The parents' argument in this regard is rejected.

In their post-hearing brief, the parents contend that a number of "guiding questions" on the manifestation determination review form were not answered by the team, thus rendering the manifestation determination review procedurally deficient. The parents' argument, however, places form over substance. Although the school psychologist who led the meeting did not ask all of the "guiding questions" on the form, this does not violate IDEA. Congress changed the requirements for a manifestation determination review in 2004, and many of the questions on the antiquated form used by the school district are no longer applicable. After the 2004 amendments, the only relevant questions are whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability or if the conduct in question was the direct result of the LEA's failure to implement the IEP. Thus, the parents' arguments concerning the failure of the team to check all the boxes on the manifestation determination review form is

irrelevant to the substantive or procedural adequacy of the manifestation determination review, and the parents' argument is rejected.

The parents also argue in their post-hearing brief that the school district failed to have a discussion at the manifestation determination review concerning whether or not the student's IEP had been implemented. The record evidence clearly indicates, however, that the manifestation determination review team did discuss the student's IEP and concluded that the student's IEP was being followed. Thus, even if a box on the form is not checked, the manifestation determination review team properly considered whether the student's IEP had been implemented. The parents' argument is rejected. It is clear from the record evidence that the student's conduct in bringing a [weapon] to school was not a manifestation of the student's disabilities.

The guardians have alleged that the student was denied FAPE as a result of the school district's conduct of the May 31, 2018 manifestation determination review team meeting. Applying the two-part test developed by the U.S. Supreme Court to the facts of this case, it is clear that the parents have not proven a denial of FAPE. There is no challenge to the appropriateness of the student's IEP. Indeed, the parties have stipulated that the student's current educational programing is not in contest. According to the Supreme Court, the only other way to prove a denial of FAPE would be an actionable procedural violation by the school district. The guardians have not proven any procedural violations of the Act. Even assuming *arguendo* that the guardians have proven some procedural violation of IDEA, they have not, in addition, demonstrated a loss of educational opportunity for the student, serious deprivation of the guardians' participation rights or a deprivation of educational benefit. *Ridley School District v. MR and JR ex rel. ER*, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); IDEA 615(f)(3)(E); 34 C.F.R. § 300.513(a).

To the extent that the testimony of the student's grandmother/guardian is inconsistent with the testimony of the school district staff who testified at the due process hearing, testimony of the student's grandmother/guardian is not as persuasive and credible as the testimony of the school district staff. This conclusion is based upon the demeanor of the witnesses, as well as the following factors: the student's grandmother/guardian had selective memory issues during cross-examination when questioned by counsel for the local education agency. A number of points made by the grandmother/guardian during her direct testimony were elicited through very leading questions. Even though the rules of evidence do not strictly apply to administrative hearings, they may be helpful in terms of weighing evidence. In addition, the credibility and persuasiveness of the testimony of the grandmother/guardian is impaired by a serious contradiction in that she testified that she disagreed with the conclusions of both manifestation determination reviews. The documentary evidence, however, directly contradicts this testimony and supports the testimony of other witnesses that the guardians both agreed with the conclusions of the manifestation determination reviews that the student's conduct was not a manifestation of the student's disabilities. In addition, the testimony of the grandmother/guardian that she never refused permission for the school district to conduct a psychological evaluation is also contradicted by the documentary evidence. Also, the testimony of the grandmother/guardian that she was the sole guardian of the student and that the student's grandfather was not also the student's guardian is contradicted by the documentary evidence, as well as by assertions of the guardians' counsel on the record during the hearing and in the due process complaint.

It is concluded that the guardians have not established the manifestation determination review conducted on May 31, 2018 was inappropriate or that it caused a denial of FAPE to the student.

Whether the guardians/grandparents have proven that the school district denied a free appropriate public education to the student by extending a 45-day interim alternative educational setting placement?

The student was placed in a 45-day interim alternative educational setting because the student possessed a weapon on school property. The guardians contend that the interim alternative educational setting denied FAPE to the student.

A district may remove a student to an IAES for 45 school days, regardless of whether the behavior was a manifestation of the student's disability, if a student carries a weapon to school or at a school function. In this case, the student had a [redacted]. The guardians do not contest that the 45-school day interim alternative educational setting was appropriate given the student's possession of a weapon on school property. Accordingly, the district was within its rights to remove the student to an interim alternative educational setting for 45 school days.

Instead, the guardians contend that the interim placement denied FAPE to the student because it lasted too long. On June 1, 2018, the student was placed in a 45-school day interim alternative educational setting at the school district's cyber academy. This placement continued until June 15, 2018. The 45-day placement resumed at the beginning of the 2018-2019 school year from August 27, 2018 until November 7, 2018 at a school operated by the Intermediate Unit. Due to the timing of the school year, the parties agreed that the student would finish the 2017-2018 school year in the district's cyber program. On June 7, 2018, an IEP team meeting was held and revisions were made for the student to begin at the interim

alternative educational setting the start of the 2018-2019 school year. The student's grandmother approved both of those changes.

Before the expiration of the 45-school day time period, the school building principal met with the student's grandfather and they agreed that it was in the best interest of the student for the student to start back at the high school at the beginning of the second marking period. On November 8, 2018, there was an IEP team meeting in which both guardians and the student participated. The IEP was revised to reflect that the student would return to the student's home school in the district on November 9, 2018. The grandparents approved the extension of the interim setting. Clearly the agreement by the grandparents to minimize the disruption to the student by bringing the student back from the interim setting at the beginning of the marking period obviates any technical violation by district. The student's grandfather/guardian agreed to the placement. Given the agreement by the guardian to extend the interim alternative educational placement, the guardians cannot now claim that the extension denied FAPE to the student.

At the due process hearing, the grandmother testified that she objected to keeping the student in the interim alternative educational setting for longer than the 45-school day period. No other evidence in the record supports this claim. The student's grandmother testified further that she is the only legal guardian and the school district erred in relying upon the agreement by the grandfather to extend the period of the interim alternative educational setting because the grandfather is not the legal guardian. The record evidence indicates, however, that the student's grandfather signed various documents as the student's legal guardian. Also, counsel for the guardians filed a due process complaint on behalf of both the grandfather and the grandmother. In addition, at the outset of the hearing, counsel for the guardians introduced the grandfather, who was the only grandparent in attendance at the first session of the hearing, as one of the student's legal

guardians - along with the grandmother. No other evidence in the record suggests that the grandfather is not a legal guardian for the student. The position of the guardians that the school district erred in extending the 45-school day interim alternative educational setting by having discussions with the grandfather, as opposed to the grandmother, is rejected. It is clear that both grandparents were and are the legal guardians for the student, and therefore, are his parents for purposes of IDEA. The guardians approved of the extension of the interim alternative educational setting and the documentary evidence supports the school district's contention with regard to this issue.

The guardians have alleged that the student was denied FAPE as a result of the extension of the interim alternative educational setting. Applying the two-part test developed by the U.S. Supreme Court to the facts of this case, it is clear that the parents have not proven a denial of FAPE. There is no challenge to the appropriateness of the student's IEP. Indeed, the parties have stipulated that the student's current educational programing is not in contest. According to the Supreme Court, the only other way to prove a denial of FAPE would be an actionable procedural violation by the school district. The guardians have not proven any procedural violations of the Act. Even assuming *arguendo* that the guardians have proven some procedural violation of IDEA, the parents have not, in addition, demonstrated a loss of educational opportunity for the student, serious deprivation of the guardians' participation rights or a deprivation of educational benefit. *Ridley School District v. MR and JR ex rel. ER*, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); IDEA 615(f)(3)(E); 34 C.F.R. § 300.513(a).

To the extent that the testimony of the guardian conflicts with the testimony of the school district staff who testified in this hearing, it is concluded that the testimony of the guardian is less credible and persuasive

than the testimony of the school district staff. See previous discussion herein.

It is concluded that the guardians have failed to prove that the extension of the 45-school day interim alternative educational placement was inappropriate or constituted a denial of FAPE to the student.

Whether the guardians/grandparents have proven that the student was denied a free appropriate public education because of an inappropriate manifestation determination review on December 3, 2018?

On November 27, 2018, the student sent a text message to another student stating, [redacted]. The student's grandparents/guardians contend that the school district denied FAPE to the student by disciplining the student for this conduct which they contend was a manifestation of the student's disabilities.

The school district conducted a manifestation determination review team meeting concerning this incident on December 3, 2018. At the manifestation determination review meeting, school district staff agreed that the student's conduct was not a manifestation of the student's disabilities. Initially, the student's grandparents/guardians believed that the student's conduct was a manifestation of oppositional defiant disorder. By the end of the meeting, all participants, including the grandparents/ guardians, agreed that the conduct of the student [redacted] was not a manifestation of the student's disabilities.

The manifestation determination review team thoroughly discussed the student's IEP and the student's disabilities and correctly concluded that the problem behavior for which the student was to be disciplined was not a manifestation of the student's disabilities. Although the school psychologist who led the meeting did not discuss all the "guiding questions" on the form,

the team discussed all relevant information pertaining to the question of manifestation. The discussion of guiding questions in the discussion of the first issue is incorporated by reference herein. The manifestation determination review team was substantively and procedurally in compliance with legal requirements. The student's conduct was not a manifestation of the student's disabilities.

The guardians have alleged that the student was denied FAPE as a result of the school district's conduct of the December 3, 2018 manifestation determination review team meeting. Applying the two-part test developed by the U.S. Supreme Court to the facts of this case, the parents have not proven a denial of FAPE. There is no challenge to the appropriateness of the student's IEP. Indeed, the parties have stipulated that the student's current educational programing is not in contest. According to the Supreme Court, the only other way to prove a denial of FAPE would be an actionable procedural violation by the school district. The guardians have not proven any procedural violations of the Act. Even assuming *arguendo* that the guardians have proven some procedural violation of IDEA, they have not, in addition, demonstrated a loss of educational opportunity for the student, serious deprivation of the guardians' participation rights or a deprivation of educational benefit. *Ridley School District v. MR and JR ex rel. ER*, 680 F.3d 260, 58 IDELR 271 (3d Cir. 2012); IDEA 615(f)(3)(E); 34 C.F.R. § 300.513(a).

The student's grandmother testified that she feels that the conduct was a manifestation of the student's disability. This testimony is contradicted by her documented agreement from the manifestation determination review meeting form upon which she noted her agreement that the student's misconduct was not a manifestation of the student's disabilities. To the extent that the testimony of the grandmother is inconsistent with the testimony of school district staff who testified at the hearing, the testimony

of school district staff is more credible and persuasive than the testimony of the student's grandmother. See previous discussion herein.

It is concluded that the guardians have not established the manifestation determination review conducted on December 3, 2018 was inappropriate or that it caused a denial of FAPE to the student.

ORDER

Based upon the foregoing, it is HEREBY ORDERED:

That all the relief requested by the due process complaint is hereby denied. The complaint is dismissed.

IT IS SO ORDERED.

ENTERED: March 10, 2020

James Gerl

James Gerl, CHO
Hearing Officer