

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

**Pennsylvania Special Education Due Process Hearing Officer
Final Decision and Order**

Closed Hearing

ODR No. 29202-23-24

Child's Name:

T.T.

Date of Birth:

[redacted]

Parent (*Pro Se*):

[redacted]

Local Education Agency:

Central Dauphin School District
1240 N. Rutherford Road
Harrisburg, PA 17112

Counsel for LEA:

Christopher J. Conrad, Esquire
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100 Corporate Center Drive, Suite 201
Camp Hill, PA 17011

Hearing Officer:

Cheryl Cutrona, J.D.

Date of Decision:

March 12, 2024

PROCEDURAL HISTORY

The student named on the cover page¹ (hereafter "Student"), resides in the School District named on the cover page (hereafter "District"). The Student has been identified as eligible for special education pursuant to the Individuals with Disabilities Education Act (IDEA)² based on a primary classification of Specific Learning Disability (SLD) in the areas of reading fluency, math computation and application, and written expression; and a secondary disability of Other Health Impairment (OHI) based on a diagnosis of Attention-Deficit/Hyperactivity Disorder (ADHD).

On January 30, 2024, the Student was involved in a physical altercation at school. On February 2, 2024, a manifestation determination review (MDR) found that the Student's participation in the disciplinary infraction was not directly and substantially related to the Student's disability. The District seeks expulsion for a violation of the Student Code of Conduct. The Parent disagrees with the outcome of the MDR.

On February 12, 2024, at the behest of the Parent, the District filed an Expedited Discipline due process complaint requesting that a hearing officer determine whether or not the Student's conduct was a manifestation of the Student's disability.

The Complaint proceeded to a closed, in-person, expedited due process hearing held on Monday, February 26, 2024.

For the reasons set forth below, the Hearing Officer sustains the result of the MDR.

¹ In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including details appearing on the cover page of this decision, will be redacted prior to its posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

² 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14).

ISSUES

1. Whether or not the Student's conduct was a manifestation of the Student's secondary disability of ADHD?

FINDINGS OF FACT

All evidence including the exhibits admitted to the record, the transcripts of the testimony and the parties' oral closing statements was considered.³ The only findings of fact cited in this Decision are those needed to address the issues resolved herein. All exhibits and all aspects of each witness's testimony are not explicitly referenced below.

1. The District is a local educational agency (LEA) within the meaning of 20 USC § 1401(15), 34 CFR § 300.28, 22 Pa. Code 14.102(a) (2)(vii) and a recipient of federal funds within the meaning of the IDEA, 20 USC § 1401 and Section 504, 29 USC § 794(b)(2)(B).
2. At the time of the due process hearing, the Student attended a District high school in the [redacted] grade with the educational placement of Supplemental Learning Support (S-3, p. 24).
3. The Student's most recent Reevaluation Report (RR), dated May 6, 2022, included a statement from the Parent indicating that the Student was thought to have had ADHD and had been prescribed [redacted] for it. The Student stopped taking [redacted] during the pandemic. The School Psychologist received verbal permission to test the Student for ADHD (S-2, p. 2-3).
4. The RR included the results of the Wechsler Intelligence Scale for Children (WISC-V) assessment indicating that the Student's ability to exert mental

³ References to the record throughout this decision will be to the Notes of Testimony (NT), School Exhibit (S-) and/or Parent Exhibit (P-) followed by the Exhibit number and page number, and Hearing Officer Exhibits (HO) followed by the exhibit number.

control was within the Extremely Low Range. This was defined as sustaining attention and concentration (S-2, p. 2).

5. Teachers' comments in the 2022 RR described problem behaviors commonly associated with ADHD (e.g., talkative; disruptive; "stares into space"; "trouble paying attention"; "struggles to stay focused"; "does not always fully engage or give full-time focus on the instruction") (S-2, p. 6).
6. The Conners-3 rating scales completed by the Student's teachers indicated that the Student presented with symptoms on the DSM-5 scale for ADHD-Predominantly Inattentive Presentation, Conduct Disorder, and Oppositional Defiant Disorder (ODD). The Student's self-rating indicated that the symptom counts were "probably" met for the DSM-5 ADHD-Predominantly Hyperactive-Impulsive Disorder. The examiner found the raters' validity to be acceptable because their scores were similar, falling in the slightly elevated range. The examiner concluded that the Student was exhibiting behaviors consistent with ADHD and noted that other clinically relevant information should also be considered in making an ADHD diagnosis (S-2, p. 13-14).
7. The examiner concluded that the Student continued to need special education supports for SLD and OHI because they appeared to be having a negative effect on the Student's educational performance (S-2, p. 15, 16-17).
8. Teachers' comments under "Present Levels" on the current Individualized Education Plan (IEP) dated March 3, 2023, with revisions on September 13, 2023 and February 2, 2024, described behavior problems commonly related to ADHD (e.g., "zones out;" teacher makes sure the Student "isn't beefing with other students"; "trouble staying on task") (S-3, p.8-9). Lack of impulse control was not listed as a "need" (S-3, p. 11-12) in the IEP. The IEP goals primarily addressed attention deficits. There were no

goals specifically related to impulse control (S-3, p. 18-20). The IEP program modifications and specially designed instruction were primarily related to SLD and attention deficit. None specifically supported impulse control (S-3, p. 21-22). The IEP did not list any related services (S-3, p. 22). In fact, evidence of, or supports for, impulse control were not specifically listed anywhere in the 27-page IEP (S-3).

9. The recent disciplinary history cited in the 2022 RR listed a MDR on February 2, 2022 for an altercation (S-2, p. 14).
10. The Student's disciplinary record for the 2023-2024 school year included suspensions and detentions for verbal altercations and truancy (S-6, pp. 1-3).
11. On January 5, 2024, the Student was attacked at [redacted] a nearby school outside of the District. The Student was [redacted] and needed to go to a hospital emergency room for treatment. The following week, the Student did not attend school because of [redacted]. On January 30, 2024, during lunch, Student A told the Student that Student E had posted a social media text message to Student B, [who attends a different school and who [redacted] at the Student], informing Student B that the Student was planning to attend a [redacted] game that evening. Student E encouraged Student B to fight the Student. The Student became emotional and relayed this information to the Dean of Students (NT, pp. 50-53).
12. On the morning of January 30, 2024, the Dean of Students met with the Student to discuss the Student's concerns related to the social media post. The Dean counseled the Student to avoid Student E and to not attend the [redacted] game scheduled for that evening. The Dean calmed down the Student and warned the Student of the consequences that would occur if a fight ensued. Shortly thereafter, a teacher alerted the Dean that a fight was occurring. The Dean went to the classroom where

the fight was happening, observed the Student and Student I attacking Student E, radioed for support using a walkie-talkie, and attempted to break up the fight. During the melee, the Student attempted to reach past the Dean to hit Student E and ended up striking the Dean. During the investigation the Dean discovered that the Student and Student I went to Student E's classroom with the intent of confronting Student E. The Dean concluded that this was a planned attack and not an impulsive act because the Dean had expressly counseled the Student to not engage in fighting Student E. The incident caused a significant disruption to the educational setting and put other students and staff at risk of injury. As a result of the incident, the Student received an OSS and the matter was referred to law enforcement (NT, pp. 20-30).

13. The Dean of Students drafted a Building Incident Report that described the physical altercation. The narrative description reported that three students – the Student, a cohort (Student I), and student (Student E) – engaged in a verbal altercation that escalated into a physical fight. During the scuffle, the Dean of Students who attempted to quell the disturbance was injured. Eventually the students who were gathering in and around the classroom were cleared and the altercation was deescalated. As a consequence, the Student was suspended for three to nine days pending an investigation and an informal hearing. The investigation included cell phone video footage of the altercation and testimony from several teachers who were witnesses (S-6, pp. 1-2).
14. A Manifestation Determination Review (MDR) Team meeting was held on February 2, 2024. Although they were not all listed on the MDR form, testimony indicated that the MDR meeting was attended by: the Parent; the Student; the School Principal; the Dean of Students; the Student's learning support teacher/case manager; and a regular education teacher (S-5, p. 1; NT, p. 40). The MDR Team determined that the Student's

behavior was not a manifestation of the Student's disability nor was it a result of the District's not implementing the Student's IEP (S-5, p. 5-6). The Parent disagreed with the finding and requested an expedited due process hearing (S-5, p. 6).

15. The School Psychologist reviewed the Student's RRs, IEP, and disciplinary record; attended the MDR meeting; and drafted the MDR form indicating that the MDR team had concluded that the fight had been planned, that it was not an impulsive act, and that the Student's behavior was not a direct result of the District's failure to implement the Student's IEP (NT, pp. 45-47; S-5). The Mother was provided with procedural safeguards at the meeting (NT, p. 48).
16. The Parent testified that there have been multiple posts of the brutal attack on the Student and Student I that took place on January 5, 2024. The Parent notified the School that the Student would be out following the January 5th incident to heal from the attack, and received permission for the Student to complete assignments on Chromebook. From the Parent's perspective, when the January 30th social media post planning another attack was brought to the Student's attention, the Student was triggered and lashed out impulsively (NT, pp. 56-57).

District's Claim

The District urges the Hearing Officer to uphold the result of the MDR and order that the Student may be subject to further discipline, including expulsion, as any other student would be under the circumstances.

Parent's Claim

The Parent contends that the OSS served by the Student is sufficient because the Student's actions are a direct result of the Student's mental health disability.

LEGAL PRINCIPLES

Burden of Proof

In general, the burden of proof essentially consists of two elements: the burden of production and the burden of persuasion. The burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

The burden of persuasion must be established by a preponderance of the evidence. *Jaffess v. Council Rock School District*, 2006 EL 3097939 (E.D. Pa. October 26, 2006). A “preponderance” of evidence is a quantity or weight of evidence that is greater than the quantity or weight of evidence produced by the opposing party. *Comm. v. Williams*, 532 Pa. 265, 284-286 (1992).

This rule can decide the issue when neither side produces a preponderance of evidence – when the evidence on each side has equal weight, which the Supreme Court in *Schaffer* called “equipoise.” When the evidence is in “equipoise,” the party seeking relief and challenging the program and placement must prove their case by a preponderance of the evidence in order to prevail. See *Schaffer* above; see also *Ridley S.D. v. M.R.*, 680 F.3d 260 (3d Cir. 2012); *L.E. v. Ramsey Board of Education*, 435 F.3d 384 (3d Cir. 2006).

On the other hand, whenever the evidence is preponderant (i.e., there is weightier evidence) in favor of one party, that party will prevail, regardless of who has the burden of persuasion. See *Schaffer*, above.

Credibility Determinations

It is the responsibility of the hearing officer, as factfinder, to determine the credibility and reliability of the witnesses’ testimony. See *22 Pa. Code*

§14.162 (requiring findings of fact); See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 *11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute Resolution*, 88 A.3d 256, 266 (Pa. Commw. 2014) (it is within the province of the hearing officer to make credibility determinations and weigh the evidence to make the required findings).

This Hearing Officer found all of the witnesses to be candid, credible and convincing, testifying to the best of their ability, recollection, and perspective on the issues.

IDEA Discipline Principles

When discipline is imposed, the IDEA provides important protections to students found to be eligible for special education services. A local education agency (LEA), including a school district, is permitted to remove a child with a disability from his or her current educational setting for violating the code of student conduct for a period of no more than ten consecutive school days within the same school year, provided that the same discipline would be imposed on non-disabled students. 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §300.530(b).

An LEA is also permitted to impose additional disciplinary removals for separate incidents of misconduct for fewer than ten consecutive school days, provided that such removals do not constitute a “change of placement.” 20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §300.530(b). A “change of placement” based on disciplinary consequences is met if a removal for more than ten consecutive school days is imposed on an eligible student. 34 C.F.R. § 300.536(a).

“Any unique circumstances” may be considered by the LEA when determining whether a change in placement is appropriate for a child with a

disability who violates a student code of conduct. 20 U.S.C. § 1414(k)(1)(A); 34 C.F.R. § 300.530(a).

Manifestation Determination

Once a decision is made to change the placement of a child with a disability for violating the code of student conduct, the LEA must conduct a manifestation determination review to determine whether the conduct “was caused by, or had a direct and substantial relationship to, the child’s disability; or ... was the direct result of” the LEA’s failure to implement the child’s IEP. 20 U.S.C. § 1415(k)(E)(i); see also 34 C.F.R. § 300.530(e). See *J.H. v. Rose Tree Media School District*, 2018 U.S. Dist. LEXIS 157803 (E.D. Pa. 2018) (upholding manifestation determination that conduct was not related to the student’s disability when the team considered all available relevant information, including the student’s disability-related manifestations, and agreeing there was no causal relationship); *Fitzgerald v. Fairfax County School Board*, 556 F.Supp.2d 543 (E.D. Va. 2008) (same).

Within ten school days of any decision to change the placement of a child with a disability or suspected disability because of a violation of a code of student conduct, the Manifestation Determination review team – including the LEA, the parent and relevant members of the child's IEP team (as determined by the parent and the LEA) – must review all relevant information in the student's file, including the student's IEP, the student’s disability, any teacher observations, and any relevant information provided by the parents.

If the team determines that the behavior was not a manifestation of the child’s disability, the LEA may take disciplinary action that would be applied to children without disabilities, except that the child with a disability remains entitled to special education services. 20 U.S.C. §§ 1415(k)(1)(C) and (k)(1)(D); 34 C.F.R. §§ 300.530(c) and (d). More specifically, the child shall continue to be provided educational services enabling him or her to

participate in the general education curriculum, and to make progress toward meeting the IEP goals; and, where appropriate, have an FBA conducted and implementation of behavior interventions. 20 U.S.C. § 1415(k)(1)(D); 34 C.F.R. § 300.530(d). The student's IEP team determines the services to be provided during the period of removal as well as the setting. 20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.530(d)(5).

DISCUSSION

For the Hearing Officer to uphold the decisions reached by the MDR team, she must find that (1) the hearing process was procedurally appropriate; and (2) that a preponderance of the evidence demonstrates that the Student's behavior was not directly and substantially related to the Student's disability, or a result of the District not implementing the IEP. In this case, there were no procedural due process violations related to the MDR and the substantive decisions reached by the MDR team were proven by a preponderance of the evidence presented.

Procedural Due Process

The MDR was held three days following the incident, well within the statutory time limit, and it was attended by relevant members of the Student's IEP team. The MDR form does not indicate that the School Psychologist or the School Principal attended the MDR meeting, however, the School Psychologist's credible testimony confirms it.

The School Psychologist reviewed the incident report, the Student's RRs and current IEP, and other relevant information. The MDR report lists a description of the incident, comments from teachers, relevant portions of the Student's IEP, information from the Parent, and its conclusions. And, the Parent received a copy of Procedural Safeguards at the MDR. There were no allegations that the Parent was not properly informed of the MDR.

Based on the above, the Hearing Officer finds that the District did not violate the Student's or the Parent's due process rights.

Substantive Determination – Relationship between the Student's Behavior and Disability

The MDR team concluded that there was no nexus between the Student's disability and the Student's behavior on January 30, 2024. The crux of the dispute appears to be the parties disagreement as to whether the Student's actions were impulsive. Impulsivity is behavior commonly associated with ADHD, which is the basis for the Student's secondary disability under the category of OHI. ADHD is described as involving two presentations: attention deficit and hyperactivity/impulsivity.⁴

The American Psychological Association defines "impulsive" as "describing or displaying behavior characterized by little or no forethought, reflection, or consideration of the consequences of an action, particularly one that involves taking risks."⁵ A few other definitions typical in the literature define impulsive behavior as: "A fast reaction without thinking and conscious judgment; acting without enough thinking; and a tendency to act with less thinking compared to the others who have similar levels of knowledge and ability."⁶ And, there are three factors that contribute to impulsivity:

- A. acting on the spur of moment (motor activation),
- B. not focusing on the task at hand (inattentiveness), and
- C. not planning and thinking carefully (non-planning).⁷

The teachers' comments in the Student's recent RR and IEP appear to focus on attention-deficit aspects of ADHD rather than the behavior associated with hyperactivity/impulsivity. And, the IEP goals, program

⁴ Tobin, Renee M. and Alvin E. House, *DMS-5® in the Schools*, New York: Guilford Press, 2016, pp. 161-169.

⁵ <https://dictionary.apa.org/impulsive>

⁶ Arce E, Santisteban C. Impulsivity: a review. *Psicothema*. 2006;18(2):213-20.

⁷ Patton JH, Stanford MS, Barratt ES. Factor structure of the Barratt impulsiveness scale. *J Clin Psychol*. 1995;51(6):768-74.

modifications, and SDI are primarily directed at attention deficits, not impulse control.

The Student's behavior cannot be described as a spur-of-the-moment decision. There was forethought, it was planned with another student, and the Dean of Students had recently informed the Student of the consequences of fighting. Therefore, the evidence demonstrates that the MDR Team correctly determined that the planned fight was not the result of impulsivity associated with the Student's secondary disability.

Neither the Student nor the Parent disputed the Student's involvement in the fight on January 30, 2024. They sincerely believe that it is a result of the Student's disability because the Student lashed out shortly after being triggered by the threatening social media post urging other students to attack the Student at the [redacted] game scheduled for that evening. While compelling and traumatic, the attack on the Student on January 5, 2024 and the January 30th social-media post do not absolve the Student's actions on January 30, 2024 or explain them as the result of impulsivity.

Substantive Determination – District's Implementation of the IEP

The MDR team found that the District did not fail to implement the Student's IEP. The box is checked on the MDR form indicating that the MDR team concluded that the Student's conduct was not a direct result of the District's failure to implement the IEP, but fails to indicate "why." The District witnesses testified that they believed that, in general, the Student is receiving learning support goals, objectives, program modifications, and specially designed instruction in accordance with the IEP.

More specifically, the Hearing Officer gives credence to the fact that the Dean, who had also been the Student's learning support teacher, and the Student have the type of relationship that made it possible for the Student to immediately discuss a situation of concern. Even though the

Dean's attempts to deescalate the Student were ultimately not successful, the Dean's support demonstrates that the District is providing the Student with the type of support needed by a student with ADHD.

Therefore, the MDR team's decision that the school is implementing the Student's IEP prevails.

CONCLUSION OF LAW

The preponderance of the evidence demonstrates that the Student's behavior was not directly or substantially related to the Student's secondary ADHD disability or the result of the District failing to implement the Student's IEP. Therefore, the MDR team's conclusion is sustained.

ORDER

AND NOW, this 11th day of March, 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the District's claim is SUSTAINED. It is FURTHER ORDERED that any claims not specifically addressed by this decision and order are DENIED and DISMISSED. The Hearing Officer's jurisdiction is relinquished.



Cheryl Cutrona, J.D.
Special Education Hearing Officer

Date of Decision

March 12, 2024

ODR 29202-23-24