

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. 29532-23-24

Child's Name:

Z.D.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent

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Hearing Officer:

Joy Waters Fleming, Esq.

Date of Decision:

May 17, 2024

INFORMATION AND PROCEDURAL HISTORY

The Student (Student)¹ is a [redacted] year-old student enrolled in a District [redacted] school. The Student's first day of school in the District was March 7, 2024. The Student is eligible for special education services under the primary exceptionality of specific learning disability (SLD) and the secondary exceptionality of other health impairment (OHI) with a diagnosis of ADHD. The Student is entitled to procedural protections under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act (ADA), and the regulations implementing those statutes.² On March 19, 2024, the Student engaged in a cafeteria altercation. A manifestation determination review concluded that the Student's conduct was not caused by, nor did it have a direct and substantial relationship to, a disability or due to a failure to implement the IEP. The District initiated expulsion proceedings.

The Parent filed this complaint and requested an expedited due process hearing with allegations that the District failed to conduct an

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 the details on the cover page, will be redacted prior to the decision's 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). Section 504 is found at 29 U.S.C. § 794. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11. The Americans with Disabilities Act is found at 42 U.S.C. §§ 12101-12213.

appropriate manifestation determination. The complaint also contained FAPE claims. The parties agreed to bifurcate the proceedings with the resolution of the denial of FAPE claims to occur along the standard IDEA resolution timelines.

As relief, the Parent seeks an Order barring the District from expelling the Student or ordering reinstatement, a comprehensive evaluation, appropriate programming and placement, compensatory education for the District's failure to provide a FAPE during a purported unlawful exclusion from school and attorneys' fees. In response, the District maintained that it has fulfilled its legal obligations to the Student and that the relief requested by the Parent should be denied.

For the following reasons, the Parent has not established by a preponderance of the evidence that the manifestation determination held by the District regarding the Student was not in compliance with the IDEA. The claims of the District are granted.

ISSUES

- 1) Did the District's manifestation determination procedures regarding the Student comply with 34 CFR § 300.530 and properly determine that the student's conduct was not caused by, or had a direct and substantial relationship to, the student's disability?
- 2) Did the District's manifestation determination procedures regarding the Student comply with 34 CFR § 300.530 and properly determine that the conduct in question was not the direct result of the LEA's failure to implement the IEP?

FINDINGS OF FACTS

1. The Student is currently [redacted] years old, enrolled in the District and eligible for special education as a child with a specific learning disability (SLD) and other health impairment (OHI) with a diagnosis of ADHD.
2. Since [redacted], this Student has experienced educational instability and has attended many schools.³ (P-17, p. 3)

Previous Education

[redacted] Grade

3. During the 2017-2018 school year the Student was enrolled in the [redacted] grade in a school district. (P-17, p. 3)
4. In May 2018, the Student received a reevaluation (RR) that included cognitive, behavioral and classroom functioning assessments. The RR concluded that the Student had a full-scale IQ of 99 and exhibited pleasant and kind behaviors but was still adjusting to the class schedule. (P-7, 13-14)
5. The 2018 RR identified the Student's developmental and functional needs as reading comprehension, math skills, and task completion. (P-7, p. 14)

³The parties introduced very limited educational records of this Student.

6. The 2018 RR indicated the Student struggled to remain focused while working and completing tasks. (P-7)

[redacted] Grade

7. During the 2018-2019 school year, the Student was enrolled in the [redacted] grade in a new district and received special education programming. (P-2)

8. The school district of attendance conducted a functional behavioral assessment (FBA). The FBA hypothesized that in less structured environments or presented with non-preferred or academic tasks, the Student would call out, get involved in others' conflict and become more fidgety to avoid work and gain peers' attention. (P-2)

[redacted] Grade

9. During the 2020-2021 school year, the Student was enrolled in the [redacted] grade in a new school district. This was the fifth brick-and-mortar school attended by the Student. (P-4)

10. In May 2021, the District reevaluated the Student through a records review. The 2021 RR incorporated the achievement and aptitude determinations from the 2018 evaluation.⁴ The RR determined the Student continued to be eligible for special education services under the primary disability category of specific learning disability (SLD) and other health impairment (OHI) - ADHD. (P-4)

[redacted] Grade

⁴ The Student's last reevaluation occurred in May 2021. The District will be ordered to issue a permission to reevaluate the Student.

11. During the 2022-2023 school year the Student was enrolled in the [redacted] grade in an online charter school and received special education programming to address needs related to a SLD and OHI. (P-7)
12. On January 17, 2023, the Student's IEP team met to develop educational programming. The offered IEP did not denote any special considerations that the Student exhibited behaviors that impeded learning or that of others warranting the development of a positive behavior support plan (PBSP). (P-7)
13. The January 2023 IEP contained the Student's present levels, educator input, a summary from the 2018 RR, reading, math, and assignment completion goals and related SDI. The IEP offered placement in supplemental learning support.
14. Educator input indicated the Student needed to attend class consistently, turn in assignments, and participate. Other comments stated the Student was pleasant with peers. (P-7, p. 12)

2023-2024 School Year - [redacted] Grade - Current Education

15. During the 2023-2024 school year, the Student was enrolled in a distance learning charter school. (P-13, p.8)
16. On February 1, 2024, the Parent registered the Student in the [redacted] grade in the District. (P-9)

17. On the registration form, the Parent indicated the Student had an existing IEP did not have ADHD or other listed medical conditions and was never suspended or expelled from school. The Parent uploaded the Student's January 2023 IEP and submitted it with the registration form. (P-9, P-10)
18. Along with the completed registration packet, the District obtained some of the Student's educational records including an FBA, some former IEPs and the [redacted]-grade reevaluation reports. No disciplinary records were provided with the Student's educational records. (P-2, P-4, P-5, P-7)
19. The Student's first school day in the District was March 7, 2024.⁵ (P-23; N.T. 38)
20. On March 11, 2024, the IEP team met to develop programming for the Student. No special considerations were noted in the IEP that required the development of a PBSP. The March 2024 IEP included the Student's educational history, Parent input, academic goals and SDI, a summary of previous evaluative data from a former IEP and a determination that the Student was not eligible for ESY. (P-13)
21. The March 2024, IEP adopted the reading comprehension and math calculation goals from the January 2023 IEP. SDI included direct, explicit reading and math instruction, modified tests/quizzes, repetition, and reminders. (P-13, p. 14-17, S-16; N.T. 57)

⁵ The reasons the Student did not start school until a month after registration were unclear and not introduced through this hearing record.

22. The District's March 2024 IEP included a summary of the Student's 2018 RR, as reported in the January 2023 IEP from a former school. The RR summary included the Student's aptitude and achievement performance, strengths and needs, cognitive, behavioral and classroom functioning observations, and the impact of disability on progress in the general education curriculum. (P-13, p. 6)
23. The March 2024 IEP incorporated information from the January 2023 IEP and reiterated that the Student struggled to remain focused while working and completing tasks and had reading comprehension, math skills, and task completion needs. (P-13, p. 9)
24. On March 15, 2024, through a NOREP, the District offered the Student placement in itinerant learning support. (P-15)
25. The Student's learning support teacher reviewed the Student's March 2024 IEP when the Student joined the class. (P-13; N.T. 164)
26. On March 19, 2024, while in the lunch line, a peer was observed to push the Student. The Student pushed the peer back. The Student was observed punching the peer, throwing the peer to the ground, and continuing hitting while the peer was on the ground. The Student then put the peer into a headlock once they got off the ground. The peer bled from the nose and mouth after the incident. Other students videotaped the incident. (P-17, P-30-2, P-30-3; N.T. 27-31)
27. On March 22, 2024, the District held a manifestation determination review (MDR) meeting. The MDR team included the Parent, the [redacted] grade Principal/LEA representative, regular and special

education teachers, the school psychologist, and the special education supervisor. (P-17, p. 1)

28. In preparation for a MDR, the school psychologist met with the case manager to review the Student's present levels, the 2018 FBA, the 2021 RR, and IEPs developed in 2022 and 2023. (N.T. 111, 115-117, 129-130)
29. During the MDR, the team reviewed and discussed the Student's disclosed medical history, narrative of the lunchroom incident, a summary from the 2024 IEP, the 2021 RR with 2018 data and the FBA hypothesis, observations from the current reading specialist and ELA teacher, Parent's input, and the team's findings and conclusion. None of the supplied information indicated the Student had a history of physical aggression (P-2, P-4, P-13, P-17; N.T. 83, 89, 129, 132, 134)
30. The current educators' input in the MDR indicated the Student's behavioral concerns, such as socializing, focus, missing assignments, lateness and phone usage. The Parent indicated the Student had sustained six concussions and had been taking PTSD medication.⁶(P-17, p.3)
31. The school psychologist determined the Student's fight was not caused by the identified disability because the incident occurrence was not consistent with the ADHD symptoms exhibited by the Student, and educational records did not indicate factors that compromised the ability to inhibit behavior. The school psychologist

⁶ The Parent did not testify at the hearing and presented no evidence to substantiate this information.

noted that the educational records documented the Student's history of inattentiveness but did not indicate physical aggression. (N.T. 132, 134)

32. After discussing the Student's current IEP and previous educational information that included IEP programming, FBA data, RR conclusions, the team was asked if the conduct in question was caused by the Student's disability or had a direct and substantial relationship to Student's disability. All members of the school team answered no to the question. (P-17, N.T. 41, 43, 45, 47, 86, 102-107, 231, 233)
33. The MDR described the behavior that included setting events (lunchroom interaction), antecedents (Student and peer pushing each other) (details of the incident (Student punched the peer in the face) and immediate consequences (Parent/police contacted), and witnesses (student #4, #5). (P-17, p. 2; N.T. 102-107)

Failure to implement the IEP

34. During the MDR, the team discussed the Student's current educational program to determine whether identified needs were addressed through the March 2024 IEP. (P-17; N.T. 124-125, 132-133)
35. After discussing the Student's current educational programming, all MDR participants were asked if Student's conduct was the direct result of the District's failure to implement the IEP. The members of the school team answered no to the question. (P-17, N.T. 41, 43, 45, 47, 86, 102-107)
36. The Parent indicated uncertainty if the Student's behavior was a

manifestation of disability because of a belief that paperwork provided by a previous school district was inaccurate. (P-17)

37. On April 15, 2024, the District held an expulsion hearing for the Student. The school board decision held the decision in abeyance until the conclusion of this due process hearing. (HO-1)

DISCUSSION and CONCLUSIONS OF LAW

General Legal Principles

Generally, the burden of proof consists of two elements: the burden of production and persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief.⁷ The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise.⁸ In this case, the Parent is the party seeking relief and bears the burden of persuasion.

Special education hearing officers, in the role of fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. *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 (Quakertown Community School District)*, 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who

⁷ *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006).

⁸ *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed. Appx. 920, 922 (3rd Cir. 2010).

testified to be generally credible as to the facts. The Parent offered testimony from the [redacted]-grade Assistant Principal, the school psychologist, the Student's reading specialist, and the language arts and special education teachers. The District called the special education supervisor as its sole witness. The Parent did not testify.

In the relatively few instances that there were contradictions, those are attributed to lapses in memory or recall, or to differing perspectives, rather than an intention to mislead; and in any event, credibility was not determinative on any issue. The weight accorded the evidence, however, was not equally placed.

IDEA DISCIPLINARY PRINCIPLES

The IDEA provides a number of protections when a local educational agency (LEA) seeks to impose discipline on a student with a disability. Specifically, when an eligible student is facing a change in placement for disciplinary reasons, a meeting must convene to determine whether or not the conduct in question was a manifestation of the student's disability:

(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. 20 U.S.C. § 1415(k)(1)(E)(i) (*italics added*); 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)(1)(E)(ii); see also 34 C.F.R. § 300.530(e)(2).

If the conduct is determined to be a manifestation of the child's disability, the LEA 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)(1)(F); see also 34 C.F.R. § 300.530(f). By contrast, if the team determines that the behavior which resulted in discipline was not a manifestation of the student's disability, the LEA may apply the same disciplinary procedures applicable to all children without disabilities, except that children with disabilities must continue to receive educational services necessary to provide a free, appropriate public education (FAPE). 20 U.S.C. §§ 1415(k)(1)(C) and (D); 34 C.F.R. §§ 300.530(c) and (d).

Parent's Claims

The Parent contends that the manifestation determination review (MDR) in response to the March lunchroom fight involving the Student was legally improper. In the complaint, the Parent contended the MDR team improperly concluded the Student's conduct was not caused by student's disability or had a direct and substantial relationship to OHI due to the ADHD diagnosis. The complaint also contained allegations regarding the District's failure to provide FAPE, which are scheduled for resolution through a non-expedited hearing.

The uncontested facts have established that this eligible [redacted] grader has experienced significant educational instability and was new to the District [redacted] school. After attending less than ten school days, the Student engaged in a lunchroom altercation that left a peer with a bloodied nose. The District initiated expulsion proceedings; a hearing was held, but no final determination was made. Although that is a severe consequence, the resolution of this dispute must focus on the two fundamental questions presented to the team tasked with conducting the manifestation review (MDR). Based on the hearing record, the team properly addressed both questions.

First, the District sufficiently reviewed available information concerning the Student's disabilities before determining that the Student's behavior was not a manifestation of the disability. Although the Student was new to the District, it had completed an updated IEP and received incomplete educational records that included previous IEPs, a RR, and a FBA. None of that information reviewed by the MDR team indicated the Student had a disciplinary history, engaged in physical or verbal aggression, or displayed significant behavioral concerns. The MDR team knew and discussed the Student's ADHD diagnosis, resulting in eligibility as OHI. Still, the information considered by the team indicated that the Student's disability presented in non-violent, non-aggressive ways.

The MDR team included the Parent, the [redacted] grade Principal/LEA representative, regular and special education teachers, the school psychologist, and the special education supervisor. They met, reviewed the pertinent educational and disability considerations and discussed this information. The evidence has established that the team members understood the Student's disabilities (SLD/OHI) and how they presented during the school day. A properly constituted MDR team was present, and a timely meeting occurred. Although some of the witnesses exhibited minor

confusion, overall, their testimony was credible and demonstrated an understanding of the requisite factors, which, in my view, rendered the final determination valid.

This evidentiary record was persuasive that the MDR team adequately considered the nexus between the Student's disabilities and the disciplinary event. Overall, nothing in the Student's available educational records corroborated the Parents' contentions that the Student's actions were related to the Student's disabilities (SLD/OHI-ADHD) or the District's failure to implement the current IEP. Although this Student has ADHD and is a person with an OHI, none of the evidence introduced by the Parent, contradicted the MDR team's findings. Notably, the school psychologist testified that after reviewing Student's educational records and the incident report, she determined the severity of the behaviors did not match the ADHD symptoms the Student exhibited, and arguing with peers is not the same as being physically aggressive. Overall, the absence of evidence that the Student engaged in any remotely similar incidents at school in the past and that the most current significant behavioral infractions involved failure to complete schoolwork, socializing and phone use did not support the Parent's position in this matter.

This Student does have documented ADHD. However, the documentary and testimonial evidence indicated the Student's ADHD presented as inattentiveness but not impulsivity or aggression. No persuasive evidence was presented to the contrary. Many years ago, as a [redacted]-grader, a district determined that an FBA was necessary. However, the resulting hypothesis, reviewed by this MDR, indicated distractibility, fidgetiness, and involvement in others' conflicts as significant behaviors of concern. No aggressive behavior was noted. This Student is now in the [redacted] grade, and no subsequent FBA or PBSP has been

introduced. The MDR team properly concluded the assault was not a manifestation of the Student's OHI or ADHD disability. Accordingly, absent preponderant proof, I now find that the MDR was substantively complete, sufficient and appropriate.

Additionally, the Parent has presented no preponderant evidence that the Student's conduct was the direct result of the failure to implement the IEP. After the transfer to this new school, the District immediately developed an IEP to address the Student's reading and math needs. Although some new testing occurred, much of the information was incorporated from the previous IEP. No special considerations were noted that indicated the need for a PBSP. The IEP contained goals and SDI, and the Student was assigned a case manager. During the brief school attendance period, the Student received the special education services outlined in the IEP.

On this hearing record, the Parent has not met the needed burden of proof. The District complied with the requirements under the IDEA for this manifestation determination. The Parent's claims for relief are denied.

ORDER

AND NOW, this 17th day of May 2024, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The MDR team's March 22, 2024, conclusion that the Student's March 19, 2024, conduct was not a manifestation of disability is affirmed.
2. Within five school days of the date of this decision, if not already accomplished, the District shall provide the Parent with a permission to reevaluate. The reevaluation should include a functional behavioral assessment (FBA).

It is FURTHER ORDERED that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Joy Waters Fleming, Esquire

Joy Waters Fleming

HEARING OFFICER
ODR File No. 29532-23-24

May 17, 2024