

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. 29840-23-24

Child's Name:

D.Z.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent:

Pro Se

Local Educational Agency:

Philadelphia School District
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Counsel for LEA:

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Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

08/28/2024

Introduction

This special education due process hearing concerns the educational rights of [redacted] ("student"), a student who attends school in the Philadelphia School District ("District").¹ The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student identified in April 2024 with a specific learning disability in mathematics calculation.

The student's parent filed the complaint which led to these proceedings. The parent claims that the handling of a disciplinary matter in January 2024 was a denial of a free appropriate public education ("FAPE") because the student should have been deemed 'thought to be eligible' at that time and no manifestation determination process was held before discipline was implemented. Therefore, as a result of the disciplinary incident, the student's placement at an alternative education placement for disruptive youth ("AEDY") was inappropriate. Furthermore, parent claims that the District's evaluation process and report are inappropriate and that the student is entitled to an independent educational evaluation ("IEE") at District expense.

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. See *also* 22 PA Code §§14.101-14.162 ("Chapter 14").

The District counters that it did not deny the student FAPE in any regard, either in the handling of the disciplinary placement or the placement in an AEDY. The District also stands by its evaluation process and report as appropriate under the terms of IDEA.

For reasons set forth below, I find in favor of the District.

Issues

1. Did the District handle the disciplinary incident appropriately under IDEA?
2. If so, was the AEDY placement inappropriate?
3. Must the District provide an IEE at public expense?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

1. Aside from a half-year in a cyber charter school in the 2022-2023 school year, the student has attended District schools since kindergarten. (Parent's Exhibit ["P"]-1; School District Exhibit ["S"]-27).
2. Academically, the student has largely met grade-level expectations, although over time mathematics has always been an area of deeper

need, and more intensive support, than reading and language arts. (P-1).

3. Behaviorally, the student appears to have had no difficulty in the elementary school years. (P-1).
4. In January 2022, in the student's [redacted] grade year, the District engaged the student in conflict resolution strategies. (S-23).
5. In the 2022-2023 school year, the student's [redacted] grade year, the student encountered various behavioral issues involving peers. (S-23).
6. In September 2022, the District engaged the student in peer mediation. (S-23).
7. In January 2023, the District engaged the student in conflict resolution strategies and a restorative-practices meeting with building-level administrators. (S-23).
8. In February 2023 and/or March 2023, the student was suspended for two days. (P-1; S-23).³
9. In February 2023, the District recommended that the student engage in the student assistance program and recommended behavioral support services. The parent declined both supports. (S-18, S-23).

³ The record shows that the student was suspended for two days in the 2022-2023. (P-1). The record shows that the parent was involved in discussions and reinstatement regarding behavioral expectations in February and March 2023. (S-23). It is unclear how the two days of suspension intersect with the parent/reinstatement meetings.

10. At points, the student was permitted to take breaks and work independently “to avoid interactions with other students”. The student attended a different lunch “in order to avoid the lunchroom” and “seem(s) to struggle with responding to peer pressure and/or ignoring drama”. (S-18)
11. On January 23, 2024, during the student’s [redacted] grade year, the student was involved in a significant altercation with another student on school grounds, after school hours shortly after dismissal. (S-4, S-5, S-6, S-7, S-8, S-9, S-17, S-29; Notes of Testimony [“NT”] at 200-237).
12. The altercation was a fight between the student and a peer. In a chaotic situation, family members of both students, peers, and bystanders were involved as a group surrounding the combatants, who moved in and amongst the group, engaging each other, breaking off, and then re-engaging. (S-29).
13. Following the altercation, the student was suspended for three days. (P-1; S-19).
14. On February 1, 2024, for the student’s safety, the District placed the student in an AEDY placement. (S-22; NT at 74-135).
15. Building-level discipline administrators informed the parent that, for the student’s safety, thereafter the student should not return to the school building which the student was attending. The student’s parent

honored the directive, but the student was mistakenly marked with unexcused absences for not being in school in early February 2024. This mistake was corrected on the student's attendance record. (P-1, P-7; S-28; NT at 25-72, 200-237).

16. On February 6, 2024, the parent requested that the student be evaluated for special education. (P-10).
17. On February 9, 2024, the District scheduled a disciplinary hearing for a week later, to consider the student's violation of the District code of conduct. (S-21).
18. On February 12, 2024, the District held a behavior performance review. The District review indicated that the student was not thought to have a disability. (S-18).
19. On February 14, 2024, the family reiterated its request for an evaluation. (S-24).
20. On February 16, 2024, the District held the disciplinary hearing. (NT at 137-167).
21. On February 16, 2024, the parent provided consent for an evaluation of the student. (S-26).
22. Neither the parent's February 6th nor the February 14th requests for an evaluation referenced the student's behavior. The February 6th request was a general request; the February 14th request was based on academic concerns. (S-24, S-26).

23. Following the disciplinary hearing, the District's disciplinary hearing officer ordered that the student be transferred from the AEDY placement to a new regular education school, different from the school the student had attended. (NT at 74-135, 137-167).
24. On April 24, 2024, the District issued its evaluation report ("ER"). (S-27).
25. The April 2024 ER indicated that the evaluation process was rooted in "concerns with reading and writing". (S-27).
26. Parent concerns were included in the April 2024 ER. Parent's concerns were focused on academics, including reading (comprehension and fluency), writing, and some concerns in mathematics. Parent did not report any concerns regarding behavior. (S-27).
27. An observation of the student in the educational environment, the new middle school placement as a result of the disciplinary hearing, indicated that the student was largely attentive and on-task with self-directed group work. (S-27).
28. Input from teachers at the middle school placement which the student attended prior to the altercation indicated that the student's academics were adequate, with supports in some areas. The teachers all reported difficulties with peers and some reported difficulties with adults: "consistent conflicts with other students", "negative

relationships with adults in the building...actively negative and spiteful toward them when (the student) saw them”, a “main concern with (the student) was fighting”, and “took perceived slights very seriously and did not shy away from conflict if it was initiated”. (S-27).

29. Curriculum-based assessment at the middle school the student attended prior to the altercation indicated that the student scored at the 34th percentile in mathematics and the 35th percentile in reading, both at the “on watch” level. (S-27).
30. The April 2024 ER contained cognitive testing. The student’s full-scale IQ was assessed at 89. (S-27).
31. The April 2024 ER contained academic achievement testing. No achievement score was statistically discrepant from the student’s cognitive testing, although there were markedly lower scores in numerical operations (78) and spelling (75). (S-27).
32. The April 2024 ER contained behavior rating scales, completed by the parent and a teacher from the middle school placement the student attended prior to the altercation. (S-27).
33. On the parent’s rating scales, the parent rated the student in the average range on most sub-scales and all composites, except for an at-risk rating on the attention problems sub-scale. (S-27).
34. On the teacher’s rating scales, the teacher rated the student in the average range on most sub-scales and all composites, except for

an at-risk rating on the conduct-problems sub-scale and a clinically-significant rating on the aggression sub-scale. (S-27).

35. The April 2024 ER identified the student as a student with a specific learning disability in mathematics computation, indicating that the evaluation data as a whole supported this identification. The evaluator opined that the student's relatively lower academic achievement score in spelling did not support an identification in written expression as the evaluation data as a whole did not impact reading and writing achievement/skills. (S-27).
36. The April 2024 ER recommended goal-based instruction in order of operations, long division, addition of fractions, and multiplying multi-digit numbers with regrouping, along with specially-designed instruction in computation skills. (S-27).
37. In June 2024, the parent filed the special education due process complaint which led to these proceedings. (Hearing Officer Exhibit - 1).

Credibility of Witnesses

All witnesses testified credibly. No one witness's testimony was accorded materially more or less weight than any other witness's testimony.

Legal Framework

To assure that a child eligible under IDEA receives a free appropriate public education ("FAPE") (34 C.F.R. §300.17), the child's special education programming must be reasonably calculated to yield meaningful educational benefit to the student. (Board of Education v. Rowley, 458 U.S. 176, 187-204 (1982)). 'Meaningful benefit' means that a student's program affords the student the opportunity for significant learning in light of his or her individual needs, not simply *de minimis*, or minimal, or 'some', education progress. The child's education programming must be appropriately ambitious in light of the child's strengths and needs, current levels of programming, and goals. (Andrew F. ex rel. Joseph F. v. Douglas County School District, 580 U.S. , 137 S. Ct. 988, 197 L. Ed. 2d 335, (2017); Dunn v. Downingtown Area School District, 904 F.3d 208 (3d Cir. 2018)).

Discipline & Special Education. Where a student identified with a disability under IDEA breaches the student of conduct and is subject to discipline amounting to school-removal of more than 10 consecutive school days, or more than 15 cumulative school days in a school year, such a removal is considered a disciplinary change in the student's educational placement. (34 C.F.R. §300.536(a)(1); 22 PA Code §§14.102(a)(2)(xxxii), 14.143(a)). Within 10 school days of the decision to implement a disciplinary change in placement, the school district must undertake a manifestation determination review. "(The school district), the parent, and relevant

members of the child's IEP team (as determined by the parent and the [school district]) must 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 if the behavior underlying the disciplinary action was a manifestation of the student’s disability, whether the behavior was “caused by, or had a direct and substantial relationship to, the child’s disability”, or was the direct result of the school district’s failure to implement the IEP. (34 C.F.R. §300.530(e); 22 PA Code §14.102(a)(2)(xxxii)).

These disciplinary protections may apply to a student who has not been identified under IDEA “if the (school district) had knowledge...that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.” (34 C.F.R. §300.534(a); 22 PA Code §14.102(a)(2)(xxxii)). A student in this circumstance is often referred to as a student who is thought-to-be eligible.

‘Knowledge’, for this purpose, is imputed to the school district (1) if the parents expressed concerns in writing to school administrators or the student’s teacher that the student requires special education; or (2) if the parents requested a special education evaluation; or (3) if teachers or other educators expressed concerns about patterns of behavior to special education or other administrators. (34 C.F.R. §300.534(b); 22 PA Code §14.102(a)(2)(xxxii)). If the school district does not have knowledge based

one of these three factors, the student is not thought-to-be eligible, and the disciplinary protections do not apply— “the child may be subjected to the disciplinary measures applied to children without disabilities who engage in comparable behaviors.” (34 C.F.R. §300.534(d); 22 PA Code §14.102(a)(2)(xxxii)).

IEE. Under the terms of the IDEA, “(a) parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency....” (34 C.F.R. §300.502(b)(1); 22 PA Code §14.102(a)(2)(xxix)). Upon requesting an IEE at public expense, a school district has one of two choices: the school district must provide the evaluation at public expense, or it must file a special education due process complaint to defend its re-evaluation process and/or report. (34 C.F.R. §300.502(b)(2)(i)-(ii); 22 PA Code §14.102(a)(2)(xxix)).⁴

An evaluation must “use a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the child, including information provided by the parent, that may assist in determining” an understanding of the student’s disability and the content of the student’s individualized education program. (34 C.F.R.

⁴ In this matter, as part of prehearing planning, the District indicated that it would not provide an IEE at public expense. A collaborative decision was made with the District, the parent, and the hearing office that the District would assume the burden of proof as to the appropriateness of its evaluation process and report. In that way and with the consent of the District, the District explicitly defends its evaluation through this hearing process.

300.304(b)(1); 22 PA Code §14.102(a)(2)(xxv)). Furthermore, the school district may not use “any single measure or assessment as the sole criterion for...determining an appropriate educational program for the child”. (34 C.F.R. 300.304(b)(2); 22 PA Code §14.102(a)(2)(xxv)).

Discussion & Conclusions

On January 23, 2024 when the altercation occurred, the student was not identified as a student eligible under IDEA. Prior to the incident, the District did not have knowledge that the student was thought-to-be-eligible. Specifically, the parent had not expressed concerns in writing to school administrators or the student’s teacher that the student required special education nor had requested a special education evaluation, and teachers or other educators had not expressed to special education or other administrators concerns about the student’s patterns of behavior.

Given these factors, the manifestation-determination procedures did not apply to the situation, and the District’s implementation of its discipline procedures did not violate any obligation to the student under IDEA. Those District procedures included removal to an AEDY placement for the student’s safety and a disciplinary hearing to determine if the AEDY placement should continue. Having found that the student was not thought-to-be-eligible under IDEA, at that point in the chronology, this hearing officer has no

authority over these processes. But the District followed these procedures and, ultimately, returned the student to a District middle school setting to complete the 2023-2024 school year.

As for the April 2024 ER, it is, on its face, appropriate. Input was gathered from the parent and teachers, the student was observed in the educational environment, and multiple assessments were administered to gauge the student's cognitive ability, academic achievement, and behavioral affect. In that way, the District's ER cannot be gauged to be inappropriate. And the student's identification as a student with a specific learning disability in mathematics computation appears to be supported by the content and conclusions of the ER.

But the April 2024 ER does not have the context of complete information which this record makes available, namely a pattern in prior school years of documented behavioral disruption, seemingly consistent across settings (negative peer interactions, rising to the level of conflict, with anecdotal negative interactions with adults). This information, which was not available to the evaluator or did not enter into the ER, provides a different context for the input from multiple teachers and the behavior ratings submitted by one of those teachers.

Having said that, however, further evaluation would not seem to be warranted. Specifically, the only reason for a further evaluation would be to

probe a potential identification as a student with an emotional disturbance, “a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance:

- an inability to learn that cannot be explained by intellectual, sensory, or health factors;
- an inability to build or maintain satisfactory interpersonal relationships with peers and teachers;
- inappropriate types of behavior or feelings under normal circumstances;
- a general pervasive mood of unhappiness or depression; or
- a tendency to develop physical symptoms or fears associated with personal or school problems.” (34 C.F.R. 300.8(c)(4); 22 PA Code §14.102(a)(2)(ii)).

Based on the entirety of this record, even with the context of the student’s prior behavioral issues, the student does not exhibit any of these conditions to a marked degree that adversely affect’s the student’s educational performance—the student learns effectively, maintains satisfactory relationships with most peers and adults, does not exhibit a pervasive mood of unhappiness or depression, and does not develop physical symptoms/fears associated with school. Perhaps the only condition that

might arguably be exhibited is inappropriate behavior under normal circumstances, particularly by taking offense at perceived slights and responding with negativity and confrontation/conflict. But the record does not elevate this potential marker of emotional disturbance to a position where an IEE is warranted. The student's IEP team may take a different view if the behaviors persist into high school (where developmental maturity may help to ameliorate some of the responses of the student), or begin to adversely impact the student's learning, or begin to manifest in one or more of the areas which indicate a potential emotional disturbance. But based on all of the evidence, at this point there is not enough contained in the record to support the need for an IEE.

In sum, then, the District handled the disciplinary incident appropriately under IDEA and parent is not entitled to an IEE at public expense.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the Philadelphia School District did not fail in its obligations to the student under the IDEA. Parent is not entitled to an independent educational evaluation at public expense.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

08/28/2024