

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 23-1037EDM

vs.

SARASOTA COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

An expedited due process hearing was held on April 14, 2023, before Todd P. Resavage, an administrative law judge (ALJ) with the Division of Administrative Hearings (DOAH). The due process hearing was held, by agreement of the parties, via Zoom video-teleconferencing.

APPEARANCES

For Petitioner: Petitioner, pro se
 (Address of Record)

For Respondent: Amy J. Pitsch, Esquire
 Sniffen & Spellman
 123 North Monroe Street
 Tallahassee, Florida 32301

STATEMENT OF THE ISSUE

Whether Petitioner's behavior, which resulted in discipline, was a manifestation of his disability.

PRELIMINARY STATEMENT

Respondent received Petitioner's Request for Due Process Hearing (Complaint) on March 15, 2023. Respondent forwarded the Complaint to DOAH on the same day, and the matter was assigned to ALJ Jessica E. Varn.

Following a telephonic scheduling conference on March 21, 2023, the due process hearing was set for April 14, 2023. On March 29, 2023, the matter was transferred to the undersigned for all further proceedings.

The hearing proceeded, as scheduled, on April 14, 2023. Petitioner's father testified on behalf of Petitioner, but offered no other testimony or documentary evidence. Respondent presented the testimony of [REDACTED], an assistant principal; and [REDACTED], a behavior specialist. Respondent's Exhibits 1 through 5 were admitted into the record.

Upon the conclusion of hearing, the parties were invited to file proposed final orders on or before April 24, 2023. The final hearing Transcript was filed on April 19, 2023. Respondent filed a Proposed Final Order, which was considered in preparing this Final Order. Petitioner did not file a proposed final order. The deadline for this Final Order, ten school days after the hearing, is April 28, 2023.

Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violations. For stylistic convenience, male pronouns will be utilized in this Final Order when referring to Petitioner. The male pronouns are neither intended, nor should be interpreted, as a reference to Petitioner's actual gender.

FINDINGS OF FACT

1. Petitioner is [REDACTED] years old. During the [REDACTED], he was in [REDACTED] grade and attended School A, a public [REDACTED] school in Sarasota County, Florida.

2. Petitioner is a student who qualifies for exceptional student education. His documented exceptionalities are Specific Learning Disability (SLD) and Language Impairment (LI), for which he receives direct instruction in reading, math, social/emotional skills, and language therapy.

3. Petitioner has an individualized education program (IEP). His most recent IEP, dated January 13, [REDACTED], documented how his disabilities affect his social and emotional behavior as follows:

When [Petitioner] is given instructions or assignments he deems undesirable, he will become defiant/non-complaint and/or display off-task behaviors to escape work and gain attention.

When [Petitioner] is frustrated with a situation or person, he will become defiant, display aggressive gestures or make inappropriate, disrespectful comments towards them in order to gain attention or avoid an undesired situation.

[Petitioner] has difficulty identifying and acknowledging the behaviors that impede his learning. His refusal to acknowledge these behaviors prohibits him from making progress on increasing his replacement behaviors. He is quick to blame others for his behaviors instead of accepting responsibility for his actions and words.

[Petitioner] has received 18 disciplinary referrals so far this school year. The infractions are repetitive disruptive behavior, inappropriate activity, repetitive disobedience/defiance/insubordination, intimidation/threat, misuse of electronics, failure to comply with class rules, verbal confrontation, out of assigned area and profane/obscene language.

4. Because Petitioner's behavior impedes his learning or the learning of others, a positive behavior intervention plan (BIP) had been developed to address the same. While the BIP was not admitted into evidence, an excerpt from the BIP is set forth in Respondent's Exhibit 2, and provides the following:

He has a current BIP with the following behaviors of concern:

Non-compliance/Defiance – arguing, not listening, talking over the adult, refusing to follow directions, saying “no” or “stop talking” when given a directive he does not agree with, moving seat without permission.

Off task disruptive behaviors – talking without permission, working on tasks other than what he was asked to do, getting out of his seat without permission, looking inappropriate items up on the computer, slamming his fist into his hand, desk or computer, yelling when he is frustrated, making random loud noises, aggressive gestures towards others, turning off other student laptops.

Inappropriate comments toward staff and peers – growling, telling teachers to “shut up”, making comments regarding peers [sic] physical appearance, academic ability, and sexual orientation, calling peers inappropriate names (stupid, filthy, dirty, homeless), telling people they are “racist”, screaming rude comments in other people's face, telling adults they are “trash” and “stupid.”

[Petitioner] has received 26 disciplinary referrals so far this school year. The infractions are repetitive disruptive behavior, inappropriate activity, repetitive disobedience/defiance/insubordination, intimidation/threat, misuse of electronics, failure to comply with class rules, verbal confrontation, out of assigned area, profane/obscene language and SESIR-bullying.

5. On February 9, 2023, one of Petitioner's teachers reported that Petitioner pushed her out of the way while seeking to enter the classroom. He

was directed to the administration office. Assistant Principal [REDACTED] issued a disciplinary referral for violating the Code of Student Conduct for “simple battery,” which has a minimum mandatory punishment of out-of-school suspension and recommendation for expulsion. As a result, Petitioner received an out-of-school suspension from February 10 through 14, [REDACTED].

6. On February 14, [REDACTED], a Manifestation Determination Review (MDR) meeting was conducted to determine whether Petitioner’s conduct on February 9, [REDACTED], was caused by, or directly and substantially related to, his disability or the direct result of the school not implementing his IEP. The meeting was attended by Petitioner’s father, Respondent’s representative, and relevant members of Petitioner’s IEP team.

7. Assistant Principal [REDACTED], who was a member of the MDR team, credibly testified that the team considered the behavior that subjected Petitioner to disciplinary action, Petitioner’s IEP, and his disciplinary history. The MDR team also listened to and considered Petitioner’s father’s statements. During the meeting, Petitioner’s father represented that, according to Petitioner, he had simply wanted to squeeze into the classroom and did not push the teacher.

8. Pursuant to the MDR report, the MDR team considered and documented the following: Petitioner’s behavior subject to disciplinary action; relevant information from Petitioner’s IEP; his disciplinary history; observations of Petitioner from his history, science, reading, and math teachers; his current education placement; and his behavioral concerns.

9. Ultimately, the school-based members of the MDR team concluded that the behavior at issue was not caused by, or directly and substantially related to, Petitioner’s disabilities; and all members, including Petitioner’s father, concluded that the behavior at issue was not a direct result of the school failing to implement his IEP.

10. Assistant Principal [REDACTED] credibly testified that Petitioner’s physical aggression toward the teacher was an “outlier” and not consistent

with his disabilities, SLD and LI. Additionally, [REDACTED] confirmed that there was no dispute among the MDR team that his IEP was being implemented with fidelity.

11. [REDACTED], a behavioral specialist at School A, was also a member of the MDR team. [REDACTED] works with Petitioner on his behavioral goals as set forth in his IEP and BIP. She credibly testified that Petitioner's behaviors primarily manifest in these ways: being off-task, lack of compliance, defiance, and verbal aggression. Like Assistant Principal [REDACTED], she stated that Petitioner's behavior of pushing the teacher was unusual and not consistent with his underlying disabilities and his typical behavioral issues.

[REDACTED] testified that his BIP was being implemented.

12. Petitioner's father testified that the MDR team "ignored" the fact that Petitioner has a disability. He also testified and stated that Petitioner did not engage in the conduct that resulted in the disciplinary referral. He simply "doesn't believe" that a [REDACTED]-year-old could push a teacher twice Petitioner's size.

13. Following the MDR, Respondent removed Petitioner from his placement at School A, and placed him at Respondent's interim alternative educational school (IAES). Assistant Principal [REDACTED] credibly testified that the IAES could implement Petitioner's IEP. Although Petitioner was assigned and eligible to begin attending the IAES on February 15, [REDACTED], Petitioner has not attended.

CONCLUSIONS OF LAW

14. DOAH has jurisdiction over the subject matter of this proceeding and of the parties. *See* § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u) and 6A-6.03312(7).

15. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *Dep't of Educ., Assistance to States for the Educ. of Child. with Disab.*, 71 Fed. Reg.

46724 (Aug. 14, 2006) (explaining that the parent bears the burden of proof in a proceeding challenging a school district's manifestation determination).

16. In enacting the Individuals with Disabilities Education Act (IDEA), Congress sought to “ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A); *Phillip C. v. Jefferson Cnty. Bd. of Educ.*, 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. § 1400(c)(2)(A)-(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. *Doe v. Ala. State Dep't of Educ.*, 915 F.2d 651, 654 (11th Cir. 1990).

17. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. *See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 205-06 (1982). Among other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint “with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child.” 20 U.S.C. § 1415(b)(1), (3), (6).

18. School districts have certain limitations on their ability to remove disabled children from their educational placement following a behavioral transgression. The IDEA provides that where a school district intends to place a disabled child in an alternative educational setting for a period of

more than ten school days, it must first determine that the child's behavior was not a manifestation of his disability. 20 U.S.C. § 1415(k)(1)(C); Fla. Admin. Code R. 6A-6.03312(3).

19. The necessary inquiry is set forth in 20 U.S.C. § 1415(k)(1)(E), as follows:

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. If the local educational agency, the parent, and relevant members of the IEP team determine that either subclause (I) or (II) of clause (i) is applicable, the conduct shall be determined a manifestation of the child's disability. 20 U.S.C. § 1415(k)(1)(E)(ii). If the conduct is deemed a manifestation of the child's disability, the student must be returned to the educational placement from which he or she was removed. 20 U.S.C. § 1415(k)(1)(F)(iii). Additionally, if no BIP was in place at the time of the misconduct, the school district is obligated to “conduct a functional behavioral assessment, and implement a [BIP] for such child.” 20 U.S.C. § 1415(k)(1)(F)(i).

21. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the school district may apply the relevant disciplinary procedures in the same manner and duration as would be applied to children without disabilities. 34 C.F.R. § 300.530(c). The child, however, must continue to receive education services so as to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. Additionally, the child must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. 34 C.F.R. § 300.530(d)(i), (ii).

22. Pursuant to Florida Administrative Code Rule 6A-6.03312(7), a student's parent may request an expedited due process hearing "if the parent disagrees with a manifestation determination or with any decision not made by an administrative law judge (ALJ) regarding a change of placement under this rule"

23. Petitioner's primary argument is that the MDR team's determinations were incorrect because the school-based members of the team did not prove that the underlying conduct actually occurred. The undersigned rejects this contention. *See Danny K. v. Dep't of Educ.*, 2011 WL 4527387, at *12 (D. Haw. 2011) (concluding no authority suggests that a manifestation determination team must review the merits of a school's findings on how a student violated the code of student conduct as such a requirement would essentially deputize manifestation determination teams, and, in turn, administrative hearing officers as appellate deans of student).

24. Next, Petitioner's father testified that the manifestation team, in making its determination, ignored that he has a disability. The evidence does not support this testimony. To the contrary the testimony from Respondent's witnesses and the documentary evidence establish that the MDR team considered his disability in reaching its determinations.

25. Petitioner failed to establish that Petitioner’s conduct on February 9, 2023, was caused by, or had a direct and substantial relationship to his SLD or LI; or that the conduct resulted from School A’s failure to implement his IEP.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that Petitioner’s Complaint is denied, in all aspects.

DONE AND ORDERED this 26th day of April, 2023, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675
www.doah.state.fl.us

Filed with the Clerk of the
Division of Administrative Hearings
this 26th day of April, 2023.

COPIES FURNISHED:

Amanda W. Gay, Esquire
(eServed)

Michael Newsome, M.Ed.
(eServed)

Amy J. Pitsch, Esquire
(eServed)

Petitioner
(eServed)

Andrew King, General Counsel
(eServed)

Dr. Allison Foster, Interim Superintendent
(eServed)

NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).