

DOCKET NO. 009-SE-0917

**STUDENT,
Petitioner**

v.

**RIESEL INDEPENDENT SCHOOL
DISTRICT,
Respondent**

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BEFORE A SPECIAL EDUCATION

HEARING OFFICER FOR

B. Resolution Session and Mediation

On October 4, 2017, the Parties filed a written agreement to bypass the resolution session pursuant to 34 C.F.R. § 300.532(c)(3).

C. Continuances

There were no continuances or extensions of the decision due date.

D. Preliminary Motions

On October 9, 2017, the District's motion to dismiss non-IDEA claims for a lack of subject matter jurisdiction and to preclude the admission and/or consideration of previously litigated IDEA claims was granted for good cause.

II. DUE PROCESS HEARING

The due process hearing was conducted on October 17-18, 2017. Petitioner continued to be represented by Student's legal counsel Ms. Angelone and Mr. Motiwala. The District was represented throughout this litigation by its legal counsel Ms. Driscoll and Mr. Wood. In addition, Principal ***, ***, attended the closed hearing as a party representative. The hearing was recorded and transcribed by a certified court reporter.

There were no adjustments to the post-hearing schedule.

III. PRIOR DUE PROCESS HEARING

On May 1-2, 2017, the Parties were involved in another IDEA due process hearing. That case was assigned TEA Docket No. 092-SE-1216. The issues in that hearing involved the provision of a free, appropriate public education (FAPE), evaluations, notice, and least restrictive environment (LRE). The Hearing Officer issued

the final decision in 092-SE-1216 on July 6, 2017, found for the District on all issues, and denied Petitioner's requested relief. The Hearing Officer's decision is currently on appeal in the U.S. District Court, Western District of Texas.

IV. FACTUAL BACKGROUND

*** ***. This due process hearing involves an expedited appeal of a temporary disciplinary placement of *** school days at ***, Disciplinary Alternative Educational Placement (DAEP). 34 C.F.R. § 300.532(c). The DAEP placement resulted from Student's alleged ***, ***.’

Student has ***; *** Admissions, Review, and Dismissal Committee (ARDC) meeting is pending.

V. ISSUES

A. Petitioner's Issues

Petitioner submitted the following narrow issue:

Was Student's Manifestation Determination Review procedurally and substantively compliant with the requirements of 34 C.F.R. § 300.530?¹

B. Respondent's Legal Position and Additional Issues

The District's response, filed September 28, 2017, denies that Student's Manifestation Determination Review procedurally and substantively failed to comply with the requirements of 34 C.F.R. § 300.530.

¹ Order No. 2 at 2.

VI. REQUESTED RELIEF

A. Petitioner's Requested Relief

Petitioner requests the following items of requested relief:

- (1) An order that Student be returned to Student's general education placement;
- (2) An order directing the District to provide one day of compensatory education for each school day (7.5 hours = 1 school day) the District excluded Student after the ***-day removal period ending August ***, 2017, until Student is *** or until the conclusion of this due process hearing;
- (3) An order requiring the District to provide compensatory education by direct funding to a credible tutoring organization such as *** or by a certified teacher of Student's choosing;
- (4) An order directing the District to reimburse Parents for transportation costs to and from the DAEP; and,
- (5) Any other appropriate relief.

B. Respondent's Requested Relief

Respondent requests a denial of all of Petitioner's claims and requested relief.

VII. STIPULATED FINDINGS OF FACT

1. Student is enrolled in Riesel Independent School District (ISD) as a *** grade student.
2. Student has been identified as a student eligible for special education services as a

student with specific learning disability (SLD) for ***, ***, and ***, ***.²

3. In TEA Docket No. 092-SE-1216, the Parties participated in a due process hearing on May 1-2, 2017. In that case, the Hearing Officer issued the final decision on July 6, 2017, finding for the District on all contested issues.
4. The ARDC convened for Student on May ***, 2017, to conduct the annual review of Student's individual education program (IEP).
5. Principal *** determined Student had violated the Student Code of Conduct on ***.
6. The ARDC convened on August ***, 2017, to conduct a manifestation determination review (MDR) for Student. The ARDC reconvened on September ***, 2017.
7. S e

classroom observations suggest the need for additional emotional and/or behavioral assessments.”⁶

4. Student’s disciplinary history for *** and *** grades was admitted into evidence during the present hearing. Student’s disciplinary record, while not unblemished, primarily consists of minor infractions ***.⁷ Aside from the *** incident, Student’s disciplinary record notes *** incidents of tardiness, and a *** incident between *** and Student involving Student ***.⁸
5. During the *** incident in ***’s class, Student became visibly angry when Student was ***. ***’s classroom rule is *** when students violate that rule. For a few seconds, *** thought Student might have to restrain Student but a restraint was never necessary. Student refused to *** and received an office referral. As Student was ***. Student didE8 Tc 0.00u.gt

10. The MDR reviewed Student's current evaluations that included a 2016 FIE, additional assessment data obtained on March ***, 2017, a functional behavioral assessment (FBA) from March ***, 2017, and an IEE completed on April ***, 2017. The MDR determined that Student's assessments were current and Student continued to qualify for special education services as a student with a SLD.
11. Student's March 2017 FIE contained information derived from teacher observations that included sociological, emotional/behavioral, and adaptive behaviors.¹⁴ The MDR reviewed and considered this information.¹⁵
12. The MDR reviewed teacher comments obtained as part of the March ***, 2017 FBA. Those teacher comments were positive: "great student, very personable, doing well, good natured, always willing to participate in class activities, asks questions when Student doesn't understand something, easily motivated, and can meet set goals."¹⁶
13. Mr. *** stated during the MDR, as a teacher observation, that Student is motivated and has caused no problems in Student's class.¹⁷
14. The MDR conducted a review of existing evaluations and data (REED).¹⁸
15. The MDR considered Student's IEP, discussed whether there was a need to revise, and determined Student's current IEP goals and objectives were appropriate for implementation in various settings.¹⁹
16. During the MDR, Mother raised concerns that Student needed to be assessed for eligibility as a student with an Other Health Impairment (OHI) for ADHD, *** (***), a psychological evaluation, and another FBA. Mother believes Student suffers from ***, and has *** ***. Mother contends Student's alleged *** is a manifestation of those unidentified disabilities.²⁰
17. After considering Mother's concerns, the MDR ordered additional assessments for OHI, ***, a psychological evaluation, and another FBA. The assessments were ordered to be completed within 30 school days.²¹

¹⁴ J. Ex. 1 at 3-4.

¹⁵ Tr. at 83 ("We looked at the whole evaluation.").

¹⁶ J. Ex. 4 at 13.

¹⁷ J. Ex. 4 at 13.

¹⁸ J. Ex. 4 at 13.

¹⁹ J. Ex. 4 at 8-9; Tr. at 169-71.

²⁰ J. Ex. 4 at 13; Tr. at 80.

²¹ J. Ex. 4 at 13; Tr. at 164.

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disability if:

- x The parent expressed concern in writing to supervisory or administrative personnel or to a teacher that the student is in need of special education;
- x The parent requested an evaluation for special education; or,
- x A teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the student directly to the school district's director of special education or other supervisory personnel. 34 C.F.R. § 300.534(b)(1)-(3).

However, a school district is *not* deemed to have the requisite knowledge if the parent has not allowed a special education evaluation or has refused special education services. 34 C.F.R. § 300.534(c). In that case, the student may be subject to the same disciplinary measures as applied to children without disabilities who engage in comparable behaviors. 34 C.F.R. § 300.534(d)(1).

Student's eligibility is still a concern for Petitioner but that issue was resolved at the prior hearing. The single issue for this case was whether Student's MDR was procedurally and substantively compliant with the requirements of 34 C.F.R. § 300.530. The preponderance of the evidence showed the MDR was convened and conducted appropriately; Student's temporary DAEP placement satisfied the IDEA's procedural and substantive requirements.

Pursuant to 34 C.F.R. § 300.530(c), when there is a proposed temporary disciplinary change of placement resulting from a violation of the student code of conduct, and the change of placement will exceed ten days, the District is required to make a determination as to whether the code of conduct violation was a manifestation of the student's disability. If

2. Student, by next friend, Mother, (collectively, Petitioner) bears the burden of proof on all issues raised in Petitioner's complaint. *Schaffer ex rel. v. Weast*, 546 U.S. 49, 126 S.Ct. 528, 537, 163 L.Ed.2d 387 (2005).
3. The District timely convened and conducted Student's MDR in compliance with the relevant procedural and substantive requirements of the IDEA. 20 U.S.C. § 1415(k)(1)(E)-(F); 34 C.F.R. § 300.530(a)-(e).

XI. ORDERS

Based upon the foregoing findings of fact and conclusions of law Petitioner's requests for relief are **DENIED**.

SIGNED October 30, 2017.

XII. NOTICE TO THE PARTIES

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state