

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

██████████ **BY AND THROUGH** ██████████

Petitioners,

v.

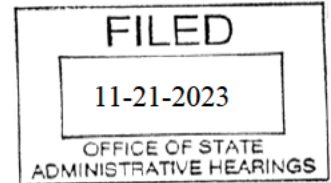
**HENRY COUNTY SCHOOL DISTRICT,
Respondent.**

Docket No.: ██████████

██████████ **OSAH-DOE-CPEXP-75-Howells**

Agency Reference No.: ██████████

FINAL DECISION



I. Introduction

On October 9, 2023, the Petitioners filed a Due Process Hearing Request (“Complaint”), seeking an expedited review of a manifestation determination made by the Henry County School District (“District”). The hearing was conducted before the undersigned on November 6, 2023. ██████████’s mother appeared pro se for the Petitioners. The District was represented by Megan Rittle, Esq.

II. Findings of Fact

1.

Petitioner ██████████ is seventeen (17) years old. In September 2023, he was enrolled in grade 12 at ██████████ High School. He has been diagnosed with an autism spectrum disorder and receives special education services through the Emotional Behavior Disorder program. (Exs. P-1, P-7.)

2.

██████████’s Individualized Education Plan (“IEP”) contains a Behavioral Intervention Plan (“BIP”). The BIP was based on a January 22, 2020 Functional Behavior Assessment (“FBA”). The BIP’s targeted behavior is verbal aggression. Specifically, ██████████ makes vocalizations above conversational level, and makes inappropriate statements such as using foul language or insults. The hypothesized function of the behavior is “escape from demands and other aversive stimuli (e.g., instruction, people, and sounds).”

(Ex. P-7.)

3.

Neither ██████'s IEP, nor his BIP require that ██████ be supervised constantly. Prior to the incident, at issue, there had been no discussion in IEP team meetings about the need to add services during football practices. (Ex. P-7; Testimony of Bryan Bailey.)

4.

Sonya Wilson is a special education teacher. She has been ██████'s case manager and teacher since the ninth grade. She was also his Check-in, Check-out ("CICO") adult, with whom he started his day. According to the BIP, the CICO's function is to remind ██████ of his behavioral expectations, his behavioral goals, and to debrief past outcomes, if necessary. (Testimony of Sonya Wilson; Ex. P-7.)

5.

Part of ██████'s BIP is for him to display alternative or replacement behaviors which meet the same function as the target behavior. In particular, if ██████ becomes agitated he can go to a cool down area in the classroom or during non-preferred activities, ██████ can verbally request a break. (Ex. P-7.)

6.

During this school year, Ms. Wilson did not observe any major incidents with ██████ during the school day. She believes that his BIP was working. She noted that he had requested breaks when he felt the need. (Testimony of Sonya Wilson).

7.

Bryan Bailey is a general education teacher. He teaches math and physical education. He is ██████'s football coach and weight training coach. He is familiar with ██████'s IEP and BIP. In the past, he has observed ██████ yell and storm out of the weight room. When Mr. Bailey would check on him, ██████ would tell Mr. Bailey that he had to go see Ms. Wilson. In Mr. Bailey's opinion, the BIP was

working. (Testimony of Bryan Bailey.)

8.

On September 19, 2023, during the fall break, the football team was at school for afternoon practice. An incident occurred involving [REDACTED] and another student in the ninth grade locker room before practice.¹ No adults were present in the locker room at the time of the incident. The coaches learned of the incident after it happened. (Testimony of Mr. Bailey; Ex. R-5.)

9.

According to Coach Clark, Coach Hill reported that [REDACTED] was acting strange. After roll call, Coach Clark spoke with [REDACTED] and sent him to his office to cool down. Thereafter, the father of the other student involved in the incident appeared at practice. (Ex. R-5.)

10.

Dr. Danielle Barnes is the assistant principal of [REDACTED] School. Her duties include, among other things, investigating disciplinary infractions. When Dr. Barnes returned to school on the Monday following fall break, she was informed about the incident on September 19, 2023 by the principal and the coach. Dr. Barnes conducted an investigation by getting statements from witnesses who were present. According to Dr. Barnes' investigation, [REDACTED] went into the ninth grade locker room before practice. He began bothering and poking another student with a stick, causing a cut on the student's arm. Thereafter, he wrestled the student's phone away from him and threw it on the ground causing it to be damaged. (Testimony of Dr. Barnes; Exs. R-2, R-5.)

11.

After her investigation, Dr. Barnes informed [REDACTED]'s mother that [REDACTED] was accused of a

¹ There are two locker rooms used by the football team. One locker room is for the ninth grade students. The other locker room is for the varsity students. The students are routinely informed that varsity players are not to go into the ninth grade locker room. [REDACTED] is a varsity football player. (Testimony of Mr. Bailey; Ex. R-5.)

disciplinary infraction, specifically theft, there would be a disciplinary hearing, and [REDACTED] would be on in-school suspension pending the disciplinary hearing. (Testimony of Dr. Barnes; Exs. R-2, R-5.)

12.

A manifestation determination review was conducted on October 6, 2023. The manifestation determination team reviewed a summary of the alleged conduct, the student code of conduct, the number of in-school and out-of-school suspension days accrued, [REDACTED]'s IEP and BIP, the most recent psychological evaluation, and a letter from [REDACTED]'s physician regarding his medications.² Additionally, Mr. Bailey presented some of his observations about [REDACTED]. The members of the team, excluding [REDACTED]'s mother, decided that the conduct in question was not caused by or did not have a direct and substantial relationship to [REDACTED]'s disability. The members of the team, excluding [REDACTED]'s mother, decided that the conduct was not a direct result of the school district's failure to implement the IEP. [REDACTED]'s mother disagreed with both decisions made by the other members of the manifestation team. (Testimony of Comeletta Hudgins; Testimony of Bryan Bailey; Ex. R-3.)

13.

A disciplinary hearing was conducted on October 19, 2023.³ The disciplinary hearing officer determined that [REDACTED] committed the following violation of the Henry County Schools Code of Conduct: 3.11 Theft Greater than \$500. As a result, a long-term suspension was imposed. The suspension commenced on October 19, 2023 and will terminate on December 20, 2023. (Exs. R-4, R-5.)

14.

At the hearing in this matter, [REDACTED]'s mother testified that the District did not follow the Check-in, Check-out procedure during the fall break football practice. She also testified that she believes the manifestation determination team did not consider the changes to [REDACTED]'s medications. (Testimony of

² It appears that [REDACTED] did not talk about the incident during the manifestation determination review.

³ [REDACTED] was instructed by his attorney not to testify at the disciplinary hearing.

██████ did not attend or testify at the hearing.⁴

III. Conclusions of Law

1.

The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 et seq.; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 et seq.; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. 160-4-7-.01. -.21.

2.

Petitioners bear the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs 160-4-7-.12(3)(1); Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

3.

Under IDEA, students with disabilities have the right to a free appropriate public education (“FAPE”). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. Comp. R. & Regs. 160-4-7-.02(1)(a). “The purpose of the IDEA generally is ‘to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living’” C.P. v. Leon County Sch. Bd., 483 F.3d 1151 (11th Cir. 2007), quoting 20 U.S.C. § 1400(d)(1)(A).

⁴ ██████’s mother tendered a letter from a nurse practitioner and physician at the Children’s Healthcare of Atlanta, Hughes Spalding Autism Clinic. The letter, states, in pertinent part, as follows: “█████’s history of low frustration intolerance, ongoing anxiety, and explosive outburst[s] at home and at school is directly related to his [autism spectrum disorder] diagnosis and his difficulty with understanding social situations and regulating emotions. This appears to also be true with the most recent incident that occurred during football practice.” The letter contains no specific facts about the incident. (Ex. P-5.) Neither author of the letter testified at the hearing.

4.

If a student with a disability commits a violation of a school district's code of conduct, and the school district seeks the child's removal for more than ten consecutive school days, the district must conduct a manifestation determination review to determine whether the misconduct is a manifestation of the child's disability. See 34 C.F.R. § 300.536. As part of the manifestation determination review, the local educational agency, the parents, and relevant members of the child's IEP team 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 conduct in question was (1) caused by, or had a direct and substantial relationship to, the child's disability, or (2) the direct result of the local educational agency's failure to implement the child's IEP. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).⁵ A manifestation determination review must be conducted within ten days of any decision to change the placement of a child with a disability as a result of a code of conduct violation. 34 C.F.R. § 300.530(e).

5.

If after a manifestation determination review the misconduct is determined to have been caused by or have a direct and substantial relationship to the student's disability or is the direct result of the school district's failure to implement the child's IEP, then the school must return the student to the original placement unless the parents and the school district agree otherwise. See 34 C.F.R. § 300.530(e), (f). However, if the student's conduct is determined not to be a manifestation of the disability, then

⁵ "The manifestation determination team typically does not determine the facts of the incident for which an eligible student is subject to discipline." Bristol Twp. Sch. Dist. v. Z.B., No. 15-4604, 2016 U.S. Dist. LEXIS 4626 at *14 (E.D. Pa. Jan. 14, 2016). Rather, that is the purpose of the school disciplinary hearing. Porter v. Ascension Par. Sch. Bd., 393 F.3d 608, 624 (5th Cir. 2004); see also Danny K. v. Dep't of Ed., No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS at *39-40 (D. Hi. Sept. 27, 2011) (concluding that the role of the manifestation determination team is not to determine the facts of what actually happened; rather, it was "to determine whether the actions leading to [the] [s]tudent's potential suspension – as determined by the [educational agency's] investigation – were a manifestation of an eligible disability or of the [educational agency's] failure to implement the [] IEP.")

“school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. . . .” 34 C.F.R. § 300.530(c).

6.

Additionally, if the removal constitutes a change of placement, the regulations provide that the child’s IEP Team determines both the interim alternative educational setting for services and the appropriate educational services “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.” 34 C.F.R. §§ 300.530(d)(1)(i). If the administrative law judge finds that the child’s misconduct was a manifestation of his disability, the administrative law judge can return the child to placement from which the child was removed. 34 C.F.R. § 300.532(b)(2)(i).

7.

Here, the District complied with the requirements for a manifestation determination. It reviewed the relevant information in ██████’s file, his most recent IEP, his BIP, the most recent psychological evaluation, his teachers’ observations, and information provided by the parent. ██████’s mother objected to Dr. Barnes’ testimony about her findings of her investigation, as hearsay. However, during the manifestation determination review, the disciplinary hearing, and the instant hearing, neither ██████’s mother, nor ██████ provided any factual information about what actually happened on September 19, 2023. As noted above, it is not the manifestation determination team’s role to determine the facts of what actually happened. Rather, they must determine whether the conduct, as determined by the school’s investigation, was a manifestation of ██████’s disability or the school’s failure to implement the IEP. Danny K., 2011 U.S. LEXIS at 39-40. If ██████’s mother wanted the manifestation determination team to know additional facts, solely within ██████’s knowledge, then it was incumbent on ██████ to provide

those facts. Gloria V. v. Wimberley Indep. Sch. Dist., No: 1:19-CV-951-RP, 2021 U.S. Dist. LEXIS 37387 at *45.

8.

Petitioners failed to prove that the conduct at issue was caused by or had a direct and substantial relationship to his disability. ■■■■■'s BIP contained the target behavior of verbal aggression. The hypothesized function of the behavior was escape from demands and other aversive stimuli. There was no evidence of verbal aggression. Nor was there any evidence that ■■■■■ was reacting to demands or attempting to escape aversive stimuli. Rather, it was quite the opposite. The behavior, as known by the manifestation determination team, was that ■■■■■ went into the ninth grade locker room, a place he was not supposed to be, to bother another student with a stick, causing a scratch to the student's arm. Then he wrestled the other student's phone away and threw it to the ground, causing substantial damage. This is substantially different behavior from the behavior targeted by ■■■■■'s BIP. Additionally, ■■■■■ chose to enter the ninth grade locker room. There was insufficient evidence presented that ■■■■■'s behavior was caused by or had a direct and substantial relationship with his disability. The letter from ■■■■■'s nurse practitioner and physician is conclusory in nature. It does not provide sufficient facts about the incident at issue. Rather, it discusses his history of frustration intolerance, anxiety, and explosive outbursts. Neither the letter, nor the evidence at the hearing indicated that ■■■■■ was frustrated or anxious. Nor does the letter explain how his disability caused him to enter the ninth grade locker room.

9.

Petitioner failed to prove that ■■■■■'s conduct was a direct result of the District's failure to implement ■■■■■'s IEP. Petitioner asserted that the District failed to implement the CICO procedures. However, she presented no evidence that ■■■■■'s conduct was the *direct result* of the District's failure to implement the IEP. In other words, she presented no causal connection between the failure to implement

the CICO procedure and [REDACTED]'s conduct.

10.

For these reasons, the Petitioners' failed to prove by a preponderance of the evidence that [REDACTED]'s behavior was caused by or had a direct and substantial relationship to his disability, or that it was the direct result of the District's failure to implement his IEP.

IV. Decision

Based on the foregoing Findings of Fact and Conclusions of Law, the District's manifestation determination is **AFFIRMED**.

SO ORDERED, this 21st day of November, 2023.

Stephanie M. Howells

Stephanie M. Howells
Administrative Law Judge

