

OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

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Petitioner,

vs.

Case No. 19-2239EDM

BRADFORD COUNTY SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

A final hearing was held in this case before Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [REDACTED], [REDACTED], in Starke, Florida.

APPEARANCES

For Petitioner: Petitioner  
(Address of Record)

For Respondent: [REDACTED], Esquire  
Resolutions in Special Education, Inc.  
Apartment 22  
10681 Airport Pulling Road  
Naples, Florida 34109

STATEMENT OF THE ISSUE

The issue for determination in this proceeding is whether the Student's (Petitioner or Student) conduct on [REDACTED], [REDACTED], that constitutes a violation of the student code of conduct, was a manifestation of [REDACTED] disability.

PRELIMINARY STATEMENT

On [REDACTED], [REDACTED], Respondent conducted a manifestation determination review (MDR), at the conclusion of which the MDR team determined that Petitioner's act of misconduct did not constitute a manifestation of [REDACTED] disability. Petitioner's parent was dissatisfied with the team's decision and on [REDACTED], [REDACTED], filed a Request for an Expedited Due Process Hearing. The request for hearing was forwarded to DOAH for hearing.

On [REDACTED], [REDACTED], after reasonable notice to the parties, a pre-hearing telephonic conference was held to discuss scheduling the hearing. The parent did not participate in the teleconference. After discussion regarding the length of time necessary for the hearing, the final hearing was scheduled for [REDACTED], [REDACTED]. A Notice of Hearing reflecting the date, time and place of the hearing was timely provided to both parties.

The final hearing was held, as scheduled, with all parties in attendance. At the hearing, Petitioner's parent advised that [REDACTED] had no witnesses and, therefore, offered no testimony. Similarly, Petitioner's parent advised that [REDACTED] had no documents to offer into evidence other than a letter from a health provider regarding Petitioner's disability. The letter was not accepted into evidence because Petitioner had not complied with the requirement in the Individuals with Disabilities Education Act (IDEA) that the parties provide documents they intend to use at

hearing five days before the final hearing. However, Respondent stipulated to Petitioner's eligibility of [REDACTED] ([REDACTED]) under IDEA and stipulated that Petitioner also manifests [REDACTED] ([REDACTED]). Given these stipulations, Petitioner was not prejudiced by the inadmissibility into evidence of the medical provider's letter. Respondent did not offer the testimony of any witnesses and did not introduce any exhibits into evidence.

At the conclusion of the final hearing, Respondent made a Motion to Dismiss the Due Process Complaint because Petitioner offered no evidence and did not meet Petitioner's burden of proof to establish that Petitioner's conduct on [REDACTED], [REDACTED], was a manifestation of [REDACTED] disability. The Motion to Dismiss was granted with a written final order to follow within 10 days of the final hearing.

In regards to this Final Order, unless otherwise indicated, all rule and statutory references contained in this Final Order are to the version in effect at the time of the alleged violation.

Additionally, for stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to the Student. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to the Student's actual gender.

## FINDINGS OF FACT

1. The Student is currently [REDACTED] years old. [REDACTED] is a student who qualifies for exceptional student education (ESE). [REDACTED] documented exceptionality is [REDACTED]. [REDACTED] also manifests [REDACTED].

2. During the 2018-2019 school year, the Student was in [REDACTED] grade and attended School A, a public school in Bradford County, Florida.

3. At all times material, the Student had an Individual Educational Plan (IEP) that was consented to by the Student's parent. There was no evidence regarding the contents of the Student's IEP or any [REDACTED] program [REDACTED] might have.

4. On [REDACTED], [REDACTED], it was reported that the Student video recorded a fight in the school restroom, posted the recording on social media and that such conduct violated the student code of conduct.

5. Shortly thereafter, a school discipline referral was issued to the Student for the above-described conduct. The conduct was found to be a violation of the student code of conduct and the Student was recommended for a lengthy suspension.

6. On [REDACTED], [REDACTED], Respondent conducted an MDR. The MDR team concluded that the Student's conduct was not a manifestation of [REDACTED] disability.<sup>1/</sup> At the hearing, there was no evidence regarding the MDR team or the process it followed. Similarly,

there was no evidence that the Student's behavior was a manifestation of ■■■ disability. Given that Petitioner presented no evidence demonstrating that the MDR committee's decision was incorrect, the Petition for Due Process hearing should be dismissed.

#### CONCLUSIONS OF LAW

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

8. 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 Education of Children with Disabilities, 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).

9. In enacting the 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. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

10. 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), (b)(3) and (b)(6).

11. School districts have certain limitations on their ability to remove disabled children from their educational placement following a [REDACTED]. Specifically,

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 10 school days, it must first determine that the child's behavior was not a manifestation of ■■■■ disability.

20 U.S.C. § 1415(k)(1)(C). Pursuant to the IDEA's implementing regulations, "[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA [local educational agency] must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504." 34 C.F.R. § 300.530(h).

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

(II) [I]f the conduct in question was the

13. 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 ■ or ■ was removed.

20 U.S.C. § 1415(k)(1)(F)(iii). Additionally, if no ■ (■) was in place at the time of the misconduct, the school district is obligated to "conduct a ■, ■, ■, and implement a [■] for such child." 20 U.S.C. § 1415(k)(1)(F)(i).

14. 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 [REDACTED] [REDACTED] [REDACTED] , 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) and (ii).

15. In this case, Petitioner presented no evidence that demonstrated the manifestation review process did not comply with IDEA or that the misconduct in question was a manifestation of the Student's disability. As such, Petitioner, failed to demonstrate that Respondent's determination concerning the Student's conduct was incorrect.

#### ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. The Petition for Due Process is dismissed.
2. Respondent may apply the relevant disciplinary procedures in the same manner and duration as would be applied to children without disabilities. The Student, however, must continue to receive education services so as to enable the Student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the Student's IEP.
3. All other requests for relief are denied.

DONE AND ORDERED this 21st day of May, 2019, in Tallahassee,  
Leon County, Florida.

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DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 21st day of May, 2019.

### ENDNOTE

<sup>1/</sup> In general, the purpose of a manifestation review hearing is to review the manifestation decision made by the manifestation determination team. The purpose of the hearing is not to challenge the accuracy of the specific act for which a student is being disciplined. In general, challenges to the specific act for which a student is being disciplined, and whether that act occurred, can only be made in a disciplinary hearing provided for in the school's student code of conduct or Board rules.

### COPIES FURNISHED:

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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).