

**DISTRICT OF COLUMBIA
OFFICE OF THE STATE SUPERINTENDENT OF EDUCATION**

Student Hearing Office
810 First Street, N.E., 2nd Floor
Washington, DC 20002

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Student Hearing Office
April 10, 2013

STUDENT, ¹)	
through the Parent,)	
)	Date Issued: April 10, 2013
Petitioner,)	
)	
v.)	
)	
District of Columbia Public Schools)	
Respondent.)	
)	
)	

HEARING OFFICER DETERMINATION

Background

Petitioner, the mother of fourteen-year old Student, filed a due process complaint notice on February 19, 2013, alleging that Student had been denied a free appropriate public education (“FAPE”) in violation of the Individuals with Disabilities Education Act (“IDEA”).

Petitioner specifically alleged that District of Columbia Public Schools (“DCPS”) had wrongly determined that Student’s behavior that led to a 44-day suspension in February 2013 was not a manifestation of his disability. Petitioner also alleged that DCPS committed a procedural violation of the IDEA when it failed to follow proper Manifestation Determination Review (“MDR”) procedures during the MDR meeting that took place in February 2013. Student’s suspension led to an interim alternative school placement away from Student’s home school.

DCPS asserted that it had not denied Student a FAPE. DCPS’ position was that it had followed proper procedures when determining that Student’s behavior that led to suspension was not a manifestation of Student’s disability. DCPS asserted that it had properly considered the facts of the incident, Student’s disability classification and Student’s Individualized Education Program (“IEP”) before concluding that Student’s behavior was not a manifestation of his disability.

¹ Personal identification information is provided in Appendix A.

Subject Matter Jurisdiction

Subject matter jurisdiction is conferred pursuant to the IDEA, as modified by the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. Section 1400 et. seq.; the implementing regulations for the IDEA, 34 Code of Federal Regulations (“C.F.R.”) Part 300; and Title V, Chapter E-30, of the District of Columbia Municipal Regulations (“D.C.M.R.”).

Procedural History

A due process complaint notice was filed on 02/19/13 that contained both disciplinary and non-disciplinary allegations. On 02/22/13, an Order on Bifurcation was issued which split the case in two. Case No. 2013-0089 was designated as the non-disciplinary case on a non-expedited hearing timeline. Case No. 2013-0089-B was designated as the disciplinary hearing case on an expedited hearing timeline.

DCPS timely responded to the expedited allegation in the complaint (in District of Columbia Public School’s Response To Petitioner’s Due Process Complaint filed in 2013-0089) on 03/01/13 and made no challenges to jurisdiction.

Petitioner waived the resolution meeting, but DCPS did not. A resolution meeting did not take place. The fifteen-day resolution period expired on 03/06/13. Pursuant to 34 C.F.R. 300.532(c)(2), the due process hearing must take place no later than 20 school days following the filing of the complaint, i.e., 03/20/13. The final decision is due no later than 10 school days following the hearing. The expedited due process hearing took place on 03/20/13 and the final decision is due no later than 04/10/13.

This Hearing Officer was assigned to the case on 02/21/19. A prehearing conference took place on 03/01/13 and a Prehearing Order was issued on 03/05/13.

The due process hearing was a closed hearing that took place on 03/20/13. Petitioner was represented by Alana Hecht, Esq. and DCPS was represented by Lynette Collins, Esq. Neither party objected to the testimony of witnesses by telephone. Petitioner participated in the hearing in person. Both parties declined the opportunity to discuss settlement at the beginning of the due process hearing.

Petitioner’s disclosures, dated and filed on 03/13/13, contained a witness list and Exhibits P-1 through P-13. Petitioner’s disclosures were admitted into evidence without objection. P-10 and P-12 were misrepresented in Petitioner’s list of documents. P-10 is Student’s IEP dated December 5, 2012. P-12 is Student’s IEP dated September 30, 2012.

DCPS’ Disclosure Statement, dated 02/06/13, was filed on 03/13/13. It contained a witness list and Exhibits R-1 through R-2. DCPS’ disclosures were admitted into evidence without objection.

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Petitioner presented three witnesses in her case in chief: Student; paralegal and educational advocate (“paralegal”); and senior educational advocate.

DCPS elected not to present any witnesses.

The sole issue to be determined in this Hearing Officer Determination is as follows:

Issue #1 - Whether DCPS denied Student a FAPE by (a) wrongly determining at the Manifestation Determination Review (“MDR”) on 02/06/13 that Student’s conduct on 01/23/13 that led to suspension was not a manifestation of Student’s disability; and (b) failing to follow proper procedures at the MDR by failing to (1) review Student’s disability classification and the incident that led to suspension, (2) review and discuss the relationship of Student’s behavior to his disability, and (3) determine whether or not DCPS failed to implement Student’s IEP and whether a failure to implement the Individualized Education Program (“IEP”) contributed to Student’s conduct.

For relief,² Petitioner requested a finding of a denial of a FAPE on the issue presented; a determination that Student’s conduct on 01/23/13 that led to suspension was a manifestation of Student’s disability; DCPS to revise Student’s Manifestation Determination Review documentation to reflect that Student’s conduct was a manifestation of his disability; and Student to resume his school placement at his home school.

Findings of Fact

After considering all the evidence, as well as the arguments of both counsel, this Hearing Officer’s Findings of Fact are as follows:

#1. Fourteen-year old Student is a resident of the District of Columbia. During the 2012-2013 school year, Student attended his neighborhood school as a special education student.³

#2. Student’s most current IEP, dated 12/05/12, classifies Student with a primary disability of Emotional Disturbance. The IEP provides for the following services: a total of 20 hours/week of specialized instruction in reading, mathematics and written expression; 1 hour/week of behavioral support services outside of general education; and 240 minutes/month of speech-language services outside of general education.⁴

#3. Student’s 12/05/12 IEP includes annual goals in the area of emotional, social and behavioral development that addresses Student’s difficulty controlling his impulses and incorporating learned coping skills. Student’s IEP reflects that Student’s Emotional Disturbance disability causes him to react quickly without thinking when upset or angry, to become verbally

² Petitioner withdrew, with prejudice, her request for compensatory education in the form of tutoring/instruction for missed instruction while Student was at home from 01/23/13 until an interim alternative school placement was provided by DCPS.

³ Student.

⁴ P-10-1, P-10-8.

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defiant or physically aggressive with staff and students, to yell out, to walk out of the classroom, and to throw many things in the classroom setting.⁵ Student tends to escalate quickly from being calm to becoming very angry and often cannot calm himself easily even if given time and space.⁶

#4. On 01/23/13, Student was involved in the following incident that led to a 44-day suspension: Student was late to classroom #1 and refused admittance. Student was given his books and then he reported to classroom #2, per his Behavioral Intervention Plan. Student took a seat in the back of classroom #2, per the direction of the classroom teacher. While Student was waiting for the classroom teacher to finish with her class so that she could assist Student with his classwork, Student engaged in conversation with another student. During the conversation, Student made very inappropriate comments about the sexuality and race of two different teachers. The classroom teacher overheard Student's remarks and asked Student to leave the room. When Student failed to comply with the teacher's directive, the teacher approached Student's desk and grabbed Student's hat, coat and scarf from the back of the chair. This action infuriated Student and he proceeded to call the teacher undesirable names and threatened to do her bodily harm. The teacher gently, but firmly pushed Student out of the room and shut the door. Student continued to yell and curse at the teacher through the classroom door. When the Dean of Students arrived, Student threatened him. When the security/police arrived, Student ran out of the school building.⁷

#5. On 01/30/13, Student was suspended from 01/24/13 through 03/29/13 for violating the code of student conduct when he threatened a teacher.⁸ The suspension was based on the incident that occurred on 01/23/13. During the suspension period, Student was removed from his neighborhood school and given an interim alternative school to attend.⁹

#6. A manifestation determination review ("MDR") meeting was convened on 02/06/13. Petitioner's representatives were given copies of the 01/23/13 incident reports, but Petitioner didn't offer any discussion on the incidents after the incident reports were received.¹⁰ The teacher who was threatened presented her version of events. At the MDR meeting, Petitioner's representatives offered their input (1) about the nature of Student's disability, (2) that Student's IEP was not being implemented, and (3) that Student's behavior was a manifestation of his disability.¹¹

#7. Although Petitioner disagreed with DCPS' position that Student's behavior was not a manifestation of his disability, Petitioner was given the opportunity to offer her viewpoint at the MDR meeting on all aspects of the determination of whether or not Student's behavior was a manifestation of his disability. Petitioner's representative read the definition of emotional disturbance to the meeting participants and read from specific sections of Student's IEP that referenced the symptoms of Student's emotional disability that negatively affected him in the school environment. Petitioner's representative also voiced her opinion that Student's IEP was

⁵ P-10-5, P-10-6.

⁶ P-10-7.

⁷ Student, P-6-1.

⁸ P-6-3.

⁹ Student, P-6-5.

¹⁰ Paralegal, P-3-1, P-5-1, P-6-1.

¹¹ Paralegal, P-3, P-4.

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not being implemented, but gave no specifics to back up her claim. DCPS listened to Petitioner, but simply disagreed with Petitioner. DCPS took the position that Student knows right from wrong. DCPS determined that Student's conduct was not a manifestation of Student's disability.¹²

#8. At the MDR meeting on 02/06/13, Student became irate when the teacher gave her version of events that occurred on 01/23/13. He called her unpleasant names and threatened to do her bodily harm. A police officer escorted Student from the room, following his outburst. Ten minutes later, Student was able to return to the room after he had calmed down. Student was able to sit through the rest of the MDR meeting.¹³

#9. Student's behavior on 01/23/13 was consistent with the symptoms of his disability. Student was unable to manage his anger and apply appropriate coping skills when the teacher took Student's articles of clothing from him. Student escalated quickly and was unable to calm down because the teacher did something he didn't like. Student's behavior on 01/23/13 was a manifestation of his disability.

Conclusions of Law

Based upon the above Findings of Fact, the arguments of counsel, as well as this Hearing Officer's own legal research, the Conclusions of Law of this Hearing Officer are as follows:

The overall purpose of the IDEA 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. 34 C.F.R. 300.1.

"Based solely upon evidence presented at the hearing, an impartial hearing officer shall determine whether the party seeking relief presented sufficient evidence to meet the burden of proof that the action and/or inaction or proposed placement is inadequate or adequate to provide the student with a FAPE." 5 D.C.M.R. E-3030.3. The burden of proof in an administrative hearing is properly placed upon the party seeking relief. *Schaffer v. Weast*, 44 IDELR 150 (2005).

A hearing officer's determination of whether a child received a FAPE must be based on substantive grounds. In matters alleging a procedural violation, a hearing officer may find that a child did not receive a FAPE only if the procedural inadequacies (i) impeded the child's right to a FAPE; (ii) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parent's child; or (iii) caused a deprivation of educational benefit. 34 C.F.R. 300.513(a).

The first issue to be determined is whether DCPS denied Student a FAPE by (a) wrongly determining at the Manifestation Determination Review ("MDR") on 02/06/13 that Student's conduct on 01/23/13 that led to suspension was not a manifestation of Student's disability; and

¹² Paralegal, P-3, P-4.

¹³ P-5-1.

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(b) failing to follow proper procedures at the MDR by failing to (1) review Student's disability classification and the incident that led to suspension, (2) review and discuss the relationship of Student's behavior to his disability, and (3) determine whether or not DCPS failed to implement Student's IEP and whether a failure to implement the Individualized Education Program ("IEP") contributed to Student's conduct.

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 education agency ("LEA"), the parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA) 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 – (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 LEA's failure to implement the IEP. The conduct must be determined to be a manifestation of the child's disability if the local education agency, the parent, and the relevant members of the child's IEP Team determine that either of the above two conditions was met. 34 C.F.R. 300.530(e).

School personnel may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 consecutive days (to the extent those alternatives are applied to children without disabilities). 34 C.F.R. 300.530(b).

Petitioner met her burden of proof on part (a) of this issue, but failed to meet her burden of proof on part (b).

The evidence was sufficient for the Hearing Officer to conclude that Student's behavior on 01/23/13 that led to a 44-day suspension was a manifestation of his disability. Student's behavior on that day, i.e., escalating, uncontrollable and threatening behavior in response to the teacher picking up his articles of clothing, was consistent with the way Student's disability was described in the social, emotional and behavioral section of his IEP. Student's IEP specifically stated that Student's disability causes him to react quickly without thinking when upset or angry, to become verbally defiant, and to often yell out. Regardless of the precipitant, Student has a short fuse. He angers easily and has difficulty calming down. Student's conduct on 01/23/13 easily falls within the realm of Student's disability, as described in Student's IEP. Student's conduct on 01/23/13 had a direct and substantial relationship to his disability.

DCPS took the position that Student's behavior was not a manifestation of his disability because he knew right from wrong. Student may very well know right from wrong, but his disability interferes with his ability to exhibit appropriate behavior when he is angry or agitated by the words or actions of others. Student exhibited precisely the same type of uncontrollable anger at the MDR meeting when the teacher was reciting her version of events. In that instance, Student was able to calm down after 10 minutes; however, the behavior that occurred was consistent with the symptoms of Student's disability and not too different from the behavior that occurred on 01/23/13 that led to suspension.

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The evidence was insufficient for the Hearing Officer to conclude that DCPS had failed to follow any procedural requirements of convening a MDR meeting. Petitioner was given the opportunity to discuss the nature of Student's disability, express her view that Student's IEP was not being implemented and her view that Student's behavior was a manifestation of Student's disability. The discussion occurred, although DCPS' input was undoubtedly brief. DCPS simply disagreed with Petitioner's position.

Petitioner offered no concrete evidence that Student's IEP was not being implemented, either at the MDR meeting or at the due process hearing. The paralegal testified that she talked to someone on the telephone, didn't know who the person was and was told that all but one of Student's teachers as listed on the class schedule were general education teachers. The paralegal did not confer with the special education coordinator or any of Student's teachers. The paralegal's testimony was not given any weight because the basis of the statement, that Student's IEP was not being implemented, was unreliable.

Although Petitioner disagreed with DCPS' determination that Student's behavior was not a manifestation of his disability, Petitioner was given the opportunity to offer her viewpoint at the MDR meeting on all aspects of the determination of whether or not Student's behavior was a manifestation of his disability. Petitioner's representative read the definition of emotional disturbance to the meeting participants and read from specific sections of Student's IEP that referenced the symptoms of Student's emotional disability that negatively affected him in the school environment.

At the MDR meeting, Petitioner was able to review the incident reports. The teacher who was threatened by Student also provided her version of events.

Petitioner failed to meet her burden of proof that DCPS failed to follow proper MDR review procedures at the MDR meeting on 02/06/13.

ORDER

(1) DCPS shall revise Student's Manifestation Determination Review documentation of 02/06/13 to reflect that Student's conduct on 01/23/13 was a manifestation of his disability; and

(2) If Student has not already been readmitted to his home school,¹⁴ DCPS shall make provisions for Student to be readmitted within 3 school days of the date of this Order.

IT IS SO ORDERED.

NOTICE OF RIGHT TO APPEAL

¹⁴ Documentary evidence in the record indicated that Student's suspension ended on 03/29/13.

Hearing Officer Determination

This is the final administrative decision in this matter. Any party aggrieved by this Hearing Officer Determination may bring a civil action in any state court of competent jurisdiction or in a District Court of the United States without regard to the amount in controversy within ninety (90) days from the date of the Hearing Officer Determination in accordance with 20 U.S.C. §1415(i).

Date: April 10, 2013

/s/ Virginia A. Dietrich
Hearing Officer