

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA



FILED  
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█ :  
Plaintiff, :  
 :  
v. :  
 :  
HOUSTON COUNTY SCHOOL : Docket No.  
DISTRICT, : OSAH-DOE-SE-█-76-KENNEDY  
Defendant. : 15-300818

*K. Westray*  
Kevin Westray, Legal Assistant

**FINAL DECISION**

█  
Ira L. Foster, Esq.  
Tomieka R. Daniel, Esq.

**For Defendant:**  
William Rowland Jerles, Jr., Esq.

**I. INTRODUCTION**

Plaintiff, █ is an █ year-old male whose family resides within the Houston County School District (Defendant). He is eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 (IDEIA). █ attends █ High School (█) where his education is governed by an Individual Education Program (IEP).

On August 14, 2014, █ brought alcohol to school. As a result, █ was suspended from █ for one calendar year, with the option to return to school for the Spring 2015 semester if he performed well behaviorally and academically during his suspension period in the Fall 2014 semester. During his suspension in Fall 2014, █ received alternative home-based services through Houston County Crossroads Center (Crossroads). Due to his good behavior, grades, and attendance at the home-based program, █ has since returned to █ for the 2015 spring semester and is on track to graduate with his class.

█ claims that his conduct was a direct result of his disability and that Defendant did not adequately consider his disability when determining his punishment. █ also asserts that his punishment was in violation of 34 CFR 300.530(g)(2).

For the reasons set forth below, █'s claims are **DENIED**.

## II. FINDINGS OF FACT

1.

█ is an █-year-old student who is eligible to receive special education services from Defendant pursuant to IDEIA. █ currently attends █ High School. *Joint Exhibit 1.*

2.

█ has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and demonstrates borderline intellectual functioning. *Plaintiff's Exhibit 1; Testimony of Dr. S █*  
*W █*

3.

Due to his ADHD, █ receives special education services pursuant to IDEIA under the category of emotional and behavioral disorder. *Joint Exhibit 1.*

4.

On August 14, 2014, █ was found to be in possession of a water bottle full of tequila. █ and several other students were drinking hot sauce and sharing the alcohol. █ admitted that he owned and brought the water bottle to school. █ was therefore accused of violating the school policy of Possession of Alcohol on School Campus. *Joint Exhibit 2.*

5.

On August 18, 2014, a Manifestation Determination Review Committee (Committee) hearing was held. Members of the Committee included █'s general education teacher, his special

education teacher, ██████ program specialist, the Local Education Agency (“LEA”) representative for the school district, the school psychologist, the assistant principal, ██████ and ██████’s grandmother, ██████ *Joint Exhibit 2.*

6.

The Committee determined that ██████’s rule violation was not caused by his disability and that his disability did not have a direct and substantial relationship to the conduct in question. *Joint Exhibit 2.*

7.

On August 27, 2014, a tribunal hearing was held. The tribunal held that ██████ should be suspended from ██████ for the remainder of the 2014-2015 school year. ██████ was then given the opportunity to enroll at Crossroads, the local alternative school. The tribunal also determined that with good grades, behavior, and attendance, ██████ could return to ██████ at the conclusion of the first semester. *Joint Exhibits 4 and 5.*

8.

The tribunal referred determination of which program ██████ should be placed in at Crossroads to the IEP committee. There, it was determined that ██████ should receive services through the home-based model, at the request of ██████’s grandmother and because there would not be adequate support for him at the alternative school itself. *Joint Exhibit 4.*

9.

██████’s representatives filed a due process hearing request on September 24, 2014. An early resolution session (“ERS”) was held on October 17, 2014. The ERS was unsuccessful, and ██████’s representatives filed a request for special education mediation later that day. A mediation session was scheduled for November 14, 2014, but ██████’s representatives elected to forego

mediation and proceed straight to a due process hearing. A due process hearing was held on December 18, 2014. *Joint Exhibits 5, 6, and 7; Defendant's Exhibit 2.*

10.

█ has since returned to █ for the second semester of the 2014-15 school year and is on-track to obtain a standard high school diploma and to graduate with the rest of his classmates in the spring. *Testimony of Zabrina Cannady.*

### III. CONCLUSIONS OF LAW

1.

Plaintiff █ bears the burden of proof in this matter. Bd. Of Educ. Of Hendrick Hudson Cent. Sch. Dist., Westchester Co. v. Rowley, 458 U.S. 176 (1982); Ga. Comp. R. & Regs. 160-4-7-.12(3)(n). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

This Court's review is limited to the issues Plaintiff raised in the due process complaint.<sup>1</sup> 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(j)(3); see also Co. of San Diego v. Ca. Special Educ. Hearing Office, 93 F.3d 1458, 1460 (9th Cir. 1996); B.P. v. New York City Dept. of Educ., 841 F. Supp. 2d 605, 611 (E.D.N.Y. 2012).

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<sup>1</sup> Specifically, the issues cited in █'s due process complaint concern the Committee's determination that his behavior was not a manifestation of his disability and the alleged violation of 34 CFR 300.530(g)(2). To the extent █ raised other issues at the hearing, including the adequacy of the home-based services and the request that █ remain at █ for an additional year, these issues were not considered by the Court as they were not in █'s due process complaint.

The Court is not ruling on whether █ may remain at █ for an additional year, but since the parties devoted considerable time to that argument during the hearing, it is noted that █ did not present sufficient evidence to show any denial of appropriate education, nor did he prove that he suffered any actual harm by missing the fall semester at █. In fact, █'s grades have improved overall, he is on track to receive a regular high school diploma, and he will graduate with his class.

3.

When the placement of a child with disabilities is to be changed because of a violation of a code of student conduct, the school has 10 days to conduct a manifestation determination. 34 C.F.R. 300.530(e)(1). The manifestation determination committee must include the LEA, the parent or legal guardian, and relevant members of the child's IEP team. The committee must review all relevant information to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability. 34 C.F.R. 300.530(e)(1)(i). In the case [REDACTED] the Committee met within 4 days of his rule violation and included all parties known to be relevant to the discussion, including the school psychologist, the program specialist (who also has a doctorate in psychology), [REDACTED]'s grandmother, and [REDACTED] himself. Several members of the Committee testified that all relevant evidence was considered to determine if the conduct was caused by, or related to, [REDACTED]'s disability.

4.

[REDACTED]'s sole basis for contesting the manifestation determination is testimony from his pediatrician, Dr. S [REDACTED] W [REDACTED], who was not a part of the Committee. Dr. W [REDACTED] testified that he believes [REDACTED]'s ADHD was a direct cause of his behavior. However, Dr. W [REDACTED] has no background or specialized training in mental health, sees [REDACTED] infrequently, and was not in possession of all the facts about [REDACTED]'s violation. When his testimony is contrasted with that of Dr. Lisa Smith, a program specialist at [REDACTED] who has a doctorate in psychology and specialized training in mental health disorders, sees [REDACTED] several days a week, and possesses an in-depth knowledge of both the situation and [REDACTED]'s disability, Dr. W [REDACTED] testimony was not persuasive.

5.

If a child with disabilities knowingly possesses or uses illegal drugs while at school, school personnel may send the child to an interim alternative educational setting for up to 45 days without regard as to whether the behavior is determined to be a manifestation of the child's disability. 34 C.F.R. 300.530(g)(2). ■■■ contends that his punishment violates this provision, but in fact this provision does not apply to this case at all. This case concerns alcohol, not illegal drugs. As defined in the statute, illegal drugs means a controlled substance identified under schedules I, II, III, IV, or V in section (c) of the Controlled Substances Act (21 U.S.C. 812(c)), a classification that does not include alcohol. 34 C.F.R. 300.530(h)(i)(1 and 2). Therefore, ■■■'s punishment is not in violation of 34 C.F.R. 300.530(g)(2) because ■■■'s situation is not covered by that provision.

6.

Generally speaking, if a student's behavior is determined to not be a manifestation of the child's disability, school personnel may discipline the child with disabilities in the same manner as they would a child without disabilities. 34 C.F.R. 300.530(c). Defendant has shown that ■■■ was disciplined in the same manner as a child without disabilities. ■■■ has not established that the discipline was inappropriate or that it denied K.F. a free and appropriate public education.

#### **IV. ORDER**

Based on the foregoing findings of fact and conclusions of law, ■■■'s claims are **DENIED**. ■■■ has presented insufficient evidence to prove that Defendant did not adequately consider his disability when determining his punishment. ■■■ has also failed to show that his punishment

was in violation of 34 CFR 300.530(g)(2). Finally, [REDACTED] has not demonstrated that he was denied an appropriate education or suffered any harm due to his suspension.

**SO ORDERED**, this 11<sup>th</sup> day of February, 2015.

  
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Ana P. Kennedy  
Administrative Law Judge