

RECEIVED MAY 20 2013



IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

FILED
OSAH

MAY 16 2013

██████████)
)
 Plaintiff,)
)
 v.)
)
 COBB COUNTY SCHOOL DISTRICT,)
)
 Defendant.)

DOCKET NO.

K. Westray
Kevin Westray, Legal Assistant

OSAH-DOE-SE-1333466-33-Baxter
13- 283330

FINAL ORDER

COUNSEL: ██████████ pro se, for Plaintiff
Patrick H. Ouzts, for Defendant
Baxter, Judge

I. INTRODUCTION

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§ 1400 to 1482; the federal regulations promulgated pursuant to IDEA, 34 C.F.R. Part 300; Georgia law governing special education services, O.C.G.A. § 20-2-152; the Rules of the Georgia Department of Education regarding exceptional students, Ga. Comp. R. & Regs. r. 760-4-7; the Georgia Administrative Procedure Act, O.C.G.A. §§ 50-13-1 to 50-13-23; and OSAH's Administrative Rules of Procedure, Ga. Comp. R. & Regs. r.616-1-2.

██████████ ("Plaintiff") is a ██████████-year old student in the District. He was represented by his mother ("Mother") throughout this proceeding.

Plaintiff's Complaint raises two allegations. First, the Complaint alleges that the District made an improper determination of ██████████'s eligibility for his Individualized Education Program ("IEP"). Specifically, Mother complains that the diagnosis of Mood Disorder/Bipolar was not included in his eligibility, and ██████████ was only provided services through the eligibility of Other Health Impaired ("OHI") for Attention Deficit Hyperactivity Disorder ("ADHD"). Second, the Complaint alleges that the District made an improper determination regarding his conduct and disability at the Manifestation Determination Review ("MDR"). In essence, Mother claims that if the Mood Disorder/Bipolar diagnosis was properly considered at the eligibility meeting then ██████████'s behavior would have been considered a manifestation of the Mood Disorder/Bipolar.

On March 12, 2013, Mother requested a Due Process Hearing. Having not resolved the issues through an early resolution session, a hearing was scheduled for April 25, 2013 in the Georgia Office of State Administrative Hearings ("OSAH"). In preparation for the hearing, the parties followed all procedures and orders for preparing for the hearing as detailed in the Pre-Hearing Order. On April 25, 2013, an OSAH hearing was conducted.

At the hearing, Mother presented witnesses detailing ■■■'s educational history, discipline history, psychological history, and specifics of the IEP meeting and MDR meeting. At the close of Plaintiff's case, the District moved for a Determination arguing that Plaintiff failed to state a legally cognizable claim under the IDEA. The Court heard arguments and now issues a Final Order in the matter.

IT IS HEREBY ORDERED THAT, all of Plaintiff's' requests for relief are **DENIED** and Plaintiff's Complaint is **DISMISSED**.

As shown more fully below, the Court finds that the District complied with the IDEA, implementing regulations, and GADOE Rules and Regulations when it conducted the IEP eligibility meeting on March 1, 2013 and when it conducted the MDR meeting on March 8, 2013.

II. FACTUAL BACKGROUND

A. Disciplinary History in the 2012-2013 School Year

On August 25, 2012¹, ■■■ attended a middle school football game, where ■■■ used profanity and threatened a parent in the stands. (Def. Ex. 8) As a result of this incident, ■■■ was issued a ten-day out of school suspension ("OSS"). (Def. Ex. 8)

On September 25, 2012, ■■■ was involved in a fight with another student, and after the fight, ■■■ ran down the halls screaming, "I'm not going back to jail." (Def. Ex. 8 and 13) As a result of this incident, ■■■ was issued ten-day OSS and assignment to Ombudsman² for the remainder of the semester. (Def. Ex. 8 and 13)

¹ During summer football practice, ■■■ was involved in an incident in which he used profanity and threatened a volleyball coach. ■■■ was not disciplined for this incident because the school year had not yet started and the administrators thought it had been informally resolved.

² Ombudsman is an alternative school in the District in which student's take classwork, primarily, through a computer system.

On February 1, 2013, ■ was involved in an incident in which he threatened a teacher. (Def. Ex. 10) Charges of felony terroristic threats were filed against ■ based on the incident. (Def. Ex. 10).

On February 4, 2013, ■ was found to be in possession of pills which are listed under the Georgia Controlled Substances Act. (Def. Ex. 8)

On February 5, 2013, an MDR was held regarding the terroristic threats and possession of pills based on ■'s suspected disability pursuant to 20 U.S.C. § 1415(k)(1)(C). (Def. Ex. 28) The MDR found that the terroristic threats may be a manifestation of his suspected disability³, but possession of the pills was not. (Def. Ex. 28) As such, ■ received ten-day OSS. (Def. Ex. 8) In addition, the procedures for prescription medication were reviewed with ■ his mother, and his probation officer. (Def. Ex. 29)

On February 27, 2013, ■ arrived to school with medication mixed in a soft-drink bottle, and ■ showed the mixture to another student. (Def. Ex. 8) Based on this incident, ■ was recommended to Ombudsman for the remainder of the year, pending a MDR. (Def. Ex. 8) On March 1, 2013, an MDR was conducted. (Def. Ex. 36) The MDR found that the conduct in question was not caused by and does not have a direct and substantial relation to ■'s disability. (Def. Ex. 36) The MDR found that the conduct in question was not a direct result of the system's failure to implement ■'s IEP. (Def. Ex. 36)

At the conclusion of the MDR meeting, Mother agreed to the Ombudsman placement. At which point, ■ became angry. ■ then left the room. (Def. Ex. 8) The campus officer tried to get ■ to return to the meeting but was not successful. (Def. Ex. 8) As ■ walked about campus, he pushed a teacher. (Def. Ex. 8) ■ then threatened an administrator and pushed him with both hands in the chest. (Def. Ex. 8) ■ continued to walk about campus, where he told another student he was going to fight an administrator. (Def. Ex. 8) ■ then went to that administrator's office and banged on the door. (Def. Ex. 8) ■ then encountered the administrator, assumed a boxing stance, and threatened to fight the administrator. (Def. Ex. 8) ■ was then restrained by a coach. (Def. Ex. 8) While waiting on campus police, ■ threatened a third administrator. (Def. Ex. 8) He also threatened to kill the son of an

³ At this point, ■'s special education eligibility had yet to be determined, but services had been requested.

administrator. (Def. Ex. 8) ■ was arrested for this incident. (Def. Ex. 8) He has not returned to school since the event.

An MDR was conducted on March 8, 2013 regarding the March 1, 2013 incident, as described below.

B. IEP Eligibility Meeting on March 1, 2013⁴

Mother completed a Direct Parent Referral for special education services and signed the Consent for Testing on October 10, 2012. (Def. Ex. 20) According to Mother's testimony, the District's psychological evaluation had to be rescheduled due to ■'s conflicts throughout November and December, including court dates, doctor appointments, and testing preparation. (See also. Def. Ex. 31)

Ultimately, an IEP eligibility meeting took place on March 1, 2013. (Def. Ex. 31, 32, 33, and 34) Numerous individuals on behalf of the District and ■ attended the eligibility meeting, including Mother, special education teacher, counselor, psychologist, administrator, and family intervention specialist. (Def. Ex. 32) The IEP team relied on three psychological evaluations. First, the IEP team reviewed a report produced by Mother ("Dr. Munjal's Evaluation").⁵ (Joint Ex. 1) Dr. Munjal's Evaluation listed cannabis abuse; ADHD; Mood Disorder, NOS; and Oppositional Defiant Disorder ("ODD"). Second, the IEP team reviewed a psychological evaluation from Northside Hospital, dated October 30, 2012 ("Dr. Janer's Evaluation"). (Joint Ex. 2) Dr. Janer's Evaluation noted Conduct Disorder, based on ■'s history of behavioral problems including stealing, fighting, property destruction and weapon carrying, and ADHD based on difficulty concentrating, distractibility, forgetfulness and daydreaming. (Joint Ex. 2) Third, the IEP team reviewed a psychological evaluation from the District's psychologist, dated January 23, 2013 ("Dr. Wrensen's Evaluation"). (Def. Ex. 31) Dr. Wrensen's Evaluation noted that Mother indicated a previous diagnosis of Bipolar Disorder; however, the evaluation stated, "currently, any mood disorder is not readily apparent at the time..." (Def. Ex. 31) Instead, Dr. Wrensen's evaluation noted ■ met the criteria for Conduct Disorder, which is not an eligibility classification. (Def. Ex. 31) Ultimately, Dr. Wrensen's evaluation recommended special

⁴ Mother refused special education services on April 24, 2007 and February 27, 2009; furthermore, she did not cooperate with the District's attempts to provide ■ with special education services from 2007 until 2012. (Def. Ex. 16)

⁵ The "evaluation" was a one-page document titled, "Progress Notes."

education eligibility only for OHI based on ADHD, but the evaluation stated, "eligibility is to be determined by an interdisciplinary team, and the team should consider all available information in making this determination." (Def. Ex. 31)

According to Mother's testimony, the IEP eligibility team discussed these psychological evaluations and ■■■'s educational experience. Through that discussion, the IEP eligibility team decided that ■■■ was only eligible for special education services through OHI based on ADHD⁶. (Def. Ex. 32) Based on the eligibility of OHI, the IEP eligibility team, then, prepared an IEP for ■■■ (Joint Ex. 3)

C. MDR on March 8, 2013

Based on ■■■'s eligibility for special education services based on OHI as a result of his ADHD and his behavior, which resulted in his arrest on March 1, 2013, the District conducted an MDR meeting on March 8, 2013 pursuant to 20 U.S.C. § 1412(k). (Def. Ex. 37) In the MDR, the IEP team reviewed ■■■'s initial placement, his current IEP, his last eligibility date, his current psychological evaluation, and the District's discipline tracker. (Def. Ex. 37) The IEP team, then, concluded that the conduct in question was not caused by, nor did it have a direct and substantial relationship with, ■■■'s disability. (Def. Ex. 37) Notably, the only disability for which ■■■ was eligible for special education was OHI, based on ADHD; therefore, the MDR only considered the ADHD, in accordance with the IDEA. The IEP team, then, decided that the conduct in question was not a direct result of the system's failure to implement ■■■'s IEP. (Def. Ex. 37) Mother disagreed with the decision at the MDR and her concerns were discussed; however, Mother did not offer any new evaluations for the team to consider or request that additional eligibility information be considered.

⁶ Though Mother produced Dr. Munjal's Evaluation and told the team about the previous Bipolar diagnosis, the IEP team did not find ■■■ eligible for special education under any other criteria. Specifically, eligibility for special education based on Emotional Behavioral Disorder ("EBD") requires a finding of emotionality. Emotionality tends to manifest as anxiety, fear, or depression. Because both Dr. Janer's Evaluation and Dr. Wrensen's evaluation did not find emotionality, the IEP team did not find ■■■ eligible for special education services for EBD. Instead, all three evaluations noted conduct disorder, ODD, and/or social maladjustment, which do not support eligibility for special education services under the IDEA.

Based on all the above described facts, the District recommended that [REDACTED] attend school at Ombudsman from his return to school until the end of the 2014-2015 school year. (Def. Ex. 37)

III. CONCLUSIONS OF LAW

The pertinent laws and regulations governing this matter include the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), 34 C.F.R. § 300 et seq., O.C.G.A. § 20-2-152, and Ga. Comp. & Regs. at Chapter 160-4-7 et seq. (DOE Rules).

The Plaintiff's case is limited to the issues raised in the Complaint. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.C. § 300.511(d)

Plaintiff bears the burden of proof. Ga. Comp. R. & Regs. r. 160-4-7-.1S(1)(g)(8).

A. The IEP Meeting on March 1, 2013 Complied with the IDEA.

The IDEA defines a "child with a disability" as a child who has any one of eleven listed disabilities including "a serious emotional disturbance" and "other health impairment." (34 C.F.R. § 300 .8(a)(1)). Similarly, the State of Georgia has identified twelve categories that qualify a child for special education eligibility under the IDEA, including "emotional and behavioral disorder" (EBD) and "other health impaired" (OHI). Ga. Comp . R. & Regs. r. 160-4-7.05.

The GADOE defines the disability category of "Other Health Impaired" to mean a child that has:

limited strength, vitality, or alertness including a heightened alertness to environmental stimuli, that results in limited alertness with respect to the educational environment, that

- (1) Is due to chronic or acute health problems such as asthma, attention deficit disorder or attention deficient hyperactivity disorder, diabetes, epilepsy, or heart condition, hemophilia, lead poisoning, leukemia, nephritis, rheumatic fever, sickle cell anemia, and Tourette Syndrome, and
- (2) Adversely affects a child's educational performance.

In some cases, heightened awareness to environmental stimuli results in deficiencies with starting, staying on, and completing tasks; making transitions between tasks; interacting with others; following directions ; producing work consistently; and organizing multi-step tasks.

Ga. Comp. R & Regs. r. 160-4-7- .05, Appendix G (internal citations omitted).

The GADOE defines the disability category of "Emotional and Behavioral Disorder (EBD)" to mean a child that has:

An emotional and behavioral disorder is an emotional disability characterized by the following:

- (i) An inability to build or maintain satisfactory interpersonal relationships with peers and/or teachers. For preschool-age children, this would include other care providers.
- (ii) An inability to learn which cannot be adequately explained by intellectual, sensory or health factors.
- (iii) A consistent or chronic inappropriate type of behavior or feelings under normal conditions.
- (iv) A displayed pervasive mood of unhappiness or depression.
- (v) A displayed tendency to develop physical symptoms, pains or unreasonable fears associated with personal or school problems.

A child with EBD is a child who exhibits one or more of the above emotionally based characteristics of sufficient duration, frequency and intensity that interferes significantly with educational performance to the degree that provision of special educational service is necessary. EBD is an emotional disorder characterized by excesses, deficits or disturbances of behavior. The child's difficulty is emotionally based and cannot be adequately explained by intellectual, cultural, sensory general health factors, or other additional exclusionary factors.

Ga. Comp. R & Regs. r. 160-4-7-.05, Appendix G (internal citations omitted).

As evidenced by Dr. Janer's Evaluation and Dr. Wrensen's Evaluation, ■■■ lacked the emotionality associated with EBD. Specifically, ■■■ lacked the anxiety, fear, depression, remorse, and/or pervasive mood of unhappiness, which is typically associated with EBD. Instead, Dr. Janer found ■■■ to manifest Conduct Disorder. Dr. Wrensen classified the behavior as social maladjustment. Even, Dr. Munjal classified ■■■s behaviors as Oppositional Defiant Disorder.

As a matter of law, Conduct Disorder, Oppositional Defiant Disorder, and social maladjustment do not qualify as an eligibility category for special education services under the IDEA. Fulton Cty. Sch. Dist. V. S.C., by and through E.C. and T.C., 1:07-CV-1907-MHS (N.D. Ga. 2007) (citing "See also Springer v. Fairfax County Sch. Bd., 134 F.3d 659, 664 (4th Cir. 1998)('the regulatory framework under IDEA pointedly carves out 'socially maladjusted' behavior from the definition of serious emotional disturbance"); A.E. v. Ind. Sch. Dist. No. 25, 936 F.2d 472, 476 (10th Cir. 1991)('That a child is socially maladjusted is not by itself conclusive evidence that he or she is seriously emotionally disturbed."); Brendan K. v. Easton Area Sch. Dist., No. 05-4179, 2007 U.S. Dist. LEXIS 27846, at *32 (E.D. Pa. Apr. 16,

2007)(“Courts and special education authorities have routinely declined to equate conduct disorders or social maladjustment with serious emotional disturbance.””).

Furthermore, the EBD regulations state, that EBD “does not include children with social maladjustment unless it is determined that they are also children with EBD. A child whose values and/or behavior are in conflict with the school, home or community or who has been adjudicated through the courts or other involvement with correctional agencies is neither automatically eligible for nor excluded from EBD placement. Classroom behavior problems and social problems, e.g. delinquency and drug abuse, or a diagnosis of conduct disorder, do not automatically fulfill the requirements for eligibility placement.” Ga. Comp. R & Rigs . 160-4-7-.05, Appendix D(3)

In conclusion, [REDACTED]’s eligibility for special education services was properly categorized under OHI based on ADHD.

To the extent Plaintiff claims that eligibility should have been found under another eligibility category based on Mood Disorder/Bipolar, Plaintiff failed to produce evidence of what that eligibility should have been. As such, he failed to meet his burden of proof on the issue, meriting dismissal of his claim.

Furthermore, the IDEA requires two steps in determining a student’s eligibility category:

(i) Draw upon information from a variety of sources, including aptitude and achievement tests, parent input, and teacher recommendations, as well as information about the child’s physical condition, social or cultural background, and adaptive behavior; and

(ii) Ensure that information obtained from all of these sources is documented and carefully considered.

34 C.F.R. § 300.306(C)(1).

In the case at hand, the District drew upon information from a variety of sources, including all information presented by Mother. Furthermore, the information from all of these sources was documented and fully considered. To that extent, there was no evidence that members of the IEP team failed to consider the information or were restricted from making an independent finding of eligibility.

As such, Plaintiff’s claim that the IEP meeting to determine eligibility was in violation of the IDEA is **DISMISSED**.

B. The MDR on March 8, 2013 Complied with the IDEA.

The 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." 20 U.S.C. § 1400(d)(1)(A).

Under the IDEA, within 10 school days of any decision to change the placement of a "child with a disability" due to a violation of a code of student conduct, a MDR must occur to determine whether the student's conduct was a manifestation of his disability. 20 U.S.C. § 1415(k)(1)(E)(i). During an MDR, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's CEP, 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 local education agency's failure to implement the IEP.

Id.

The District was required to consider, in the MDR, only the disability for which the student is eligible to receive special education services. Because ■ was only OHI eligible due to his diagnosis of ADHD and that ■ was not EBD eligible, there is no rationale for requiring the District to consider ■'s EBD (or Bipolar/Mood Disorder) during its MDR. See Fulton Cty. Sch. Dist. V. S.C. by and through E.C. and T.C., 1:07-CV-1907-MHS (N.D. Ga. 2007)

The IDEA provision specifying the procedure to be followed during an MDR states that the manifestation determination team must assess whether the student's disciplined conduct "was caused by, or had a direct and substantial relationship to, the child's disability." 20 U.S.C. § 1415(k)(1)(E)(i)(emphasis added). However, none of the possible disorders specified under 34 C.F.R. § 300.8(c), defining a "child with a disability," would apply to ■ based on his diagnosis of ODD, social maladjustment, or Conduct Disorder. Furthermore, the IEP team found no basis for the Mood Disorder/ Bipolar, so the IEP team was not required to consider Mood Disorder/ Bipolar in the MDR. Thus, the District was under an obligation to only consider ■'s ADHD in the MDR.

To that extent, the District did properly conduct the MDR, following the process dictated by the IDEA and making the considerations required by the IDEA.

As such, Plaintiff's claim that the MDR meeting was in violation of the IDEA is **DISMISSED**.

IV. DECISION

IT IS HEREBY ORDERED THAT, all of Plaintiff's' requests for relief are **DENIED** and Plaintiff's Complaint is **DISMISSED**.

SO ORDERED, this 10th day of May, 2013.



AMANDA C. BAXTER, Judge