

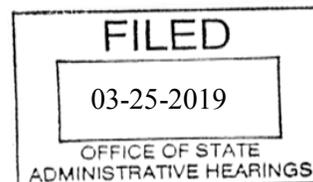
**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

██████████ BY AND THROUGH ██████████;
AND ██████████,
Petitioner,

v.

**CHATHAM COUNTY SCHOOL
DISTRICT,**
Respondent.

**Docket No.: 1919050
1919050-OSAH-DOE-SE-25-Teate**



FINAL DECISION

I. Introduction

On December 3, 2018, the Petitioner, ██████████ by and through his mother ██████████ filed a Due Process Hearing Request (“Complaint”), alleging (1) identification; (2) evaluation and (3) Free Appropriate Public Education (“FAPE”) as the basis of their complaint against the Respondent, the Chatham County School District (“CCSD” or “the District”). On January 7, 2019, the parties jointly requested a bifurcated hearing. In their request, the parties asked for this Court to hold an initial hearing on the claims in paragraphs 115-124 of the Petitioner’s Complaint to determine whether Respondent violated 20 U.S.C. § 1415(k)(1) (34 C.F.R. § 300.530) with respect to its Manifestation Determination Review (“MDR”) on or about October 4, 2018. The undersigned granted the bifurcated hearing request on January 9, 2019. A hearing was held before the Office of State Administrative Hearings (“OSAH”) on January 29 - 30, 2019 and February 4, 2019. Julia H. Sullivan, Esq., represented Petitioner and Brian Dennison, Esq., represented CCSD.

Summary of Arguments

Petitioner:

█████ contests the MDR based on the following arguments: (1) the alleged conduct was a manifestation of █████'s disability; (2) Respondent had insufficient time to implement █████'s IEP and thus, the conduct in question was the result of a failure to implement his IEP; (3) Respondent failed to administer █████'s medications as prescribed; (4) Respondent failed or neglected to supply █████ or █████ with prior written notice of the decision to seek a change in █████'s placement as required by 34 § C.F.R. 300.503; (5) Respondent failed or neglected to provide a parental rights statement to █████. at the time the decision to seek removal was made, as required by 34 C.F.R. §§ 300.504, 300.530(h); and (6) Respondent failed or neglected to provide adequate notice of the MDR, which in combination with the failure to supply prior written notice, deprived █████ of the opportunity to meaningfully participate in the MDR. (Petitioner's Post-Hearing Brief).

Respondent:

CCSD's arguments in support of upholding its MDR determination include:

- The scope of an MDR's manifestation analysis is limited to the relation between █████ conduct and the disability that is the basis of █████'s eligibility under the IDEA;
- Inasmuch as █████'s disability under IDEA is categorized as █████ based on a diagnosis of █████ this was the disability considered by the MDR team;
 - The task of the Court is to determine whether the District's conduct during the MDR was procedurally adequate, satisfying the requirements of 20 U.S.C. § 1415(k)(1)(E)(I);
 - A procedural violation of the IDEA is not sufficient on its own to show a school failed to provide a child with FAPE;
 - An MDR committee "shall 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 make its manifestation determination. 20 U.S.C. § 1415(k)(1)(E)(i). This language does not require each member to read every piece of information in the student's file before the meeting; and

- Regarding FAPE, the issue before this Court for this bifurcated hearing is whether the Petitioner has demonstrated that [REDACTED]'s alleged conduct was the direct result of a failure by the District to implement [REDACTED]'s IEP.

After considering all of the admissible evidence and the arguments of the parties, the Petitioner's request for a reversal of CCSD's MDR determination is **DENIED** for the reasons stated below.

II. Findings of Fact

Background

1. [REDACTED] is a [REDACTED] student at [REDACTED] within the CCSD. [REDACTED] lives with [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] play a significant role in his care and often interact with Respondent with [REDACTED] express, written consent. (Testimony of [REDACTED] at pp. 678-679; Testimony of [REDACTED] at p. 686).

2. On August 27, 2018, Respondent developed Response to Intervention (RTI) Tier 2 interventions for [REDACTED] to address concerns with his behavior. The goal of [REDACTED]'s RTI was to interact appropriately with other students. (Petitioner Exhibit 59; Testimony of [REDACTED] at pp. 464-467). Prior to this date, [REDACTED] had a 504 plan, which was originally put in place at his former school, [REDACTED], and amended after he transferred to [REDACTED] School. (Petitioner Exhibit 53; Testimony of [REDACTED] at pp. 460-461).

September 5, 2018 Allegation of Student Incivility

3. On or about September 5, 2018, students reported to the bus monitor that [REDACTED] was watching porn on the bus and showing it to them. As a result of the allegations, [REDACTED] received a disciplinary referral for student incivility. (Respondent Exhibit 1).

September 11, 2018 Meeting to Develop an IEP

4. On or about September 11, 2018, Respondent convened a meeting to develop an IEP for [REDACTED]. Respondent determined that [REDACTED] was eligible for special education services in the category of [REDACTED] based upon his [REDACTED] diagnosis. As a result of this classification, [REDACTED] is a student with a disability protected by the IDEA. (See 20 U.S.C. 1400 et seq.).

September 24, 2018 Allegation of Student Incivility and One-Day Suspension

5. On or about September 24, 2018, [REDACTED] refused to take his IReady assessment and became disruptive to the learning environment. The school administration was called, and [REDACTED] was removed from the classroom. [REDACTED] was again disruptive at lunch and refused to sit in his assigned seat, which led to school administration being called a second time that day. As a result of [REDACTED] disruptive behavior, Respondent suspended [REDACTED] for one day of Out-of-School Suspension (OSS) for student incivility. (Respondent Exhibit 1).

September 27, 2018 Allegation of Student Incivility and Five-Day Suspension

6. On or about September 27, 2018, a female student reported to a teacher that [REDACTED] had been repeatedly touching her and grabbing her bottom. She also reported that [REDACTED] said sexually explicit things and discussed raping classmates and a teacher. Another female student reported that [REDACTED] had previously rubbed his body against her back and bottom and made her uncomfortable. Both students stated that they told [REDACTED] to stop and leave them alone. [REDACTED] also allegedly created a “rape list” that named several female classmates and placed female classmates on a rating scale based on their body type. Due to these allegations, Respondent gave [REDACTED] a disciplinary referral. In conjunction with his referral, [REDACTED] received five days OSS. (Respondent Exhibit 1).

October 4, 2018 IEP Manifestation IEP Amendment and MDR Determination

7. On or about October 4, 2018, Respondent drafted an “Individualized Education Program Manifestation IEP Amendment” that is the basis for the Manifestation Determination Review (MDR) at issue in the present case. The MDR team consisted of [REDACTED], [REDACTED]’s special education teacher, and the following general education teachers: [REDACTED], [REDACTED], and [REDACTED]. Vice Principal [REDACTED] participated in the MDR as the Local Education Agency representative. [REDACTED] and the program manager at [REDACTED] School, [REDACTED], also attended the MDR. Both parties stipulated that [REDACTED], the school counselor, and the school psychologist, [REDACTED], did not attend the MDR. (Transcript at pp. 778-779).

8. After the MDR, Respondent concluded that [REDACTED]’s alleged behavior was not caused by, and did not have a direct and substantial relationship to, his disability and that his conduct was

not the result of a failure to implement [REDACTED]'s IEP. (See 34 C.F.R. § 300.530(e)). [REDACTED] grandparents, who attended the MDR on behalf of [REDACTED], dissented from this conclusion. Based on the findings of the IEP team, [REDACTED] was subject to the same disciplinary actions which may be placed on all general education students.

December 3, 2018 Due Process Hearing Request and Prehearing Matters

9. On December 3, 2018, [REDACTED] and [REDACTED], filed a Due Process Hearing Request with OSAH.

10. An Early Resolution Session was held on December 13, 2018. The parties were unable to resolve the Due Process Hearing Request at that time. However, on January 7, 2019, a Joint Motion to Bifurcate the Hearing was filed with this Court. On January 9, 2019, the undersigned granted the motion, which limited the present hearing to issues arising from, and relating to, the MDR.

III. Conclusions of Law

1. Petitioner 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 is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2. Pursuant to the order on January 9, 2019, this Court's review is limited to paragraphs 115-124 in Petitioner's Due Process Hearing Request. Specifically, this Court is reviewing whether Respondent violated 20 U.S.C. § 1415(k)(1) with respect to its MDR on or about October 4, 2018.¹ See 34 C.F.R. § 300.530(e).

¹ To the extent Petitioner raised other issues at the hearing beyond the MDR, those issues were not considered by the Court.

3. When a school proposes to change the placement of a child with disabilities 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 school's IEP team must meet to determine whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability or whether the conduct was a result of the school's failure to implement the student's IEP. 34 C.F.R. § 300.530(e)(1)(i), (ii). In making this determination, the school, the parent, and relevant members of the IEP team (as determined by the parent and the school) will review the student's IEP, the student's behavior intervention plan (BIP), any relevant teacher observations, and any other information provided by the parents.

4. In the case of ██████ the IEP team met within 7 days of his rule violation. However, ██████ did not attend the meeting, and it is unclear whether she had prior notice of the meeting. Nonetheless, several members of the IEP team testified that all relevant evidence was considered to determine if the conduct was caused by, or related to, ██████'s disability and whether such conduct was the result of a failure to implement his IEP. (Testimony of ██████ and ██████).

5. While ██████ has presented sufficient evidence to suggest that ██████ is broadly associated with a tendency to engage in impulsive behaviors, ██████ has not proven by a preponderance of the evidence that his alleged conduct was a manifestation of his disability. ██████, a clinical psychologist with board certification in clinical neuropsychology and expert witness for ██████, testified that "one would not expect that someone with ██████ would specifically manifest those [inappropriate sexual] behaviors." (Testimony of ██████ at pp. 208-210). In response to ██████'s position that his behavior was a manifestation of his disability, Respondent argues that ██████'s conduct was based on "choice behaviors" that involved planning and forethought. (Testimony of ██████ on pp. 251-255). The record supports Respondent's position. Specifically, ██████ testified that ██████ is often around females at church and youth group and has no issues, which suggests that ██████ controls himself in some contexts, while acting out in others. (Testimony of ██████ at pp. 681-682). Furthermore, the inclusion of behavioral goals within ██████'s IEP, does not mean that such behaviors are tied to his disability, but rather, that such behaviors are concerning and needed to be documented. The undersigned finds ██████'s alleged behavior did not have a direct and substantial relationship to his disability category.

6. Similarly, because [REDACTED] alleged conduct was not directly or substantially related to his disability, the brief amount of time between the implementation of [REDACTED] IEP and the MDR is moot.

7. There is evidence to support Petitioner's statement that Respondent failed to adequately provide [REDACTED] with his prescribed medication. The record indicates that [REDACTED] was provided his medication inconsistently and the burden was often on him, as a student, to go to the nurse of his own volition. (Petitioner Exhibit 50). However, [REDACTED] had numerous incidents while presumably taking his medication, so the record does not support a finding that Respondent's failure to provide medication had a direct and substantial relationship to [REDACTED]'s conduct or the MDR. (Respondent Exhibit 1).

8. It is unclear whether [REDACTED] or [REDACTED] received prior written notice of the decision to seek a change in [REDACTED]'s placement, whether [REDACTED] received a parent rights statement, or whether adequate notice was provided for the MDR. In the IEP form, there are two boxes—one box states "Parent received 10 days written notification" and the second box states "Parent waived the right to 10 day notification." (Respondent Exhibit 1). The second box stating that "Parent waived the right to 10 day notification" was checked on the IEP form. [REDACTED] testified that she does not check off the box for the parent waiver unless she previously received permission from the parent, but she does not believe she spoke to [REDACTED] (Testimony of [REDACTED] at pp. 264-265). [REDACTED], [REDACTED], also does not remember receiving notice by phone or mail, but she necessarily received some sort of contact from Respondent because she attended the October 4th IEP meeting. (Testimony of Ms. [REDACTED] at pp. 707-708). Additionally, although Ms. [REDACTED] was unsure, she believes that she told [REDACTED] about the meeting before she attended it. *Id.* It is concerning to the undersigned that there was no documentation by Respondent as to whether [REDACTED] or [REDACTED] was provided prior written notice of the decision to seek a change in [REDACTED]'s placement, a parent rights statement, or notice of the MDR. Further, the waiver of prior written notice was not given by [REDACTED] and may not have been given at all. However, as [REDACTED] testified, Ms. [REDACTED] is [REDACTED] number one advocate," and she attended the October 4, 2018 meeting on his behalf. (Testimony of [REDACTED] at p. 679). As such, the Court finds that while concerning, the procedural violations and possible lack of notice to [REDACTED] do not invalidate the MDR given Ms. [REDACTED] ongoing involvement in [REDACTED]'s education and her fervent advocacy on his behalf.

IV. Decision

Based on the foregoing findings of fact and conclusions of law, **IT IS HEREBY ORDERED** that a reversal of CCSD's MDR determination is **DENIED**. [REDACTED] has presented insufficient evidence to prove that [REDACTED]'s alleged conduct was caused by, or had a direct relationship to his disability, or that such behavior was due to a failure by Respondent to adequately implement his IEP.

SO ORDERED, this 25th day of March 2019.



Steven W. Teate
Administrative Law Judge

