

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

Docket No.: 18-000553

**J.R. o/b/o A.R.,
Petitioner**

Case No.: 18-00006

v

Agency: Education

**Southfield Public Schools,
Respondent**

Case Type: Ed Sp Ed Expedited

Filing Type: Appeal

**Issued and entered
this 7th day of February, 2018
by: Kandra Robbins
Administrative Law Judge**

DECISION AND ORDER

PROCEDURAL HISTORY

This matter concerns a due process hearing request/complaint under the Individuals with Disabilities Education Act (IDEA) 20 USC 1400 et seq. On or about January 9, 2018, Petitioner filed a due process request/complaint with the Michigan Department of Education (MDE). MDE forwarded the Due Process Hearing Request to the Michigan Administrative Hearing System for hearing. It was assigned to Administrative Law Judge (ALJ) Kandra Robbins.

A Scheduling Order was issued on January 11, 2018 scheduling an expedited hearing in this matter for January 31, February 1 and 2, 2018. A Prehearing Conference was held on January 19, 2018.

On January 31, 2018 the Due Process Hearing was convened as scheduled. Petitioner J.R. appeared on her own behalf. Attorney Jordan Bullinger appeared on behalf of Respondent.

The following exhibits were offered by Petitioner and admitted into evidence unless otherwise indicated:

1. Petitioner Exhibits 1-18 were not offered.
2. Petitioner Exhibit 19 is a Pediatric Neurology Clinic Note, dated November 27, 2017.

3. Petitioner Exhibit 20 is a letter from Aimee F. Luat, MD, Pediatric Neurology, DMC Children's Hospital of Michigan, dated December 8, 2017.
4. Petitioner Exhibit 21 is a Neurology Pediatric Specialty Center Patient Discharge Instructions, dated December 8, 2017.
5. Petitioner Exhibit 22 was not offered.
6. Petitioner Exhibit 23 is a DMC Children's Hospital of Michigan Final Report, dated August 20, 2010.
7. Petitioner Exhibits 25 through 40 were not offered.

Petitioner offered Exhibit 24. It was not admitted for lack of foundation and hearsay.

The following exhibits were offered by Respondent and admitted into evidence:

1. Respondent Exhibit No. 1 is a Functional Behavioral Analysis Behavioral Intervention Plan Addendum, dated September 18, 2017.
2. Respondent Exhibit No. 2 is an Individualized Education Program (IEP) dated October 23, 2017.
3. Respondent Exhibit No. 3 is a Special Education Mediation Agreement, dated December 20, 2017.
4. Respondent Exhibit No. 4 consists of 12 pages of Incident Report Forms, dated January 8, 2018.
5. Respondent Exhibit No. 5 is a Special Education Meeting Invitation, Notice of Change in Placement as a Result of a Disciplinary Removal, a Manifestation Determination Review, an Interim Alternate Educational Setting (IAES), and a Notice for Provision of Services and Programs Interim Alternative Educational Setting, dated January 17, 2018.
6. Respondent Exhibit No. 6 is an Individualized Education Program, dated January 17, 2018.
7. Respondent Exhibit No. 7 is a Progress Report, dated January 19, 2018.
8. Respondent Exhibit No. 8 is a lesson plan for January 22 and 24, 2018.
9. Respondent Exhibit No. 9 is a Mileage and Gas Reimbursement form.

10. Respondent Exhibit No. 10 was not offered.

11. Respondent Exhibit No. 11 is a Concentra Medical records for Dr. Freeman.

12. Respondent Exhibit No. 12 is the Curriculum Vitae for Lanissa L. Freeman, PhD.

The following individuals testified in this matter:

1. J.R., Petitioner
2. Lanissa Freeman, Director of Support Services
3. Alissa Anstandig, School Social Worker
4. Ann Woodman, Occupational Therapist
5. Laura Swartz, Speech Pathologist
6. Anyia Fort, Special Education Teacher
7. Leathia Houston, Support Coordinator, MORC
8. Sonia Jackson, Principal

ISSUES

1. Did the District properly comply with the disciplinary protections pursuant to 34 CFR 300.530 through 300.536 including the appropriate education services?

APPLICABLE LAW

The petitioner-parents, as the party challenging the District's determination or implementation of special education and related services, have the burden of proof by a preponderance of the evidence for all claims raised in this matter. *Schaffer v Weast*, 546 US 49; 126 S Ct 528; 163 L Ed 2d 387 (2005); *Doe v Defendant I*, 898 F2d 1186 (CA 6, 1990).

In this case, Petitioner is challenging the provision of educational placement and services following a disciplinary action by District.

The Code of Federal Regulations provides that:

(a) General. The parent of a child with a disability who disagrees with any decision regarding placement under §§300.530 and 300.531, or the manifestation determination under §300.530(e), or an LEA that believes that maintaining the current placement of the child is substantially likely to result in injury to the child or others, may appeal the decision by requesting a hearing. The hearing is requested by filing a complaint pursuant to §§300.507 and 300.508(a) and (b).

(b) Authority of hearing officer.

(1) A hearing officer under §300.511 hears, and makes a determination regarding an appeal under paragraph (a) of this section.

(2) In making the determination under paragraph (b)(1) of this section, the hearing officer may-

(i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of §300.530 or that the child's behavior was a manifestation of the child's disability; or

(ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

(3) The procedures under paragraphs (a) and (b)(1) and (2) of this section may be repeated, if the LEA believes that returning the child to the original placement is substantially likely to result in injury to the child or to others.

(c) Expedited due process hearing.

(1) Whenever a hearing is requested under paragraph (a) of this section, the parents or the LEA involved in the dispute must have an opportunity for an impartial due process hearing consistent with the requirements of §§300.507 and 300.508(a) through (c) and §§300.510 through 300.514, except as provided in paragraph (c)(2) through (4) of this section.

(2) The SEA or LEA is responsible for arranging the expedited due process hearing, which must occur within 20 school days of the date the complaint requesting the hearing is filed. The hearing officer must make a determination within 10 school days after the hearing.

* * *

- (5) The decisions on expedited due process hearings are appealable consistent with §300.514.

34 CFR 300.532

Authority of school personnel

- (a) Case-by-case determination. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the other requirements of this section, is appropriate for a child with a disability who violates a code of student conduct.

- (b) General.

- (1) School personnel under this section 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 school days (to the extent those alternatives are applied to children without disabilities), and for additional removals of not more than 10 consecutive school days in that same school year for separate incidents of misconduct (as long as those removals do not constitute a change of placement under §300.536).

- (2) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, during any subsequent days of removal the public agency must provide services to the extent required under paragraph (d) of this section.

- (c) Additional authority. For disciplinary changes in placement that would exceed 10 consecutive school days, 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 pursuant to paragraph (e) of this section, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities, except as provided in paragraph (d) of this section.

- (d) Services.

- (1) A child with a disability who is removed from the child's current placement pursuant to paragraphs (c), or (g) of this section must-

- (i) Continue to receive educational services, as provided in §300.101(a), 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; and

- (ii) Receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur.
- (2) The services required by paragraph (d)(1), (d)(3), (d)(4), and (d)(5) of this section may be provided in an interim alternative educational setting.
 - (3) A public agency is only required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed.
 - (4) After a child with a disability has been removed from his or her current placement for 10 school days in the same school year, if the current removal is for not more than 10 consecutive school days and is not a change of placement under §300.536, school personnel, in consultation with at least one of the child's teachers, determine the extent to which services are needed, as provided in §300.101(a), 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.
 - (5) If the removal is a change of placement under §300.536, the child's IEP Team determines appropriate services under paragraph (d)(1) of this section.

(e) Manifestation determination.

- (1) 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 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.
- (2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's IEP Team

determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

- (3) If the LEA, the parent, and relevant members of the child's IEP Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.
- (f) Determination that behavior was a manifestation. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must-
- (1) Either-
 - (i) Conduct a functional behavioral assessment, unless the LEA had conducted a functional behavioral assessment before the behavior that resulted in the change of placement occurred, and implement a behavioral intervention plan for the child; or
 - (ii) If a behavioral intervention plan already has been developed, review the behavioral intervention plan, and modify it, as necessary, to address the behavior; and
 - (2) Except as provided in paragraph (g) of this section, return the child to the placement from which the child was removed, unless the parent and the LEA agree to a change of placement as part of the modification of the behavioral intervention plan.
- (g) Special circumstances. School personnel may remove a student to an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability, if the child-
- (1) Carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of an SEA or an LEA;
 - (2) Knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or
 - (3) Has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA.
- (h) Notification. On 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 must notify the parents of that decision, and provide the parents the procedural safeguards notice described in §300.504.

(i) Definitions. For purposes of this section, the following definitions apply:

- (1) Controlled substance means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)).
- (2) Illegal drug means a controlled substance; but does not include a controlled substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law.
- (3) Serious bodily injury has the meaning given the term "serious bodily injury" under paragraph (3) of subsection (h) of section 1365 of title 18, United States Code.
- (4) Weapon has the meaning given the term "dangerous weapon" under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code. 34 CFR 300.530

The Federal Code defines "serious bodily injury" as:

The term "serious bodily injury" means bodily injury which involves-

- (A) a substantial risk of death;
- (B) extreme physical pain;
- (C) protracted and obvious disfigurement; or
- (D) protracted loss or impairment of the function of a bodily member, organ, or mental faculty; 18 USC 1365(h)(3).

The Code of Federal Regulations defines a change of placement as:

Change of placement because of disciplinary removals

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if-

- (1) The removal is for more than 10 consecutive school days; or

- (2) The child has been subjected to a series of removals that constitute a pattern-
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.
- (b)
 - (1) The public agency determines on a case-by-case basis whether a pattern of removals constitutes a change of placement.
 - (2) This determination is subject to review through due process and judicial proceedings. 34 CFR 300.536

FINDINGS OF FACT

Based on the entire record in this matter, including the testimony and admitted exhibits, the following findings of fact are established:

1. Student was born on [REDACTED]. In 2010, Student was evaluated by Dr. Behen and staff at the Children's Hospital of Michigan Autism Center. It was found that Student was evidencing significant deficits in communication, deficits in social reciprocity, and evidence of behavioral stereotypes at levels consistent with Autism Spectrum Disorder. This resulted in a clinical impression of Pervasive Developmental Disorder Not Otherwise Specified and Disruptive Behavior Disorder Not Otherwise Specified. [Pet. Exh. 23]
2. At the beginning of the 2017/2018 school year, Student was assigned to the ASD categorical classroom located in the Levey Middle School within the Respondent District.
3. Student was taking Abilify as prescribed by his doctor. In the summer of 2017, it was determined to discontinue this medication because of the significant side effects. In September 2017, Student's medication was adjusted.

4. Petitioner notified Student's teacher, Ms. Fort, that his medication was being adjusted. Ms. Fort notified the school team of the medication change in light of the potential for behavioral concerns.
5. Student's Functional Behavioral Analysis and Behavioral Intervention Plan from February 27, 2017 was updated on September 18, 2017. [Resp. Exh. 1]
6. On October 23, 2017, an annual review of Student's IEP was held. It was determined to continue Student's eligibility for special education services as a student with Autism Spectrum Disorder under MARSE 340.1715. [Resp. Exh. 2]
7. During the October 23, 2017 IEP, Student's strengths were noted as "Student enjoys school. He enjoys engaging with his peers and learning new things. He does a great job following his daily schedule and completing assignments. He likes technology and enjoys interfacing with the interactive whiteboard, keyboarding on desk top computers and using tablets". Petitioner noted that she would like for Student to continue to learn how to tell time. [Resp. Exh. 2]
8. During the October 23, 2017 IEP, the Team noted the following special factors to be considered: The communication needs of the student, the need for assistive technology device and services for the student and the use of positive behavioral interventions and supports, and other strategies to address behavior because the student has behavior that impedes his learning or the learning of others. [Resp. Exh. 2]
9. The October 23, 2017 IEP contained five goals each supported by two objectives. The first goal was a behavioral goal. The annual goal is that by October 2018 Student will significantly reduce the frequency and intensity of temper tantrums and outbursts by 50% as measured by behavior logs and systematic observations. The first objective supporting this goal is that by March 2018, via role play in the social work office, Student will utilize effective self-control strategies i.e. "look, listen, and think" to help him express his anger or dissatisfaction through appropriate verbalizations as measured 2 out of 3 interactive opportunities in the classroom and/or social worker office. The second objective is that by October 2018, Student will use statements that reflect acceptance of responsibility for angry outbursts and process the factors that contribute to this challenge 70% of the time as measured by systematic observation and behavior logs. [Resp. Exh. 2]
10. The second goal is a fine motor skill goal. The annual goal is that by October 2018, student will demonstrate proportionate sized letters placed in correct placement (including "diving" letters) 75% of the time when composing or copying 3-4 sentences from a model, ¾ tries based on therapist's structured observation.

The objectives supporting this goal are that by April 2018 Student will demonstrate proportionate sized tall and short letters 75% of the time when composing or copying 3-4 sentences from a model, $\frac{3}{4}$ tries based on therapist's structured observation and that by October 2018, student will demonstrate proportionate sized "diving" letters (eg. g, p, q, j and y) in the correct placement when composing or copying 3-4 sentences from a model at 75% accuracy $\frac{3}{4}$ tries based on therapist's structured observations. [Resp. Exh. 2]

11. The third goal is a communication goal. The annual goal is that by October 2018, Student will improve his language skills by identifying details with 70% accuracy as observed and documents on therapy log. The first objective to support this goal is that by April 2018, Student will identify 2 to 4 details in a short story/material presented with visual support during structured activity with 60% accuracy as observed and documented on therapy log. The second goal is that by October 2018, Student will identify 2 to 4 details in a short story/material presented with visual support during structured activity with 70% accuracy as observed and documented on therapy log. [Resp. Exh. 2]
12. The fourth goal is a reading goal. The annual goal is that by October 2018, Student will increase reading comprehension skills when reading aloud with 70% accuracy as measured by informal testing. This first objective to support this goal is that by April 2018, Student will identify main characters in level appropriate text with adult support with 60% accuracy. The second objective is that by October 2018, Student will identify main characters in level appropriate text with adult support with 60% accuracy. It is noted that the two objectives are identical. [Resp. Exh. 2]
13. The fifth goal is a math goal. The annual goal is that By October 2018, Student will increase his ability to understand and tell time with 60% accuracy as measured by informal testing. The first objective supporting this goal is that by April 2018, Student will tell time to the nearest minute using an analog clock with adult support with 50% accuracy. The second objective is that by October 2018, Student will tell time to the nearest minute using an analog clock with adult support with 50% accuracy. These two objectives are identical. This goal is also supported with two additional objectives. The first is that by April 2018, Student will add time to solve a problem using an analog clock with adult support with 50% accuracy. The second objective is identical. [Resp. Exh. 2]
14. The October 2017 IEP included several listed supplementary aids and services. The IEP provided for Speech and Language Services of 15 to 25 minutes for 2 to 4 times a month. It required School Social Worker services for 20 to 30 minutes for 2 to 4 times a month. Student was placed in the Autism Spectrum Disorder Categorical Classroom located at Levey Middle School for 20 to 25 hours per

week. Student had 11.5 hours of general education instruction per week. The general education consisted of gym, art and computer class. [Resp. Exh. 2 / Fort Testimony]

15. As part of the October 2017 IEP, a Center Program Placement Summary was completed. It noted that Student had difficulty with maintaining self-control, particularly when it comes to not getting his way. Student challenges with impulse control and significantly aggressive behaviors towards peers and adults. The Summary notes that on November 16, 2017, Student physically attacked a peer¹ by stabbing him in the back with a pencil several times. In addition, as a para pro and a teacher attempted to intervene, Student physically assaulted both injuring the teacher's thumb and leaving a scar on the para pro's chest area. Both staff had to seek medical attention and were off work for several days. Student is also verbally inappropriate while agitated as evidenced by using vulgarities towards staff and peers. His behavior is noted as unpredictable and explosive as he destroys school property and the property of others when he is upset. He refuses to calm down or accept re-direction. [Resp. Exh. 2]
16. Because of the incident on November 16, 2017, Student was removed from his educational placement. Petitioner filed a Due Process Hearing Request, Docket No. 17-026759; Agency Case No. 17-00086. The parties participated in Special Education Mediation and reached an agreement. As part of the agreement, the Due Process Hearing Request was withdrawn and the matter was dismissed. [Resp. Exh. 3 / Petitioner Testimony]
17. As part of the Mediated Agreement, it was determined that Student would return to Levey on January 8, 2018. A para-professional (para-pro) would be assigned to him. [Resp. Exh. 3]
18. Southfield Public Schools had a winter recess beginning at the conclusion of the school day on December 22, 2017 and returning to classes on Monday, January 8, 2018.
19. On January 8, 2018, Student returned to Levey. Dr. Lanissa Freeman², the Director of Support Services, acted as the para-pro assigned to Student as required by the Mediated Agreement. Dr. Freeman decided to act as the para-pro in an effort to ease Student back into the school routine and it would provide an opportunity for her to model/ coach future para pros.

¹ This peer shall be referred to through this opinion as Student G to protect his privacy.

² Dr. Freeman has a Bachelor of Science in Cognitive Impairments, a master's in education leadership, a Doctorate of Philosophy in Curriculum and Instruction K-12. She has an Educational Specialist Certificate. She has continuing education from the Harvard National Institute for Urban School Leaders, Adaptive schools Training and Legal Research Publication. She is certified in CPI and is a CPI instructor.

20. In preparation for Student's return to school, Dr. Freeman prepared a calm-down basket consisting of Student's preferred activities. Dr. Freeman also arranged for a work area set up in the media center. Student's Behavioral Plan called for a quiet/ break room as well as opportunities for individual instruction. [Resp. Exh. 1 / Dr. Freeman testimony]
21. Dr. Freeman met Student as he exited the school bus at approximately 8:40 a.m. She noted he was in a heightened state at the time. She accompanied Student to his locker. Student had difficulty unlocking his locker. The locker was opened by a staff member, Mrs. Leapheart. Student shouted, "it is his entire fault". Student then pointed and hit Student G's locker. Dr. Freeman attempted to use re-direction strategies. They discussed the work he had previously turned in and she invited Student to go with her to the office to turn in his additional work. Dr. Freeman was able to calm Student down and they reviewed his homework and a completed project. They went to the work area set up in the Media Center. [Resp. Exh. 4, pg. 1]
22. While in the media center at approximately 9:10 a.m., Student kept stating that he "wanted to go to class". Dr. Freeman explained to Student that he would have to show her that he was ready to go to class. Student sat down for approximately 2 minutes. He then began to state that "Student G should be there and not him" and "it was Student G's fault". Dr. Freeman observed that Student was escalating his voice. He got up from his chair and explored the media center. Dr. Freeman continued to attempt to deescalate Student. She invited him to engage in a preferred activity. She allowed him to walk around the media center. She offered a sensory toy. Student began to knock things down and shout. He was becoming more frustrated. Student was asked to pick up the things he knocked down, he was able to comply. However, he was only able to calm down for approximately 2 minutes and then would escalate again. [Resp. Exh. 4, pg. 2]
23. At approximately 9:15 a.m., Student refused to do any work. He ripped up his name card and began to shout he wanted to be left alone. Student stated that student G laughed at him and it was student G's fault. Student refused to work on a puzzle, refused a snack and refused to call mom; all attempts to redirect him. Student then entered Mrs. Andstandig's office and asked her if he could leave and if she would help him. Mrs. Andstandig praised Student for seeking assistance and using his words. She stated that he would have to demonstrate that he was ready to return to class. Student was only able to calm down for about 3 minutes. [Resp. Exh. 4, pg. 3]

24. At about 9:22 a.m., Student returned to his work area and shouted that he was a prisoner and he wanted his old teachers. Dr. Freeman told Student to show her that he was ready and he stated that she was the director and she should not be there. Dr. Freeman used a non-verbal white board and wrote the word "Stop". Student complied with the request for about 2 minutes before again stating that it was student G's fault and student G should be there. [Resp. Exh. 4, pg. 4]
25. At about 9:27, Student was walking around the media center shouting that he wanted to go and he was getting frustrated. Student became emotional and began to cry that it was student G's fault. A teacher walked in and Student began to shout profanities directed toward Dr. Freeman. Dr. Freeman invited Student to take 3 deep breaths and modeled and took 3 deep breaths with him. Student complied. Student walked around breathing and trying to regain his composure. However, he began to escalate after 3 minutes. [Resp. Exh. 4, pg. 5]
26. At 9:31, Student began to escalate shouting aggressively and hitting himself in the head. In an effort to redirect him, Dr. Freeman asked him to help her fix the name tag. Student began working with her to fix the name plate he had previously torn. She thanked him and provided additional positive reinforcement. Once the task was completed, Student escalated again and began to shout verbal threats such as "I am going to fight you. I will fight you". Student was offered a break. [Resp. Exh. 4, pg. 6]
27. At 9:42, Student was becoming emotionally charged with his verbal threats. He was screaming and swearing. All efforts to redirect or de-escalate were not working. [Resp. Exh. 4, pg. 7]
28. At 9:44 a.m., Student swung at Dr. Freeman with a closed fist. She was able to block the punch and move away. Student aggressively came at her and bit her arm. [Resp. Exh. 4, pg. 8]
29. At about 9:48 a.m., Student complied with a request to sit down and began to calm down. He sat for about 1-2 minutes. He then rose and shouted that it was "student G's fault" and requested to leave. He shouted that he was going to tear up the computer. He continued to scream and shout. Dr. Freeman calmly told Student to show her that he was ready. He refused to comply. [Resp. Exh. 4, pg. 9]
30. At 9:51 a.m., Student was walking around the media center, crying and shouting profanities at Dr. Freeman. He then charged her and struck her with several closed fist punches in the head. He pulled out her earrings and broke the chain of her crucifix. She requested assistance, but no one was in the media center. Dr. Freeman shouted "backpack". The distraction allowed her to move away from

Student. Student then began to throw items from the calm down basket at her (blocks, books, wipe board and markers). [Resp. Exh. 4, pg. 10]

31. At 9:59 a.m., Student was continuing to show signs of aggression at Dr. Freeman. Student attempted to hit her, and she was able to block the punch. Student tripped into her causing both to fall. Student then kicked her in the stomach and knee. Mr. Chop, the assistant principal, came into the media center to assist with calming Student. Security was also called. Dr. Freeman left the media center. Student began to de-escalate with a decrease in physical and emotional energy. He sat down calming and rested his head in the media center with the security guard. [Resp. Exh. 4, pg. 11]
32. At about 10:50 a.m., District staff contacted Petitioner. She stated that she was in Royal Oak and unable to come to the school to get Student.
33. Dr. Freeman was seen at Concentra Medical Center on January 8, 2018. She suffered a migraine and extreme pain in her arm, knee, left foot and a burning in her back because of the aggressive behaviors of Student.
34. Dr. Freeman suffered a strain on her right and left shoulder tendons, and on her upper right and left arms. Her knee was swollen and bruised. She had a muscle strain in her lower back. She was given muscle relaxers and pain medication. [Resp. Exh. 4, pg. 12 and Resp. Exh. 11]
35. Dr. Freeman has had to participate in physical therapy two times a week since the January 8, 2018 incident. She is currently required to use a cane and unable to use stairs affecting her ability to perform household chores. This has affected her ability to participate in church activities and leisure activities particularly ballroom dancing and instructing in dance. She has difficulty cooking for her family as she cannot stand for long periods of time.
36. Student remained at school for the entire school day on January 8, 2018. He slept for a while. In the afternoon, he worked with the Speech Pathologist from 12:00 -12:30 p.m. and again from 2:15 until about 3:30 p.m.
37. On January 8, 2018, the District provided Petitioner with a Notice of a Change in Placement as a Result of a Disciplinary Removal. The Notice indicated that Student was being removed for 6 days because of a violation of the student code of conduct. The Notice included notification of a Manifestation Determination Review to be held on January 17, 2018. [Resp. Exh. 5]

38. On January 11, 2018, a Notice for a Manifestation Determination Review (MDR) and an Interim Alternative Educational Setting Meeting for January 17, 2018 was sent to Petitioner and other IEP team members. [Resp. Exh. 5]
39. On January 17, 2018, the MDR was convened. The following individuals participated: Leathie Houston, Support Coordinator MORC; Petitioner; Student; Laura Schwartz, Speech Pathologist; Ann Woodman, Occupational Therapist; Anya Fort-Bradly, Special Education Teacher; Alissa Anstanding, Social Worker; Sonia Jackson, Principal; Terrance McEvans, P/E teacher; and Lanissa Freeman, Director of Support Services. [Resp. Exh. 5]
40. The Team determined that Student's misconduct on January 8, 2018 was a manifestation of his disability. [Resp. Exh. 5]
41. Although Student's misconduct was determined to be a manifestation of his disability, the District determined that the special circumstances, injuries to Dr. Freeman, necessitated a 45-day interim alternative educational setting. [Resp. Exh. 5]
42. An Interim Alternative Educational Setting (IAES) was determined by the following team members: Sonia Jackson, Principal; Dr. Lanissa Freeman, Director of Student Support; Anyia Fort, Special Education Teacher; Terrance McEvans, general education teacher; Petitioner; Alissa Anstandig, school social worker; Laura Schwartz, Speech Pathologist; Leathie Houston, Support Coordinator, MORC; Ann Woodman, Occupational Therapist. The IAES was determined to be the Southfield Education Center for 2 to 3 days a week for 4 to 6 hours. The IAES was to be in effect from January 18, 2018 through March 28, 2018. [Resp. Exh. 5]
43. Petitioner was provided a written Notice for Provision of Services and Programs Interim Alternative Educational Setting on January 17, 2018. [Resp. Exh. 5]
44. On January 17, 2018, the District requested to convene an IEP Team to update Student's IEP based on the behavioral needs of Student. Petitioner refused to agree to a new IEP. [Resp. Exh. 6]
45. Student began receiving education services on January 18, 2018 in the IAES. It takes the District's transportation office 2 days to be able to schedule student transportation. It was determined that Petitioner would transport Student on January 18, 2018 and would be reimbursed. Petitioner did transport Student to the IAES on January 18, 2018. The District reimbursed Petitioner for the transportation costs. The District has provided all other transportation. [Resp. Exh. 9]

46. Student attends the IAES on Tuesdays and Thursdays for 2 ½ hours each day for a total of 5 hours per week. His academic work is supervised by a retired ASD teacher. On Thursdays, the speech pathologist, school social worker and occupational therapist each work individually with Student as required by his October 2017 IEP.

47. The Student's teacher, Occupational Therapist, School Social Worker, and Speech Pathologist all report that Student is making progress on each of the five goals contained in his October 2017 IEP. Each report that they expect Student to achieve the goals as written. [Resp. Exh. 7]

48. Student's academic work in the IAES included English Language Arts, Reading Comprehension, Math/ Science; and written/ oral expression. [Resp. Exh. 8]

DISCUSSION

In the instant matter, like in most due process hearings, a number of witnesses testified and there were numerous exhibits offered and admitted into evidence. I have reviewed and considered all that is contained in the exhibits and the transcripts of the hearing in deciding this matter.

Petitioner raised the issue that the District failed to comply with the December 2017 Mediation Agreement. It was clarified at the hearing that Petitioner is disputing the compliance with the Agreement and not any claims previously raised in the first Due Process Hearing Request. This Tribunal lacks jurisdiction to determine compliance with a Mediation Agreement. It was explained to Petitioner that this issue would have to be filed as a State Complaint with the Michigan Department of Education.

Petitioner argues that the District did not properly place Student in an IAES. Petitioner argues that Student has been removed from school since January 8, 2018 without receiving services. In addition, she contends that Student is not receiving the related services called for in the October 2017 IEP. She contends that Student is not receiving the educational services that he is entitled to receive under IDEA.

The District contends that Student violated the code of conduct. The District properly convened a MDR meeting. The Team properly determined that Student's misconduct of January 8, 2018 was a manifestation of Student's disability. The District contends that special circumstances apply in this case and the District's determination to place Student in a 45-day IAES was properly made. Additionally, the District contends that Student has been receiving all the related services required in the IEP and Student has been given the academic supports to access the general education curriculum.

In this matter, there is no dispute that Student engaged in misconduct in violation of the school code of conduct when he shouted profanities, threw items, and physically assaulted Dr. Freeman on January 8, 2018. There is no dispute that Student's conduct was a manifestation of his disability.

Student's educational placement under the October 2017 IEP was primarily in the ASD classroom at Levey. On January 8, 2018, Petitioner was given notice that Student was removed from that educational placement for a period of 6 days. This would be the school days of January 9, 10, 11, 12, 16 and 17. Although this removal was only for a period of six days, Student had previously been removed in November and December 2017. Therefore, this removal of Student was a change of placement as defined the regulations. The change in placement would require a Manifestation Review.

A Manifestation Review was held on January 17, 2018. This was held within 10 school days of Student's removal on January 8, 2018 as required. The Manifestation Review was held with the Parent, the District, and the relevant members of Student's IEP team. Although as part of the MDR it was determined that the misconduct was a manifestation of Student's disability, School Personnel determined to remove Student to an interim alternative educational setting for 45 school days because of special circumstances as permitted under 34 CFR 300.530(g)(3). The District determined that based on the extent of the injuries suffered by Dr. Freeman, Student had inflicted serious bodily injury upon Dr. Freeman while in the media center at Levey Middle School. Additionally, the School had concerns about the safety of the other students in the ASD classroom. Student clearly had a fixation on student G. On January 17, 2018, the District provided Petitioner with notice of the decision to place Student in the IAES.

The Federal Code defines "serious bodily injury" as a bodily injury which involves extreme pain or protracted loss or impairment of the function of a bodily member or organ. In this case, Dr. Freeman had extreme pain from the bite, the punches, and the kicks inflicted by Student. Dr. Freeman had to seek medical care. She was prescribed muscle relaxers and pain relievers. The injuries sustained by Dr. Freeman have limited her range of motion in her arms, and the use of the leg. Dr. Freeman has required physical therapy twice a week since the injuries to regain full use of her arms and leg. I find that the injuries suffered by Dr. Freeman because of the physical assault by Student meets the definition of serious bodily injury.

I find that the District properly determined to move Student to an IAES for a period of 45 days. The next question is whether the IAES is appropriate. The IAES was determined by the Student's IEP team. In the IAES, Student is receiving 1:1 academic instruction from a retired ASD teacher. The academic instruction is comparable to the instruction occurring in the Student's ASD classroom. Student teacher, Ms. Fort, testified that Student is making progress on his academic goals contained in his IEP.

Although Petitioner contends that Student was not receiving any of the related services called for in his IEP, Ms. Anstandig, Ms. Schwartz, and Ms. Woodman all testified that they are providing services to Student on a weekly basis. This would more than satisfy the 2 to 4 times per month that is listed in the IEP. More importantly, each has testified that Student is making progress on all the goals listed in his IEP and each expects that Student will achieve his goals. The School Social Worker specifically testified that she and Student have been working on anger issues. She testified that their sessions have been very productive while Student has been in the IAES.

Contrary to Petitioner's contention, I find that the District has properly complied with the disciplinary protections provided by the Federal regulations. Student was properly placed in an Interim Alternative Educational Setting. The IAES selected by the District has allowed Student to continue to make progress on both the academic goals and the related services goals listed in his current IEP.

Petitioner has failed to establish that the District did not properly comply with the disciplinary protections contained in the Code of Federal Regulations.

CONCLUSIONS OF LAW

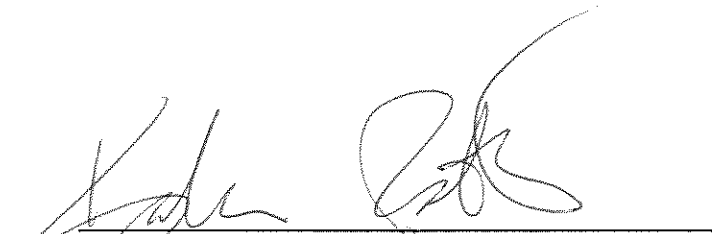
Petitioner has failed to establish that the District did not properly comply with the disciplinary protections.

ORDER

IT IS ORDERED Petitioner's complaint is denied.

IT IS FURTHER ORDERED that any claims or defenses not specifically addressed herein are dismissed with prejudice.


A party aggrieved by this decision may seek judicial review by filing an action in a court of competent jurisdiction within 90 days of the date of this order.



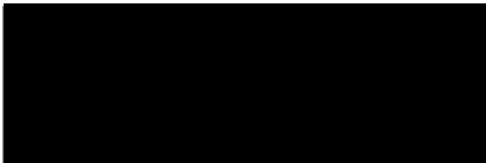
Kandra Robbins
Administrative Law Judge

PROOF OF SERVICE

I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 7th day of February, 2018.



Pamela Moore
Michigan Administrative Hearing System



Jeffrey J. Butler
Clark Hill PLC
212 E. Grand River Ave.
Lansing, MI 48906

Jordan M. Bullinger
Clark Hill PLC
200 Ottawa Avenue NW
Suite 500
Grand Rapids, MI 49503

Ruth Oda
Office of Special Education
PO Box 30008
Lansing, MI 48933

Southfield Public Schools
Lanissa Freeman, Director of Special Education
24661 Lahser Road
Southfield, MI 48033