

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM**

IN THE MATTER OF:

**J.R. o/b/o S.D.,
Petitioner**

v

**Fowlerville Community Schools,
Respondent**

Docket No.: 18-003361

Case No.: 18-00020

Agency: Education

Case Type: Ed Sp Ed Expedited

Filing Type: Appeal

**Issued and entered
this 2nd day of April, 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 February 20, 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.

On February 22, 2018, a Scheduling Order was issued scheduling a Prehearing Conference for March 6, 2018 and the hearing for March 19 and 20, 2018. On March 6, 2018, the Prehearing Conference was held.

On March 19, 2018, the hearing was convened as scheduled. Petitioner J.R. and Attorney Jason Wine appeared on behalf of Petitioners. Attorney Roy Henley, Attorney, Jessica Baker, and Special Education Director Kim Wooster appeared on behalf of Respondents.

Prior to the beginning of the hearing, the parties submitted a Joint Stipulation of Fact and Material Admissions as follows:

1. Petitioner J.R. is S.D.'s mother.

2. S.D. is [REDACTED] years old, born on [REDACTED]

3. S.D. is eligible for special education programs and services as a student with other health impairment (OHI) pursuant to R 340.1709a of the Michigan Administrative Rules for Special Education.
4. A Multidisciplinary Evaluation Team Report and Eligibility Recommendation dated October 22, 2015 found S.D. ineligible for programs and services as a student with autism spectrum disorder pursuant to R 340.1715 of the Michigan Administrative Rules for Special Education.
5. A Multidisciplinary Evaluation Team Report and Eligibility Recommendation dated March 16, 2015 found S.D. ineligible for programs and services as a student with an emotional impairment pursuant to R 380.1706¹ of the Michigan Administrative Rules of Special Education.
6. S.D.'s IEP dated January 26, 2017 provides supports including using a behavior plan and permitting breaks from the academic setting.
7. Following a series of short-term removals during the first several months of 2017-2018 school year, S.D. was given a two-day out of school suspension for his conduct on October 19, 2018.
8. A Manifestation Determination Review (MDR) conducted on November 1, 2017 determined that his conduct on October 19, 2017 was not a manifestation of his disability.
9. S.D. was disciplined for his conduct on January 30, 2018.
10. A MDR conducted on February 6, 2018 determined that his conduct on January 30, 2018 was not a manifestation of his disability.
11. On February 21, 2018, Fowlerville Community Schools Board of Education expelled S.D. for 180 school days for serious school misconduct arising out of his January 30, 2018 conduct.

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

1. Petitioner Exhibit 1 through 26 were not offered.

¹ The Joint Stipulation cites MARSE R 380.1706. This appears to be a typographical error and should actually be MARSE 340.1706 as there is no Rule 380.1706. Rule 340.1706 is the definition for Emotional impairment, determination, evaluation.

2. Petitioner Exhibit 27 is a confidential Report of Neuropsychological Assessment, dated February 5, 2018.
3. Petitioner Exhibit 28 is a Psychological Evaluation Report, dated March 3, 2018.
4. Petitioner Exhibit 29 was not offered.
5. Petitioner Exhibit 30 is a Confidential Neuropsychological Assessment Report, dated May 7, 2015.
6. Petitioner Exhibits 31 through 33 were not offered.
7. Petitioner Exhibit 34 is a Curriculum Vitae for Douglas H. Ruben, Ph.D.

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

1. Respondent Exhibit A was not offered.
2. Respondent Exhibit B is Manifestation Determination Review, dated November 21, 2017.
3. Respondent Exhibit C and D were not offered.
4. Respondent Exhibit E is an Individualized Education Program, dated November 3, 2017.
5. Respondent Exhibits F through K were not offered.
6. Respondent Exhibit L is a Basic Functional Behavior Assessment / Positive Behavior Support Plan, dated November 3, 2017.
7. Respondent Exhibit M through Q were not offered.
8. Respondent Exhibit R is Multidisciplinary Evaluation Team Report and Eligibility Recommendation, dated March 16, 2015.
9. Respondent Exhibit S and T were not offered.
10. Respondent Exhibit W is Permission to Exchange Information, dated February 6, 2018.
11. Respondent Exhibit Y is a letter from Mark Rojewski, dated February 6, 2018.

12. Respondent Exhibit Z was not offered.

After the hearing, Petitioner requested that Respondent Exhibit M be admitted. Respondent had no objection. Respondent Exhibit M is a Behavior Support Plan, dated March 15, 2017.

Respondent offered Exhibit X. This Exhibit is the same as Petitioner's Exhibit 27. It was not admitted as it was a duplicate exhibit. However, it was noted for the record that Exhibit X was not provided to the District until February 6, 2018.

The following individuals testified in this matter:

1. James Fitzgerald, Assistant Principal
2. Amy Jonas, Special Education Teacher
3. Kari Nilsen, School of Social Work Student
4. Douglas Rueben, Psychologist
5. Margie Portice, School Psychologist
6. Michelle Spisz, Teacher
7. Karin Jenson, School Psychologist
8. Jodi McConnell, School Social Worker
9. Megan Hickman, LESA Social / Emotional Coach
10. Kimberly Wooster, Director of Special Education

At the close of Petitioner's proofs, Respondent made a motion for directed verdict. This motion was taken under advisement. Respondent's Motion is denied. A determination will be made fully on the merits. At the conclusion of the hearing, it was determined that the parties would be permitted to file written closing arguments by March 26, 2018. Each party filed a timely closing argument.

ISSUE and APPLICABLE LAW

During the Prehearing Conference, the following issues were identified for the hearing:

- A. Was the Manifestation Determination Review held in November 2017 appropriate?
- B. Was the Manifestation Determination Review held in February 2018 appropriate?

During the hearing, Petitioner waived the claim regarding the November 2017 MDR. [Tr. Vol. I, pg. 36] Therefore, this decision does not address this claim.

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).

The Code of Federal Regulations provide in pertinent part:

34 CFR 300.530. 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.

34 CFR 300.532. Appeal

- (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.
- (3) Unless the parents and LEA agree in writing to waive the resolution meeting described in paragraph (c)(3)(i) of this section, or agree to use the mediation process described in §300.506 –
 - (i) A resolution meeting must occur within seven days of receiving notice of the due process complaint; and
 - (ii) The due process hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of the receipt of the due process complaint.
- (4) A State may establish different State-imposed procedural rules for expedited due process hearings conducted under this section than it has established for other due process hearings, but, except for the timelines as modified in paragraph (c)(3) of this section, the State must ensure that the requirements in §§300.510 through 300.514 are met.
- (5) The decisions on expedited due process hearings are appealable consistent with §300.514.

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 is 14 years old.
2. Student is eligible for special education services as a student Other Health Impairment (OHI), specifically Attention Deficit Hyperactivity Disorder (ADHD).

3. In March 2015, a Multidisciplinary Evaluation Team (MET) completed an Eligibility Recommendation concerning Emotional Impairment and Other Health Impairment. The Team found that Student did not meet the criteria as a student with an emotional impairment. [Ex. R]
4. During the MET, it was noted that there is a family history of ADHD and ODD. The MET also indicated that in 2006, Student met criteria for Speech and Language Impairment and received support through the Early-on Program. The MET also indicated that Student was evaluated at Mott Children's Hospital and diagnosed with ADHD. [Ex. R]
5. The MET report notes that Student struggles with defiant behavior in response to not getting his way, getting reprimanded or corrected or when he is frustrated. [Ex. R]
6. A Neuropsychological Assessment of Student was completed by Vilija Petrauskas, PhD, Postdoctoral Fellow on May 6, 2015. Dr. Petrauskas completed the assessment as part of a Multidisciplinary FASD clinic as the result of a concern about prenatal alcohol exposure. The purpose was to determine if Student exhibited CNS dysfunction as characterized by neurocognitive/neurobehavioral impairment. As part of the Multidisciplinary Evaluation, Student was also to be seen by Behavioral Pediatrics and Genetics for medical and dysmorphology exams. [Ex. 30]
7. Dr. Petrauskas noted that Student's available medical history is significant for reactive airway disease, pneumonia, fifth disease, ADHD and ear infection. [Ex. 30]
8. As part of Dr. Petrauskas' assessment, the following tests were administered to Student: Wechsler Intelligence Scale for Children, fifth edition; Wechsler Abbreviated Scale of Intelligence-second edition; Wechsler Individual Achievement Test- third edition; Rey Osterrieth Complex Figure Test; Grooved Pegboard Test; California Verbal Learning Test, Children's edition; Test of Everyday Attention for Children; Test of Variables of Attention; Delis-Kaplan Executive Function System; Connor-3; Behavior Rating Inventory of Executive Function; and Adaptive Behavior Assessment System-second edition.
9. Dr. Petrauskas found that Student met criteria for Attention-Deficit/Hyperactivity Disorder-Combined Presentation (314.01). Dr. Petrauskas did not make a determination regarding Fetal Alcohol Syndrome (FAS) at the time because they were waiting for the results of the medical and dysmorphology exams. Dr. Petrauskas makes no mention of ODD as part of the medical history or as a diagnosis. [Ex. 30]

10. It is unclear if Dr. Petrauskas' assessment was ever provided to the IEP team or District personnel prior to this hearing.
11. Petitioner did not provide any documentation from the medical or dysmorphology exams, as a result neither the School nor this Tribunal is aware if Student has been diagnosed with FAS from the Multidisciplinary FASD clinic.
12. On November 3, 2017, an IEP team meeting was held and continued on November 10, 2017. Participating as team members were Student S.D.; Petitioner J.R.; Myriah Lillie, Principal; Michelle Spisz, General Education Teacher; Amy Jonas, Special Education Teacher; Karin Jenson, School Psychologist; Jodi McConnell, LMSW; James Fitzgerald, Assistant Principal; Megan Hickman, MSW, Social Emotional Coach; Laura Young, James Budley, ARC of Livingston; Mike Campbell, CMH Wraparound; and Kim Wooster, Director of Special Education. [Ex. E]
13. The IEP team determined that Student was eligible for Special Education as a Student with Other Health Impairment as defined by MARSE Rule 340.1709A. The IEP noted that Student was below grade level in math and reading and that he was failing all classes except P.E. and ELA. The IEP developed goals related to mathematics and school success. The school success goal concerned Student's work completion. The IEP contained a number of supplementary aids such as use of calculator and extended time to complete assignments. The IEP also specified the use of a Behavior Plan that would be updated outside the IEP process. The Special Education Services and Programs listed in the IEP included 10-20 minutes of director school social worker services one to three times a month; 10-30 minutes of consultation school social worker services for two to three times a month; and 10-15 minutes of Occupational Therapy Consultation for one to two times a month. Student would receive 9 to 12 hours per week of educational services in the Secondary Resource Room. [Ex. E]
14. In the fall of 2017, the Livingston Educational Service Agency (LESA) rolled out a new process for developing a Functional Behavior Assessments (FBA). Trained staff would facilitate and support the county teams in developing FBA making the process uniform across all districts. [Tr. Vol. II, pg. 221]
15. The LESA staff utilize the competing behavior pathways in developing a FBA. This process requires that you start by defining the behavior well and ask questions to determine where that behavior is occurring. Next, some ABC observations would occur to see that behavior. Then, a hypothesis would be developed. The competing behavior pathway is a visual to allow you to see what is happening before the behavior occurs, the antecedent, and what is happening after. This allows staff to hypothesize the function of the behavior. From there

the interventions are planned to ensure that the behavior is extinguished. [Tr. Vol. II, pg. 223-224]

16. Megan Hickman is a social emotional learning coach for LESA. Ms. Hickman has a bachelor's degree in women's studies and sociology and a master's degree in social work from the University of Michigan. She has taken courses specializing in school social work. She is a Licensed Master Social Worker and a certificated school social worker. She was the LESA staff member assigned to assist Fowlerville Schools in developing FBAs.
17. On November 3, 2017, a Team Meeting was convened to develop a Functional Behavior Assessment and Positive Behavior Support Plan. Ms. Hickman facilitated the development of the FBA. The other team members were Michelle Spisz, general education teacher; Jodi McConnell, School Social Worker; J.R., Petitioner; James Fitzgerald, Assistant Principal; Amy Jonas, Special Education Teacher; Myriah Lillie, Principal; Karin Jenson, School Psychologist; and Laura Young. [Ex. L]
18. The team began by attempting to prioritize what behavior of Student's would the plan focus on. After analyzing Student's disciplinary referrals, it was determined that the FBA would focus on leaving the class. This particular behavior was occurring with high frequency and often led to other inappropriate behaviors. The team believed that if they were successful in keeping Student in class, the other behaviors would also be extinguished. [Tr. Vol. II, pg. 225]
19. Through the ABC observations, the Team developed the hypothesis that Student was leaving the classroom to avoid or escape a task. Next, the Team developed strategies that could be put in place to prevent the behavior from occurring and skills to keep the behavior from occurring. The Team also had lengthy discussions regarding how to reinforce the appropriate behaviors and the response to the behavior when it occurred. [Tr. Vol. II, pg. 226]
20. Ms. Hickman testified that the research suggests that when developing a comprehensive FBA, it is better to focus on one behavior. If you choose too many behaviors it can impact the fidelity of the Plan and the data for analyzing the Plan. It was for this reason that the Team only focused on one behavior, the most significant, eloping class to avoid work. [Tr. Vol. II, pg. 226]
21. As part of the development of the FBA, the Team looked at the various environments to compare where Student was being successful and also having difficulties. As part of the FBA, Student's schedule was altered. He began receiving math in a one on one environment. They looked at scaffolding demands. [Tr. Vol. II, pg. 257]

22. Based on the data collected from the Team, Student had 16 behavioral incidents documented prior to the implementation in November. Student only had six documented behavior incidents between the implementation of the Plan and January 30, 2018. [Tr. Vol. II, pg. 259]
23. As part of the Behavior Intervention Plan (BIP) developed as part of the FBA, Student received green tickets that he was permitted to trade in for rewards.
24. On January 3, 2018, Alex Hinesbusch, PhD., Postdoctoral Fellow, at the University of Michigan Department of Physical Medicine and Rehabilitation-Rehabilitation, Psychology and Neuropsychology, completed a Neuropsychological Assessment of Student.
25. Dr. Hinesbusch notes that Student has a history of attention-deficit/hyperactivity disorder (ADHD), oppositional defiant disorder (ODD) and developmental delay. However, the report does not indicate when or by who the ODD was diagnosed. The report does reference the previous assessments by Dr. Petrauskas.
26. As part of Dr. Hinesbusch's assessments, the following tests were administered: Wechsler Intelligence Scale for Children, fifth edition; Wechsler Individual Achievement Test, third edition; California Verbal Learning Test, Children's Version; Test of Variables of Attention Complex Figure Test; Grooved Pegboard; Adaptive Behavior Assessment System, third edition, Parent Report; Conners, 3rd edition; Parent and Teacher Report; Behavior Assessment System for Children, third edition; Self and Parent Report, ASESBA Teacher Report Form Ages 6-18. [Ex. 27]
27. Dr. Hinesbusch found that Student meets the criteria for Attention-Deficit/Hyperactivity Disorder, combined subtype, and Specific Learning Disability in Mathematics and deficits in executive functioning. [Ex. 27]
28. Neither Dr. Petrauskas or Dr. Hinesbusch diagnosed Student with ODD. [Ex. 27 and 30]
29. Petitioner did not provide Dr. Hinesbusch's assessment to the District until February 6, 2018.
30. On January 30, 2018, Student was in his first hour classroom with Ms. Spisz. He requested to take his earned green tickets to the office and turn them in for his reward. Ms. Spisz granted permission for Student to leave the classroom to go to the office and turn in the green tickets.

31. Student went to the office. Mr. Fitzgerald was not there at the time. Student apparently left and returned to his classroom. He then returned to the office. At some point without permission, he took a Chromebook. When he returned to the office he had the Chromebook in his possession and demanded that Mr. Fitzgerald remove all the restrictions to the Chromebook.
32. Mr. Fitzgerald observed that Student was angry. He attempted to de-escalate the situation. He told Student that he would talk with the teacher and make sure the Chromebook was needed. Mr. Fitzgerald reminded Student that he knew that he was not permitted unrestricted access. Student was very angry. He did eventually calm down and traded in his reward ticket. Student was angry and swearing at Mr. Fitzgerald. [Tr. Vol. I, pgs. 29-30]
33. Student was angry and threatened to break every Chromebook. Student got up, left and slammed to door. Ms. Lillie kind of blocked the office door and encouraged Student to stay in the office while he was agitated. Student wanted to go back to the classroom but was told he could not go while agitated. She gave Student multiple opportunities and locations to go into to calm down. Student set the Chromebook down, logged out, and then took off out through the break room back door. [Tr. Vol. I, pg. 30]
34. Student continued to not follow direction from staff. Student hid between exterior set of doors. Sergeant Soli and Mr. Dowker attempted to speak with Student and encourage him to come to the office. Mr. Dowker and Sergeant Soli stood in front of the doors to keep Student safe. [Ex. B]
35. Staff attempted to contact student parents. During this time, an officer went to the home to make sure someone was there. [Ex. B]
36. Eventually, Student calmed down. He entered his classroom and without disturbing the class, packed his belongings and left. Student was agitated, and his fists were clenched. [Tr. Vol. I. pgs. 163-164]
37. The officer verified that Student's step-father was home and that it was alright to permit Student to walk home. Student left at about 8:26 a.m. yelling multiple profanities. [Ex. B]
38. A Manifestation Determination Review (MDR) was held on February 6, 2018 to determine if Student's conduct on January 30, 2018 was a manifestation of his disability. [Ex. B]
39. Participating in the MDR was Kim Wooster, Director of Special Education; J.R., mother; Myriah Lillie, Principal; James Fitzgerald, Assistant Principal; Officer Soli;

Amy Jonas, Special Education Teacher; Jodi McConnell, LMSW; Karin Jenson, School Psychologist; Laura Young; Megan Hickman, LMSW, Social/Emotional Coach; Michelle Spisz, General Education Teacher; B.R. step-father; Mike Campbell. [Ex. B]

40. At the MDR, Petitioner provided the District with a four-sentence letter from Mark Rojewski, MD, which stated that Student has been diagnosed with ADHD-inattentive type and ODD. The letter also stated that the Student was following appropriately with adolescent psychiatry and will likely remain symptomatic throughout the school year. [Ex. Y]
41. Ms. Wooster requested that Petitioner sign a release of information to permit the IEP team to obtain clarifying information from Dr. Rojewski. Petitioner refused. [Ex. W]
42. As part of the MDR, the Team reviewed Student's IEP; the summary of the behavior on January 30, 2018; the FBA and Behavior Plan; the letter from Dr. Rojewski and the Neuropsychological Assessment from Dr. Hinnebusch. [Ex. B]
43. There was lengthy discussion among the Team in deciding the MDR. It was the opinion of the Team that the behavior was not a manifestation of Student's disability. The Team made this decision based on a number of factors including the control exhibited by Student during much of the interaction.
44. It was the opinion of the Team that Student had planned to accost Mr. Fitzgerald regarding the Chromebook restrictions. As part of the plan, Student used subterfuge to leave the classroom and go to the office. Student appropriately approached Ms. Spisz during class and requested to go to the office and turn in his green tickets.
45. When Student approached Ms. Spisz, she had no indication that he was agitated. He had been working on this school work and under the conditions of the Behavior Plan, approached Ms. Spisz and properly asked to go to the office.
46. However, at some point and without permission, Student removed a Chromebook from the storage shelves in the classroom and took it to the office where he began the altercation with Mr. Fitzgerald.
47. From the testimony of the various Team members, Student behaved appropriately each time he thought he was getting what he wanted. When he thought Mr. Fitzgerald was removing the Chromebook restrictions, Student's

interaction was appropriate. When he was not getting his way, he would escalate the situation.

48. Student was able to calm himself sufficiently when he entered the classroom to collect his belongings, he did not disturb anyone else in the classroom.
49. From the description of the incident, Student's actions on January 30, 2018 were specifically designed to get what he wanted. He controlled his behavior to the extent necessary to obtain his desires. When he did not get his desires, he would misbehave. This is not impulsive behavior but a controlled temper tantrum to manipulate the staff.
50. The Team reviewed Student's actions based on all the information that they had at the time. They examined his defiant behavior and determined that Student's actions on January 30, 2018 were not a manifestation of any disability but deliberate actions to obtain his desires. On January 30, 2018, when Student did not get unfettered access to the Chromebook, he continued his actions until he was permitted to simply go home.
51. Because Student's actions were found not to be a manifestation of his disability, the District imposed sanctions for Serious School Misconduct under the Student Code of Conduct as they would any other student.
52. Student was not sanctioned for using profanity as the Team viewed the profanity as part of the disability because of the impulsive nature.
53. Subsequent to the MDR, Student was seen by Dr. Douglas Ruben for an evaluation.
54. On February 27, 2018, Douglas Ruben, Ph.D., completed a psychological evaluation of Student. Dr. Ruben was evaluating Student to determine if there was a potential for sexual predatory behavior considering an allegation raised by the biological parent of Petitioner's step-children. [Tr. Vol. I, pg. 91]
55. As part of the background information, Dr. Ruben cites to the two neuropsychological testing reports completed by Dr. Petrauskas and Dr. Hinnebusch. [Ex. 28]
56. He notes that Student had previously been diagnosed with ADHD, combined presentation and Specific Learning Disability because of math deficits. Dr. Ruben makes no mention of a previous diagnosis of ODD. [Ex. 28]

57. Dr. Ruben administered the following tests: Millon Adolescent Clinical Inventory (MACI); Wechsler Abbreviated Scale of Intelligence, 2nd edition; Behavior Assessment System for Children, BASC-3 parent rating scale, Adolescent; House-Tree-Person Test; Rorschach Psychodiagnostic; Thematic Apperception Test (TAT); Clinical Interview and reviewed the Neuropsychological Assessment Report, May 7, 2015; the Neuropsychological Assessment Report, January 3, 2018; and the Functional Behavior Assessment/Positive Behavior Support Plan, Fowlerville Schools, November 3, 2017. [Ex. 28]
58. As a result of his evaluation, Dr. Ruben diagnosed Student with Disruptive Mood Disregulation Disorder, Attention Deficit Hyperactivity Disorder, combined presentation; and Oppositional Defiant Disorder, severe. Dr. Ruben specifically noted that Student can be highly oppositional, authority disrespectful, rule-violating and inconsistent with behavior promises. He presents a high risk of angry and rebellious behaviors despite clear guidance on how to follow instructions. [Ex. 28]
59. Dr. Ruben testified that Student's behavior has a pattern. He stated that when asked to do something or when he anticipates that there's going to be any type of confrontation, Student will escalate, usually using profanity. This will be followed by a threat of property destruction. Then Student will attempt to get out of the situation, escape or avoidance. Dr. Ruben testified that the parent and a teacher may be reinforcing this behavior. This type of cyclical tantrum is an active behavior commonly seen as a subtype of ADHD, combined. [Tr. Vol. I, pgs. 95-97]
60. Dr. Ruben testified that this is impulsive. Student wants what he wants and does not want a delay. When Student sees that it is not going good, he wants to get out of the situation. [Tr. Vol. I, pg. 97]
61. Dr. Ruben's report was not available to the District at the time of the MDR.

DISCUSSION

In the instant matter, like in most due process hearings, many witnesses testified and there were numerous exhibits offered and admitted into evidence. Post-hearing written closing arguments were permitted. The closing arguments filed in this matter were lengthy, detailed and thorough regarding the witnesses' testimony, documentation offered at hearing and the applicable law. I have reviewed and considered all that is contained in the post-hearing written closing arguments, the exhibits and the transcripts of the hearing in making a determination in this matter.

I find that the District properly reviewed all the circumstances surrounding the incident of January 30, 2018 as part of the manifestation determination. The District clearly considered all information that it possessed at the time including the documents presented by Petitioner.

Although Petitioner contends that the Student had ODD and the behavior was a manifestation of the ODD, it is unclear what documents were ever given to the District prior to the February 6, 2018 MDR that supports this diagnosis. Neither Neuropsychological Assessment completed by the University of Michigan Medical Staff diagnosed Student with ODD. Rather, each diagnosed Student with ADHD combined type and one diagnosed Student with a specific learning disability. The letter from Dr. Rojewski indicates that Student had been diagnosed with both ADHD inattentive type and ODD. However, the letter gives no specifics. Furthermore, the efficacy of the letter is questionable as both Neuropsychological Assessments indicate that rather than ADHD inattentive type, Student was actually diagnosed with ADHD combined type. When the District sought authorization to clarify the letter, Petitioner refused. If the Petitioner refuses to provide accurate and relevant information to the District, the District cannot be held liable for making decisions using the only information it has.

It is clear from the record that Petitioner manipulates the information provided to the District. She does not provide complete and accurate documents to allow the Student's IEP team to have as much information as possible while making determinations. She refused to sign a release of information concerning Student's diagnosis.

At the time of the MDR for the January 30, 2018 incident, Dr. Ruben had not yet completed his evaluation. This is the first documentation provided that actually diagnosis Student with ODD and any type of explanation.

Dr. Ruben contends that the behavior of January 30, 2018 was a manifestation of Student's disability. Limited weight is given to Dr. Ruben opinion as the purpose of Dr. Ruben's assessment was to examine sexual predatory behavior, he never spoke to any school staff, did not have access to all the information regarding Student's behavior on January 30, 2018 or even other behavioral referrals. One of the most critical factors from the MDR was that Student used subterfuge to leave the classroom and approach Mr. Fitzgerald. It is unclear from Dr. Ruben's testimony if he was aware of this factor. The preplanning and subterfuge use of the tickets to go to the office were not clearly written in the MDR report [Ex. B]. It appears that Dr. Ruben only used the MDR report, Exhibit B, and potentially verbal reports from Petitioner concerning the incident. In light of Petitioner's failure to provide complete and accurate information to the District, it is unclear that Dr. Ruben actually had a full picture when he arrived at his opinion. Dr. Ruben himself testified that it would have been critical for him to speak to school staff when making decisions concerning the school environment. Because the

evaluation was not completed as part of a school environment, Dr. Ruben never spoke to any school staff.

Student's conduct on January 30, 2018 was not an impulsive moment. Student used subterfuge to leave the classroom and approach Mr. Fitzgerald regarding access to the Chromebook. This was not an incident where an authority figure approached Student about a situation triggering any impulse or defiance. This was an incident where the Student created the incident. Clearly, Student had a plan of action when he arrived at school on the morning of January 30, 2018 to discuss access to the Chromebook with administrators. He attempted to get his own way and when that failed, he engaged in serious misconduct until he was permitted to go home. The incident of January 30, 2018 was premeditated and not impulsive.

I find that the District thoroughly reviewed all the information in its possession concerning Student, his disability and his behaviors when conducting the manifestation review. The District's determination based on the information it had at the time of the manifestation review was appropriate.

CONCLUSIONS OF LAW


I find based on a preponderance of the evidence, that Petitioners have failed to establish that Student's conduct on January 30, 2018 was a manifestation of his disability.

ORDER

IT IS ORDERED:

1. Petitioners' complaint is **DENIED**.
2. Respondent's Motion for Directed Verdict is **DENIED**.
3. 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

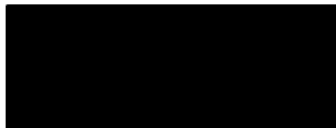
I hereby state, to the best of my knowledge, information and belief, that a copy of the foregoing document was served upon all parties and/or attorneys of record in this matter by Inter-Departmental mail to those parties employed by the State of Michigan and by UPS/Next Day Air, facsimile, and/or by mailing same to them via first class mail and/or certified mail, return receipt requested, at their respective addresses as disclosed below this 2nd day of April, 2018.



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