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Due Process Hearing Officer

KANSAS STATE DEPARTMENT OF EDUCATION
EXPIDITED DUE PROCESS HEARING

____, a minor female child and Case no. 14EP -OOI USD #_____

HEARING OFFICER'S DECISION

1. On October 21, 2013,_____(Father) and_____(Mother)_____, the

parents of __ a minor female child filed a Request for Expedited Special education Due Process Hearing. This matter was heard on November 11, 2013. Both Mother and Father presented evidence in the form of testimony and Exhibits P-l through P-4. SRO_____ (Assistant Principal _____ of High School),_____(Special Education Resource Teacher), (School Counselor) and_____(School Psychologist)

_____

testified for the district. The district also submitted Exhibits D-1 through D-33 for consideration.

2. In their complaint, the parents alleged that USD #:

A. Made a manifestation determination without reviewing all relevant information supplied by the parents, made a decision prior to the meeting and that the Manifestation Group did not contain the proper educational participants.

B. Manifestation Group recommended the maximum penalty for the child's behavior without consideration for __'s mental and/or emotional health.

3. On November 4, 2013, the district filed "School District's Motion to Dismiss" and on November 6, 2013, the district filed "School District's Supplement to Motion to Dismiss" the issue(s) raised in 2B. That motion is granted. The Manifestation Group made no recommendations regarding the disciplinary action later taken by USD #

The disciplinary action taken by the district was the result of a Disciplinary Due Process Hearing held October 23, 2013. The parents and ___ attended the hearing and presented evidence regarding __'s mental and emotional health. __ was suspended by the Disciplinary Hearing Committee until March 14, 2014. The parents did not request an appeal hearing and failed to exhaust their administrative remedies through that appeal process and the suspension stands.

4.The sole remaining issue for due process would then be did the Manifestation Determination Review team, Exhibit D-23, correctly find that the conduct in question (possession of drugs and contraband) was NOT caused by nor did it have a direct substantial relationship to __'s disability. (All parties agree that the district properly implemented the IEP.)

FACTUAL BACKGROUND

5. __ is a 15 year old transfer student with an IEP from Massachusetts, Exhibit D-2. In addition to the Massachusetts IEP, the district also received a "Report of Neuropsychological Assessment" from Dr. _____ __'s physician in Massachusetts in the Epilepsy Program, Exhibit D-1. The IEP team met and an IEP (written for OHI) was in place by October 8, 2013, Exhibit D-4.

6. __ "has a history of epilepsy diagnosed at 22 months of age" (Exhibit D-1 , page 1). She also has been diagnosed with mood disorder, depression, receives medication for anxiety

and has PTSD (testimony of Father and Mother). According to the testimony of the parents (based on the written report of Dr.exhibit D-1), __'s epilepsy impacts her decision making.

7. On October 9, 2013, __ was found in possession of 3 lighters, drug paraphernalia and marijuana, Exhibit D-8. __ gave conflicting stories about the items to SRO _____ (Exhibit D-7) and _____. Ms. __ claimed that she was returning some of the items to another student and/or she had received some of the items that morning from another student. Security footage did not support FIG's story that the items were received that morning from another student, Exhibit D-6. __ was arrested and placed on 10 days short term out of school suspension, Exhibit D-5.

8. Text messages taken directly from __'s phone (Exhibit D-9 through D-21) indicate that __ was interested in purchasing marijuana from the first day she began school roughly on September 9, 2013, until the contraband was found in her possession on October 9, 2013. The text messages also show a course of conduct revolving around purchase/use/consumption of marijuana that appears to be thought out and planned.

9. In Exhibit D-22, __ even emails Ms.(on October 1 1, 2013) that her _____ suspension "was a blessing in disguise! I am staying away from all of the drugs and alcohol and this was my wake up call and I feel better.. .not having to hide anything".

MANIFESTATION DETERMINATION REVIEW

10. Ms.testified that a Manifestation Determination Review (MDR) was _____ held October 14, 2013, Exhibit D-23. In attendance for the district throughout the entire meeting were Ms. Mr. V , Ms. and Ms. _____ _____, _____, _____

English Teacher, left early in the meeting. Mr. _____attendance was not required because the conduct in question was not academically related. The MDR team used the guidelines developed by the district, Exhibit D-24.

Ms. _____testified that no decision was made prior to the MDR team meeting but that a description and narrative of FIG's behavior (possession of contraband and marijuana) was completed prior to the start of the MDR meeting.

12. To the sole question at issue: "Was the conduct in question caused by or did it have a direct substantial relationship to student's disability" Ms. _____voted "No" because:

A. Ms.did not believe epilepsy caused __ to bring drugs to school.

B. She believes that __ organized and networked with students to obtain drugs as shown by the text messages from __'s phone.

C. __ told Ms.that __ had inappropriate items in her backpack.

D. The Massachusetts IEP (Exhibit D-2) stated that __ was able to articulate good and bad choices.

E. __ concealed the illegal activity during the investigation and hid the contraband among other items in her backpack.

13. Mother testified that the MDR team did not consider notes/reports contained in a white notebook. Other MDR team members do not recall Mother asking that the information contained in the white notebook be considered. Ms. _____reviewed Exhibits P-l through P-4 and testified that this "new" information would not have made a difference because it contained no new diagnosis and no indication that __'s behavior and control problems were related to her seizures.

14. An IEP placement meeting was held October 25, 2013. Both parents and __ attended. It was the decision of the IEP team that __ would attend Project Hope during the period of her suspension. __ is still currently attending Project Hope. The parents testified that Project Hope has 23 male students and only 2 female students. The parents had no specific instances where the gender composition of Project Hope negatively impacted __'s education.

15.(Special Services Coordinator) testified that Project Hope was an alternative educational day program for grades 5-12. __ receives IEP services at Project Hope and __ is progressing well.

16. Mr.testified that as __'s 3rd hour resource teacher he found __ to be generally well adjusted. He also testified that he did not believe __'s possession of contraband and marijuana was a manifestation of or had a direct substantial relationship to her disability because:

A. __ was aware that her activity was illegal and was aware of the consequences of that activity because of her text messages and the fact that items were hidden in the backpack.

B. __ texts (Exhibit D-20) demonstrated forethought, planning and networking.

C. He found no evidence of impulsiveness and ample evidence of planning.

D. Exhibits P-l through P-4 would not have changed his opinion.

Ms. also testified that the MDR team made no decision until the meeting October 14, 2013. She voted no to the question of whether the conduct in question was caused by or did it have a direct substantial relationship to the student's disability because:

A. Her review of Dr. 's report (Exhibit D-1) shows __ had the ability to compensate and could problem solve.

B. __'s 30 days of text messages show that __ was knowledgeable about drugs.

C. __ had 3 days to think about bringing marijuana pipe to school and used planning and forethought.

D. __ concealed her illegal activity in the backpack.

E. Receipt of Exhibit's P-1 through P-4 would not have made a difference in her decision.

18. Ms. _____testified that the MDR team did not make a decision prior to the meeting although the details of the incident had been recorded on the paperwork prior to the meeting. She also testified in agreement with Mr. _____, Ms. _____ and Ms. _____because:

A. __'s problem solving skills are within the expectations for her age.

B. __ had previous recorded instances of disruptive behavior (conduct problems).

C. 30 days of text messages show forethought and planning before acting.

D. Concealment of illegal activity.

E. Exhibits P-1 through P-4 would not have made a difference because they contain no testing data or academic data.

19. Both Mother and Father testified at the hearing. The parents believe that the district did not spend enough time with __. District employees could not know why __ brought contraband and marijuana to school. The parents testified that __ did not knowingly or willingly bring drugs to school. The conduct was a manifestation of __'s disability because:

A. Dr. _____'s report indicates that __ is not capable of thinking through the process of bringing contraband to school because of the impact of her disability on __'s executive decision making.

B. The district had __ as a student for only 4 weeks and cannot know what impact __'s disability has on her thought process.

c. Parents had 10 years of __'s educational/psychological history (white notebook) that the district failed to consider.

D. __'s disability causes her to lack executive and cognitive functions.

E. MDR team made decision prior to meeting.

F. __ did not willingly or knowingly bring contraband to school because of her disability.

G. All of __'s conduct shows impulsivity that is tied to her disability. __ told her parents that she did not know why she did this.

H. __ has a history of lying so that her text messages are fluffing or lies to impress her friends and not true statements or planning.

I. District never talked about what was best for __ and made their decision without considering __'s mental development.

J. __ is immature and not cognitively developed. Parents testified that __ behaves like a 12 year old and not a 15 year old,

K. District never considered impact that epilepsy had on __'s cognitive thinking.

20. The parents testimony consisted mainly of the above conclusions. As __'s parents, they believe that __ did not realize that she should not bring drugs and paraphernalia to school and that her epilepsy was responsible. No objection evidence exists to support their position.

After reviewing all of the exhibits, testimony and applicable statutes and case law, it is the decision of this hearing officer that:

The petitioners failed to meet their burden of proof. The manifestation determination made by the Manifestation Determination Review (MDR) team was factually and legally correct. Substantial evidence supports the fact that __'s possession of contraband and marijuana was not caused by and did not have a direct and substantial relationship to her disability ("0111").

The MDR team considered all relevant information and made a decision after consideration of all relevant information after the meeting. The MDR team was comprised of all necessary team members.

The conclusions/legal arguments/factual statements contained in the "School District's Post Hearing Brief" are adopted.

Is/ sue _____
DeVoe sue DeVoe,
#13314
Expedited Due Process Hearing Officer

Certificate of Service

Sue DeVoe states that on November 25, 2013, she emailed a copy of the above to:

Parents_____and_____, amgvaca@yahoo.com
_____,MGN@nkfirm.com
_____, _____@_____
schools.org
Mark Ward, mward@ksde.org

"s/ Sue _____
DeVoe Sue DeVoe