

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

PENNSYLVANIA

SPECIAL EDUCATION HEARING OFFICER

DECISION

EXPEDITED DUE PROCESS HEARING

Name of Child: E.M.

ODR #18638/ 16-17 KE

Date of Birth:
[redacted]

Date of Hearing:
January 25, 2017

CLOSED HEARING

Parties to the Hearing:
Parent[s]

Downingtown Area School District
540 Trestle Place
Downingtown, PA 19335

Date of Decision:

Hearing Officer:

Representative:
John Bogan, Esquire
Frankel & Kershenbaum
1230 County Line Road
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Jennifer Donaldson, Esquire
Sweet, Stevens, Katz and Williams
331 Butler Avenue
New Britain, PA 18601

February 3, 2017

Linda M. Valentini, Psy.D. CHO
Certified Hearing Official

Background

Student¹ is a late-teen aged District resident who was formerly eligible for special education under the classification of Other Health Impairment (ADHD) but was exited from special education following a reevaluation completed in late May 2016. The Parent² agreed with the reevaluation's conclusion that Student no longer qualified for special education and signed the Notice of Recommended Educational Placement (NOREP). Following an incident on December 9, 2016 involving illegal drugs the District suspended Student for ten days, then pursuant to a School Board hearing expelled Student. Student is currently enrolled in the District's cyber school program and, under specified conditions, is eligible to apply for readmission to the high school when one calendar year has passed.

Believing that certain behaviors in the fall of 2016 should have led the District to conduct another reevaluation, the Parent requested this expedited due process hearing, asserting that Student should have been considered 'thought to be eligible' and therefore entitled to the disciplinary protections afforded by the Individuals with Disabilities Education Act (IDEA).³ Accordingly, the Parent asks for an order that the expulsion be vacated, that the District conduct a manifestation determination, and that the District provide an Independent Educational Evaluation (IEE) at public expense to ascertain Student's needs.

The District's position is that Student is neither an eligible student nor a thought to be eligible student under IDEA, and therefore not entitled to any of the IDEA's protections or provisions related to discipline including a manifestation determination, a 45-day alternative educational placement, and/or even this due process hearing, and presented a Motion to Dismiss in its opening statements. Unwilling to deny the Parent an opportunity to present her case I denied the District's last minute Motion and conducted the hearing.

For the reasons set forth below, I find that the Student was not a 'thought-to-be-eligible' student at the time of the incident in question, that the District acted appropriately with regard to its discipline of Student, and that Student is not entitled to any of the requested relief.

Procedural History

On January 12, 2017 the Parent through counsel filed a request for an expedited disciplinary hearing; in accord with statutory timelines the hearing was scheduled for January 25, 2017. On January 19, 2017 the parties and their attorneys participated in a Resolution Meeting which did not result in an agreement. On January 20, 2017 the District's counsel provided Parent's counsel with an Answer to the Complaint wherein the District advised that Parents should withdraw the expedited due process request, and if they did not "...the District will request that this matter be dismissed by the Hearing Officer for lack of jurisdiction...".

¹ This decision is written without further reference to the Student's name or gender, and as far as is possible, other singular characteristics have been removed to provide privacy.

² The singular 'Parent' is generally used in this decision as mother attended and participated in the hearing and conducted interactions with the District; however, it is understood that she was acting on behalf of both Parents.

³ 20 U.S.C. §§ 1400-1482.

Although the District copied the hearing officer on its Answer, the District did not timely file a Motion to Dismiss. Rather, in a brief conference just prior to the start of the hearing the District's attorney articulated the position that Student was not entitled to this hearing and that the hearing officer had no authority to conduct the hearing because Student was not 'thought to be eligible' under a certain provision of the IDEA. The hearing officer invited the District's attorney to introduce a Dismissal Motion as part of opening remarks, but informed counsel that, as there had not been such a Motion presented earlier for consideration, the hearing would go forward. More importantly, the hearing went forward because just as due process must be fair it must also give the appearance of being fair. As the Parent, the District, their respective counsel and the witnesses were all gathered in the hearing room, aborting the process without allowing the parties to present their evidence presented the possibility of the process being perceived as unfair.

Obviously expecting that the hearing would go forward, Counsel for both parties collaborated on a book of exhibits marked "E" compiled by the District counsel's firm. Counsel explained that these were not strictly Joint exhibits, and that there may be objections to some of the documents, but that the book had been created to streamline the expedited hearing record. Counsel are commended for their cooperation in this regard, as well as for presenting their cases in a succinct manner such that the hearing could be completed in about four hours.⁴

Issues

As of December 9, 2016 was Student entitled to the disciplinary protections the IDEA affords to 'thought to be eligible' students?

If Student was entitled to such protection, what remedies are appropriate?

Stipulation

The Parties stipulated that no one reported any pattern of behaviors of concern regarding Student to the District's Director of Special Education or to her Supervisor, the Director of Pupil Services during the fall of 2016. [NT 174]

Findings of Fact

Exit from Special Education Eligibility

1. Student is a late-teen aged resident of the District who attended a District high school through December 9, 2016 and pursuant to an expulsion is now enrolled in a cyber school program funded by the District. [NT 134, 141; E-22]

⁴ Parent counsel is also commended for stepping in at the last minute because original counsel had become unexpectedly available.

2. In June 2013 Student was identified as eligible for special education services under the IDEA with the classification of Other Health Impairment because of a diagnosis of Attention Deficit Hyperactivity Disorder (ADHD) with associated deficits in Executive Functioning. Symptoms of anxiety and depression were also noted. The Parent's concerns at that time were Student's deficits in organization and time management. [E-8]
3. The June 2, 2013 Evaluation Report found cognitive ability as assessed by the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV) to be in the Average Range (Full Scale IQ 108 at the 70th percentile). Academic achievement standard scores as assessed with the Wechsler Individual Achievement Test –Third Edition (WIAT-III) were all Above Average with Composite Standard Scores as follows: Total Reading 116 at the 86th percentile; Written Expression 120 at the 91st percentile; and Mathematics 118 at the 88th percentile. [E-8]
4. After three years of special education programming Student received the IDEA-mandated re-evaluation, and the results were presented in a Re-Evaluation Report (RR) dated May 24, 2016. The District re-assessed cognitive ability with the Woodcock-Johnson Test of Cognitive Abilities – Fourth Edition (WJ-IV) and found Student's General Ability Index to be 114 in the High Average Range. Academic achievement was assessed through the Woodcock-Johnson Tests of Achievement – Fourth Edition (WJ-IV) and Student earned standard scores as follows: Broad Reading Composite 108 in the Average Range; Written Language Composite 111 in the High Average Range; and Broad Mathematics Composite 118 in the High Average Range. [E-8]
5. Student's grades in major subjects as of May 17, 2016⁵ were as follows (first marking period, second marking period, midterm exam, third marking period): English: A, B, 88, B; Honors Western Civilization A, B, 82, A; Honors Algebra II A, B, 68, B; Chemistry I B, B, 74, C; [Foreign Language] A, A, 77, A. Student's GPA was 3.62. [E-8]
6. Assessment of Executive Functioning with the Behavior Rating Inventory of Executive Functioning (BRIEF) revealed disparate results between the Parent's ratings and a teacher's ratings on ten factors: none of the teacher's ratings of various components queried fell into the significant range whereas nine of the Parent's ratings were clinically significant. [E-8]
7. The Conners Scale was used to look at how symptoms of ADHD affected Student. The Parent's ratings suggested that Student's behaviors affect schoolwork and grades "occasionally", friendships and relationships "occasionally" and home life "occasionally". The teacher's ratings suggested that Student's behaviors affect schoolwork and grades "occasionally" and friendships and relationships "never". Student's self-ratings suggested that Student's behaviors affect schoolwork and grades "occasionally", friendships and relationships "never" and home life "never". [E-8]
8. The possible presence of emotional and/or behavioral disorders was assessed through the Behavior Assessment System for Children – Third Edition (BASC-3). The results of the

⁵ Fourth marking period and final grades were not yet available at the time the RR was written.

Parent's endorsements were reported in two contradictory ways and therefore cannot be established as a fact.⁶ The teacher's endorsements resulted in one at-risk score on Atypicality while "all other areas" measured by the teacher's scale fell into the average range. The Student's self-report endorsements resulted in a clinically significant score for Attention Problems and at-risk scores for Sensation-Seeking, Anxiety, Sense of Inadequacy, Relations with Parents, Self-Esteem, Test Anxiety, Mania and Ego Strength; "all other areas" measured by the Student's scale fell into the average range. [E-8]

9. Formal observation using Momentary Time Sampling resulted in a finding that during a 20-minute interval Student was on task 100% of the time as was the peer chosen as a control. [E-8]
10. The RR notes that Student's teachers reported no significant concerns, and there were no guidance concerns regarding attendance or discipline. [E-8]
11. The RR notes that Student attended Organizational Lab three times per six-day cycle. By May 2016 Student had mastered the IEP goal of utilizing self-advocacy strategies including but not limited to seeking help from the appropriate teacher or resource when needed, independently managing grades and assignments, disclosing the need for SDI and accommodations when appropriate, and earning an average of three points on the self-advocacy rubric completed by teachers once per marking period. [E-8]
12. The May 24, 2016 RR concluded as follows: "When considering all data gathered for this re-evaluation it can be seen that [Student] no longer exhibits an educational disability in any category...Therefore it is the recommendation of the Multidisciplinary Team that [Student] be exited from special education programming and enrolled in full-time regular education programming." The Parent did not request a meeting and did not express any disapproval of the RR. [NT 115, 119, 167; E-8]
13. The Parent approved and signed the NOREP exiting Student from Special Education on May 25, 2017. [NT 116, 144, 168; E-9]

Academics in Fall 2016

14. Close to the beginning of the 2016-2017 school year Student spoke with the Parent and was crying because Student wanted to drop an AP class. The Parent advised Student to speak with the guidance counselor. [NT 149, 170]
15. Student met with the guidance counselor on one occasion, and was distraught and crying about feeling overwhelmed regarding schoolwork. The guidance counselor discussed some strategies Student could use to work through feeling overwhelmed. [NT 36-37, 53]

⁶ The RR reported Parent's endorsements as yielding clinically significant scores on Attention Problems, Social Skills, Activities of Daily Living and Executive Functioning and at-risk scores on Adaptability, Leadership, Functional Communication, Anger Control, Developmental Social Disorders and Resiliency. However the RR then states: "All areas measured by the parent scale fell into the Average range". This may have been a typographical error omitting the word 'other' as seen in the teacher and the Student results.

16. The conversation with the guidance counselor centered on Student's difficulty with an Advanced Placement (AP) college level course in Probability and Statistics. Student wanted to drop that course. [NT 46, 49]
17. In addition to the AP course, Student was also taking Honors Level courses in U.S. History, Math Analysis, and French Seminar. Honors classes are more rigorous than Level One college prep classes. [NT 47-48, 107-108; E-11]
18. Based on twelve years' experience in her role, the guidance counselor does not find it unusual or atypical for a student to cry in her office. [NT 39, 49-51]
19. In her experience the Guidance counselor finds nothing unusual in an 11th grader's wanting to drop a course. [NT 51]
20. In September 2016 at the beginning of the school year Student also met with the high school principal to request dropping the AP course. At the first occasion the principal pointed out that Student had chosen to take the course and needed to give it a good faith effort. [NT 58-59]
21. In October, a few weeks later, Student again came to the principal asking to drop the course. As Student's grade at that time was a "C" the principal pointed out that Student was being successful and encouraged Student to keep going and see if things got better. [NT 60]
22. On the occasion of the third meeting Student had just done poorly on an assessment which pulled down the AP course grade. Given that Student had taken his advice and put forth good faith effort in the course and was still struggling the principal granted permission for Student to drop the AP course and he informed the assistant principal of this. [NT 61, 92]
23. Student "shed a few tears" on two of the three occasions when Student met with the principal. In his experience students crying in his office when told they had to make more effort before he would allow them to drop an AP course in the first four or five weeks of school is not unusual. [NT 62-63, 75]
24. Student met with the assistant principal on one occasion about dropping the AP course. [NT 89]
25. At that meeting Student was crying and expressed feeling overwhelmed with taking two math courses at the same time: AP Probability and Statistics and Honors Math Analysis. Student had been advised not to take two math courses, but Student had wanted to attempt that roster. [NT 90, 108-111]

26. It is not unusual for students to cry in the assistant principal's office – the due process hearing was held in the middle of the week and the assistant principal had already had four students come in crying that week. [NT 90-91]
27. Once Student was allowed to drop the AP course Student's grade improved in the Honors Math Analysis course.
28. At the same time Student was struggling with the AP statistics course Student was also in "Contemporary Issues" with all upperclassmen, mostly seniors. This is a course that involves having conversations with people who are older than you are about issues that are going on in the world today. Although that course can impose pressure, Student thrived in that class as evidenced by not just Student's achieving A's in both quarters of the first semester, but the teacher's recommending Student to represent the course to peers and to the assistant principal. [NT 111-112; E-11]
29. Student was in regular education in 11th grade. Grades for the first two marking periods were as follows: US History Honors B/B; English C/C; Honors Math Analysis D/B; Honors Seminar [Foreign Language] A/B; Contemporary Issues A/A. Weighting of courses is such that a B in an Honors course is weighted like an A in a Level One course. [NT 112-113; E-11]
30. No guidance counselor or teacher expressed any concerns to the principal in the fall of 2016 about Student's behavior or academics previous to the December 9, 2016 incident. The one or two conversations the principal had with the Parent were specifically about Student's desire to drop the AP course. [NT 67-68, 71]
31. The assistant principal is not aware of anyone in the fall of 2016 making any reports to the director of special education, or the director of pupil services, or any other special education staff concerning any pattern of behavior of Student that could warrant special education services. [NT 114-115]
32. Prior to the December 9, 2016 incident the Parent had not expressed any concerns to anyone that Student should be re-evaluated or was in need of special education services. [NT 119]

Behavior Record: Start of the School Year through December 8, 2016

33. Student drove to school for the first time beginning in September 2016. The school day begins at 7:40 a.m. From the start of the school year through November 9, 2016 Student was late to school unexcused fourteen times, seven of these times being ten or fewer minutes late: 8:35, 7:48, 7:42, 7:48, 10:05, 7:43, 7:50, 9:33, 8:49, 7:43, 10:19, 8:00, 10:26, 7:41. On two other occasions Student came late, once at 7:53 and once at 7:44. The attendance log for those two days indicated that following late arrival Student went to the nurse and was excused absent for the rest of the day. [NT 41, 78-81; E-12]
34. Although Student incurred detentions for these late arrivals the assistant principal, whose entire career in education has been with high schoolers, testified that it is not unusual for

students who begin driving to school for the first time to miscalculate distance, the morning volume of traffic, and time. She also testified that students have to park at a distance from the school entrance. Student's being late to school the number of times and the generally few minutes of lateness does not signal school avoidance. [NT 97-98, 102-103; E-13, E-23]

35. Student failed to come to several of the detentions issued for lateness; on one occasion Student called the assistant principal to reschedule. [NT 96-97; E-23]
36. After the assistant principal talked with the Student and the Parent in late October or early November about having Student take the bus to school to avoid lateness instead of driving Student's lateness stopped. [NT 98-100; E-12]
37. Student had one full day of illegal absence from the start of the school year through December 9, 2016. [E-12]
38. Student cut a 6th period sewing class in September. [NT 94; E-12]
39. In November Student [redacted] in retaliation for complications in a "love triangle". Student readily admitted the action and explained the reason for it in detail to the assistant principal. [NT 100-101; E-13]

December 9, 2016 Incident and Consequences

40. On December 9, 2016 Student was involved in an exchange of drugs for money, a transaction that spanned two days. The part of the transaction that took place in the school was recorded on video surveillance footage. Several students ingested the drug, which looked like rock candy, and experienced various physiological effects; some of these students went to the hospital to be checked. [NT 122-134, 136; E-14]
41. A staff member created a typed contemporaneous account of how the school's knowledge of the situation unfolded, including Student's involvement in the incident. The Police Department's School Resource Officer typed out an account of his knowledge of the incident. Student provided a hand-written account of Student's involvement in the matter. [NT 122-134; E-15]
42. The assistant principal's expert opinion is that the incident that spanned two days was neither an impulsive act nor a reflection of deficits in organization. [NT 137-138]
43. The District issued an Out-Of-School Suspension Notification dated December 9, 2016. [E-17]
44. By letter dated December 13, 2016 the Parent was notified that the School Board would hold a hearing for Student on December 23, 2016 to determine whether additional suspension days or expulsion would be imposed. The Parent was informed of her right to bring legal counsel, to present witnesses or other evidence and to cross-examine the District's witnesses. [E-18]

45. On December 21, 2016 the Parent sent an email acknowledging receipt of the hearing notification and confirming the family's attendance. The mother reminded the District that Student has ADD and takes psychotropic medication. [E-20]
46. The District Administration made a recommendation to the School Board that Student be expelled but be given a path to re-entry into school after one year. [E-21]
47. The School Board held a formal hearing on December 23, 2016. Among other items found when Student's belongings were searched was a [sharp instrument]. In addition to the drug issue, possession of the [sharp instrument] was included in the school board's considerations and decision. [E-14, E-22]
48. The School Board found that the charge of possession and transfer of a controlled substance on school property was substantiated. The Board also found that the charge of possession of a weapon on school property was substantiated. [E-23]
49. The School Board accepted the recommendation of District Administration that Student be expelled but be given a path to return to school in one calendar year for the second half of senior year and graduation. [NT 134-135; E-23]
50. The District offered, and the Parent accepted, enrollment of Student in the Pierson Instructors Intercyber Program at District expense. The District agreed to facilitate course work closest in availability to Student's current curriculum. [NT 134; E-22]
51. The Order following the School Board's hearing provided that prior to December 1, 2017 Student may apply for re-entry into the School District for start of the second semester of the 2017-2018 school year if the application for re-entry is in accord with the timeline imposed, and if Student meets certain conditions laid out in the Order. [E-22]

Legal Basis and Discussion

Burden of Proof: The burden of proof, generally, consists of two elements: the burden of production [which party presents its evidence first] and the burden of persuasion [which party's evidence outweighs the other party's evidence in the judgment of the fact finder, in this case the hearing officer]. In special education due process hearings, the burden of persuasion lies with the party asking for the hearing. If the parties provide evidence that is equally balanced, or in "equipoise", then the party asking for the hearing cannot prevail, having failed to present weightier evidence than the other party. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006); *Ridley S.D. v. M.R.*, 680 F.3d 260 (3rd Cir. 2012). In this case the Parents asked for the hearing and thus assumed the burden of proof. As the evidence was not equally balanced the Schaffer analysis was not applied.

Credibility: During a due process hearing the hearing officer is charged with the responsibility of judging the credibility of witnesses, weighing evidence and, accordingly, rendering a decision incorporating findings of fact, discussion and conclusions of law. Hearing officers have the plenary responsibility to make “express, qualitative determinations regarding the relative credibility and persuasiveness of the witnesses”. *Blount v. Lancaster-Lebanon Intermediate Unit*, 2003 LEXIS 21639 at *28 (2003); See also generally *David G. v. Council Rock School District*, 2009 WL 3064732 (E.D. Pa. 2009). There were no concerning issues that arose regarding the credibility of any witness; all presented as testifying to the best of their recollections and there were no points at which their testimony conflicted. The testimony of the principal and the assistant principal was particularly detailed and useful in sorting out the facts in the case. Clearly, the Parent is a loving and devoted mother who wants the best for her child and was understandably distressed by the behavior incident.

Scope of the Decision: Despite the narrow issue articulated at the outset of the hearing, the parties presented evidence such that in the interest of judicial economy and in the hope of preventing further litigation I choose to address three areas of inquiry: whether Student is ‘thought to be eligible’, whether Student’s conduct was a manifestation of Student’s former category of eligibility, and whether an IEE at public expense is warranted.⁷

Thought to Be Eligible: A child who has not been determined to be eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct, may assert any of the protections afforded to children with disabilities if the school district had knowledge, or is deemed to have had knowledge, that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. The school district may be deemed to have had pre-existing knowledge that the student was a child with a disability if: 1) the student’s parent expressed to the teacher or to supervisory or administrative personnel a written concern that the child was in need of special education and related services; 2) the student’s parent requested an evaluation; or 3) the child’s teacher or other school district personnel expressed specific concerns about a pattern of behavior demonstrated by the child, either directly to the director of special education or to other supervisory personnel of the agency. 34 CFR §300.534.

Although Student had been recently exited from special education, the Parent asserts that prior eligibility and behaviors in the fall of 2016 entitled Student to receive certain protections as a thought to be eligible child under the IDEA. However, there are limitations to a child’s receiving a ‘thought to be eligible’ designation, and one limitation is directly relevant to the instant matter: A student who has been evaluated for special education services and was found to not be eligible is not a “thought-to-be” eligible student for purposes of disciplinary protections. 34 C.F.R. § 300.534(c)(2). Student having been reevaluated in May 2016 and found no longer eligible, places Student in the category of this limitation.

Additionally, documentary and testimonial evidence regarding Student’s disciplinary record in the fall of 2016 failed to support the Parent’s belief that the District should have considered

⁷ “The Hearing Officer’s attempt to permanently resolve the issues in this case serves both parties’ interest in avoiding future litigation.” *Sch. Dist. of Phila. v. Williams*, 2015 U.S. Dist. LEXIS 157493.

another reevaluation of Student. Student's lateness to school, at times by minutes, was largely a function of Student's inexperience with driving in morning traffic and negotiating parking. Student's skipping a 6th period sewing class on one occasion raises no red flags, not even a pink flag, and the [redacted] incident was, given the circumstances, not altogether unjustified. Other than lateness which ended in early November, cutting one class, and a mild act of retaliation against a peer who had violated Student's privacy, Student's disciplinary record in the time period in question was altogether unremarkable for a student in regular education or in special education.

Finally, Student's ultimately successful, sometimes tearful, campaign to drop the AP class, was, in the estimation of school staff, not a sign that a reevaluation was warranted on either an academic basis or an emotional basis. I agree. Student was struggling with taking two math courses, against advice, and soon realized that the AP course was too difficult given the rest of Student's roster. During the time Student was taking both math courses the Math Honors course suffered; when Student dropped the AP course after giving it an honest effort the Math Honors grade went up and Student continued to be successful in Student's other courses.

Manifestation Determination: Under the IDEA and its implementing regulations, 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 local educational agency, the parent, and relevant members of the IEP Team shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement an IEP. 20 U.S.C. § 1415(k)(E)(i). *See also* 34 C.F.R. § 300.530(e). If it is determined that the conduct in question had either the causal relationship with the disability or was a result of the failure to implement the child's IEP, the conduct "shall be determined to be a manifestation of the child's disability." 20 U.S.C. § 1415(k)(E)(ii).

The nature of Student's prior basis of eligibility for special education (Other Health Impairment due to ADHD) in the context of the violation of the student code of conduct (exchanging drugs for money) does not support the argument that Student's action had a causal relationship to the former eligibility classification. The facts in the record establish that Student planned and completed the process over a two day period. By no stretch could the violation be considered a manifestation of Student's previous IDEA eligibility.

Independent Educational Evaluations: Parental rights to an IEE at public expense are established by the IDEA and its implementing regulations: "A parent has the right to an independent educational evaluation at public expense if the parent disagrees with an evaluation obtained by the public agency..." 34 C.F.R. § 300.502(b)(1). Here the Parent has not expressed specific disagreement with the District's reevaluation but requests an IEE at public expense as part of a package of equitable remedies for the District's alleged inappropriate discipline of Student.

I find that the District's Re-Evaluation is exemplary. In addition to reporting the results of Student's initial Evaluation, the District conducted a completely new set of assessments that provided current data on Student's functioning. The District reassessed cognitive ability and

academic achievement using a different pair of instruments from those employed in the original evaluation. The District used a well-recognized instrument (BRIEF) to assess Student's executive functioning, and explored social and emotional areas through the BASC and the Connors using the triad of Parent/Teacher/Student questionnaires for each. The District observed Student in class and reported both structured and narrative results, canvassed the teachers and the guidance department, queried the special education teacher providing specially designed instruction in the Organizational Lab three times per six-day cycle and reported Student's grades for the first and second marking period, the mid-term exam and the third marking period. The District's Re-Evaluation went into impressive detail, and the resulting data clearly supported the conclusion that Student was no longer in need of special education services. I find that the District's RR was appropriate and that Student is not entitled to an IEE at public expense

Discussion and Conclusions

For the reasons set forth above, at the time of the December 9, 2016 incident Student was not a 'thought to be eligible' student, there were no signals of any type that suggested the District should have provided another reevaluation to explore academic or emotional needs, Student's violation of the code of conduct was not a manifestation of Student's former eligibility classification, and Student is not entitled to any of the requested relief, including an IEE at public expense. For the benefit of the Parent and the District I offer the comment that aside from the very unfortunate and apparently isolated serious incident, the testimonial and documentary evidence suggest that in school Student presents as a child with considerable assets in the academic and social areas, and these assets should serve Student well upon return to the District and in endeavors post-high school.

Order

It is hereby ordered that:

As of December 9, 2016 Student was not a 'thought to be eligible' student under the IDEA and therefore was not entitled to the disciplinary protections the IDEA affords to eligible or thought to be eligible students.

As Student was not entitled to such protection, the Parent's requested remedies are denied:
The expulsion will not be reversed, the District does not have to conduct a Manifestation Determination meeting and Student is not entitled to an IEE at public expense.

Any claims not specifically addressed by this decision and order are denied and dismissed.

February 3, 2017

Date

Linda M. Valentini, Psy.D. CHO

Linda M. Valentini, Psy.D. CHO
Special Education Hearing Officer
NAHO Certified Hearing Official