

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

ODR No. 2654-1112

Child's Name: E.R.

Date of Birth: [redacted]

Dates of Hearing: 1/17/12

CLOSED HEARING

Parties to the Hearing:

Parents

Parent

School District

Central Dauphin
600 Rutherford Road
Harrisburg, PA 17100-5227

Representative:

Parent Attorney

None

School District Attorney

Christopher J. Conrad
Marshall, Dennehey
4200 Crums Mill Road, Suite B
Harrisburg, PA 17112

Date Record Closed:

January 20, 2012

Date of Decision:

January 31, 2012

Hearing Officer:

Anne L. Carroll, Esq.

INTRODUCTION AND PROCEDURAL HISTORY

Student enrolled in the District during the 2010/2011 school year as an IDEA eligible student with the disability categories of specific learning disabilities (SLD) and emotional disturbance (ED). The District implemented Student's last IEP from the prior school district, placing Student in a supplemental academic and emotional support class until a 3 year reevaluation was completed by the District in March 2011. Following a meeting to review the reevaluation report (RR) and develop a new IEP, Student's IDEA eligibility in the SLD category was confirmed, and with Parent's approval, Student's placement was changed to itinerant learning support. The District requested permission to conduct a psychiatric evaluation to confirm or rule out ED as an additional disability category, but Parent refused.

During the 2010/2011 and 2011/2012 school years, Student displayed no significantly defiant or aggressive behavior in a school setting, and no aggression toward staff, until an incident in November 2011 which led to expulsion after a hearing before the school board. Before referral to the board, the District members of Student's IEP team conducted a manifestation determination review and concluded that the incident was not a manifestation of Student's disability, and was not a direct result of the District's failure to implement Student's IEP. Parent was invited, but declined to attend the manifestation determination review meeting. Since the expulsion, Student has been receiving special education services in an alternative educational setting.

Parent challenged the December 5, 2011 expulsion decision by filing a due process complaint on December 9. A one session expedited hearing was conducted on January 17, 2012. For the reasons that follow, the District's determination that Student was subject to the same discipline as any regular education student is upheld.

ISSUES

1. Before referring Student to the School Board for a hearing that resulted in a change of Student's educational placement for disciplinary reasons, specifically, expulsion, did the District conduct an appropriate manifestation determination review in accordance with IDEA requirements?
2. Was Student subjected to a disciplinary change of placement by the School District for conduct that (a) was caused by, or had a direct and substantial relationship to Student's disability or (b) was the direct result of the District's failure to implement Student's IEP?

FINDINGS OF FACT

1. Student, born [redacted], is a teenaged resident of the Central Dauphin School District and eligible for special education services. (Stipulation, N.T. p. 17)
2. Student has a current diagnosis of specific learning disabilities (SLD) in accordance with Federal and State Standards. 34 C.F.R. §300.8(a)(1), (c)(10); 22 Pa. Code §14.102 (2)(ii); (Stipulation, N.T. pp. 18, 19)
3. Student attended a regular high school in a different school district during 9th grade, then spent 10th grade and the first quarter of 11th grade in a treatment center. (N.T. pp. 102; S-1, p. 2)¹
4. Prior to enrolling in the District for the remainder of 11th grade, Student had been identified by another school district as IDEA eligible, with SLD as the primary disability category and ED as a secondary eligibility category. (N.T. p. 103; S-1, pp. 2, 8)
5. Upon enrolling in the District high school, Student was initially placed in the [redacted] program, an emotional support program. Student was provided with academic and behavior support services, including counseling with a mental health therapist. The

¹ Only the District submitted exhibits that were admitted into the record in this matter. In a January 9, 2012 letter memorandum denying the District's sufficiency challenge/motion to dismiss, Parent was directed to provide the District with a list of any witnesses, other than herself and Student, whose testimony she wanted to present at the hearing, and a list of any documents she wished to use during the hearing by 8:00 a.m. on Thursday 1/12. (HO-1 B, p. 2) During a conference call on 1/13/12, Parent mentioned a District staff member as a potential witness and referred to documents she intended to use at the hearing. Parent was informed that although any documents not included in the District's exhibits could be excluded based upon the District's objection, since Parent missed the deadline for providing her list of documents to the District, Parents' documents would still be considered for admission if important to establishing the facts of the case, provided that Parents provided a list of any such documents to the District by the end of the day on 1/13.

At the hearing, Parent referred to documents related to a civil rights complaint against the District arising from the District's residency challenge to Student's enrollment in the fall of 2010. Parent contended that the District's expulsion decision was related to that complaint. The District's objection to the documents was sustained because the only issues at the hearing were whether the District disciplined Student for reasons arising from or closely related to Student's disability or because of the District's failure to properly implement Student's IEP. *See* N.T. p. 85..

counseling services were discontinued when Student reported that there was no reason to meet with the therapist. (N.T. p. 101; S-1, p. 7)

6. At the time Student began attending school in the District, Student spent part of the school day with a special education teacher, also Student's case manager, who provided instruction, monitored Student's academic progress and provided support by meeting with Student at least weekly to check on grades and assignments. Toward the end of the 2010/2011 school year, when Student began experiencing more academic difficulties, the special education teacher provided additional 1:1 support to enable Student to pass one of two math inclusion classes for the year. (N.T. pp. 103, 110, 111, 126, 127, 128)
7. As part of a required 3 year reevaluation completed in March 2011, a District school psychologist administered the Wechsler Abbreviated Intelligence Scale (WASI) and the Wide Range Achievement Test, Fourth Edition (WRAT-4). Parent and Student's regular education teacher completed rating scales for the Behavior Assessment System for Children-Second Edition (BASC-II). (N.T. p. 134; S-1, pp. 1—7)
8. The ability and achievement tests (WASI and WRAT-4) disclosed a severe discrepancy between Student's verbal and perceptual reasoning abilities, as well as between Student's overall ability and achievement in math, particularly math calculation, resulting in the psychologist's recommendation to retain the SLD eligibility category. (N.T. pp. 105, 134, 135; S-1, pp. 3—5, 8)
9. Parent's BASC-II ratings placed Student in the "at risk" range for anxiety, attention problems, adaptability, social skills and functional communication. Parent's ratings were in the "clinically significant" range for depression, but Parent disagreed with the results of the scoring of her answers. Parent did not believe that Student was depressed, or had an emotional disturbance, but noted that personal issues, such as the loss of Student's dog, caused a sad demeanor at times. (N.T. p. 137; S-2, p. 6, S-2, p. 5)
10. Student's special education teacher also completed the BASC-II form. Her ratings placed Student in the "at risk" range for hyperactivity, conduct problems and learning problems and in the "clinically significant" range for aggression, based upon the response that Student "almost always: argues when denied own way." (S-1, pp. 6, 11)
11. A Functional Behavioral Assessment of Student was conducted and data sheets prepared by District staff to track and decrease/eliminate arguing. That target behavior was selected based upon records from previous schools Student attended which identified arguing as a commonly displayed behavior, but tracking was eliminated after a 10 day observation because the behavior was not displayed in District classrooms other than with the counselor to whom Student had been assigned, and did not recur once the counseling was eliminated. The school psychologist concluded that a behavior support plan was unnecessary. (N.T. pp. 138, 139; S-1, pp. 9, 10)
12. Behaviors of concern identified by Student's teachers were distractibility, lack of focus, difficulty completing/turning in class and homework assignments. Classroom

observation also identified a moderate need for academic support in math when presented with complex concepts or operations. (S-1, pp. 6, 7)

13. Parent declined the school psychologist's request to permit the District to conduct a psychiatric evaluation, in accordance with District policy, to determine whether ED should continue as a secondary disability category. (N.T. pp. 45, 46, 137, 148, 151—154)
14. The March 2011 ER included recommendations that Student should be provided with extra time to complete work; assure that larger problems were divided into smaller pieces to master before combining the parts to reach the whole result; preview of facts and vocabulary prior to reading a textbook passage; review and repetition; visual support strategies, career exploration and goal setting. (S-1, p. 12)
15. An IEP meeting was held and an IEP developed for Student at the same time the ER was reviewed. Needs identified in the IEP included borderline visual- spatial matching skills, below average math computation skills; social skills, anger management training, coping and self-advocacy skills training. (N.T. p. 106; S-2, p. 7)
16. The IEP included transition services, a goal for math and a goal for timely meeting interim deadlines and completing Student's [major] project. Specially designed instruction included extended time for large tests and assignments, prompting to remain on task, bi-weekly check-in with the special education teacher/case manager for tracking academic progress and work completion and use of a calculator. The IEP further provided that Student would spend 90% of the school day in the regular education classroom with itinerant learning support services. (N.T. pp. 108, 109; S-2, pp. 13—15, 17, 19; S-3)
17. Parent participated in the meeting to review the RE and develop the IEP. Parent agreed that Student was IDEA eligible in the SLD disability category only, and further agreed to the proposed goals and learning support services, signified by her signed approval of the NOREP that accompanied the IEP. (N.T. pp. 107—110; S-2, p. 2, S-3, p. 3)
18. The itinerant learning support services provided to Student were an inclusion math class, co-taught by a special education and regular education teacher that moved at a slower pace and included more repetition and more opportunity for practice than other regular education math classes. Student also met with the special education teacher weekly to monitor academic progress and provide additional instruction if needed. (N.T. pp. 111, 128)
19. Before and after Student's reevaluation and the development of a new IEP, Parent disagreed with the District's proposals and efforts to provide emotional support services. Parent wanted the District's services to be directed solely toward improving Student's academic success. Parent did not, and still does not, believe that Student needed behavior and emotional support services. (N.T. pp. 46, 47, 104, 108, 112, 131, 151, 175, 177, 185—189; S-2, p. 6)

20. Student was succeeding academically at the beginning of the 2011/2012 school year, but attendance and grades began to decline in the second half of the first marking period. The special education teacher noted increasing depression, disengagement and discouragement with school, but not violent or aggressive behaviors. (N.T. pp. 112, 113)
21. Parent rejected the special education teacher's suggestions that Student should receive additional special education services, such as direct, 1:1 math instruction during the school day and a smaller class in a learning and emotional support setting. Parent wanted the District to provide Student with after school tutoring for academic classes, since Student was unable to participate in the tutoring offered by the District before the beginning of the school day. (N.T. pp. 47—49, 51, 72, 77, 78, 111—113, 123, 124, 128, 129, 131, 196)
22. Early in November 2011, Student was involved in an incident [redacted]. Student did not believe that s/he was at fault [redacted]. (N.T. pp. 94, 95, 114, 157, 158)
23. [redacted] (N.T. pp. 157—159, 178)
24. [redacted] Student was arrested and criminal charges filed. (N.T. pp. 159—163; S-4, p. 1)
25. Parent and Student met with the assistant high school principal and were provided an opportunity to offer additional information about the incident. At the end of the meeting, a 10 day suspension that had been imposed immediately after the incident was continued without modification, and Parent was informed that the District was referring Student for a School Board hearing and recommending expulsion. (N.T. pp. 164—167; S-4, p. 2, S-5)
26. Parent was invited to a manifestation determination review meeting with the District members of Student's IEP team on the day after the informal hearing with the assistant principal, but declined to attend. The IEP team members present at the meeting reviewed Student's records, including the IEP, and completed a manifestation determination review worksheet. The District IEP team members concluded that the behavior Student exhibited was an isolated incident that did not arise from and was not substantially related to Student's SLD. (N.T. pp. 59, 115—119, 140—142, 168, 171, 182; S-6, p. 2)
27. The IEP team also concluded that Student's IEP had been appropriately implemented, and further noted that emotional support services would have been beneficial to Student but had been consistently rejected by Parent. (N.T. pp. 118, 142, 148, 149, 182; S-6, pp. 3, 5)
28. Based upon the results of the manifestation determination review, Student was referred to the School Board for additional discipline as a regular education student would have been, and after the Board conducted a hearing concerning the incident, Student was expelled for the remainder of the school year. (N.T. pp. 169, 170, 182, 183; S-9, S-10)

29. After the expulsion, the District issued a NOREP for an alternative school placement, to which the District has been providing transportation, and where Student's IEP continues to be implemented. (S-12)
30. Student's disciplinary record for calendar year 2011, which included the second half of the 2010/2011 school year and the beginning of the 2011/2012 school year, from September to the November incident, shows 10 disciplinary incidents, including one 10 day out of school suspension in March 2011 for [redacted]. Between March and November, there were two additional incidents of inappropriate behavior of a minor nature. The remaining disciplinary incidents involved failures to timely arrive in class or attend detention and truancy. (N.T. pp. 70, 71; S-8, p. 1)

DISCUSSION AND CONCLUSIONS OF LAW

I. Legal Standards

A. Change of Educational Placement for Disciplinary Reasons

According to the federal regulations implementing the Individuals with Disabilities Education Act (IDEA), if a school district wants to discipline an eligible student by initiating a change in educational placement that will last more than 10 consecutive school days, the school district must conduct a manifestation determination review to determine whether the violation of the code of student conduct that led to the proposed discipline "was caused by or had a direct and substantial relationship to the child's disability or ... was the direct result of the [School District]'s failure to implement the IEP." 34 C.F.R. §300.530(e)(1)(i), (ii). Such determination must be made within 10 school days of any decision to change an eligible child's placement, and must be made by "the [School District] the parent, and relevant members of the child's IEP team (as determined by the parent and the [School District]." §530(e)(1). The participants in the manifestation determination meeting "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." §300.530(e)(1).

If, after conducting an appropriate review in compliance with the applicable regulatory standards, the IEP team concludes that the behavior at issue was not caused by the student's disability, had no direct and substantial relationship to the student's disability, and was not a direct result of the school district's failure to implement the IEP, the school district may take the same type of disciplinary action that it would take with respect to a student without a disability, provided that if the student is removed from his/her current educational placement, the school district must ensure that the Student is provided with a free, appropriate public education (FAPE), continues to participate in the general curriculum in the alternative setting, and continues to make progress toward achieving his/her IEP goals. §300.530(c), (d)(1).

If the outcome of the manifestation determination review permits the school district to proceed with the disciplinary change of placement, the student's IEP team determines the alternative setting. §531. A parent who disagrees with the results of the manifestation determination, or with the alternative placement decision, is entitled to appeal by means of a due process hearing. 20 U.S.C. §1415 (b)(6), (f); 34 C.F.R. §§300.507, 300.511, 532(a). If the hearing officer determines that the district violated the procedures required by §530 or that the behavior was a manifestation of the child's disability, the hearing officer may return the child to the original placement or order a change of placement to a 45 day alternative placement upon determining that "maintaining the current placement of the child is substantially likely to result in injury to the child or to others." §532(b)(1), (2)

B. Burden of Proof

In *Schaffer v. Weast*, 546 U.S. 49; 126 S. Ct. 528; 163 L. Ed. 2d 387 (2005), the Supreme Court established the principle that in IDEA due process hearings, as in other civil cases, the party seeking relief bears the burden of persuasion. Consequently, because Parent challenged the

District's decision to expel Student, Parent was required to prove by a preponderance of the evidence that the District violated IDEA by changing Student's placement for the remainder of the school year due to Student's violation of the code of student conduct. *Jaffess v. Council Rock School District*, 2006 WL 3097939 (E.D. Pa. October 26, 2006).

Although the burden of persuasion remains with the party that files a due process complaint throughout the proceedings, the Supreme Court did not specify in the *Schaffer* case which party must produce evidence at various points in the proceeding. Consequently, although a school district will prevail if a parent fails to present sufficient evidence to justify a conclusion that the district violated the IDEA by whatever action or failure to act that the parent contends was inappropriate, that does not mean that a school district has no obligation to present evidence at a due process hearing. Allocating the burden of persuasion affects the outcome of a due process hearing only in that rare situation where the evidence is in "equipoise," *i.e.*, completely in balance, with neither party having produced sufficient evidence to establish its position. Determining whether that situation exists, and that a school district should prevail in a due process hearing based upon a parent's failure to meet the burden of persuasion, ordinarily requires a full record in order to weigh and compare each party's evidence

In this case, the District contended at several points in the pre-hearing proceedings, and at the conclusion of Parent's initial presentation of evidence at the hearing, that Parent had not met the basic requirement of producing some evidence that the District's actions violated the IDEA statute and regulations. *See* N.T. pp. 96—98; HO-1-C, pp. 1, 2) Although Parent's evidence was limited to her own testimony suggesting various reasons for the District's actions, the District's motion was denied in order to provide Parent with a full and fair opportunity to offer reasons for reversing the District's expulsion decision based upon a substantive IDEA violation

or a procedural violation that interfered with Student's right to a free, appropriate public education (FAPE), substantially interfered with Parent's opportunity to participate in making decisions concerning providing FAPE to Student, or deprived Student of an educational benefit.

Moreover, the IDEA statute and regulations impose affirmative obligations upon the District to assure that an eligible student is not subjected to a change of placement for conduct arising from, or substantially related to, a disability, or because of the District's failure to implement Student's IEP. The District, therefore, was also required to produce evidence of its actions to assure that it complied with the IDEA legal standards, although the burden of persuasion remained with Parent throughout the proceedings. The evidence produced by both parties by the end of the hearing, including the testimony of Parent and the District witnesses and the documents presented by the District was far from equally balanced, and established that there was no IDEA violation by the District. Requiring Parent to bear the burden of persuasion did not, therefore, determine the outcome of this case.

II. Parent's Claims/Arguments

Parent is understandably upset about Student's expulsion from the District and believes it was unjustified for a number of reasons, including (1) overreaction by District staff to events that led to the incident for which Student was expelled; (2) mishandling of the incident by District staff; 3) [redacted]; (4) the District's desire to remove Student from the District because of Parent's refusal to permit the District to provide Student with emotional and behavior support services; (5) retaliation against Parent and Student because of a civil rights complaint Parent filed when the District challenged the family's residency within the District.

Four of the reasons Parent gave for the incident might have provided a basis for concluding that the District violated IDEA disciplinary procedures in this case. If, *e.g.*, there had been

evidence, not just Parent's suggestion, that Student's learning disability affected [Student's] ability to remember and comply with [redacted], that might have established that the incident was caused by or had a direct and substantial relationship to Student's disability. Also, if Student's IEP included procedures for handling [redacted] and there was evidence that those procedures were not followed, it would have been possible to conclude that the incident was directly related to the District's failure to implement Student's IEP. In addition, if the District failed or refused to provide academic services designed to address all identified needs, as Parent suggested, or tried to override Parent's refusal to permit a psychiatric evaluation and refusal to agree to a change of placement to an emotional support setting by a disciplinary change of placement rather than by filing a due process complaint and seeking a hearing, such conduct, if proved, could support a conclusion that a change of placement for disciplinary reasons violated IDEA.²

A. Relationship Between Student's Disability and the Incident that Led to Expulsion

1. Learning Disability

Parent suggested that Student did [redacted]. (N.T. pp. 32, 33, 57, 58, 67, 68, 93) Parent, however, was clearly grasping at straws in an attempt to link Student's conduct to a disability and avoid the consequences of Student's aggressive behavior. (FF 23, 24) Parent was not

² These comments are not meant to suggest that the District had any obligation to use the due process procedures to seek a change of educational placement from itinerant learning support to supplemental or full-time learning or emotional support, or to obtain a psychiatric evaluation or an additional psycho-educational evaluation when Parent refused to agree to those proposals. Although the District is free to use the due process procedures to implement a proposed change of placement or to proceed with an evaluation, it has no obligation to do so. *See* 34 C.F.R. §300.300(a)(3), 300.507(a). On the other hand, however, the District would not be permitted to deny services or IDEA benefits to Student because Parent refused to consent to the type of placement/services the District considered appropriate or beneficial. 34 C.F.R. §300.300(d)(3). The District, therefore, could not use the disciplinary procedures applicable to regular education students to bring about a change of educational placement for which it could not obtain parental consent, even if the incident was not a manifestation of disability or did not result from failure to implement the IEP.

present for the incident and Student was not present at the hearing, although Parent was specifically informed that Student would be permitted to testify. (N.T. p. 85; HO 1-B, p. 2)

The description of the incident, therefore, was based entirely upon the testimony of the District witnesses, particularly [redacted]. *See* FF 22, 23, 24. The facts concerning the incident establish that Student's [redacted] (FF 23) The testimony at the due process hearing was consistent with the written accounts in the incident report prepared immediately afterward and with the testimony presented at the expulsion hearing. *See* S-4, p. 1; S-9, pp. 5—8)

Although Parent suggested collusion among the District's witnesses to support its position, nothing in the manner in which the District witnesses testified, specifically [redacted], who testified extensively about the incident that led to the expulsion suggested that he was not testifying truthfully. Parent's accusation that the testimony of the District's witnesses was consistent because they wanted to support the District's position was based on nothing more than speculation and suspicion. Based on the testimony and the documents in the record, the only reasonable conclusion that accounts for the consistency in the testimony of the District's witnesses concerning the incident, and all other matters concerning Student's time in the District's high school, is that the testimony was truthful and accurate.

Other than Parent's purely speculative suggestion of memory/comprehension problems as the reason Student [redacted] Parent suggested no other connection between an identified, or even a possible disability and the incident.

2. Emotional Disturbance

Although Student did not have a current ED diagnosis at the time the incident occurred, there was considerable evidence that the District wanted to explore that possibility, but Parent rejected the District's request to evaluate Student to determine whether ED should be identified

as another disability category, and also disagreed with efforts to provide emotional support services. (FF 4, 13, 19, 21) Although as noted above in Footnote 2, the District was not required to use the due process procedures to override Parent's objections, the possibility that an unidentified disability that the District had reason to suspect may have been the cause of the [redacted] incident should also be considered, since the intent of the IDEA provisions concerning discipline is to assure that a change of educational placement is not based upon disability-related conduct.

The record in this case also establishes that indicators suggesting the possibility emotional disturbance as an additional disability category did not involve [redacted]. The primary behaviors of concern noted in the documents and testimony were lack of focus, distractibility, failure to complete assignments, withdrawal, disengagement from school and depression. (FF 12, 20) Although there was some evidence of difficult behaviors from prior educational settings and from the rating scale completed by Student's special education teacher in connection with the March 2011 reevaluation, those types of behaviors were not significant during Student's enrollment in the District and did not interfere with Student's educational progress in the District high school. (FF 10, 11) Student's disciplinary record also did not suggest [redacted] (FF 30)

Upon review of all the evidence, there is no basis in the record for reversing the District's conclusion that Student's conduct that led to the expulsion was not caused by, and was not directly and substantially related to Student's learning disability in math. There is also no evidence that Student's conduct was caused by or directly and substantially related to the possibility of ED as an additional disability category for Student.

B. Relationship of Implementation of Student's IEP to the Behavior Incident

Student's IEP in place at the time of the incident contained goals, objectives and specially designed instruction to address Student's identified learning disability in math, difficulty completing assignments and planning/organization. (FF 16) Student's IEP did not address [redacted], because such behaviors had not been observed in the District. Moreover, Parent was opposed to including a behavior plan or emotional support services in Student's IEP. (FF 11, 19) Although Parent was also opposed to a psychiatric evaluation, the District explored Student's emotional and behavioral status by means of behavior rating scales completed by Parent and the special education teacher, and also conducted a functional behavioral assessment (FBA). (FF 9, 10, 11, 13) As noted above, neither the data collected by the District for the reevaluation, nor the experience of the high school staff with Student during the 2010/2011 and 2011/2012 school year prior to November 2011 suggested a need for goals or strategies to address [redacted] behaviors.

Since Student's IEP did not address the type of behavior Student exhibited in the November incident that led to expulsion, neither [redacted], nor [redacted] was caused by a failure to implement Student's IEP.

C. Other Possible Reasons for Reversing the Expulsion

1. Retaliation for Parent's 2010 Civil Rights Complaint

As explained to Parent on the record at the due process hearing, her suggestion that the District was retaliating against Student because she had filed a civil rights complaint when the District initially refused Student's enrollment based on a residency question was not considered as a possible basis for reversing the District's expulsion decision. *See* N.T. pp. 84, 85. There is no basis in the IDEA statute or regulations concerning disciplinary changes of placement for considering evidence that the District may have had an improper motive for choosing expulsion

as the discipline imposed for the incident in question. Once it is determined that the conduct that led to the disciplinary change of placement was not caused by, or was not directly and substantially related to a disability, and did not result from the District's failure to implement Student's IEP, a special education due process hearing officer has no power to reverse an expulsion decision.

2. Procedural Issues Concerning the Manifestation Determination Review

Although Parent did not suggest that conducting the manifestation determination review without her violated either Student's rights or her right to participate in that process, it should be noted that Parent acknowledged that she had been invited to the meeting and declined to participate. (FF 26; N.T. p. 59) The evidence also establishes that the IDEA procedures required for a conducting an appropriate manifestation determination review meeting were followed by the District members of Student's IEP team. (FF 27) As discussed in detail above, the determination that Student could be treated as a regular education student with respect to the incident that led to the discipline, including referral to the school board for an expulsion hearing, is fully supported by the record. Any issues concerning the school board's procedures with respect to the expulsion hearing, the sufficiency of the evidence before the board or the outcome, are not matters considered in a special education due process hearing under the circumstances presented by this case.

3. Issues Concerning Parents' Refusal to Agree to an Emotional Support Placement

Parent's underlying theme in challenging the District's action in this matter was her belief that the District wanted Student out of the high school because she refused to permit a change of placement to an emotional support setting, or agree to additional special education services.

There is no doubt from the record that the District believed that it could better meet Student's needs with additional supportive services and by providing some academic instruction in a special education classroom, because it believed that Student would benefit from smaller classes. (FF 21, N.T. pp. 128, 129) There is also no doubt that Parent adamantly opposed those suggestions. (FF 19)

The evidence established, however, that the District consistently tried to meet Student's academic needs, as well as needs for structure and support, within the limits imposed by Parent's refusal to consider a more restrictive placement and emotional support services. There is no evidence that the District had any reason or motive for wanting Student out of the school because of the restrictions Parent placed on the services the District was permitted to provide to Student.

The evidence also suggested that Student fared better during the time the District was implementing the prior IEP and on that basis, assigned Student to the [redacted] emotional and academic support program. (FF 5, 6) It is notable, *e.g.*, that of the ten (10) disciplinary incidents on the record during calendar year 2011, eight (8) occurred after Student was removed from the [emotional support] program. (S-7) In addition, Student's special education teacher testified that Student's academic difficulties and attendance problems rose toward the end of the 10-11 school year, and increased again, after a brief period of success, during the current school year. (FF 6, 20) Although Student certainly had academic difficulties and problems with completing school assignments throughout the time spent in the District, Student's problems appear to have increased after Parent rejected emotional support and behavior services and Student was removed from the [emotional support] program.

Finally, Parent contended that the District failed to provide sufficient academic services to meet Student needs arising from the learning disability. The District, however, was not required

to provide the type of services Parent considered ideal, such as after school tutoring in all academic classes. (FF 21) There is no basis for concluding that the District denied Student necessary services because the District did not provide services in keeping with Parent's preferences if it had an appropriate alternative.

CONCLUSION

Based upon all the evidence of record and the discussion of the issues above, there is no basis for granting Parent's request to reverse the expulsion and return Student to the District high school.

ORDER

In accordance with the foregoing findings of fact and conclusions of law, the School District properly referred Student to the School Board for the same type of disciplinary action applied to students who are not eligible for special education services. Accordingly, it is hereby **ORDERED** that the Central Dauphin School District need take no further action with respect to Parent's claims concerning [Student's] expulsion.

It is **FURTHER ORDERED** that any claims not specifically addressed by this decision and order are denied and dismissed

Anne L. Carroll

Anne L. Carroll, Esq.
HEARING OFFICER

January 31, 2012