

*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

Child's Name: I.S.

Date of Birth: [redacted]

Dates of Hearing:

January 29, 2015

February 5, 2015

CLOSED HEARING

ODR Case # 15762-1415AS

Parties to the Hearing:

Parent[s]

Columbia Borough School District  
200 N. Fifth Street  
Columbia, PA 17512

Date Record Closed:

Date of Decision:

Hearing Officer:

Representative:

Ilene Young, Esquire  
172 Middletown Boulevard  
Suite 204  
Langhorne, PA 19047

Jeffrey Champagne, Esquire  
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February 5, 2015

February 21, 2015

Jake McElligott, Esquire

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student<sup>1</sup> is an early teen-age student residing in the Columbia Borough School District (“District”) who has been identified as a student with a disability under the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and Pennsylvania special education regulations as a student with an emotional disturbance.<sup>2</sup> Pursuant to District’s authority to make a unilateral out-of-district placement resulting from a serious infraction under the District’s student code of conduct, the District implemented a unilateral 45-day change in placement for the student in an alternative education setting.

The District conducted a manifestation determination review, finding that the behavioral incident was not caused by, or did not have a direct and substantial relationship to, the student’s disability under the IDEIA, and was not a result of the failure to implement the student’s individualized education plan (“IEP”). Parent disagreed with the manifestation determination result and filed a special education due process complaint on January 6, 2015, seeking to have the student returned to the District. Parent also seeks, as part of the order, an independent educational evaluation (“IEE”) for the student.

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<sup>1</sup> To protect the confidentiality of the student, the generic use of “student”, rather than a name or gender-specific pronouns, will be employed and will be substituted in direct quotes throughout the decision.

<sup>2</sup> It is this hearing officer’s preference to cite to the implementing regulation of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 24 PA Code §§14.101-14.163.

Because parent's complaint regards a disciplinary change in placement, this decision is on an expedited timeline. (34 C.F.R. §300.532(c); 22 PA CODE §14.162(q)(4)). The hearing was conducted in two sessions over January 29 and February 5, 2015. The decision is due within ten school days of the hearing. (34 C.F.R. §300.532(c)(2)). District personnel confirmed, at the end of the hearing, that based on the District's school calendar, the 10-school day timeline expires on February 23, 2015.

For the reasons set forth below, I find in favor of the parent regarding the result of the manifestation determination review. The order will contain provisions for an IEE under the hearing officer's authority as granted by 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix).

### **ISSUE**

Should the result of the manifestation determination be upheld?

### **FINDINGS OF FACT**

#### November 2011 Re-Evaluation

1. For the four school years (2010-2011/4<sup>th</sup> grade, 2011-2012/5<sup>th</sup> grade, 2012-2013/6<sup>th</sup> grade, and 2013-2014/7<sup>th</sup> grade) prior to the current 2014-2015 school year, the student attended a nearby school district. In November 2011, in the fall of 5<sup>th</sup> grade, the

- student was re-evaluated by the nearby school district. (Parent's Exhibit ["P"]-2, P-26, P-27, P-28; School District Exhibit ["S"]-3, S-4, S-5; Notes of Testimony ["NT"] at 156).
2. The November 2011 re-evaluation report ("RR") indicated that the student had been identified through an October 2008 re-evaluation conducted by a local intermediate unit as a student with an emotional disturbance. At the time of the October 2008 re-evaluation, the student was not residing in the District, or in the nearby school district. (P-2; S-4, S-5).
  3. The November 2011 RR indicated, by history, that the student was receiving, at the time of the re-evaluation, supplemental special education services in an emotional support classroom. (P-2; S-4, S-5).
  4. The November 2011 RR referenced 2008 psychological diagnoses and past psychiatric treatment. (P-2; S-4, S-5)
  5. The November 2011 RR indicated that, at that time, the student was receiving out-of-school behavioral health services. (P-2; S-5).
  6. The November 2011 RR indicated, by history, a progression of educational settings from kindergarten through the placement in the fall of 2011 that required behavioral and/or emotional support, although those placements were progressively less restrictive as to the setting and type of services. (P-2; S-4, S-5).

7. The November 2011 RR indicated, through parent's input, that the student required multiple prompts to complete homework, which took 2-3 hours per night. The student's mother also had concerns about defiance over task completion at home and at school, and lack of respect for adults at home and at school. (P-2; S-4, S-5).
8. The November 2011 RR contained results from a functional behavior assessment ("FBA") where the behaviors of concern were "non-compliance", "is disrespectful to certain adults", and "inappropriate peer interaction (does not cope with or tolerate peers)". The FBA indicated that skills deficits related to these behaviors included, in part, "participation skills: during peer-directed activities (says peers are stupid)", "social skills: does not appear to enjoy peer interactions", and organizational skills. The FBA also noted that the student had difficulty with "self-regulation skills:...handling stressful situations, calming self when agitated, and has difficulty with problem solving". (P-2; S-4, S-5).
9. The November 2011 RR indicated student needs, in part, in "working with others, especially those (the student) doesn't feel are as bright as (the student)", "coping skills", and "social skills—appropriate peer interaction, especially when speaking to peers". (P-2; S-4, S-5).

October 2013 IEP

10. In October 2013, during the student's 7<sup>th</sup> grade year, the nearby school district and parent agreed to the most recent IEP to be implemented at the nearby school district. (P-26; S-5, S-6).
11. The October 2013 IEP indicated that the student exhibited behaviors that impeded the student's learning or that of others. For this reason, the student's IEP contained a positive behavior support plan. The behaviors of concern included "refusal to complete work", "manipulation of items on desk", and "lack of focus/easily distracted by peers". The educational skill deficits related to these behaviors included, in part, "communication and/or social skill deficits". (P-26; S-5, S-6).
12. The October 2013 IEP included teacher input. All teachers reported lack of attention/focus. Two teachers reported talking back or extraneous commentary. The same two teachers reported difficulty working with, or ignoring, peers during small group work. (P-26; S-5, S-6).
13. The October 2013 IEP characterized the student's functional performance in school, in part, as follows: "Overall, it has been reported that (the student's) behavior has been inconsistent in (the student's) classes. (The student) generally has an apathetic attitude towards (the student's) class work and completing it. (The student) has shown teachers an attitude when being asked to write

simple sentences, or work together with partners or small groups. (T)eachers have reported that (the student) shows a lack of motivation in all of (the student's) classes, and (the student's) attitude is negatively affecting the quality and consistency of (the student's) work....(The student) is often exhibiting behaviors that affect (the student's) academic performance. (The student) can avoid work by putting (the student's) head down, manipulating items on (the student's) desk or in (the student's) binder, stating that any partner or group (the student) is placed in 'does not like (the student)', or finding items...to play with." (P-26; S-5, S-6).

14. In the October 2013 IEP, the student's mother reported concerns with declining grades and problematic homework completion. (P-26; S-5, S-6).
15. The October 2013 IEP indicated that the student should "continue to receive specially designed instruction in (the student's) classes to improve (the student's) academic and behavioral performance". The IEP identified needs for the student to continue improving "social interaction with peers" and "completion of class and homework assignments". (P-26; S-5, S-6).
16. The October 2013 IEP contained four goals, one in assignment-completion, one in study/organizational skills, and two in occupational therapy (legibility and keyboarding). (P-26; S-5, S-6).

17. The October 2013 IEP indicated that the student would receive itinerant special education services, with the student receiving direct instruction in social skills and mathematics outside the regular education class.<sup>3</sup> (P-26; S-5, S-6).
18. The October 2013 IEP indicated that, as a specific related service, the student would receive curb-to-curb school bus transportation every school day. (P-26; S-5, S-6).

#### 2014-2015 School Year

19. The student completed the 2013-2014 school year in the nearby school district. In the spring/summer of 2014, the student began to reside in the District. (NT at 73-74).
20. In early August 2014, the District was informed by the student's mother that the student would be enrolling at the District. With the consent of the student's mother, the District requested student records from the nearby school district. (P-1; S-7; NT at 626-630).

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<sup>3</sup> The October 2013 IEP indicates that the student will not participate in regular education when "(the student) is receiving direct instruction in social skills and mathematics". (P-26 at page 19, S-5 at page 19). In the "related services" section of the October 2013 IEP, however, the student was to receive "social work services" and "individual/group work social work services". (P-26 at page 17, S-5 at page 17). In the context of special education, and K-12 education generally, 'social skills' and 'social work' are terms of art and each has a particular meaning. Here, given the totality of the October 2013 IEP at P-26/S-5, the term 'social work' appears to be used instead of 'social skills', or at least some degree of direct instruction regarding social interaction by the student. Thus, the finding of fact is explicitly written to indicate that the student was to receive related services through the October 2013 IEP that addressed social interaction with others.

21. The nearby school district provided to the District, at least, the November 2011 RR and the October 2013 IEP. (P-1; S-7, S-39; NT at 565-567, 577-578).
22. With the student's grade-level progression, the student would have begun the 2014-2015 school year in the District in 8<sup>th</sup> grade. At the request of student's mother, though, the student was enrolled by the District in a repeat of 7<sup>th</sup> grade. (NT at 156-157, 563-564).
23. In late August 2014, the District issued a notice of recommended educational placement ("NOREP") indicating that "(The student) will receive specially designed instruction as stated in (the student's) IEP". The District implemented the October 2013 IEP from the nearby school district. (S-8, S-39; NT at 565-568).
24. At some point, however, after receipt by the District of the October 2013 IEP, the District unilaterally indicated, in writing on a copy of the October 2013 IEP that the student was "dismissed" from social skills instruction and occupational therapy in June 2014. There is no NOREP from the nearby school district to indicate that the services were discontinued or modified. (S-5 at page 17; NT at 388, 446-450).
25. The District is a walking community. The District does not provide bus transportation to students. A notation was made by the District on a copy of the October 2013 IEP that the service was

provided only to June 2, 2014 (ostensibly end-of-school, or disenrollment, from the nearby school district). The student's mother was informed by the District that it would not be providing any transportation as a related service. (S-5 at page 17; NT at 110, 571-573).

26. Early in the school year, on September 5, 2014, the student's mother participated in a meeting that included 7<sup>th</sup> grade educators. The District's notes from the meeting indicate that a variety of issues and items were shared by the student's mother, including the following issues/items related to behavior: "had issues in the past with behavior", "will refuse to do work", "was in (a private mental health/therapeutic setting)", "doesn't like to do things at home", "has more friends here", "parents have not found positive reinforcement that works", and "had (therapeutic support staff) from kindergarten to 5<sup>th</sup> grade". (P-14; S-9; NT at 387).

27. In mid-September 2014, the student received a disciplinary warning for "student touching". (P-22).

#### October 2014 Re-Evaluation

28. In early October 2014, with the student's mandated triennial evaluation due, the District engaged in a re-evaluation process. (P-18; S-11)

29. The re-evaluation process was undertaken by a District special education teacher in her first year of full-time employment.

In late October 2014, the District issued its RR. (P-18; S-11; NT at 380).

30. The October 2014 RR did not contain any background information from the November 2011 RR. The October 2014 RR indicated that the student's current educational program was itinerant learning support. (P-18; S-11).
31. The student's mother provided input for the October 2014 RR. In the parent's input, the student's mother indicated that she did not feel the student's IEP met the student's needs. (P-18; S-10, S-11).
32. The student's mother indicated that the student disliked school. The student's mother indicated that the statements "gets along well with other children", "is respectful towards authority", and "is a behavior problem at home or in school" did not apply to the student. (P-18; S-10, S-11).
33. The student's teachers provided input for the October 2014 RR. (P-18; S-10, S-11).
34. The student's social studies teacher reported that the student "gets off task easily" and found "constant prompting and giving redirections" to be successful accommodations. The teacher reported that the student got along with peers and adults. The teacher reported that the student often did not complete work. Behaviorally, the teacher indicated that "easily frustrated" and

“frequent off-task behavior” best described the student. Socially, the teacher indicated that “prefers company of a few close friends” best described the student. (P-18; S-10, S-11).

35. The student’s mathematics teacher reported that the student got along with peers and adults. The teacher reported that the student often did not complete work. Behaviorally, the teacher indicated that “easily frustrated”, “frequent off-task behavior”, and “quiet and unresponsive in class” best described the student. Socially, the teacher indicated that “prefers company of a few close friends” and “impolite (at times)” best described the student. (P-18; S-10, S-11).

36. The student’s science teacher reported that the student “is sometimes distracted” and “needs reminders” to turn in work but noted generally acceptable work habits. The teacher noted that the student had an “improved attitude towards class” and that “(the student) is starting to make new friends and is completing work more regularly”. (P-18; S-10, S-11)

37. The student’s English teacher reported that the student “tends to give excellent verbal input” and usually completed required work but “sometimes does not complete homework by the due date”. Behaviorally, the teacher reported that “easily frustrated” best described the student. Socially, the teacher reported that “leads others”, “self confident and vocal among

- peers”, “prefers company of a few close friends”, and “courteous and well mannered” best described the student. (P-18; S-10, S-11).
38. The October 2014 RR included an IQ score from testing completed in summer 2008. The student’s full-scale IQ was reported as 97, in the average range. (P-18; S-11).
39. The October 2014 RR included a reading assessment and a mathematics assessment, both of which indicated that the student was at or above grade level. (P-18; S-11).
40. The October 2014 RR concluded that the student was a student with an emotional disturbance. The RR identified student needs in assignment completion, organization skills, independent work, written expression, behavior support, and responding to prompts/redirection. (P-18; S-11).

October 2014 IEP

41. Following the October 2014 RR, the District drafted an October 2014 IEP. (P-20; S-12).
42. The October 2014 IEP indicated that the student exhibited behaviors that impeded the student’s learning or that of others. For this reason, the student’s IEP contained a positive behavior support plan. The behaviors of concern included “disrespectful to adults”, “off task”, “unorganized”, and “not completing/turning in work on time”. The educational skill deficits related to these behaviors appear to be copied directly from the October 2013 IEP

including the portion “communication and/or social skill deficits”. The behavior support plan indicated that “any deficits due to behavior are being addressed in the IEP”. (P-20; S-12).

43. The October 2014 IEP contained two goals, one in appropriate use of social skills and study skills to obtain passing grades and one in appropriate use of social skills to comply with school and classroom rules. These were the goals in the positive behavior support plan. The social skills instruction was delivered entirely in regular education by either the regular education teacher or special education teacher. Social skills instruction was not provided as a related service. (P-20; S-12).

44. The October 2014 IEP called for the student to be placed in itinerant learning support with 93% of the student’s time spent in regular education. (P-20; S-12).

Events of November/December 2014

45. In November 2014, the student met with the building principal for a disciplinary physical altercation. (P-22).

46. On December 10, 2014, on the walk home from school, a friend of the student was involved in a fight with other students, and the student intervened. The student and the student’s parents met with the building principal with concerns about the incident. The student was advised “to stop walking home with the [other]

student that was in the fight because he tends to draw that type of negative attention to himself.” (P-22; NT at 118-122).

47. On December 11, 2014, on the walk home from school, a friend of the student was involved in a fight with other students. The friend of the student was injured [redacted]. (NT at 122-123, 221-223, 368-370).

48. The student was present at the altercation. Exactly when the student abandoned the scene is unknown; the student, deeply frightened and emotional, ran to the nearby home of the student’s own grandparents and related events about the altercation to grandmother. (NT at 221-223).

December 12<sup>th</sup> Incident & Manifestation Determination

49. On the morning of December 12, 2014, the student brought a [pointed object] to school. (S-17, S-18, S-19; NT at 330-335).

50. The student gave various answers as to why the student brought a [pointed object] to school that day. To a District administrator, the student indicated that “(the student) carries money...and that it was for protection on the way home. (The student) told me that (the student) had no intention of using it and that also a friend...had been jumped the night before.” To parents, the student indicated only that the student brought the [pointed object] for defense in light of the after-school altercations of the

- prior two days. (P-23; S-18 at pages 1-2; NT at 131-132, 338-340, 359-360).
51. The student was consistently honest and cooperative in admitting to possession of the [pointed object]. (P-23; S-18 at page 1, S-20, S-22).
52. On December 12<sup>th</sup>, the day of the incident, the District implemented a 5-day out-of-school suspension. On December 16, 2014, the District increased the out-of-school suspension to 10 days and sought to expel the student. (P-23; S-20, S-22; NT at 125-126).
53. On December 16, 2014, the District also held a manifestation determination meeting to determine if the [redacted] incident was a manifestation of the student's disability. (P-25; S-21).
54. The November 2011 RR, October 2014 RR, and October 2014 IEP were not circulated to participants prior to the manifestation determination meeting and were not considered in the meeting. (NT at 129, 465-468).
55. A letter dated December 16, 2014, indicating that the student's suspension would be extended to 10 days, did not contain information about the manifestation determination process. Parent was not aware that the meeting on December 16<sup>th</sup> was a manifestation determination meeting and was unable to

- prepare for the deliberations by, and potential consequences from, that meeting. (S-22; NT at 126-127).
56. District-based members of the manifestation determination meeting supported a conclusion that the [redacted] incident was not a manifestation of the student's disability. The student's mother disagreed. (P-25; S-21).
57. District-based members of the manifestation determination meeting supported a conclusion that the [redacted] incident was not the result of a failure to implement the student's IEP. The student's mother disagreed. (P-25; S-21).
58. The ultimate conclusion of the manifestation determination meeting was that the [redacted] incident was not a manifestation of the student's disability and that "the relevant disciplinary procedures applicable to children without disabilities may be applied." (P-25; S-21).
59. The rationale provided was: "Team feels that the incident was not a manifestation of (the student's) disability. Expulsion hearing will be to follow. Mom disagrees with this decision." (P-25; S-21).
60. Following the manifestation determination meeting, the student was removed for 45 school days to an interim out-of-school alternative placement, and the District began to consider expulsion of the student. (P-24, P-25; S-21, S-25; NT at 601-605).

61. On January 6, 2015, the student began to attend the interim out-of-district alternative placement. (S-25, S-26; NT at 482-485).
62. On January 6, 2015, the student's mother filed the complaint that led to these proceedings.<sup>4</sup>
63. At the hearing, the parties stipulated that the District's expulsion proceedings were being held in abeyance, pending the results of this special education due process hearing. (NT at 601-605).

### **DISCUSSION AND CONCLUSION OF LAW**

The provision of special education to students with disabilities is governed by federal and Pennsylvania law. (34 C.F.R. §§300.1-300.818; 22 PA Code §§14.101-14.163)). In certain circumstances, an intricate series of protections must be observed before a school district can impose out-of-school suspension on a student with disabilities. (34 C.F.R. §300.530; 22 PA Code §14.102(a)(2)(xxxii)).

One such instance, as happened in this case, is where a student's disciplinary infraction involves drugs, weapons, or serious bodily injury

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<sup>4</sup> Parent's complaint lodged an objection to the manifestation determination review. The complaint also included allegations of denial of a free appropriate public education regarding alleged violations on the part of the District in evaluating and/or programming for the student. To allow for the disciplinary change-in-placement issue to be heard on a mandatory expedited timeline, the non-expedited issues were bifurcated from the issue considered in this decision, and a new file number was established for handling the non-expedited issues. The proceedings at this file number did not consider whether or not there was any denial of a free appropriate public education related to the evaluation and/or programming by the District.

to another. In such circumstances, a school district may unilaterally change the student's placement, placing the student in an alternative education setting, for up to 45 school days. (34 C.F.R. §300.530(g); 22 PA Code §14.102(a)(2)(xxxii)).

When such a change in the student's placement takes place as a result of significant discipline, the school district must conduct a review to determine whether the behavior which led to the proposed discipline "was caused by or had a direct or 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)). This process is referred to as a "manifestation determination".

The manifestation determination must be made within 10 school days of any decision that results in a disciplinary change in placement, and must be made by "the (school district), the parent, and relevant members of the child's IEP team." (34 C.F.R. §530(e)(1)). The participants "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." (34 C.F.R. §530(e)(1)).

If the manifestation determination team concludes that the behavior at issue was not a manifestation of the student's disability, the school district may take the same type of disciplinary action that it would take with respect to a student without disabilities, provided that if the student is removed from the current placement, the school district must

ensure that the student is provided with a free, appropriate public education, continues to participate in the general curriculum in the alternative setting, and continues to make progress toward achieving his/her IEP goals. (34 C.F.R. §300.530(c),(d); 22 PA Code §14.102(a)(2)(xxxii)).

A parent who disagrees with the results of the manifestation determination is entitled to appeal by means of a due process hearing. (34 C.F.R. §532(a); 22 PA Code §14.102(a)(2)(xxxii)). The hearing, as it did here, takes place on an expedited timeline, and the hearing officer may (1) return the student to the original placement if the hearing officer determines that the disciplinary change in placement was a violation or that the student's behavior was a manifestation of the student's disability, or (2) order a change of the student's placement where a maintaining the current placement of the student is "substantially likely to result in injury to the child or to others." (34 C.F.R. §300.532; 22 PA Code §14.102(a)(2)(xxxii)).

In this case, the manifestation determination review erred in finding that the [redacted] incident was not caused by, or did not have a direct and substantial relationship, to the student's emotional disturbance. At the hearing, the parties disputed the exact existence/nature of a past diagnosis of reactive attachment disorder. While that evidence was entered into the record, and considered by this hearing officer, it was not made part of the findings of fact in this matter

because, at the end of the day, evidence as to what documentation related to the student's needs the District possessed and when it possessed that documentation is not precise enough on this record to impact, one way or the other, the legal determinations that must be made.

What is precisely clear, however, is that in the summer of 2014 in the run-up to the 2014-2015 school year, the District had in its possession from the nearby school district, at least, the November 2011 RR and October 2013 IEP. These documents alone show that student had deep and continuing challenges with, and required programming for, social interaction with both peers. Granted, a fair reading of the November 2011 RR and October 2013 IEP might lead to a conclusion that over time those social interaction issues were improving; but in August 2014, as recently as ten months earlier, the student's October 2013 IEP noted that "continued improvement in social interaction with peers" was an explicit need, with multiple instances of difficult peer interaction reported by the student's teachers.

It is also noted that, as part of the student's related services in the October 2013 IEP, the student was provided curb-to-curb transportation. Even in a school district which provides bus transportation, curb-to-curb transportation is an uncommon related service, outside of servicing students with mobility issues or some type of health/safety component to the transportation issue. In the context of the November 2011 RR and

October 2013 IEP, one must conclude that this related service was rooted in peer interaction—nothing in the student’s disability profile or services suggests any other reason for providing such transportation.

Likewise, in September and November 2014, there were two documented disciplinary incidents involving the student with peers. The consecutive incidents of December 10 and 11, 2014 involved escalations of negative peer interactions which resulted in altercations, the first of which involved the student’s direct intervention, and the second of which led to physical injury of the student’s friend.

This history of needs for support in peer social interaction, of transportation geared to before/after school peer interaction, and of multiple incidents of inappropriate peer interaction in the fall of 2014 provides the backdrop for the [redacted] incident of December 12, 2014. The student’s reasons for bringing the [pointed object] to school were consistently related to peer interaction. By the student’s own admission to others, the student referenced both fear related to the afterschool altercation of the day before and fear of peers related to having money in school. Regardless of which reason, or both, that existed in the student’s thinking, having a [pointed object] in school on December 12, 2014 had a direct and substantial relationship to the student’s emotional disturbance.

Therefore, the result of the manifestation determination was inaccurate, and the District will be ordered to facilitate a return of the

student to the regular education environment setting where the student attended prior to December 12, 2014.

Additionally, there are no findings in this decision that speak to whether or not the [redacted] incident was the direct result of the District's failure to implement the student's IEP. As indicated above, allegations of a denial of a free appropriate public education arising from the District's handling of the transition to the District from the nearby school district, including implementation of the October 2013 IEP from the nearby school district, and/or the appropriateness of October 2014 RR and/or the appropriateness of the October 2014 IEP are all matters to be decided in a separate due process proceeding.

Parent has requested an IEE at public expense. The District will be ordered to provide an IEE but not in response to parent's request. The IEE will be ordered under the hearing officer's authority to order an evaluation. (34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix)). The relationship between the parent and the District is at a precarious point. Perhaps the relationship has been irretrievably soured. But the student is new to the District and, hopefully, the parties can move past these events and engage in a productive relationship with a focus on the student's educational programming. It is the hope of this hearing officer that an IEE may provide the foundation for such a productive relationship and a process to obtain an IEE will be set forth in the order.

## **CONCLUSION**

The result of the manifestation determination was inaccurate. The conduct which led to the disciplinary incident of December 12, 2014 was caused by, or had a direct and substantial relationship to, the student's emotional disturbance. The District will be ordered to facilitate a return of the student to the regular education environment setting where the student attended prior to December 12, 2014, including directives to the IEP team, and will be ordered to provide an IEE at public expense.

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## **ORDER**

In accord with the findings of fact and conclusions of law as set forth above, the conduct which led to the disciplinary incident of December 12, 2014 was caused by, or had a direct and substantial relationship to the student's disability. Therefore, forthwith but no later than Friday, February 27, 2014, the District is ordered to facilitate a return of the student to the regular education setting which the student attended on and before December 12, 2014.

As part of facilitating this return, the District shall arrange to provide curb-to-curb transportation of the student each morning from the student's residence to the school, and each afternoon from the school to the student's residence. This transportation shall be provided as, and be incorporated in, the student's IEP as a related service.

No later than Monday, March 2, 2015, the student's IEP team shall meet to consider changes to the student's IEP in light of the parties' understanding of the student's needs. As indicated in the paragraph immediately above, the student's IEP shall be revised to include curb-to-curb transportation. Furthermore, a school psychologist shall be part of the student's IEP team at that meeting.

Pursuant to the authority of a hearing officer as granted in 34 C.F.R. §300.502(d)/22 PA Code §14.102(a)(2)(xxix), it is ordered that:

- On or before Wednesday, March 4, 2015, the District shall provide in writing to the parent information (as set forth below) for three independent evaluators experienced in conducting comprehensive psychoeducational evaluations for educational programming ("IEE evaluator[s]"), and two evaluators experienced in conducting occupational therapy evaluations for educational programming ("OT evaluator[s]"), all of whom will make themselves available to conduct an independent educational evaluation at District expense.
- The District's selection of the IEE and OT evaluators shall be based solely on the background and experience of the evaluators.

Communications by the District with a potential evaluator shall not include any discussion of an evaluator's rate or fee, and, in selecting the IEE and OT evaluators, the District shall not give any consideration to its estimation of the cost of the independent evaluations.

- The information provided to the parent regarding the selected IEE and OT evaluators shall include the name and full curricula vitae for the evaluators. The student's parent may review the evaluators' curriculum vitae but shall not contact any of the potential evaluators.
- The cost of the independent evaluations shall be at the IEE and OT evaluators' rate or fee and shall be borne by the District at public expense.
- On or before March 11, 2015, the student's parents shall contact the District's director of special education in writing to inform the District of the IEE evaluator and OT evaluator selected by the parent to conduct the independent evaluations.
- If the student's parents have not provided in writing on or before March 4, 2015 a selection of

the IEE evaluator and/or OT evaluator, the District shall select the independent evaluator(s) from the lists provided. Even if the District makes the selection of the IEE evaluator and/or OT evaluator, all other aspects of this order related to the independent evaluators and/or the independent evaluations shall be remain in effect.

- The input, assessments, scope, details, findings and recommendations of the independent evaluation reports shall be determined solely by the selected evaluators. Notwithstanding the provisions of this paragraph, observations by the independent evaluators shall be only school-based and shall not take place in the home environment.
- After the IEE evaluator and OT evaluator have issued the independent evaluation reports for the student, the student's IEP team shall meet to consider the findings of the evaluations in light of the student's IEP and educational programming ("the independent evaluation IEP meeting"). At the independent evaluation IEP

meeting, the IEP team shall invite and include the independent evaluators in the IEP team meeting (making scheduling accommodations for their participation as necessary). The District shall bear any cost, or rate, for the appearance of the independent evaluators at the independent evaluation IEP meeting.

- The terms of this order regarding the involvement of the independent evaluators shall cease after the independent evaluators have participated in the independent evaluation IEP team meeting, although nothing in this order should be read to limit, or interfere with, the continued involvement of the independent evaluators as one party, or both parties, see(s) value in such continued involvement and might make arrangements therefor.

Nothing in this order should be read to limit or interfere with the ability of the IEP team, by agreement of the parent and the District, to alter the explicit directives of this order related to the independent evaluators and/or evaluations, or the student's IEP generally.

Any claim for consideration at this file number not specifically addressed in this decision and order is denied.

*Jake McElligott, Esquire*

Jake McElligott, Esquire  
Special Education Hearing Officer

February 21, 2015