

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

Pennsylvania Special Education Due Process Hearing Officer

Final Decision and Order

Closed Hearing

ODR No. 30601-24-25

Child's Name:

L.S.

Date of Birth:

[redacted]

Parents:

[redacted]

Counsel for Parent:

Pro Se

Local Educational Agency:

Unionville-Chadds Ford School District
740 Unionville Road
Kennett Square, PA 19348

Counsel for LEA:

Rose McHugh, Esquire
331 E. Butler Avenue
New Britain, PA 18901

Hearing Officer:

Michael J. McElligott, Esquire

Date of Decision:

02/04/2025

Introduction

This special education due process hearing concerns the educational rights of L.S. ("student"), a student who attends school in the Unionville-Chadds Ford School District ("District").¹ The student currently qualifies under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 ("IDEA")² as a student with a health impairment related to executive functioning needs (task-approach/task-persistence/self-advocacy in academic matters).

As a result of two behavior incidents on November 19, 2024, the District sought to implement discipline which would result in an exclusion from school in excess of ten consecutive school days. The manifestation determination ("MD") process yielded a conclusion that the behaviors were not a manifestation of the student's disability, which would allow the District to implement discipline as it might for a regular education student.

The student's parents ultimately disagreed with the conclusion of the MD process and filed the complaint which led to these proceedings.³ The parents also seek compensatory education for denial of a free appropriate

¹ The generic use of "student", and avoidance of personal pronouns, are employed to protect the confidentiality of the student.

² It is this hearing officer's preference to cite to the pertinent federal implementing regulations of the IDEA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§14.101-14.162 ("Chapter 14").

³ The parents were initially represented by counsel, who filed the complaint on behalf of the parents, handled all pre-hearing matters, and represented the parents at the first hearing session. After that session, the parents ended their relationship with their attorney and proceeded *pro se* at the second and final session of the hearing and in all post-hearing matters.

education ("FAPE") for the period of time that the student has not been in the educational placement outlined in the student's individualized education program ("IEP").⁴

The District stands by the determination of the MD process. The District also sought to maintain the student's placement outside of the District due to the substantial likelihood that the student posed a threat in the school environment.

For reasons set forth below, I find in favor of the District.

Issues

Were the behavior incidents on November 19, 2024

a manifestation of the student's disability, or not?

If not, is the student entitled to compensatory education?

Findings of Fact

All evidence of record was reviewed. The citation to any exhibit or aspect of testimony is to be viewed as the necessary and probative evidence in the mind of the hearing officer.

⁴ In their complaint, parents also sought to have the MD finding removed from the student's educational records. A student's educational records are under the control of the school board, and this hearing officer has no jurisdiction to impact or to order a school board's handling of a student's educational records. During the hearing, the parties were informed of this lack of jurisdiction. (Notes of Testimony ["NT"] at 721-722).

1. The student is a [redacted] grade student at the District.
2. Parents [redacted] (Joint Exhibit ["J"]-1 at page 2; Notes of Testimony ["NT"] at 48-176).

Educational History – Prior to [redacted] Grade

3. The student began to attend District schools in [redacted] grade, the 2013-2014 school year. (J-1 at page 1).
4. In February 2019, in the student's [redacted] grade year, the student began to receive instructional support for organization/task-focus and self-advocacy for academic matters. (J-1 at pages 7-10).
5. Prior to the student's [redacted] grade year, the 2019-2020 school year, the student's behavior in the educational environment was not problematic. (J-1 at pages 1-26, J-8 at pages 1-3).

[redacted] Grade / 2019-2020

6. In [redacted] grade, the student's behavior in educational settings became more regularly problematic, including classroom disturbance, disrespect to staff, inappropriate/problematic peer interactions, and cutting class. (J-8 at pages 1-3).
7. In February 2019, the student's parents requested an evaluation of the student. (J-1 at page 10).

8. In April 2020, the District issued its initial evaluation report ("ER") of the student. (J-1 at pages 1-26).
9. In the parent input in the April 2020 ER, parents reported "these (problematic) behaviors emerged or greatly increased in [redacted] grade compared to other school years." Parents also reported that the student seemed to exhibit disrespect and classroom disruption with two teachers but not other teachers. (J-1 at page 2).
10. Teacher input in the April 2020 ER indicated that the student engaged in an inconsistent pattern of potentially problematic behaviors—one teacher reported more significant behavior issues with adults and peers, a second teacher reported less-concrete behavior issues with adults and no issues with peers, and a third teacher reported no behavior issues with adults but more prevalent behavior issues with peers. (J-1 at pages 3-7).
11. The April 2020 ER included a proposed behavior plan that addressed interactions with peers and adults, as well as organization and task-completion. (J-1 at pages 10-14).
12. The April 2020 ER included behavior rating scales completed by each parent and two teachers. (J-1 at pages 15-17).
13. The parents' behavior ratings were relatively consistent between each rater. Neither parent rated the student as clinically significant in any area. Both parents rated the student as at-risk in the conduct

problems, attention problems, and functional communication sub-scales. The student's mother rated the student as at-risk in the aggression sub-scale. As a result of the mother's ratings, the externalizing-problems composite was in the at-risk range; all other composites (internalizing problems, behavioral symptoms, and adaptive scales) were in the average range. The student's father rated the student as at-risk in the social skills sub-scale. As a result of the father's ratings, the adaptive-scales composite was in the at-risk range; all other composites (externalizing problems, internalizing problems, and behavioral symptoms) were in the average range. (J-1 at pages 15-16).

14. The teachers' behavior ratings were highly divergent between each rater. (J-1 at pages 16-17).
15. The student's writing teacher did not rate the student at a clinically-significant level in any sub-scale or composite. The writing teacher rated the student as at-risk in the depression, withdrawal, social skills, and functional communication sub-scales. All composite ratings were in the average range. (J-1 at pages 16-17).
16. The student's science teacher rated the student at a clinically-significant level in the following sub-scales: hyperactivity, aggression, conduct problems, attention problems, atypicality, and social skills. The science teacher rated the student as at-risk in the adaptability,

leadership study skills, and functional communication sub-scales. The science teachers' sub-scale ratings for externalizing problems (hyperactivity, aggression, and conduct problems) resulted in a clinically significant rating in the externalizing-problems composite. The teacher also rated the student at the clinically significant level in the behavioral symptoms composite. The teacher rated the student the at-risk level in the school-problems composite. (J-1 at pages 16-17).

17. The April 2020 ER included attention rating scales completed by each parent and a teacher. (J-1 at pages 17-19).
18. The parents' behavior ratings were relatively consistent between each rater. Neither parent rated the student in the very-elevated range in any area. Both parents rated the student in the elevated range in the learning-problems scale. The student's mother rated the student in the elevated range in the defiance/aggression scale and in the elevated range for the markers for diagnostic criteria for oppositional defiant disorder. Aside from the learning-problems rating, the student's father rated the student in the average or high-average range across all other measures. (J-1 at pages 17-19).
19. The student's mathematics teacher completed the attention ratings. The teacher rated the student in the very-elevated range in the following areas: inattention, hyperactivity/impulsivity, defiance/aggression, the instrument's global index, and for the

markers for diagnostic criteria for attention deficit hyperactivity disorder (“ADHD”)/impulsivity, conduct disorder, and oppositional defiant disorder. (J-1 at pages 17-19).

20. The April 2020 ER included rating scales for executive functioning, completed by each parent and a teacher. (J-1 at pages 19-21).
21. The parents’ ratings on the relevant scales for executive functioning (inhibition/impulsivity, behavior regulation index, emotional control, and emotional regulation index) were consistent between each rater.⁵ Both parents rated the student in the potentially-clinically-elevated range on the inhibition/impulsivity scale and behavior-regulation index. Both parents rated the student in the average range on the emotional-control sub-scale and emotional-regulation index. (J-1 at pages 19-21).
22. The student’s social studies teacher rated the student in the clinically-elevated range on the inhibition/impulsivity scale and behavior-regulation index. The teacher rated the student in the potentially-clinically-elevated range on the emotional-control sub-scale and emotional-regulation index. (J-1 at pages 19-21).

⁵ Other sub-scales and indices in the executive functioning assessment are geared toward planning, organizing, and task. These areas showed the potential need for support in various areas, on the ratings of both parents and the teacher, but are less relevant for understanding the background of the behavior incidents of November 19, 2024.

23. Due to the COVID-19 pandemic and consequent statewide school closure in March 2020, the District was unable to perform observations of the student in the school environment and was unable to perform cognitive and academic-achievement assessments. The closure also impacted the implementation of certain provisions of the behavior plan. Therefore, the April 2020 ER was judged as incomplete, and the District deferred any identification of the student under IDEA until it could further assess the student. (J-1 at pages 3, 10-14, 23).

[redacted] Grade / 2020-2021

24. In August 2020, the District concluded the evaluation of the student with full assessments/instrumentation and issued a completed ER. (J-1 at pages 27-58).

25. The August 2020 ER identified the student as a student with a health impairment who required special education related to executive functioning deficits (organizational skills, task-focus, self-advocacy, externalizing behaviors, emotional challenges). (J-1 at pages 53-54).

26. In September 2020, the student's individualized education program ("IEP") team determined that the student's educational needs "would best be met within the emotional support program". (J-2 at page 2).

27. In [redacted] grade, the 2020-2021 school year, the student was involved in four disciplinary referrals, all in the second semester and all involving interactions with adults, resulting in one reprimand, two 1-day suspensions, and one 2-day suspension. (J-8 at page 3).

[redacted] Grade / 2021-2022

28. In [redacted] grade, the 2021-2022 school year, the student was involved in six disciplinary referrals. Two involved cutting class, two involved rough or boisterous behavior, one involved missing Saturday detention, and one involved failure to follow adult directives. None of the incidents resulted in suspension from school. (J-8 at pages 2-3).

[redacted] Grade / 2022-2023

29. In October and November 2022, the student was involved in four disciplinary referrals. One involved controlled substances and resulted in a 5-day suspension. Two involved disrespect of staff and failure to follow adult directives, and one involved a classroom disturbance; none of these referrals resulted in suspension. (J-8 at page 3).
30. In February 2023, the student's IEP underwent its annual revision. (J-3).
31. Teacher input in the February 2023 IEP indicated that the student engaged in appropriate behavior with peers and was respectful

with adults was respectful with adults, although the student's math and English teachers reported more concerns with peers, and the math teacher reported more resistant behaviors with her requests (although the student would ultimately comply). (J-3 at pages 15-16).

32. The February 2023 IEP included information related to a school-based program to help the student self-assess levels of "stress, motivation, frustration, and to identify successful coping strategies". Bi-weekly feedback from teachers, collected as part of the program, indicated that "teachers have reported consistent increases in positive behaviors in class and decreases in behavioral issues." (J-3 at page 17).

33. In April 2023, the District issued a re-evaluation report ("RR"). (J-2).

34. Parent input in the April 2023 RR indicated that the parents sought for the student to receive services in the learning support environment not the emotional support environment. (J-2 at page 2).

35. Teacher input in the April 2023 RR included an assessment of level of appropriateness of interactions with peers. Two teachers reported the student always exhibited appropriate interactions with peers; two teachers reported the student sometimes exhibited appropriate interactions with peers. (J-2 at pages 5-6).

36. No teacher reported any problematic behavior directed toward adults. (J-2 at pages 5-6).
37. The April 2023 RR included progress-monitoring data for an IEP goal in coping skills and impulse control. The trend-line for progress is relatively flat for the instructional year preceding the RR. (J-2 at pages 7-8).
38. The student's own input into the April 2023 RR indicated that the student felt there was progress in appropriate interactions with others, including adults. (J-2 at page 9).
39. The April 2023 RR included updated behavior rating scales, completed by the student's mother, a teacher, and a self-report. (J-2 at pages 10-12).
40. The mother's behavior ratings did not rate the student as clinically significant in any area. The mother rated the student as at-risk in the conduct problems, attention problems, and functional communication sub-scales. The mother's ratings resulted in the student being rated in the average range on all composites. (J-2 at pages 10-12).
41. The student's emotional support teacher did not rate the student as clinically significant in any area. The teacher rated the student as at-risk on only one sub-scale (social skills). The teacher's ratings, being almost uniformly in the average range, resulted in the student

being rated in the average range on all composites. (J-2 at pages 10-12).

42. The student's self-report on the behavior ratings scales were all in the average range, across all sub-scales and composites. (J-2 at pages 10-12).

43. The April 2023 RR included rating scales for executive functioning, completed by the student's learning support teacher. (J-2 at pages 12-13).

44. The emotional support teacher did not rate the student as clinically elevated in any area. The teacher rated the student with mild-elevation on only one sub-scale (task initiation). The teacher's ratings, being almost uniformly in the average range, resulted in the student being rated in the average range on all indices. (J-2 at pages 12-13).

45. The April 2023 RR continued to identify the student as a student who required special education as the result of health impairments related to executive functioning skills. (J-2 at page 14).

46. The April 2023 RR included the following recommendations to the student's IEP team:

"Parents requested a re-evaluation to determine continued need in the emotional support program, as (the student) has made progress with...behavioral needs.

Findings of the current psychoeducational evaluation indicate that (the student) is meeting or close to meeting...goals during each progress monitoring check point. Teachers report no behavioral concerns and note continued improvement in this area. Scales completed for this evaluation evidence no significant needs in the social, emotion or behavioral areas. (The student) and parents feel that emotional support is no longer needed at this time....The (evaluation team) [which includes the parents] determined in April 12, 2023 that (the student) continues to evidence a need for special education to address executive function needs as a student with an other health impairment. Therefore, the (evaluation team) is recommending continuant in learning support services only." (J-2 at page 15; parenthetical material in the original edited for stylistic consistency, bracketed material added for clarity).

47. In April 2023, following the issuance of the April 2023 RR, the student's IEP was revised to include the updated input, assessments, and recommendations contained in the April 2023 RR. (J-3).

48. The April 2023 IEP, as revised, included one goal for executive functioning support for preparation and study skills for classroom quizzes and tests. (J-3 at page 28).
49. The April 2023 IEP, as revised, discontinued the emotional support elements of the student's programming and all supports were delivered in learning support with an emphasis on executive functioning in academic areas. (J-3 at pages 29-33).
50. In May 2023, the student was involved in a disciplinary referral for disrespect to staff. (J-8 at page 2).
51. During [redacted] grade, the parents requested a meeting with District leadership to address the student's belief that certain staff and security officers purportedly are biased and engage in racist behavior with students of color. A particular incident involved a friend of the student who reportedly overheard a conversation amongst District personnel, including a school security officer, where those personnel purportedly disparaged students of color. The student views District school security officers with suspicion and forms a background to the student's sense of how those officers conduct their duties. (School District ["S"]-1; NT at 48-176).
52. Security officers at the high school are employees of the District and are not police officers. They are not armed. The security officers wear an athletic shirt with school insignia; pants and shoes are non-

uniform. Security officers have a lanyard and carry walkie-talkies. (J-6 at video #6).⁶

53. Security officers undergo initial training by the District before they assume their duties and participate in ongoing training. (NT at 277-332).

[redacted] Grade / 2023-2024

54. In [redacted] grade, the 2023-2024 school year, prior to a February 2024 IEP meeting, the student was involved in seven disciplinary referrals. Four involved classroom disturbance, two involved cutting class, and one involved academic dishonesty. None of the incidents resulted in suspension from school. (J-8 at pages 2-3).
55. In February 2024, the student's IEP was revised. (J-4).
56. Teacher input in the February 2024 IEP was generally positive, without significant indications of problematic interactions with peers or adults. ((J-4 at pages 12-13).
57. The February 2024 IEP indicated that behavior support consultation was no longer necessary. (J-4 at page 13).

⁶ J-6 is a collection of video clips recorded on November 19, 2024 from security cameras at various locations in the high school and in the high school parking lot. There are ten clips in all, seven showing various hallway locations within the high school (videos 1-7), two showing the waiting area of the main office (videos 8 and 9), and one showing a view of the parking lot (video 10), all saved to a media device (J-6) in chronological order. Video #6 shows a very clear view of the garb of the security officers, specifically the security officer involved in the incidents of November 19th.

58. Parental input in the February 2024 IEP indicates that “(the student) hates school but attends”. (J-4 at page 17).
59. The executive functioning goal, special education instruction and supports, and learning support placement remained the same as in the February 2023 IEP (with April 2023 revisions). (J-4 at pages 26-28).
60. Following the February 2024 IEP meeting, the student was involved in one disciplinary referral in February (parking in the wrong parking lot) and two referrals in April (a class disturbance and persistent tardiness to school). (J-8 at page 2).

[redacted] Grade / 2024-2025

61. In [redacted] grade prior to November 19, 2024, the student was involved in four disciplinary referrals (three involving persistent tardiness to school and one for leaving class without permission). None of these referrals resulted in a suspension. (J-8 at page 2).
62. On November 1, 2024, a coach and mentor of the student, who had been involved with the student’s athletics since childhood, was diagnosed with a highly aggressive form of cancer. The student was highly emotional at news of the diagnosis and at a hospital visit. The coach/mentor passed away on November 17, 2024. (NT at 48-176).

November 19th Incidents

63. On the afternoon of November 19, 2024, a school security officer was informed that a student may have left a backpack in or around a school elevator. The security officer was instructed to search the elevator area to see if the backpack was there. (NT at 277-332).
64. The security officer was stationed, as a usual part of her schedule, in the main office of the high school (NT at 277-332).
65. The main entrance of the high school, and the high school office, are on the second floor of the building but are accessible from street level given the way the building is situated in the topography of the campus. The security officer was informed that the backpack might be in the elevator area on the third floor of the building. (NT at 277-332, 339-412).
66. The security officer left her station at the high school main office and exited the office area to use a stairwell to go up to the third floor. It is a very short distance from the main office to the stairwell. (NT at 277-332; J-6 at video #1).
67. The student, having requested to use the bathroom during class, was in the same second-floor hallway as the security officer at the time she came out of the high school office, moved down the hallway, and turned into the stairwell. (J-6 at video #1; NT at 523-581).

68. From her work in the high school, the security officer knew the student as a member of the student body. She had never interacted with the student and did not know anything particular about the student. (NT at 288-332).

69. The security officer was not involved in the conversation purportedly overheard by a classmate in [redacted] grade that added to the student's suspicion of District security personnel. (NT at 48-176, 288-332).

70. By way of explanation after the incidents described herein, the student shared that the student simply wondered what the security officer was doing and wondered if the security officer was seeking to "target" certain students. (S-1 at pages 1-2; Hearing Officer Exhibit – Threat Assessment; NT at 48-176, 339-412).

71. The student was not close to the security officer as she came into the hallway and moved to the stairwell. The student saw the security officer at some distance along the hallway and jogged down the hallway to catch up to the security officer. (J-6 at video #1).

72. The student entered the stairwell after the security officer had entered. (J-6 at video #1).

73. The security officer exited the stairwell on the third floor and proceeded down the third-floor hallway. Shortly thereafter, the student

exited the stairwell on the third floor and followed the security officer at a distance. (J-6 at video #2).

74. As the security officer passed another staff member walking in the other direction, the two shared a brief interaction as they passed each other. The interaction caused the security officer to turn to address the staff member. This brought the student, following behind the security officer, into her view. (J-6 at video #2).

75. As the security officer turned, bringing the student into her view, the student moved into a doorway, ostensibly not to be seen following her. (J-6 at video #2).

76. At the end of the third-floor hallway, the hallway ends at stairs heading up to some other level. The elevator is in small area tucked behind the stairs, such that, as the hallway ends, one has to make a ninety-degree turn to the right and then another ninety-degree turn to the left to come into the elevator area. The elevator area itself is out of view of the security camera. (J-6 at video #3).

77. The security officer moved into the elevator area. The backpack was not in the elevator area, so the security officer exited the elevator area, heading back into the hallway. (J-6 at video #3; NT at 277-332).

78. Just as the security officer came around the sharp corners of the elevator area, the student came into the elevator area, seemingly surprised that the security officer was now heading back in the

opposite direction. The student turns and begins to follow the security officer back down the third-floor hallway. (J-6 at video #3).

79. The security officer testified credibly that the student was stomping at various points during the time the student followed the security officer. The videos in evidence do not have sound, so the volume of the student's steps is unknowable from viewing the videos. But as the student watches the security officer head back down the third-floor hallway, the student clearly stomps. (J-6 at video #3).
80. The student followed the security officer along the third-floor hallway. (J-6 at video #4).
81. The security officer entered the stairwell to return to the second floor. (J-6 at video #5).
82. The security offer exited the stairwell into the second-floor hallway to return to the high school office. (J-6 at video #6).
83. As the security officer came into the hallway, a staff member entered the hallway from another doorway. The security officer paused to converse with the staff member, at which point the student exited the stairwell and passed the security officer, heading into the office ahead of her. (J-6 at videos #6, #7).
84. The student entered the main office ahead of the security officer. Upon entering the office, the student headed to the left, which is where the security officer is stationed. The student stood in proximity

to the security officer as she resumed her station. (J-6 at video #7; NT at 277-332).

85. Eventually, the student moved away from the security officer and engaged office staff at the counter about needing to speak with an administrator. Staff informed the student that the administrator was unavailable, and the student exited the office. (J-6 at videos #8, #9; NT at 277-332).

86. The security officer testified credibly that she was uncertain of the student's intentions throughout the following incident and was concerned when she realized that the student was intentionally following her. She did not address, or engage with, the student to avoid escalating the situation. (NT at 277-332).

87. The security officer was upset, and scared by, the interaction with the student. The security officer reported the student's behavior to the building principal, who noted the emotional affect of the security officer. (NT at 277-332, 638-682).

88. District administrators reviewed the videos and decided to implement a one-day suspension of the student, along with short-term removal of parking privileges at the high school. (NT at 339-412, 523-581).

89. By the time the investigation had concluded and the administrative team had consulted, the school day was nearing its

end. The student's mother was summoned to the high school since the student would be excused for the remainder of the day. The assistant principal, the student's mother, and the student discussed the behavior involving the security officer, including review of the videos. (S-1 at pages 1-2; NT at 48-176, 339-412).

90. The student reacted emotionally to news of the discipline but denied any intention of intimidating or frightening the security officer. The student did not acknowledge that the behavior was problematic and did not show remorse. (S-1 at pages 1-2; NT at 48-176, 339-412).

91. The student shared that the student's generalized suspicion of District security staff was part of the thinking about the security officer who the student followed. (S-1 at pages 1-2; NT at 48-176, 339-412).

92. After the meeting, the student's mother left the high school, assuming the student would leave as well. (NT at 48-176).

93. The student left the office, followed by an administrator. (S-1 at pages 1-2; NT at 339-412).

94. The student did not leave the building. The student returned to a foods class to retrieve food the student had made, disobeying the administrators' directives and disrupting the class. (S-1 at pages 1-2; NT at 339-412).

95. After leaving the classroom, the student exited the building. The student went the car driven to school that day, started it, but did not leave. (S-1 at pages 1-2; NT at 339-412).
96. At this point, the high school was being dismissed. Administrators and security officers were outside the building and in the parking lot, at their regular positions for dismissal. (NT at 277-332, 339-412, 523-581).
97. Two administrators approached the vehicle and informed the student that the student needed to leave campus. The student eventually complied, driving off. But the student immediately circled back to the parking spot and appeared that the student would park again in the spot. (S-1 at pages 1-2; NT at 339-412, 523-581).
98. Instead of parking the car again, however, the student drove off. (S-1 at page 1-2; NT at 339-412, 523-581).
99. The student went to exit the parking lot, coming to a stop sign at an intersection in the parking lot. At that stop sign, students continue straight to exit the parking lot; another road within the parking lot complex comes into the intersection at that point. Positioned at that intersection was the security officer who the student had followed that afternoon; her regular position at dismissal is at that intersection. (J-6 at video #10; NT at 277-332, 523-581).

100. The student approached the stop sign and applied the brakes, slowing down, but the car did not come to a complete stop. (J-6 at video #10).
101. The student rolled through the stop sign and began to make a right turn, which would have taken the car down the other road in the parking lot. Mid-turn, however, the brake lights—which had been lit as the student rolled through the stop sign—were no longer lit, and the student swerved back to the left. In swerving back to the car’s original path, the car passed closely in front of the security officer. (J-6 at video #10).
102. After the car passed, the security officer lifted her arms and shrugged, in exasperation. The student continued beyond the security officer to exit the parking lot as student’s normally would. (J-6 at video #10; NT at 277-332).
103. After the parking lot incident, the student indicated that there had been a last-second change of mind between picking up a friend on campus and waiting for that friend to come to the car just off campus. (P-3, P-6; NT at 48-176).
104. An immediate, present-sense impression of an administrator who witnessed the incident in the parking lot was that the student had purposefully driven at, or close to, the security officer. The

administrator went to the security officer to see if she needed assistance. (NT at 339-412).

Post-Incidents

105. Following the parking lot incident, District administrators spoke with the security officer, reviewed video of the incident, and consulted about further discipline. (NT at 277-332, 339-412, 523-581, 638-682).
106. The District administrators called police as a result of the parking lot incident. The police reviewed the video and visited the family. The police did not file charges as a result of the parking lot incident. (NT at 48-176, 277-332, 523-581).
107. In the late afternoon of November 19th, the student emailed an apology to the security officer and two District administrators. (P-2).
108. The emailed apology is not reflected by the student's affect and statements on November 19th or in the information shared by the student through the threat assessment. Although a private evaluator who interviewed the student (see below) indicated that the student was apologetic in the interview with him. (P-1 at page 11; S-1 at pages 1-2; Hearing Officer Exhibit – Threat Assessment at pages 7-10).

109. On November 19th itself, the District informed the parents that the discipline for both incidents would be increased to ten days. (J-5 at pages 1-2; NT at 48-176, 339-412, 523-581, 638-682).
110. On November 21, 2024, the parents were informed that the next day a MD meeting would be held (along with a regular education informal hearing required as part of the 10-day suspension). Parents testified that they had no sense of what the MD process entailed or what the result might be. (P-7; NT at 48-176, 688-721).
111. On November 22, 2024, the District held a MD meeting. The student attended the MD, along with the parents, the high school principal, the high school assistant principal, the student's special education teacher, and a District school psychologist. (J-7; NT at 48-176, 339-412, 415-466, 587-635, 688-721).
112. As part of the District's practice, a regular education administrator arranges with a District school psychologist to hold a MD meeting. (NT at 415-466).
113. At the MD meeting, only the school psychologist had a copy of the MD worksheet in front of her; no other attendee had the worksheet to refer to as the school psychologist worked through the questions and considerations of the MD process. (J-7; NT at 48-176, 339-412, 415-466, 587-635, 688-721).

114. The MD process concluded that the November 19th incidents were not a result of the student's disability, did not have a direct and substantial relationship to the student's disability, and were not the result of a failure to implement the student's IEP. (J-7).
115. No one at the MD meeting voiced disagreement with the considerations or conclusions of the MD process. (NT at 48-176, 339-412, 415-466, 587-635, 688-721).
116. On November 23, 2024, the student's mother signed and returned the MD worksheet with an indication that she agreed with the outcome of the MD process. (J-7).
117. The student's father did not access or read the MD worksheet, sent to the parents as an email attachment, until some time after the MD worksheet was sent to the parents. (NT at 688-721).
118. On December 3, 2024, the District informed parents that it would seek the student's expulsion. (J-5 at pages 3-4; P-11).
119. On December 6, 2024, counsel for the parents contacted District counsel, indicating the entry of an appearance on behalf of the family and mother's retraction of the agreement with the outcome of the MD process.
120. On December 10, 2024, parents, through counsel, filed the complaint which led to these proceedings. (J-10).

121. On December 14, 2024, a private evaluator retained by the family issued a psychoeducational evaluation of the student. (P-1; NT at 184-271).
122. The private evaluator performed a record review of the student's pertinent education records. (P-1 at pages 1-6).
123. The December 2024 private evaluation included updated assessments of the student's cognitive ability and academic achievement. (P-1 at pages 6-7, 9).
124. The student's performance on memory sub-tests in cognitive testing were suggestive of ADHD. (P-1 at page 8).
125. The student's performance on an assessment of attention indicated that the student's scored "in the ADHD range" indicating "difficulty in sustained visual attention over a 20-minute period". (P-1 at page 8).
126. The student's performance on an assessment of executive functioning confirmed the need for support of the student's executive functioning. The re-administration of the executive functioning assessment administered in the April 2020 ER showed scores consistent with the parents' ratings on that instrument in that report. (P-1 at pages 8-9, 10-11).

127. In the December 2024 private evaluation, the parents and the student completed behavior checklists.⁷ Both parents, and the student through self-report, scored the instrument in the normal range in the measures for depression, anxiety, somatization, and conduct problems. In the measure for oppositional defiant problems, the mother scored the instrument in the clinical range; the father's and student's self-report scored the instrument in the normal range. In the measure for ADHD problems, the mother scored the instrument in the clinical range, the father scored the instrument in the borderline-clinical range, and the student's self-report scored the instrument in the normal range. (P-1 at pages 10, 21).
128. The December 2024 private evaluation included a summary by parents of the November 19th incidents. (P-1 at page 11).
129. The December 2024 private evaluation included a clinical interview of the student by the evaluator. The interview included the impact on the student of the loss of the student's coach/mentor. (P-1 at pages 11-12).
130. The December 2024 diagnosed the student with ADHD, including the need for support for executive functioning. (P-1 at page 13).

⁷ For a comprehensive view of the results, the 'clinical', 'borderline clinical' and 'normal' descriptors from the scoring of the instrument is used for this finding of fact. P-1 at page 21.

131. The December 2024 diagnosed, or at least presented as a foundation for understanding the student's behavior on November 19th, an acute stress disorder, precipitated by the death of the coach/mentor. An acute stress disorder is a short-term stress reaction to a significant life event. (P-1 at page 13).
132. The private evaluator opined that the MD process reached an incorrect conclusion. In the view of the evaluator, the November 19th behavior incidents were related to the student's ADHD, issues with self-regulation, and acute stress disorder. (P-1 at pages 13-15; NT at 184-271).
133. Prior to the hearing, parents filed a motion for pendency, asserting stay-put protections for the student in the educational placement the student attended at the time the District sought a disciplinary change-in-placement. The District responded to the motion, averring that returning the student to that placement was substantially likely result in serious bodily injury. (Hearing Officer Exhibit – Parents' Pendency Motion; Hearing Officer Exhibit – District Response to Pendency Motion).⁸

⁸ These, and all, hearing officer exhibits will be prepared and finalized as the evidentiary record is prepared. The exact marking of those exhibits are not available at the time of the issuance of this decision. The parties will be provided with a comprehensive list of HO exhibits when those exhibits have been finalized.

134. The parents' motion for pendency was denied pending the development of evidence at the first hearing session. (Hearing Officer Exhibit – Ruling re: Parents' Pendency Motion).
135. At the outset of the hearing, parents requested reconsideration of the pendency ruling. (NT at 15-17, 31-35).
136. At no time did the District conduct a threat assessment of the student.
137. After the development of evidence at the first hearing session, the hearing officer requested that the District undertake a threat assessment of the student. (NT at 467-479).
138. The District's threat assessment was issued between the two evidentiary sessions. The threat assessment concluded that the events of November 19, 2024, and especially the parking lot incident, amounted to a very-serious/substantive threat. (Hearing Officer Exhibit – Threat Assessment).
139. The threat assessment reached the following conclusion: "The team believes that the student has no current intent to kill or cause very serious injury with a weapon to the victim; however, per (school threat assessment) guidelines, 'if a threat cannot be quickly resolved, it should be considered substantive. If there is an uncertainty about whether a threat is transient or substantive, the best approach is to

treat the threat as substantive". (Hearing Officer Exhibit – Threat Assessment at page 32).

140. The student has been receiving education and support through the District's online program. In the eyes of parents, this has not been successful. (NT 48-176, 587-635, 688-721).

Credibility of Witnesses

All witnesses testified credibly. The testimony of the student's parents and the private evaluator tended to minimize the potential sense of threat or stress in the eyes of the security officer as a result of the two behavior incidents, primarily based on the security officer's presentation on the videos; the security officer testified that, internally, she felt a degree of threat and fright from the incidents. The testimony of the security guard is credited, that a sense of threat or fright reasonably surfaced out of those interactions.

Legal Framework

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 pertinent part, where a school district seeks to remove a student identified as a child with a disability under IDEA for more than 10 consecutive school days due to a disciplinary matter, such a

removal is considered a disciplinary change in the student's educational placement. (34 C.F.R. §300.536(a)(1); 22 PA Code §14.102(a)(2)(xxxii)). Within 10 school days of the decision to implement a disciplinary change-in-placement, "(the school district), the parent, and relevant members of the child's IEP Team (as determined by the parent and the [school district]) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents" to determine if the behavior underlying the disciplinary action 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); 22 PA Code §14.102(a)(2)(xxxii)). This review is the MD process.

If the MD process determines that the behavior underlying the disciplinary action *is not* a manifestation of the student's disability, the school district may take disciplinary action as it would with a student who does not qualify under IDEA (34 C.F.R. §300.530(c); 22 PA Code §14.102(a)(2)(xxxii)); if the MD process determines that the behavior underlying the disciplinary action *is* a manifestation of the student's disability, the student must be returned to the then-current educational placement, and the student's IEP team must seek to understand how the behavior must be understood and addressed by the student's IEP. (34 C.F.R. §300.530(e)(f); 22 PA Code §14.102(a)(2)(xxxii)).

Furthermore, the IDEA provides that a procedural violation is not, in and of itself, grounds for a finding of a denial-of-FAPE. A procedural violation of IDEA may be grounds for a finding of denial-of-FAPE only where the procedural violation impeded the student's right to FAPE, or significantly impeded a parent's right to participate in educational decision-making, or caused a deprivation of educational benefit. (34 C.F.R. §300.513(a)(2); 22 PA Code 14.102(a)(2)(xxx)).

Discussion & Conclusions

Here, a reader of this record is confronted with two positions: One, the student has a somewhat lengthy history, since adolescence in [redacted] grade, of problematic behaviors in the school environment, many (but not all) related to executive functioning needs/ADHD symptomology/impulse control. Two, even given this history, the behavior incidents of November 19th were entirely out of character for the student and can accurately be described as singular. Sorting through these two positions, in answering the MD questions presented in this matter, is the challenge. Indeed, there is an evidentiary tug-of-war that takes place between the two positions.

First, the record taken as a whole clearly shows that since [redacted] grade, the student has engaged in patterns of behavior that involve defiance of adults, disruption, problematic interactions with peers, and failure to follow rules or requirements in the educational environment. Some, but not

all, of these incidents over the years are clearly rooted in impulse control, or at least ill-judged reactions in the moment. This moves one toward a sense that the incidents of November 19th might be the result of the student's disability. Countering that, however, is the fact that the entire mosaic of prior behavioral incidents are made up of discrete moments of misbehavior. Indeed, there is a flare of disrespect, or defiance, or aggression with peers which passes as quickly as it came. Outside of the November 19th incidents, the record is devoid of ongoing behavior incidents that persists over long periods of time.

Second, while occurrences of disrespect or defiance are part of the student's behavioral mosaic, the record is strong that the student engages in non-problematic interactions with teachers. In fact, the majority of the input and formal behavior assessments in the April 2020 ER, the April 2023 RR, and the student's IEPs indicate that the student is often polite, respectful, and responsive. The singularity of certain input/assessments reporting deeply problematic behaviors leads to a conclusion that those behavior are more situational, born of personality conflict or interpersonal dynamics, rather than a pattern of impulse control. In short, there is a great degree of volitional behavior in much of the problematic behavior reported by educators.

Third, the following of the school security officer through the hallways on November 19th falls along these lines. There was a sustained, volitional

effort to follow the officer, beginning with the student hurrying to be in proximity of the officer, following the officer with a sense of planning (namely, ducking into a doorway out of the officer's view when she turned), stomping to intimidate or make the interaction something more than mere following, and not breaking off the following of the officer by ending up at the same point with the officer in the high school office. Over that entire span of time, the record—through the objective visual evidence of the videos—supports a finding of intentionality not impulsivity.

Fourth, the level of intentionality of the student in the parking lot incident is more clouded than the record as to following the officer in the hallways. Is it intentional or impulsive? One cannot answer definitively as an abstract. But given the record as a whole, in the context of the student's clearly persistent and intentional behavior directed toward the security officer—substantively, a complete stranger to the student—, the view that the rolling stop and the swerving of the car was surfaced from the same place (i.e., intimidation of the officer) is supported by a preponderance of the evidentiary record taken as a whole. Furthermore, even if one takes the view that it was not intentional, the behavior had significant, concrete, and reasonable impact on the school security officer which, unlike the parents and private evaluator on this record, will not minimize.

Accordingly, the evidence supports a finding that both behavior incidents of November 19th—following the security officer in the hallways and

the parking lot incident involving the security officer—were not the result of the student’s disability, nor did those incidents have a direct and substantial relationship to the student’s disability, nor did those incidents result from a failure to implement the student’s IEP.

There are some elements of the record that must be addressed as part of this discussion. In the development of evidence at the hearing, parents clearly disagree with the imposition of expulsion as the disciplinary consequence for the November 19th incidents. In the hearing, it was pointed out to them, and will be reiterated here in the decision, that special education due process takes no view of the type or severity of the disciplinary consequence. It is not probative of the central question presented in the hearing: Were the incidents of November 19th rooted in the student’s disability? The District’s disciplinary course, amounting to a disciplinary change-in-placement, triggered the hearing process; but this process takes no view of the District’s pursuit of that course.

The private evaluator’s December 2024 report and conclusions strongly argues that the conclusion of the MD process is flawed and that the November 19th incidents are the result of, or are rooted in, the student’s disability. Two elements of the analysis in the report were new to the record of decision-making: The consideration of the impact of the student of the death of the student’s coach/mentor, and the resulting diagnosis of acute stress reaction. The District in its MD process did not consider the death of

the coach/mentor; this is a piece of information that might have cut a new facet in the understanding of the MD team. But no one at the MD meeting, including parents and the student, shared any view of the potential impact of the death of the coach/mentor. In that regard, it was not information that the District ignored or overlooked or dismissed—it simply was not a consideration of the team. Likewise, the diagnosis of acute stress reaction was not something that the MD team could consider. That diagnosis did not come for nearly a month after the behavior incident and MD meeting. Neither of these things are unimportant—and sadness over the death of the coach/mentor clearly had an impact on the student—but it is equally clear that neither the fact of the event or even acute stress that the student may have experienced impacted the persistent, intentional, and ongoing nature of the student’s behaviors on November 19th .

Finally, the MD process could have been handled more forthrightly. Failing to provide parents with more advanced notice of the MD meeting and failing to provide all participants with a copy of the MD worksheet are both procedural flaws. The District would be well-served to review its practices in both regards, making sure parents have more time rather than less time to prepare for a MD meeting and having available for all participants at a MD meeting the document which structures the team’s considerations. In fact, under a different set of facts, where the MD process might reach an unsupportable conclusion or some other element of an incident might

amount to a denial-of-FAPE, these procedural flaws might undergird a finding of procedural denial-of-FAPE. On this record, the MD meeting and result are fully supported by events as those unfolded and by this evidentiary record. Therefore, there is not substantive denial-of-FAPE, which blunts any assertion by parents that there has been a procedural denial-of-FAPE.

In sum, then, the behaviors underlying the two November 19, 2024 disciplinary incidents are not a manifestation of the student's disability.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, the behaviors underlying the two November 19, 2024 disciplinary incidents are not a manifestation of the student's disability. The student is not entitled to compensatory education.

Any claim not specifically addressed in this decision and order is denied and dismissed.

s/ Michael J. McElligott, Esquire

Michael J. McElligott, Esquire
Special Education Hearing Officer

02/04/2025