



**Before the  
State of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of ###, Student

**DECISION**

v.

DHA Case No. DPI-24-0016  
DPI Case No. LEA-24-0015

##### [School District@

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The PARTIES to this proceeding are:

, Student, by

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Disability Rights Wisconsin  
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>School District@, by

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**PROCEDURAL HISTORY**

On April 17, 2024, Attorney Ally Seneczko, on behalf of (Parents) and (Student), filed an expedited due process hearing request with the Department of Public Instruction (DPI) under the Individuals with Disabilities Education Act (IDEA) and Wis. Stats. Chapter 115 against the ##### (District). DPI referred the matter to the Wisconsin Division of Hearings and Appeals, and Senior Administrative Law Judge (ALJ) Sally Pederson was duly appointed to conduct an expedited hearing.

On April 25, 2024, a prehearing telephone conference was held with the parties, and the expedited hearing was scheduled for May 9, 2024. The hearing commenced as scheduled but was unable to be completed in one day and, consequently, was continued on May 14, 2024. The District did not hold school on May 17 and 27, 2024. Therefore, the decision in this expedited matter is due on May 30, 2024.

### ISSUE

Did the District incorrectly determine that the Student's conduct on March 13, 2024 was not a manifestation of his disability and, consequently, improperly expel the Student from school?

### FINDINGS OF FACT

1. The Student is a 15-year-old (d.o.b. 12/01/2008) child with disabilities who resides in the District.
2. Due to his disabilities, the Student has struggled with impulse control, emotional and behavior regulation, and social functioning since he was a young child. (Parents' Exhibits 4 and 5)<sup>1</sup>
3. When the Student was seven years old in November 2016, the Dean Clinic conducted a neuropsychological evaluation, and the Student was diagnosed with attention deficit hyperactivity disorder (ADHD)-combined subtype and adjustment disorder with depressed features. (P. Ex. 4, p. 41)
4. In December 2016, when the Student was in second grade, the District evaluated him for services under Section 504 of the Rehabilitation Act of 1973. The referral form noted that the Student "struggles with regulating his behavior, body, and emotions a large part of the day," and his "impulsive behaviors affect his work input and output, often having to miss chunks of time due to being a disruption to the classroom environment or needing breaks to reset his body." The District found him eligible for services and developed a Section 504 Plan for him. *Id.*
5. In October 2018, when the Student was in fourth grade, the District's previous Director of Pupil Services referred the Student for a special education evaluation under the IDEA in response to the Student's "increase of behavioral incidences" that "resulted in him being sent home, out of school suspension, and police contact." (P. Ex. 5, p. 57)

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<sup>1</sup> Hereinafter, references to the Parents' exhibits will be abbreviated as P. Ex., and references to the District's exhibits will be abbreviated as D. Ex.

6. The Student incurred the following disciplinary referrals from kindergarten through December 2018 (halfway through his fourth-grade school year):
  - Kindergarten (2014-2015) – three disciplinary referrals, all for “being physical” with other students.
  - First grade (2015-2016) – seven disciplinary referrals, three for being physical with other students, four for non-compliance/disruptive behaviors.
  - Second grade (2016-2017) – 13 disciplinary referrals, eight for being physical with others, one threat (putting nuts in the lunchbox of a student with a nut allergy), two for non-compliance/disruptive behaviors, one for profanity, one for vandalism.
  - Third grade (2017-2018) – seven disciplinary referrals, five for being physical with other students, two for non-compliance/disruptive behaviors.
  - Fourth grade (as of December 2018) – 16 disciplinary referrals, four for being physical with other students, nine for non-compliance/disruptive behaviors, one for running off school grounds, and one for bringing a weapon (a pocket-knife) to school, which the Student would not relinquish to an adult until the District called the police.  
*Id.* at pp. 68, 71.
  
7. In November 2018, the District convened an individualized education program (IEP) team to evaluate the Student. The evaluation and assessment reports indicated that the Student was functioning above grade level academically, particularly in math and reading. However, his behaviors were impeding the learning of himself and others, and despite the “many behavior accommodations and supports being provided, [the Student] continued to struggle with self-regulation.” While the Student was already receiving private therapy at Stateline Mental Health Services, the special education teacher’s assessment summary stated that the Student “needs to be coached by a trained professional on how to handle his emotions and his body to function successfully in the educational setting.” *Id.* at pp. 68, 71, 75.
  
8. On December 12, 2018, the IEP team determined the Student met the eligibility criteria for emotional behavioral disability (EBD) and that he needed special education services. *Id.* at pp. 81-84.
  
9. On that same date, the IEP team developed an initial IEP that contained three annual goals, all addressing the Student’s struggle to comply with teacher directives and his lack of impulse control, coping skills, and self-regulation. The IEP included 15 minutes per day of special education/specially designed instruction that focused on social skills. The Student was attending school in the District for a limited amount of time in the afternoons and was engaging in outpatient therapy at the Cross Roads program in Janesville during

the mornings. The IEP also included transportation as a related service and numerous supplementary aids and services. (P. Ex. 5, pp. 93-99)

10. The IEP team also conducted a functional behavioral assessment (FBA) of the Student and developed a behavior intervention plan (BIP) that was included in his December 2018 IEP. The BIP indicated that the Student's difficult behaviors included making loud verbalizations and distracting noises in class, refusing adult correction in class, disrupting class by moving around and making grand gestures, and becoming "instrumentally aggressive." *Id.* at pp. 105-109.
11. In January, February, and March 2019, the IEP team reviewed and revised the Student's IEP to increase his hours in school, based upon his behavior improving and his transition from Cross Roads to a nearly full-time school day in the District in March. In addition to the existing 15 minutes of specialized social skills instruction in the Student's IEP, the IEP team increased the amount of special education services to include 20 minutes of academic instruction in the January IEP, which was then increased to 80 minutes of academic instruction in the February IEP, and reduced to 65 minutes of academic instruction in the March 2019 IEP. (S. Ex. 6, p. 124; S. Ex. 7, pp. 168, 148; St. Ex. 8, pp. 156, 167, 171)
12. In November 2019, when the Student was in fifth grade, the IEP team conducted an annual review of his IEP and revised it to include two annual goals. Both goals addressed the Student's need "to increase his ability to use coping strategies to regulate his body in order to remain an active learner in the classroom." The IEP called for 20 minutes of specially designed instruction in the form of two 10-minute breaks during the afternoon, as well as various supplementary aids and services aimed at encouraging positive behaviors and work completion. (S. Ex. 9, pp. 181-184)
13. In February 2020, the IEP met again to review and revise the IEP based on increased behavioral concerns, noting that the Student's behaviors had become more sexual in nature during fifth grade. The IEP team revised the Student's BIP to include information about his sexually inappropriate behavior and add consequences for that and other disruptive behavior, including removing him from the classroom if he could not be redirected or continued misbehaving after having a break outside of class. (S. Ex. 10)
14. In October 2020, when the Student was in sixth grade, the IEP team revised his IEP to reduce his educational placement to three and a half hours per day at school. The IEP team determined that, due to the Student's needs in the area of self-regulation, he would attend classes at school in the morning, and class work would be provided for him to complete at home, as his self-regulation difficulties were heightened in the afternoon. (P. Ex. 11, p. 224)







































