



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 01033-22

AGENCY DKT. NO. 2022-33871

D.S. ON BEHALF OF M.S.,

Petitioner,

v.

**HAMILTON TOWNSHIP BOARD
OF EDUCATION, MERCER COUNTY,**

Respondent.

D.S. on behalf of M.S., petitioner, pro se

Michael A. Pattanite, Jr., Esq., for respondent Hamilton Township Board of Education, Mercer County (Lenox, Socey, Formidoni, Giordano, Lang, Carrig & Casey, attorneys)

Record Closed: March 7, 2022

Decided: March 15, 2022

BEFORE **TRICIA M. CALIGUIRE, ALJ:**

STATEMENT OF THE CASE

This case arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §§1401 to 1484(a) and C.F.R. §§300.500. By a request for expedited relief, petitioner D.S. on behalf of M.S. challenges the determination of the child study team (CST) at Steinert High School (Steinert), Hamilton Township School District (District), that

M.S.'s involvement in a fight at school on February 1, 2022, constituted a disciplinary infraction neither related to nor caused by her disability, and challenges the discipline issued to M.S. by respondent Hamilton Township Board of Education, Mercer County (Board).

PROCEDURAL HISTORY

On February 7, 2022, petitioner filed a complaint for an expedited due process hearing with the New Jersey Department of Education, Office of Special Education, which was transmitted to the Office of Administrative Law (OAL) on February 9, 2022. In accordance with N.J.A.C. 6A:14-2.7(o), the expedited hearing was scheduled for March 4, 2022.

On February 14, 2022, petitioner filed a request for emergent relief directly with the OAL. Oral argument on emergent relief, including sworn testimony of minor child M.S., was held on February 22, 2022. An order denying emergent relief was entered on February 23, 2022.

On March 4, 2022, the expedited hearing was held via Zoom Communications, Inc., a remote audio-visual platform licensed by the OAL for use during the COVID-19 public health emergency. Prior to presenting testimony, the parties agreed that, consistent with the February 23, 2022, decision of the Board, M.S. would return to school upon obtaining medical clearance from her personal doctor and transmitting such to respondent.¹ Respondent moved to dismiss petitioner's challenge to the discipline imposed on M.S. by the Board on the grounds that petitioner had not submitted documentary evidence or a list of witnesses and therefore, would not be able to carry the burden of proving that the decision of the Board was arbitrary, capricious and/or not in accordance with law and/or Board policy. This motion was denied on the grounds that were petitioner to prevail in her challenge of the manifestation determination, the Board's

¹ Respondent further agreed to conduct certain evaluations of M.S. and to reimburse petitioner for a psychiatric evaluation conducted by an independent professional.

decision on discipline would necessarily also fail. Further, petitioner intended to make her case through direct examination of her daughter, M.S., by cross-examination of the Board's witnesses, and by reference to the exhibits already part of the record.

Throughout the hearing, petitioner failed to observe proper decorum, making insulting and condescending statements regarding respondent's counsel and witnesses,² specifically challenging their truthfulness by making references to matters outside the record.

On March 7, 2022, both parties made post-hearing submissions and the record closed.³

FACTUAL DISCUSSION AND FINDINGS

The following **FACTS** are not in dispute and accordingly, I **FIND**:

M.S. is a seventeen-year-old female who is eligible for special education (SE) and related services. M.S. was initially found eligible for SE and related services in 2016. She has not attended school in the District continually since 2016, but while enrolled in the District, has received such services.

Throughout the emergent and expedited proceedings, petitioner stated that M.S. is eligible for SE under the classification "emotionally disturbed." Petitioner introduced a copy of the cover page of the draft individual education program (IEP) for M.S., dated March 25, 2020, which states that M.S. is classified as emotionally disturbed. (P-1.) As shown on the cover page, this IEP was proposed for use during the 2020-2021 school year.

² During the hearing, respondent asked that petitioner be held in contempt; though sanctions were considered, they were not issued. N.J.A.C. 1:1-14.14.

³ After March 7, 2022, numerous emails were exchanged by the parties and by petitioner and the Department of Education. Though my judicial assistant was routinely copied on these emails, they involved matters occurring after the record closed. See N.J.A.C. 1:1-18.5(c); see also Fn 4, below.

In May 2020, the New Jersey Department of Education proposed readoption of the SE regulations, N.J.A.C. 6A:14, with amendments. Included in those amendments was a change in the term “emotional disturbance” to “emotional regulation impairment.” See N.J.A.C. 6A:14-3.5(c)(5); 2020 N.J.R. 22439 (May 4, 2020). The proposed amendments were readopted with this change on September 9, 2020, effective September 10, 2020. 52 N.J.R. 1822(b) (Oct. 5, 2020). The amendments did not change the criteria for eligibility under this classification, as discussed further below.

M.S. began the 2021-2022 school year in eleventh grade at Gateway High School in Florida, where she received instruction in a general education (GE) class pursuant to an IEP developed by the CST at Gateway High School.

Since November 2021, M.S. has attended eleventh grade at Steinert⁴ in a GE class where she receives instruction pursuant to an IEP adopted on November 20, 2022.⁵ M.S. spends more than eighty percent of the school day in the presence of GE students.

On January 29, 2022, District Superintendent Scott R. Rocco, Ed.D. (Rocco) and Steinert Principal Bridget O’Neill (O’Neill) sent a letter to all Steinert students and their families regarding a recent increase in student fights at school and the use of social media by students to incite and/or share such fights. (R-1.) That letter stated, in pertinent part:

Moving forward, any student involved in, inciting, or provoking a fight will face:

- An immediate out of school suspension for no less than 5 school days and up to 9 school days.

⁴ The District operates three high schools. Prior to enrolling M.S. at Steinert, D.S. applied for a “zone waiver,” whereby M.S. would have attended Hamilton High School West though she lives in the part of the township which sends resident students to Steinert. That application was denied. Petitioner attempted to challenge that denial in this proceeding; it was recommended that she obtain guidance from the Office of Special Education regarding such a challenge.

⁵ Petitioner repeatedly claimed that respondent had made “illegal” changes to the IEP without her knowledge and/or consent. She offered no proof other than a copy of the first page of the draft IEP dated March 2020.

- An immediate loss of privileges including but not limited to: athletic/extracurricular activities, prom, walking in graduation, use of cellphone in school.

Any student involved in a second fight will face:

- An immediate out of school suspension pending a hearing before the Board of Education where a referral will be made to remove the student from the school and placed in an alternative educational program.

If our investigation of a fight reveals there to be premeditation and/or planning which includes efforts to incite an unsafe environment through written, verbal or electronic communications with others:

- Additional charges will be considered;
- A hearing before the board will be mandated; and
- A referral will be made for the student to be removed from the school and placed in an alternative educational program.

Any student recording, posting, or disseminating video of a fight will be found in violation of the District's Electronic Recording and Communication Device Policy, as well as other potential code of conduct violations and will face appropriate disciplinary consequences.

[(R-1.)]

On February 1, 2022, M.S. was involved in a fight with A.C., another female student, in the Steinert library. Respondent introduced three videos of the incident (and petitioner submitted but did not introduce two videos, at least one of which was a duplicate of respondent's video).⁶ In the first, a twenty-three-second video, M.S. is seen walking toward A.C., who is seated on a couch. M.S. is talking to A.C., gesturing with her hands. The camera moves away and then returns and M.S. is seen striking A.C. quickly and repeatedly. A third student, a male, pulls A.C. away and the video stops.

⁶ The videos were included with the packet introduced as Exhibit R-2.

The second video, a forty-three-second video, starts just after the first ends. A.C. is standing, still partially held by the male student, who appears to be trying to de-escalate the situation, raising a hand to try to keep the female students separated. M.S. is yelling at A.C., who is responding. M.S. steps up onto the couch, swings at A.C., steps back down, and then climbs over the couch again, swinging at A.C. By this time, adults come to help separate the girls, both of whom continue to yell at each other as A.C. is removed from the camera frame by the male student.⁷

The third video, four minutes and eight seconds long, was taken from M.S.'s Instagram Live account, posted on February 2, 2022. She is seen on the full screen and in a thumbnail shot in the top right corner of the screen describing what happened during the February 1, 2022 fight. The thumbnail shot appears over the video of the fight. M.S. appears to be talking to another female as she describes the fight; M.S. is smiling and dancing.

On February 1, 2022, Principal O'Neill contacted petitioner by telephone to report that M.S. had been involved in a fight with A.C.⁸ M.S. was charged with the disciplinary infraction of "fighting/instigating a fight on February 1 in the Steinert library." (R-2, at 2.) O'Neill directed petitioner to pick up M.S., stated that M.S. would be suspended, and the term of suspension would be determined after an internal investigation was completed. On February 4, 2022, O'Neill spoke with petitioner by telephone, as confirmed by email, and stated that M.S. was suspended pending a discipline decision by respondent.

On February 7, 2022, petitioner was notified by email from Sharon Prowisor (Prowisor), Learning Disabilities Teacher-Consultant (LDTC), of two dates for a manifestation determination meeting with the members of M.S.'s CST. (R-6.) The purpose of the manifestation determination meeting was to consider whether M.S.'s

⁷ Other than the repeated use of profanity, it is difficult to discern what any person in the first two videos is saying.

⁸ While there is some dispute regarding events leading up to the fight, during the emergent hearing, petitioner acknowledged that M.S. was involved in a fight and that her action was a violation of the Steinert Student Code of Conduct.

inappropriate behavior was a manifestation of her disability. Further, Prowisor offered to conduct the meeting “in-person or virtually,” at petitioner’s option, and requested additional dates and times for the meeting that would be convenient for petitioner. (R-6.)

By two return emails, sent within thirty minutes of Prowisor’s email, petitioner effectively stated that she would not participate in this meeting. (R-6.) On February 8, 2022, Prowisor notified petitioner that the manifestation determination meeting would be held on February 10, 2022, at 9:30 a.m., within the ten-day period following M.S.’s removal from Steinert. (R-6.) The manifestation determination meeting was held on February 10, 2022; neither petitioner nor M.S. attended.⁹ (R-7, at 4.) The CST determined that M.S.’s behavior was not a manifestation of her disability, stating, in pertinent part:

M.S. is classified with an Emotional Regulation Impairment.

The incident that occurred on Tuesday, 2/1/22 is not typical of a student with Emotional Regulation Impairment, or [sic] is it typical of [M.S.’s] school behavior. [She] has a history of reacting impulsively (“temper outbursts”) and this was not an impulsive act. She was in control of her actions on this day, as she had set up the situation before hand, and she went to the library for the sole purpose of confronting the student [with whom she fought].

[(R-7, at 2.)]

On February 15, 2022, respondent held a discipline hearing before a committee of the Board. (R-8.) Petitioner testified at this hearing and cross-examined respondent’s witnesses. (R-9.) At its regular meeting on February 23, 2022, the Board found as follows, in pertinent part:

[M.S.] engaged in a preplanned fight that she intended to have recorded and placed on social media, and that she did narrate

⁹ While petitioner raised procedural issues with respect to the manifestation determination meeting at the emergent hearing and in her post-hearing brief, she introduced testimony only to dispute the finding that M.S.’s behavior was not a result of or related to her disability.

the video of the fight on Instagram live. The Board finds that . . . [as] the manifestation determination found that [M.S.'s] conduct was not a manifestation of her disability, she can be disciplined consistent with the Code of Conduct. For this matter, the Board notes the enhanced penalties set forth by the Superintendent relative to preplanning to fight, recording the fight, and posting the fight on social media. The Board finds that [M.S.] is found to have engaged in all three of the prohibited activities.

The Board finds that [M.S.'s] suspension shall be through the date of the decision – February 23, 2022.

[(R-9.)]

Disputed Issues/Testimony

James Altobello (Altobello), the District Director of Secondary Education, testified on behalf of respondent. In his position, he oversees all disciplinary matters at the District's three high schools and three middle schools. Petitioner challenged Altobello's statement that he was in the library during the fight, but he can be seen on the videos trying to intervene. In any event, there is no dispute that the fight occurred and Altobello made no statements regarding how or by whom the fight was initiated.

LDTC Prowisor testified on behalf of respondent. She identified M.S.'s IEP, dated November 30, 2021, and effective December 1, 2021, through June 21, 2022. (R-5.) Prowisor stated that M.S. has diagnoses that fall under the classification "emotional regulation impairment," including oppositional defiance disorder, general anxiety disorder, major depressive disorder, and impulse control disorder.

As part of the CST, Prowisor participated in the manifestation determination meeting regarding M.S. She identified the documents filled out during and as a result of the manifestation determination meeting. (R-7.) Prowisor stated that the CST determined that, based on all evidence and M.S.'s diagnosis, M.S.'s behavior on February 1, 2022, was not a manifestation of her disability as her actions were not impulsive but preplanned.

On cross-examination, Prowisor stated that she had contact with M.S. on three occasions since November 2021, that petitioner is very involved with M.S.'s education, and M.S. had last been evaluated by the District during the 2017-2018 school year. (R-5, at 4.) Over petitioner's objections, Prowisor stated that the IEP marked as Exhibit R-5 was not changed by the CST after November 30, 2021.

Principal O'Neill testified on behalf of respondent. She did not witness the fight but went to the library upon learning of it. O'Neill met A.C. outside the library and took her to O'Neill's office, where A.C. stated that she had been "jumped" by M.S. and did not know what had provoked the fight. While A.C.'s statements to O'Neill are hearsay, they are corroborated by the videos in which M.S. is seen striking A.C. first.¹⁰

O'Neill identified her report of the incident, dated February 1, 2022. (R-2, at 5.) To prepare this report, O'Neill interviewed all witnesses to the fight and the participants (M.S. and A.C.). She stated that she interviewed the "student who filmed the fight" and this student, R.W., told O'Neill that while in the lunchroom, M.S. said she intended to fight A.C. Further, R.W. stated that M.S. handed R.W. her phone already in filming mode and that R.W. filmed the fight using M.S.'s phone. R.W.'s statements are hearsay, only some of which are corroborated, as discussed below.

In her report, O'Neill states that she and Vice-Principal Dr. Lauren Brazil (Brazil) interviewed M.S. in O'Neill's office after the fight. (ibid.) During this meeting, O'Neill stated that M.S. told her she planned the fight and planned to record the fight. Further, M.S. stated that she turned the video recorder on her phone on and handed her phone to R.W., another female student, who then filmed the fight. M.S. told O'Neill that the fight had been shared on social media. The next day, O'Neill viewed the video of the fight as posted by M.S. on Instagram Live.

¹⁰ A.C. gave a written statement consistent with her verbal statements to O'Neill. (R-2, at 27.) The written statement is hearsay, but A.C.'s description of the incident, including being held back by the male student, is corroborated by the videos.

With respect to the reason for the fight, O'Neill stated that M.S. told her she "had a beef with A.C." since middle school, but M.S. did not tell O'Neill that A.C. had made unkind remarks regarding M.S.'s deceased brother at a Black Student Union (BSU) meeting.

On cross-examination, O'Neill stated that she did not know whether R.W. could have acted on her own to film the fight.

M.S. testified on her own behalf. She stated that she and A.C. started having trouble about one month after M.S. enrolled at Steinert, but she tried to let it go and did not fight with her prior to February 1, 2022. M.S. identified her text exchange with R.W., sent on February 1, 2022, after the fight. (R-2, at 29.) In response to R.W.'s question, "Im still lost what did you really fight that girl for," M.S. responded:

I Faught [sic] her cause she was talkin shit about me wensday [sic] during the bsu meeting with her friends. Nd me nd [A.C.] had beef for awhile. Since we both went to west but we both wasn't doin nun [sic] about. I was gonna fight her when I first got to Stienert [sic].

Ns she mentioned my brother with her lil bsf [G.]¹¹

[(R-2, at 29.)]

M.S. stated that on February 1, 2022, she was in the lunchroom and overheard A.C. talking about the BSU meeting and specifically, about M.S.'s deceased brother.¹² A.C. left the lunchroom for the library. M.S. frequents the library during free periods, such as lunch, and stated that she has a permanent library pass. She went to the library, where she again overheard A.C. talking about her brother. She stated that she put both her bag

¹¹ "Ns" is typically used in texts as short for "no shade"; "bsf" is typically used in texts to mean "best sister/friend." www.urbandictionary.com.

¹² In her request for an expedited hearing, petitioner stated that "the fight escalated after numerous harassing comments and statements were made to minor child M.S. by A.C. referring to her 'stupid dead brother' and harassing verbal comments made to M.S. by A.C. that occurred at a [BSU] meeting on 1/26/2022." Petition of D.S. on behalf of M.S. (February 6, 2022), at 3.

and her phone down on a table and did not turn on the video camera nor hand her phone to any person.¹³

While M.S. conceded that her phone was used to record the fight, and that the recording was posted to social media, she stated that the video recorder can be turned on without the password and someone else must have recorded the fight and posted it to social media.¹⁴

On cross-examination, M.S. was asked about the following statements from the text exchange with R.W.:

Wait you [sic] told the principal we heard [A.C.] talking shit?
When was this?

LMAO¹⁵ I threw a lie in there nd said she was they believe me

Oh ok

Yuh lmao child I rly run that admin frfr¹⁶

[Ibid.]

M.S. confirmed that she exchanged the texts with A.C. after school hours on February 1, 2022. When asked to explain her “lie” to the principal, M.S. would not respond, began to cry, and her testimony was stopped.

¹³ Here, M.S. contradicted her sworn testimony at the Board hearing, where she said, “well I gave my phone to [R.W.]” (R-3 (Tr. (February 15, 2022), at 55:15-16.)

¹⁴ This statement is consistent with M.S.’s testimony before the Board, where she said she did not know that R.W. was recording the fight. Tr., at 55 18-19, 21. Yet, at the Board hearing, M.S. stated she knew that R.W. had her phone; by the due process hearing, M.S. was saying that the recording was done by an unknown third person with her phone.

¹⁵ “Lmao” typically means “laugh my ass off.” www.urbandictionary.com. M.S. confirmed that meaning during cross-examination.

¹⁶ “Frfr” typically means “For real, for real.” Ibid.

For testimony to be believed, it must not only come from the mouth of a credible witness, but it also has to be credible in itself. It must elicit evidence that is from such common experience and observation that it can be approved as proper under the circumstances. See, Spagnuolo v. Bonnet, 16 N.J. 546 (1954); Gallo v. Gallo, 66 N.J. Super. 1 (App. Div. 1961). A credibility determination requires an overall assessment of the witness's story in light of its rationality, internal consistency, and the manner in which it "hangs together" with the other evidence. Carbo v. United States, 314 F.2d 718, 749 (9th Cir. 1963). Also, "[t]he interest, motive, bias, or prejudice of a witness may affect his credibility and justify the [trier of fact], whose province it is to pass upon the credibility of an interested witness, in disbelieving his testimony." State v. Salimone, 19 N.J. Super. 600, 608 (App. Div.), certif. denied, 10 N.J. 316 (1952) (citation omitted).

Generally, petitioner contends that all of respondent's witnesses, at every point during these proceedings, have mischaracterized the fight and/or their own roles witnessing and/or responding to the fight, and have lied about statements made by both petitioner and M.S. While petitioner claims "many inconsistencies" in the statements made by respondent's witnesses,¹⁷ she failed to introduce documentary or testimonial evidence in support of those claims (other than M.S.'s testimony which, as described above, was inconsistent). Overall, there was no evidence of bad faith or improper motive on the part of respondent.

Petitioner, however, is persuasive in her challenge to respondent's claim that M.S. asked another student to record the incident and then posted it "to social media when it had already been posted while [M.S.] was sitting in Principal O'Neill's office immediately following the incident." Ltr. Br. of Petitioner (March 7, 2022), at 1.

As stated above, M.S. admitted at the hearing that her phone was used to record the fight. O'Neill stated that the video had been posted to social media by the time she

¹⁷ For example, petitioner claimed that respondent erroneously credited Dr. Rocco with witnessing the fight, but his name appears only at the end of the librarian's statement as assisting with other students. Petitioner alleged that M.S.'s IEP was changed without parental consent but provided no proof; the alleged changes were outside the scope of the present inquiry.

met with M.S., shortly after the fight. R.W.'s alleged statements to O'Neill regarding filming the fight are only corroborated by the video of the fight (and it is highly likely that all the students in the library that morning had phones with video capability). Other than O'Neill's report, none of the reports of the incident given by students and school personnel mentions M.S. asking R.W. to record the fight. Even R.W., who makes statements regarding attempting to talk M.S. out of fighting, does not describe using any phone, her own or M.S.'s, to record the fight.

Further, even if M.S. had intended that the fight be filmed, for her to have posted the fight on social media, M.S. would have had to have retrieved her phone before being escorted to O'Neill's office. Based on O'Neill's report, about fifteen minutes passed between the fight and the meeting between M.S., Brazil and O'Neill. That was certainly enough time to get the fight on social media, if M.S. had the phone back in her possession, but that was not established. M.S. was responsible, though, for posting to social media on February 2, 2022. Even though the initial posting to social media was not confirmed, visual proof was presented of M.S. posting to, and narrating over the video of the fight on, Instagram Live.

The first portion of the above-quoted texts between M.S. and R.W. supports M.S.'s claim that she fought A.C. because of A.C.'s statements at the BSU meeting the week before the fight. The second portion of the texts, however, raises a question as to the veracity of M.S.'s claim that A.C. was repeating such statements on February 1, 2022, in the lunchroom and just before M.S. took the first swing at her, in the library. M.S. was given plenty of opportunity at the hearing to explain herself and, specifically, to describe the lie that she told R.W. she fed to the administration on February 1, 2022. She was not able to do so. Based on the texts, it is reasonable to conclude that the lie that M.S. told the principal was that she and R.W. "heard [A.C.] talking shit." That conclusion is supported by R.W.'s statement that she tried to talk M.S. out of following A.C. to the library and fighting with her.

Petitioner did not present expert testimony to show that the manifestation determination was incorrect. M.S. did testify about the absence of pre-meditation on her part; setting aside that M.S. is not qualified to offer a medical opinion, her statements are difficult to reconcile with her insistence that she fought A.C. on February 1 in response to remarks made by A.C. on January 26.

Based on the foregoing, I **FIND** the following additional **FACTS** by a preponderance of credible evidence:

1. On January 26, 2022, at a BSU meeting, A.C. made statements to or about M.S. and M.S. admitted in a text message to R.W. that these statements were the reason M.S. instigated the fight on February 1, 2022.
2. M.S. left the cafeteria on February 1, 2022, and went to the library with the intention of fighting with A.C. R.W. tried to dissuade M.S. from fighting with A.C. but was unsuccessful.
3. Shortly after entering the library, M.S. walked to where A.C. was sitting and threw the first punch.
4. The fight was recorded on M.S.'s phone by a third person.
5. The video of the fight was uploaded to social media from M.S.'s phone on two occasions, right after the fight and the next day. M.S. is responsible for posting the fight to Instagram Live on February 2, 2022.

LEGAL ANALYSIS AND CONCLUSIONS

It is well-settled that the IDEA requires a school district to provide a free appropriate public education (FAPE) to all children with disabilities and determined to be eligible for SE. 20 U.S.C. §1412(a)(1)(A). When a child eligible for SE is subject to discipline, federal

and state law provide certain safeguards. 20 U.S.C. §1415, codified at 34 C.F.R. § 300.530.

When, as here, an SE student is subject to discipline for violation of a code of student conduct, the district cannot remove the student from her placement for more than ten days unless a manifestation determination is performed. 20 U.S.C. §1415(k)(1)(E); N.J.A.C. 6A:16-7.3(a)(7). The goal of a manifestation hearing is to determine whether the conduct for which the student is being disciplined was a result of or affected by the student's disability or a failure to implement the student's IEP. In making a manifestation determination, the IEP team must consider all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parent to determine:

If the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

If the conduct in question was the direct result of the [District's] failure to implement the IEP.

[34 C.F.R. 300.530(e); 20 U.S.C. § 1415(k)(1)(E)(i), (ii).]

If the IEP team, which typically includes the parent, finds that the behavior was a manifestation of the student's disability, the IEP team must either conduct a functional behavioral assessment and implement a behavioral intervention plan, or review and modify any existing plan as necessary, and return the child to the placement from which she was removed, unless there is agreement that a change in placement is appropriate. 34 C.F.R. 300.530(f). If the manifestation-determination review does not find one of the above criteria met, then the school may continue with the student discipline (including expulsion) just as it would for any student without an IEP, except that continued FAPE may be provided in an interim alternative educational setting. 20 U.S.C. §1415(k)(1)(C).

When the parent of a child with a disability disagrees with the manifestation determination, she may appeal the decision by requesting a hearing. 34 C.F.R. 300.532.

The question at the hearing is whether the Board can meet the burden of proving that M.S.'s behavior was not a manifestation of her disability. N.J.S.A. 18A:46-1.1.

Petitioner claims that respondent failed to follow the requirements of federal and state law with respect to the notice she was provided of the scheduling of the manifestation determination meeting. In the emergent proceeding, petitioner argued that respondent gave her only a day or two to prepare for the manifestation determination meeting and that there was confusion over that meeting and the Board committee hearing on appropriate discipline. There was, however, no testimony presented at either hearing to prove a due process violation in the conduct of the manifestation determination meeting. The regulations require advance notice to the parent of a manifestation determination meeting, but also require that the meeting be held within ten days of the behavior at issue, leaving respondent little choice with respect to dates. Respondent provided notice to petitioner of the meeting and attempted to reschedule – whether by date or by forum – at her request, but petitioner made it clear that she would not attend, and the meeting proceeded without her. I **CONCLUDE** that respondent acted appropriately in scheduling and conducting the manifestation determination meeting.

Petitioner also challenges the decision of the CST that M.S.'s actions were not a manifestation of her disability, emotional regulation impairment. As described above, in May 2020, the title of the eligibility category formerly called “emotionally disturbed” was changed, but the criteria for eligibility remained the same, as follows:

"Emotional regulation impairment" means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a student's educational performance due to:

- i. An inability to learn that cannot be explained by intellectual, sensory, or health factors;
- ii. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

- iii. Inappropriate types of behaviors or feelings under normal circumstances;
- iv. A general pervasive mood of unhappiness or depression; or
- v. A tendency to develop physical symptoms or fears associated with personal or school problems.

[N.J.A.C. 6A:14-3.5(c)(5).]

Petitioner claims that respondent, and in particular, Principal O'Neill, are lying about what transpired on February 1, 2022. While petitioner argues that M.S.'s actions were not "pre-meditated," she and M.S. contend that those actions were in response to unkind remarks made previously to M.S. by A.C. at the BSU meeting six days earlier. M.S. told at least one other person, R.W., of her intention to fight with A.C. before she followed A.C. to the library. While respondent did not prove that M.S. directed R.W. to film the fight and/or to upload it to social media immediately, it is undisputed that one day later, knowing that she had been suspended from school and that a hearing on her discipline was pending, M.S. went on social media with the same video of the fight and added narration.

The CST determined, as explained by Prowisor, that: M.S. planned in advance to fight A.C. over remarks A.C. made six days before the fight occurred; M.S. followed A.C. to the library with the intention of fighting with her; M.S. did not act impulsively in fighting with A.C. or in posting the fight to social media (particularly given that she waited a day before posting on Instagram Live). Petitioner did not provide expert testimony to criticize the CST manifestation determination. I **CONCLUDE** that respondent correctly determined that (1) M.S.'s actions were in violation of the Code of Conduct and of the January 29, 2022, letter of the District prohibiting fighting and the promotion of fighting through social media; and (2) those actions were not a manifestation of M.S.'s disability. Accordingly, respondent was permitted to proceed with the disciplinary process for M.S. as it would have for a student without an IEP.

Petitioner challenges whether the above-described action of M.S. warrants discipline under the Code of Conduct, District policies and/or District regulations and, if so, whether the respondent acted appropriately in issuing to M.S. the penalty of suspension from February 1 through February 24, 2022, a period of approximately sixteen school days.

The DOE requires local boards of education to adopt and implement codes of student conduct which establish “standards, policies and procedures” for student behavior on school grounds and to support and maintain a “civil, safe, secure, supportive and disciplined school environment conducive to learning.” N.J.A.C. 6A:16-7.1. School boards are routinely granted broad discretion in the enforcement of student codes of conduct. See, L.B. o/b/o S.C. v. Hamilton Tsp. Bd. of Educ., OAL Docket No. EDS 08561-17 (June 22, 2017).

Actions within a school board’s authority, including the adoption and implementation of disciplinary policies, are entitled to a presumption of correctness and will not be upset by the courts unless there is an affirmative showing that a decision is arbitrary, capricious or unreasonable. Thomas v. Bd. of Educ. of Morris Twp., 89 N.J. Super. 327, 332 (App. Div. 1965), affirmed, 46 N.J. 581 (1966). In general, a board of education’s actions are entitled to a presumption of lawfulness and good faith. Where board actions are challenged, the challenger bears the burden of proving that such actions were unlawful, arbitrary, capricious or unreasonable. Schuster v. Bd. of Educ. of the Twp. of Montgomery, 96 N.J.A.R.2d (EDU) 670, 676 [citing Schnick v. Westwood Bd. of Educ., 60 N.J. Super. 448 (App. Div. 1960), and Quinlan v. North Bergen Twp. Bd. of Educ., 73 N.J. Super. 40 (App. Div. 1962)]. To satisfy the arbitrary and capricious standard, petitioner must prove that respondent acted in either bad faith or in disregard to the circumstances.

As stated above, petitioner conceded that M.S.’s action in fighting in school was a violation of the Code of Conduct; the facts show that her conduct in fighting and posting the video of the fight on social media also violated Steinert policies as expressed in the

January 29, 2022, letter from the administration to the school community. As respondent notes, petitioner submitted no evidence, and has not argued, that the discipline imposed on M.S. was inconsistent with the penalties mandated by District policy for such violations. It is noteworthy that the policy as expressed in the January 29, 2022, letter authorized respondent to impose a greater penalty on M.S., but respondent opted otherwise.

Petitioner has not shown that the Board was arbitrary, capricious, or unreasonable in its determination that M.S. must serve a sixteen-day suspension and may return to school under prescribed conditions, including medical clearance, a psychiatric evaluation, and limits on cellphone use in school. Therefore, I **CONCLUDE** that petitioner did not carry her burden in proving that the Board's action was unlawful, arbitrary, capricious or unreasonable.

ORDER

For the reasons stated above, I hereby **ORDER** that the application of petitioner **D.S. on behalf of minor child M.S.** for an expedited ruling that respondent **Hamilton Township Board of Education** erred in its decision that the conduct of M.S. constituted a disciplinary infraction neither related to nor caused by her disability is hereby **DENIED**, and I hereby **ORDER** that the decision of respondent to impose discipline on **M.S.** in the form of a sixteen-day suspension and return to school under prescribed conditions is hereby **AFFIRMED**.

I further **ORDER** that the petition of **D.S. on behalf of minor child M.S.** is hereby **DISMISSED** with prejudice.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2021) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2021). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education.

March 15, 2022

DATE



TRICIA M. CALIGUIRE, ALJ

Date Received at Agency:

Date Mailed to Parties:

TMC/nmn

APPENDIX

WITNESSES

For Petitioner:

M.S.

For Respondent:

James Altobello
Sharon Prowisor
Bridget O'Neill

EXHIBITS

For Petitioner:

P-1 Draft IEP (cover page only), dated March 25, 2020

For Respondent:

R-1 Hamilton Township School District letter to Steinert Families, dated January 29, 2022
R-2 Administrative Hearing Preparation
R-3 Disciplinary Hearing Transcript, dated February 15, 2022
R-4 Letter from Hamilton Township School District's attorney to D.S., dated February 24, 2022
R-5 IEP dated November 30, 2021
R-6 Email chain re: manifest determination meeting, dated February 7 and February 8, 2022
R-7 Manifest Determination, dated February 10, 2022
R-8 Hamilton Township School Principal's letter to D.S., undated