

ARKANSAS DEPARTMENT OF EDUCATION

Special Education Unit


As Parent of

PETITIONER

VS.

NO. EH-26-12

PANGBURN SCHOOL DISTRICT

RESPONDENT

HEARING OFFICERS FINAL DECISION AND ORDER

Issue Presented

Whether the Pangburn School District erred at the manifestation determination conference held on September 8, 2025, in concluding that Student's conduct exhibited on September 2, 2025, was not a manifestation of Student's disability?

Procedural History

On October 3, 2025, the Arkansas Department of Education (hereinafter referred to as the "Department") received a request to initiate an expedited due process hearing from [REDACTED] (hereinafter referred to as "Parent" or "Petitioner"), as parent of [REDACTED] (hereinafter referred to as "Student") against the Pangburn School District (hereinafter referred to as "District" or "Respondent")

In response to the Parent's request for an Expedited Due Process hearing, the Department assigned the case to this impartial hearing officer. Thereafter, the Prehearing conference was scheduled for October 24, 2025, and the Expedited Due Process Hearing set for October 27, 2025.¹

The Prehearing conference was conducted via zoom on October 25, 2025.² Parent appearing pro se, and counsel for the District both attended the prehearing conference. Additionally, Ben Pollitzer, Arkansas Department of Human Services (ADHS) attorney, and Pricilla Mangthag, Arkansas Department of Human Services case worker also attended. During the prehearing conference it was discussed that since the filing of this expedited due process hearing, Student was removed from Parent's custody by DHS because of allegations of abuse. ADHS asked that the expedited due process hearing be heard after their probable cause hearing which was scheduled for October 29, 2025. The District and parent agreed with changing the

¹ See Hearing Officer file, Scheduling order.

² Transcript, prehearing conference.

expedited due process hearing to November 4, 2025, which was the last day the expedited due process hearing could be heard during the twenty school day statutory requirement under IDEA.³ During the prehearing conference, the parties also discussed unresolved issues to be addressed at the hearing, as well as the witnesses and evidence which would be necessary to address the same.⁴

Thereafter testimony was heard in this case on November 4, 2025.⁵ Present for the Hearing were [REDACTED] [REDACTED] Student, Terry Kane, High School Principal and district LEA, David Rolland, Superintendent, Jaquelyn Harrison, and Cody Kees, attorneys for the district, Ben Pollitzer, ADHS attorney, and Pricilla Mangthag, ADHS case worker.

The following witnesses testified in this matter: Terry Kane, Ashley Greene, Dutchess Butler.⁶

Having been given jurisdiction and authority to conduct the hearing pursuant to Public Law 108-446, as amended and Arkansas Code Annotated §6-41-202 through §6-41-223, Dana McClain, J.D., Hearing Officer for the Arkansas Department of Education, conducted a closed impartial hearing.

Both parties were offered the opportunity to provide post-hearing briefs in lieu of closing statements. The district filed its post hearing brief on November 7, 2025.

³ 34 CFR § 300.532(c)(1) due process complaint requesting an expedited hearing, the hearing must occur within 20 school days of the filing of the complaint.

⁴ Id.

⁵ Hearing Transcripts Vols. I-II.

⁶ Id.

Findings of Fact

1. Student is a sixteen (16) year old female, who attends Pangburn High School.
2. Student has been diagnosed with Disruptive Mood dysregulation Disorder (DMDD), ADHD, Major Depressive Disorder and a Specific Learning Disability in Math.⁷
3. Student is in the 11th grade at Pangburn High School.⁸
4. Student is identified for special education services under the category of Other health Impairment.⁹ Student receives indirect special education services for math and adaptive behavior, with accommodations such as extended time, frequent breaks, and individualized testing.¹⁰
5. The District developed and implemented a detailed Behavior Intervention Plan(BIP) for Student. Including frequently meeting to discuss Student's behavior outcomes and ways to improve the plan. This behavior plan focuses on avoidance/escape behaviors, positive reinforcement, nutritional support, and coping strategies. Fidelity checklists show mixed effectiveness; some interventions (snacks, small class sizes) are helpful, but organizational issues persisted.¹¹
6. On September, 2, 2025, Student was involved in an incident at school involving alcohol. Specifically, it was determined that Student, along with her boyfriend, discussed and planned to bring alcohol to school to consume while at school. Messages between Student and her then boyfriend outlined the plan. The plan

⁷ See expedited due process complaint.

⁸ Id.

⁹ Id.

¹⁰ District Exhibits, pgs. 51-56, 101-106.

¹¹ Id., pgs. 51-56, 109-115, 121-127.

involved Student's boyfriend bringing the alcohol –referred to as “kool-aid” (per the boyfriend's statement) and Student would bring a mixer (coffee). On September 2, 2025, both students' brought the items discussed to school, and the alcohol was later confiscated from their possession. Laboratory testing confirmed the substance was alcohol¹², and multiple witnesses corroborated that both students consumed it on campus.¹³

7. The District determined that Student's conduct on September 2, 2025, violated District policy 4.18 (Prohibited Conduct) and Policy 4.24 (Drugs and Alcohol).¹⁴
8. On September 4, 2025, the District held a Manifestation Determination Review (MDR) under IDEA. Parent asked to reschedule, as she had not received documentation related to Student's suspension and needed time to review it. The District did not provide hard copies at the meeting due to confidentiality concerns and indicated documents would be sent electronically, with redacted hard copies available for pickup the following day. Although Parent was dissatisfied, she agreed and collected the documents the next day. The MDR team, including Parent, then agreed to move the meeting to September 8, 2025.¹⁵
9. On September 8, 2025, the District held a manifestation determination review (MDR) to decide whether Student's behavior on September 2, 2025, was a manifestation of her disability. The Parent contested the validity of the MDR, arguing that the evidence presented was obtained unlawfully under the Fourth Amendment's search and seizure protections, and claimed it was illegal for the district to continue, alleging

¹² The results of this testing were not available for the manifestation determination review.

¹³ District's Exhibits, pgs. 7-31.

¹⁴ Id., pgs. 2-6.

¹⁵ Id., pgs. 37-39. Hearing Transcripts, pgs. 53-54.

- violations of her participation rights under IDEA. Despite efforts by the team to calm the situation and encourage parental involvement, the Parent persistently objected and ultimately prevented the meeting from proceeding. After multiple unsuccessful attempts to engage with the Parent, the team asked her to leave; she eventually did, allowing the District to move forward with the MDR.¹⁶
10. On September 8, 2025, during the MDR meeting, the committee concluded that the student's actions—planning to bring and consume alcohol on campus and subsequently executing that plan—were not determined to be a manifestation of her disability.¹⁷
11. On October 3, 2025, Parent filed this Expedited Due process hearing request challenging the outcome of the MDR and seeking reversal of the committees finding that Student's behavior or planning, bringing and consuming alcohol at school was not a manifestation of her disability.¹⁸

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

In general, the burden of proof is viewed as consisting of two elements: the burden of production and the burden of persuasion. Before consideration of the Parent's claims, it should be recognized that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*,

¹⁶ District Exhibits, pgs. 48-49.

¹⁷ Id., pg. 49.

¹⁸ See expedited due process complaint.

546 U.S. 49, 62 (2005). Accordingly, the burden of persuasion, in this case, must rest with the Parent.

In the role of factfinders, special education hearing officers are charged with the responsibility of making credibility determinations of the witnesses who testify. *Albright ex rel. Doe v. Mountain Home Sch. Dist.* 926 F.3d 943 (8th Cir. 2019), *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008). This hearing officer found each of the witnesses who testified to be credible in that they all testified to the facts to the best of their recollection; minor discrepancies in the testimony were not material to the issues to be determined and, in any event, were not deemed to be intentionally deceptive.

The weight accorded the testimony, however, is not the same as its credibility. Some evidence, including testimony, was more persuasive and reliable concerning the issues to be decided, discussed as necessary below. In reviewing the record, the testimony of all witnesses and each admitted exhibit's content were thoroughly considered in issuing this decision.

MANIFESTATION DETERMINATION REVIEW (MDR)

20 U.S.C. 1415(d)(1)(E) states:

(E) Manifestation determination

(i) In general

Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall 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—

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

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

(ii) Manifestation

If the local educational agency, the parent, and relevant members of the IEP Team determine that either subclause (I) or (II) of clause (i) is applicable for the child, the conduct shall be determined to be a manifestation of the child's disability.

(F) Determination that behavior was a manifestation

If the local educational agency, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team shall—

(i) conduct a functional behavioral assessment, and implement a behavioral intervention plan for such child, provided that the local educational agency had not conducted such assessment prior to such determination before the behavior that resulted in a change in placement described in subparagraph (C) or (G);

(ii) in the situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior; and

(iii) except as provided in subparagraph (G), return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan.

Here the Parent specifically challenges the decision by the IEP team made at the September 8, 2025, Manifestation Determination Review meeting that Student's behavior on September 2, 2025, was not a manifestation of her disability. Parent raises several process issues with the district's implementation of the MDR process under IDEA, but offers no proof that the process was conducted in violation of IDEA or that parent was not provided ample opportunity to participate in the September 8, 2025, manifestation determination review meeting. Parent could have remained in the MDR meeting and made her objections for the record but declined to do so. Further, both Terry Kane, high school principal and district LEA, and Duchess Butler, student's school counselor, testified that the intentional collaboration between Student and her boyfriend, over several days, helped the IEP team determine that Student's behavior on September 2, 2025 was not a manifestation of her disability. The IEP team considered Student's educational evaluation dated February 8, 2024, Student's diagnoses and condition as well as her intellectual/achievement scores that showed she is average to low average indicating that she has all capability of understanding right from wrong. Further, the team looked at a physician's report, current IEP, the behavior intervention plan, classroom-based assessments, student statements concerning the incident used to corroborate that Student was telling other students at her table that she had "koolaid" later identified by Student as alcohol. The team also looked at screenshots between Student and her boyfriend showing how they collaborated and planned to bring the alcohol to school for consumption. None of the information reviewed or discussed at the manifestation determination review indicated that any of Student's diagnoses would support

a finding that her behavior on September 2, 2025, was as a result of her disability. Parent, in her presentation of her case did not offer any evidence to support that Student's disabilities supported a finding that Student's behavior on September 2, 2025, was a manifestation of her disability. Parent's only evidence consisted of the following recordings:

- Audio recording-Manifestation Determination Review meeting September 4, 2025, 3 recordings
- Audio recording-Manifestation Determination Review meeting September 8, 2025, 1 recording
- Audio recording-Expulsion hearing September 15, 2025
- Video recordings of Parent and Student being escorted from the Manifestation Review Determination meetings on September 4, 2025, and September 8, 2025.

Additionally, Parent submitted several pages outlining her arguments; however, she did not include any supporting documentation, or introduce any additional evidence into the record. As a result, this evidence did not substantiate Parent's claim that the district failed to adhere to IDEA procedures for conducting a Manifestation Determination Review or that Student's behavior on September 2, 2025, was a manifestation of her disability.

Order

The result of the testimony and evidence warrant a finding for the district. Specifically, the Parent failed to present sufficient evidence in the record to establish by preponderance of the evidence that the District's decision, that Student's conduct on September 2, 2025, was not a manifestation of her disability as determined at September 8, 2025, Manifestation Determination Review was incorrect.

Finality of Order and Right to Appeal:

The decision of this Hearing Officer is final. A party aggrieved by this decision has the right to file a civil action in either Federal District Court or a State Court of competent jurisdiction, pursuant to the Individuals with Disabilities Education Act, within ninety (90) days after the date on which the Hearing Officer's Decision is filed with the Arkansas Department of Education.

Pursuant to Section 10.01.36.5, Special Education and Related Services: Procedural Requirements and Program Standards, Arkansas Department of Education 2008, the Hearing Officer has no further jurisdiction over the parties to the hearing.

IT IS SO ORDERED.

Dana McClain
HEARING OFFICER

11/13/2025
DATE