WYOMING DEPARTMENT OF EDUCATION
SPECIAL PROGRAMS DIVISION
DUE PROCESS HEARING

In Re the Matter of:

Case #: H-004-25

(the Student), by and through her/his Parent(s) and/or Guardian(s),

Petitioner, **DECISION and ORDER**

vs.

NATRONA COUNTY SCHOOL DISTRICT #1,

Respondent.

BACKGROUND and SUMMARY

All documents filed in the matter and/or referenced below are part of the official RECORD of this Case which will be deposited with the Wyoming Department of Education (WDE).

The matter was initiated by PETITIONERS' Request for a Due Process Hearing, filed with the Wyoming Department of Education on November 12, 2024. It states, among other things, that the STUDENT: had been previously identified as having an emotional disability and is also suspected to have a learning disability; should be returned to High School (which is in Natrona County) with an IEP in place; and, did fine in a prior school placement with an IEP. The Request also refers to a manifestation meeting and PETITIONERS' view that it should have determined the STUDENT'S behavior was the result of disability.

Based on these assertions, the undersigned Hearing Officer emailed PETITIONERS and RESPONDENT on November 14, 2024, inquiring: (1) whether the STUDENT is currently a child with a disability for special education purposes; and (2) whether there had been a manifestation determination the result of which was the subject of PETITIONERS' Request for a Due Process Hearing.

On November 14th, PETITIONERS responded to the undersigned's email inquiry that the answer to both questions is "yes". Accordingly, arrangements for an Expedited Due Process Hearing pursuant to 34 CFR §300.532 were begun.

On November 20th, RESPONDENT provided PETITIONERS and the WDE with a Response to the Request for Due Process Hearing, a copy of which WDE provided to the undersigned.

On November 22nd, a Scheduling Conference was held which resulted in an ORDER FOLLOWING SCHEDULING CONFERENCE issued on November 25th. That ORDER recites that there were two issues for resolution: (1) Was the Manifestation Determination Review (MDR) recently conducted regarding the STUDENT within the framework of 34 CFR § 300.532; and, (2) if so, was its conclusion in error?

Dates for the Expedited Due Process Hearing were identified at the Conference and described in the ORDER, along with other associated hearing details. The ORDER concludes: "Any request for corrections to this Order shall be presented to the Hearing Officer and the opposing Party, via email, with proposed alternative language, not later than November 25th at 5:00 p.m." No request for correction was presented.

On December 10th, an Expedited Due Process Hearing commenced. PETITIONERS appeared pro se, with the STUDENT. RESPONDENT appeared through and was represented by Attorney Zara S. Mason, and RESPONDENT'S Director of Special Services Katie Ostlund, and Associate Superintendent Amy Rose.

On December 10 and 11th, PETITIONERS and the STUDENT testified. They were the only witnesses on behalf of PETITIONERS.

At the conclusion of PETITIONERS' case, RESPONDENT moved to dismiss PETITIONERS' claims. Judgment for RESPONDENT, as a matter of law, was found to be appropriate.

As more fully detailed below, the undersigned FOUND, among other things, that: PETITIONERS had been allowed to present evidence, including that the Manifestation Determination Review (MDR) conducted regarding the STUDENT was within the framework of IDEA, more specifically 34 CFR § 300.532; the testimony of PETITIONERS, consistent with Exhibit J-4 which was admitted without objection, was that on or about May 28, 2024 PETITIONERS revoked their Consent for the Student to receive Special Education and Related Services (hereinafter, sometimes referred to collectively as "special education services), resulting in the discontinuation of special education and related services for the STUDENT; as a further consequence, at the time of the alleged misconduct of the STUDENT in October 2024, the protections of IDEA were not available to PETITIONERS or the STUDENT, and RESPONDENT was deemed, pursuant to 34 CFR §300.534, not to have knowledge that the STUDENT is "a child with a disability"; and, as another further consequence, PETITIONERS' claim to IDEA protections, e.g., a manifestation determination (MDR) pursuant to 34 CFR §300.530 and the ability to appeal an adverse MDR decision pursuant to 34 CFR §300.532, was not available. Judgment as a matter of law for RESPONDENT, obviated the need to take up the second issue. In other words, because PETITIONERS had not proven that the MDR was within the framework of IDEA, the second claim, that is, whether the MDR conclusion was flawed, became inconsequential.

Based upon the following Findings of Fact and Conclusions of Law, RESPONDENT should be found to be the prevailing party and PETITIONERS' claims should be dismissed:

FINDINGS OF FACT

1. The STUDENT has been attending RESPONDENT'S High School as a grader since August 26, 2024. (Student testimony, Transcript Vol. 1, pp. 23-25; Petitioner Mother testimony, Transcript Vol. 2, p. 202; Exhibit P-2.)

2. Prior to attending High School, the STUDENT attended other schools of RESPONDENT where the STUDENT received special education services, beginning in the third grade, and continuing almost continuously until May 2024. Consequently, the Student had numerous Individual Education Plans (IEPs), including an IEP developed January 2024. (Petitioner Mother testimony, Transcript Vol. 2, pp. 121-122, 126-128, 182-183, 195, 206-207; Student testimony, Transcript Vol. 1, pp. 21-22, 29, 73-75; Exhibits P-3, P-17.)

3. On May 28, 2024, PETITIONERS revoked their consent for RESPONDENT to provide special education services to the STUDENT. (Petitioner Mother testimony, Vol. 2, pp. 183, 193-195, 201; Exhibits J-4 and J-5.)

4. On May 28, 2024, following PETITIONERS' revocation of consent for special education services to be provided the STUDENT, RESPONDENT issued Prior Written Notice to PETITIONERS concerning cessation of services. PETITIONERS were specifically informed "protections under IDEA would no longer be in effect." In the Prior Written Notice, RESPONDENT urged, "continuing with current services that would follow" the STUDENT "into High School as this has helped" the STUDENT "be more successful". However, as the Prior Written Notice recites, PETITIONER Mother "disagreed and felt that the removal of services would allow" the STUDENT "to have a fresh start at High School." (Petitioner Mother testimony, Transcript Vol. 2, pp. 194-195; Exhibits J-4 and J-5.)

5. On or about October 24th, the STUDENT picked up a Fireball bottle, and, apparently believing it to be empty, put the bottle in the STUDENT'S backpack. The next day, October 25th, the STUDENT brought the backpack and bottle to school. As a result of a search of the STUDENT'S backpack on October 25th, the bottle was discovered by RESPONDENT'S staff. (Student testimony, Transcript Vol. 1, pp. 11-12, 26-27, 45-46, 71-72, 101; Petitioner Mother testimony, Transcript Vol. 2, pp. 200-201; Exhibit P-15.)

6. On October 25th, a citation was issued to the STUDENT for being in possession of alcohol in relation to the Fireball bottle which had been located in the STUDENT'S backpack. (Student testimony, Transcript Vol. 1, pp. 47, 57-58.)

7. At the time the citation was issued to the STUDENT on October 25th, PETITIONERS' consent for the STUDENT to receive special education services was not in place and the STUDENT did not have an IEP. (Petitioner Mother testimony, Transcript Vol 2, p. 211; Transcript Vol. 3, pp. 232, 251-252.)

8. On or about October 25th, a disciplinary action against the STUDENT for being in possession of alcohol on school property was commenced by RESPONDENT, because RESPONDENT determined possession of the Fireball bottle was a violation of RESPONDENT'S Policy, as defined in RESPONDENT'S Student Discipline and Conduct Handbook. (Student testimony, Transcript Vol. 1, pp. 17-19; Exhibit P-2.)

9. On October 25th, following issuance of the citation to the STUDENT, PETITIONERS requested that the STUDENT be evaluated for special education and related services, which, PETITIONERS maintain, "protected" them and the STUDENT under IDEA from the moment of the request going forward. (Petitioner Mother testimony, Transcript Vol 2, pp. 129-130, 148-155, 202, 209-210; Exhibit J-1; Petitioner Mother testimony, Transcript Vol. 3, pp. 232, 239-240, 252.)

10. On November 4th, RESPONDENT conducted a manifestation determination regarding the STUDENT'S possession of the Fireball bottle. (Exhibit P-1; Transcript Vol. 1, pp. 12-13.) At that time, the STUDENT did not have an IEP. (Petitioner Mother testimony, Transcript Vol. 3, pp. 231-232.)

11. On November 12, 2024, PETITIONERS filed their Request for Due Process Hearing with the Wyoming Department of Education. (Due Process Hearing Record, tab 1.)

12. On November 22, 2024, a Scheduling Conference with the Parties and the Hearing Officer took place which resulted in an Order Following Scheduling Conference. (Due Process Hearing Record, tab 25.) That Order describes the two Due Process Hearing issues as follows:

> Without objection, the issues are identified as: (1) Was the Manifestation Determination Review (MDR) recently conducted regarding the Student, within the framework of 34 CFR § 300.532; and, (2) if so, was its conclusion in error?

(Ibid., p. 1, § A. The Conference was reported and a transcript is in the Record.)

13. On Tuesday, December 10, 2024, an expedited Due Process Hearing was convened on PETITIONERS' Request for Due Process. Appearing were the PETITIONERS, and the STUDENT. RESPONDENT appeared by and through Attorney Zara S. Mason, Director of Special Services Katie Ostlund, and Associate Superintendent Amy Rose. (Transcript, Vol. 1, p. 2.)

14. On December 11th, at the close of PETITIONERS' case, Attorney Mason moved for dismissal of the matter, in essence because the evidence showed that the STUDENT had been withdrawn from special education services by PETITIONER Mother on May 28, 2024, the STUDENT was not receiving special education services from RESPONDENT at the time of the Fireball bottle incident and disciplinary action taken in relation to possession of it, and PETITIONERS and the STUDENT were not, therefore, entitled to the protections of the IDEA in the context of discipline in that regard. (Transcript, Vol. 3, pp. 254-258.)

CONCLUSIONS OF LAW

A. The Individuals with Disabilities Education Act ("IDEA") (20 U.S.C. § 1400 et seq.), with its implementing regulations, found at 34 CFR Parts 300 and 301, was created to meet the unique needs of children with disabilities by mandating provision of a free and appropriate public education (hereinafter referred to as FAPE) to them. (*Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 181 [1982].)

B. Wyoming, through its Department of Education, has adopted Rules for Services For Children With Disabilities. Those rules govern the operation of all special education programs and services provided to children with disabilities in public schools within Wyoming. (https://rules.wyo.gov/Search.aspx?mode=1, Chapter 7, Section 1.) The Rules state that IDEA and

all federal regulations pertaining to IDEA are applicable to public special education programs and services in Wyoming. (Ibid., Section 2.)

C. IDEA requires educational agencies to implement procedures which provide "(a)n opportunity to present complaints with respect to any matter relating to the identification, evaluation, or educational placement of" eligible students "or the provision of" FAPE to such students. (20 U.S.C. § 1415[b][6], [b][7].)

D. One such implementing procedure is the right to a due process hearing before an impartial hearing officer to resolve disputes between parents and schools. (20 U.S.C. § 1415[f][1][A]; 34 CFR §§ 300.511 and 512.)

E. In the case of a dispute involving "a child with a disability," when parents disagree with a manifestation determination (that is, whether misconduct of a child with a disability was caused by, or had a direct and substantial relationship to the child's disability under 34 CFR § 300.530), a procedural right is to be afforded an expedited due process hearing as described in 34 CFR § 300.532.

F. Whether a matter involves a "child with a disability," is a threshold question, and the phrase has a statutory definition. 20 U.S.C. § 1401(3)(A) provides:

> The term "child with a disability" means a child - (i) with intellectual disabilities, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (referred to in this chapter as "emotional disturbance"), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.

G. A second threshold question involves whether the child has been determined to be eligible for special education and related services, and an evaluation for such eligibility involves advance parental consent. Chapter 7 of the Wyoming Department of Education Rules pertaining to Services

for Children with Disabilities, at Section 6(b) provides that a "school district or public agency shall implement parental consent and the revocation of parental consent procedures consistent with 34 CFR §§ 300.9 and 300.300 (including the 2008 Amendment and any subsequent amendments)."

H. 34 CFR § 300.9 defines and deals, in pertinent part, with parents' consent in relation to special education and related services for their child. Importantly, 34 CFR § 300.9(c)(1) states that consent "may be revoked at any time."

I. 34 CFR § 300.300 distinguishes parental consent for evaluations for special education services from parental consent for special education services. 34 CFR § 300.300(b)(4) states, in pertinent part, that when a parent revokes consent a student's school (iii) "will not be considered to be in violation of the requirement to make FAPE available to the child because of the failure to provide the child with further" special education services, and, (iv) is not required to convene an IEP Team meeting or develop an IEP for further provision of special education services.

J. 34 CFR § 300.534 provides, in pertinent part, that a child who has not been determined to be eligible for special education services and who has engaged in behavior that violates a code of student conduct, may assert IDEA protections provided the student's school has knowledge - as determined in accordance with § 300.534 - that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. But notably, section 300.534 goes on to say that a school is not deemed to have knowledge that a child is a child with a disability, as described, if the child's parent "has refused services".

K. Once PETITIONERS revoked consent in May 2024 for the STUDENT to receive special education services, RESPONDENT was obligated to provide PETITIONERS with Prior Written Notice pursuant to 34 CFR § 300.503.

L. RESPONDENT, having provided PETITIONERS with Prior Written Notice (see Exhibits J-4 and J-5) before ceasing special education services for the STUDENT (see Petitioner Mother testimony, Transcript Vol. 2, pp. 194-195), was required to discontinue the provision of special education services to the STUDENT, and the STUDENT became a general education student of

RESPONDENT, subject to disciplinary procedures without the protections provide by IDEA. (73 Fed. Reg. 73,011 - 73,013 [2008].)

M. Exhibits J-4 and J-5 satisfy the Prior Written Notice requirements of 34 CFR § 300.503.

N. The United States Supreme Court has ruled that in a due process hearing, a party challenging an action, or complaining of inaction in the context of special education services, has the burden of proof (*Schaffer v. Weast*, 546 U.S. 49 [2005]), and in this case, PETITIONERS had that burden.

NOW THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that PETITIONERS' claims are dismissed and RESPONDENT is found to be the prevailing Party.

ENTERED this 2nd day of January, 2025.

Robert "Bob" Mullen, Hearing Officer

Addressed as follows, copies of this Decision and Order are being sent to the Parties via email on the date signed and also via the U.S.P.S.:

Petitioners:

Respondent: Natrona County School District #1
Zara S. Mason, Esq.
P.O. Box 10700
Casper, Wyoming 82602
zmason@wpdn.net