

FEB 28 2014

Before the
Administrative Hearing Commission
State of Missouri



)	
), in the interest of)	
,)	
)	
Petitioner,)	
)	
vs.)	No. 14-0121 ED
)	
SPECIAL SCHOOL DISTRICT)	
OF ST. LOUIS COUNTY,)	
)	
Respondent.)	

DECISION

We grant the motion to dismiss filed by the Special School District of St. Louis County (“the District”). We agree that Petitioner is not entitled to a manifestation determination review because the suspension in question was for less than 10 days, and there was no accumulation of short-term removals over 10 days.

Procedure

On January 29, 2014, Petitioner filed a complaint against the District. On February 5, 2014, the District filed a motion to consolidate this case with a case previously filed by Petitioner¹ or, in the alternative, to dismiss the case.

¹ Case number 13-1819 ED.

Findings of Fact

1. On October 18, 2013, Parent filed a due process complaint against the District, alleging the District's failure to provide Student with a free appropriate public education (FAPE).
2. On January 29, 2014, at the School, two girls approached Student to start a fight with her.
3. As a result of the confrontation, the School suspended Student for three days.

Conclusions of Law

We have jurisdiction over cases under the IDEA as follows:

A parent, guardian or the responsible educational agency may request a due process hearing before the Administrative Hearing Commission with respect to any matter relating to identification, evaluation, educational placement, or the provision of a free appropriate public education of the child.^[2]

We treat the District's motion as a motion for decision on the pleadings. Regulation 1 CSR 15-3.446(4) provides that we may grant such a motion if a party's pleading, taken as true, entitles another party to a favorable decision.

Right to a Manifestation Determination

In the complaint, Parent asks for a manifestation determination³ and a due process hearing because, she asserts, her child's rights for an FAPE were violated. Specifically, she alleges, "[I]n addition to the manifestation determination I am asking for a Due Process Hearing because once again rights for a FAPE were violated."

If a child has had his or her placement changed for a disciplinary reason, then the *school* must conduct a manifestation determination to determine if the behavior resulted from the child's

² Section 162.961.1, RSMo. Supp. 2012.

³ The complaint reads, "[I]n addition to the manifestation determination I am asking for a Due Process Hearing because once again rights for a FAPE were violated." We characterize this statement as requesting a manifestation determination because it was filed with the Department of Elementary and Secondary Education, which forwarded it to us as a complaint.

disability.⁴ A suspension from school can be a “change of placement.”⁵ Regulation 34 C.F.R. § 300.536(a) sets out when such a change of placement sufficient to require a manifestation determination occurs, as follows:

For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if—

- (1) The removal is for more than 10 consecutive school days;
or
- (2) The child has been subjected to a series of removals that constitute a pattern—
 - (i) Because the series of removals total more than 10 school days in a school year;
 - (ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and
 - (iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

In this case, however, according to the complaint, Student was only suspended for three school days, and there is no allegation of any pattern of removals. Therefore, according to the facts as alleged by Petitioner, a manifestation determination cannot be made.

Also, a manifestation determination is conducted by the local educational agency (“LEA”), the parent, and relevant members of the child’s IEP team as determined by the parent and the LEA.⁶ Then, it is the determination of the LEA whether a pattern of removals constituted a change of placement subject to review through a due process proceeding, such as the ones we are charged with conducting.⁷ Accordingly, our role in the manifestation

⁴ 34 C.F.R. 300.530(e).

⁵ *Honig v. Doe*, 484 U.S. 305, 328 (1988).

⁶ 34 C.F.R. 300.530(e).

⁷ 34 C.F.R. § 300.536(b)(2). We express no opinion whether the failure to conduct a manifestation determination is subject to review in a due process hearing.

determination process is not to make the determination, but to review the determination after it is made.

Therefore, taking the allegations of the complaint as true, the District is entitled to a decision in its favor. A three-day suspension is not sufficiently long enough to merit a manifestation determination, and such a determination is to be made by the LEA, the parent, and relevant members of Student's IEP team. This Commission's role in the manifestation determination process is not to make the determination, but to review the determination after it is made.

Summary

We dismiss the complaint.

SO ORDERED on February 10, 2014.

SREENIVASA RAO DANDAMUDI
Commissioner