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Manifestation Determination Hearing for T.S.

Date of Birth: x/xx/xx

ODR File Number: 6126/05-06/AS

Date of Hearing: January 3, 2006

CLOSED HEARING

Parties:

Representative:

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Date Transcript/Exhibits Received:

1/6/06

Date Closing Statements/Record
Closure:

1/6/06

Date of Decision:

1/15/06

Hearing Officer:

Joy Waters Fleming, Esq.

Background

Student, “Student” is a [teenaged] eligible student residing within the geographical boundaries of the Southern York School District, “District”. After Student was found in violation of the District’s policy prohibiting the “use or possession, or being under the influence of drugs..., or unauthorized substances...” the District conducted a manifestation determination that resulted in a finding that student’s behavior was not a manifestation of his disability. Parent initially agreed with the determination and later indicated disagreement. She sought this hearing to establish whether the conclusion of the team was appropriate.

Issue

1. Was the District’s Manifestation Determination regarding student appropriate?

Findings of Fact

1. Student is currently [teenaged] and in the ninth grade at the High School located within the District. (SD-8)
2. Student is eligible for special education as a student with a primary classification as other health impaired “OHI” because of attention deficit hyperactivity disorder, “ADHD”. (SD-4)
3. In 2002, the District approached Parent about behavioral issues concerning Student. (S-1, S-2, N.T. 15)
4. After the evaluation, the District advised Parent to consult with Student’s physician about an ADHD diagnosis. (S-2, p.6)
5. Student’s physician diagnosed him with ADHD and prescribed Adderall for the management of his condition. (N.T. 16)
6. Parent did not administer the Adderall to Student as prescribed. (N.T. 17, P-14)

7. Student had previous disciplinary issues in school that resulted in his placement out of the District. (P-5)
8. In May 2005, the District conducted a re-evaluation of Student. (S-4)
9. In that report, the team indicated that Student's attention problems caused him to demonstrate inappropriate behavior in the classroom and/or school environment, perform academically at below expected levels and demonstrate difficulties in organization, concentration, attention and focus. (SD-7, p.1)
10. Based on observation from Student's teachers, Student's needs were identified as needing to show greater behavioral control within the school environment. (SD-4, p.7)
11. On November 3, 2005, while at school, during the ninth period, Student [engaged in problematic behavior at school]. (P-1, S-6, S-7, N.T. 43, 54)
12. As a result of his conduct, Student was suspended from school for ten days from November 7, 2005-November 18, 2005 and scheduled to attend a school board expulsion hearing. (SD-7, p.2, SD-8)
13. On November 11, 2005, the IEP team met and conducted a manifestation determination. (S-7)
14. The team concluded that Student's behavior was not a manifestation of his disability. (P-1, S-7)
15. A regular education teacher, special education teacher and school psychologist, were not present at the manifestation determination although they signed indicating agreement. (P-1, S-7, N.T.)
16. The special education teacher signed the determination before the meeting and the school psychologist signed the manifestation determination after the meeting. (N.T. 89)
17. Parent initially signed the report agreeing with the determination of the District. (N.T. 27)

18. On November 17, 2005, the Board of School directors unanimously voted to expel Student. (S-8, p. 26)
19. After the expulsion hearing, Student and his mother met with a licensed social worker, Parent's expert, specializing in ADHD. (P-13)
20. After meeting with Student, the social worker concluded that Student was impulsive and that his school based behavior problems are a result of his impulsivity. (P-13)
21. Parent's expert met with Student and his mother on three occasions and during those sessions, he did not administer any assessments or testing nor did speak with any school personnel. (N.T. 63-64)
22. Parent's expert did review the 2005 psychological report of the District as well as Student's previous grade report. (N.T. 64)

Discussion

Although Parent requested a due process hearing by letter of December 6, 2005, this case was not acknowledged by the Office for Dispute Resolution as a manifestation determination until December 19, 2005. The District's offices were closed between December 26, 2005-January 1, 2006. This hearing commenced on January 3, 2006.

Under the Individuals with Disabilities Education Act (IDEIA), a school district may not impose a disciplinary removal from school longer than 10 days or institute a change in placement of an eligible child, without first conducting a manifestation determination. In Pennsylvania, any removal from school for more than ten consecutive days for a child with a disability constitutes a change of placement. 20 U.S.C. §1415(k) (1) (c).

Under IDEIA 2004, within **ten 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 LEA, the parent, and relevant members of the IEP team are to 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 - whether (1) the misconduct was caused by, or had a direct and substantial relationship to,

the child's disability, or (2) whether the misconduct was the direct result of the local educational agency's failure to implement the IEP. 20 U.S.C. § 1415(k) (1) (E) (i). If the parties determine that the conduct was a manifestation of the child's disability, the team is obligated to follow the procedures outlined in the Act.

The facts in this case are uncontraverted. On November 3, 2005, during his ninth period class, Student [engaged in behavior]. (FF. 11) As a result of this incident, Student was suspended from school for ten days. (FF.12) The District concluded that Student's behavior was not a manifestation of his disability and subsequently Student was expelled. (FF. 13,14)

In this case, a change of placement of more than ten consecutive school days was contemplated. As a result, the team met on November 11, 2005, approximately eight days after the incident. Parent indicated that when she arrived only two other school personnel were present and she was handed a document, already drafted, to which her signature was requested. (FF. 17) During that meeting which lasted fifteen minutes, none of Student's educational records were reviewed. (FF. 15-17) After urging from the District, Parent marked the line indicating that she agreed with the team decision that Student's misconduct was not a manifestation of his disability. (FF. 15-17) ¹The evidence has established that both the special education teacher and psychologist although not present at the meeting, checked the line also indicating agreement with the team decision. (FF. 15-17 The Supervisor of Special Education before meeting with Parent reviewed all requisite documents in advance of the review including all of his previous evaluation reports and his most recent IEP. (FF. 15-17) From a procedural standpoint, the District conducted the manifestation review in accordance with the law. Although the Act does not specify that all members of the team must be present or that Parent must be informed of her right to provide any information that may serve to inform the team, a District would be well advised to make sure that those very technical requirements are regarded. This District's exercise of a different method of conducting their manifestation determination is procedurally correct and does not render the result invalid.

¹ Parent later changed her position and advised the District that she disagreed and requested this hearing.

With respect to the determination of the team, based on the totality of evidence presented, Parents have not met their burden of establishing that Student's behavior had a direct and substantial relationship to his diagnosis of ADHD and thus that Student's behavior was a manifestation of that impairment.

Inquiry now turns to whether the District has demonstrated whether the Student's behavior was a manifestation of his disability. In consideration of this conclusion, the team concluded that Student's ADHD is responsible for impulsivity as well as his demonstrating inappropriate classroom behaviors, performing below expected academic levels and demonstrating difficulties in organization, concentration, attention and focus. Because Student knows the difference between right and wrong and that the incident took place over two school periods, the team concluded that Student's disability was not responsible for his actions that resulted in violation of the District's code of conduct and eventual expulsion. (FF. 13-16)

The evidence in this case has established that Student does indeed have ADHD. (FF. 5) Although Parents, through expert testimony attempted to establish that Student's impulsivity resulted in [the behavior], they have not met their burden of proof.

Parent's expert met with Student three times after the District recommended expulsion. (FF. 19-21) After these meetings, he authored a report concluding that Student "is a very impulsive teenager" and that "his previous behavior problems in school are a direct result of his impulsivity". (FF. 20) In support of this conclusion, the expert indicated that he reviewed Student's school based evaluations but did not perform any independent testing. (FF.21) Although the expert reviewed the Student's most recent grades and the 2005 evaluation report, he did not speak with anyone at the District nor did he compile information from it concerning Student's school based behaviors. (FF. 8-9, 21) Furthermore, the expert opined of the subtypes of ADHD that exist, he did not formally make a diagnosis of Student. (FF. 21) Finally, the expert indicated that he based his determination regarding Student's impulsiveness primarily on information from Student and his Parent, without input from the District. (FF. 21) Although the expert's testimony was credible in certain respects, it was not sufficiently compelling or credible to defeat the District's conclusion that Student's ADHD was not responsible for his [behavior]. First, the evidence has

established that Student did think and ponder before he [engaged in the behavior]. Those actions appear on their surface to require planning and forethought calling into question the “impulsivity” of Student’s behavior. Second, Parent has not presented sufficient evidence that if Student is appropriately recognized as an impulsive or combined sub-type, which has not conclusively been established, he struggles with impulsivity issues throughout his school day or that a pattern of impulsive behaviors is present. District personnel have exhibited concern regarding Student’s behavioral choices. (FF. 7, 10) However, a review of the evidence in this case indicates that Student “usually demonstrates good-self-control” and that he makes “socially appropriate choices”. (FF. 8) Thus a recent pattern of impulsive conduct is not apparent in this case.

The suspicion that Student may have ADHD arose in 2002. (FF. 3-4) At a later point, Student was formally diagnosed with ADHD. (FF. 5) The recommended treatment for Student’s ADHD included a medication regime which was not followed. (FF. 5-6) Understandably, Parent has concerns about the efficacy of a medication routine involving stimulants for her child. However, in this case, medical advice was not heeded, possibly to the detriment of Student. Although stimulants are not a panacea with respect to ADHD, they are a part of a course of treatment that sometimes is a necessary first step toward the management of this condition.

Finally, Parents have presented no credible evidence that Student’s misconduct was the direct result of the local educational agency’s failure to implement the IEP. Having concluded that all standards have been met, the District’s determination that Student’s behavior was not a manifestation of his disability was appropriate. In sum, Student's behavior was not a manifestation of his disability. Accordingly, the District’s determination will stand.

Order

1. The District’s Manifestation Determination that Student’s behavior was not a manifestation of his disability was appropriate

2. The District's proposed recommendation of an interim alternative was appropriate.

Joy Waters Fleming

Joy Waters Fleming, Esq.
Special Education Hearing Officer
January 15, 2006