

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

Pennsylvania  
Special Education Hearing Officer

DECISION

ODR No. 00985-0910KE

Child's Name: Student

Date of Birth: xx/xx/xx

Dates of Hearing: 5/10/10

CLOSED HEARING

Parties to the Hearing:

Representative:

Parents

Parent Attorney  
Jennifer Bradley, Esq.  
McAndrews Law Offices  
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Berwyn, PA 19312

School District  
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School District Attorney  
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Date Record Closed:

May 14, 2010

Date of Decision:

May 25, 2010

Hearing Officer:

Anne L. Carroll, Esq.

## **INTRODUCTION AND PROCEDURAL HISTORY**

Student (Student) is completing 11<sup>th</sup> grade at [redacted] High School [in the District], having recently returned to school after a 30 day exclusion imposed due to [a violation of the school rules] [in Europe] on April 1, 2010 during a District sponsored trip.

At the beginning of the 2004/2005 school year, the District provided Student with a Service Plan as a protected handicapped student under §504 of the Rehabilitation Act of 1973, after Parents notified the District that Student had a medical diagnosis of ADHD and shared a psychological evaluation report they had obtained privately. Early in the 2007/2008 school year (9<sup>th</sup> grade), the District notified Parents that an updated medical diagnosis of disability and a new request for an accommodation plan was required in order to maintain Student's §504 eligibility and develop a new Service Plan. Parents, however, contend that Student's status as a §504 protected handicapped student never changed and that the District's apparent failure to continue implementing the §504 Service Plan during high school was a violation of Student's §504 rights. Parents further contend that the District's failure to conduct a manifestation determination review, or provide a similar process, prior to imposing the 30 day disciplinary exclusion was improper. Parents' ultimate contention is that if an appropriate manifestation determination review, or other similar process sufficient under §504 had been conducted, the District would have been forced to conclude that Student's violation of the District code of conduct that led to the discipline was a manifestation of Student's ADHD, and, therefore, that it was improper to impose a disciplinary sanction amounting to a change of placement for that violation.

Because the evidence produced at the May 14, 2010 expedited hearing does not support Parents' contention that the violation resulting in the 30 day exclusion from school arose from disability-related conduct, Parents' claims based upon allegedly improperly discipline are denied.

### **ISSUES**

1. Did the Coatesville Area School District violate Student 's rights under §504 of the Rehabilitation Act of 1973, or under the IDEA statute, by imposing a 30 day exclusion from school without considering whether the conduct that resulted in the discipline was a manifestation of Student's previously identified condition, ADHD?
2. If the District should have considered whether Student 's conduct was a manifestation of a disability that rendered Student a §504 protected handicapped student, did the process the District provided prior to imposing the discipline satisfy the legal requirement that the District must provide a pre-disciplinary process to a §504 protected student that is similar to the manifestation determination review provided to an IDEA eligible student?
3. Was Student 's behavior that resulted in a disciplinary change of placement, a 30 day expulsion from school, a manifestation of a disability, *i.e.*, ADHD?

### **FINDINGS OF FACT**

1. Student (Student) is a teen-aged child, born xx/xx/xx. Student is an 11<sup>th</sup> grade regular education student in the Coatesville Area School District. (N.T. pp. 15, 16 (Stipulation), 30)
2. Student has a medical diagnosis of Attention Deficit Hyperactivity Disorder (ADHD), for which Student has been successfully treated with medication to improve concentration and focus. Student takes the medication on school days and on weekends when school work requires that Student maintain a similarly high level of focus and concentration. (N.T. pp. 30, 31; P-13)
3. Parents obtained a private psychological evaluation in April 2004, followed by a report recommending classroom accommodations for Student's ADHD. At Parents' request, the District subsequently developed a Service Plan under §504 of the Rehabilitation Act of 1973 based upon the psychological evaluation report. (N.T. pp. 32, 33, 36; P-1, P-2, P-4)
4. An updated Service Plan was developed in September 2006 for Student's 8<sup>th</sup> grade year, but in October 2007, at the beginning of 9<sup>th</sup> grade, the District notified Parents that they needed to provide current medical documentation of Student's disability to establish

continued eligibility and to request development of a new Service Plan based upon the updated information. (N.T. pp. 43, 45; P-7, P-9)

5. Parents never provided additional medical documentation, the District conducted no new evaluation to determine whether Student's §504 protected status should end, and no new Service Plan was developed during high school. Student's high school teachers, however, provided any accommodations necessary to assure Student's academic success in accordance with their usual high professional standards for instructional practices. (N.T. pp. 46—48; S-12)
6. During the last 2 weeks of March through the first few days of April, 2010, Parents permitted Student to participate in a school-sponsored trip to [Europe]. (N.T. pp. 48, 49)
7. Prior to leaving, Student and Parents were required to sign and notarize a document agreeing to abide by the District's policy prohibiting certain conduct during the trip,. (N.T. pp. 49, 110; S-9)
8. Parents elected to stop Student's ADHD medication for the trip because Student has less need of it when there are no school work demands and because Parents were reluctant to have Student travel with a controlled substance. (N.T. pp. 50, 51)
9. On the second to last evening before returning home from Europe, a group of trip participants, including Student, received permission to leave their hotel and visit the town in which they were staying. (N.T. p. 112; P-15, S-1 pp. 16, 17 )
10. The students violated their signed agreement to abide by certain rules. The prohibition "crossed Student's mind" before Student committed the violation. (N.T. p. 151; P-15, S-1 pp. 19, 20, 21, l. 4; S-3, S-9)
11. [redacted – related to consequences of violation]
12. [redacted related to teacher's suspicion of the violation]
13. The teacher notified the school administration about the suspected violation and Parents were contacted on the morning of Student's first day back at school, after the teacher had discussed the incident with the high school principal and 11<sup>th</sup>/12<sup>th</sup> grade assistant principal. (N.T. pp. 51, 52, 54, 123, 124, 150—152)
14. After interviewing the suspected students on the day they returned to school after the trip, the District suspended Student and all of the others involved in the incident for 10 days, the maximum punishment that can be imposed without a hearing before the school board discipline committee, and set formal hearings in accordance with the District's Controlled Substances policy and Secondary Discipline Code. (N.T. pp. 150—153, 157, 161, 162, 176, 184; S-2, S-3, S-4, S-5, S-8, S-11, pp. SD-3, SD-5)

15. During the initial investigation, and at the discipline committee hearing, Student readily admitted to the violation, and further admitted at the discipline committee hearing that although the prohibition crossed Student's mind, and Student knew it was forbidden, Student was not thinking about it when Student committed the violation. Student expressed remorse for Student's conduct. (N.T. pp. 121, 161, 170, 189; P-14, P-15, S-1, pp. 21, 25, 27, 34, S-3)
16. Parents requested an informal hearing, which the District believes was provided via Parents' discussions with District administrators on the day the 10 day suspension was imposed and on one or more other occasions prior to the discipline committee hearing. As a result of those discussions, Parents believed that Student would not receive a 30 day expulsion after the formal discipline committee hearing, at which all information concerning Student would be taken into account. (N.T. pp. 55, 59, 91, 159, 160, 171, 172)
17. At the discipline committee hearing, both Parents and school administrators testified to Student's high standards for [ ]self, hard work, exemplary and academically successful school record. Documents presented to the disciplinary committee for consideration supported the testimony concerning Student's good grades and the absence of other serious disciplinary referrals. (N.T. pp. 62, 82, 165—167, 189, 190; P-15, S-1, pp. 27, 28, 30—33; S-6, S-13)
18. Parents also presented a letter from Student's pediatrician noting that Student's ADHD can lead to potentially impulsive and impetuous behaviors despite medication. (N.T. pp. 60, 189, 195; P-13, P-15, S-1 p. 35)
19. Before making its disciplinary recommendation, the District hearing examiner and the two school board members comprising the discipline committee fully considered all information concerning the incident, the District's Secondary Discipline Code and Student's profile, including the pediatrician's letter and Student's cooperation with the investigation. (N.T. pp. 191, 192, 195, 197, 198; P-13, S-7, S-11, pp. SD3—SD5)
20. At its April 27, 2010 meeting, the full School Board approved the discipline committee's recommendation to impose the mandatory punishment for violating the District's policy, a 30 day exclusion from school which, with credit for the 10 day suspension already served, ended May 18, 2010. (N.T. pp. 167, 168, 179, 192—194, 198—201; P-15, S-1 p. 36, S-7, S-15, p. 11)
21. During the exclusion period, Student was permitted to receive all assignments, was allowed half-time to catch up on any work missed, and could participate in any previously scheduled standardized tests. Student was permitted to take the PSSA and Advanced Placement tests scheduled during the first two weeks of May at the high school. (N.T. p.78; P-15, S-1, p. 36)

## **DISCUSSION AND CONCLUSIONS OF LAW**

Of the three issues identified for consideration and decision in this case, the critical determination at the heart of this matter is whether the District improperly punished Student for conduct that arose from an identified disability. Although the other two issues implicate important procedural rights, the truly essential issue that substantively affects Student is whether, based upon the evidence produced at the due process hearing, the District was justified in imposing the same discipline as that imposed on students who are unquestionably neither IDEA eligible nor §504 protected. Because the substantive issue is most important and is really dispositive of this aspect of the due process complaint, the ample evidence concerning the substantive issue will be considered first.

Effect of Disability/Lack of Medication on the Conduct that Led to the Discipline

There is no question that Student has a medical diagnosis of ADHD for which Student has been taking medication for a number of years to good effect. (F.F.2) Despite an apparent lack of implementation of a formal Service Plan since entering high school in 9<sup>th</sup> grade, Student has maintained good grades in challenging regular education classes, including honors and advanced placement classes, through the third quarter of 11<sup>th</sup> grade. (S-13, S-14) There is, however, also no question that Student did not take Student's medication during the school trip to Europe, when a lapse in judgment ultimately led to serious disciplinary consequences in the form of a 30 day exclusion from school.

Via their due process complaint, and in testimony and argument at the due process hearing, Parents attributed Student's uncharacteristic conduct entirely to the absence of medication for the duration of the trip, apparently acknowledging that ordinarily the medication sufficiently ameliorates the effect of the ADHD as to make it a non-factor in Student's academic performance and school conduct. There are, however, several flaws in Parents' arguments that

the absence of medication led to an increase in ADHD symptoms on the trip, and led to a violation of the District's code of conduct by Student engaging in an impulsive behavior, that was caused by, or was substantially related to Student's ADHD. Most important to the conclusion that the absence of medication did not result in an increase in typical ADHD behaviors was the testimony of the teacher in charge of the trip, who testified at the due process hearing that she noticed no difference in Student's demeanor from the beginning to the end. (F.F. 12) Although Parents argued that not noticing a change in Student's behavior wasn't surprising given the number of other students on the trip, the teacher testified at the discipline committee hearing that she made it a point to closely observe the other students who had accompanied the three students who clearly exhibited [behavior differences] after the evening in town. (F.F. 12) The teacher also noted a change in the demeanor of all the students in that group, in that they appeared chastened and uncomfortable with her after the trip to town. (F.F. 12) The teacher's observation of the change in behavior of all the students involved comports with Student's testimony at the discipline committee hearing that upon later reflection, Student concluded that the violation had been a "dumb idea" and that Student regretted Student's behavior. (S-1, p. 23)

If Parents' theory were correct, *i.e.*, that Student's decision to commit the violation was directly related to the cumulative effect of a number of days without ADHD medication, it would be reasonable to expect that by the last two days of the trip, when the teacher's attention was focused more closely on Student, she would have observed behaviors that Parents testified were typical of Student's behavior on weekends, after only 1 or 2 days without medication, such as silliness and forgetfulness. *See*, N.T., pp. 66, 67. Such behaviors, are among the kinds of behaviors the teacher would likely have noted in connection with her closer scrutiny of the

students on the town trip. Consequently, the teacher's testimony that she observed nothing different in Student's demeanor is more significant than if Student had not been one of the targets for close scrutiny. Moreover, if the effects of the lack of medication are cumulative, as Parents suggested, it would be reasonable to expect the behaviors to have been even more evident the day after the incident.

The testimony of Student's Mother at the discipline committee hearing, her letter to the high school principal after the discipline hearing, and even her testimony at the due process hearing strongly suggest that Parents' present contention that the conduct arose from Student's ADHD is, in essence, an afterthought—another possible way to clear Student's record after the main line of attack failed to obtain the desired outcome. At the discipline hearing, where both Parents spoke, they focused on Student's success, motivation, high principles and generally good behavior. *See* S-1, pp. 29—35. There was no reference to Student's ADHD in Father's statement, and only very brief mention in Mother's remarks, where she noted that, "Teen-agers live in the moment. Teen-agers with ADHD especially live in the moment." S-1, p. 33. Mother's statements also made very little reference to the Student's pediatrician's brief letter that raised the possibility that the incident may have been related to ADHD. Mother presented the letter to the discipline committee without comment after she finished speaking. S-1, p. 35.

Finally, Student testified at the discipline committee hearing that the District's strong policy "crossed Student's mind". (F.F. 10; S-1, p. 21, l. 4) That admission belies the contention that Student's decision resulted from an entirely thoughtless, disability-related impulse rather than from the typical adolescent penchant to "live in the moment" so aptly described by Mother in her discipline hearing remarks.



Parents' true underlying position is that the discipline imposed on all of the students involved in the incident was out of proportion to an offense of opportunity that reflected the poor judgment typical of adolescents, especially in a group. Mother's remarks at the discipline hearing concerning Student's ADHD were far less detailed than her description of the group of students exposed to strong temptation during unsupervised time, and the potential impact of discipline as serious as a 30 day exclusion from school on the futures of all of the students involved. Parents' position in that regard was stated even more explicitly in Mother's testimony at the due process hearing, where she expressed her opinion that a 30 day expulsion was too severe a punishment for "[the violation]." (N.T. p. 91, l. 21, 22, 25) The need to put the students' behavior in the proper context was also stated in the letter sent to the high school principal after the discipline committee hearing. S-12.

It is certainly understandable that Parents are extremely upset that a moment's lapse in judgment on the part of an otherwise exemplary Student resulted in very serious consequences that might cast a shadow over the immediate future, especially college plans. There is, however, no convincing evidence that the behavior that resulted in the 30 day exclusion from school was any more related to Student's ADHD than to the typically thoughtless behavior and "group think" all too familiar to virtually all parents who ever shepherded a child through adolescence. Even assuming that the District should have provided Student with a manifestation determination review<sup>1</sup>, the District would necessarily have considered the same evidence produced at the due process hearing concerning the incident, Student's typical behavior in school and on the trip, and

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<sup>1</sup> Although not legally required for §504 protected students, and although the District never before faced that situation, the testimony at the due process hearing established that the District's policy relating to the discipline of both IDEA eligible and protected handicapped students is to conduct a manifestation determination review before proceeding with discipline that amounts to a change of placement. N.T. p. 175. See *Centennial School District v. Phil L. and Lori L. ex rel. Matthew L.*, 559 F. Supp. 2d 634 (E.D. Pa 2008), where the court concluded that an IDEA manifestation determination review was sufficient to satisfy §504 procedural requirements for imposing discipline that amounts to a change of placement for a §504 protected student.

behaviors on and off medication. The available evidence, as describe above, does not support the conclusion that Student’s conduct on the school trip was caused by or had a direct relationship to Student’s ADHD. Consequently, the District was justified in treating Student like Student’s typical peers with respect to the discipline resulting from the incident in Europe.

Sufficiency under §504 of the Pre-Discipline Process Provided to Student

The evidence at the due process hearing established that Student was provided the same hearing afforded all non-protected students who violated the District’s policy and Secondary Discipline Code relating to the policy.

In accordance with the District’s own policies as described by the assistant high school principal, a student protected under §504 is provided with additional procedures, specifically an “alert” on the student’s file that would trigger the involvement of the §504 coordinator and ultimately a manifestation determination review. N.T. pp.163, 164, 174, 175. Since Student was not provided with the disciplinary procedural safeguards available to §504 protected students, Student was clearly not afforded the process the District itself considers sufficient for a §504 protected student.

Nevertheless, as discussed above, the information that would have been generated via that process would ultimately have resulted in the conclusion that Student’s behavior was neither caused by nor had a direct or substantial relationship to the ADHD diagnosis. Consequently, although Student was not afforded the full procedures a §504 protected student should and would receive in accordance with the District’s policies, any procedural violation did not result in a substantive denial of FAPE, and, therefore, requires no redress.

Effect of the District’s Failure to Consider Student a §504 Protected or IDEA Eligible Student Before Proceeding with a 30 Day Disciplinary Exclusion from School

The substantive issues underlying this aspect of the case raises the question whether the District was legally obligated to provide Student with an actively implemented §504 Service Plan during Student's high school years. The issue is complicated by the different legal standards relating to §504 eligibility that are presently in effect and the eligibility standards applicable in October 2007 when the District notified Parent that it was, in effect, exiting Student from §504 eligibility absent further medical information concerning Student's disability.<sup>2</sup> (F.F. 4, 5) Another legal issue is the effect of Student's "record of impairment" on §504 eligibility for purposes of determining whether a manifestation determination review should have been conducted prior to the regular discipline committee hearing. In addition, the parties have agreed to an independent educational evaluation to determine whether Student is IDEA eligible. (P-10)

Nevertheless, even assuming that Student was §504 protected and/or IDEA eligible at the time Student violated the Secondary Discipline Code, and, therefore, should have been provided with a manifestation determination review prior to participating in the same discipline committee hearing afforded to non-disable students, the outcome would have been the same. The substantive evidence relating to the incident establishes that Student was not disciplined for conduct that was caused by or had a direct or substantial relationship to a disability. Consequently, the District would ultimately have been permitted to proceed with the regular disciplinary hearing even if a manifestation determination review had been held.

Although it is possible that the District committed a procedural violation by failing to consider whether Student was a protected or eligible Student prior to proceeding with its

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<sup>2</sup> Prior to the January 1, 2009 effective date of the American with Disabilities Amendments Act of 2008 (ADAA) which also apply to §504, the U.S Supreme Court decision in *Sutton v. United Airlines, Inc.*, 527 U.S. 471 (1999) potentially limited §504 eligibility when an impairment that would otherwise have substantially affected a major life activity was controlled by effective mitigating measures. That may well have been the effect of Student's ADHD medication in October 2007, possibly affecting the propriety of the District's decision to terminate Student's §504 Service Plan notwithstanding its failure to conduct a formal reevaluation to determine eligibility.

discipline procedures as if Student was neither §504 protected nor IDEA eligible, the potential procedural violation had no substantive effect on whether the District properly excluded Student from school for 30 days.

**ORDER**

In accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** that the Coatesville Area School District is required to take no remedial action concerning Student 's 30 day exclusion from school due to an infraction of the District's policy and Secondary Discipline Code.

*Anne L. Carroll*

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Anne L. Carroll, Esq.  
HEARING OFFICER

May 25, 2010