

*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

EXPEDITED DUE PROCESS HEARING

Name of Child: R.M.  
ODR #5926/05-06 KE

Date of Birth: [redacted]

Date of Hearing: October 24, 2005

CLOSED HEARING

Parties to the Hearing:

Parent[s]

Tredyffrin Easttown School District  
738 First Avenue  
Berwyn, Pennsylvania 19312

Date Transcript Received:

Date of Decision:

Hearing Officer:

Representative:

Patricia O'Neill, Esquire  
22 West Front Street  
Media, Pennsylvania 19063

Kenneth Roos, Esquire  
Wisler, Pearlstone, Talone et al  
Office Court at Walton Point  
484 Norristown Road, Suite 100  
Blue Bell, Pennsylvania 19422

October 27, 2005

October 30, 2005

Linda M. Valentini, Psy.D.

## Background

[Student] is a [teenaged], 9<sup>th</sup> grade, eligible student living in the Tredyffrin-Easttown School District (hereinafter District). [Student] was involved with other students in an incident involving taking [an object of school property] that was later found off school property. At a manifestation determination meeting in which [Student's] parents, [redacted] (hereinafter Parents) participated, the school team members determined that the incident was not a manifestation of [Student's] disability. The Parents requested this expedited hearing to challenge that finding.

## Issue<sup>1</sup>

Did the manifestation determination team correctly determine that [Student's] actions were not a manifestation of his disability?

## Findings of Fact

1. [Student] is a [teenaged] 9<sup>th</sup> grade student who is a resident of the School District.
2. After school on September 9, 2005 [Student] and two other students took [an object of school property later found] off District property. (NT 249, 133-135; S-28, S-29, S-30)
3. In August, prior to the start of the 2005-2006 school year, the Intermediate Unit conducted an inservice training on IDEA 2004. There was a 30 to 45 minute portion regarding manifestation determinations<sup>2</sup>. District counsel reviewed pertinent information regarding the IDEA 2004 manifestation determination provisions for 15 to 20 minutes with relevant District staff prior to the Manifestation Determination meeting for Richard. (NT 62-65)
4. On September 15, 2005, following an “informal hearing”, the District conducted a Manifestation Determination meeting attended by the director of special education, two high school assistant principals, a high school psychologist, the middle school psychologist who had evaluated [Student] twice, parents and [Student]. (NT 53-54; S-28, S-29, S-30)
5. The middle school psychologist who participated in the Manifestation Determination team meeting had ongoing contact with [Student] in the middle

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<sup>1</sup> As this was an expedited hearing which needed to be concluded within time limits put forth by the Commonwealth of Pennsylvania Department of Education, Bureau of Special Education, a second issue regarding Child Find and possible compensatory education was set aside (NT 25). This hearing officer will retain jurisdiction for an additional fifteen days after issuing this Decision to give the Parents the opportunity to decide whether or not to pursue the second (non-expedited) issue at this time or to refile at a later date.

<sup>2</sup> The presenter on this topic is a special education hearing officer.

- school setting, as well as ongoing informal contact about [Student] with [Student's] reading teacher. (NT 30-31, 37-39, 45, 47-49, 54, 57, 69, 90, 120)
6. Other than the Parents and [Student], the middle school psychologist knew [Student] better than anyone else on the Manifestation Determination team. He does not believe that [Student's] actions were a manifestation of [Student's] disability. (NT 56, 66, 70-72)
  7. The school-based team members determined that [Student's] actions were not a manifestation of his disability. (NT 147-149; S-30)
  8. Although evaluations in 4<sup>th</sup> and 6<sup>th</sup> grades found [Student] ineligible, in 7<sup>th</sup> grade [Student] was reevaluated and found to have a mild learning disability in the areas of written expression, reading comprehension and math concepts. (NT 36-37, 40, 42-43, 50; S-4, S-11)
  9. According to the Wechsler Intelligence Scale for Children – Fourth Edition (WISC-IV), administered as part of the evaluation process that formed the basis of an Evaluation Report (ER) dated January 5, 2004, [Student's] Full Scale IQ was 105 at the 63<sup>rd</sup> percentile. Factor scores were Verbal Comprehension 99 (43<sup>rd</sup> percentile), Perceptual Reasoning 104 (61<sup>st</sup> percentile), Working Memory 97 (42<sup>nd</sup> percentile) and Processing Speed 115 (84<sup>th</sup> percentile). (NT 47; S-11)
  10. Behavior Assessment Scales for Children (BASC) Teacher Rating Scales completed by two of [Student's] teachers as part of the 7<sup>th</sup> grade reevaluation resulted in at-risk or clinically significant scores in the areas of attention problems, hyperactivity, learning problems, study skills, social skills and leadership. (NT 44-45; S-11)
  11. A BASC Self-Report completed as part of the 7<sup>th</sup> grade reevaluation yielded scores that resulted in all areas being in the “average” range, except that [Student] had fewer than average problems in the somatization and atypicality areas. (NT 44; S-9)
  12. BASC Self Report items [Student] endorsed as “False” included: I have many accidents, I cannot stop myself from doing bad things, I can't stop myself from making mistakes, and I get blamed for things I can't help. (S-9)
  13. Caution indexes on the BASC Self Report designed to detect inconsistency of responses or lying yielded scores indicating that [Student's] response pattern was acceptable, that is that [Student] appeared to answer in a truthful and conscientious fashion. (S-9)
  14. The 2004 ER notes needs in the areas of organization, study techniques, maintaining focus, retaining and applying concepts, reading comprehension and math concepts. (S-11)

15. A behavior report from April of 6<sup>th</sup> grade notes that [Student] was “a great student” in 5<sup>th</sup> grade. [Student] had no disciplinary reports in 5<sup>th</sup> grade. (NT 91; P-4)
16. In 6<sup>th</sup> grade there were four behavioral incidents, two in January and two in May. (P-4)
17. In 7<sup>th</sup> grade there were eleven behavioral incidents, seven of which involved a new teacher for whom [Student] did not behave. (NT 40, 84-85; P-4)
18. In 8<sup>th</sup> grade there were only two incidents, both in October. (P-4)
19. Overall, in the elementary and middle school setting [Student] did not exhibit impulsivity consistent with ADHD, predominantly hyperactive impulsive type<sup>3</sup>, although [Student] acted up in class for negative attention and was difficult in the classroom of a new teacher during 7<sup>th</sup> grade. (NT 46-49, 55, 57, 75, 91, 119-120; P-4)
20. [Student] may or may not meet diagnostic criteria for ADHD, predominantly inattentive type, commonly called ADD. A notation done eight years ago suggests that at one time [Student] may have been diagnosed with “ADD”, but no subsequent information to this effect was ever supplied by the Parents until the incident in question. A psychiatric evaluation done on October 31, 2004 listed it as a Rule-Out on Axis I. (NT 110, 113-11, 118-119; S-2, S-20, P-1)
21. Although [Student] demonstrates some of the characteristics of ADHD, predominantly inattentive type, commonly called ADD, [Student] may not do so to a level that is maladaptive and developmentally inappropriate. (NT 104-109)
22. Other than the [incident], [Student] has never taken anything belonging to the District, or belonging to a family member without permission, or from a store without paying. (NT 262)
23. A notation on [Student’s] School Health Record form dated 9/97 (first grade) reads “On Adderall for ADD”. (P-2)
24. From second grade to the incident in question [Student] has not been to a psychiatrist for possible prescription of medication to address a deficit in attention. (NT 256, 258-259)
25. A Parent Report, completed by [Student’s] mother on 6-21-01 when [Student] was in 4<sup>th</sup> grade states, “Has never had any problems in school with behavior. Beaumont K-4. Preschool 2 years at O.LA”. The report also carries the notation, “[Student] easily loses his focus”. (P-1)

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<sup>3</sup> As opposed to ADHD, predominantly inattentive type, commonly called ADD.

26. On a BASC Structured Developmental History completed in November 2002 [Student's] mother noted that "[Student] travels all over the country with a (sic) AAA ice hockey team". (NT 113-115; S-2)
27. On the same BASC form, in answer to the question "What do you find most difficult about raising this child?", [Student's] mother responded, "difficulty staying focused and on task". (S-2)
28. On the same BASC form the mother answered "No" to the question "Has this child ever been on long-term medication (more than 6 months)?", "No" to the questions "Any problems in preschool?" and "Any problems in kindergarten?" and "No" to the question "Seems impulsive?". (S-2)

#### Discussion and Conclusions of Law

The Federal special education statute recognizes that a child's disability may lessen or remove his responsibility for a behavioral infraction, and thus mitigate the disciplinary consequence of the action. If a District wishes to discipline an eligible student in such a way that changes the student's current educational placement, it must first determine whether or not the action in question was a manifestation of the student's disability. Section 615(k)(1)(E)(i) of the Individuals with Disabilities Education Improvement Act (IDEIA), 118 STAT. 2726-2727 provides that

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.

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.

Section 615(k)(3)(A) and (B) and (4)(B) of the IDEIA provides that if a student's parent disagrees with any decision regarding placement or the manifestation determination the parent may request an expedited hearing at which a hearing officer will hear, and make a determination, regarding the appeal. In the instant matter, the Parents are exercising their rights under the statute.

Although [Student] is eligible for special education under the classification of specific learning disability, the Parents assert that [Student] also has an Attention Deficit Disorder and that this disorder was the underlying factor in [Student's] action now under scrutiny.<sup>4</sup>

To support the Parents' position the mother testified that [Student] is impulsive and does things without thinking (NT 226), has difficulty focusing attention (NT 23), had behavior problems in Preschool and took Ritalin in Kindergarten and Adderall in first and second grades<sup>5</sup> (NT 228-229, 253, 267; FF 23), and was a behavior problem in third grade to the point that the teacher said that [Student] needed to be put back on medication<sup>6</sup> (NT 229). However, this testimony asserting a long history of impulsivity and losing focus easily is brought into question by the facts that for the past five years the Parents did not seek a psychiatric consult about possibly reinstating medication (NT 256; FF 24) and [Student] does not see [Student's] self as being unable to control [Student's] own actions (FF 12). Moreover, the Parents' position is flatly contradicted by the documentary evidence that 1) in filling out a Parent Report form in June 2001 [Student's] mother wrote that [Student] "Has never had any problems in school with behavior. Beaumont K-4. Preschool 2 years at O.L.A" (P-1; FF 25) and 2) in filling out a BASC history form in 2002 she endorsed "No" to questions about long term medication, impulsivity, and problems in preschool or kindergarten (S-2; FF 28). Additionally, the fact that [Student] successfully participates as an outstanding member of an AAA ice hockey team and travels within the United States and in Canada for competitions belies a disabling condition of impulsivity, inability to focus and inattentiveness (NT 35; S-2; FF 26). Furthermore, under cross examination and clarifying questioning by the hearing officer, the mother was not straightforward, both denying and confirming that she had been truthful when filling out the BASC developmental history form in 2002 (NT 259-261).

Overall, although she was clearly concerned about and supportive of her [child], the mother's testimony simply lacked credibility and hence could be given little weight. However, even if the Parent had been credible, and even if [Student] does in fact have a life-long condition of a deficit in attention, from the evidence presented there could simply be no reasonable conclusion that this possible condition, let alone [Student's] documented mild learning disability, had a "direct and substantial relationship" to the incident in question.

Dr. M, the school psychologist who participated in the Manifestation Determination meeting and testified at this hearing, provided credible and persuasive evidence that the

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<sup>4</sup> The Parents also put forward a theory that [Student] was being too harshly disciplined for an incident that was not serious, and that the Manifestation Determination team came to its conclusion because of animosity arising from [Student's] conflict with the [child] of a member of the School Board (NT 166-167). This hearing officer's authority only rests in determining, based on [Student's] disability and [Student's] history, whether the team's conclusion was correct or not, and not to determine any underlying motivations that could have impacted the conclusion. Likewise it is not within this hearing officer's authority to decide whether or not the incident was "serious" (NT 162-163, 167) and/or whether the consequences imposed by the District are too harsh.

<sup>5</sup> Medication was discontinued after second grade because it was causing weight loss.

<sup>6</sup> [Student] was not put back on medication, and the teacher successfully implemented strategies such as preferential seating to assist [Student's] focusing. (NT 229)

Manifestation Determination team came to the correct conclusion in finding that the incident for which [Student] is being disciplined was not a manifestation of [Student's] disability.

Dr. M is a licensed psychologist as well as a certified school psychologist, worked in the traditional school psychologist role for twenty-three years and specialized in behavior management for an additional ten years. He designed the Pro-Social Behavior System, a behavior management system for schools that won an award through the National Association of School Psychologists. He has written articles and, along with Dr. P (school psychologist and now attorney representing parents in special education matters) and Dr. C (developmental pediatrician), coauthored a chapter in a book titled Innovations in Clinical Practice. (NT 29-30) Dr. M testified that part of behavior management is dealing with Attention Deficit Hyperactivity Disorder (ADHD) issues (NT 30) and clarified that although the term Attention Deficit Disorder (ADD) is commonly used, there is no Diagnostic and Statistical Manual – Fourth Edition (DSM-IV) listing for ADD, rather it is properly termed Attention Deficit Hyperactivity Disorder, Predominantly Inattentive Type. (NT 59)

Dr. M knew [Student] well as he evaluated [Student] in 2003 and 2004, observed [Student] informally, greeted [Student] in the hallways, and had ongoing contact with [Student's] reading teacher. Dr. M pointed out that, observed in the school setting, [Student] did not exhibit behaviors commonly associated with impulsivity. The other members of the Manifestation Determination team considered the information Dr. M brought to the table, considered [Student's] history and considered the opinions of the Parents and came to the conclusion that [Student's] actions were not a manifestation of [Student's] disability. Based upon the testimonial and documentary evidence presented at the hearing this hearing officer concurs and finds that the District succeeded in meeting its burden of proof in this matter.

## ORDER

It is hereby ORDERED that:

The manifestation determination team correctly determined that [Student's] actions were not a manifestation of [Student's] disability.

October 30, 2005

Date

*Linda M. Valentini, Psy.D.*

Linda M. Valentini, Psy.D.  
Hearing Officer