

5/9/06

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MAY 10 2006

CASE CLOSURE SUMMARY REPORT

(This summary sheet must be used as a cover sheet for the hearing officer's decision at the end of the special education hearing and submitted to the Department of Education before billing.)

Public Schools
School Division

Mr. and Mrs.
Name of Parents

May 9, 2006

Name of Child
, Esq.

Date of Decision or Dismissal
Parents represented themselves

Counsel Representing LEA
Parents

Counsel Representing Parent/Child
Schools

Party Initiating Hearing

Prevailing Party

Hearing Officer's Determination of Issue(s):

That the LEA was correct in its determination that the conduct leading to discipline was not a manifestation of the Child's special education disability, which is LD.

Hearing Officer's Orders and Outcome of Hearing:

The manifestation determination of the LEA is affirmed.

This certifies that I have completed this hearing in accordance with regulations and have advised the parties of their appeal rights in writing. The written decision from this hearing is attached in which I have also advised the LEA of its responsibility to submit an implementation plan to the parties, the hearing officer, and the SEA within 45 calendar days.

Urchie B. Ellis

Printed Name of Hearing Officer

Signature Va. State Bar No. 5422

MAY 10 2006

Dispute Resolution &
Administrative ServicesDEPARTMENT OF EDUCATION
DUE PROCESS HEARINGPUBLIC SCHOOLS
(School, LEA)MR. and MRS.
(Parents)

(Child)

May 9, 2006
(Date of decision)

(Counsel for School, LEA)

Parents represented themselves
(Counsel for Parents, Child)

DECISION OF HEARING OFFICER

This proceeding was initiated by Parents by request for due process filed March 17, 2006. Objection to the sufficiency of the request was filed on March 27, and the Hearing Officer concluded that the request was not adequate and allowed the Parents to file an amended request. The LEA supplied the proper form, and the amended request was filed on April 3. The Request for Due Process was for review of a manifestation hearing determination in a discipline proceeding, and for a regular due process proceeding related to evaluation. Both cases were assigned to the undersigned Hearing Officer.

By letter of March 24, the Hearing Officer set dates of April 4 and May 2 for the respective proceedings, and a prehearing telephone conference for 9 A.M. March 28. That conference took place, lasted 1 1/4 hours, and resolved many details. In that the regular due process proceeding was withdrawn, and the parties were engaged in Resolution procedure, and neither party had requested expedited hearing, the hearing set for May 2 was retained for the manifestation proceeding. Mediation had taken place in Feb and March, 2006, without success.

The LEA submitted a compilation of 65 exhibits, which were acceptable to the Parents, and were received into the record by agreement. One subpoena was issued. LEA presented 7 witnesses, and both Parents testified. The hearing on May 2, 2006, lasted about 5 hours. Both sides made opening and closing statements.

THE FACTS:

Child is a girl, 15 years old, in good health, currently attending a regular high school. She has been receiving special education services for some years and is classified as Specific Learning Disabled. While in 8th grade at a middle school on May 16, 2005, she was found to be possessing coricidin tablets and to have given several to fellow students at school. This was in violation of the LEA Code of Student Conduct, which had been given to and explained to all students, including Child. After some investigation the facts were resolved, and she was suspended on May 19, 2005. She was on homebound instruction for the balance of the school year, until about June 17, 2005. A manifestation determination meeting was held on May 27, 2005, and it was concluded that the conduct was not a manifestation of her disability. Under the Code of Conduct, Principals are required to submit such matters to the School Board for suspension.

On June 13, 2005, a Disciplinary Review Hearing Officer considered her case, but placed the proceeding on hold because Child was being re-evaluated. An Eligibility Committee meeting took place on August 1, 2005, and declined to change Child's classification to Emotional Disturbed, and thus there was no change in the manifestation determination. On August 11, 2005 a letter was sent to Parents advising that the matter would be sent to the School Board. On August 24, 2005, Parents submitted a written appeal of the suspension, and a request for an IEE, and for a due process proceeding. The case was then taken off the School Board agenda. (That due process proceeding was by chance assigned to this Hearing Officer.)

About August 27, 2005, the Parents agreed to withdraw their due process request, and the LEA agreed allow Child to attend a regular high school and receive her IEP services. An Independent Educational Evaluation, IEE, was to be done at public expense, and Child was then to have further manifestation review. A Ph.D., Licensed Clinical Psychologist, did an evaluation in the fall, and his report was submitted to the LEA on Jan. 4, 2006.

On Jan. 25, 2006, the Eligibility Committee met to consider the IEE and other material. The Committee members felt that Child was not a child with "Emotional Disability" or "Other Health Impaired". Parents left the meeting before it was over. A further meeting was held on Feb. 20, 2006. The team considered the IEE and other information and concluded that the conduct in May 2005 was not related to Child's learning disability. Parents were notified but did not attend.

Child has had no other conduct problems before or since. She has had passing grades, and good comments from her teachers. She was on homebound while on suspension, and apparently received less services than she would have had at the middle school, and thus her grade performance may have suffered.

The LEA will have to make some arrangements for her special education schooling if the determination, that her conduct in May 2005 was not a manifestation of her disability, is upheld.

THE ISSUE AND THE APPLICABLE LAW:

The issue is whether the LEA properly concluded that the conduct of the Child in connection with the coricidin incident was not a manifestation of her special education disability-- e.g. Specific Learning Disabled. The applicable law is summarized in the Virginia Safeguard Requirements dated June 2005. Parents have the burden of proof to demonstrate that the LEA determination was in error, and the LEA has to establish that it met the procedural requirements and properly made the essential findings.

THE EVIDENCE:

The evidence relied upon by Parents was the IEE by the Ph.D., Licensed Clinical Psychologist, supplied to the LEA on Jan. 4, 2004 (Ex. 53). They particularly relied upon his reference to ADHD in several contexts, and to his reference to impulsive activity and to some family dysfunction. They also testified about some problems at home with the Child. Reference was made to a comment about ADHD at a meeting years ago at another school district, but Child was classified as LD and there was no reference to ADHD in a later IEP which was in the record (Ex.3). They explained that they had not presented this argument in the past at IEP and other meetings because they were not well enough informed to associate Child's attention difficulties at school with possible ADHD. The Ph.D. did not testify. He did not do an ADHD evaluation.

The LEA presented 7 witnesses who variously referred to and participated in the several IEPs and Manifestation, and other, meetings, and had reviewed extensive materials and records

pertaining to Child, including the IEE. [She had been in the LEA special education program since January 2003 (and in special education before that at another location)]. They represented appropriate professional qualifications and experience. They variously concluded that the conduct was not a manifestation of her disability, and that her proper special education classification was LD and was not OHI or ADHD or ED. They referred to many of the exhibits.

Child was suspended and on homebound instruction, with some special education services until the end of the school year about June 17, 2005. While some question was raised about the adequacy of the services in this homebound period, she did get passing grades. Starting in September 2005 she attended a regular LEA high school, and has had passing grades, and no discipline problems for almost an entire school year down to the date of the hearing. It appears that she will probably finish the school year before this matter is referred back to the School Board for consideration of expulsion.

The LEA has to establish several conclusions to support its determination that the conduct leading to the discipline was not a manifestation of the Child's disability. The IEP Team and other qualified personnel did consider all relevant information including the IEE and other diagnostic results, and information supplied by the Parents, and observations of the Child, and her IEP and placement. They also determined that the IEP and placement were appropriate and that the special education services were consistent with the IEP and placement. They also concluded that the Child's disability did not impair her ability to understand the impact and consequences of her behavior, and did not impair her ability to control her behavior. Child had received prior review of the Code of Conduct, and a Behavior Intervention Plan was done after the incident. (See Exhibits 3, 12, 21, 28, 31, 32, 33, 40, 41, 43, 51, 57, and 58)

CONCLUSIONS:

The Hearing Officer has carefully reviewed all of the Exhibits and refreshed his memory of the testimony, and arguments, and concludes that Parents have not established that the Child has ADHD or that there were any shortcomings or failures in the handling and analysis by the LEA. He concludes that the conduct leading to the discipline was not a manifestation of the Child's special education disability.

The Hearing Officer also concludes that the LEA has met its burden of showing that it has complied with the requirements in connection with making a determination regarding manifestation, and in placing Child on homebound instruction for the period thought June 17, 2005, and in subsequent handling. The case may be referred to the School Board to consider expulsion, but since Child is in a special education category, she will be supplied with appropriate accommodations and services if she is expelled.

This decision is final and binding unless either party appeals in a Federal District Court within 90 calendar days of the date of this decision, or in a State Circuit Court within one year of the date of this decision. Any party wishing to appeal is advised to consult with legal counsel about procedures and deadlines. The LEA has a responsibility to submit an implementation plan to the Parties, the Hearing Officer, and the SEA, within 45 days.

May 9, 2006


Urchie B. Ellis, Hearing Officer
Virginia State Bar No. 5422

cc: To the Parties, to Counsel, and to the Virginia Dept. of Education (SEA).