

03-0320431

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

~~_____~~,
Petitioner,
v.
CARROLL COUNTY SCHOOL
SYSTEM,
Respondent.

DOCKET NO.:
OSAH-DOE-SE-03-20431-22-JRA



FINAL DECISION

The above matter came before the Office of State Administrative Hearings (OSAH) on December 17, 2002.¹ This is a de novo hearing under the Individuals with Disabilities Act, (IDEA), 20 U.S.C. §§ 1400 *et seq.* The due process request was made on November 14, 2002, subsequent to Petitioner being charged with school rule violations and a November 13, 2002 IEP meeting, at which the IEP committee decided that Petitioner's behavior had not been a manifestation of his disability. Petitioner had been voluntarily placed by the Petitioner's parents in an alternative school in lieu of a 10 day suspension.

Subsequent to a prehearing conference, the issue to be heard was narrowed to a manifestation determination.² Based on a review of closing argument and a review of the evidence presented at the hearing, no additional issues are left for adjudication. Based on the evidence presented, it is determined that the IEP committee properly determined that Petitioner's behavior which led to a decision that he was in violation of school rules was not a manifestation of his disability. Consequently, Respondent is determined to be in compliance with the provisions of IDEA.

Findings of Fact

1.

~~_____~~ is a ~~_____~~ year old student who is in the 11th grade and on track to receive a technical preparation diploma. (Testimony of Hicks, Transcript ("T."), at pp. 34-36.

¹ Present at the hearing were the Petitioner's representative, ~~_____~~ pro se, and Respondent's counsel, Mr. Hartley, with Respondent's designated representative, Ms. Donna Nicholas. The record remained open until after the receipt of the transcript and a period of time for receipt of closing arguments. The record closed February 10, 2003.

² Petitioner's representative had difficulty in articulating clearly the issues which prompted the due process request. Dissatisfaction with the decision that rule violations had taken place and with the placement at an alternative school, although initially agreed to, appeared to be the reason. Consequently, the issue was the manifestation decision.

2.

██████ is currently eligible and receiving special education services under the category of "Other Health Impaired" ("OHI") with a diagnosis of attention deficit disorder (ADD). These services are provided at the alternative school in Carroll County, the Crossroads Academy. Prior to November 11, 2002, ██████ received his services at Central High School in Carroll County. (Testimony of Hicks, T. at pp. 36; 46)

3.

██████ has been in the Carroll County School System ("LSS") since the sixth grade. He transferred in from Paulding County where he had a section 504 plan. Beginning in his seventh grade, he began receiving special education services under the category of OHI due to his ADD. (Testimony of Hicks, T. at p. 38; Respondent's Exhibit R-1)

4.

██████, throughout the time he has received services from the LSS, has exhibited typical behaviors of children with ADD. Three types of behavior are generally observed, i.e., attention and concentration difficulty, impulsivity and hyperactivity. Impulsivity is demonstrated by acts which are related to impatience and an inability to delay responses and are characterized by a lack of conscious thought or particular purpose or reason. Specifically, ██████ has generally shown inattention, a failure to complete assignments in class. His impulsivity and hyperactivity have been exhibited by restlessness, excessive talking and blurting out inappropriate comments. (Testimony of Hicks, T. at pp. 38-40; testimony of Bowen, T. at pp. 102-107)

5.

██████ has not historically presented physically aggressive behavior and this has not been behavior brought to the attention of the IEP committee or professionals who have worked on functional assessment reports. The only exception has been some pushing of other students and an inappropriate verbal threat to a teacher. (Testimony of Hicks, T. at pp. 42-43, 56-57; testimony of Bowen, T. at pp. 105-107; 114-115; Respondent's Exhibits R-2; R-3; R-4; R-5; R-8; and R-14)

6.

On November 1, 2002, ██████ took a knife with him to a football game and threatened another student. ██████ was found in violation of school rules prohibiting carrying weapons to school. This finding was affirmed by the disciplinary Tribunal of the LSS on December 11, 2002. (Respondent's Exhibits 10; R-11; and R-15)

7.

Subsequent to the November 1, 2002 incident, the IEP committee met on November 13, 2002, to determine (assuming the allegations were true) whether ██████'s behavior was a manifestation of his ADD. Petitioner's parents believed the behavior was impulsive; the IEP committee determined that it was not a manifestation of his disability. At the IEP meeting, ██████ admitted that he had brought the knife but denied he had threatened

anyone.³ [REDACTED] understood the school rules and the consequences of violating the rules. The act of bringing a knife to an event was caused by [REDACTED]'s belief that he needed to protect a friend and showed conscious planning and thought. (Testimony of Hicks, T. at pp. 56-57; testimony of Bowen, T. at p. 104; Respondent's Exhibit R-12; R-13)

8.

Prior to the IEP meeting held on November 13, 2002, [REDACTED]'s parents had consented (on November 12, 2002) to a transfer to Crossroads Academy pending the decision of the Disciplinary Tribunal. (Testimony of Hicks, T, at p. 50; Respondent's Exhibit R-12)

Conclusions of Law

1.

This matter is governed by the Individuals with Disabilities Act (IDEA) and the regulations implemented under IDEA which require that a free and appropriate education (FAPE) be provided to any student who is identified as having a disability as defined by the Act, 20 U.S.C. § 1412 (1); 34 C.F.R. § 300.4, in the least restrictive environment.

2.

The code of conduct for students applies to a student with disabilities unless a student's IEP specifically provides otherwise. DOE Rule 160-4-7-.14(1)(b). Disciplinary procedures applicable to students without disabilities may be applied to the student with disabilities if the behavior is not a manifestation of the student's disability. DOE Rule 160-4-7-.14(6)(a).

If an action is contemplated regarding a student who carries or possesses a weapon to school or to a school function, the IEP committee must conduct a manifestation determination review within 10 days of the date the decision is made to take the action. In making this manifestation determination, the IEP committee must consider first, in terms of the behavior subject to disciplinary action, relevant information such as evaluation and diagnostic results; observations of the student; the student's IEP and placement.

Then the committee must consider

“(I) in relationship to the behavior subject to disciplinary action, the student's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the student's IEP and placement;

(II) The student's disability did not impair the ability of the student to understand the impact and consequences of the behavior subject to; and

(III) The student's disability did not impair the ability of the student to control the behavior subject to disciplinary action.” DOE Rule 160-4-7-.14(5)(I)-(III).

³ Although Petitioner has only admitted the possession of the knife and not the threat, for purposes of this decision, the findings of the Disciplinary Tribunal are accepted as true.

3.

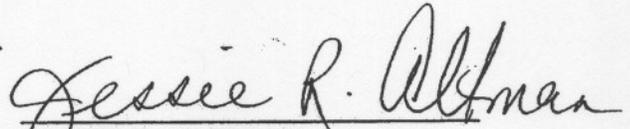
A review of the evidence shows that the IEP committee properly determined that [REDACTED]'s behavior in bringing the knife to the school activity was not a manifestation of his disability. The IEP was appropriate and the disability did not impair [REDACTED]'s ability to understand the impact and consequences of his behavior or to control his behavior.

[REDACTED] has no history of physically aggressive behavior. Although his father argued that the behavior was impulsive, impulsivity, as defined by Mr. Hicks, is characterized by a lack of conscious thought or particular purpose or reason. [REDACTED]'s action in bringing the knife to the school event involved thought and planning and was not impulsive.

Decision

Based on the foregoing findings of fact and conclusions of law, it is determined that the LSS properly found that the behavior [REDACTED] exhibited (bringing a knife to a school event and threatening another student), which led to a finding of school violations and disciplinary action, was not a manifestation of his disability.

SO ORDERED this 12th day of March, 2003.


JESSIE R. ALTMAN
ADMINISTRATIVE LAW JUDGE