

BEFORE AN IMPARTIAL HEARING OFFICER
STATE OF COLORADO
Due Process Hearing L2002:111

FINDINGS OF FACT AND DECISION

In the Matter of the Educational Placement of a Student,

[STUDENT],

Concerning

ACADEMY SCHOOL DISTRICT #20

and

[PARENTS], Parents of the Student

FINDINGS OF FACT AND DECISION

Introduction

The Parents of the Student (hereafter referred to as the “Parents”) requested a due process hearing. In compliance with Rule 6.03(6)(d)(iii) of the Rules for the Administration of the Exceptional Children’s Educational Act (hereafter the “ECEA Rules”) the student’s and the parents’ names are not contained herein except on the cover page. The Parent’s four page letter requesting a due process hearing was dated May 17, 2002 and was attached to a form entitled “Intent to File for a Due Process Hearing ”dated May 16, 2002. The first phrase of that letter states, “We are appealing the manifestation meeting held May 15, 2002...” The final sentence of the letter contains the phrase, “Thank you for your assistance as we appeal this manifestation...”

The District received that written request on May 17, 2002. At a prehearing conference held in the District’s Offices on June 21, 2002 the District and the Parents agreed pursuant to Rule 6.03(6)(b) of the ECEA Rules to extend the time for the hearing officer to reach a final decision until August 1, 2002. The hearing took place in the District’s offices on Tuesday, July 23, 2002. Because of the unavailability of a witness on that day the hearing was reconvened on August 7, 2002 and the Parents and the District further agreed to extend the time for the hearing officer to reach a decision to August 12, 2002.

At the June 21, 2002 prehearing conference it was further agreed that the sole issue to be determined by the hearing officer to be: “Was the Student’s conduct in May, 2002 which resulted in disciplinary action by the District a manifestation of the Student’s disability?”

The Parents were advised of the availability of low cost or free advocacy and legal services to assist them with the hearing. They had the help of advocates who were not lawyers.

The District was represented throughout these proceedings by the law firm of Stettner, Miller, and Cohn, P.C. by Brent P. Benrund, Esquire of that firm:

Upon consideration of the testimony of the witness and the items entered in to evidence the hearing officer makes the following findings of fact:

FINDINGS OF FACT

1. The Student is a male who was born [].
2. At all time relevant to this decision the Student was receiving services from the District pursuant to an Individualized education Program (IEP) dated May 16, 2001 which determined that the Student has a disability as defined by the ECEA Rules.
3. That disability is Attention Deficit Hyperactivity Disorder (hereafter ADHD).
4. Consistent with ADHD, the Student is impulsive in that he does things too quickly and gets into trouble because he has not thought trough the situation at hand. The crux of this disability is the inability to attend appropriately to a task.
5. Scientists who have studied ADHD believe that this disability may be caused by a neurological disorder. Therefore because ADHD may have a physiological or medical cause it is considered a disability under the ECEA Rules which entitles the Student to special services to deal with the disorder.
6. The Student has also been diagnosed with Oppositional Defiant Disorder (hereafter referred to as ODD).
7. Scientists who have studied ODD have determined that this disorder is a behavioral problem characterized by a conscious decision to break rules that are imposed by society (family, school, etc.). Therefore because ODD has no physiological or medical cause,

but is simply the willful disregard for rules, it is not considered a disability under the ECEA Rules and does not entitle the Student to any special services.

8. The Student's ODD is mentioned in his IEP for the purpose of assisting the IEP team in understanding the unique needs of the student.
9. During the 2001-2002 school year the Student attended Mountain Ridge Middle School (hereafter the School) in the District.
10. During April and May, 2002 the Student was assisting the physical education teachers in the School with certain tasks such as organizing equipment.
11. While working with the physical education teachers, the Student learned that the teachers were storing several hundred dollars in cash in an unlocked file drawer in their offices. The District does not know exactly how much was taken because accurate records were not kept. The hearing officer hereby requests that the District review these practices to determine whether or not it is prudent to keep monies in such a manner and to fail to keep an accurate accounting.
12. This money was obtained from student fund raising events for the purpose of buying additional equipment for the physical education department.
13. Mr. Tony Scott, the principal at the School, and Ms. Karen Wasserman, the Student's Special Education Teacher at the School, testified that the Student admitted to them in the presence of his mother that he did not immediately take the money, but that he discussed the availability of the money with a friend and then returned on another occasion when no one was in the vicinity of the cabinets where the money was stored and took the money.

14. There were several discrepancies in the testimony of exactly when the statements were made by the Student regarding his discussion with his friend. After being confronted with these discrepancies, both witnesses were consistent that the Student had admitted discussing the taking of the money with a friend prior to actually taking the money.
15. It is uncontroverted that the Student took the money when no one was present to observe the act.
16. The Student attended one of the hearing sessions but did not testify. The Student did not deny that he planned the theft with a friend. The Student did not testify that he grabbed the money the first time he saw it.
17. The theft was discovered after the Student was observed spending lavishly on a field trip and at the mall.
18. On May 14, 2002 the Student returned \$420.00 to the School.
19. On May 15, 2002 a review of the Student's theft was made by a team that included: the District's psychologist, a psychology intern, the Student's special education teacher, the school nurse, the Student, the Parents, the school principal, a school psychologist who appeared as a parent advocate, and another parent advocate. This meeting was for the purpose of a "manifestation review".
20. According to the School psychologist who chaired the May 15, 2002 meeting it was the consensus that the theft was not a manifestation of the Student's disability (ADHD).
21. During this Due Process hearing the psychologist, the special education teacher, the school nurse and principal affirmed that they did not believe that the theft was a manifestation of the disability and that was their decision on May 15, 2002.

22. On May 15, 2002, the Student, the Parents and their two advocates disagreed with that determination and at this Due Process Hearing reiterated that disagreement.
23. The written summary of the May 15, 2002 meeting does not contain a direct statement that it was determined that the theft was not a manifestation of the Student's ADHD but that is the effect of that summary.
24. In the written summary of the May 15, 2002 manifestation review under the section labeled conclusion it states in part, "Parents acknowledge... he responded to a dare in taking the action."
25. On May 17, 2002 the District received the request for Due Process Hearing appealing the May 15, 2002 decision.

DECISION

ADHD is the only disability of the Student recognized under the ECEA Rules. If the Student acted too quickly by grabbing the money the first time he saw it, or while in the presence of the teachers, then such an act would be consistent with ADHD. On the other hand if the Student planned the theft a day or more before actually doing it, discussed the theft with others before actually carrying it out, and carried out the theft by sneaking into the office area at a time when the teachers and other potential witnesses were gone, then such a deliberate act would not be consistent with ADHD.

The Parents objected to and disagreed with the testimony of Mr. Scott and Ms. Wasserman that the Student admitted preplanning the theft, discussing it with another, and executing the theft in a surreptitious manner. The hearing officer has found that their testimony is credible. Furthermore because there was no testimony that the Student acted too quickly by

grabbing the money when he first saw it or in a manner to suggest impulsiveness such as grabbing the money while under observation where there would be a high likelihood of getting caught, it must be concluded that the theft by the Student during the first part of May, 2002, at the Mountain Ridge Middle School was not a manifestation of his Attention Deficit Hyperactivity Disorder. Though the theft is completely consistent with the willful behavior that has been diagnosed as Oppositional Defiant Disorder, that fact has no relevance pursuant to the ECEA Rules.

WHEREFORE, the undersigned hearing officer determines that the Parent's appeal of the May 15, 2002 Manifestation Review is without merit and no relief is awarded. Attached is a copy the ECEA Rules regarding State level review [Rules 6.03(9), 6.03(10), 6.03(11), 6.03(12), 6.03(13), and 6.03(14)].

Dated this 12th day of August, 2002 by:

Gordon F. Esplin

CERTIFICATE OF MAILING

I hereby certify that a true and correct copy of this document had been sent to the following the 12th day of August, 2002 by certified mail:

1. [PARENTS]
2. Brent P. Benrund, Esq.
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