BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of: STUDENT, Petitioner, v. OAKLEY UNION ELEMENTARY SCHOOL DISTRICT, PITTSBURG UNIFIED SCHOOL DISTRICT, and MT. DIABLO UNIFIED SCHOOL DISTRICT, Respondents.	OAH CASE NO. N2006100061

DECISION

Judith A. Kopec, Administrative Law Judge, Office of Administrative Hearings, Special Education Division, State of California, heard this expedited hearing on November 1 and 2, 2006, in Oakley, California.

Rhoda Benedetti, attorney, represented Petitioner (Student). Wendy E. Musell, attorney, also represented Student on November 1, 2006. Tamara L. Loughrey, attorney, also represented Student on November 2, 2006. Student's mother (Mother) attended the hearing.

Jan E. Tomsky and Summer D. Dalessandro, attorneys, represented Respondent Oakley Union Elementary School District (Oakley). Maryann Hussey, Oakley's Director, Student Support Services, attended most of the hearing. Sandra Smyth, Oakley's Coordinator, Student Support Services, attended in Ms. Hussey's absence.[1]

Student filed the Complaint on October 2, 2006, and raised issues for both an expedited hearing and a regular due process hearing. The matter was bifurcated. Student subsequently withdrew the issues that were the subject of the regular due process hearing.

[1] Neither Pittsburg Unified School District (Pittsburg) nor Mt. Diablo Unified School District (Mt. Diablo) participated in the expedited hearing.

The expedited hearing concluded on November 2, 2006. The record remained open for the submission of written closing arguments, which were received and the record was closed on November 6, 2006.

ISSUES

Did Oakley fail to conduct an appropriate manifestation determination by:[2]

1. Concluding that the conduct for which Student was disciplined was not a manifestation of his disability prior to the manifestation determination meeting on April 21, 2006?

2. Failing to allow Mother and Student's mental health professionals to provide relevant information during the manifestation determination meeting on April 21, 2006?

Because the Complaint does not allege that the manifestation determination was not correct, this issue is not decided in this matter.

CONTENTIONS OF THE PARTIES

Student contends that Oakley determined that the conduct for which he was disciplined was not a manifestation of his disability prior to conducting the manifestation determination meeting.

Oakley contends that its staff did not reach any conclusion concerning whether Student's conduct was or was not a manifestation of his disability prior to the manifestation determination meeting.

Student contends that Oakley denied Mother the opportunity to present relevant information on his behalf at the manifestation determination meeting. Student also contends that Oakley prohibited two mental health professionals familiar with Student from presenting relevant information at the meeting.[3]

---

[2] The issues were re-formulated for this decision. Student alleges in his Complaint that Oakley denied him a free and appropriate public education (FAPE) by failing to conduct an appropriate manifestation determination. A challenge to a manifestation determination is limited to whether the district complied with the procedural requirements or whether the determination was incorrect.

[3] Student contends for the first time in his closing argument that the manifestation determination team failed to review Student's file, individualized education program (IEP), and any teacher observations; that Oakley denied Mother the right to refer to Student's records during the manifestation meeting; and that Oakley failed to follow the procedural requirements before assessing Student prior to the manifestation determination meeting. These violations are not alleged in the Complaint and are not at issue.

Oakley contends that Mother and Student's mental health professionals participated during the manifestation determination meeting. In addition, the school psychologist obtained relevant information from Mother which was included and considered in his report and findings that he presented at the meeting.

FACTUAL FINDINGS

Background Information

1. Student is a 13-year old eighth-grade student who is eligible for special education services under the category of other health impairments due to severe attention deficit/hyperactivity disorder (ADHD) that significantly impacts his educational performance. Student attended school in Mt. Diablo through fifth grade (approximately September 1998 to June 2004), and in Pittsburg during sixth and part of seventh grades (approximately September 2004 to March 2006).

2. Student transferred into seventh grade at Oakley's Delta Vista Middle School on March 30, 2006. On April 12, 2006, Student was suspended for bringing a knife to school. On April 21, 2006, a manifestation determination meeting was conducted. The team determined that Student's conduct was not a manifestation of his disability. On May 3, 2006, Oakley's Board of Trustees expelled Student.

Oakley's Preparation for Manifestation Determination Meeting

3. As discussed in Legal Conclusions paragraphs 3 and 4, a district is required to conduct a manifestation determination prior to expelling Student. The manifestation determination is to be made by the district, the parent, and relevant members of the IEP team. In making the manifestation determination, all relevant information in the student's file, including the IEP, any teacher observations, and any relevant information provided by the parents must be reviewed to determine if the conduct subject to discipline is a manifestation of the student's disability.

4. Oakley staff met before the April 21, 2006 manifestation determination meeting to discuss when and where the meeting would be held, who would attend, and what needed to be done before the meeting. A resource specialist prepared alternative versions of the required paperwork: one version to be used if the team determined that Student's conduct was a manifestation of his disability; the other version, if it was not.

5. In preparation for the manifestation determination meeting, School Psychologist Scott Schwartz, Ph.D., obtained and reviewed Student's educational records, including Student's most recent IEP from Pittsburg dated November 4, 2005, and the triennial psycho-educational assessment conducted in November 2005. He spent about two hours interviewing and testing Student and one-half hour interviewing Mother.

6. During his interview with Mother, Dr. Schwartz sought her opinions about how Student was performing socially, emotionally and adaptively, and how Student's ADHD was affecting him. Mother told Dr. Schwartz that Student had recently discontinued some medication, and the family was under some duress because of their recent move and relocation. Mother expressed more concern about Student's academic problems, such as his lack of organizational skills and inability to complete his school work, than any behavioral problems. Dr. Schwartz solicited Mother's input, summarized it in his report, and considered it in his findings.

7. Dr. Schwartz administered the Behavior Assessment System for Children, Second Edition (BASC-2), a behavior rating scale, to Mother. The BASC-2 includes over 100 questions concerning a parent's observations of the nature and frequency of a variety of behaviors in his or her child. Dr. Schwartz summarized in his report the results from Mother's responses on the BASC-2.

8. Dr. Schwartz concluded in his report that there appears to be no basis for linking Student's behavior with his identified disability of ADHD. In addition, he found that it is reasonable to conclude that Student's conduct was not the direct result of Oakley's failure to implement his IEP. There is no evidence that prior to the manifestation determination meeting Oakley staff colluded to find that Student's conduct was not a manifestation of his disability.

Manifestation Determination Meeting

9. Dr. Schwartz and Resource Specialists Sallie Brown and Katie Gasca, among others, attended the April 21, 2006 manifestation determination meeting on behalf of Oakley.

10. Student and Mother attended the meeting. Mother also brought with her two mental health professionals from Contra Costa County Department of Mental Health: Kathy Davison, family involvement coordinator, and Ferdinand Uwaechie, case manager. Ms. Davison has known Mother and Student for about three years, assisted Mother with special education matters while Student was attending school in Pittsburg, and previously attended other manifestation determination meetings for other students. Mr. Uwaechie has counseled Student on a weekly basis for over two years.

11. Immediately before the meeting began, Mother received a copy of Dr. Schwartz's report. Dr. Schwartz spent a considerable portion of the meeting reviewing his report, summarizing the information he obtained, and discussing his findings.

12. Mother testified that she was not permitted to speak at the meeting. According to Mother, there is a considerable amount of information that she wanted to tell those attending the meeting, such as Student's medication history, his frustration and low self-esteem, and the services that she believes he needs. Much of this testimony was in response to leading questions. When asked to identify areas that she would have liked to have

discussed at the meeting, she often responded in cryptic phrases and was unable to elaborate on what information she wanted the team to know.

13. Mother's testimony that she was not permitted to speak at the meeting is not credible. Mother explained that her belief was based on an incident during the meeting when Ms. Hussey allegedly stopped Mr. Uwaechie from speaking. Mother's testimony in this regard is not corroborated by any other witness. Mother is not a novice to the world of special education meetings; she attended numerous IEP meetings concerning Student's special education services over the years, including four IEP team meetings between October 19, 2004, and November 4, 2005.

14. Mother attended the meeting with a general understanding of its purpose. She participated in the meeting by listening to Dr. Schwartz's presentation of his report and the comments of the other participants, and expressing her disagreement with the determination that Student's conduct was not a manifestation of his disability. Both Ms. Davison and Mr. Uwaechie participated in the meeting by either asking questions or expressing opinions about Student, his conduct and well-being.

15. Oakley staff attending the meeting did not actively solicit the input of Mother, Ms. Davison or Mr. Uwaechie concerning Student or Oakley's implementation of his IEP. Oakley staff did not discourage or prevent their participation in the meeting.

LEGAL CONCLUSIONS

Applicable Law

Burden of Proof

1. As the petitioner, Student has the burden of proving that Oakley did not comply with the law. (*Schaffer v. Weast* (2005) 546 U.S. 49 [126 S.Ct. 528, 163 L.Ed.2d 387].

Manifestation Determination Process

2. A student receiving special education services may be suspended or expelled from school as provided by federal law. (Ed. Code, § 48915.5, subd. (a).)

3. Whenever a district removes a student from his or her current educational placement for over 10 days, subjects a student to a pattern of removals that total over 10 days, or removes a student to an interim alternative educational setting for specific conduct involving weapons, drugs, or violent acts, a student receiving special education services is entitled to specific procedural protections. The district is required to conduct a review to determine if the conduct that is subject to discipline is a manifestation of the student's disability. This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E).)

4. A manifestation determination must be conducted by the district, the parent, and relevant members of the IEP team as determined by the parent and the district. (20 U.S.C. § 1415(k)(1)(E)(i).) All relevant information in the student's file, including the IEP, any observations of teachers, and any relevant information from the parents must be reviewed to determine if the conduct was caused by, or had a direct and substantial relationship to the child's disability, or was the direct result of the district's failure to implement the IEP. (*Ibid*.) If the team decides that either of these two factors apply, then the conduct must be determined to be a manifestation of the child's disability. The manifestation determination must be done within 10 school days of a decision to change the placement of the student due to a violation of the code of student conduct. (*Ibid*.)

5. A parent who disagrees with any decision regarding placement or the manifestation determination may request a hearing. (20 U.S.C. § 1415(k)(3)(A).) An Administrative Law Judge shall decide these appeals. (20 U.S.C. § 1415(k)(3)(B)(i).) The Administrative Law Judge may order a change in placement of the child and may return the child to the placement from which he or she was removed. (20 U.S.C. §1415(k)(3)(B)(ii)(I).)

6. It is presumed that an official duty has been regularly performed. (Evid. Code, § 664.)

Determination of Issues

Did Oakley fail to conduct an appropriate manifestation determination by concluding that the conduct for which Student was disciplined was not a manifestation of his disability prior to the manifestation determination meeting on April 21, 2006?

7. As discussed in Legal Conclusions paragraphs 2 through 4, and 6, Oakley was required to conduct a manifestation determination prior to expelling Student. As determined by Factual Findings paragraphs 4 through 8, Oakley did not determine that Student's conduct was not a manifestation of his disability prior to the manifestation determination meeting on April 21, 2006.

Did Oakley fail to conduct an appropriate manifestation determination by failing to allow Mother and Student's mental health professionals to provide relevant information during the manifestation determination meeting on April 21, 2006?

8. As discussed in Legal Conclusions 2 through 4, and 6, Oakley was required to conduct a manifestation determination with members of its staff, Mother, and relevant members of the IEP team. In conducting the manifestation determination, all relevant information in the student's file, including the IEP, teacher observations and any relevant information from Mother must be reviewed.

9. As determined by Factual Findings paragraphs 5 through 7, Dr. Schwartz solicited information from Mother that was included in his report and considered in his findings. As determined by Factual Findings paragraph 10, Mother brought two people to the meeting who participated on her behalf. As determined by Factual Findings paragraphs 14 and 15, no one prevented Mother, Ms. Davison, or Mr. Uwaechie from participating in the meeting. As determined by Factual Findings paragraph 14, Mother, Ms. Davison and Mr. Uwaechie each participated in the meeting. As determined by Factual Findings paragraphs 10 through 15, Oakley reviewed relevant information from Mother during its manifestation determination.

10. As determined by Legal Conclusions paragraphs 7 and 9, Oakley conducted an appropriate manifestation determination in connection with Student's expulsion.

ORDER

Student's appeal of Oakley's manifestation determination is denied.

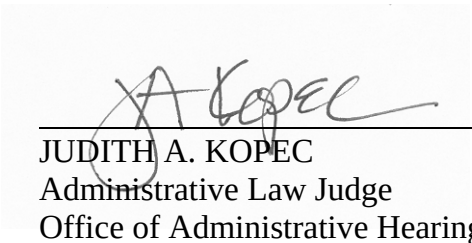
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires a decision to indicate the extent to which each party prevailed on each issue heard and decided. Oakley prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code, § 56505, subd. (k).)

Dated: November 16, 2006



JUDITH A. KOPEC
Administrative Law Judge
Office of Administrative Hearings
Special Education Division