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PENNSYLVANIA
SPECIAL EDUCATION HEARING OFFICER

ODR File No.: 7935/07-08 LS
Student: D.B.
School District: Philadelphia
Type of Hearing: Closed

For the Student:

For the School District:

Kenneth Cooper, Esq.
Office of General Counsel
School District of Philadelphia
440 North Broad Street, Third Floor
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Due Process Hearing Request Date:	July 23, 2007
Hearing Date:	September 19, 2007
Date transcript received:	September 25, 2007
Decision Date:	October 5, 2007
Hearing Officer:	Daniel J. Myers

BACKGROUND

Student is a xx year old, eleventh grade high school student who contests two School District determinations: that Student made several false 911 emergency services calls from the high school; and that this behavior was not a manifestation of Student's disability. For the reasons described below, I find for the School District.

ISSUE

Whether or not the behavior of which Student is accused is a manifestation of Student's disability.

FINDINGS OF FACT

1. Student is a xx year old (date of birth is xx/xx/xx) 11th grade high school student who has been identified with a specific learning disability and communication impairment (articulation errors and slurred speech.) (SD4)¹ He is at the 6th grade level in math, and 4th-5th grade level in reading. (N.T. 71; SD4) His individualized education program (IEP) contains goals in written expression, reading, math and speech/language. (SD4)
2. For the last 2 ¼ school years, Student has attended a special arts and technology high school in the School District. (N.T. 28, 64) At that high school, he attends special education math, reading, social studies and science classes, and regular education vocational classes, lunch and specials. (N.T. 63, 80)
3. While Student received TSS services at school from an outside provider in 5th grade, there is no record of such services since around 7th grade. (N.T. 27, 29, 68) At the high school, Student has always been pleasant, with no disciplinary incidents. (N.T. 41, 51, 72, 82) At home, however, Student is oppositional, immature, and attention seeking. (N.T. 101, 104, 106) He is one of 5 adopted children at home, and he has regularly received private therapy. (N.T. 74)
4. On Friday February 23, 2006, Philadelphia's 911 service received a telephone call reporting that a black male was holding a teacher at gun point in room 203 at Student' high school. Police responded at high speed with sirens and with weapons drawn, but after a search of the school, they determined that the 911 report was unfounded. (N.T. 33, 34; SD1)

¹ References to SD and HO are to the School District and Hearing Officer exhibits, respectively. Student's father did not offer any exhibits at the hearing. References to N.T. are to the transcript of the September 19, 2007 hearing session.

5. On Monday February 26, 2007, another call to 911, allegedly from a male student, reported that a black man was holding a teacher at gun point in room 206 of the high school. Again, police responded at high speed with sirens and with weapons drawn, but after a search of the school, they determined that the 911 report was unfounded. (N.T. 33-35)
6. On Tuesday February 27, 2007, another call to 911 reported that someone had been stabbed at the high school. While police were at the school in response to this call, the 911 service received another call that a male student had a bomb in a suitcase and was in the gymnasium. Police determined that both calls to 911 were unfounded. (N.T. 33, 35, 52)
7. The police were able to determine that the 911 calls had been made from a cell phone somewhere in or close to the high school. (N.T. 54)
8. Toward the end of the day on Tuesday, February 27, the high school principal went on the school-wide PA system, and sent a recorded message to parents, asking that anyone with information relating to the false 911 calls contact the school or the Philadelphia police. (N.T. 35; SD1, p.4)
9. Following the principal's announcement, a student told his or her teacher that he or she had heard Student make the 911 call on Monday. (N.T. 36, 55-56) In response to this report, Student was brought to the principal's office. Student emptied his pockets, which included a cell phone, and denied that he knew anything about the 911 calls. The principal confiscated the cell phone and checked to see if it recorded any calls to 911, but saw that the cell phone indicated that no calls had been made at all. (N.T. 56, 65) Student then was allowed to go home because the school day had ended. (N.T. 36-37, 56)
10. On Wednesday, February 28, 2007, two female students told the high school disciplinarian that Student had called 911 on two separate days. (N.T. 42)
11. Also on the same day, another student reported that Student had admitted in the cafeteria that he'd made phone calls to 911 and that no one would ever be able to find out that he, Student, had done it. (N.T. 38, 57) When asked by the high school disciplinarian, Student admitted that he had made the statement in the cafeteria, but he stated that he was only joking. (N.T. 44, 58)
12. On Wednesday, February 28, 2007, Student was suspended for 3 days because his admitted joke in the cafeteria was considered a disruption of school. (N.T. 38; SD1)
13. On Thursday, March 1, 2007, police interviewed the two girls who had reported that Student had called 911. Following the interviews, the police arrested Student at his house. (N.T. 27, 38)

14. On March 5, 2007, Student returned to school after his 3 day suspension. (N.T. 59) The School District and Student's parent then conducted a manifestation determination because the School District was planning to transfer Student to a remedial disciplinary school for a violation of the Code of Student Conduct, based upon his having made several false 911 calls. (N.T. 38-40, 60, 61, 79; SD1; SD2; SD3)
15. Everyone at the manifestation determination, except Student's parent, determined that the alleged violation of the code of conduct was not a manifestation of Student's disability. (N.T. 62; SD3) The School District's psychologist searched Student's records and found no evidence of any disability other than specific learning and speech language disabilities, and no mention of any therapy at all. (N.T. 69, 74) He noted that, even when Student received TSS services in 5th grade from an outside provider, his IEP contained no behavioral goals. (N.T. 69) The manifestation determination team determined that Student's 911 phone calls were attention seeking behavior that Student was treating as a joke, and they determined that, in addition to the transfer to a remedial disciplinary school, Student required some counseling to address the seriousness of his behavior. (N.T. 8-89, 92; SD2)
16. There have been no other reports of anyone other than Student who might have made the 911 calls. (N.T. 46, 63) Aside from the February 2007 calls to 911, the only other police incident at the high school in the last three years was a false bomb scare in December 2006. (N.T. 64)
17. Student requested this due process hearing, during the pendency of which he remains at the high school and has not been transferred to the remedial school. No one seems to know the result of the criminal proceedings. Apparently, during two court appearances in criminal court this summer, the police failed to appear. (N.T. 15, 24-26) The School District has never been contacted by any law enforcement authorities since March 1, 2007, and the confiscated cell phone remains in the principal's office. (N.T. 58)
18. Student argues that, despite his false and joking admission to having made the 911 calls, he did not actually make the calls. (N.T. 14-15) Student adds that there is no evidence that he did, in fact, make the calls. (N.T. 15) While admitting to having a cell phone in February 2007, Student contends that he found that phone on the street and that it was never activated. (N.T. 25, 99)
19. I conducted a due process hearing on September 19, 2007. School District exhibits SD1- SD4 were admitted into the record without objection (N.T. 95) Student did not have any exhibits for admission into the record.

DISCUSSION

Under the Individuals with Disabilities Education Improvement Act (IDEIA), the School District is required to provide a free appropriate public education (FAPE) to all Students who qualify for special education services. 20 U.S.C. § 1412 The School District program will meet its FAPE obligation if it provides special education and related services at public expense, that meet the standards of the state educational agency, and that are provided in conformity with an individualized education program (IEP.) Stroudsburg Area School District v. Jared N., 712 A.2d 807 (Pa. Cmwlth. 1998)

IDEIA and special education regulations set out detailed procedures and requirements that school personnel must follow when a child with a disability is removed from his current placement because of a violation of a code of student conduct. 20 USC §1415(k); 34 CFR §§300.530-300.533 In Re a Student in the Bethlehem Area School District, Special Education Opinion No. 1811 (2007) The key question in such cases is whether the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability. In Re a Student in the Philadelphia School District, Special Education Opinion No. 1796 (2007)

Student argues, not unreasonably, that the first question in such cases is whether the conduct in question ever occurred at all. It would seem intuitive that a child with a disability should not be disciplined for behavior that never occurred. This is a very narrow hearing, however. It is an appeal of a manifestation determination. It is not a complete disciplinary hearing. That is a significant distinction.

Education is a statutory right, and all children, whether disabled or not, are entitled to basic due process before they are deprived of their education rights. Goss v. Lopez, 419 U.S. 565 (1975); Shuman v Penn Manor School District, 422 F.3d 141 (3rd Cir 2005); 22 Pa. Code §12.8

In other words, all children receive a basic, regular education due process hearing in cases such as this. IDEIA guarantees that children with disabilities receive an extra, special education due process hearing as well. The focus of the special education due process hearing, as I noted above, is narrow. It is not to determine whether the alleged behavior actually occurred – that is for another forum, probably the regular education due process hearing and possibly the criminal proceedings. The purpose of this special education due process hearing is to ensure that, regardless of any dispute regarding the underlying behavior, Student is not being disciplined for disability-based behavior.

Thus, while it might seem counter-intuitive at first, it really does not matter for my purposes whether or not the Student's alleged behavior occurred or not. Even if the School District fabricated the allegations out of whole cloth, my job would simply be to determine whether Student was being disciplined for disability-based behavior. Theoretically, I suppose that a school district could admit that it had fabricated the alleged behavior and still prevail at a manifestation determination review appeal, as long

as the false charges did not allege disability-based behavior. In such a case, one hopes that the additional, regular education due process protections to which all children are entitled would prevent the child from being disciplined for behavior that admittedly had never occurred.

That, of course, is not the case here. The School District does not admit that it has falsely accused Student, but rather it clearly believes that it has sufficiently investigated and responsibly charged Student with making the 911 calls. Student wants a forum to challenge the truth of the alleged behavior. He should receive that opportunity, as should every student who is entitled to basic due process under Goss, supra, and Chapter 12 of Pennsylvania's regulations. That opportunity, however, is afforded in a different forum than this special education review of a manifestation determination.

In his opening statement at the September 19, 2007 due process hearing, the School District's counsel noted that Student's regular education due process hearing is scheduled for October 10, 2007. (N.T. 18) That regular education due process hearing may be the opportunity at which Student might challenge the accuracy of the underlying charges. Presumably, even if the charges do not allege disability-based behavior, as I conclude today, Student would not be transferred to a remedial disciplinary school if, at the regular education due process hearing, it was established that he never, in fact, made the phone calls in the first place. That is only my presumption, however, and it has no legal value because it concerns a matter that is outside my bailiwick.

Today, I perform my narrow function, which is to review the manifestation determination team's conclusion that there was no connection between the alleged behavior, which was (whether accurate or not) the 911 phone calls, and Student's disabilities. (SD 3) Student has specific learning disabilities and speech articulation deficits. (N.T. 71; SD4) The School District's psychologist searched Student's records and found no evidence of any emotional or behavioral problems, and no mention of any mental health therapy. (N.T. 69, 74) He noted that, even when Student received TSS services from an outside provider in 5th grade (5 years before the behavior at issue), his IEP contained no behavioral goals. (N.T. 69) The manifestation determination team determined that Student's 911 phone calls were not related to his specific learning disability or his speech language deficits. (N.T. 8-89, 92; SD2) I agree. The record supports the manifestation determination review team's conclusion that there is no connection between the alleged behavior and Student's disability. Accordingly, I find for the School District.

CONCLUSION

Student appeals the manifestation determination team's conclusion that his alleged false 911 telephone calls were unrelated to his disability. Student's appeal focuses on the accuracy of the allegations, not upon the connection of the alleged behavior to Student's disability. I conclude that it is not my role to determine whether the allegations are true or not. My role is to determine whether there is a connection between the alleged behavior and Student's disability. Because the record indicates no connection between the alleged behavior and Student's disability, I find for the School District.

ORDER

- The School District's manifestation determination was appropriate.
- No action is required of the School District.

Daniel J. Myers

Hearing Officer

October 5, 2007

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