

BEFORE A SPECIAL EDUCATION HEARING OFFICER

STATE OF TEXAS

**Student, bnf Parent
Petitioner,**

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v.

DOCKET NO. 146-SE-0105

**SOCORRO INDEPENDENT
SCHOOL DISTRICT,
Respondent**

DECISION OF THE HEARING OFFICER

Statement of the Case

Student is a special education student at *** School in the Socorro Independent School District. This dispute began when Student, who was allegedly under the influence of ***, came before assistant principal *** on December 8, 2004. *** called Student's family. In response, Student's grandfather picked up Student and took him home. *** then launched a manifestation determination and disciplinary ARD meeting. The main issue in this case is the sufficiency of the notice of that ARD meeting to satisfy requirements of the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.* After reviewing the evidence and the briefs and arguments of counsel, I rule that to the extent the notice may have been inadequate; it did not cause any damage to the petitioner warranting relief.

Petitioner requested this due process hearing on January 24, 2005. The original 45-day deadline was March 10, 2005. By agreement, the parties have extended the 45-day deadline until April 18, 2005.

Attorney Mark Berry, of El Paso, Texas, represents Student and his next friend, Parent Attorney Henry C. Hosford, of the El Paso law firm of Baskind & Hosford, P.C., represents Socorro Independent School District. The parties held a prehearing conference by phone on February 2, 2005. They held the due process hearing in the *** School on March 2, 2005.

Findings of Fact

1. Student is a *** year old student who lives in the Socorro Independent School District. He attends *** School. He is a special education student with learning disabilities. He is eligible for and receives services under IDEA.

2. On December 8, 2004, ***, assistant principal of *** School sent Student home from school after concluding Student was under the influence of ***. *** prepared

a student code of conduct violation report and sent a copy home to Student's parents with Student's grandfather.

3. The report read in part:

"Student was seen going off campus @ 7:40. When return @ 8:05 - emanated strong odor of ***, disoriented as to time and place - ***. Refused substance use assessment. Father called at work informed of student code of conduct violation. Parent conference set for 12-9-04 to fill out/discuss disciplinary placement.¹

4. *** asked Student's grandfather to have Student's mother get in touch with him to discuss disciplinary placement.

5. Student's mother hired Mr. Berry to represent Student.

6. On December 10, 2004, Mr. Berry called *** school principal, ***, to tell her that he represented Student. He requested an appeal to *** from ***'s determination two days earlier that Student was under the influence of ***.²

7. On December 13, 2004, when Student's mother, Parent, tried to visit Principal *** office, Principal *** turned her away because she did not have an appointment. Instead, Ms. *** sent her to a conference room where *** met with Assistant Principal Aguirre and other school personnel. They intended to conduct a manifestation and disciplinary ARD meeting that morning about the December 8 *** incident. There was some discussion of Student's situation and Assistant Principal Aguirre stated that, to discipline Student, school officials recommended sending him to an alternative school for the rest of the school year. Parent, who is an attorney, objected to lack of advance notice of an ARD meeting that morning. *** also said she felt the alternative school too harsh a discipline that would interfere with Student's education. By agreement, no ARD meeting was held on December 13, 2004. It was rescheduled for December 17, 2004. School authorities provided *** a copy of the parents' rights brochure before the meeting on the 13th was adjourned.

8. On December 16, 2004, Mr. Berry wrote Principal ***. His letter asked for postponement of the December 17 ARD meeting until after the Christmas holidays because of conflicts with his schedule.

9. The school conferred with Mr. Berry's staff on a convenient time for the ARD meeting and rescheduled it for January 11, 2005.

1 See Exhibit 10x (attached to the transcript).

2 Although there is some testimony this conversation may have taken place on a different date, Mr. Berry's letter of December 15, 2004, references December 10, 2004 as the date the conversation took place. See Petitioner's Exhibit 3. There was never any action taken on the request for an appeal from Assistant Principal *** finding that Student was, in fact, under the influence of *** on December 8, 2004. However, that matter arises under Chapter 37 of the Education Code. I have no jurisdiction over the matter.

10. The school forwarded a copy of the ARD notice to Mr. Berry through Socorro ISD attorney, Mr. Hosford. The adequacy or inadequacy of this notice is the central issue in this hearing.

11. Requirements for what such a notice must contain appear at 34 CFR §300.503. Among the requirements is a requirement that school officials inform the parent of the purpose of the ARD meeting and the action proposed. The notice to Parent reads in part; "School administration is recommending a change in placement." Also several items are checked. Among the checked items are the following, "Discuss, at your request, any educational or related service not proposed below; review your child's program (including results of any new evaluations); develop and/or review the individual education plan (IEP) for your child". Under the heading, "other", is a handwritten note, "recommendation to alternative ed program."

12. Another requirement in 34 CFR §300.503 is the notice must include an explanation of why the agency proposes the action. The notice to Parent contains a handwritten note, "Change of placement is recommended for discipline reason."

13. Another requirement in 34 CFR §300.503 is that the notice must list other options considered and the reason why they were rejected. The notice to Parent lists "Regular Education " and "Alternative program" as the options considered. As reasons for rejection, the notice states, "change of placement is recommended for discipline reason."

14. Another requirement in 34 CFR §300.503 is the notice must include a description of each evaluation procedure, test, record, or report used as a basis for the proposed action or a description of any other factors that are relevant to the agency's proposal. The notice shows through check marks the following evaluation procedures, tests, records, or reports will be reviewed and discussed, "Full and Individual Initial Evaluation"; "School Records" and "Parent information."

15. Another requirement in 34 CFR §300.503 is the notice must advise parents where they may obtain "procedural safeguards" and give the parents the name of a contact person from whom they can obtain additional information if they have questions. A copy of the procedural safeguards was furnished with the notice and the name and phone number of *** is provided as the contact person.

16. Before the ARD meeting, Vice Principal *** met with ***, Socorro ISD Associate Director for Special Education. They drafted proposed changes to Student's IEP. The draft is in evidence as Petitioner's Exhibit 13, Respondent's Exhibit 3. In its entirety, it reads as follows:

Recommended Schedule

For 15 school days the student will follow the schedule below.

1. Student will report to the office by 8:00 a.m. every school day and sign in.
2. Student will be escorted to first period class.
3. Student will be escorted to and from Math and Science Labs.
4. Student will stay in SAC for Rtg and Wtg Labs.
5. Student will be escorted to and from Electrical Trades and Construction Careers.
6. Art I will be done in SAC.
7. Student will be escorted to Economics and English *** classes for 20 mins. of initial instruction and then escorted to SAC.

Student will eat lunch in SAC.

Student will be assigned 50 hrs. of Community Service to be determined by school administration.

The student will be monitored by instructional personnel.

Any absences during these 15 days will be made up by continuing to follow the schedule indicated above.

17. Assistant Principal *** and *** met briefly with *** School Principal *** before the meeting to find out her reaction to what they were proposing. At no time was the proposal shared with the parent, before the ARD meeting.

18. The ARD meeting convened as scheduled on January 11, 2005. At some point in the meeting, Mr. Berry and Parent walked out, complaining of inadequate notice of the issues. The school authorities continued to meet after Mr. Berry and Parent left. The ARD continued to its completion. At the end, the ARD had determined the *** incident was not a manifestation of Student's disabilities and had adopted the recommended disciplinary schedule proposed by the administration.

19. "Community service" means that the student will be assigned projects helping out around the school outside of normal school hours. As of the date of this hearing, Student had completed his days in SAC (in-school suspension). The school authorities no longer intend to require him to complete the community service. Student will graduate with the rest of his class as scheduled this spring.

Discussion

It is well settled that a disciplinary placement for a period exceeding ten days is a change in placement under the IDEA. See Honig v. Doe, 484 U.S. 305 (1988). Therefore, the provisions of 34 CFR §300.503 (about notice that schools must give to parents before a change in placement) apply in this case.

While the notice provisions of 34 CFR §300.503 are important, there is no penalty when minor deviations in the notice requirements occur absent a significant adverse impact on the student's education. See Doe v. Alabama State Dep't of Educ., 915 F. 2d 651, 660, 17 IDELR 41 (11th Cir 1990) which contains a detailed and thoughtful discussion of this issue. I adopt that discussion by reference and rely on it for my ruling here. Among the reasons the Doe v. Alabama State Dep't of Education court gave for its decision was that the parents had actual notice of all issues the ARD meeting considered despite technical flaws in the notices of the ARD meetings. I believe that is also true in this case. Here the school sent a sketchy written notice covering all the issues to *** through Mr. Berry before the ARD meeting. There were also discussions between *** and Assistant Principal Aguirre on December 13, 2005. Parent was furnished with a copy of the parents' rights brochure twice. Further, attorney Berry's experience in special education matters is such that he must have understood what would go on at the ARD meeting. Moreover, if he regarded the notice as too sketchy, he had ample time to seek clarification before the meeting and could have requested a continuance during the meeting.

The situation presented in this case where the school prepared a draft IEP before the ARD meeting has also been considered in several cases and found not to violate IDEA. See Fuhrmann v. East Hanover Bd. of Education, 993 F2d 1031, 1036, 19 IDELR 1065 (3rd Cir. 1993); Scituate School Committee v. Robert G., 620 F. Supp. 1224, 1230-1231, 557 IDELR 207 (D.R.I. 1985); and In re: Student with a Disability, 103 LRP 8554 (Mich. State Education Agency 2002). See also, Appendix A of the IDEA regulations, Question and Answer 32. These authorities make clear that it is proper for school authorities to prepare a draft IEP and bring it with them to an ARD meeting so long as they make it clear to the parent that the draft IEP is for discussion only. In our case, there is no indication in this record that the school authorities were trying to present the draft IEP to Parent and Mr. Berry as anything other than a draft.

Conclusions of Law

I conclude that petitioner did not carry his burden of showing a denial of FAPE. The notice of Student's manifestation ARD meeting, though lacking factual detail, touched on all topics required by 34 CFR §300.503. The notice was supplemented by verbal discussion with the parent. The notice also contained a contact name for further information and clarification of its contents. The school also furnished the parent a detailed parents' rights brochure written in lay language. Even assuming the sketchy notice may have been inadequate, petitioner did not show that it either caused any

significant adverse consequences to Student's education or deprived the parent of meaningful input in development of the IEP. It did not violate the IDEA for the school district officials to bring a draft IEP to the ARD meeting. The mother and her attorney (who is very experienced dealing with Special Education issues) could have requested a continuance to cure any surprise because of the lack of detail in the notice but did not do so before walking out of the meeting. I cannot find any basis for ordering relief under the facts and circumstances of this case.

Order

All issues are resolved in favor of the school district and the case is dismissed.

Entered at Austin, Texas, April 11, 2005.

Larry J. Craddock
Special Education Hearing Officer

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SOCORRO INDEPENDENT

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SYNOPSIS

Issue No. 1: Whether the notice to the parents of a manifestation determination ARD meeting was sufficient to satisfy IDEA requirements?

Held: For the School District. Requirements for what such a notice must contain appear at 34 CFR §300.503. Here each of these requirements was touched on in a cursory way and the parent also knew about the issues through conversations with school district officials and were represented by an attorney who is very knowledgeable in special education law. There was no showing of any significant adverse impact on the student's education or the parent's rights to participate in planning the student's education as a result of improper notice of the manifestation determination ARD meeting.

Citation: 34 CFR §300.503; Doe v. Alabama State Dep't of Educ., 915 F. 2d 651, 660, 17 IDELR 41 (11th Cir 1990).

Issue No. 2: Whether it violated IDEA requirements for school officials to bring a draft IEP to an ARD meeting?

Held: For the School District. It is proper for school authorities to prepare a draft IEP and bring it with them to an ARD meeting so long as they make it clear to the parent that the draft IEP is for discussion only. There is no indication in this record that the school authorities were trying to present the draft IEP as anything other than a draft.

Citation: Appendix A of the IDEA regulations, Question and Answer 32; Fuhrmann v. East Hanover Bd. of Education, 993 F2d 1031, 1036, 19 IDELR 1065 (3rd Cir. 1993); Scituate School Committee v. Robert G., 620 F. Supp. 1224, 1230-1231, 557 IDELR 207 (D.R.I. 1985); and In re: Student with a Disability, 103 LRP 8554 (Mich. State Education Agency 2002).