

State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

FINAL DECISION

OAL DKT. NO. EDS 05315-18

AGENCY DKT. NO. 2018-27818

T.D. ON BEHALF OF J.D.,

Petitioner,

v.

**GLOUCESTER COUNTY VOCATIONAL
BOARD OF EDUCATION,**

Respondent.

T.D., petitioner, pro se

Teresa M. Lentini, Esq., for respondent (Florio, Perrucci, Steinhardt and Cappelli,
L.L.C., attorneys)

Record Closed: April 27, 2018

Decided: May 8, 2018

BEFORE **JEFFREY R. WILSON**, ALJ:

STATEMENT OF THE CASE

Petitioner filed an expedited due process petition seeking a finding that the Gloucester County Vocational Board of Education's (BOE) failed to provide a manifestation determination, a functional behavioral assessment (FBA) and a behavioral intervention plan (BIP) to determine an appropriate Individualized Education Program (IEP).

PROCEDURAL HISTORY

The Department of Education, Office of Special Education Programs (OSEP), transmitted this matter to the Office of Administrative Law (OAL), where it was filed on April 12, 2018, for determination as an expedited contested case. The hearing was held on April 27, 2018, and the record closed.

FACTUAL DISCUSSION AND FINDINGS

Based upon the evidence produced and my observations of the demeanor of the witnesses and credibility of the testimony, I **FIND** the following **FACTS**:

J.D. was born on December 19, 2002, and is a second semester, ninth grade student at the Gloucester County Institute of Technology¹ (GCIT) and is eligible for special education and related services within the classification of Other Health Impaired (OHI). J.D. was diagnosed with attention deficit hyperactivity disorder (ADHD) which affects his academic performance in his ability to sustain attention to tasks.

J.D. began his matriculation at GCIT's School of Construction Technology, in September 2017. When he transferred from the Deptford Township School District (Deptford Township), none of his records were provided to GCIT because Deptford Township still had him on roll in their district. On October 26, 2017, Susan Heiken, GCIT Director of Clinical Services/Vocational Special Education, directed Deptford Township to forward J.D.'s complete academic records. The only documentation provided was an IEP dated March 20, 2017. This was when GCIT first became aware that J.D. was eligible for special education and related services. Based upon that IEP, GCIT developed an updated IEP for J.D. on November 1, 2017. (R-3.)

At GCIT, safety is paramount because students have access to tools and equipment that would be considered weapons in non-vocational schools. These tools include, but are not limited to: chefs' knives, welding torches, power saws, power sanders,

¹ GCIT academic years consist of two semesters.

power drills, screw drivers and hammers. GCIT focuses its curriculum on preparing its students for careers in their chosen trades and willingness to follow instructions is stressed. GCIT's Parent/Student Handbook (R-6) lays out their student conduct/discipline policies in detail. J.D.'s mother acknowledged receipt of the Parent/Student Handbook through the school's on-line parental portal, School Opening. (R-7.)

GCIT's 2017/2018 academic year began on September 7, 2017. (R-9.) J.D.'s daily performance assessment noted concerns for his behavior beginning on September 25, 2017, when he was off task for failing to wear his safety glasses in shop class. (R-10.) On September 28, 2017, J.D. received an after-school detention for damaging school property and another student's project using shop tools. (R-5.) On October 16, 2017, J.D. received a lunch-detention for inappropriate language/verbal abuse of another student. (R-5.)

Concerned for the growing number of his noted Incident Referrals so early in the school year, the Assistant Principal, Joyann Ford, contacted J.D.'s mother on October 24, 2017, and they met with J.D.'s science and carpentry teachers to review his daily performance assessment. (R-10.) On October 30, 2017, J.D. entered into a behavioral contract with the understanding that violations of the contract's conditions could result in dismissal from GCIT. (R-8.) On October 31, 2017, J.D. failed to report to his assigned lunch-detention and on November 1, 2017, J.D. was removed from class for discharging a fire extinguisher. J.D.'s negative conduct continued throughout the school year. (R-5.)

On March 9, 2018, J.D. and several other students were involved in an altercation in the boys' restroom. The Assistant Principal called J.D.'s mother to apprise her of the incident and summoned her to the school to discuss the situation and to review video footage of the altercation. At that time, J.D. and his mother were given verbal notice of a four day, out-of-school suspension for assaulting another student, to be served March 12, 13, 14, 15, 2018. (R-2.) In addition, J.D. received juvenile delinquency charges. On March 12, 2018, Principal James H. Dundee, Jr., mailed J.D.'s mother formal, written confirmation of the four day, out-of-school suspension, and also invited her to contact him to arrange a conference if she had any questions. (R-2).

On March 16, 2018, J.D. returned to GCIT with his mother and they met with the Assistant Principal and the Student Resource Advisor. Concerns were addressed relative to J.D.'s disregard for safety precautions and his escalating, negative behavior that was in violation of his behavior contract. The group also discussed alternative placement options. J.D.'s mother indicated that she was not sure as how she wanted to proceed. At no time was J.D. or his mother told that J.D. was expelled. On March 19, 2018, homebound instruction was ordered for J.D.

On March 20, 2018, the Assistant Principal met again with J.D.'s mother to further discuss placement options for J.D. that included transferring back to Deptford Township, Choice Schools and alternative schools. J.D.'s mother was given a blank Student Form in case she decided to withdraw J.D. from GCIT. (P-1.) Although expulsion was being considered, at no time was J.D. or his mother told that J.D. was expelled. At that time, J.D.'s mother was informed that homebound instruction had been ordered for J.D. to begin on March 23, 2018, and would continue through the end of the school year².

GCIT received several emails from J.D.'s mother asking why her son had been expelled. GCIT responded that J.D. had not been expelled and that no request had been made for an expulsion hearing.

GCIT began collecting information for J.D.'s annual review on March 7, 2018. The IEP meeting was held on April 13, 2018. The IEP noted that J.D. was in need of a very restrictive learning environment to maintain his focus. He had accumulated three days of in-school suspension and four days of out-of-school suspension and was administratively placed on homebound instruction. It was administratively recommended that J.D. return to Deptford Township after completing the present academic year on homebound instruction. (R-1.)

² Due to logistical issues, homebound instruction did not begin until March 29, 2018, and was still being provided at the time of the fair hearing.

A manifestation determination was also included in the April 13, 2018, IEP. (R-1.) The manifestation determination detailed sixteen violations of GCIT's Code of Conduct, including the March 9, 2018, assault. Based upon information collected, the IEP team determined that J.D.'s behavior was not a manifestation of his disability. J.D.'s mother signed the IEP Participants Page, but she refused to discuss the manifestation determination.

LEGAL ANALYSIS AND CONCLUSIONS

Here, the petitioner argues that GCIT failed to provide a manifestation determination, a FBA and a BIP after J.D. received a four day, out-of-school suspension for assaulting another student while on school property. There was no requirement for a manifestation determination meeting. It is only when a special education student is suspended for disciplinary reasons for more than ten days that the IEP team should meet in order to determine whether the special education student's conduct was a manifestation of his disability. 20 U.S.C.A. § 1415(k)(1)(E). Despite not being required, a manifestation determination was conducted and included in the April 13, 2018, IEP. The manifestation determination detailed sixteen violations of GCIT's Code of Conduct, including the March 9, 2018, assault on the school's premises. Based upon information collected, the IEP team determined that J.D.'s behavior was not a manifestation of his disability.

Moreover, 20 U.S.C.A. § 1415(k)(1)(G)(iii) holds that: school personnel may remove a student to an interim alternative educational setting without regard to whether the behavior is determined to be a manifestation of the child's disability, in cases where a child has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of a State or local educational agency.

Finally, a FBA and BIP are only mandated if the IEP team makes the determination that the student's conduct was a manifestation of the child's disability. 20 U.S.C.A. § 1415(k)(1)(F)(i). Therefore, I **CONCLUDE** that the petitioner was not entitled to a manifestation determination, a FBA or a BIP.

ORDER

For the foregoing reasons, petitioner's request for relief is **DENIED**.

This decision is final pursuant to 20 U.S.C. § 1415(i)(1)(A) and 34 C.F.R. § 300.514 (2017) and is appealable by filing a complaint and bringing a civil action either in the Law Division of the Superior Court of New Jersey or in a district court of the United States. 20 U.S.C. § 1415(i)(2); 34 C.F.R. § 300.516 (2017). If the parent or adult student feels that this decision is not being fully implemented with respect to program or services, this concern should be communicated in writing to the Director, Office of Special Education Programs.

May 8, 2018
DATE

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JEFFREY R. WILSON, ALJ

Date Received at Agency _____

Date Mailed to Parties: _____

JRW/dm

APPENDIX

Witnesses

For Petitioner:

T.D.

For Respondent:

Susan Heiken, GCIT Director of Clinical Services/Vocational Special Education
James H. Dundee, Jr., GCIT Principal
Joyann R. Ford, GCIT Assistant Principal

Exhibits

For Petitioner:

- P-1 Gloucester County Institute of Technology Student Form (Blank)
- P-2 Robins Nest Letter, dated October 17, 2017
- P-3 Robins Nest Letter, dated November 22, 2017
- P-4 Robins Nest Letter, dated April 4, 2018

For Respondent:

- R-1 Individualized Education Program (IEP) and Manifestation Determination, dated April 13, 2018
- R-2 Incident Referral Sheet, dated March 9, 2018
- R-3 Individualized Education Program (IEP), dated November 1, 2017
- P-4 Individualized Education Program (IEP) page 21 of 21, dated April 23, 2018
- R-5 Incident Referral Sheets, dated September 29, 2017 through March 12, 2018

- R-6 Parent/Student Handbook, 2017 – 2018 School Year
- R-7 School Opening, Term 2017 – 20108 School year
- R-8 Behavioral Contract, dated October 30, 2017, and November 1, 2017
- R-9 Daily Attendance Sheet
- R-10 Email from Joyann R. Ford to T.D., dated October 24, 2017