

**BEFORE A SPECIAL EDUCATION HEARING OFFICER  
STATE OF TEXAS**

**STUDENT bnf  
PARENT  
Petitioner,**

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v.

**DOCKET NO. 249-SE-0305**

**SILSBEE INDEPENDENT  
SCHOOL DISTRICT,  
Respondent**

**FINAL DECISION**

I heard this case on May 24, 2005, in the administrative offices of the Silsbee Independent School District. The Petitioner, STUDENT, and next friend, PARENT, appeared pro se. The Respondent, Silsbee Independent School District ("the District"), appeared through its attorney, Ms. Melody G. Chappell, of the firm of Wells, Peyton, Greenberg, & Hunt, L.L.P., Beaumont, Texas. I extended the original decision due date of May 15, 2005 until June 17, 2005 by agreement of the parties.

**FINDINGS OF FACT**

1. STUDENT is a \*\* year old student at Silsbee Middle School who is repeating the \*\* grade. He was held back a year at the request of his parent.
2. The District has identified STUDENT as a special education student who is eligible for education and services under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1401 et seq. He has bipolar disorder and the District has found him eligible for education and services in the "Other Health Impairment" category.
3. On October 29, 2004, after being removed from his classroom for disruptive behavior, STUDENT allegedly became agitated and attempted to bite a substitute teacher on the wrist and kick him in the groin. A sheriff's deputy arrested STUDENT on a complaint filed by the substitute teacher. The deputy took STUDENT to the county seat in Kountze, Texas. There authorities held STUDENT in the waiting room of the County Juvenile Probation Department until his parent came for STUDENT and took him home. The authorities dropped the charges against STUDENT without prosecution. STUDENT has not attended Silsbee \*\*\* School or other District schools since October 29, 2004. However, the District has provided him with four hours a week of homebound services.
4. On November 11, 2004, an ARD committee held a manifestation determination ARD and, except for STUDENT's parent, decided that STUDENT's behavior on October 29, 2004, was not a manifestation of STUDENT's bipolar condition. The ARD committee, except for STUDENT's parent, recommended his placement for the rest of the school year in the District's Juvenile Justice Alternative Educational Program (JJAEP). STUDENT's parent strongly disagreed

with both the manifestation determination and the recommended placement. She believes that whatever occurred on October 29, 2004, was a direct manifestation of STUDENT's bipolar disorder. After a recess, the ARD committee reconvened on December 3, 2004, and compromised on homebound services for four hours a week for the rest of the semester instead of sending STUDENT to JJAEP. STUDENT's doctor signed a recommendation that he receive the homebound services. An ARD meeting on January 5, 2005, to discuss STUDENT's placement for the second semester of the 2004-2005 school year ended with PARENT walking out of the meeting after trying to get STUDENT back into Silsbee \*\* School rather than sending him to JJAEP for the second semester of the school year. PARENT later brought in a doctor's recommendation to extend the homebound services until the end of the second semester and the ARD committee concurred with that placement.

5. On March 31, 2005, PARENT filed this action to get STUDENT back into Silsbee \*\* School for the 2005-2006 school year. Before our hearing, the District submitted an offer of judgment. It reads as follows: (1) STUDENT shall be assigned to attend \*\* grade at Silsbee \*\*\* School, beginning the 2005-2006 school year, or as soon as released from homebound by his physician; (2) The student's ARD committee will meet as soon as possible to review psychological information provided by PARENT; and (3) STUDENT shall not be considered for expulsion concerning his actions on October 29, 2004.

### **STIPULATION**

Following presentation of the evidence, PARENT and the District agreed on the record as follows:

1. The District shall not expel STUDENT nor shall the District take any other adverse action against STUDENT because of his actions on October 29, 2004.
2. STUDENT shall be readmitted to Silsbee \*\*\* School for the 2005-2006 school year.
3. The ARD committee will meet within thirty days following the date of this decision to determine an appropriate placement for STUDENT in the next academic year. It shall consider, among other issues, the question of promoting him to the \*\* grade or retaining him in the \*\*. It shall review all the psychological information provided by PARENT and shall supplement that information with such other and additional data and test information as the ARD committee may find appropriate; and it shall set up an Individual Education Plan and develop a Behavioral Intervention Plan.

### **CONCLUSIONS OF LAW**

STUDENT is a student in Silsbee Independent School District who is eligible for special education services under 20 U.S.C.A. §1401(3)(A); 34 C.F.R. § 300.7 (a)(1); Texas Education Code § 29.003; and 19 T.A.C. § 89.1040.

Respondent Silsbee Independent School District has a responsibility to provide

STUDENT with a free appropriate public education. 20 U.S.C.A. §§1412 (a)(1), 1411(i) (1)(c); 24 C.F.R. § 300.300; Texas Education Code § 19 T.A.C. § 29.001 and 19 TAC § 89.1001(a).

The agreed order represents a reasonable compromise of petitioner's claims. I have authority to approve it (and hereby do approve it) under 19 TAC § 89.1170(b).

### **ORDER**

IT IS ORDERED that (except as otherwise provided herein) the District shall timely implement this decision within 10 school days in accordance with 19 TAC §89.1185(q) and 34 CFR §300.514. The following must be provided to the Division of Complaints Management at the Texas Education Agency and copied to the Petitioner within 15 school days from the date of this decision: (1) documentation demonstrating that the decision has been implemented; or (2) if the timeline set by the Hearing Officer for implementing certain aspects of the decision is longer than 10 school days, the district's plan for implementing the decision within the prescribed timeline, and a signed assurance from the superintendent that the decision will be implemented ENTERED this the 10th day of June 2005.

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Larry J. Craddock  
Special Education Hearing Officer  
For the State of Texas

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**SILSBEE INDEPENDENT  
SCHOOL DISTRICT,**

**Respondent**

**SYNOPSIS OF DECISION**

**ISSUES:** A twelve-year-old student with bipolar disorder allegedly attempted to bite a teacher on the wrist and kick him in the groin. The ARD committee held a manifestation determination ARD and, except for the student's parent, decided that the student's behavior was not a manifestation of his disabilities and recommended that his placement in the District's Juvenile Justice Alternative Educational Program (JJAEP) for the remainder of the school year. The student's parent negotiated four hours weekly homebound services for the rest of the semester instead of sending the student to JJAEP. The student's doctor signed a recommendation that the student receive the homebound services. After trying to get the student back in the school the second semester of the school year the parent again agreed to the student receiving four hours weekly home bound services that semester. She then filed a due process hearing to get the student back into the school beginning in the next school year.

**Federal Citations:** 20 U.S.C.A. §§1401(3)(A), 1412 (a)(1), and 1411(i) (1(c); 34 C.F.R. §§ 300.7 (a)(1), 300.300 and 300.514.

**Texas Citations:** Texas Education Code §§ 29.001 and 29.003; and 19 T.A.C. §§ 89.1001(a), 89.1040, and 89.1170(b).

**HELD:** For the parent. After the evidence was in, the parties agreed on the record to all relief sought by the parent. The agreement represents a reasonable compromise of the differences between the parties and its implementation is ordered.