

STUDENT <i>b/n/f</i>	§	BEFORE A SPECIAL EDUCATION
PARENT,	§	
Petitioner,	§	
	§	
	§	
vs.	§	HEARING OFFICER
	§	
CORPUS CHRISTI INDEPENDENT	§	
SCHOOL DISTRICT,	§	
Respondent.	§	FOR THE STATE OF TEXAS

**DECISION OF THE HEARING OFFICER**

**I.  
STATEMENT OF THE CASE**

On October 21, 2008, Student *b/n/f* Parent (“Petitioner”), requested a Due Process Hearing from Texas Education Agency (“TEA”) pursuant to the Individuals with Disabilities Education Improvement Act (“IDEIA”), 20 U.S.C. §1400 *et seq.*, contending that Corpus Christi Independent School District (“CISD,” “the District,” or “Respondent”), violated Petitioner’s right to receive a free, appropriate, public education (“FAPE”) in the Least Restrictive Environment (“LRE”). TEA assigned the case to the undersigned to serve as Special Education Hearing Officer on October 21, 2008.

On October 21, 2008, the Initial Scheduling Order of the Hearing Officer was sent to the parties informing them that the prehearing telephone conference would be held on November 7, 2008, that the Due Process Hearing was scheduled for December 8, 2008, and that the Decision due date was January 4, 2009.

On October 30, 2008, Petitioner filed a Motion to Enforce “Stay-Put” Pursuant to 20 U.S.C. § 1415 (j); 34 C.F.R. §300.514. Respondent filed its Reply to Petitioner’s Motion to Enforce “Stay-Put” on November 5, 2008. From a review of the motion and response, the Hearing Officer determined that the case appropriately belonged on the expedited track and contacted the parties for a prehearing conference in compliance with the required deadline.

The Hearing Officer convened the prehearing conference on November 10, 2008. In attendance were the following persons: (1) Mr. Christopher Jonas, counsel for the Petitioner; (2) Mr. Jose Martín, counsel for the Respondent; (3) the court reporter, who made a record of the telephone conference; and (4) the Hearing Officer. During the conference the parties discussed rescheduling the hearing and agreed to the following dates: the Due Process Hearing would be rescheduled to December 3, 2008, with Disclosures due at 5:00 p.m. December 1, 2008.

The Due Process Hearing convened at the Mary Grett Middle School on December 3, 2008. Mr. Christopher Jonas appeared as counsel for Petitioner. Both parents were present for Student during the hearing. Mr. Jose Martín, appeared counsel for the Respondent. The Director of Special Education served as the official representative for Respondent during the hearing.

Petitioner called two witnesses; Respondent called three witnesses. The Hearing Officer admitted twenty-two exhibits into evidence from the parties. The transcript of the one-day hearing prepared by the court reporter was 78 pages in length.

The date agreed upon for submission of post-hearing briefs was December 10, 2008, and the parties timely submitted their briefs. The parties agreed to extend the Decision Deadline until December 12, 2008, to accommodate the submission of briefs and preparation of the Decision.

## **II. ISSUES AND RELIEF REQUESTED**

Petitioner contends that Respondent's removal of Student to the alternative educational placement ("AEP") violated his right under the IDEA to be educated in the least restrictive environment (LRE). Petitioner has the Hearing Officer order an updated evaluation for Student and compensatory services for the period of time he was placed in the AEP.

## **III. FINDINGS OF FACT**

Based upon the matters of record and matters of official notice, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following findings of fact based on a preponderance of the credible evidence:

1. Student's parents reside within the jurisdictional limits of Corpus Christi Independent School District. CCISD is a political subdivision of the State of Texas and a duly incorporated independent school district. Student resides with one of his parents.
2. Student receives special education services from CCISD under the classification of emotionally disturbed (ED) and other health impaired (OHI).
3. Student has been diagnosed with Bipolar Disorder, Type I with features of delusional psychosis. His physician has prescribed the following medications: Focalin, Depakote, Respiradol, and Trazodone.
4. Student often exhibits bad judgment and impulsive behavior. His decisions are often based on distorted thinking and delusions. He sees a psychiatrist once a month. He has also been receiving ongoing treatment from a psychologist.
5. On September 26, 2008, the school received a Crime Stoppers tip that Student was in possession of pills. This tip led to an investigation. The assistant principal performed the investigation. No pills were found to be in Student's possession, either on his

- person or in his backpack or locker. However, from the investigation the school concluded that on September 26, 2008, Student brought pills to school, offered them to other students, and took the pills himself. Student told inconsistent stories to various people about what pills he had taken. He told two students the pills were “bars,”<sup>1</sup> but he told his teacher all he had was Advil, and later he maintained they were generic aspirin. The school concluded Student attempted to pass the pills off as drugs.
6. Student caused a bit of disorder in the classroom upon his arrival to math on September 26, 2008. The teacher, upon hearing a bunch of noise that sounded like somebody running into something, inquired, “Hey, what’s going on?” One of the other students responded that Student had run into the computer table. The teacher noticed that during the class period Student was very quiet and nonresponsive. This behavior was out of character for him.
  7. The students to whom Student offered the pills, provided statements to the assistant principal for the investigation. One student described the pills Student offered as white. The other student described the two pills as oval shaped that looked a very light blue color, almost white. The student also described Student as “acting weird,” that he was “kinda shaking” and “fell back into the computers.”
  8. Student’s family discounted the statements provided by the students and apparently attributed them to a “conspiracy theory by little girls.”
  9. On October 16, 2008, Student’s family was notified in writing that the principal of his school had recommended that Student be assigned to the Student Learning and Guidance Center (“SLGC”) for a period of thirty school days. The principal also informed the parents of their right to appeal the order for removal to the District Hearing Officer, and of the procedures necessary to institute the appeal. The parents chose not to appeal the assignment of Student to the SLGC.
  10. On November 10, 2008, the Admission, Review and Dismissal (“ARD”) Committee met to determine whether the incident that occurred on September 26, 2008, was a manifestation of Student’s disability. With the exception of the parents, the ARD Committee decided that the incident was not a manifestation of Student’s disability.
  11. The SLGC is an alternative education placement. Since Student has been attending classes at the SLGC his Individual Education Program has remained the same as it was when he was attending classes at his previous campus, with one change. Instead of Spanish he now has a class known as Teen Leadership that is a required course for any student at SLGC. It deals with social skills, decision making and appropriate reactions. In comparison with Student’s previous campus, SLGC is a smaller campus. SLGC has both general education classes and special education classes. SLGC has content mastery, counselors, an assistant principal and a principal. When

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<sup>1</sup> The term “bars” is the shortened version of “handlebars,” a slang term for Xanax, so-called because the shape resembles handlebars.

Student began attending SLGC an ARD Committee meeting was held to enter Student into the SLGC program in early November 2008.

#### **IV. DISCUSSION**

##### **A. Burden of Proof**

Under the IDEIA a parent of a child with a disability who disagrees with any decision regarding the child's disciplinary placement may appeal the decision. 34 C.F.R. §§ 300.530-300.531. Reasons for the appeal may include disagreement with the removal to an interim alternative education placement, disagreement regarding the manifestation determination, or other matters concerning the provision of services or placement of the child. In this case Petitioner disagrees with the removal to the AEP, because it does not provide services to Student in the LRE, and therefore, does not provide him FAPE.

Because it is Petitioner who is seeking relief under the IDEIA, Petitioner bears the burden of proof on this matter. *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528, 535-537 (2005).

##### **B. Respondent's Arguments**

Respondent argues that the jurisdiction of Hearing Officers is limited to ensuring compliance with IDEIA requirements in the conduct of manifestation determinations and disciplinary placements. Moreover, the law allows Respondent to place Petitioner in the AEP for up to 45 school days regardless of whether his controlled substance offense was related to his disability or not.

##### **C. Analysis**

Respondent contends that Hearing Officers lack authority to review the discipline imposed by the school, and cites an earlier Texas case in support of its position. *See Rudy F. v. Poteet ISD*, 29 IDELR 423 (1998). Other cases have followed a somewhat consistent approach regarding disciplinary fact-finding also. In any event, due process avenues for challenging the disciplinary action in this matter were available to the parents. It was their choice not to appeal the principal's decision to remove Student to the SLGC and to file this proceeding instead.

The Hearing Officer recognizes that jurisdiction is indeed limited in disciplinary cases under the IDEIA. Therefore, the issue brought by Petitioner – whether the removal to the AEP provides services in the LRE – is limited by the parameters of the Hearing Officer's jurisdiction. So the Hearing Officer here may review procedural circumstances concerning the IDEIA and compliance with the requirements for manifestation determination.

In that regard, there are no procedural violations. As to the manifestation determination, it matters not because of the nature of the offense here. Because of the *nature of the offense*, whether the incident was related to his disability simply does not play a part in this decision; the ARD Committee may place him in the AEP for up to 45 school days as a disciplinary

consequence, regardless of the disability.<sup>2</sup> Even if his actions were a manifestation of his disability, the Hearing Officer has no authority to overturn that decision. Thus, it matters not whether his disability played any part in the incident of September 26, 2008.

## V. CONCLUSIONS OF LAW

After due consideration of matters of record, matters of official notice, and the foregoing findings of fact, in my capacity as a Special Education Hearing Officer for the State of Texas, I make the following conclusions of law:

1. Student is eligible for special education services as a child who is emotionally disturbed and other health impaired. 20 U.S.C. §1401 (3) (A); 34 C.F.R. §300.8 (c) (4), (9); 19 TEX. ADMIN. CODE § 89.1040 (c) (4), (8).
2. CCISD is required to provide Student FAPE. *See Cypress-Fairbanks Indep. School Dist. v. Michael F.*, 118 F.3d 245, 248 (5th Cir. 1997).
3. Petitioner bears the burden of proof with respect to the issues presented in this case. *Schaffer v. Weast*, 546 U.S. 49 (2005).
4. Petitioner did not meet its burden of proof with respect to the issues presented in this case. *Schaffer v. Weast*, 546 U.S. 49 (2005).

### ORDER

Based upon the foregoing findings of fact and conclusions of law, it is hereby ORDERED that the relief sought in this matter by Petitioner is DENIED. Finding that the public welfare requires the immediate effect of this Final Decision, the Hearing Officer makes it effective immediately.

SIGNED this 12<sup>th</sup> day of December 2008.

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*Lucretia Dillard*  
Special Education Hearing Officer

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<sup>2</sup> See 20 U.S.C. § 1415(k)(1)(G)(ii); 34 C.F.R. § 300.530(g)(2)