

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

**Student, bnf**

**Parent & Parent,  
Petitioner,**

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**v.**

**DOCKET NO. 360-SE-0803**

**NORTHSIDE INDEPENDENT  
SCHOOL DISTRICT,  
Respondent.**

**DECISION OF THE HEARING OFFICER**

**Procedural History**

Petitioner Student bnf Parent and Parent (“Student” or “Petitioner”) brings this action against the Respondent Northside Independent School District (“the school district”, “NISD”, or “Respondent”) under the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. Sec. 1400 et. seq as amended, and its implementing state and federal regulations.

Petitioner has been represented in this case by his legal counsel, Jeffery D. Waren, Attorney at Law. Respondent has been represented in this case by its legal counsel, Craig Wood of Langley & Banack.

The request for hearing was filed on August 13, 2003. Olivia Ruiz was the special education hearing officer initially assigned to this case. The parties requested a continuance in order to conduct an independent educational evaluation. The hearing was reset for December 2-3, 2003 with a status conference by phone set for November 20, 2003. Sadly, Ms. Ruiz’s husband passed away unexpectedly on November 19, 2003 and she requested that another hearing officer be assigned to the case.

Ann Lockwood was reassigned to serve as the hearing officer on November 20, 2003. However, the December 2<sup>nd</sup> and 3<sup>rd</sup> hearing dates posed a scheduling conflict for the new hearing officer. The parties convened by phone on December 4<sup>th</sup> and selected new dates for the hearing. The special education due process hearing was conducted on January 13-14, 2004. The deadline for the hearing officer’s decision was extended until January 30, 2004 to allow the parties to submit written closing arguments.

While the case was pending a controversy arose between the parties about the appropriate site for the provision of interim educational services. The school district sought relief in state district court following an order from the hearing officer on the issue. The school district secured a Temporary Restraining Order from the state district court that directed interim educational services be provided

at the school district’s administration building. A hearing in the state district court on the school district’s request for a Temporary and Permanent Injunction was scheduled while this Decision was pending. The outcome of that proceeding is unknown to the hearing officer at this time.

## Issues

The issues for decision in this case are:

1. Whether the school district provided Student with a free, appropriate public education (“FAPE”) within the meaning of the Individuals with Disabilities Education Act (“IDEA”) during the 2002-2003 school year; specifically, whether the Individual Educational Plan (“IEP”) and Behavior Intervention Plan (“BIP”) were appropriate within the meaning of IDEA;
2. Whether the school district should have provided Student with special education services and support during the summer school program of 2003 in order to receive FAPE under IDEA;
3. Whether the school district should have provided Student with psychological services, in the form of individual counseling and/or psychotherapy beginning in the 2002-2003 school year up through the present in order to receive FAPE within the meaning of IDEA;
4. Whether the 30 day placement at the Alternative School beginning on October 24, 2003 provided Student with FAPE in the least restrictive environment (“LRE”) within the meaning of IDEA;
5. Whether the agreed-upon IEP and BIP formulated by the parties at the October 23, 2003 Admission, Review & Dismissal Committee (“ARD”) meeting was implemented by the school district during Student’s placement in the Alternative School;
6. Whether the school district implemented Student’s IEP and BIP for the current school year; specifically, prior to his placement at the Alternative School, in order to receive FAPE within the meaning of IDEA;
7. Whether Petitioner’s complaint regarding the summer school program is outside the jurisdiction of the special education hearing officer in this case; specifically, whether that complaint is an IDEA issue;
8. Whether Petitioner’s complaint regarding the summer school program, even if it is an IDEA issue, is moot since Respondent has offered Petitioner any and all relief that could be granted on that issue;
9. Whether Petitioner’s requests for relief for reimbursement for the costs of preparation for an agricultural class and for family and individual counseling are appropriate forms of relief under IDEA; and,
10. Whether the school district had the authority to place Student in an alternative educational placement (“AEP”) for disciplinary reasons for a period beyond 10 days in the absence of an order from a special education hearing officer.

At the end of the due process hearing, the parties agreed that the issue of whether the school district should provide Student with homebound services for 8-12 weeks as recommended by his treating physician as an interim program and placement would be dismissed from this case since that issue is the subject of the state district court proceeding.

## **Relief Requested**

As relief, Petitioner requests the following:

1. The school district provide Student with compensatory educational services based upon the proof of his educational needs at the due process hearing;
2. Placement in whatever program and/or placement is recommended by Student's treating physician, Dr. \*\*\*, for the remainder of the current school year;
3. Reimbursement for the following out of pocket expenses:
  - a. outside, private counseling;
  - b. summer school tuition at \$180.00 ; and
  - c. preparation for an agricultural program for the current school year;
4. The school district provide Student's parents with parent-training; and,
5. The school district provide Student and his parents with family counseling, as well as individual counseling for Student with his treating physician, Dr. \*\*\*.

## **Findings of Fact**

1. Student is a \*\*\* year old \*\*\* school student who is eligible for special education services from NISD as a student with learning disabilities ("LD"), Other Health Impairment ("OHI") and a serious emotional disturbance ("ED"). There is no dispute about Student's eligibility for services from NISD.
2. Student has a long history of academic and behavioral difficulties. Although Student got through \*\*\* school, he has had a rough time in \*\*\* school. As a \*\*\* Student was able to pass all his classes, earn the requisite number of credits and end up with a \*\*\* average. However, Student began to fall apart academically as a \*\*\*. He failed English and Biology and barely passed Geometry. Although Student performed better in his electives he ended up with a \*\*\* average and did not earn the requisite number of credits. Student has an identified learning disability in written expression, basic reading skills, reading comprehension, and mathematics calculation. Remediation and reading instruction were recommended for Student by an NISD multidisciplinary team at the end of the fall semester of his \*\*\*year.
3. Student's behavior has posed a significant problem for his teachers, administrators, peers, and his family. Student has a great deal of difficulty modulating his emotions. His behavior is typified by highly variable and unpredictable moods, a resentful irritability, a pessimistic outlook and impulsivity. Student is restless, capricious, and erratic and tends to be easily offended. He has a low tolerance for frustration and vacillates between being distraught at one time and irrationally contentious another. Student fears displaying weakness.
4. Student has also been verbally aggressive and abusive, disrespectful to teachers and administrators, non-compliant, and argumentative. He has a history of blurting out in class, failing to do his work, leaving classes without permission, using profanity, and failing to take responsibility or show

remorse for his actions.

5. Student doesn't pay attention to details and makes a lot of careless mistakes. He is often off task during school work or chores at home. He often does not listen to what is said and has trouble following instructions – he needs constant reminders to get things done. Student is very disorganized, often loses things, and strongly dislikes and avoids tasks that require a lot of concentration or mental effort. Student is easily distractible, often forgets homework and doesn't turn it in, fidgets and is often out of his seat at school.
6. Student requires constant redirection to remain on task or to behave appropriately but attempts to do so by teachers and other authority figures often result in insubordinate responses. Problems at school noted in the fall of his \*\*\* year included: missing assignments (weekly); organizational problems (daily); attention and concentration (daily) and, oppositional behaviors (19 referrals through December 2002).
7. Student has difficulty relating well to peers and siblings due to his abrasive, unpredictable, and disruptive behavior. Student has trouble expressing his emotions verbally and often provokes others as a way to get them to understand what he is feeling. He tends to believe he can outlast others, particularly those in authority. Student handles adverse consequences by escaping, dissimulating, or by bullying others.
8. Student has been diagnosed with Attention Deficit Hyperactivity Disorder (“ADHD”), Conduct Disorder, and, more recently, with Bi-polar Disorder. He has tried various medications in the past to address the problematic symptoms of his ADHD but they produced negative side effects. Student has a history of nicotine and cannabis abuse and possible alcohol abuse.
9. Bi-polar disorder is a medical condition typically characterized by episodes of alternating mania and depression. Persons with bipolar disorder often have co morbid substance and alcohol abuse. Bi-polar persons in a manic state may be either elated or quite irritable and anger very easily which is the more common presentation in adolescents. An adolescent with bi-polar disorder may also become aggressive. Adolescents with bipolar disorder often have trouble controlling their behavior.
10. Persons with bi-polar disorder experience “flight of idea” i.e., they are unable to focus on one subject, will jump from one thing to another, have racing thoughts, and, engage in high-risk behavior. Adolescents with bi-polar disorder often demonstrate poor impulse control and poor judgment in their behavior and their decisions.
11. Student has been reluctant to admit that he has a psychiatric condition. This is very typical of a bipolar patient in the manic stage. Student's treating psychiatrist has not yet seen a depressive episode but has identified a long-lasting mania in Student. This is not uncommon in adolescents who often present with mania alone.
12. The diagnosis of bi-polar disorder was first made in February 2003 by a psychologist and has since been confirmed by his current treating psychiatrist. Therefore, Student had not been effectively or appropriately treated for his bi-polar disorder for a long time. He has gone through several adjustments in his bi-polar medications since the initial diagnosis. Student's bi-polar disorder remains moderate to severe despite treatment over the past eight months. However, the treatment has only been on an outpatient basis once or twice a month.

13. Student has been strongly resistant to treatment and is only now just beginning to acknowledge and accept it. He is becoming more cooperative in terms of taking his medication and receptive to the psychiatrist's recommendations. Student is gaining awareness about his bipolar disorder. A lack of insurance to pay for therapy has also interfered with his family's ability to provide him with the treatment he needs. He still has not yet fully responded to treatment for his bipolar disorder. He is only partially stable at this time.
14. Student has a repertoire of maladaptive coping skills that are not directly related to the bipolar disorder but have certainly affected his behavior. The mental health professionals who have evaluated and/or treated Student are deeply concerned about his lack of remorse and failure to take responsibility for his actions. They are troubled by what appears to be a lack of conscience. Student seems to be unaware of the impact he has on others and seems unable to empathize with others.
15. Although the experts disagree as to whether the behaviors that are the object of school discipline are a manifestation of the ADHD, the Conduct Disorder or the Bi-polar Disorder, there is agreement that Student needs to be stabilized and face the consequences of his actions and decisions. Student needs to be closely monitored by his psychiatrist and receive individual and family psychotherapy at least once a week.
16. In December 2002 a Behavior Intervention Plan ("BIP") was designed for Student. One hour of counseling per week was confirmed as a related service to be provided by the Child Guidance Center ("CGC") at NISD expense. Counseling began that month but Student often refused or resisted the service. The CGC ultimately referred Student to Dr. \*\*\* for treatment and counseling due to staff shortages at the CGC.
17. Various ARD meetings have been conducted during Student's \*\*\* school tenure to address his "persistent misbehavior" at school. Student was suspended for a day in April 2003 for insubordination. He was also suspended from riding the bus for the remainder of the year after using disrespectful and profane language with a bus driver.
18. In early May of his \*\*\* year, a manifestation determination ARD was convened to review Student's continuing incidences of truancy and insubordination, one incident of evasion and one incident of profanity. The ARD concluded that Student's disabilities did not impair his ability to understand the impact and consequences of his behavior or his ability to control himself.
19. Student was placed in a behavior management class for most of the day except for an agriculture class which he was allowed to attend. There were costs associated with the agriculture program that were paid by his parents. Counseling of one hour per week was noted as a continuing related service provided through the CGC. He finished the school year under this disciplinary placement.
20. NISD suggested Student attend summer school to make up the credits he failed to earn in the spring. Student attended the first summer session and put forth enough effort to earn a half credit. However, his behavior disintegrated with a change in summer school teaching personnel and he immediately got into trouble. Student was not allowed to finish the summer school program due to his behavioral problems.
21. However, NISD also offered Student two options. The first was to complete the second semester curriculum at an individualized pace with periodic instructional support and evaluation by an experienced teacher. This option was immediately available to Student but he apparently did not

avail himself of this opportunity. The second option was to arrange for Student to complete the curriculum next summer at no further cost to his parents.

22. Behavioral and academic problems persisted in the fall of his junior year. A Behavior Consultation report included a number of very specific recommendations to address Student's behaviors with an aim towards teaching him appropriate responses. However, problems continued.
23. An ARD ultimately agreed that Student needed a more restrictive setting in order to learn to manage himself more appropriately in school and specifically to cope with the consequences of his behavioral choices. Student's mother was a member of the ARD and agreed with the plan. He was placed at the  
\*\*\* Alternative School

("AEP") for thirty days. Unfortunately, Student got into an altercation with a NISD peace officer assigned to the AEP in November 2003. The altercation resulted in injuries to both Student and to the peace officer.

24. While the peace officer knew Student was a student with a disability he did not know the nature or type of Student's disability, was not aware that Student had a BIP or what the BIP required nor had he received any specific training in dealing with students with disabilities. Student had one disciplinary incident at the AEP prior to the altercation in November. The school district is contemplating expulsion based upon this incident.
25. Student's treating psychiatrist, Dr. \*\*\*, recommended that placement on a regular \*\*\* school campus would not be appropriate for Student at this time. Instead, Dr. \*\*\* recommended a more restrictive instructional setting for Student. Dr. \*\*\* contemplates conferring with the school district to determine the various available options. Student needs to be stabilized before he is ready to return to a regular \*\*\* school campus.

## **Discussion**

### **FAPE**

Student is quite clearly a very challenging young man to teach and to parent. His multiple disabilities appear to intersect in ways that are confusing and problematic for both Student and for those in positions of authority who attempt to teach, discipline and parent him. The school district has struggled with Student for several years. The evidence showed that there were behavior plans, individual educational plans, and a set of behavioral recommendations in place. The evidence also showed that counseling was offered to Student as a related service which he often resisted or refused. Student's story of an escalating set of disciplinary problems and academic frustration and failure is a sad and troubling one.

However, Petitioner did not meet his burden of proving that the school district's program failed to provide Student with FAPE under IDEA. There was no evidence to show whether the IEP's, BIP's, or the set of behavioral recommendations were not implemented or implemented in an inappropriate manner. In this jurisdiction, the party challenging the terms of a student's IEP bears the burden of proving whether it is appropriate or not. Thus, the Petitioner had the burden of proving that the IEP's and behavior plans at issue did not provide Student with the requisite meaningful educational benefit. Petitioner failed to meet this burden. *Tatro v. Texas*, 703 F. 2d 823 (5<sup>th</sup> Cir. 1983)(*Tatro II*), *aff'd on other grounds sub nom Irving Ind. Sch. Dist. v. Tatro*, 468 U.S. 883 (1984); *Alamo Heights Ind. Sch. Dist. v. State Bd. of Educ.*, 790 F.

*2d 1153 (5<sup>th</sup> Cir. 1986); Christopher M. v. Corpus Christi Ind. Sch. Dist., 933 F. 2d 1285 (5<sup>th</sup> Cir. 1991).*

### **Summer School**

The evidence showed that Student was somewhat successful in his summer school program without the support of special education services during the first session. The evidence also showed, however, that he was not successful the second session due in part to a difference in the disciplinary approach of the second summer session teacher and Student's own lack of effort and compliance.

Petitioner failed to meet his burden of proof that Student's problems during the second session were a result of a failure of the school district to provide him with accommodations, modifications, and/or other support rather than a result of his Conduct Disorder and maladaptive behaviors. *Id.*

Even if the school district should have provided Student with some special education support, any harm caused by that failure has been addressed by the school district's offer to provide Student with a self-paced individualized program including teacher support; or, a second opportunity to attend summer school the following summer tuition free.

Finally, I conclude that the issue regarding summer school is clearly an IDEA issue within my jurisdiction as a special education hearing officer. The fact that a summer school program is a regular education program and not a special education program is not determinative. Petitioner raised the question of whether NISD should have provided Student with special education support when he participated in the summer school program.

Certainly an ARD Committee could have decided that Student needed summer school to make up his lost credits and what services, if any, he might need to ensure success. The fact that Petitioner did not establish that an ARD Committee should have been convened for that purpose is not fatal to the issue as a jurisdictional matter. The issue is clearly one related to Student's educational program and thus is within my jurisdiction under IDEA. *34 C.F.R. Sec. 300.507; 19 Tex. Admin. Code Sec. 89.1151.*

### **Psychological Services**

The evidence showed that Student did indeed receive psychological services from NISD through CGC. In fact, it was the CGC psychologist who first raised the possibility that Student has bipolar disorder. The evidence also showed that CGC referred Student to Dr. \*\*\* for further evaluation and treatment since CGC could not meet those needs at the time of the diagnosis.

The evidence showed that counseling was to continue for Student as a related service for the 2002-2003 school year and for the current school year 2003-2004 of one hour per week. Since NISD agreed to provide Student with counseling through CGC, and CGC referred Student to Dr. \*\*\* because it could not meet his needs, it follows that NISD should have funded individual counseling services in the amount of one hour per week from by Dr. \*\*. There was either a communication gap between CGC and NISD in that regard or between NISD and Student's parents who appeared to believe they alone shouldered the financial responsibility for this aspect of Student's program.

There can be no doubt that with the complex intersection of Student's multiple disorders: ADHD, Conduct Disorder, and Bi-polar Disorder, and his history of behavioral difficulties in the school setting, Student clearly needed psychological counseling as a related service and continues to need it in order to benefit from his education. *34 C.F.R. Sec. 300.24 (a)(b)(2).*

Student needs, through counseling, to gain a better understanding and acceptance of his various disabilities, comply with the medication regime aimed at addressing and controlling his various symptoms, and, learn new ways to communicate his feelings and frustrations that are functional and appropriate. Petitioner met his burden of proof on this issue. *Tatro, supra*.

### **IEP/BIP Implemented in AEP**

Petitioner failed to present almost any evidence as to whether Student's IEP and/or BIP were implemented while he was in the AEP. Indeed, there was little evidence as to what Student's program even was at the AEP and the record is unclear, vague and confusing on this point. Therefore, Petitioner failed to meet his burden of proof on this issue. *Id.*

### **IEP/BIP Implemented in Current School Year**

The evidence showed that there was an IEP and BIP in place for the current school year. The evidence also showed that a set of behavioral recommendations were made by NISD staff after conducting a behavioral consultation. All these documents appear to address Student's needs as a student with multiple behavior disorders. However, Petitioner did not prove, one way or the other, whether school staff failed to implement the IEP and/or BIP or failed to implement them in an appropriate manner. Only one teacher testified at the hearing but was not questioned as to his knowledge and/or use of Student's IEP and/or BIP. Again, Petitioner simply did not meet his burden of proof on this issue. *Id.*

### **Reimbursement Claims for Costs of Agriculture class and Counseling Services**

Respondent raises the issue of whether Petitioner's claims for reimbursement for the costs of his agriculture program and for the costs of outside counseling paid for by Student's parents are appropriate forms of relief under IDEA. I have already addressed the issue of counseling – a related service that should have been provided to Student but wasn't. As for the costs of the agricultural program: courts have long held that equitable forms of relief are appropriate under IDEA, including the costs of tutoring, materials, etc. that parents pay for when a school district fails to provide a student with FAPE. *See, Sch. Comm. of Burlington v. Dept. of Educ., 471 U.S. 359, 370-371 (1985).*

Therefore, Petitioner might have been entitled to reimbursement for the costs of the agricultural program if he had met his burden of proving that he was denied participation in the class, that the disciplinary measures that resulted in the denial violated IDEA, and that he was thus denied the benefit of the class. The record is ambiguous and confusing on these points and thus Petitioner cannot prevail on this issue. However, as a question of law I conclude that IDEA does provide reimbursement for costs paid by parents when there has been a denial of FAPE. *Id.*

### **School District Authority to Make AEP Placement without Hearing Officer Order and LRE Issue**

IDEA amendments have established a specific set of rules and circumstances under which a school district may place a student in an alternative placement for disciplinary reasons. *See, 34 C.F.R. Secs. 300.519-300.529.* However, in this case, the evidence showed that placement in the AEP was an ARD decision made to address a number of behavioral and academic issues and not necessarily as a disciplinary measure per se. Placement in the AEP for 30 days was a unanimous ARD decision. Student's mother supported the idea as a

way to control Student's escalating negative and non-compliant behaviors at school. Therefore, placement in the AEP was not a unilateral disciplinary decision by the school district but instead a collaborative decision made by an ARD that included Student's mother. An ARD has the authority to make changes in a student's placement without a hearing officer's order. Petitioner did not meet his burden of proving that the AEP placement was not the least restrictive environment given Student's continuous academic and behavioral issues. *See, 34 C.F.R. Sec. 300.552.*

### Conclusions of Law

1. Petitioner failed to meet his burden of proving that the school district denied Student a free, appropriate public education within the meaning of IDEA and, specifically whether the Individual Educational Plan and Behavior Intervention Plan were appropriate. *Tatro v. State of Texas, 703 F. 2d 823 (5<sup>th</sup> Cir. 1983) aff'd on other grounds sub nom Irving Ind. Sch. Dist. v. Tatro, 468 U.S. 883 (1984); Alamo Heights Ind. Sch. Dist. v. State Bd. of Educ., 790 F. 2d 1153 (5<sup>th</sup> Cir. 1986); Christopher M. v. Corpus Christi Ind. Sch. Dist., 933 F. 2d 1285 (5<sup>th</sup> Cir. 1991).*
2. Petitioner failed to meet his burden of proof that the school district should have provided him with special education services during summer school in order to receive a free, appropriate public education within the meaning of IDEA. *Id.*
3. The issue of whether a school district should have provided a student with a disability special education services during summer school is an issue within the jurisdiction of a special education hearing officer in Texas. *34 C.F.R. Sec. 300.507; 19 Tex. Admin. Code Sec. 89.1151.*
4. Petitioner's complaint about the summer school program is moot since the school district has offered Petitioner meaningful and compensatory relief on that issue. Thus, there no longer exists a controversy between the parties on that issue. *Kolsti v. Guest, 576 S.W. 2d 892, 893 (Tex. Civ. App. – Tyler 1979).*
5. Respondent provided Petitioner with counseling services as a related service during the 2002-2003 school year but failed to continue to provide those services during the current school year so that Petitioner could receive a benefit from his educational program. *34 C.F.R. Sec.300.24(a)(b)(2).*
6. Petitioner failed to meet his burden of proof that the school district failed to either implement the Individual Educational Plan and/or Behavior Intervention Plan or to implement those plans appropriately during the current school year while he was still on the regular \*\*\* school campus and/or while he was in the Alternative Educational Placement. *Tatro v. State of Texas, supra.*
7. Reimbursement for the costs of an agricultural program would be an appropriate form of equitable relief under IDEA if Petitioner had met his burden of proving that he was denied participating in the program due to disciplinary measures that failed to provide him with a free, appropriate public education under IDEA. *Sch. Comm. of Burlington v. Dept. of Educ., 471 U.S. 359, 370371 (1985).* However, Petitioner did not meet his burden of proof in that regard. *Tatro v. Texas, supra.*
8. Petitioner did not meet his burden of proving that placement in the AEP was a unilateral disciplinary decision or that it was not the least restrictive environment. Instead, it was a placement approved by an ARD Committee that has the authority to make changes in a student's placement to meet individual needs. Placement was made by ARD to address series of student's escalating academic and behavioral issues. *34 C.F.R. Sec. 300.552; Tatro v. Texas, supra.*

## **ORDERS**

Based upon the foregoing findings of fact and conclusions of law I hereby **ORDER** the Respondent to reimburse Petitioner for the cost of individual counseling services provided to Petitioner by Dr. \*\*\* during the past eight months and to continue to fund the cost of individual counseling services for Petitioner from Dr. \*\*\* for one hour per week through the remainder of the current school year.

All other relief not specified herein is **DENIED**.

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.

**SIGNED the 30th day of January, 2004.**

/s/Ann V. Lockwood  
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Ann Vevier Lockwood  
Special Education Hearing Officer

### **Notice to the Parties**

The Decision of the Hearing Officer in this cause is a final and appealable order. Any party aggrieved by the findings and decisions made by the hearing officer may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States. 19 Tex. Admin. Code Sec. 89.1185 (p); Tex. Gov't Code, Sec. 2001.144(a)(b).

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

**Student, bnf**

**Parent & Parent,  
Petitioner,**

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**v.**

**DOCKET NO. 360-SE-0803**

**NORTHSIDE INDEPENDENT  
SCHOOL DISTRICT,  
Respondent.**

**SYNOPSIS**

**Issue:** Whether school district provided \*\*\* school student with LD, OHI and ED (ADHD, Conduct Disorder and Bipolar Disorder) with FAPE; specifically, whether school district IEP and BIP were appropriate within meaning of IDEA.

**Held:** **For the school district.** Petitioner failed to meet his burden of proof on this issue.

**Citation:** **34 C.F.R. Sec. 300.13**

**Issue:** Whether school district should have provided student with LD, OHI and ED (ADHD, Conduct Disorder, Bipolar Disorder) special education services during summer school in order to receive FAPE.

**Held:** **For the school district.** Petitioner failed to meet his burden of proof on this issue.

**Citation:** **34 C.F.R. Sec. 300.13**

**Issue:** Whether Petitioner's complaint regarding summer school is outside the jurisdiction of a special education hearing officer in Texas.

**Held:** **For the student.** The issue of whether an ARD Committee should have convened and decided student (who failed two classes) needed to attend summer school and needed special education support to earn credits is an issue related to student's educational program and thus within the jurisdiction of a special education hearing officer in Texas.

**Citation:** **34 C.F.R. Sec. 300.507; 19 Tex. Admin. Code Sec. 89.1151**

**Issue:** Whether Petitioner's complaint about summer school, even if an IDEA issue, is moot since school district offered Petitioner meaningful relief as compensation.

**Held:** **For the school district.** Petitioner's complaint about summer school was moot since school district offered student opportunity of either completing curriculum at own individualized pace with teacher support or to attend next summer session tuition free. Controversy on this issue no longer existed between parties and thus issue was moot since all meaningful relief that could have been granted was offered by school district.

**Citation:** 34 C.F.R. Sec. 300.507; 19 Tex. Admin. Code Sec. 80.1151

**Issue:** Whether school district should have provided \*\*\* school student with LD, OHI and ED (ADHD, Conduct Disorder and Bipolar Disorder) individual counseling services as a related service in order to receive FAPE during the prior and current school years.

**Held:** **For the student.** School district did provide individual counseling services to student through community mental health organization but when community mental health organization could no longer serve student due to staff shortage and referred student to private physician school district failed to fund counseling services provided by the physician. Evidence showed student clearly needed counseling as a related service in order to receive a benefit from his education.

**Citation:** 34 C.F.R. Sec. 300.24 (a)(b)(2)

**Issue:** Whether placement in alternative educational placement for 30 days was within school district's authority without an order from a hearing officer and whether that placement provided student with the least restrictive environment within the meaning of IDEA.

**Held:** **For the school district.** Petitioner failed to meet his burden of proof that placement was not least restrictive environment given student's continuous academic and behavioral difficulties on regular high school campus with special education services. Placement was made by unanimous ARD decision, including parent, as means of addressing series of student's escalating academic and behavioral issues. Placement was not made unilaterally by school district for disciplinary reasons per se.

**Citation:** 34 C.F.R. Sec. 300.550-552

**Issue:** Whether IEP and BIP were implemented while student with LD, OHI and ED (ADHD, Conduct Disorder and Bipolar Disorder) was placed in AEP for 30 days and whether IEP and BIP were implemented during current school year prior to placement in AEP.

**Held:** **For the school district.** Petitioner failed to meet his burden of proof that IEP and/or BIP were either not implemented or implemented inappropriately during the current school year or during his placement in the AEP.

**Citation:** 34 C.F.R. Sec. 300.350 (a)

**Issue:** Whether Petitioner's request for relief regarding reimbursement for costs of agricultural program is appropriate form of relief under IDEA.

**Held:** **For the student in part and the school district in part.** Reimbursement for costs of agricultural program is appropriate form of equitable relief within meaning of IDEA but Petitioner did not meet his burden of proving that he was denied participating in the program, that the denial was the result of disciplinary measures and/or a failure to implement student's IEP and/or BIP, or that the denial constituted a failure to provide FAPE.

**Citation:** 34 C.F.R. Sec. 300.13