

**STATE OF CONNECTICUT
DEPARTMENT OF EDUCATION**

Student v. Norwalk Board of Education

Appearing on behalf of the Parents: Attorney Marilyn F. Davidson
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Appearing of behalf of the Board: Attorney Michelle Laubin
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Appearing before: Attorney Mary Elizabeth Oppenheim, Hearing Officer

FINAL DECISION AND ORDER

ISSUES:

1. Whether the student's behavior which resulted in the suspension notification of March 21, 2001 was a manifestation of the student's disability.
2. If so, whether the student's IEP must be revised.
3. If so, whether the student should be reinstated to school, including the right to participate in the athletic program.

PROCEDURAL SUMMARY:

This hearing was requested on March 30, 2001. This hearing proceeded as an expedited hearing, as it was brought to contest the manifestation determination in accordance with C.F.R. Section 300.525 and Conn. Agencies Regs. Section 10-76h-10.

The hearing was scheduled to commence on April 9, 2001. A "Notice Regarding Lay Advocates" was included in the Notice of Scheduled Hearing Dates, which provided:

In accordance with federal and state regulations and statutes, please take notice that parties have a right to be accompanied and advised by individuals with special knowledge of training with respect to the problems to children with disabilities in due process hearings. These lay advocates, however, cannot proceed as counsel in the hearings. Non-lawyers, however, cannot advocate on behalf of parents in the due process hearings. See, In the Matter of Arons, 32

IDELR 253 (Delaware 2000) (discussion of IDEA regulations and the state law proscription against the unauthorized practice of law)

This notice was forwarded to the Parents' "advocate" and the Board representative, as it appeared that the Parents were intending to proceed with a non-lawyer advocate presenting their case at the hearing.

At the hearing on April 9, the Parents indicated that they were intending to proceed with the non-lawyer advocate representing them at the hearing. In accordance with the notice, the parties were informed that non-lawyer advocate would merely be allowed to consult with, not advocate on behalf of the Parents. The Parents requested that the hearing be continued to the next date, so that they could secure representation of counsel. The Parents were thereafter represented by an attorney. The lay advocate continued to be present at the hearing dates, but did not advocate for the Parents during the proceedings. The hearing continued on April 16, 18 and 25. The evidentiary portion of the hearing was closed on May 3, 2001, upon receipt of briefs from the parties.

To the extent that the summary and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Callallen Independent School Board*, 835 F. Supp. 340 (S.D. Tex. 1993).

FINDING OF FACTS:

1. The Student is in ninth grade at the Board High School, and had been identified as eligible for special education services since he was in the sixth grade. (Testimony Mother, Exhibits B-3, B-9, B-16, B-21, B-26)
2. The Student was identified with identified with the exceptionality of "Learning Disability" in April 1998. (Exhibit B-9) The 1998 Planning and Placement Team (PPT) minutes noted attention related-problems. The Student's grades fluctuated a great deal and teachers noted that the Student was unfocused. (Exhibit B-3) In February 1998, the Parents shared with the team that the Student's pediatrician felt the Student was showing signs of Attention Deficit Disorder (ADD). (Exhibit B-3) The minutes note that the Student would miss directions and important details, which may be due in part to attention issues. (Exhibit B-9) It also was noted that he was occasionally distractible and the attention to detail was lost both in math and writing. (Exhibit B-9)
3. The school psychologist completed a psychological evaluation report in the Spring of 1998 which was used by the PPT team as a basis for its decision that the Student was eligible for special education services, and to draft an individualized education program for the Student. (Exhibits B-9, B-6) The school psychologist concluded her report with the following recommendations:

- "1. PPT to determine eligibility for special education and related services.
2. [The Student] would benefit from preferential seating, close to teachers but in

- a less distracting area of the classroom.
3. Due to his inattention to details and impulsivity, his work style is inconsistent. [The Student] needs to slow down and check his work for errors and completeness.
 4. Results of this evaluation may be shared with [the Student's] pediatrician due to his inattention, distractibility and impulsivity." (Exhibit B-6)
4. The Spring 1998 report was the last psychological report completed on the Student prior to the incident; the Student was in the process of triennial evaluations at the time of the incident, and the 2001 psychological report was not completed prior to the manifestation review and the hearing. (Testimony Ms. Shippee, Exhibit B-27) A "Summary Report," not a final report, was submitted by the Board in its exhibits. (Exhibit B-28)
 5. The mother thought that the Student qualified for special education services in the sixth grade, and thereafter, due to his ADD and his learning disability. (Testimony Mother)
 6. From sixth grade to the present, the Student has continued to be identified as Learning Disabled (Exhibits B-9, B-16, B-21, B-26), although ADD has always been discussed at the PPT meetings. (Mother's Testimony) The Mother's understanding of the identification of "learning disabled" is that it includes ADD. (Testimony Mother) The Parents did not know of the different categories of disabilities of Other Health Impaired (OHI) and Specific Learning Disability (SLD) (Testimony Mother)
 7. The Board identifies students as Learning Disabled based on a variance between intelligence and functioning of more than 22 points. (Testimony Mr. Follman)
 8. In the April 14, 2000 PPT, at the Student's annual review, the Student's Individualized Education Program (IEP) included goals for organization and for developing skills in following written and oral directions. (Exhibit B-26) In accordance with this IEP, the Student was to receive two and one-half hours per week of special education services. The IEP also provided for modifications and adaptations in regular education including extra time for tests and projects, test and quizzes in the resource room, and preferential seating. (Exhibit B-26)
 9. On Wednesday, March 21, 2001, the Student was working in the computer lab at the Board High School with his math class during the first period of the school day. (Testimony Student, Mr. Follman, Mother)
 10. About five minutes after the class began, the Student was "zoned out" and then saw a threat that was handwritten on the casing of the computer in front of him. (Testimony Student) The writing stated, "I will blow up the school 3/26/01." (Exhibits B-32, B-43) The Student alerted the teacher about the threat. (Testimony Student, Mr. Beavers) Initially the Student denied that he had written the threat on the computer casing. (Testimony Student, Mr. Beavers [School Security Official], Mr. Follman)

[School Housemaster]) Shortly thereafter the Student admitted that the threat was his writing. (Testimony Student, Mr. Beavers) The Student indicated that he was not aware that he was writing the threat, and did not have a grip on reality when he wrote the threat. (Testimony Student) The Student felt he was in a trance-like or blackout state when the threat was written. (Testimony Student) At the time that this blackout state occurred, the Student was sharing a computer with another student. (Testimony Student, Mr. Beavers) The other student was asked by the security official whether he saw the Student write the threat, but was not asked anything about the Student's demeanor at the time of the incident. (Testimony Mr. Beavers)

11. The security official requested that the Student write a statement about the writing. (Testimony Student, Mr. Beavers) The statement written contemporaneously by the Student noted "I was writing something on the computer. *I was unaware of the stupid writing.*" (Exhibit P-3, Emphasis added)
12. The Student's Parents were summoned to the school because the Student was involved in a serious incident. (Testimony Mother, Mr. Follman)
13. When the Parents arrived at the School, the Student was upset and crying in the office. (Testimony Mother) The Mother asked the Student whether the medication that the Student was taking caused the incident. (Testimony Mr. Follman) The Mother told Mr. Follman, the school housemaster, that the Student was on medication and that the other doctor should be contacted immediately. (Testimony Mother)
14. The week before this incident the Parents and the Students had an appointment with David Brizer, M.D., Chair of the Department of Psychiatry at Norwalk Hospital. (Testimony Dr. Brizer, Student, Mother) Dr. Brizer is associated with the school-based health center. (Testimony Mother, Dr. Brizer)
15. At the appointment, Dr. Brizer prescribed Wellbutrin for the Student. (Testimony Dr. Brizer, Student, Mother) Dr. Brizer diagnosed the Student with ADHD "inattentive" type, and Depressive Disorder –NOS. (Testimony Dr. Brizer) The Student was initially prescribed one pill per day of the Wellbutrin. (Testimony Dr. Brizer, Mother, Student) Wellbutrin was prescribed because the doctor thought it could alleviate both the symptoms of ADHD and depression with one medication. (Testimony Dr. Brizer) If there is coexisting depression, Wellbutrin is an appropriate medication for ADHD. (Testimony Dr. Brizer)
16. The Student began taking Wellbutrin on Thursday, March 15. (Testimony of Mother, Student, Dr. Brizer) The student began to experience side effects from the psychotropic medication within the first day he began to take it. (Testimony Mother, Student) He experienced lightheadedness, diarrhea and nausea during the first day, which continued throughout the time he was on the medication. (Testimony Student, Mother) On Friday, March 16 the Student was sent home from school due to these symptoms. (Testimony Student, Mother)

17. The Student continued to experience side effects from the medication, including dizziness, insomnia, headaches, diarrhea and nausea through the weekend and throughout the time he was on the medication. (Testimony Mother, Student) The Student appeared agitated over the weekend. (Testimony Mother) This was atypical, out-of-character behavior. (Testimony Mother)
18. In accordance with the doctor's instructions, the dosage of the Wellbutrin was increased on Sunday, March 18, to two pills per day. (Testimony Mother, Student, Dr. Brizer) The Mother thought the medication should continue and increase, even in light of the side effects, because she thought that the doctor had said the side effects would diminish over time. (Testimony Mother)
19. On Monday, March 19, the Student's side effects appeared to increase. (Testimony Mother, Student) His insomnia continued, and he became very jittery, fidgety and felt he was twitching for no reason. (Testimony Student) He was "dazing out" more than usual, felt like his skin was crawling, and felt pale and flushed. (Testimony Student)
20. During this time, the Student was participating in baseball tryouts. (Testimony Student, Mother) At the tryouts, the Student was one of approximately 60 students trying out for the freshman and JV baseball teams. (Testimony Student) Two or three coaches were present at the time. (Testimony Student) The Student experienced lightheadedness and other side effects during the baseball tryouts, but didn't tell the coaches about it because he wanted to make the team. (Testimony Student)
21. On Tuesday afternoon, the Mother was called by a teacher who told her that the Student had been laughing inappropriately that day, and appeared unfocused at class. (Testimony Mother) The Student said he began laughing uncontrollably during a Tuesday school period, which episode had been precipitated by a minor incident. (Testimony Student) He could not stop himself from laughing, and felt as though he was outside himself looking in. (Testimony Student) When the laughing finished, the Student felt his heart racing, and felt as though he was going to faint. (Testimony Student) When the Student reported this incident and his agitation to his Parents, his Mother told him he needed time for the medication to work. (Testimony Student)
22. On Wednesday, after the Parents met with Board officials regarding the bomb threat, the Parents immediately took the Student to see Dr. Brizer. (Testimony Student, Mother, Dr. Brizer) Dr. Brizer said that the Student should be taken off the medication to see if his physical and mental states improve. (Testimony Mother) After the Wellbutrin was discontinued, the side effects that the Student had been experiencing ended. (Testimony Student, Mother, Dr. Brizer) Thereafter, the Student was placed on Zoloft. (Testimony Mother, Dr. Brizer, Exhibit B-39) The only side effect that he experienced from this new medication was slight drowsiness. (Testimony Mother)
23. According to Dr. Brizer, potential side effects of Wellbutrin include dizziness, nervousness, hallucinations, confusion, nausea, diarrhea, decreased memory,

fevers/chills, delusions, and inappropriate behavior. (Testimony Dr. Brizer, Exhibit P-11) The Student's reaction to the medication fell within these potential side effects. (Testimony Dr. Brizer)

24. According to Dr. Brizer, it is highly probable that the Wellbutrin medication served as the trigger to the episode of the blanking out and writing the bomb threat on the computer. (Testimony Dr. Brizer) Dr. Brizer testified that it is highly probable that the medication either contributed to or caused the behavior resulting in the bomb threat being written on the computer. (Testimony Dr. Brizer) Dr. Brizer's conclusion was based on his knowledge of the psychotropic medication's side effects. (Testimony Dr. Brizer) It is based on Dr. Brizer's discussions with the Parents and with the Student alone, as well as his personal observation of the Student. (Testimony Dr. Brizer) It is also based on the facts that the Student had not experienced blanking out episodes prior to taken the medication, and that the Student had experienced other side effects of the medication. (Testimony Dr. Brizer)
25. Dr. Brizer is Board Certified in Psychiatry and Adolescent Psychiatry. (Testimony Dr. Brizer) He has treated more than 200 adolescent patients with learning disabilities, and his work with adolescent patients constitutes more than one-third of his practice. (Testimony Dr. Brizer)
26. Dr. Brizer had taken a history of the Student before determining that the Student's ADHD and depression should be treated with Wellbutrin. (Testimony Dr. Brizer) Dr. Brizer continues to treat the Student, and has not changed his diagnosis of ADHD with mild depression. (Testimony Dr. Brizer)
27. Steven Kant, M.D., is the psychiatrist who testified on behalf of the Board. His practice includes experience with children and adolescents, as well as work as a consultant for various school districts. (Testimony Dr. Kant) Dr. Kant never examined the Student, but based on the information provided to him, he has no reason to disagree with Dr. Brizer's diagnosis of ADHD with mild depression. (Testimony Dr. Kant) Dr. Kant agreed that Wellbutrin would be prescribed for ADHD with depression, although he would prescribe Wellbutrin as a second or third line of medication. (Testimony Dr. Kant)
28. Dr. Kant indicated that if the patient experiences a psychosis-like reaction such as memory blackout, it would be an alarming side effect. (Testimony Dr. Kant) If a patient would experience such an altered state, Dr. Kant said he would expect that the patient would act inappropriate in other situations at that time. (Testimony Dr. Kant) He would also expect that those in proximity to the child would presumably notice odd behavior. (Testimony Dr. Kant)
29. Dr. Kant initially testified that there was no likelihood that the Student could have written the threat, and not realized it, experiencing a shift in his mental status due to the Wellbutrin. (Testimony Dr. Kant) Dr. Kant further indicated, however, that if there were other incidences that showed a shift in mental status, with a temporal

connection, he would be less certain to say that the altered status did not occur. (Testimony Dr. Kant) Dr. Kant felt that if, along with the memory blackout, there was truly an uncontrollable laughing incident, that would be relevant in determining whether the patient was experiencing an altered state due to the medication. (Testimony Dr. Kant) Dr. Kant further said that if you waited it out, with some of the side effects, things might get worse. (Testimony Dr. Kant)

30. On March 21, 2001 the Student was suspended from school for ten school days for violation of Board of Education Policy #5144. . . (for the) (b)omb threat written on computer. (Exhibit B-30) The Suspension Notification further indicated that an expulsion hearing would be held prior to the student's return to school. (Exhibit B-30)
31. On March 22, the Board scheduled a Manifestation Determination review for March 29. (Exhibit B-31)
32. The Manifestation Determination review team convened on March 29, 2001. The team members present were a special education supervisor, a school administrator, the Parents, the school psychologist, a school social worker, a regular education teacher, the Student's guidance counselor, the school nurse, the Student, and the Parents' lay advocate. (Exhibit B-37, Testimony Mother, Ms. Shippee)
33. According to the special education administrator Ms. Shippee, the Parents were very clear at the Manifestation Determination review that the medication caused the behavior resulting in the written bomb threat. (Testimony Ms. Shippee)
34. At the Manifestation Determination review, the Parents shared with the team two notes from Dr. Brizer which indicated that on the date of the incident, the Student was taking Wellbutrin, a medication that can occasionally cause inappropriate behavior, mood swings, and agitation. (Testimony Mother, Exhibits P-1, B-36) In the review, the school nurse noted that the side effects that the Student may have experienced are not common. (Exhibit B-37) No testimony was presented by any witness, nor is there any mention in the minutes, regarding whether the school psychologist was asked to consider whether the psychotropic drug could cause these side effects during the manifestation determination. (Exhibit B-37, Testimony Ms. Shippee, Mother)
35. Some of the team members discussed whether they had seen any unusual behavior prior to the written bomb threat incident. (Testimony Ms. Shippee, Mother, Exhibit B-37) The regular education teacher who was present when the incident occurred indicated at the manifestation review that he did not observe any unusual behavior prior to the incident. (Testimony Ms. Shippee) The written bomb threat incident, however, occurred in the first 5 or 10 minutes of the first period of the day and, therefore, there was little time for that teacher to observe any prior behavior on the date of the incident. (Testimony Mother, Student, Mr. Beavers) According to Ms. Shippee, Mrs. MacDonald, the special education teacher, indicated to the team that she did not recall calling the Mother about the Student's laughing incident.

(Testimony Ms. Shippee) This, however, was not reported in the minutes recorded by Ms. Shippee, and it is directly contrary to the recollection of the Mother. (Testimony Ms. Shippee, Mother, Exhibit B-37) The special education teacher did not testify at the hearing.

36. The minutes indicate that the baseball “[c]oaches did not see any unusual behaviors during the week he was on medication.” (Exhibit B-37) No coaches, however, were asked to report about the Student’s behavior. (Testimony Ms. Shippee) Rather, the conclusion was reached because no unsolicited negative feedback was received from the coaches. (Testimony Ms. Shippee) Despite the notation in the minutes of the Manifestation Determination review, the Parents did not report to the team that the Student felt fine. (Testimony Mother, Exhibit B-37)
37. The team reviewed reports from teachers. (Testimony Ms. Shippee, Exhibits P-7, B-37) These “reports” were merely forms requesting academic progress reports with spaces for comments regarding attitude in class, preparation of work, achievement to date and further comments. (Exhibit P-7) The form did not include any question regarding whether any of the teachers had noticed any unusual behavior during the relevant time period. A few days prior to the manifestation determination review, the forms were distributed to the teachers, and the teachers were told it was for a PPT. (Testimony Ms. Shippee) No testimony was offered on which days the Student had classes with these teachers, and whether the observed the Student in the relevant time period.
38. According to the special education administrator, the members of the team did not feel that the behavior related to the use of the Wellbutrin, because they had not seen any unusual behavior. (Testimony Ms. Shippee) The team reportedly was concerned because the doctor’s letters did not say that the medication definitely caused the incident. (Testimony Ms. Shippee) The Parents disagreed with the team’s conclusion regarding the connection between the medication and the behavior. (Testimony Mother)
39. The Parents disagreed with the other members of the team, who concluded that the Student’s disability did not impair his ability to understand the impact and consequences of his behavior. (Testimony Ms. Shippee, Mother)
40. During the manifestation determination review, there was extensive discussion regarding the prescribed medication. (Testimony Mother, Ms. Shippee, Exhibit B-37) The team discussed that the Student’s work completion has varied throughout the school year. (Exhibit B-37) The team further discussed that the medication was prescribed for the Student’s attention difficulties, to help the Student focus. (Exhibit B-37, Testimony Mother, Ms. Shippee) The Father had told the team that the Wellbutrin was taken for the learning disability and for depression. (Testimony Mother) The Parents frequently used the generic term “learning disability” to include ADD/ADHD in their discussions with the Board representatives, and at this hearing. (Testimony Mother)

41. Despite the extensive discussions at the manifestation determination review regarding the prescribed medication, the discussion that the medication was prescribed for attention-related problems, and the discussion that the Student's work completion had varied throughout the school year, the team concluded that the Individualized Education Program was appropriate. (Testimony Ms. Shippee, Exhibit B-37) The team merely discussed that the Student had a disability; there was no discussion as to the Student's specific disability, except for the discussion about that the Student's work completion has varied, and that the medication was prescribed to help the Student focus. (Testimony Mother, Exhibit B-37) The team did not have any lengthy discussions regarding the Student's IEP. (Testimony Mother) The Mother did not feel she could join in the discussion of whether the IEP was appropriate. (Testimony Mother)
42. The Manifestation Determination review team concluded that the behavior was not a manifestation of the Student's disability, and the incident was referred for disciplinary action. (Testimony Ms. Shippee, Exhibit B-37)

CONCLUSIONS OF LAW:

1. The Student is eligible for special education and related services as set forth in the Individuals with Disabilities Education Act, 20 U.S.C. Section 1401, et. seq.
2. The Individuals with Disabilities Education Act has specific procedures that must be followed if disciplinary action is taken against a student who is eligible for special education. If a disciplinary action involving a change in placement for more than 10 days is contemplated for a child with a disability who has engaged in behavior that violated any rule or code of conduct of the local educational agency that applies to all children. . . a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action. 20 U.S.C. Section 1415(k)(4)(A), 34 C.F.R. Section 300.519, et. seq. Such a review was required in this matter.
3. The statutes and regulations provide detailed procedures for what constitutes a proper manifestation review. In carrying out this review, the team may determine that the behavior of the child was not a manifestation of such child's disability only if the team:
 - “(i) first considers, in terms of behavior subject to disciplinary action, all relevant information including –
 - (I) evaluation and diagnostic results, including such results or other relevant information supplies by the parents of the child;
 - (II) observations of the child and;
 - (III) the child's IEP and placement; and
 - (ii) then determines that –
 - (I) in relationship to the behavior subject to disciplinary action, the

child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;

(II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action and;

(III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action. 40 U.S.C. Section 1415(k)(4)(C)

4. If the team determines that *any* of the standards were not met, the behavior must be considered a manifestation of the child's disability. 34 C.F.R. Section 300.523(d) (Emphasis added)
5. If, in the required review, deficiencies in the child's IEP or placement or in their implementation are identified, the Board must take immediate steps to remedy those deficiencies. 34 C.F.R. Section 300.523(f)
6. The disciplinary provisions of the Act also provide protection to a child who has not yet been determined to be eligible for special education and related services, if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. 40 U.S.C. Section 1415(k)(8)(A)
7. Such a basis of knowledge is found if (i) the parent of the child has expressed concern in writing to the personnel of the appropriate educational agency that the child is in need of special education and related services; (ii) the behavior or performance of the child demonstrates the need for such services; (iii) the parent of the child has requested an evaluation of the child; or (iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to the other personnel of the agency. 40 U.S.C. Section 1415(k)(8)(B)
8. If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability, the parent may request a hearing, which shall be expedited. 40 U.S.C. Section 1415(k)(6)
9. In reviewing the decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of 40 U.S.C. Section 1415(k)(4)(C). 40 U.S.C. Section 1415(k)(6)(B)
10. In this appeal of the manifestation review, the Parents are asserting that the behavior was causally related to the identification of ADD/ADHD, as the behavior was the result of a side effect of the medication prescribed for the ADHD and mild depression. At the time that this incident occurred, the Student was determined to be eligible for special education and related services, although for a different disability.

Under the IDEA statute's plain language, the manifestation determination review applies to students alleging both a disability for which services are already being provided and a "new" disability for which they are not. Richland School District v. Thomas P. by Linda P., 32 IDELR 233 (W.D. Wis., 2000) Therefore, the manifestation review was required to consider whether the behavior was related to the treatment received due to the Student's ADHD.

11. IDEA's legislative history supports that the scope of the hearing officer's review under 20 U.S.C. Section 1415(k)(6)(B)(I) is *de novo*. Richland School District, Id. The hearing officer's task is not simply to review the findings of the team; rather [s]he is to take the place of the IEP Team and make [her] own independent determination of whether the agency has shown that the child's behavior was a manifestation of his or her disability in accordance with Section 1415(k)(4)(C).
12. The conclusions of the manifestation review team are not supported by the record in the minutes and testimony of those present; nor are the conclusions supported by the evidence presented in the hearing. Therefore, the manifestation review decision must be overturned both based on a *de novo* review of the team's decision, and based on the information before the manifestation determination review team.
13. The minutes of the manifestation determination review, the child's IEPs, previous psychological testing, and progress reports are replete with references regarding the Student's problems with attention and focus. The last completed psychological evaluation recommended attention-related adaptations to the Student's regular education. Moreover, the team discussed the fact that the medication was prescribed for the Student's attention difficulties, to help the Student focus. The manifestation review team is required, in accordance with 40 U.S.C. Section 1415(k)(4)(C), to consider this information in carrying out this review. The record does not reflect such a required review.
14. The Guidelines for Identifying Children with Learning Disabilities, 2nd Edition, developed by the Connecticut State Department of Education, 1999, provides that "[I]f medical conditions like an attention-deficit and hyperactivity disorder are present, the team needs to consider the impact or causation these conditions have on the student's learning problem. Identifying a student as learning disabled because the student is ADHD is an inappropriate identification." Based on the manifestation determination team's required review, and based on these state guidelines, the team erred in failing to reconsider the Student's IEP, and his identification, in light of the record before it.
15. Dr. Brizer's letters and the other relevant information supplied by the Parents to the manifestation review team, the observations of the child, the child's IEP which included adaptations for keeping to task and preferential seating, and the evaluation and diagnostic results which were part of the child's record, support the conclusion that the Student should be identified as Other Health Impaired due to his ADHD.

16. The manifestation determination review team was informed by way of the doctor's letters, and other information shared by the Parents, that the Student did experience a reaction to the psychotropic medication. The medication was prescribed due to the Student's disability, and impaired his ability to understand the impact and consequences of his behavior, as well as impaired his ability to control the behavior that was subject to disciplinary action. Therefore, the behavior was a manifestation of the child's disability. 40 U.S.C. Section 1415(k)(4)(C)
17. The team's reliance on the school nurse's comment that the side effect that the Student experienced are not common is given no weight. The Parents submitted documentation from the treating psychiatrist that indicated that the Student experienced side effects. It is irrelevant whether the side effects are common or not. What is relevant is whether the Student experienced the uncommon side effects. The weight of the evidence supports the conclusion that the Student did experience the side effects of the medication, and was experiencing the side effects at the time of the incident. At that time of the review, the manifestation review team erred in its conclusion that the Student understood the impact and consequences of his behavior, and was able to control his behavior. The standards set forth in 1415(k)(4)(C)(ii)(II) and 1415(k)(4)(C)(ii)(III) were met. Therefore, the behavior must be considered a manifestation of the child's disability. 34 C.F.R. Section 300.523(d)
18. The Board has claimed that the issue of the identification is not properly before this hearing officer as this issue was not properly raised at a planning and placement team meeting for the child. *See Conn. Agencies Regs. Sec. 10-76h-3(g)* In the manifestation review, the issue of identification was not artfully raised by the Parents or their lay advocate. Nevertheless, the issue was raised sufficiently so that the Board was on notice as to the claim that the Parents disagreed with the Manifestation Review because the Student's behavior was related to a side effect from the medication prescribed for his problems with focus and attention. Therefore, the Board was on notice that the disability related to the child's attention problems, whether based on the identification of Specific Learning Disability or Other Health Impaired.
19. A *de novo* review, which considers the additional evidence presented at the hearing, rather than merely a review of the findings of the manifestation review team, also supports the conclusion that the manifestation determination review team erred in failing to revise the Student's IEP in accordance with 34 C.F.R. Section 300.523(f). Dr. Brizer, the treating psychiatrist, diagnosed the Student with ADHD with mild depression. Dr. Kant did not disagree with this diagnosis. The Student's records include many notations of inattentiveness, inability to focus, and difficulties staying on task. The manifestation review team erred when it failed to consider and conclude that the Student had been misidentified with a Specific Learning Disability, rather than Other Health Impaired due to the diagnosis of ADHD, or that the ADHD diagnosis was in addition to the Student's Specific Learning Disability.
20. A *de novo* review supports the conclusion that the manifestation determination review team erred in its determination that the behavior was not a manifestation of such

child's disability. Dr. Brizer concluded that it was highly probable that the medication prescribed due to the Student's ADHD contributed or caused the episode of blacking out, when the Student wrote the bomb threat. Dr. Kant, while initially stating that there was no likelihood that the Student could have been in an altered mental state when he wrote the bomb threat, could not rule out that the Student would experience an altered mental state if he also experienced other such episodes near the same time.

21. Based on the evidence presented at the hearing, the Student did experience a reaction to the psychotropic medication which was prescribed due to his disability, and which impaired his ability to understand the impact and consequences of his behavior, as well as impaired his ability to control the behavior which was subject to disciplinary action. Based on the record presented at this hearing, the child's behavior was a manifestation of the child's disability, in accordance with the review requirements set forth in U.S.C. Section 1415(k)(4) and 34 C.F.R. Section 300.519, et seq.
22. The Board has not demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of 40 Section 1415(k)(4)(C).
23. In light of the questions regarding the child's IEP, and his identification, the Board must convene a PPT to take immediate steps to remedy the deficiencies in the IEP consistent with 34 C.F.R. Section 300.523(f).

FINAL DECISION AND ORDER:

1. The Student's behavior was a manifestation of his disability.
2. The Board is hereby ordered to convene a PPT to determine whether the IEP is appropriate in light of Dr. Brizer's diagnosis of ADHD and mild depression.
3. The Student shall be reinstated with full rights.