

This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

DECISION

Child's Name: S.B.

Date of Birth: [redacted]

Date of Hearing:

November 9, 2012

OPEN HEARING

ODR Case # 13163-1213KE

Parties to the Hearing:

Representative:

Parent

Pro Se

Imagine Penn Hills Charter School
of Entrepreneurship
200 Penn School Drive
Verona, PA 15147

Jennifer McLoughlin, Esquire
350 Eagleview Boulevard
Suite 100
Exton, PA 19341

Date Record Closed:

November 9, 2012

Date of Decision:

November 26, 2012

Hearing Officer:

Jake McElligott, Esquire

INTRODUCTION AND PROCEDURAL HISTORY

[The student] (hereinafter “student”)¹ is [an elementary school-aged] student who attends the Imagine Penn Hills Charter School of Entrepreneurship (“Charter School”). There is no dispute that the student qualifies as a student with a disability under the terms of the Individuals with Disabilities in Education Improvement Act of 2004 (“IDEIA”) and relevant Pennsylvania special education regulations (“Chapter 711”).² The dispute centers on whether the Charter School exceeded its statutory authority to remove the student for 45 school days for possessing a weapon.

The Charter School contends that it acted appropriately under its statutory authority to remove the student unilaterally to a private placement when the student was found in possession of [sharp objects] not belonging to the student, [objects] deemed by the Charter School to be weapons, and allegedly threatened another student with the [objects]. The student’s parent counters that the decision to remove the student from the Charter School was flawed and that the student should be returned to the Charter School.

¹ The generic use of “student”, rather than a name and gender-specific pronouns, is employed to protect the confidentiality of the student.

² It is this hearing officer’s preference to cite to the pertinent federal implementing regulations of the IDEIA at 34 C.F.R. §§300.1-300.818. *See also* 22 PA Code §§711.1-711.62.

For the reasons set forth below, I find in favor of the Charter School.

ISSUES

Did the Charter School exceed its authority in unilaterally removing the student to a private placement as the result of a possession of a weapon?

FINDINGS OF FACT

1. In February 2011, the student was identified by the school district the student was then attending as a student with specific learning disabilities in reading and mathematics. (Charter School Exhibit ["S"] -42).
2. The student began to attend the Charter School for the 2011-2012 school year. (S-36).
3. Over the course of the 2011-2012 school year, the student experienced numerous disciplinary incidents on the school bus and in school. (CS26, S-27).
4. On September 18, 2012, the student's teacher was informed by another student ("student X") that the student had threatened to [injure] student X with [sharp objects]. (S-19).
5. The student's teacher searched the student's desk and found four [sharp objects]. (S-19, S-20).
6. After securing the [objects], the teacher questioned the student. The student told her that another student ("student Y"), whose name the student did not know, had given the [objects] to the student on the school bus that morning. (S-19).
7. The student indicated that a third student ("student Z") could identify student Y. The teacher called over student Z who identified student Y as a 2nd grade student. (S-19).

8. Student Y had the [sharp objects at] the Charter School [for a specific purpose]. Neither student Y nor student Z knew how the student came into possession of the [objects]. (S-18, S-19).
9. On September 19, 2012, as a result of the incident and as required under 22 PA Code §12.6(b)(1)(iv), the Charter School held an informal hearing before implementing a 10-school day suspension. (S-15).
10. At the informal hearing related to the 10-school day suspension, the Charter School informed the parent that it intended to hold a manifestation determination hearing on September 25, 2011 to determine if the behavior was a manifestation of the student's disability. (S-15).
11. The student was suspended over the 10 school days of September 20-October 3, 2012. (Hearing Officer Exhibit-1; S-15).
12. The manifestation determination hearing was rescheduled to September 27, 2011 to accommodate the parent's schedule. (Notes of Testimony ["NT"] at 94-95).
13. On September 25, 2011, the student took part in an evaluation by a private evaluator. (S-14).
14. On September 27, 2011, the manifestation determination hearing was held. The result of the manifestation determination process was a finding that the student's behavior was not a manifestation of the student's disability. The manifestation determination worksheet also indicated that the Charter School was seeking a 45-school day unilateral private placement for the student's violation of the student code of conduct for possessing a weapon. (S-13).
15. On September 27, 2011, while the parties had gathered for the manifestation determination hearing, the Charter School requested permission to re-evaluate the student. (S-12).
16. At the manifestation determination hearing, the student's parent shared the fact that the student had diagnoses of attention deficit hyperactivity disorder and other concerns but did not produce any report or documentation to substantiate the diagnosis. The evaluation that took place two days earlier had not yet resulted in a report. (NT at 154-156, 180-181, 283-286).

17. On September 28, 2011, the Charter School issued a notice of recommended educational placement (“NOREP”), indicating that the Charter School would seek a unilateral 45-school day private placement of the student. (S-11).
18. On October 2, 2012, the manifestation determination worksheet, the NOREP, and the permission to evaluate were returned by parent. On the manifestation determination worksheet and NOREP, the student’s parent indicated disagreement and on both documents requested special education due process. The student’s parent consented to the re-evaluation. (S- 11, S-12, S-13; NT at 172-178).
19. The Charter School identified and worked with a private placement for the student. The student began to attend the private placement on October 16, 2012. (S-8, S-9; NT at 116-117, 182-187).
20. The private evaluation report was provided to the Charter School by parent in mid-October. (NT at 154-155).
21. The private placement provides specially designed instruction through a special education teacher and a classroom aide according to the student’s individualized education plan in a classroom of nine students. (NT at 43-70).
22. On or before December 1, 2012, the Charter School’s re-evaluation report will be issued. (HO-1).
23. On Friday, December 7, 2012, the student’s 45-school day unilateral placement will end. (HO-1).

DISCUSSION AND CONCLUSIONS OF LAW

Where a student with a disability “possesses a weapon at school”, school authorities are authorized to remove the student to an interim alternative educational placement for a period not to exceed 45-school days. (34 C.F.R. §300.530(g)(1)). The removal may be undertaken

unilaterally and without regard to whether the behavior, in this case being in possession of a weapon, is a manifestation of the student's disability. (34 C.F.R. §300.530(g)).³

The provisions of IDEIA adopt other federal statutory definitions for “weapon” and “serious bodily injury”. A weapon is defined as “a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury.” (18 U.S.C.A. §930(g)(2)). “Serious bodily injury” is defined as “bodily injury which involves— a substantial risk of death, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.” (18 U.S.C.A. §1365(h)(3)).

Here, the instruments in question—[sharp objects]—are weapons. The instruments are capable of causing serious bodily injury in the form of extreme physical pain [and] protracted impairment of bodily functions.

With the [objects] meeting the statutory definition of weapons under the IDEIA, the Charter School has the authority to remove the student unilaterally to an interim alternative placement. It did so appropriately and with regard for the implementation of the student's IEP.

³ At 22 PA Code §711.61(b), Pennsylvania special education regulations adopt the provisions of 34 C.F.R. §300.530(g).

Accordingly, the Charter School did not exceed its authority in unilaterally placing the student in a private placement as of October 4, 2012.

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ORDER

In accord with the findings of fact and conclusions of law as set forth above, in unilaterally removing the student to a private placement as of October 4, 2012, the [Redacted] Charter School acted within its statutory authority under 34 C.F.R. §300.530(g).

The student shall be returned to the charter school placement as deemed appropriate by the student's IEP team but no later than December 10, 2012.

Any claim not specifically addressed in this decision and order is denied.

Jake McElligott, Esquire

Jake McElligott, Esquire
Special Education Hearing Officer

November 26, 2012