

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. East Lyme Board of Education

Appearing for the Student: Attorney James C. Wing, Jr.  
51 Gillette Street  
Hartford, CT 06105-2636

Appearing for the Board: Attorney Frederick Dorsey  
Siegel, O'Connor, Zangari.  
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Appearing Before: Scott P. Myers, Hearing Officer

**FINAL DECISION AND ORDER  
(Eligibility and Manifestation Determination)**

**ISSUES:**

1. In addition to being eligible to receive special education and related services on the basis of OHI-ADD/ADHD and OHI-Depression, is the Student eligible to receive special education and related services on the basis of an SED designation?<sup>1</sup>
2. Was the possession of Prozac by the Student at school on November 7, 2002 a manifestation of the Student's disability(ies)?
3. Was the possession of Tylenol with Codeine by the Student at school at any time between November 1 and November 7, 2002 a manifestation of the Student's disability(ies)?<sup>2</sup>

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<sup>1</sup> Issue # 1 as framed in the January 13, 2003 Second Pre-Hearing Conference Report and Order assumed that the Student had not been identified as eligible at the January 8, 2003 PPT based on OHI-Depression. The parties subsequently stipulated to that designation as well as OHI-ADD/ADHD. Accordingly, what remained for hearing was a disagreement as to an SED designation.

<sup>2</sup> Issue # 3 as framed in the January 13, 2003 Second Pre-Hearing Conference Report and Order assumed that the Student was not in possession of Tylenol with Codeine at school other than on November 7, 2002. Based on the Student's testimony, it is likely that she was also in possession of Tylenol with Codeine at school on November 6, 2002. To moot the issue permanently, Issue # 3 is restated to include the period November 1 through November 7, 2002.

**SUMMARY:**

This case illustrates both the fact that teenagers sometimes lead secret lives, and what can happen when the adults in their lives do not notice. The Student is commended for her candor and openness in discussing what clearly are very difficult and painful issues with which she struggles. Counsel for the parties are commended for their professionalism, attention, flexibility and willingness to work collaboratively with each other and the Hearing Officer to permit an expeditious resolution of the disputed issues. For the reasons set forth more fully herein:

1. The possession of Prozac by the Student at school on November 7, 2002 is a manifestation of her disability(ies) and any disciplinary proceedings pending against her based on that event should be terminated, as required by Federal and State law.
2. The possession of Tylenol with Codeine by the Student at school at any point from November 1, 2002 through and including November 7, 2002 is also a manifestation of her disability(ies) and any disciplinary proceedings pending against her based on that event should be terminated, as required by Federal and State Law.
3. The Student is eligible for special education and related services under Federal and State law as of and after November 7, 2002 as Other Health Impaired (“OHI”) based on Attention-Deficit/Hyperactivity Disorder (“ADD/ADHD”) (DSM-IV-TR 314.01) (combined inattentive and hyperactive type) and Major Depression (DSM-IV-TR 296.20).
4. The Student is not, at this time, eligible for special education and related services on the basis of a “serious emotional disturbance” (“SED”) designation.
5. Prior to the events on November 7, 2002 giving rise to this proceeding and the disciplinary proceedings discussed herein, the Board did not have “knowledge” within the meaning of IDEA Regulation 34 C.F.R. § 300.527(b) that the Student was a “child with a disability” who was entitled to special education and related services.
6. A PPT should be convened and an IEP developed to permit the Student to return to school on or by January 27, 2003 or as soon thereafter as she is able to do so.<sup>3</sup>

**PROCEDURAL HISTORY:****Summary:**

The Parents commenced this proceeding by request dated December 19, 2002 seeking a determination of the Student’s eligibility and classification for purposes of entitlement to special education and related services, and interim placement pending resolution of the due process and disciplinary proceedings. (HO-1; B 1; B 2) As of the January 3, 2003 Pre-Hearing Conference, the parties were awaiting the completion of the Board’s psychoeducational and educational evaluations of the Student, which were expected to be completed in February 2003 after the scheduled date for the issuance of the final decision and order. An eligibility and manifestation PPT would be convened upon completion of the evaluation. Hearing was scheduled for January 16 and January 29, 2003 to permit resolution of the issues raised by the Parents and issuance of a final decision by the required date. As of January 23, 2003, the Student would have been out of school for 45 days.

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<sup>3</sup> See discussion in footnote 14.

The evaluations were completed more expeditiously than anticipated, and a PPT was held on January 8, 2003 at which the Student was identified as eligible to receive special education and related services on the basis of a designation of OHI – ADD/ADHD and OHI-Depression, but not SED. That PPT determined that the Student's offer of a Prozac to a male peer while at school on November 7, 2002 was a manifestation of her disability but that the possession of the Prozac and of Tylenol with Codeine at school on that day was not. Accordingly, the expulsion proceeding which had been suspended was recommenced with a hearing scheduled for January 23, 2003.

At the request of the parties, a second Pre-Hearing Conference was convened on January 14, 2003, at which the Parents requested that issues regarding the eligibility and manifestation determinations of the January 8, 2003 PPT be addressed in this proceeding. The Board did not object to doing so, and the parties concurred with the Hearing Officer's proposal to bifurcate the proceeding such that: eligibility and manifestation determination issues would be addressed at the January 16, 2003 hearing; the Hearing Officer would issue either a Final Decision (if the Hearing Officer believed the record was sufficient to enable such a decision to be made) or an interim order (if requested by the parties or if the Hearing Officer concluded that the record was not sufficiently developed to render a Final Decision) regarding those issues on or by January 20, 2003; and the January 29, 2003 hearing date would be reserved to address any remaining issues.

Accordingly, the January 16, 2003 hearing focused on presentation of evidence deemed necessary by each party to enable the Hearing Officer to decide the eligibility and manifestation issues. The following witnesses testified: (1) Christopher Mountain, a licensed and certified school psychologist employed by the Board who performed a psychoeducational evaluation of the Student in December 2002 and who was identified as the Board witness as to the eligibility and manifestation determinations made at the January 8, 2003 PPT; (2) Henry Crabbe, Ph.D., M.D., a psychiatrist who evaluated the Student on November 25, 2002 and is currently monitoring her medication regimen; (3) the Student; and, (4) the Student's Father. At the conclusion of this testimony, both parties indicated that they had no further witnesses or evidence to offer as to the eligibility and manifestation issues.

## **B. BOARD EXHIBITS**

On January 9, 2003, the Board submitted exhibits marked B 1 through B 107. The Board identified most of the pages of its exhibits as a separate exhibit number (i.e., page 1 was identified as B 1 and page two as B 2 even if they were part of the same document). Other multipage documents were identified with one exhibit number (e.g., B 106(b), pages 1 -10). Although not in the proper format, the labeling is sufficient to permit development of an appropriate record. Where Board-submitted exhibits are referenced herein the reference will be to the specific page number the Board used to designate that page of its record unless otherwise noted. By agreement of the parties, all of these Board exhibits were admitted into evidence as business records except, as discussed with and agreed to by the parties on the record, as follows:

- B 3-7; 10-11; 12-13; 20; 25-26; These documents are letters exchanged between Counsel for the Student and either Counsel for the Board<sup>4</sup> or Counsel for the Administration<sup>5</sup> and are being admitted into the record to establish, to the extent necessary, the dates and nature of communications between the parties (including information that was exchanged between the parties) and agreements reached between them regarding interim disposition of the Student pending the outcome of these proceedings. In reaching this decision, the Hearing Officer has not relied on factual assertions in these letters regarding the underlying disputed events, if any.
- B 9 This is a letter dated December 3, 2002 from Dr. Crabbe regarding his November 25, 2002 evaluation of the Student. The Hearing Officer has relied in this decision only on the following portion of that letter “[The Student] received a psychiatric . . . psychiatric disorders.” The rest of the letter states legal opinions and conclusions offered by Dr. Crabbe. The Hearing Officer did not consider any of those legal conclusions or opinions in reaching his decision.
- B 27; 46; 47 These documents are statements obtained from three students at East Lyme High School regarding the November 7, 2002 incident who are identified by full name in the documents. The Hearing Officer will redact all but the first letter of the first name of any student identified in these documents, other than the Student.
- B 106 This is a copy of the Student’s Social Security Card. The Hearing Officer will redact her Social Security Number.
- B 107 This is the Board’s witness list, which was not admitted as an exhibit.
- B 106c, pages 10-26 This is an excerpt from the DSM-IV-TR concerning Major Depressive Disorder (DSM-IV-TR pages 20, 349-356, 369-376. At the Hearing, the Hearing Officer indicated that he would take notice of these materials. Upon further consideration, it appears that these pages were part of the materials considered by school staff at the January 8, 2003 PPT. Accordingly, in addition to taking notice of these pages, the Hearing Officer will also admit them into the record as part of the Board’s exhibit of documentation concerning the January 8, 2003 PPT.

The Board’s original submission of B 30 did not include the back page of that document. At the Hearing Officer’s request and by agreement of the parties, the back page was provided at Hearing, marked as exhibit B 30a and admitted into evidence as a business record.

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<sup>4</sup> As used herein, the term “Counsel for the Board” refers to Mr. Dorsey, who is representing the Board in this due process proceeding.

<sup>5</sup> As used herein, the term “Counsel for the Administration” refers to Mr. O’Connor, who is representing the administration in pending expulsion proceedings involving the Student. Mr. Dorsey and Mr. O’Connor are affiliated with the same law firm.

During his testimony, Dr. Crabbe referred to various notes from his files. With consent from the Parents, the Board was permitted to examine those materials and requested that one document be marked as an exhibit. Exhibit B 108 is a copy of two pages of the Student's hospital records from the November 6, 2002 emergency room admission, and was admitted into evidence as a business record. That document was not created by Dr. Crabbe.

### **C. Student Exhibits**

At Hearing, the Student submitted her record which consisted of four documents marked as exhibits S1, S2, S3 and S4. S1 is a January 2, 2003 letter from Counsel for the Student to Counsel for the Board and, by agreement of the parties, is admitted into the record to the same degree as other documents of this nature as described above. S2 and S3 are copies of exhibits B106a (pages 1-7) and 106b (pages 1-10) respectively, and, by agreement of the parties, were admitted into the record. S4 is a copy of 21 U.S.C. § 812. By agreement of the parties, the Hearing Officer will take notice of that statute, but the document will not be made an exhibit.

### **D. Hearing Officer Exhibits**

The request for due process was marked as exhibit HO-1. By agreement of the parties, the Hearing Officer took notice of the following pages from the DSM-IV-TR: 20 and 375-376 (which concern Major Depression) and 85-87 and 91-93 (which concern Attention-Deficit/Hyperactivity Disorder. These materials were marked as exhibit HO-2. At Hearing the parties submitted a "Stipulation of Facts" which was marked as exhibit HO-3.

### **E. Statutes Noticed**

At Hearing, the Hearing Officer advised the parties that he would take notice of the following statutes and regulations: 21 U.S.C. § 812; Conn. Gen. Stat. §§ 21a-240; 21a-243; 21a-277; 21a-278; 21a-278a; Reg. Conn. State Agencies §§ 21a-243-1 through 21a-243-11.

### **FINDINGS OF FACT:**

To the extent that the procedural summary includes findings of fact or conclusions of law, that the findings of fact are conclusions of law, or that the conclusions of law are findings of fact, they should be so considered without regard to their given labels. *See, e.g., Bonnie Ann F. v. Callahan Independent School Board*, 835 F.Supp. 340 (S.D. Tex. 1993). The factual findings stated herein are based in part on the Hearing Officer's assessment of the credibility of witnesses. Citations to testimony or documentary exhibits are for illustrative purposes and not meant to exclude other admissible evidence in the record supporting that finding.

1. The Student is a 15 year old female who has been attending the Board's schools since September 2001. She is presently in the 10<sup>th</sup> grade and attends the Board's public high school. At no point prior to November 7, 2002 had the Parents requested that the Student be evaluated for eligibility to receive special education and related services, and at all times prior to November 7, 2002 while she was a student in the Board's school the Student attended regular education classes. (HO-3, at ¶¶ 5; 6; 9)

2. The Student and her Parents knew prior to November, 2002 that the possession of Prozac by a student at school would be “viewed by the school as a violation of State Law, Board Policy and the [East Lyme] High School Handbook.” (HO-3, at ¶ 7) The Student and Parents were advised of the Board’s Policies in this regard prior to the commencement of the 2002-2003 academic year by letter dated August 5, 2002 in which Grade 10-12 Students were advised of a “major change” in the Board’s Drug and Alcohol Policy such that “possession of controlled drugs . . . and/or the use or aiding in the procurement of controlled substances . . . on school grounds . . . may result in a 180 day expulsion from school.” (B 60) *See also* copies of the pertinent Board policies and regulations in B 106(f) and 106(g).<sup>6</sup>
3. The Student and her Parents knew prior to November, 2002 that the possession of Tylenol with Codeine by a student on school property would be “viewed by the school as a violation of State Law, Board Policy and the [East Lyme] High School Handbook.” (HO-3, at ¶ 7.)
4. In the evening of Friday November 2, 2002, the Student removed a number of Tylenol with Codeine tablets from a family medicine cabinet, placed them in her pocketbook, went to her room, dumped the contents of her pocketbook out and ingested the Tylenol with Codeine tablets that fell out along with other medications she had obtained, in a suicide attempt. The Student intended to kill herself by taking these drugs, and was not thinking of anything other than that at the time. She did not disclose this suicide attempt to her parents or family. The Student survived this attempt, was physically ill on Saturday as a result of ingesting these medications and attempted to kill herself again on Sunday November 3, 2002 by ingesting Motrin. The Student survived that attempt as well, which she also did not disclose to her parents or family. She attended school on Monday November 6, 2002, but did not disclose the suicide attempts to anyone at school. The Student told her mother about the suicide attempts in the evening of November 6, 2002. The Student did not count the number of Tylenol with Codeine tablets she had placed in her pocketbook, did not count the number of Tylenol with Codeine tablets she removed from her pocketbook and ingested in her suicide attempt, did not know whether she had ingested all of the tablets she had placed in her pocketbook, and, upon surviving the attempt, did not check to see whether any tablets were left in her pocketbook. The Student was not aware that there was any Tylenol with Codeine tablets in her pocketbook until they were found during the search of November 7, 2002. (Student Test) Apparently, when the Student emptied her pocketbook on Friday night she did not notice that not all of the Tylenol with Codeine fell out. The presence of the Tylenol with Codeine tablets in her pocketbook during this period was due exclusively to her suicide attempt.
5. The Student testified that on Monday night November 6, 2002, she placed the bottle of

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<sup>6</sup> The Parents elicited testimony from Dr. Crabbe and introduced evidence establishing whether Prozac and/or Tylenol with Codeine are “controlled drugs” or “controlled substances” within the meaning of the Board’s policies. Since those issues relate solely to the pending disciplinary action and not this due process hearing, nothing herein should be construed as a finding or conclusion as to whether these drugs are banned items for purposes of the disciplinary hearing.

Prozac in her pocketbook and on Tuesday morning before going to school retrieved it to take that day's dosage of the Prozac. The Student's Father directed her to leave the Prozac at home, but the Student did not do so. The Student stated that she is typically disorganized and in a rush in the morning, was disorganized and in a rush that morning, forgot to do what her Father had asked, and placed the Prozac in her purse without remembering that she had done so and without considering the potential consequences of bringing the Prozac to school. She testified that she was frequently disorganized, forgetful and getting off task (i.e., distracted), and identified this as a significant problem for her which had existed for an extended period of time. (Student Test) Although the Student did not directly so testify, it is also reasonable to assume based on the testimony and evidence regarding her depression that she was preoccupied with other concerns at the time, and was having difficulties with concentration, circumstances which may also have contributed to her failing to remember or follow her father's directions and returning the Prozac to her pocketbook without being aware or remembering that she had done so and without thinking of the consequences of bringing that substance to school. (Student Test; Crabbe Test)

6. The Student was not aware until she was in her first period class on November 7, 2002 that the Prozac was in her pocketbook. Upon realizing that she had the Prozac in her pocketbook, the Student recognized that she was in violation of school rules and considered whether she should tell school staff but decided against doing so. As the Student testified, that decision did not "really" reflect a "thought process." (Student Test) The Hearing Officer understands the Student to mean that she was unable to formulate a better plan than returning the Prozac to her purse and hope nobody noticed. There is no evidence that the Student displayed the Prozac or talked about it with anyone at school prior to offering it to another student several hours later.
7. The Student identified her depression as having begun in the 7<sup>th</sup> grade. She has cut her arms and wrists on a number of occasions since the 7<sup>th</sup> grade. At times, the cutting was a suicide gesture/attempt. At other times the Student cut herself to relieve stress or tension without the intention to kill herself. She did not tell her Parents about this behavior, but did talk to friends about it from time to time. The Student indicated that she made no real attempt to hide this behavior from anyone but her family. She reported that while in the 9<sup>th</sup> grade, a teacher noted cuts on her arm (which the Student stated were self-inflicted) and asked the Student about them. The Student reportedly told the teacher that she had cut herself while walking in the woods, but believed that the teacher did not believe that story. The Student also testified that she spoke to a school counselor about this behavior while in the 8<sup>th</sup> grade. The Student reported that nothing further happened as a result of these contacts with school personnel, and these contacts were not documented in the materials submitted by the Board in this proceeding. The Student testified that in the summer between her 9<sup>th</sup> and 10<sup>th</sup> grade years she had attempted suicide by ingesting medication. She did not disclose that event to her Parents. That event was apparently related to loss of her relationship with her boyfriend. In the period September 2002 through November 7, 2002, the Student was despondent over the loss of that relationship, was feeling increasingly isolated from her peers, had been "harassed" twice by other female students, was experiencing disturbances in appetite and sleep, was anxious and irritable, was having conflicts with her Parents and had crying spells. She also reported that she was

disorganized at home, had trouble concentrating and following directions, and was frequently “off task.” Her inability to cope with these problems makes her feel guilty. She also feels “bad” because she frequently does and says things to her parents and friends “without thinking.” She is frustrated with and embarrassed about her academic performance. (Student Test)

8. On September 30, 2002, the Student, along with other members of the dance team, took No Doze on one occasion to improve their dance performance. The pills were supplied by another student. The Student did not describe this as an attempt to self-medicate her depression. (Student Test) The Student was given a Saturday morning detention. (B 40; B 56)
9. The Student’s depression is not reactive and she presents with all of the “classical” signs of major depression in an adolescent. (Crabbe Test)
10. In determining the Student’s eligibility for special education and related services, and in performing the manifestation determination, the January 8, 2003 PPT considered the following, among other things: the evaluations by Mr. Mountain and Ms. Claussen (discussed below); Dr. Crabbe’s December 3, 2002 letter; reports of observations of the Student’s behavior over the course of the academic year to November 7, 2002; disciplinary and educational records; DOE guidelines for classification of students as SED; provisions of the DSM-IV-TR concerning major depression; and information provided by the Parents and Counsel for the Student. (Mountain Test; B 106a-g; representations of Counsel)
11. The January 8, 2003 PPT determined that the Student was not eligible to receive special education and related services on the basis of an SLD determination and that determination is not in dispute. (HO-3, at ¶ 17; representations of Counsel)
12. That PPT determined that the Student was eligible to receive special education and related services on the basis of OHI-ADD/ADHD and OHI-Depression. (HO-3, at ¶ 17; Mountain Test; representations of Counsel)
13. That PPT determined that the Student’s act of offering Prozac to a peer on November 7, 2002 at school was an impulsive act reflecting a manifestation of her ADHD/ADD. (HO-3 at ¶ 18; Mountain Test; representations of Counsel)
14. The school staff members of that PPT concluded that the Student was not eligible to receive special education and related services on the basis of an SED designation. The staff concluded that, although depressed, the Student was not properly designated as SED on the ground that the duration of the Student’s depression did not meet the criteria for SED, the intensity of the Student’s depression did not meet the “marked degree” criteria for SED, and the Student’s academic performance was not being significantly impacted as a result of the depression. (Mountain Test; B 106(c); HO-3, at ¶ 17) The staff members at the PPT specifically and carefully reviewed the Department’s *Guidelines for Identifying and Educating Students with Serious Emotional Disturbance* in making their determination on this point. (Mountain Test) Mr. Mountain’s testimony suggests that the critical factor for



the staff members on this issue was that the Student was performing adequately in some environments (e.g., school) and was therefore not uniformly impaired in all areas of functioning. The school staff members also concluded that because the SED designation is substantially “intrusive,” students should be designated with a less “intrusive” label than SED if possible, and that it was possible to do so in this case. (Mountain Test)

15. The Parents at the PPT disagreed with the SED eligibility determination. They contend that the Student is eligible on the basis of SED because she meets two of the criteria for SED – a “pervasive mood of unhappiness or depression” and “inappropriate types of behavior or feeling under normal circumstances.” *See* 34 C.F.R. § 300.5(b)(8)(c) and (d); Conn. Gen. Stat. § 10-76a(11); Conn. State Agency Regs. Sec. 10-76a-2(m)<sup>7</sup> (Mountain Test; representations of Counsel)
16. The PPT accepted the Student’s representations that she was not aware that she had either the Prozac or the Tylenol with Codeine in her pocketbook when she came to school on November 7, 2002, and concluded that the Student’s possession of those medications at school was an “accident” and therefore could not be (and was not) a manifestation of her disabilities. (Mountain Test) The staff members also concluded that if the Tylenol with Codeine had been part of the suicide attempt, she would have taken all of the tablets rather than leaving some in her pocketbook. (Mountain Test)
17. The Parents also disagreed with the determination that the possession of Prozac and Tylenol with Codeine at school were not manifestations of her disability(ies). (Mountain Test; HO-3, at ¶¶ 17-18; representations of Counsel)
18. Throughout his contacts with the Student related to these events, Mr. Mountain had no basis to conclude that the Student was not telling him the truth or was otherwise not a reliable reporter regarding her experience. (Mountain Test)
19. In his interviews with the Student, Mr. Mountain knew of the November 2002 suicide attempts and was informed by the Student that she had been cutting herself. (Mountain Test) Mr. Mountain made only a cursory inquiry into this area and his report lacks the detail regarding the circumstances and the Student’s depressive and ADD/ADHD symptomatology which is described above, and which the Student appeared willing and able to share. There is no indication in the Board’s documentation that any other staff member undertook a detailed interview of the Student on these issues or on her emotional status in connection with this proceeding, the manifestation or eligibility determinations.
20. Dr. Crabbe provides diagnostic and medication management services to the Student, and is not providing psychiatric or psychological counseling of any kind. He saw the Student on November 25, 2002 for a one hour initial diagnostic interview and then saw the Student several days later for a medication management consultation. On the basis of these

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<sup>7</sup> At hearing, the unhappiness or depression criterion was referred to generally as the “C” “characteristic” or “factor” and the inappropriate behavior and feeling criterion as the “D” “characteristic” or “factor.” That terminology is adopted herein for simplicity.

contacts, Dr. Crabbe concluded that the Student was presenting with the “classic symptoms” of both juvenile depression and ADD/ADHD and was not suffering from a psychosis, or a substance or alcohol abuse problem or an organic physical syndrome. Dr. Crabbe possesses the necessary experience and expertise to make these diagnoses. He concluded that the Student’s depression had begun in the 7<sup>th</sup> grade and that her symptoms since that time have included suicidal ideation, sleep and appetite disturbances, weight loss, low energy level, depressed affect, crying spells, difficulties with concentration, anger and irritability. Dr. Crabbe reported that the Student’s ADD/ADHD symptoms include distractibility, impulsivity and problems with sustaining attention and concentration. Dr. Crabbe reached those specific conclusions in part on the basis of the Student’s performance of a computerized screening test he administered to her. The Student’s depression and ADHD/ADD are also reflected in poor judgment and failure to fully recognize or think through the potential consequences of her actions. (Crabbe Test)<sup>8</sup>

21. The Student is currently being medicated with Adderall and Prozac to treat her ADHD/ADD and Depression respectively. It takes several weeks for Prozac to reach a therapeutic level. (Crabbe Test)
22. Dr. Crabbe and Mr. Mountain agreed that the presentation of depression in children and adolescents is not the same as in adults, and that it is possible for a child of the Student’s age with depression to appear to be functioning adequately in some environments while functioning poorly in others. (Crabbe Test; Mountain Test)
23. Dr. Crabbe opined that at this time and given her response to the medication regimen the Student does not require placement in either a residential or day treatment setting, could function in a mainstream setting with support and would not require a level of supervision in that environment as intensive as having to have a 1:1 escort. (Crabbe Test)
24. In late September 2002, the Student’s Father, concerned about the Student’s emotional state, began attempting to secure family counseling. That effort was not successful. The Student is scheduled to begin psychotherapy shortly. (Father Test; Student Test)
25. On September 25, 2002, the Student was reported for “insubordination” based on an incident in chemistry class described as follows: “Consistent disruption to class; inappropriate behavior; disrupted lab directions, which is a danger to students in lab using poisonous chemicals. Mom contacted by teacher twice, which lead to short term improvement, but she is unable to control herself, which is severe disruption.” She was given a Saturday morning detention. (B 41; B 58)

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<sup>8</sup> Dr. Crabbe is a very forceful and passionate advocate for his patients. It is clear that he has the expertise and experience with respect to diagnosis and medical management of juvenile depression and ADD/ADHD. However, as will most likely be apparent from a review of the transcript, at times that passion and advocacy diminishes his credibility, most particularly when it results in responding to questions seeking factual information specifically about the Student with legal conclusions, with generalities regarding individuals with depression or ADD/ADHD, or with colorful hyperbole.

26. On October 10, 2002, the Student was reported for “disrespectful behavior toward teacher/staff member” based on an incident in which she reportedly came into a class, began talking with a friend and upon leaving slammed the door. She did not return to apologize and was given a Saturday morning detention. (B 40; B 52)
27. On October 21, 2002, the Student was reported for “misrepresentation/lying” based on an incident in which rather than being in her geometry class she was found in the Nautilus Room with another Student. She was placed in a structured study hall and a Parent-Teacher conference was scheduled for October 22, 2002. (B 39-40; B 53)
28. On October 22, 2002, the Parents met with the assistant principal of the high school at the request of the assistant principal based on the number of office referrals the Student had incurred to date. The issues discussed included her “lack of seriousness” regarding school, the No Doze incident, and behavioral problems she was manifesting in class. (B 51)
29. On October 24, 2002, the Student was reported for “cutting class,” based on an incident in which she came to class and said she had a “serious problem and had to go to the 10/11 team office to see [a counselor]” but did not do so and did not return to class for 60 minutes. She was given a Saturday morning detention. (B 39; B 50)
30. On October 29, 2002, the Student was reported for “sign in/sign out abuse” based on an incident in which she left a structured study hall and did not return. She had previously been put on a pass restriction because she “wander[ed] off at frequent intervals.” (B 39; B 49)
31. On November 7, 2002, the Student attended school and was overheard by two other students offering a Prozac to a third student whom she knew and who appeared to the Student to be “sad.” (B 3; 27; 38; 46; 47) The two students reported this event to school staff who then interviewed the Student and found both the Prozac and Tylenol with Codeine. The incident was logged in the school’s computerized record system. (B 39) Reports were completed by the security director (B 38) and assistant principal. (B 44) To the extent that these records indicate that the Student offered the Prozac to more than one other student or was attempting to sell the Prozac, they are in error.
32. One of the students (K) completed a written statement on November 7 (B 46) describing the incident as follows: “I was in the lunchroom eating when C and his girlfriend had gotten into a fight and C’s girlfriend had walked away. C looked really sad and that’s when [the Student] had turned around and said, ‘C are you sad, you look it, do you want a Prozac? I have some right in my purse.’ And C just kind of laughed and blew her off. That’s when I turned to my friend M and asked her if she heard it, so she listened and [the Student] said again, ‘I have some Prozac in my purse.’” (B 46)
33. The other student (M) also completed a written statement on November 7 (B 47) describing the incident as follows: “While sitting at lunch talking with my friends, my friend K said, ‘M did you hear that?’ I listened and heard [the Student] say to C ‘do you want a Prozac?’”

and C said ‘What?’ [Then, the Student] said ‘Prozac, do you want a Prozac?’ C said no so I got up and went to tell Mr. Barnes.”

34. On November 15, 2002, C (the student to whom the Student had offered the Prozac) signed a statement as follows: “Last week during lunch I was bummed out and I was not looking to [sic] happy and [the Student] who looked at me from the next table said hey do you want some Prozac. It makes me happy. I said no I’m all good. [Name] is [the Student].” (B 27)
35. By letter dated November 8, 2002, the Parents were notified that the Student had been suspended from school for 10 days beginning November 8, 2002 through November 22, 2002 for “possession and attempted distribution of a banned item.” (B 43)
36. On November 12, 2002, the Student was referred to the Board’s School Study Team (SST). The area of concern was identified as discipline, rather than behavior, academic, social or emotional issues. (B 36) In preparation for a November 19, 2002 SST, the Student’s teachers were asked to provide written comments regarding the Student. One teacher noted that the Student was “disruptive and talks too much;” “doesn’t work to her potential” and “needs to really try.” (B 28) Another teacher noted that the Student is “often off task;” is a “capable student but often doesn’t attend to what is going on in the classroom;” and that the Student’s “social life is interfering with her work.” (B 29) Another teacher noted that the Student “has had difficulty conforming to proper classroom behavior since the first day of class. She has tried to harness her energy somewhat, but her loudness and inability to focus her work has been disruptive.” (B 30-30a) Another teacher stated that the Student needs to “put in a lot more effort.” (B 31) Another teacher stated that the Student “likes to socialize a lot” and that her “effort is small.” (B 32) All of these comments are consistent with diagnoses of depression and ADD/ADHD.
37. By letter dated November 12, 2002 (B 35) and received by the Parents on November 13, 2002 (B 34), the Parents were advised that the Administration had decided to seek expulsion of the Student for 180 days for violation of Board Policy 5131.6 (Alcohol, Drugs and Tobacco) and state law for “possession and attempted distribution of a banned item” at school. The expulsion hearing was scheduled for November 19, 2002. (B 35; 3)
38. On November 15, 2002, the Parents requested a PPT to determine if the Student was eligible for special education services “because of her emotional condition and the diagnosed Depression.” (B 3-4)
39. The Student’s first quarter report card, dated November 18, 2002, shows grades ranging from C to F, as follows: 1 grade of C, 2 grades of C-, 1 grade of D+, 1 grade of D and 2 grades of F. Three teachers commented that the Student was not completing homework or class work assignments; two teachers commented that “effort needs improvement;” one teacher noted that “behavior needs improvement;” two teachers noted that the Student “talks too much;” one teacher noted that she “disrupts the class” and one teacher noted that the Student was “easily distracted by others.” (B 24) These comments could be reflective of depression and/or ADD/ADHD.

40. On November 19, 2002 the Board agreed to continue the expulsion hearing to permit an evaluation of the Student's eligibility and the Student agreed not to return to school pending the outcome of that process. A PPT was held on November 25, 2002 to commence the evaluation process. (B 5; B 19; B 21) The minutes of the November 25, 2002 PPT note that the Student's grades were showing a steady decline over the period from the 6<sup>th</sup> grade (Cs and Bs) to the 7<sup>th</sup> grade (Cs) to the 8<sup>th</sup> grade (Cs and Ds) with some greater variability in the 9<sup>th</sup> grade (grades ranging from B- to F) (B 61). The Student was noted to have difficulty in the 9<sup>th</sup> grade with "effort, achievement [and being] easily distracted." (B 15-17)
41. The steady decline in the Student's academic performance since 6<sup>th</sup> grade is consistent with increasingly impaired functioning and difficulty meeting increased academic demands associated with a deepening untreated depression and untreated ADD/ADHD.
42. The Student's 9<sup>th</sup> grade transcript shows comments by 3 teachers that the Student's "effort needs improvement;" comments by 3 teachers regarding incomplete homework and class assignments; comments by 2 teachers that she was "achieving below ability level;" comments by 1 teacher that the Student was "easily distracted by others;" and comments by 1 teacher that the Student was having attitudinal difficulties but was showing improvement. (B 62) The Student's third quarter 9<sup>th</sup> grade report card contains similar comments, with an additional comment that the Student "disrupts the class." (B 63) The Student's second quarter 9<sup>th</sup> grade report card contains similar comments, as well as a comment that the Student "talks too much." (B 66) Similar comments were evident in the Student's first quarter 9<sup>th</sup> grade report card. (B 71) The Student had several disciplinary referrals in the 9<sup>th</sup> grade, two of which concerned disruptive behavior in class (too much talking). (B 64; B 65; B 67; B 68; B 69; B 70; B 72; B 73) These comments are characteristic of students with ADD/ADHD.
43. The Student's transcripts from the 6<sup>th</sup> (B 76), 7<sup>th</sup> (B 75) and 8<sup>th</sup> grades (B 74) reveal sporadic notations about problems with off task behavior, inconsistent effort and incomplete assignments. These comments are characteristic of students with ADD/ADHD.
44. Records of formal academic testing administered to the Student over her academic career do not evidence impaired educational functioning. (B 77; B 78; B 79; B 80; B 82; B 83; B 84)
45. School nursing records through June 2002 indicate several visits in the 2001-2002 academic year (9<sup>th</sup> grade) in which the presenting concern was identified as social emotional or anxiety. (B 91-93) There were no records of visits to the school nurse in the 10<sup>th</sup> grade.
46. On November 25, 2002, the Student was evaluated by Dr. Crabbe who diagnosed her as suffering from Major Depression, DSM-IV-TR code 296.20, and Attention Deficit Hyperactivity Disorder, DSM-IV-TR code 314.01. (B-9) In his December 3, 2002 report Dr. Crabbe opined that "the recent incident resulting in suspension is a manifestation of [the Student's] comorbid psychiatric disorders." (B 9) That report was transmitted to Counsel for the Board on December 4, 2002. (B 7)

47. An “educational evaluation” of the Student was performed on December 11 and 19, 2002 by Ms. Claussen, a special education teacher. Ms. Claussen administered certain subtests of the Woodcock-Johnson Psycho educational Battery III (“WJ-III”), described by Ms. Claussen as a measure of academic achievement in specific areas. Ms. Claussen also reviewed the Student’s “academic file.” In her report (B 106a), Ms. Claussen concluded as follows:
- a. “When compared to others at her age level, [the Student’s] academic skills, her ability to apply those skills and her fluency with academic tasks are all within the average range. Given her ability level as measured by a recently administered WISC-III, she does not have a significant area of discrepancy in any area. Her reading comprehension and written expression are relatively strengths and math skills and applications are somewhat weaker. Her current level placements seem to [sic] appropriate, given [her] abilities. She is, however, experiencing significant difficulties in school, obtaining at best, marginal grades. Off task behavior and an inability to sustain effort and complete homework is more likely contributing to her poor school performance than a lack of ability.”
  - b. The Student does not meet Connecticut requirements for SLD.
  - c. “Her testing results exhibit a profile of a student whose attentional difficulties interfere with organizing incoming information, which in turn interferes with retention and retrieval.”
  - d. Although Ms. Claussen did not make any determination as to whether the Student qualified for services under the IDEA or Section 504 of the Rehabilitation Act, she did state in her report that if the Student does qualify for such services, given her current academic difficulties the Student would more than likely benefit from the structure and support of a resource room and teaching of self-advocacy skills.
48. Mr. Mountain performed a “psycho-educational” evaluation of the Student on December 9 and 21, 2002, administering the Wechsler Intelligence Scale for Children – Third Edition (“WISC-III”), the Behavior Assessment System for Children (“BASC”), the Brown ADD Scale (Self) and the Connors-Wells’ Adolescent Self-Report Scale (Long Version) to the Student. He also interviewed the Student and her Parents, and reviewed the Student’s academic file. He asked the Student’s Parents to complete the BASC-Parent Report and the Connors’ Parent Rating Scale – Revised (L). He also asked the Student’s teachers to complete the BASC – Teacher and the Connors’ Teacher Rating Scale – Revised (L). Mr. Mountain’s report (B 106b) states as follows:
- a. The Student reported that she does not “deal well with stress” and has been “cutting” herself as a “stress reliever” since the 7<sup>th</sup> grade. She reported feeling “very stressed” in early November, and tried to “kill herself” on Friday November 3, 2002 by ingesting Tylenol, cough medicine and Motrin. She took more medication on Sunday with the same intent and “got very sick.” On Monday November 6, 2002 she told her Parents about these incidents and was taken to the emergency room.

- b. The Student returned to school on November 7, 2002 and “indicated that she was unaware the Prozac was in her purse until she got to school. She reports jokingly saying to another student who was having problems with his girlfriend that he could have one of her Prozac. [The Student] indicated that she never intended to give the [other] student the medication.”
- c. The Student attained a Full Scale IQ of 111 on the WISC-III (high average performance), with a Verbal IQ of 117 (high average) and Performance IQ of 103 (average). Mr. Mountain concluded that the Student’s “general cognitive ability is within the high average range of functioning” with average ability to “sustain attention, concentrate and exert mental control.”<sup>9</sup>
- d. On the BASC, the Student produced scores in the Clinically Significant Range on the Emotional Syndrome Index and the Personal Adjustment Composite, which indicates that she does not view herself as having good interpersonal skills or self-reliance. She also scored in the Clinically Significant Range on the Sense of Inadequacy Scale and the Depression Scale. Other scores indicate that the Student perceives herself as not having good self-esteem, self-respect, or self-acceptance; views her relationship with her Parents as negative; and views school as a place where “things are unfair.”
- e. The BASC completed by the Student’s mother showed Clinically Significant scores for Hyperactivity Scale and the Attention Problems Scale, both of which Mr. Mountain notes are “central features of ADHD.” The mother also rated the Student in the Clinically Significant range on the BASC Depression Scale.
- f. All three of the Student’s teachers rated the Student on the BASC as either “At Risk” or in the “Clinically Significant” range for Hyperactivity and one teacher rated her at the Clinically Significant range for Attention Problems. Other scores indicate conduct and aggression problems.
- g. The Student’s Connors Scale ratings indicate that she “may have more difficulties than her peers organizing and completing work,” with activities that require concentration, and with sitting still for an extended period of time.

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<sup>9</sup> As of the testing date, the Student had been taking Prozac for several weeks and was likely beginning to receive therapeutic benefits from the Prozac. The Student was also medicated with Adderall at the time. Mr. Mountain’s report does not discuss whether and to what extent the Student’s performance was enhanced by or reflects the effects of these medications. The evaluation results may therefore not reflect her abilities and capabilities in the period before and on November 7, 2002.

- h. The Mother's rating of the Student on the Connors Scale was consistent with the Student's rating of herself. The Connors scores of both the Student and the Mother show an "above average correspondence with the DSM-IV criteria for ADHD-Inattentive and Hyperactive-Impulsive Type."
  - i. The three teachers who completed the Connors Scale all described the Student in a consistent manner: The Student displays both oppositional behavior and hyperactivity, and is easily annoyed, has problems with authority, and has problems sitting still, feels restless and is impulsive. The teacher ratings were also consistent with DSM-IV criteria for ADHD-Inattentive and Hyperactive-Impulsive Type.
  - j. "Interviews, file reviews and rating scales, strongly suggest [the Student] exhibits many of the characteristics of a student with an attention deficit disorder. [The Student], her mother and her teachers all recognize hyperactivity, attention, impulsivity and conduct as being problematic areas for [the Student]. There were also concerns about depression. The information from this evaluation is consistent with [the Student's] current diagnoses of depression and ADHD."
49. At no time prior to the discovery of the Prozac and Tylenol with Codeine in the Student's possession at school on November 7, 2002: (a) had the Student been identified as a student with a disability who was eligible to receive special education and related services; (b) had the Parents requested an evaluation of the Student to determine whether she was eligible to receive special education and related services; or (c) had the Student been referred for such an evaluation by any school personnel. (HO-3 at ¶ 9; Board records generally; representations of Counsel; Mountain Test) No evidence was offered at hearing and no evidence is reflected in the documentation produced by the parties that at any time prior to November 7, 2002: (d) had the Parents expressed concern of any kind to the Board that the Student may be eligible for special education and related services; (e) had any teacher expressed such a concern to the appropriate Board personnel identified in Regulation 300.527(b)(4); or (f) had the Board considered whether it was necessary to conduct an evaluation under Regulations 300.530 through 300.536 or determined that such an evaluation was not necessary.

### **CONCLUSIONS OF LAW:**

1. At all times as of and since November 7, 2002, the Student has been and remains eligible to receive special education and related services under the IDEA, 20 U.S.C. §§ 1400, *et seq.* and its related regulations, codified at 34 C.F.R. §§ 300.500 *et seq.* (the "Regulations") or Conn. Gen. Stat. §§ 10-76, *et seq.* and its related regulations, on the basis of OHI-ADD/ADHD and/or OHI-Depression.
2. On and prior to November 7, 2002, the Board had no knowledge (within the meaning of Regulation 300.527) that the Student was disabled and entitled to receive special education and related services under the IDEA or State law. Mr. Mountain correctly concluded in his evaluation that there is evidence in the Student's records of behaviors and actions that are consistent with a diagnosis of ADD/ADHD. However, that review was undertaken with the



knowledge of the Student's diagnoses. Looking back in hindsight with that knowledge makes those threads in the Student's record stand out more clearly. Even with that knowledge, however, there is no clear cut evidence of depressive symptomatology in the Student's records. At best, without the benefit of knowing the Student's diagnoses, her school records show a slow but steady decline in academic performance since the 7<sup>th</sup> grade, academic performance that is increasingly below her level of capabilities but sufficient to enable her to continue to pass from grade to grade without modifications to the curriculum or other supports, and a sharp increase in difficulty conforming her behavior to school rules beginning in the 10<sup>th</sup> grade resulting in a sharp increase of disciplinary referrals for relatively minor infractions of school rules. Assuming that the Student maintained her downward academic and behavioral trajectory, it is likely that she would have been referred for an evaluation to determine her eligibility for special education and related services in this academic year even if she had not disclosed her suicide attempts to her Mother or asked her friend if he wanted a Prozac. However, based on the facts, the Board did not have "knowledge" (within the meaning of Regulation 300.527) prior to finding the Prozac and Tylenol with Codeine in the Student's possession at school on November 7, 2002, that the Student was a child with a disability who was eligible to receive special education and related services.

3. The parties have stipulated that the Student's offer of Prozac to a fellow student on November 7, 2002 was a manifestation of her disability. (HO-3, at ¶¶ 17-18) In other words, there is no dispute that the Student was entitled to special education and related services on November 7, 2002 on the basis of OHI-ADHD/ADD and/or OHI-Depression.
4. Although the school did not proceed as expeditiously as the Parents would have desired, the school nonetheless properly discharged its obligations to the Student under the IDEA and State special education laws. At the time expulsion proceedings were commenced, the only diagnosis the Student had been given was depression. Given the lack of evidence of depressive symptomatology at school which was having an adverse impact on her educational performance, the school could reasonably have concluded that the Student was not eligible for special education and related services and proceeded with an expulsion process. That a child is depressed and is being treated medically for that condition does not, in and of itself, make the Student eligible for special education and related services. In response to the Parents' request for a PPT to determine the Student's eligibility for special education and related services, the school properly suspended the disciplinary action and a PPT was convened and recommended that an evaluation of the Student be performed to obtain further information. The school and the Parents agreed that the Student would not return to school pending the outcome of that evaluation and would receive homebound tutoring. Upon completion of that evaluation, the PPT promptly reconvened, determined the Student's eligibility for special education and related services and then undertook a manifestation determination. That PPT was conducted in accordance with the requirements of the IDEA, and properly considered testing results, anecdotal information about the Student from her teachers, information presented by the Parents directly, through Dr. Crabbe and through Counsel for the Parents, and school records. Based on its conclusion that certain conduct was not a manifestation of her disability(ies), the Administration

recommended the disciplinary action.<sup>10</sup>

5. Regulation 300.523(d) provides that the behavior giving rise to the disciplinary action “must be considered a manifestation of the child’s disability” if the Student’s disability impaired her ability to understand the impact and consequences of, and/or to control the behavior that is the subject of the disciplinary action.<sup>11</sup>
6. In reviewing the manifestation determination in this specific case, three critical facts must be kept in mind: (a) *Prior to and as of November 7, 2002, the Student was not being treated for either of her disabilities.* The Student was not diagnosed as having ADHD/ADD until November 25, 2002 and did not begin receiving treatment for that disability prior to November 25, 2002. Although diagnosed as having depression on November 6, 2002 and prescribed Prozac, that medication had not yet reached a therapeutic level in her body and, accordingly, for all practical purposes the Student’s depression was untreated as of November 7, 2002 notwithstanding that she had begun her medication regimen. (b) *Prior to and as of November 7, 2002, the Student did not have an IEP, classroom accommodations or any kind of behavior plan in place.* In other words, the Student was relying solely on her own internal resources (e.g., judgment, social and adaptive skills, reasoning, decision-making) to determine how to proceed and had no adult-supervised or implemented support structure in place to assist her. She was on her own and suffering from two untreated conditions which clouded her judgment, reasoning and decision-making processes. (c) *The conduct which was the first manifestation of her disabilities to the school was the same conduct for which she is being disciplined.*
7. The school staff members at the PPT properly concluded that the offer of the Prozac by the Student to another student was a manifestation of the Student’s disability – specifically an impulsive act reflecting poor judgment.
8. The staff parsed the remaining manifestation determination issues much too closely

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<sup>10</sup> Given that there was a pending due process hearing and an expressed disagreement of the Parents with the eligibility and manifestation determinations, the school could have waited until the due process proceeding was concluded before recommencing expulsion proceedings, but was not required to do so under the IDEA or State law.

<sup>11</sup> After the January 8, 2003 PPT, the parties stipulated that the Student was eligible to receive special education and related services on and as of November 7, 2002 (HO-3, at ¶¶ 17-18). However, the school on and prior to November 7, 2002 had no basis to know that the Student was eligible and hence had no obligation to have an IEP or behavior intervention plan in place for her at that time. Given all of these unique circumstances, the Hearing Officer concludes that the third factor stated in Regulation 300.523(d) (whether the Student’s IEP and any behavior plan in place was appropriate to address her disabilities and was being implemented properly) is not applicable. In other circumstances, a finding that there was no IEP or behavior plan in place, or that the behavior plan and/or IEP were not appropriate or not being appropriately implemented would, under Regulation 300.523(d), **require** a finding that the conduct at issue was a manifestation of the Student’s disability.

however. The staff failed to see the forest for the trees and failed to obtain sufficient information to enable them to make a determination one way or the other as to whether the possession of Prozac or Tylenol with Codeine was a manifestation of the Student's disability(ies).

9. More specifically, the staff erred by focusing on the fact that because the Student was unaware or did not intend to bring the medications with her to school, their presence on her person at school was "accidental" and therefore *could not* be a manifestation of her disability. (Mountain Test) That analysis misses the mark in this particular and very unique case.
10. The Student did not count the number of Tylenol with Codeine tablets she took from the medicine cabinet or compare that number with the number that she removed from her pocketbook and then ingested. As the Student plainly indicated in her testimony, she was not at all concerned with determining whether any were left in her pocketbook or whether having them in her pocketbook at school would get her into trouble. She was preoccupied at the time with trying to kill herself (a direct manifestation or result of her disability) and assumed that she would be dead on Friday and therefore not be returning to school on Monday. She survived that suicide attempt, was physically ill on Saturday as a result of ingesting the medication, made and survived another suicide attempt on Sunday, returned to school on Monday without telling anybody what had happened, summoned the courage and strength to tell her parents what she had done and then was taken to the emergency room, diagnosed with depression and prescribed medication. Given all of this, it is fairly reasonable to conclude that on November 6 and 7, 2002 the Student was not thinking clearly, that her decision-making and judgment were impaired, that she was pre-occupied with matters other than compliance with school rules and that she simply did not have the presence of mind to check her pocketbook to see if there were any "banned" substances inside. All of these factors are manifestations of her depression. On top of that depressive symptomatology, there was another layer of symptomatology, then unidentified and untreated, and which exacerbated and complicated these problems: the attention, memory, concentration and impulse control problems of ADD/ADHD.<sup>12</sup>
11. The Student testified quite clearly that on Monday evening she had placed her Prozac in her pocketbook, and on Tuesday morning before going to school she retrieved it to take her daily dose, heard her father tell her to leave it at home, but then because she was so disorganized and rushing around in the morning forgot to do what her father asked and left the medication in her pocketbook, only realizing that she had them on her person once she got to school. She reported that over an extended period of time prior to November 7, 2002, she was easily distracted, forgetful, prone to going off task and prone to doing things impulsively and without thought. All of those are symptoms of her (at that point) untreated and undiagnosed ADD/ADHD. It was as a result of those problems that the Prozac ended up not where a prudent person would have put it or where her father asked her to put it, but back in her pocketbook which she then took with her to school.

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<sup>12</sup> The Hearing Officer notes that the Student has consistently acknowledged that she placed the Tylenol with Codeine in her pocketbook, and accepts responsibility for her actions.

12. Similarly, the Student's decision not to advise staff about the Prozac when she discovered it during First Block is also a manifestation of her then unidentified and untreated ADD/ADHD. She testified that she found the medication, thought about telling somebody about it, knew she could get into trouble for having it on school property, but ultimately decided to simply leave it in her purse and not tell anyone. When asked what her thought process was, she testified quite candidly that there was "no thought process" involved. The Student's failure to make what would have been the more prudent choice (going to the school nurse for example) can also, in the unique circumstances of this Student (whose disabilities were untreated at the time), reasonably be deemed to be (and in fact was) a manifestation of her ADD/ADHD and/or depression. That decision reflects no better judgment, for example, than jokingly offering a Prozac to a peer (even though she never intended to give him any and even though she knew she could get into trouble for having Prozac at school), behavior which the school found was a manifestation of her ADD/ADHD.<sup>13</sup>
13. The staff members at the January 8, 2003 PPT properly determined that the Student was not eligible for special education and related services as SED. Mr. Mountain's testimony suggests that the decision not to designate a student as SED may have been influenced to some extent by the perceived consequences of so labeling a student, and is troublesome because failing to properly identify a student's disability will not permit an appropriate plan to be developed for the student. However, on the facts, the decision made by the staff on this point was correct.
14. The Regulations define the term "serious emotional disturbance" as "a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance: (A) An inability to learn which cannot be explained by intellectual, sensory, or health factors; (B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (C) A general pervasive mood of unhappiness or depression; or (D) A tendency to develop physical symptoms or fears associated with personal or school problems." The related Connecticut regulation provides that the term "socially and emotionally maladjusted" means a "child with a psychological condition, stemming from inter- or intra-personal conflict, which manifests itself in behavior which significantly impedes the child's rate of educational development" and includes children showing "one or more of the following characteristics . . . (a) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; (b) Inappropriate types of behavior or feelings under normal circumstances; (c) A general pervasive mood of unhappiness or depression; or (d) A tendency to develop physical symptoms or fears associated with personal or school problems." Conn. State Agency Regs. § 10-76a-2(m).

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<sup>13</sup> This conclusion should not be interpreted to stand for the proposition that any time a student with depression or ADD/ADHD brings a banned drug to school, the student cannot be disciplined because that action is a manifestation of the student's disability. A case-by-case determination must be made. It is clear in this case that such conduct was a manifestation of the Student's untreated and unidentified disability(ies).

15. The PPT carefully reviewed all of the pertinent factors, and reached agreement as to all but the so-called “C” and “D” factors (pervasive mood of unhappiness or depression and inappropriate types of behavior or feelings under normal circumstances, respectively). The determination that the remaining SED criteria under the IDEA Regulations and the State regulations did not apply in this case is correct.
16. The fact that the Student is depressed does not mean that she is eligible for special education and related services on the basis of an SED designation. *See, e.g., John Doe, Jr. v. Board of Education*, 753 F. Supp. 65 (D. Conn. 1990). Not all students who are depressed are also in need of special education and related services, and not all SED-designated students are depressed. To be eligible for special education and related services on the basis of an SED designation because of depression, the State Guidelines provide that the depression must be “significant and apparent to school staff members who observe the student in a variety of settings and situations” (the “marked degree” criterion) or that there be evidence of a “marked difference between the student’s academic performance and reasonable (not optimal) expectations of performance” (the educational performance adversely affected criterion). On and prior to November 7, 2002, the school had no basis to know that the Student was depressed or suffering from ADHD/ADD. There is no evidence that anyone but the Student knew about her suicide attempt in the summer before entering the 10<sup>th</sup> grade. There is no evidence that the school knew about the November 2002 suicide attempt until on or after November 7, 2002. The Student’s academic records show a steady, but slow deterioration in her academic performance but her level of performance was still sufficient to enable her to pass her courses and progress through the curriculum. There is no evidence that at school the Student was manifesting “inappropriate” feelings or behavior in response to “normal circumstances.” Even assuming that her November 2002 suicide attempt is an “inappropriate” feeling or behavior, that act did not on this record adversely affect her academic performance and one act also does not meet the duration criterion. Accordingly, the staff members of the PPT correctly concluded that the Student did not meet the criteria for an SED designation.
17. The Student has missed 45 days of school, but there is no evidence of whether and to what extent, if at all, her progress through the curriculum has suffered. The Student testified that she completed her homework assignments during the period of homebound tutoring. The Student at this time also needs, but does not yet have, an IEP. The January 8, 2003 PPT did not develop an IEP pending the outcome of the expulsion proceeding. In discharging its obligations under the IDEA and State law, the PPT convened to develop the Student’s IEP in light of this Final Decision and Order should examine the Student’s need for compensatory educational opportunities to enable her to complete the 10<sup>th</sup> grade curriculum in light of her extended absence from school.
18. The Board has complied with its obligations to the Student under the IDEA and Connecticut state law to date. That the staff reached an incorrect decision as to manifestation at the January 8, 2003 PPT does not mean that the Board failed to satisfy its obligations or violated the procedural due process protections to which the Student is entitled.

**FINAL DECISION AND ORDER:**

1. The possession by the Student of Prozac at school on November 7, 2002 is a manifestation of her disability(ies) and she should not be disciplined further for that action. Any disciplinary proceedings pending against her on the basis of that event should be terminated, as required by Federal and State law.
2. The possession by the Student of Tylenol with Codeine at school at any point between November 1, 2002 through and including November 7, 2002 is a manifestation of her disability(ies) and she should not be disciplined further for that action. Any disciplinary proceedings pending against her on the basis of that event should be terminated, as required by Federal and State Law.
3. At all times as of and since November 7, 2002 the Student has been, and remains, eligible to receive special education and related services under Federal and State law on the basis of a designation of OHI-ADD/ADHD (DSM-IV-TR 314.01) and OHI-Depression (DSM-IV-TR 296.20). The Board had no basis to know, prior to discovering the Prozac and Tylenol with Codeine on her possession at school on November 7, 2002, that the Student was a child with a disability who was eligible to receive special education and related services.
4. The Student does not at this time meet, and has not prior to this time met, the criteria for an SED designation. This issue should be revisited by a PPT convened to determine the Student's programming for the 2003-2004 academic year, or at any time before or after that time that circumstances warrant such a review.
5. A PPT should be convened as soon as possible and an IEP developed for the Student such that the Student can return to school on or by January 27, 2003, assuming she is ready and able to do so in light of her physical condition and depression. The issue of the need for compensatory education should be evaluated once the Student's progress through her curriculum to date has been ascertained.<sup>14</sup>

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<sup>14</sup> As set forth more fully in prior orders, including the January 20, 2003 Supplemental Order, this hearing was effectively bifurcated such that eligibility and manifestation determinations issues were to be addressed first and prior to the scheduled January 23, 2003 expulsion hearing. Accordingly, this final decision and order was initially issued by the Hearing Officer on January 20, 2003. On January 27, 2003, both parties reported that the PPT required by this paragraph had been convened as required. Given their further report that there was no longer a need to address any remaining issues, this matter was concluded by the Hearing Officer and the January 20, 2003 Final Decision and Order became the final decision and order in this matter. Notwithstanding the above, the date for taking any appeal will run from the date the Department issues this final decision and order.