# Review of Recent Juvenile Cases (2007)

by
The Honorable Pat Garza
Associate Judge
386th District Court
San Antonio, Texas

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## The "stay-put" provision of Individuals with Disabilities Education Act applies only to school authorities during administrative proceedings and has no application to delinquency proceedings. [In the Matter of P.E.C.](07-2-2)

**On February 2, 2007, the San Antonio Court of Appeals held that the Individuals with Disabilities Education Act (IDEA), *20 U.S.C.S. § 1400* et seq., did not limit the juvenile court's authority to modify the juvenile's disposition.**

¶ 07-2-2. **In the Matter of P.E.C.**, No. 04-05-00859-CV, 2006 Tex.App.Lexis 6161, Tex.App.— San Antonio, 7/19/06) rel. for pub. 2/2/07

**Facts:** On January 28, 2005, the State filed an original petition alleging that P.E.C., a 14 year old special education student, engaged in delinquent conduct by committing burglary of a habitation. An adjudication and disposition hearing was held February 17, 2005, at which P.E.C. pled true to two counts of burglary of a habitation pursuant to a plea bargain. P.E.C. was adjudicated as having engaged in delinquent conduct and was placed in the custody of his parent under the supervision of the Bexar County Juvenile Probation Department for 12 months. On May 12, 2005, the State filed a motion to modify his disposition alleging that P.E.C. had violated Condition No. 7 of his probation requiring him to adhere to a 7:00 p.m. curfew, Condition No. 16 requiring him to attend school every day and follow all school rules, and Condition No. 26 requiring him to pay restitution. At the June 2, 2005 hearing, P.E.C. pled true to the alleged violations of his probation pursuant to a plea bargain. The judge modified P.E.C.'s disposition by extending the term of his probation to 18 months from the date of the hearing, and requiring three months to be served under intensive supervision with electronic monitoring, along with other modified conditions.

In September 2005, the State filed another motion to modify P.E.C.'s disposition alleging that he had committed the following violations of his probation: (1) he failed to attend school and follow school rules on or about June 27 and 29, July 8, 12 and 13, 2005; (2) on or about July 14, 2005, he failed to participate in and cooperate fully with the 60-day electronic monitoring program; (3) on or about July 14, 2005, he failed to participate in and cooperate fully with his day treatment; and (4) on or about July 14, 2005, he failed to pay restitution in monthly payments as ordered. P.E.C. pled "not true" to each alleged violation and a contested modification hearing was held on September 22, 2005. At the conclusion of the hearing, the trial judge found that P.E.C. had committed each of the alleged violations of his probation. After a psychological evaluation was completed, a disposition hearing was held on October 20, 2005, at which the judge entered orders adjudicating P.E.C. delinquent and modifying his disposition to commit him to TYC for an indeterminate period. The court found that it was in P.E.C.'s best interest to be placed outside the home, that reasonable efforts were made to prevent the need for removal from the home, that in the home he could not be provided the quality of care and level of support and supervision needed to meet the conditions of probation, and that commitment to TYC was in his best interest. The court further found that the juvenile probation department

had extended numerous programs to P.E.C., including day treatment, but that he had continued to violate the law. Finally, the court found that P.E.C.'s educational needs "are being met and will continue to be met" at the Texas Youth Commission. The written orders were signed on October 26, 2005. P.E.C. timely appealed.

**Held:** Affirmed

**Opinion:** In his first and second issues, P.E.C. asserts that he retained special educational rights under the IDEA while he was on juvenile probation, and therefore, the juvenile court lacked authority to modify his disposition and commit him to TYC before his administrative remedies under the IDEA were exhausted. We review questions of law *de novo* in the context of a juvenile commitment. *In re K.T., 107 S.W.3d at 74.*

The IDEA is a federal act that seeks "to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." *20 U.S.C.A. § 1400(d)(1)(A)*; *Schaffer v. Weast, 546 U.S. 49, 126 S. Ct. 528, 531, 163 L. Ed. 2d 387 (U.S. 2005)*. The IDEA gives the States the primary responsibility for developing and executing educational programs for disabled children, but "imposes significant requirements to be followed in the discharge of that responsibility." *Schaffer, 126 S. Ct. at 531*. Under the IDEA, a state or local educational agency must create an "individualized education program" (IEP) for each disabled child. *20 U.S.C.A. § 1414(d)*. If parents believe their child's IEP is inappropriate, they may request an "impartial due process hearing." *20 U.S.C.A. § 1415(f)*. At an administrative hearing challenging an IEP, the parents bear the burden of proving the IEP is inappropriate. *Schaffer, 126 S. Ct. at 537*. The IDEA authorizes any party aggrieved by the results of an administrative hearing to bring a civil action in a federal district court or state court of competent jurisdiction. *20 U.S.C.A. 1415(i)(2)(A)*.

The record shows that prior to being adjudicated delinquent, P.E.C. was receiving special education services in the Emotional Disturbance Program through the San Antonio Independent School District. After adjudication, as a condition of his juvenile probation, P.E.C. attended and received day treatment at the Por Vida Academy, a charter school that contracts with the Bexar County Juvenile Probation Department. P.E.C. has been diagnosed with emotional disturbance, attention deficit disorder, oppositional defiant disorder, dysthymic disorder, R/O mathematics and reading disorder, and cannabis abuse.

At the disposition hearing, P.E.C. objected that he could not be committed to TYC without first being afforded his administrative rights under the IDEA because TYC commitment would change his educational placement. He argued that his inappropriate behavior which formed the basis of the alleged probation violations was a "manifestation" of his disability, and that under the IDEA's "stay put" provision he could not be committed to TYC without first exhausting his rights under the IDEA. *See 20 U.S.C.A. 1415(j)*; *see Schaffer, 126 S. Ct. at 536* (the IDEA's "stay-put" provision in 1415(j) requires a child to remain in his "then-current educational placement" during the pendency of an IDEA hearing). However, P.E.C. presented no evidence that his conduct in violation of his probation was due to his disability. Instead, P.E.C. asserted that the State bore the burden of proving that his alleged probation violations were *not* caused by his disability before it could change his educational placement by committing him to TYC. The juvenile court rejected P.E.C.'s arguments under the IDEA as illogical and "mixing apples and oranges." On appeal, P.E.C. raises the same issue and argues there is "implied conflict preemption" between the state and federal law; however, he cites no authority for the proposition that the IDEA restricts a state juvenile court's authority to modify a juvenile's disposition.

We conclude that P.E.C.'s argument based on the IDEA is flawed. The authority of the juvenile court to modify P.E.C.'s disposition by removing him from probation and committing him to TYC is not limited by the IDEA. *Honig v. Doe, 484 U.S. 305, 327, 108 S. Ct. 592, 98 L. Ed. 2d 686 (1988)* (holding the "stay-put" provision "in no way purports to limit or pre-empt the authority conferred on courts" to exercise their equitable powers to enjoin a dangerous disabled child from attending school). In *Honig*, the Supreme Court noted that the

legislative history of a predecessor statute to the IDEA makes clear that "one of the evils Congress sought to remedy was the unilateral exclusion of disabled children by *schools*, not courts, and one of the purposes of [the "stay-put" provision], therefore, was 'to prevent *school* officials from removing a child from the regular public school classroom over the parents' objection pending completion of the review proceedings.'" *Id.* (emphasis added) (quoting *Burlington School Committee v. Massachusetts Dept. of Education, 471 U.S. 359, 373, 105 S. Ct. 1996, 85 L. Ed. 2d 385 (1985)*). Indeed, by its own terms, the "stay-put" provision of IDEA applies only to state or local school authorities during the administrative proceedings contemplated by the statute; it has no application to state court proceedings involving a juvenile who has been adjudicated delinquent. *See 20 U.S.C.A. 1415(j)*; *Honig, 484 U.S. at 327*. The proper avenue through which to challenge P.E.C.'s educational placement is by invoking the administrative procedures set forth in the IDEA, and by instituting a civil action in federal district court once the administrative remedies have been exhausted. *20 U.S.C.A. 1415(f),(i)*. Moreover, P.E.C. would bear the burden of proving that his educational placement, or IEP, is inappropriate in such a proceeding. *See Schaffer, 126 S. Ct. at 536-37* (rejecting the argument that under the IDEA, every IEP is presumed invalid until the school district demonstrates that it is valid, but noting that some states have enacted laws placing the burden on the school district under some circumstances). Here, the State had the burden to prove by a preponderance of the evidence that P.E.C. violated a condition of his probation before he could be committed to TYC, but had no burden to disprove that P.E.C.'s violations were caused by his disability. We overrule P.E.C.'s first and second issues.

**Conclusion:** Based on the record before us, we hold that the trial court did not abuse its discretion in modifying P.E.C.'s juvenile disposition and committing him to the Texas Youth Commission. Accordingly, the judgment of the trial court is affirmed.