

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

v.

SAN FRANCISCO UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2017050108

DECISION

Student filed a request for due process hearing on April 27, 2017, naming the San Francisco Unified School District. Administrative Law Judge Rita Defilippis heard the matter in San Francisco, California, on June 6, 7, and 8, 2017.

Patricia Lee, Attorney at Law, represented Student throughout the hearing. She was assisted by Olivia Vong, education paralegal and Elizabeth Nakagoshi, paralegal. Student was present. Parent attended all days of the hearing. Student's sister attended the first day of hearing.

Diane Beall, Attorney at Law, represented San Francisco throughout the hearing. Margaret Farruggio, San Francisco's Director of Special Education, attended the hearing on San Francisco's behalf.

On June 8, 2017, the hearing concluded, the record was closed, and the matter was submitted for decision.

ISSUES¹

1. Did San Francisco deny Student and Parent their right to participate in the manifestation determination review team meeting on March 23, 2017, by holding the meeting without them, and by failing to reconvene the meeting at their request?

2. Did San Francisco violate Student's procedural rights under 20 U.S.C. § 1415(k) when it failed to allow him to return to George Washington High School following the March 23, 2017 manifestation determination review meeting, because some of San Francisco's staff obtained restraining orders against Student?

3. From March 20, 2017, through the time of hearing, did San Francisco deny Student a free and appropriate public education by failing to implement his individualized education program, including his behavior intervention plan, on March 20, 2017?

4. From April 21, 2017, through the time of hearing, did San Francisco deny Student a FAPE by unilaterally changing his placement to Thurgood Marshall High School?

SUMMARY OF DECISION

Student proved, by a preponderance of the evidence, that San Francisco denied Student and Parent their right to participate in the manifestation determination review team meeting by holding the meeting without them on a date that San Francisco knew that they could not attend. Student also proved, by a preponderance of the evidence, that San Francisco failed to respond to Parent's and Student's request to reconvene a manifestation determination review team meeting, after they learned that the meeting

¹ Both expedited and non-expedited issues are determined in this Decision. This Decision was issued in conformance with the expedited timelines.

was held without them.

Student established, by a preponderance of the evidence, that Student's change of placement from George Washington, from which he was removed, to Mission High School, was a change of placement in violation of Student's procedural due process rights under 20 U.S.C. § 1415(k)(1)(F) because it exceeded the authority of the manifestation review team.

Student sustained his burden of proving, by the preponderance of the evidence, that San Francisco failed to implement his IEP behavioral intervention plan on March 20, 2017, and that the failure to implement the behavior intervention plan directly resulted in the conduct for which he was suspended and removed from his placement. Student established that this loss of educational benefit denied him a FAPE.

Lastly, Student successfully demonstrated, by a preponderance of the evidence, that he was denied a FAPE from April 21, 2017, to the date of hearing as the result of San Francisco unilaterally changing his educational placement to Thurgood Marshall High School without Student's consent and without any opportunity for him or his Parent to meaningfully participate in the IEP process.

FACTUAL FINDINGS

JURISDICTION

1. Student is an 18-year-old male who resides with Parent within San Francisco's boundaries. He has been receiving special education and related services since his early elementary school years. He is currently eligible for special education services in the categories of emotional disturbance as his primary disability, and specific learning disability as his secondary disability.

2. Student attended Edgewood, a nonpublic school for students with serious emotional disturbance, from fifth grade through the fall semester of 11th grade. Student

transitioned to the Success, Opportunity, Achievement and Resilience (SOAR) special education program, designed for students with emotional disturbance, at George Washington, a comprehensive public high school campus, by first attending two classes during the fall semester of his 11th grade year. Student's behavior at his nonpublic school declined during the transition period where he was attending public school for two periods a day. He started struggling with inappropriate language, excessive conversations which were off topic, and demanded attention. Parent expressed concern that Student was not ready to transition to a comprehensive high school. Despite her concerns, she agreed to the full-time transition. Student became a full-time student in the SOAR program at George Washington in January 2016, when he was in his 11th grade year.

THE SOAR PROGRAM

3. The SOAR program was described as a structured program to address social emotional behavioral needs interfering with success in school. The goal for students in the SOAR program is to demonstrate significant improvements in: following directives; navigating peer group interactions; increasing academic, social, and emotional achievement; increase graduation rates; and reduce low attendance and drop-out rates. Educationally related mental health services are offered to SOAR students and their families through the San Francisco Department of Public Health. Typical learning challenges of SOAR students include difficulty understanding directions, and difficulty with comprehension, writing, and reading. Social-emotional challenges include social withdrawal, social anxiety, and not understanding social situations.

4. Students in the SOAR program are on individualized point systems. They earn points for achieving predetermined goals. Students receive rewards of food, including chips, cookies, fruit snacks, "Cup O' Noodles," fruit snacks, Gatorade, and water. Students have a maximum amount of points they can earn in a class. According

to Student's behavior plan, Student could also earn honors room, honors outings, and freedom Friday.²

STUDENT'S BEHAVIOR PLANS

5. Student did not have a behavior intervention plan when he transitioned to George Washington, but the IEP team developed behavior goals to address his increased poor attendance, and Edgewood's 2015 behavior goals were continued to address Student's noncompliance and difficulty with self-regulation.³ Student's April 28, 2016 IEP documented that Student's attendance, noncompliance and poor self-regulation behaviors gradually increased following his full-time attendance at George Washington in January 2016. By March 2016, Student began struggling with regular attendance and following class and school rules. His attitude and effort in all classes changed. His grades declined. Student was described as expressing what he was thinking without a filter as to the appropriateness of his comments. Student had difficulty receiving feedback about his behavior without becoming defensive. Student did not participate in educationally related mental health services that were offered to

² No explanation of these rewards was provided at hearing. There was no evidence presented as to Student's points' records.

³ The note on May 18, 2016, attached to Student's April 28, 2016 IEP, indicated that Student's 2015 goals were continued, but the goals listed in the IEP appear to still contain the old implementation date of April 25, 2016, which had already passed. An IEP dated November 14, 2016, reflects that the completion dates for the goals were removed and substituted with "By the review date". The November 14, 2016, IEP shows that Student did not meet his noncompliance or self-regulation goals continued from 2015.

him. During Student's first full-time semester at George Washington, he was marked absent from 59 class periods.

6. In September and October of 2016, a functional behavior assessment was conducted. Reported behaviors were not observed during only three observations conducted by the assessor. Student was documented to be tardy 15 to 30 minutes, four periods a day. The report identified suspected marijuana use as a contributing factor.

7. Student was cut from the school football team at some point in the fall semester of the 2016-2017 school year. This event was a starting point for behavior changes in Student which included walking out of class, wandering around campus, refusing to leave campus, not following directions, and using profanity toward his teachers.

8. On October 19, 2016, a behavior intervention plan was developed, and attached to Student's November 28, 2016 IEP, to target Student's behavior that was impeding learning. This behavior was described as using communication that was incongruent with the expectations of the environment; calling out in class; and directing negative comments towards others that was so disruptive it stopped instruction. Student's behavior was described as being aggressive and threatening in nature at times. Student ignored prompting and directives to desist.

9. Predictors of maladaptive behavior included unstructured class time; multiple transitions; high motoric activity in the classroom; times when rules and expectations were not clear; times when peers were exhibiting disruptive behavior; times when Student was agitated; times when a peer was confrontational or engaging with Student negatively; and times when adults gave Student prompts and directives to stop. The function of Student's behavior was stated to be a reflection of his impulsive reactions based on a lack of internal coping mechanisms, and an inability to communicate his needs. Student's behavior that impeded learning was described as

showing his inability to communicate in a pro-social manner when protesting a negative social exchange, or when he wanted to escape the social/academic environment.

10. Specific interventions described in the October 19, 2016 behavior intervention plan, that would eliminate the need for Student to use the behavior impeding learning included: minimized time between transitions; provision of separate space in the classroom or a safe spot in the building that Student could retreat to when feeling overwhelmed or agitated; use of a calm neutral voice when prompting or redirecting; close supervision during times of transition, especially when Student was showing signs of agitation; attempts to find a positive peer model for Student to develop a relationship with; seating Student away from peers that might antagonize him; work with a therapist to develop scripts and strategies to use when feeling agitated; and providing a list to Student of the basic expectations in the classroom.

11. Under the October 19, 2016 behavior plan, if Student was engaged in the problem behavior, reactive strategies were to be addressed in the antecedent phase. They included: prompts to switch to replacement behavior; reminding him of positive options for communication or protest; providing proximity support to reduce stress; reminding him of basic classroom expectations for behavior and giving him support to make a good choice; giving visual reminders and prompt to use a target strategy including a verbal communication script. If behavior continued he was to be given prompts and choices but in a firm, reassuring way; acknowledging approximations of replacement behavior or his use of a strategy; staff could insist Student leave the classroom if behavior continued; and positive discussions after behavior ended.

12. On November 14, 2016, another behavior intervention plan was developed and was also attached to Student's November 28, 2016 IEP, to address Student's frequent absences, lateness to school and class, and noncompliance with teacher, paraprofessional, and other adult instruction. Predictors of Student's behaviors were

described as when he was: affected by situations that had occurred at home; asked to participate in non-preferred activities; held to a time limit such as time for class; not prepared for class with necessary materials; given a direction to follow; corrected or redirected; and when he was suspected of being under the influence of marijuana. Situations that supported Student's behavior impeding learning were when Student perceived situations or work to be too difficult, irrelevant, or boring; if he was unsure of what to do, or what was expected of him; or if there was a situation where Student might be embarrassed or needed to save face. The function of Student's behavior that impeded learning was to escape academic and social demands. The listed participants in the behavior plan development were Student; psychologist Erick Elliot; Parent; case manager Lisa Faustino; and Susan Saunders, site administrator.

13. Specific interventions identified in the November 14, 2016 behavior intervention plan included Parent/teacher collaboration to ensure Student's regular and consistent attendance and punctuality; teacher reminders to get to class on time and remind Student of how much time he has to make it to class; teachers developing a positive relationship with Student; offers of at least one task or assignment which allowed Student to experience success or establish a positive connection with school; attempts to relate topics and assignments to Student's interests, life and experiences; and presentation of clear and concise directions and expectations for Student.

14. The November 14, 2016 behavior intervention plan listed reactive strategies to use if Student's problem behavior occurred. These included prompts to switch to replacement behavior by reminding Student of his point sheet, honors time or behavior contract; and positive discussion with Student after problem behavior ended, including positive rewards and public acknowledgment of increases in attendance and compliance.

15. On November 15, 2016, Student was suspended from school for three

days for throwing a piece of paper at his teacher, Ms. Faustino, and cursing at her, causing the teacher to be afraid for her safety. On November 22, 2016, Student and Parent participated in a reentry meeting to discuss the behavior leading to his suspension and Student became upset. Student's behavior and statements precipitated a call by Student's case manager to the child crisis unit and the School Resource Officer.⁴ Student was sent home with Parent.

NOVEMBER 28, 2016 IEP TEAM MEETING

16. On November 28, 2016, Student's triennial IEP team meeting was held. The purpose of the meeting was to discuss the triennial assessment that had recently been completed, and graduation. Student's IEP documents reflected that he was on a diploma track for graduation with a regular high school diploma and his expected graduation date was listed as May 25, 2017. Student's IEP included services during the extended school year in the event he did not complete his graduation requirements. Student's eligibility for special education and related services continued under the primary eligibility category of emotional disturbance and the secondary eligibility category of specific learning disability. Student had met only one of his previous IEP goals and had not met his vocational, behavioral or attendance goals.

17. At the November 28, 2016 IEP team meeting, Student's recent behavior incident was discussed. The behavior intervention plan and three behavior goals for attendance and compliance were presented. The notes of the November 28, 2016 IEP documented that Student worked well in one-to-one settings, required prompts and tools for organization, and had been very responsive to classroom supports. Teachers reported that attendance and suspected marijuana use negatively impacted Student's

⁴ School Resource Officers are San Francisco Police Officers on campus for security purposes.

learning. If on time, prepared and not under the influence, teachers described Student as: very motivated to learn and develop skills; an active participant in discussions, adding thoughtful questions and comments; eager to work and attend college; very interested in current events and the relationship to the past; and expressive of a desire to understand the system and laws.

18. The notes of the November 28, 2016 IEP document serious behaviors of Student as well as significant attendance issues. In the two months leading up to the meeting, Student was tardy to 68 periods; and seven of those times he was over 30 minutes late to class. Student was absent from class on 14 occasions. Student's baselines for his behavior goals in this IEP list the following behaviors demonstrated daily in three to four classes including: calling out, walking out, playing music during class, using phone during class, demanding food, and withdrawal and profanity when given feedback, or when escalated and agitated.

19. The IEP team agreed that Parent would be contacted when Student became escalated so that she could attempt to calm Student. Therefore, the student resource police officer would not need to become involved.

BEHAVIOR INCIDENT OF MARCH 20, 2017

20. John Marman was Student's paraprofessional aide at George Washington, and responsible as Student's point person for five periods of Student's school day. Mr. Marman was one of three paraprofessionals in the SOAR program at George Washington. As Student's point person, Mr. Marman's responsibilities to Student were to follow Student to classes, ensure Student was on task with necessary materials and following directions, and that he was not being disruptive or moving in and out of the classroom. As Student's aide, Mr. Marman assisted Student with classwork and supported the lead teacher. Mr. Marman completed training in de-escalation techniques, as well as at least 24 hours of safety training through San Francisco, and at

the time of hearing was about to complete his masters in marriage and family counseling. Mr. Marman was sincere and thorough in his testimony in providing details of the behavior incident at issue in this proceeding. His heartfelt and honest testimony, including admissions of his own culpability in the incident at issue in this case, was given great weight.

21. Mr. Marman worked with Student for a year and nine months, ever since Student began attending George Washington. Up until March 20, 2017, Mr. Marman described his relationship to Student to be fun and joking, yet serious. Student worked closely with Mr. Marman, sharing information with him, listening to his directions. Mr. Marman felt that Student was capable of graduation, and much more. Mr. Marman described Student as being a likeable guy, a talented football player, very approachable with an infectious laugh, and one of the brightest smiles in the world. Mr. Marman said that more often than not, Student would not follow directions, would fly off the handle, would seem to arrive to school under the influence, leave school early, arrive late, and engage in verbal altercations with staff and students.

22. On March 20, 2017, at approximately 8:30 a.m., Mr. Marman arrived to work and entered Student's second period special day class science classroom. There were approximately five students present as well as the special education teacher, Nicole Warner.⁵ Student was seated at a table and engaged in a verbal altercation with another student who was seated eight feet away from him at an adjacent table. The verbal altercation with this particular student was almost a daily occurrence whereby they exchanged loud, negative verbal assaults regarding each other's physical

⁵ Ms. Warner has been a special education teacher for 12 years and has been a teacher at George Washington for the last nine years. She holds a credential which allows her to teach special education students with mild to moderate disabilities.

appearance, intellectual ability, developmental delays, and money. According to Mr. Marman, this day was no different.

23. Ms. Warner was setting up a science experiment that involved heating up a substance in a pot on a burner. Because the back and forth between Student and the classmate continued, Mr. Marman verbally requested Student to stop talking and redirected Student to do his work. At some point the peer who was verbally engaged with Student did calm down and stopped talking to Student. However Student continued his verbal assaults towards his peer. Mr. Marman asked Student to stop and to go to room 306, which was the SOAR classroom which was empty at the time. Mr. Marman told Student that if he would leave the room, he would not lose any points. Student did not comply with Mr. Marman's repeated requests.

24. Student then began directing his verbal assaults at Ms. Warner who was attempting to conduct a science experiment which involved melting a substance in a pot. Ms. Warner stated out loud that the experiment was not working. Student told Ms. Warner, "You're dumb"... "You have no common sense"... "You need to add some water." Mr. Marman told Student he was being disrespectful and asked Student to watch his language. Student continued to verbally assault Ms. Warner after she added water to the pot, saying, "That's what I told you to do." Student then called her a "dumb bitch." Mr. Marman told Student to "Shut the hell up." All the other students were telling Student to "shut the fuck up" and "calm down and pay attention." Mr. Marman prompted Student several times to go to room 306 but Student responded "no" several times. Mr. Marman was within arms' reach of Student and he lightly touched Student with a physical prompt on his shoulder, motioning him to leave and go to room 306. Student told Mr. Marman "back up," and Mr. Marman took several steps back. After Student continued to insult Ms. Warner, Mr. Marman stepped toward Student and said "we have to go." Student then said to Mr Marman: "You're 27 and you're buff, I'm 18

and I'll still whoop your ass." Mr. Marman felt threatened and responded, "Do it!" Mr. Marman said that Student had seemed to dissociate and was so upset that it was possible that Student was capable of doing anything. However, Student remained seated throughout this incident.

25. Despite Student appearing to have dissociated, Mr. Marman, having felt threatened by Student, said to Student, "Shut the hell up; you're acting like a punk, you're worthless; why do you even come to school?" Student reacted by saying, "I'll kill you, I'll get a gun and I'll get my cousin and I'll kill you." Ms. Warner had stepped into the hallway and called Student's case manager, Lisa Faustino, who came to the classroom to help.⁶

26. Ms. Faustino entered the classroom toward the end of the verbal assaults between Mr. Marman and Student. Ms. Faustino put her hand on Mr. Marman and told him to leave the classroom immediately. As Mr. Marman left the room, Student was crying. Student then called Ms. Warner a bitch and made the same threat to Ms. Warner that he would get his cousin and come back and kill her and Mr. Marman. Ms. Warner gradually removed the other students from the classroom and brought them to the SOAR classroom in room 306. Ms. Faustino called Parent and handed Student the phone. Student talked to Parent and agreed to leave campus. After he hung up the phone and was on his way out of the classroom, Student repeatedly said "Fuck you

⁶ Ms. Faustino is Student's SOAR teacher and case manager. She has been a special education teacher for 28 years. Seventeen years were spent as a teacher at a nonpublic school for students with emotional disturbance. The last 11 years she has been a special education teacher at George Washington. She holds a special education credential and all of her experience has been as a teacher of students with emotional disturbance.

Faustino, I'm gonna get a gun and come back and kill you."

27. After Student left the science classroom, he walked to the SOAR classroom, room 306, entered, and restated to Ms. Warner that he was going to come back and kill Mr. Marman. He then left the campus and went home.

28. Mr. Marman admitted his behavior and statements to Student on the day of the incident were inappropriate and were in no way shape or form a part of Student's behavior intervention plan. He was forthright about his verbal discussions with the school staff and administrators and the school resource officer immediately following the incident. However, his admittedly inappropriate statements to Student were not included in the written statement he provided to the school resource officer. Mr. Marman was directed by school administrators to take a day off during a debriefing of the incident just before he wrote his statement for the student resource officer.

29. Mr. Marman had last reviewed Student's IEP in October or November of 2016. He last reviewed Student's behavior intervention plan in January or February of 2017. Mr. Marman was unable to testify as to the details of Student's behavior intervention plan without being referred to it at hearing. Although he was referred to an older behavior plan dated October 19, 2016, he later testified that the behavior plan he implemented on March 20, 2017, was the behavior plan dated November 14, 2016.

30. There was some confusion at hearing as to whether the October 19, 2016, or the November 14, 2016, behavior plan was in effect on the day of the incident. Both behavior plans were developed before the November 28, 2016 IEP meeting, but each was marked as an attachment to the November 28, 2016 IEP on the face of each of the behavior plan documents. There was testimony that the operative behavior intervention plan on March 20, 2017, was the behavior intervention plan dated November 14, 2016. However most of the interventions used by staff during the incident were reflected in the October 19, 2016, behavior plan. Though not the operative behavior plan on the day

of the incident, the October behavior plan is relevant and probative of how Student's disability of emotional disturbance manifested in his behavior, what triggered his behavior, and what environmental situations escalated and promoted Student's problem behavior.

31. Parent testified at hearing. Her testimony was emotional and her demeanor communicated her concern for her son, her need to protect her son, and her distrust of San Francisco. She considered herself to be an active participant in her son's special education program and had always requested that the school call her any time if she was needed to assist with Student's behavior. She has been called on many occasions by staff and has responded, even on occasions when the incident for which she was called appeared to her to be minor and a matter staff should have been able to handle.

32. When Ms. Faustino called Parent at work she told Parent that Student had escalated during an incident, and had told people he wanted to kill them and he needed to be calmed down. Parent could hear her son crying in the background, and it was obvious that he was very upset. She could also hear Mr. Marman in the background. Parent was able to calm Student down, and convinced him to leave school. Ms. Faustino then got on the phone and told Parent she needed to come to school immediately.

33. Parent drove to the school and talked to Ms. Faustino and the school counselor and was informed that law enforcement had been called and Student was being suspended for five days. Parent was asked by Ms. Faustino to talk to a police officer Ms. Faustino had called on the phone, and the officer told Parent that Student had fled the scene and asked her if she was harboring her son. Parent told the officer that the school called her and told her they needed Student to go home. Parent was asked to meet the police at her home. She asked if they were going to arrest her son and they said that they just wanted to talk to him.

34. Parent went to the house and her son was already at home. Shortly after, 20 police officers arrived at the home in police cars. They were all in uniform except for two dressed in black. They stayed at the house for 15 minutes, and searched the house for guns with Parent's permission. Student was arrested, placed in handcuffs and put in a police car. Parent described Student to be in an emotional breakdown during the whole police incident. Student was charged with a felony and was in custody until he was released on Friday, April 24, 2017. As of the date of the hearing, Student had criminal charges pending.

35. A notice of suspension dated March 20, 2017, at 9:15 a.m., reflects that Student was suspended for five days for violation of Education Code section 48900, subdivision (a) (Threatened to cause physical injury upon another person), and Education Code section 48900.7 (Making terrorist threats against school officials). The notice specifically checked the box that states that expulsion was not recommended. However, the notice directed Student to go to the Office of Pupil Services on April 3, 2017, for a counseling conference and expulsion meeting.

MANIFESTATION DETERMINATION MEETING ON MARCH 23, 2017

36. San Francisco's spring break was five days in duration and began on March 27, 2017, and continued through March 31, 2017. San Francisco informed Parent that a manifestation determination review team meeting had to be held within 10 days of Student's March 20, 2017 suspension and therefore had to be held before spring break.

37. On March 21, 2017, Ms. Faustino called Parent and left a message for Parent to call the principal, Ms. Saunders, regarding the scheduling of a meeting for Student on March 23, 2017. Parent called Ms. Saunders that same day and left a message. On March 22, 2017, Ms. Saunders called Parent at approximately 2:30 p.m. to discuss the March 23, 2017 date. Parent told Ms. Saunders that she could not attend a meeting on March 23 or 24, 2017, because she had to work. Parent offered to drop

everything right then and attend a meeting at 3:00 p.m., March 22, 2017. Parent also stated that she was available for a meeting the following Monday, March 27, 2017. Ms. Saunders told Parent that she would call her back. Ms. Saunders never called Parent back. Parent's understanding was that this would be a re-entry meeting. Ms. Faustino, not aware that Student was in custody, mailed a notice of the manifestation determination meeting to Student at his home address on the morning of March 22, 2017.

38. Parent's testimony conflicted with Ms. Faustino's testimony claiming that Parent confirmed with Ms. Saunders that she would attend the March 23, 2017 meeting. Because Ms. Faustino did not personally witness the call between Parent and Ms. Saunders, and because Ms. Saunders did not testify at hearing, Parent's testimony was given more weight. Parent's testimony was credible and, although she was initially confused about dates, after referring to a calendar, she was firm on her testimony.

39. On March 23, 2017, a manifestation review team meeting was held without Parent and without Student's knowledge or attendance. Student was still in custody at this time and the principal and Mr. Elliot, the school psychologist, knew that he was in custody because they informed Ms. Faustino of his arrest and custody at the meeting. The manifestation determination meeting documentation listed the proposed disciplinary action to be suspension with recommendation for expulsion.

40. The manifestation meeting was attended by Ms. Faustino, Mr. Elliot, and Susan Saunders, the principal of George Washington. The team reviewed Student's IEP, behavior intervention plan, police incident reports, and disciplinary reports going back to November 2016. The team decided that the conduct for which Student was disciplined on March 20, 2017, was a manifestation of his disability of emotional disturbance. The team made no finding as to whether Student's conduct was a direct result of a failure to implement his IEP. The team did not amend Student's behavior

intervention plan as it was determined to be well developed and to directly address current concerns.

41. The manifestation review team meeting notes reflect that the emergency restraining orders, applied for by the school resource officer on behalf of Mr. Marman, Ms. Warner and Ms. Faustino, prevented Student from returning to George Washington. They also reflect that Mr. Marman, Ms. Warner and Ms. Faustino would file for a temporary restraining order on Monday, March 27, 2017. San Francisco determined Student required the current recommended level of service and support but instead of returning Student to George Washington, changed his placement to the SOAR program at Mission High School due to the restraining order against him.

42. The decision to place Student at the Mission High School SOAR program site was not made or discussed at the manifestation determination review meeting and was instead made by Dr. Blanco, the head of San Francisco's SOAR program and Rachel Noto, special education supervisor of San Francisco's SOAR, who were not present at the manifestation determination meeting.

SUPERIOR COURT PROTECTIVE ORDERS

43. Following the incident, on March 20, 2017, Mr. Marman, Ms. Warner, and Ms. Faustino consented to the school resource police officer filing for emergency protective orders against Student on their behalf. The paperwork was initially filed on March 20, 2017, by the officer. On March 20, 2017, three emergency protective orders were issued by the Superior Court of San Francisco, prohibiting Student from being within 100 yards of George Washington, and Mr. Marman, Ms. Faustino and Ms. Warner. In addition, on March 28, 2017, a temporary restraining order was issued ordering Student to stay 100 yards away from Mr. Marman, his place of work, and his vehicle. No exceptions were listed. On the same date a temporary restraining order was issued ordering Student to stay 100 yards away from Ms. Warner, her workplace and her

vehicle. No exceptions were listed. And on March 29, 2017, a temporary restraining order was issued ordering Student to stay 50 yards away from and have no contact with Ms. Faustino and her workplace with the exception that Student could be within three yards of Ms. Faustino at George Washington.

44. On April 19, 2017, three civil harassment restraining orders after hearing were issued by the Superior Court of San Francisco, ordering Student to stay 100 yards away from Mr. Marman, Ms. Warner and Ms. Faustino for a year, with an exception that allowed Student to be within 20 feet of them while at George Washington, but only after he submitted to a search upon entering the school campus. Mr. Marman confirmed that the judge at the April 19, 2017 hearing explained that inadvertent passing of Student and the staff in the hallways of George Washington would be understandable due to the width of the school hallways. Both Mr. Marman and Ms. Faustino testified at the hearing. It is clear that the judge who presided over the hearing and issued the protective orders intended Student to return to his placement at George Washington. He made specific exceptions to the restraining orders protecting the safety of Mr. Marman, Ms. Warner and Ms. Faustino while also allowing Student to continue his education at George Washington.

STUDENT'S GRADUATION STATUS

45. Student passed all of his classes in spring semester with the exception of Spanish 2, for which he received an "incomplete," noted to be due to his suspension and lack of completed work. He needed only five Spanish 2 credits to graduate with a regular high school diploma. Student's grade report recommended the development of an alternate assessment/project for Spanish 2, with a specific due date of May 19 or May 22, 2017, for example. If Student could pass the alternate assessment/project, then he would earn his San Francisco Unified School District high school diploma. At the time of the behavior and discipline incident at issue, Student had a 3.1 grade point average and

planned to attend college following his anticipated graduation in May 2017.

46. The last day of instruction for San Francisco's 2016-2017 instructional year was May 26, 2017. The first day of the extended school year was June 7, 2017. Extended school year is scheduled to end July 13, 2017.

EVENTS SUBSEQUENT TO THE MANIFESTATION DETERMINATION

47. On April 3, 2017, Parent and Student's attorney attended the counseling and expulsion conference meeting at San Francisco's Pupil Services Office.⁷ They were informed that Student was no longer being expelled, and given a copy of the manifestation determination. Student's attorney requested a rescheduled manifestation determination because the original was held without Parent, and while Student was in custody.

48. On April 10, 2017, San Francisco's attorney, Diane Beall, via an email to Student's attorney, offered Parent a tour of other SOAR programs at other school sites and discussed work packets for Student to complete his school assignments. Ms. Beall said the earliest possible date for an IEP manifestation determination was April 26, 2017, at 8:30 a.m. The email stated that under the March 23, 2017, IEP manifestation determination, Student could attend Mission High School until the April 26, 2017, meeting.

49. On April 11, 2017, attorney for Student sent a reply email saying that Student and Parent were not interested in touring other SOAR programs at that time and that they intended Student to return to George Washington if the civil restraining orders were lifted. Attorney for Student stated that Student's family was not available on

⁷ Student was initially represented by deputy public defender Semuteh Freeman. At hearing, Student was represented by Patricia Lee, a deputy public defender and the Managing Attorney of the Juvenile Unit of the San Francisco Public Defender's Office.

April 26, 2017, at 8:30 a.m. She clarified that April 26, 2017, at 10:30 a.m., or another day at 10:30 a.m. would work for the family.

50. On April 13, 2017, another assignment packet was sent to Student's attorney, via email, containing English and Science worksheets. Student's attorney was informed that Student could access Spanish 2 assignments via the school loop. Due dates for the packet were discussed as well as take home finals for Science and English. The email inquired as to whether Student was accepting offered services at either the civic center or the counseling center.

51. On April 13, 2017, attorney for Student replied in an email that Student and Parent were not interested in the offers of completing his studies at the civic center or the counseling center because Student was not in trouble and/or suspended. Parent requested to pick up assignments for Student from the school as Student's attorney would not see Student for a week. Student agreed to try hard to finish his assignments without the help he typically received at George Washington. Student's attorney conveyed Parent's surprise at the requirement that the assignments were due within three days because Student had always gotten increased time to complete work. Lastly, Student's attorney inquired as to when the IEP manifestation determination meeting would be, again reminding San Francisco that the family requested the time of 10:30 a.m.

52. On April 14, 2017, San Francisco replied that school work could be picked up by Parent at the school office. The email said that San Francisco was waiting for feedback regarding what the practice was concerning the turnaround time for Student's assignments. San Francisco explained that the civic center and the counseling center were suggested as a location for Student to receive academic support for the schoolwork assigned. San Francisco said that they are trying to move schedules around to accommodate the 10:30 a.m. time request on April 26, 2017.

PRIOR WRITTEN NOTICE

53. On April 21, 2017, San Francisco emailed prior written notice to Student's attorney stating that it was impossible to implement Student's IEP at George Washington and reassigning Student to Thurgood Marshall High School, effective April 27, 2017, at 8:00 a.m. The email confirmed that the prior written notice would be mailed to Student on April 24, 2017.

54. The prior written notice form, dated April 21, 2017, gave notice of "Continuing of special education and related services." The action proposed was: "Provision of FAPE; Reassignment of program location." The notice stated that due to San Francisco's inability to implement Student's IEP at George Washington, Student's services would be provided in the SOAR program at Thurgood Marshall High School. The notice stated that the reason for the notice was that restraining orders made it impossible for Student to receive his individualized support services in the SOAR academy at George Washington. The notice stated, "Because the change of location is due to the impossibility of implementation of Student's operative IEP, San Francisco has determined it does not require Student's written consent to the reassignment."

55. The prior written notice stated that less restrictive special education services from non-SOAR special education and general education staff were considered but would not provide the supports available in the SOAR academy program that were necessary for Student to receive FAPE. Further, non-SOAR special education would not reflect the required programming and services provided for in Student's operative IEP. Lastly the notice stated that due to changed circumstances, San Francisco determined that the placement provided for in Student's IEP must be implemented in a different location.

STUDENT REQUEST FOR DUE PROCESS

56. On April 27, 2017, Student filed his request for due process in the present case and emailed a copy to San Francisco. San Francisco replied via email on the same date that Parent was sent a notice of a manifestation determination IEP meeting to be held on May 3, 2017, and San Francisco asked for verification that the notice of meeting was received by Parent and Student. On April 28, 2017, Student's attorney sent San Francisco a reply email saying that Parent never mentioned getting any notice of meeting for May 3, 2017.

57. On April 28, 2017, a certified letter, containing a notice of meeting, dated April 12, 2017, for a May 3, 2017 manifestation determination meeting, was mailed to the Parent or Guardian of Student, and was returned to San Francisco on May 1, 2017, stamped as "unclaimed, unable to forward." The envelope had another date of May 5, 2017, and a hand written notation, "Refused to Accept."

58. There was no evidence at hearing that Parent received the certified letter and Parent testified that she did not receive or refuse the certified letter mailed on April 28, 2017. San Francisco never held an IEP meeting or reconvened a manifestation determination meeting after the March 23, 2017 manifestation determination.

SAN FRANCISCO'S IMPLEMENTATION OF STUDENT'S IEP AND BEHAVIOR INTERVENTION PLAN

59. Ms. Noto testified at hearing as someone with expertise in behavior plans, and in placement options for students eligible for special education as emotionally disturbed. Ms. Noto has been the director of the kindergarten through 12th grade SOAR program for emotionally and behaviorally challenged students for three years. She earned her master's degree in special education in 2007. She received a second master's degree which allowed her to obtain an administrative credential in 2015. She holds a special education credential that allows her to teach students with mild/moderate

disabilities including emotional disturbance. Ms. Noto was the school director at a nonpublic school for seven years where she supervised staff, and she developed and implemented the behavioral programs at that school. The majority of her career has been spent working with students with emotional disturbance.

60. Ms. Noto reviewed Mr. Marman's statement of the March 20, 2017 incident, on the same day. Ms. Noto stated that it was appropriate for Mr. Marman to ask Student to go to another classroom to calm down. When looking at Student's behavior intervention plan of November 14, 2016, she testified that this type of request fell under the recommended strategy of "teachers developing a positive relationship with Student" and "clearly and concisely present directions and expectations to Student." Since Student refused this direction several times, Ms. Noto recommended, based on her experience that Mr. Marman should have backed off and given Student space. When informed that Mr. Marman told Student to stop being disrespectful after he insulted his science teacher, Ms. Noto was of the opinion that this was proper because Student's behavior plan called for redirection of Student. When told that Student threatened to "Whoop Mr. Marman's ass," Ms. Noto stated that Mr. Marman should have given Student physical space and perhaps switched off with another staff member. When told that Mr. Marman told Student that he was acting like a punk and that Student was worthless, Ms. Noto stated that these were inappropriate statements which would escalate Student's behavior, and Mr. Marman should have left the room.

61. Ms. Noto's testimony regarding her opinion that the behavior implementation plan was reflected in the actions taken by staff, was not credible because most of the strategies used were not even in the November 2016 behavior plan. Because Ms. Noto has lengthy experience with student behavior interventions, her testimony was probative of the fact that the interventions that Student needed were neither in the behavior plan, nor were they implemented.

62. Ms. Noto looked for other placements for Student after the manifestation determination once it was decided that Student could not return to his placement due to the restraining order. The SOAR program at Mission High School was identified. She identified other options including the SOAR program at Thurgood Marshall High School, and non-SOAR options including the counseling center and civic center. Ms. Noto stated that the civic center program is a place where a student can receive specialized academic instruction and more individualized attention than at a comprehensive site. It is not part of the SOAR program. At the civic center two or three students are usually present at one time. Student's behavior intervention plan could be implemented at a SOAR program at a different site than George Washington or at the civic center program, and he could have received specialized academic instruction and completed his credits for Spanish 2. The counseling center provides individualized work packets where Student would pick up his packet sent by his case manager, Lisa Faustino, and complete his work. There were other teachers at the counseling center to assist Student as needed.

63. Neither the civic center nor the counseling center, which were each recommended options by Ms. Noto for Student, is a special education program.

64. Ms. Noto stated the SOAR academies were her preferred placement recommendation for Student, followed by the counseling center and then the civic center. She explained that because Student just needed Spanish 2 credits, his instruction could very easily be tailored to his individual needs to complete his requirements. Student declined all three placement options maintaining that he should be permitted to return to George Washington.

65. Ms. Noto stated that if the restraining order was not in place, Student was legally entitled to return to George Washington because his behavior was found to be a manifestation of his disability. Ms. Noto was of the opinion that Student could not be

placed in a mild/moderate special day class at George Washington to complete his credits because the teachers do not have the same level of training as the teachers in the SOAR Academy. She stated that an IEP team meeting would be required for such a placement. Ms. Noto never had any discussions with the principal about what would have to be changed to have Student go back to George Washington. If the principal had allowed Student to return to George Washington but in different classrooms, Ms. Noto said that it would not work because that would require the relationship and the direct instruction around the social skills issue by the only person on site who was trained in that, which was Lisa Faustino. Ms. Noto stated that Student could not be placed in a mild/moderate class because the mild/moderate teachers do not have the same level of training and expertise. If he was placed in a mild/moderate class, his IEP would have to be re-written. She did not have any discussion about doing that with the principal.

66. Ms. Noto's testimony regarding Student's behavior plan and her opinions regarding her insistence that Student could only be taught by Ms. Faustino were not credible in light of the fact that Student had been in a general education Spanish class all semester and Student had been in a special day class with Ms. Warner, a non-SOAR teacher with a mild/moderate credential. Additionally, Ms. Noto had just testified that Student's needs could easily have been met in a counseling center doing work packets with teacher support. Ms. Noto appeared to have practiced her responses in a way to only give answers to preclude Student's return to George Washington. Her testimony was therefore given little weight as to her opinions that there were no options for placement at George Washington which could have allowed the enforcement of the restraining orders.

LEGAL CONCLUSIONS

LEGAL FRAMEWORK UNDER THE IDEA⁸

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) 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 higher education, employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. A free and appropriate public education means special education and related services that are available to an eligible child at no charge to a parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9)(A-D); 34 C.F.R. § 300.17.) "Special education" is instruction specially designed to meet the unique needs of a child with a disability. (20 U.S.C. § 1401(29); 34 C.F.R. § 300.39; Ed. Code, § 56031, subd. (a).) "Related services" are transportation and other developmental, corrective and supportive services that are required to assist the child to benefit from special education. (20 U.S.C. § 1401(26); 34 C.F.R. § 300.34; Ed. Code, § 56363, subd. (a) [In California, related services are also called designated instruction and services].)

3. In general, an IEP is a written statement for each child with a disability that is developed under the IDEA's procedures with the participation of parents and school

⁸ Unless otherwise indicated, the legal citations in this section are incorporated by reference into the analysis of each issue decided below.

personnel that describes the child's needs, academic and functional goals related to those needs, and a statement of the special education, related services, and program modifications and accommodations that will be provided for the child to advance in attaining the goals, make progress in the general education curriculum, and participate in education with disabled and non-disabled peers. (20 U.S.C. §§ 1401(14), 1414(d)(1)(A); Ed. Code, §§ 56032, 56345, subd. (a).)

4. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] (*Rowley*), the Supreme Court held that "the 'basic floor of opportunity' provided by the [IDEA] consists of access to specialized instruction and related services which are individually designed to provide educational benefit to" a child with special needs. *Rowley* expressly rejected an interpretation of the IDEA that would require a school district to "maximize the potential" of each special needs child "commensurate with the opportunity provided" to typically developing peers. (*Id.* at p. 200.) Instead, *Rowley* interpreted the FAPE requirement of the IDEA as being met when a child receives access to an education that is reasonably calculated to "confer some educational benefit" upon the child. (*Id.* at pp. 200, 203-204.)

5. In *Endrew F. ex rel., Joseph F. v. Douglas County School Dist.* (2017) 580 U.S. __ [137 S.Ct. 988, 996], the Supreme Court clarified that "for children receiving instruction in the regular classroom, [the IDEA's guarantee of a substantively adequate program of education to all eligible children] would generally require an IEP 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" Put another way, "[f]or a child fully integrated in the regular classroom, an IEP typically should, as *Rowley* put it, be 'reasonably calculated to enable the child to achieve passing marks and advance from grade to grade.'" (*Id.* at 999 (citing *Rowley*, supra, 458 U.S. at pp. 203-04).) The Court went on to say that the *Rowley* opinion did

not “need to provide concrete guidance with respect to a child who is not fully integrated in the regular classroom and not able to achieve on grade level.” (*Id.* at 1000.) For a case in which the student cannot be reasonably expected to “progress[] smoothly through the regular curriculum,” the child’s educational program must be “appropriately ambitious in light of [the child’s] circumstances” (*Ibid.*) The IDEA requires “an educational program reasonably calculated to enable a child to make progress appropriate in light of the child’s circumstances.” (*Id.* at 1001.) Importantly, “[t]he adequacy of a given IEP turns on the unique circumstances of the child for whom it was created.” (*Ibid.*)

6. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56505; Cal. Code Regs., tit. 5, § 3082.) The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i).) As the petitioning party, Student has the burden of proof by a preponderance of the evidence on all issues in this case. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387].)

LEGAL FRAMEWORK FOR STUDENT DISCIPLINE UNDER THE IDEA

7. Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A student receiving special education services may be suspended or expelled from school as provided by federal law. (Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, the local educational agency may remove the student from his or her educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for

not more than 10 school days (to the extent such alternatives are applied to children without disabilities.) (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1).) A local educational agency is required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. (34 C.F.R. § 300.530(d)(3).) If a special education student violates a code of conduct and the local educational agency changes the educational placement of the student for more than 10 days the local educational agency must meet the requirements of section 1415(k).

8. Parents and local educational agencies may request an expedited due process hearing of claims based upon a disciplinary change of educational placement under section 1415(k). An expedited hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed, and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).)

ISSUE 1: DID SAN FRANCISCO DENY STUDENT AND PARENT THEIR RIGHT TO PARTICIPATE IN THE MANIFESTATION DETERMINATION REVIEW TEAM MEETING AND FAIL TO RECONVENE THE MEETING AT THEIR REQUEST?

9. Student contends that his procedural due process rights to participate in the manifestation determination team meeting were violated when San Francisco held the meeting without him or his Parent, knowing that he was in custody and could not attend. Student also contends that when Student and Parent learned that the meeting was held without them and they requested that the manifestation meeting be reconvened, San Francisco again violated his procedural due process rights when it failed to convene another meeting.

10. San Francisco contends that Parent was provided notice of the

manifestation determination meeting, agreed to attend, and then failed to attend. San Francisco contends that any failure to convene a meeting is harmless error because the manifestation determination team agreed that Student's conduct was a manifestation of his disability and would have returned him to George Washington if there were no protective orders against Student.

Required Due Process Procedures for Manifestation Determinations

11. A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).) A "change of placement" is a fundamental change in, or elimination of, a basic element of a pupil's educational program. A change of placement is defined as (a) a removal for more than 10 consecutive school days, or (b) a series of removals that cumulate to more than 10 consecutive school days and constitute a pattern based on listed factors. (34 C.F.R. § 300.536(a).)

12. A manifestation determination must be accomplished within 10 school days of the decision to change the placement of a student with a disability because of a violation of a code of conduct. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).) All relevant information in the student's file, including the IEP, any observations of teachers, and any relevant information from the parents must be reviewed to determine if the conduct was caused by, or had a direct and substantial relationship to the student's disability, or was the direct result of the district's failure to implement the student's IEP. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).)

13. A manifestation determination is not an IEP team meeting and different rules apply to notice and attendance requirements. A manifestation determination must be made by the school district, the parent, and relevant members of the IEP team as determined by the parent and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1) & (h).) A school district must notify parents of a manifestation

determination review team meeting early enough to ensure that they will have an opportunity to attend, and must schedule the meeting at a mutually agreed upon time and place. (34 C.F.R. § 300.322(a)(1), (2); Ed. Code, § 56341.5, subs. (a)-(c).) In the case of a manifestation determination review team meeting, the notice must inform the parent of the decision to change the student's placement and must be accompanied by a copy of the parent's procedural safeguards. (20 U.S.C. § 1415(k)(1)(H).) Effect of Student Being 18 Years Old on Due Process Procedures and Notice

14. Pursuant to title 20 United States Code section 1415(m), when a student reaches the age of majority under state law, except for a student who has been determined to be incompetent under state law, any notice required by the procedural safeguards of title 20 United States Code section 1415 shall be provided to both the student who is 18, and the parents, and all rights accorded to parents transfer to the student, including students who are incarcerated in an adult or juvenile federal, state or local correctional institution.

Requirement of Student and Parent Participation

15. "[T]he informed involvement of parents" is central to the IEP process. (Winkelman v. Parma City School Dist. (2007) 550 U.S. 516, 524 [167 L.Ed.2d 904].) Protection of parental participation is "[a]mong the most important procedural safeguards" in the Act. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

16. Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, §

56342.5.)

Analysis and Conclusions

17. When San Francisco suspended Student on March 20, 2017, and considered expelling him, they were required to hold a manifestation determination review team meeting within 10 school days. Expulsion is a change of placement of over 10 days which requires prior written notice and a manifestation determination meeting. However, Student, who holds his own educational rights, was placed in custody in a local correctional facility on March 20, 2017, and he remained there until March 24, 2017. He did not receive notice of the March 23, 2017 manifestation determination review meeting because it was mailed to his home on March 21, 2017, when he was in custody.

18. There was also no evidence presented at hearing that either Student or Parent was contacted by any other means by San Francisco in an attempt to find a mutually agreeable time for the manifestation determination meeting. Parent was informed of a meeting by telephone on March 22, 2017, in a phone conversation with the principal, but Parent informed her that she could not attend a meeting on March 23, 2017, or March 24, 2017. Parent also was not informed of the purpose of the meeting.

19. San Francisco failed to provide Student or Parent with sufficient notice of the proposed change of placement and manifestation determination review meeting, and also failed to provide them with a copy of their procedural safeguards as required by the due process procedural safeguards set forth above.

20. On March 23, 2017, without Parent or Student present, San Francisco held a manifestation determination review meeting which not only dealt with Student's suspension, but also his possible expulsion from school. Student was five credits away from graduation and had a 3.1 grade point average. He was set to graduate in May, 2017. Student and Parent had no notice of the intent to expel Student because the

suspension notice provided on the day of the incident stated that Student was being suspended for five days and was not being considered for expulsion. The principal was at the manifestation determination meeting and knew from her phone conversation with Parent the day before that Parent could not be at the meeting. Both the principal and the psychologist knew that Student was in custody when the meeting was held because they informed Ms. Faustino of this at the manifestation determination review meeting.

21. Parent did not know that San Francisco held the meeting without her on March 23, 2017, until she received the manifestation determination review team meeting documents when she attended the April 3, 2017, meeting at the Office of Pupil Services with Student's attorney, as instructed in Student's suspension notice. When Parent and Student learned that the manifestation determination meeting was held without them, they requested that the manifestation determination team meeting be reconvened to allow them to participate. Several emails were exchanged regarding availability and dates for a reconvened manifestation determination review meeting to no avail. The only notice of an intent to reconvene the manifestation determination meeting that was presented at hearing, was dated April 12, 2017, mailed on April 28, 2017, by certified mail to Parent only, and was never received by Parent or Student. That meeting, which was to be held on May 3, 2017, was never convened.

22. Testimony of Ms. Faustino and Ms. Noto was that the meeting had to be held before the week of spring break to meet the 10-day deadline to hold the manifestation review meeting. This was misleading and contrary to the manifestation determination due process provisions. The meeting is required to be held within 10 school days, which would not include the week of spring break when school was not in session.

23. Student sustained his burden of proof by the preponderance of the

evidence that San Francisco denied Student and Parent their right to participate in the manifestation determination review meeting by holding the meeting without them on a date that San Francisco knew they would not be able to attend. Student also proved by the preponderance of the evidence that, following Parent's and Student's request for San Francisco to reconvene a manifestation determination review team meeting to allow their participation, it failed to do so.

ISSUE 2: DID SAN FRANCISCO VIOLATE STUDENT'S PROCEDURAL RIGHTS BY NOT ALLOWING HIM TO RETURN TO GEORGE WASHINGTON HIGH SCHOOL FOLLOWING THE MARCH 23, 2017 MANIFESTATION DETERMINATION REVIEW MEETING?

24. Student contends that once the manifestation determination review team found that Student's conduct was a manifestation of his disability, it was obligated to return Student to George Washington, the placement from which he was removed. Student also contends that San Francisco could have returned Student to his placement even with the restraining orders against Student because the protective orders contained provisions specifically designed to allow him to attend George Washington while also protecting Mr. Marman, Ms. Warner and Ms. Faustino.

25. San Francisco contends that Student could not return to George Washington because the restraining orders against Student made the implementation of his IEP impossible and therefore Student's consent was not required to change his placement.

Manifestation Determination and Placement

26. If the local educational agency, the parent and relevant members of the IEP team make the determination that conduct for which a student was disciplined was a manifestation of his disability, the IEP team shall conduct a functional behavior assessment and implement a behavioral intervention plan for the student provided that

the local educational agency had not conducted such an assessment prior to such determination before the behavior that resulted in the proposed change of placement of over 10 days. (20 U.S.C. § 1415 (k)(1)(F).) In the situation where a behavioral intervention plan has been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior and return the student to the placement from which the student was removed, unless the parent and the local educational agency agree to a change of placement as part the modification of the behavioral intervention plan. (20 U.S.C. § 1415 (k)(1)(F).)

Analysis and Conclusions

27. On March 23, 2017, the manifestation determination review team reviewed the records of Student's behavior incident, his IEP and his behavior intervention plan and determined that his conduct on the day of the incident was a manifestation of his disability of emotional disturbance.⁹ San Francisco had previously conducted a functional behavior assessment and developed a behavior intervention plan. The team reviewed the behavior intervention plan and determined it to be well developed, to address current concerns, and to not need any changes. Having found that Student's conduct was related to his disability and that he had a behavior plan to address his behavior, the mandates of title 20 United States Code section 1415 (k)(1)(F), required the team to return Student to the placement from which he was removed, unless San Francisco and Student agreed to a change of placement as part of a modification of Student's behavior intervention plan. There is no authority under the manifestation determination procedures which permit the change of placement of a student whose conduct is a manifestation of his disability in the absence of express special

⁹ There was no evidence presented at hearing as to what behavior plan was reviewed at the manifestation determination meeting.

circumstances, which are not present here.

28. The manifestation determination review team meeting notes stated that San Francisco's offer of placement was the SOAR program at Mission High School. The notes also state that the restraining orders against Student prevented him from returning to George Washington. The decision to place Student at Mission High School was made by Ms. Noto and Dr. Blanco, who were not at the meeting. All staff witnesses at hearing testified that, but for the restraining orders, Student would have returned to George Washington.

29. Only the initial emergency protective order in effect from March 20, 2017, until March 29, 2017, required Student to stay 100 yards from George Washington, without exception. After March 29, 2017, the restraining orders did not make the implementation of Student's IEP impossible. The exceptions in the restraining orders were designed for his return to George Washington and Ms. Noto's testimony made clear that because Student only needed five Spanish 2 credits, his program could be easily designed to meet his needs by either the SOAR program or in a non-special education setting with instructional support available as needed. There were two paraprofessionals at George Washington who were not protected by Student's restraining orders, and Student was successfully working toward completion of his Spanish 2 credits in a general education setting with an aide. The manifestation determination review team could have reconvened, following the granting of the March 29, 2017, temporary restraining order allowing Student to be within three yards of Ms. Faustino. The meeting could have been convened within the 10-day timeline to hold the manifestation meeting. Therefore San Francisco's claim that Student's consent was not needed for the change of placement due to impossibility to implement Student's IEP at George Washington is without merit. Any proposal to change Student's placement due to the protective orders required Student's notice, consent, and participation, and an IEP

team meeting.

30. Student established by a preponderance of the evidence, that the change in his placement from George Washington, from which he was removed, to Mission High School, was a change of placement in violation of Student's procedural due process rights under title 20 United States Code section 1415 (k)(1)(F) because it exceeded the authority of the manifestation determination review team. This was also a change of placement in violation of title 20 United States Code section 1414(d)(1)(B)(i), and Education Code, sections 56304 and 56342.5, because it was done for reasons other than a violation of a code of conduct, without prior written notice, without an IEP team meeting with the proper participants, and without Student and Parent participation. Any proposal to change Student's placement because of the restraining orders, required prior written notice and an IEP meeting with an opportunity for Student and Parent participation.

31. The manifestation determination review team did not discuss the second prong of the manifestation determination process which is to determine if Student's conduct was the direct result of San Francisco's failure to implement Student's IEP. Based on Legal Conclusions 33 through 46, below, Student's conduct was a direct result of San Francisco's failure to implement his November 14, 2016 IEP and behavior intervention plan.

32. The manifestation determination review team reviewed Student's behavior intervention plan and determined that it was well-developed and did not need any modifications to address Student's behaviors. This conclusion is not supported by the preponderance of the evidence at hearing. Instead, the testimony of all witnesses, and the circumstances of the incident involved in the present case, call for many strategies that are not contained in the November 14, 2016 behavior intervention plan, although they were contained in the behavior intervention plan developed in October 2016. These

strategies include giving Student space to calm down inside the classroom when he is escalated and unwilling to leave; using a calm, neutral voice when prompting or redirecting; seating Student away from peers that antagonize him; limiting verbal and physical prompts when Student is escalated or agitated. The November 14, 2016, behavior plan fails to include many behaviors impeding Student's learning, including class disruption, profanity, disrespect, behavior incongruent of a learning environment such as playing music, using telephone, or walking in and out of class. Therefore, in light of the incident and the documents reviewed, the manifestation determination review team's conclusion that Student's behavior plan did not need modification to address his behavioral needs at school was not reasonable.

ISSUE 3: DID SAN FRANCISCO DENY STUDENT A FAPE FROM MARCH 20, 2017, THROUGH THE TIME OF HEARING, BECAUSE SAN FRANCISCO FAILED TO IMPLEMENT HIS IEP, INCLUDING THE BEHAVIOR INTERVENTION PLAN, ON MARCH 20, 2017?

33. Student contends that San Francisco failed to implement his behavior intervention plan, which resulted in Student's loss of educational benefit.

34. San Francisco contends that Student's November 14, 2016 behavior plan was implemented and that any failure to implement the IEP due to Mr. Marman's behavior was a momentary failure to implement the behavior intervention plan. San Francisco also contends that Student's conduct would have resulted regardless of Mr. Marman's minor deviation from the behavior plan.

35. A procedural error does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE; (2) significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the parents' child; or (3) caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target*

Range School Dist. No. 23 (9th Cir. 1992) 960 F.2d 1479, 1484.)

Substantive Requirement of Compliance with IEP Provisions

36. The IDEA's definition of a FAPE includes "special education and related services that ... are provided in conformity with the individualized education program required under section 1414(d) of this title." (20 U.S.C. § 1401(c)(8).)

37. A district commits a substantive violation of the IDEA when it departs from a provision of an agreed-upon IEP, except when the deviation can be characterized as only a minor variation from the IEP. In *Van Duyn v. Baker School Dist.* 5J (9th Cir. 2007) 502 F.3d 811, 826, the Ninth Circuit held that failure to deliver related services promised in an IEP is a denial of FAPE when "there is more than a minor discrepancy between the services provided to a disabled child and those required by the child's IEP."

Analysis and Conclusions

38. On March 20, 2017, the date of the behavior incident at issue in this case, the operative behavior intervention plan was the November 14, 2016 plan. This behavior intervention plan was developed to address attendance issues and failure to follow directions of teacher, paraprofessionals and other adults. The predictors for Student's behavior which are listed in the behavior plan and relevant to the March 20, 2017 behavior incident, include when he was asked to participate in a non-preferred activity, when he was given a direction to follow, when he was corrected or redirected, and when he was suspected of being under the influence of marijuana.

39. The relevant circumstance listed in the behavior plan where Student is identified as being more likely to engage in the behavior included when he was in a situation where he perceived situations or work to be too difficult, irrelevant, or boring; when he was unsure about expectations; and when he was embarrassed or needed to save face.

40. The interventions listed in the November 14, 2016, behavior plan which were relevant to Student's behavior on the day of the incident included positive teacher relationship with Student, a teacher offer of at least one activity, task, assignment that would assist Student to experience success or establish a positive relationship with school, attempts to relate topics and assignments to Student's interests, life and experiences, and communication of clear and concise directions and expectations for Student.

41. Student was already engaged in a loud, negative, verbal exchange with a student who was sitting at the table next to his table, eight feet away, when his point person, Mr. Marman, arrived at 8:30 a.m. Ms. Warner, his teacher, was engaged in conducting an experiment that was not working as expected, and which involved heating a pot containing a substance. Ms. Warner gave Student a verbal prompt to calm down. Testimony at hearing indicated that the verbal assaults between Student and this particular peer were a daily occurrence and this day was no different. This indicates that there was a general acceptance at the behavior which continued daily. It is unknown why these two students would have been seated next to each other because seating Student near peers that antagonize him had previously been identified as a trigger for his problem behavior.

42. Based on the events of the incident, as predicted by Student's November 14, 2016, behavior plan, Student became more and more agitated with each redirection. Other students were yelling at him to "Shut the fuck up," including the student with whom he previously exchanged verbal assaults. This put Student in a position of embarrassment and a situation where he needed to save face, which the November 14, 2016 behavior plan also identified as provocative of Student's behavior. Then, Mr. Marman, who previously had a positive relationship with Student, also began telling Student to "Shut the hell up." Student's maladaptive behavior thus continued to be

provoked. This violated the November 14, 2016, behavior plan's requirement for positive teacher relationships. Then the physical prompt by Mr. Marman, although gentle, caused Student to become even more agitated as evidenced by Student's comment, "Back the fuck up." Mr. Marman retreated but when Student continued to be upset, Mr. Marman physically approached Student again, insisting that they had to go to room 306. Although the November 14, 2016, behavior plan did not expressly include this, it would appear to be common sense not to physically touch a student who is already escalated and who has just rejected a physical prompt by clearly responding with an aggressive verbal response.

43. When Mr. Marman insisted Student go to room 306, Student threatened to physically fight Mr. Marman and appeared to Mr. Marman to dissociate and be capable of anything. But instead of retreating, evacuating the room, and/or getting another staff person to step in, Mr. Marman, in front of all the other students in class, responded by calling Student worthless, said that Student was acting like a punk, and asked him why he even bothered coming to school. At this point, Student began his rambling threats to get a gun and kill Mr. Marman and later, Ms. Warner, and Ms. Faustino.

44. Although the behavior plan was initially implemented when Student was redirected, the majority of Mr. Marman's responses to the behavior incident created the very situation which the November 14, 2016, behavior plan cautioned to avoid. Mr. Marman's behavior during the incident deteriorated any positive relationship he and Student previously had. Mr. Marman admitted that his inappropriate comments to Student during the incident were in no way implementing the behavior plan. There were several opportunities for Mr. Marman and Ms. Warner to end the escalating behaviors of Student and they failed to do so. The eventual exit of Mr. Marman from the classroom, and the removal of other students from the room, was done quickly and without

Student attempting to interfere. This is evidence that this plan could have been executed very early in the incident, before Student began his verbal assaults on Ms. Warner, when it was clear that he was not responding to Mr. Marman's multiple requests to go to room 306. This would have been the only way to eliminate the known triggers, identified in Student's behavior intervention plan, which escalate Student's behavior.

45. San Francisco, in its closing brief, describes Mr. Marman's behavior as a brief moment where he failed to implement the IEP. San Francisco also asserts in its closing brief that Mr. Marman's behavior did not directly cause Student to escalate to the behavior for which he was suspended. San Francisco's attempts to discount and minimize the failure of Mr. Marman to implement Student's behavior intervention plan are rejected because San Francisco's arguments are unreasonable in light of a preponderance of the evidence presented at hearing.

46. Student proved by the preponderance of the evidence, that his behavior plan was not being implemented on March 20, 2017. As a direct result of the failure to implement Student's behavior plan, his behavior escalated to the point that he appeared to dissociate and subsequently engage in the behavior for which he was arrested and for which George Washington staff sought and obtained restraining orders against him. Since his suspension, San Francisco has prohibited Student from returning to his placement at George Washington, and he sustained an immediate loss of educational benefit which denied him a FAPE. San Francisco's various offers of placement do not remedy the serious substantive and procedural violations of IDEA; nor do they remedy Student's loss of his graduation, and current exposure to criminal justice proceedings.

ISSUE 4: DID SAN FRANCISCO DENY STUDENT A FAPE DUE TO SAN FRANCISCO CHANGING HIS PLACEMENT TO THURGOOD MARSHALL HIGH SCHOOL ON APRIL 21, 2016?

47. Student contends that San Francisco denied him a FAPE from April 21, 2017, to the date of hearing by unilaterally changing his placement without his consent and without an opportunity to participate in the IEP process, in violation of the procedural safeguards of the IDEA. Student contends that this denial of a FAPE resulted in his loss of educational benefit, including his inability to graduate with a regular high school diploma.

48. San Francisco contends that procedural safeguards were not required for the change of placement to Thurgood Marshall High School because the protective orders against Student made the implementation of his IEP at George Washington impossible.

Procedural Requirements for Change of Placement

49. Written notice must be given to the parent of a child with a disability within a reasonable time before a public agency proposes to initiate or change the identification, evaluation, or educational placement of a child or the provision of FAPE to the child. (34 C.F.R. § 300.503(a)(1); Ed. Code, § 56500.4, subd. (a)). Further, the content of such notice must include (1) a description of the action proposed; (2) an explanation of why the agency proposes to take the action; a description of each evaluation, procedure, assessment, record, or report the agency used as the basis for the proposed action; a statement that the parents of a child with a disability have protections under procedural safeguards; sources for the parents to contact to obtain assistance in understanding the provisions of this part; a description of other options that the IEP team considered and the reasons why those options were rejected; and a description of other factors that are relevant to the agency's proposal. (34 C.F.R. § 300.503; Ed. Code, §

56500.4, subd. (b).)

50. The purpose of the prior written notice requirement is to ensure that parents receive sufficient information about the proposed placement change to reach an informed conclusion about whether it will provide an appropriate education. (*Smith v. Squillacote* (D.D.C. 1992) 800 F.Supp. 993, 998.) In some cases it may be acceptable to use the IEP itself to provide prior written notice of a placement change, but only if the document contains all of the notice elements required by 34 C.F.R. § 300.503(b). (*G.D. v. Westmoreland Sch. Dist.* (1st Cir. 1991) 930 F.2d 942, 949.) The notice must be given “a reasonable time before” the district actually changes the student’s placement or the provision of a FAPE to the student. (34 C.F.R. § 300.503(a).) This is to ensure that “parents have enough time to assess the change and voice their objections or otherwise respond before the change takes effect.” (Letter to Chandler (OSEP 2012) 59 IDELR 110.) Verbal notice may not be substituted for written notice. (*Union Sch. Dist. v. Smith* (1994) 15 F.3d 1519, 1526.)

51. Again, Federal and State law require that parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, assessment, educational placement, and provision of a FAPE to their child. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304, 56342.5.) A district must ensure that the parent of a student who is eligible for special education and related services is a member of any group that makes decisions on the educational placement of the student. (Ed. Code, § 56342.5.)

Analysis and Conclusions

52. From March 23, 2017, through the time of the hearing, San Francisco has refused to allow Student to return to his placement upon the claim that it would be impossible to implement Student’s IEP at George Washington due to the restraining orders against him. First San Francisco attempted to change Student’s placement to

Mission High School at Student's manifestation determination meeting, without prior written notice to him, without his participation, and without an IEP team meeting. As set forth above, this change of placement exceeded the authority of the manifestation determination review team and violated the IDEA and the Education Code because it was done for reasons other than a violation of a code of conduct, without any of the procedural safeguards required by IDEA. (20 U.S.C. § 1414(d)(1)(B)(i); Ed. Code, §§ 56304 and 56342.5.)

53. Since that time, San Francisco has offered to place Student in any SOAR program at sites other than George Washington, at San Francisco's counseling center, or at civic center. These are all proposed changes of placement which require prior written notice, an IEP meeting, and Student's meaningful participation. Student and Parent have never been afforded any opportunity to participate in discussions regarding whether Student's IEP could be implemented in a way consistent with the restraining orders against him.

54. Student requires only five credits of Spanish 2 to complete his requirements for a regular high school diploma. His Spanish teacher noted on his grade report that Student could complete his 2016-2017 spring semester Spanish credits and earn his diploma if he completed an alternate assessment/project.

55. Ms. Noto, Supervisor of SOAR programs kindergarten through 12th grade, testified at hearing that the counseling center provides individualized work packets where Student would pick up his packet sent by his case manager, Lisa Faustino, and complete his work. There are other teachers at the counseling center to assist Student as needed. Ms. Noto confidently testified that this non-special education placement would be her preferred placement for Student, second only to a SOAR special education placement at a different site, because Student's instruction could very easily be tailored to his individual needs to complete his Spanish 2 credits.

56. Ms. Noto's confident testimony that Student could successfully complete his graduation requirements in a non-special education setting by completing an individualized instruction packet with some teacher support, contradicts her prior testimony claiming that even the placement of Student in a George Washington mild/moderate special education classroom with an aide would be insufficient because a teacher with a mild/moderate special education credential has insufficient training to address Student's social and emotional needs. Her testimony as to Student's inability to function in a special day class and need for a SOAR teacher, such as Ms. Faustino, was also not credible given that Student has been successfully attending a general education special education Spanish 2 class and a non-SOAR special day science class, both with the assistance of a paraprofessional, up until the day of his suspension on March 20, 2017.

57. The evidence presented at hearing established that there are ways that Student could complete his Spanish credits at George Washington, while complying with the restraining orders against him. The restraining orders themselves evidence that the judge who wrote the orders assumed that Student would return to George Washington. The April 19, 2017 civil harassment orders allowed Student to be within 20 feet of all three of the protected staff while at George Washington. Mr. Marman's testimony established that the restraining order hearing judge also understood that there might be unintended proximity to the protected staff during transitions just by nature of the width of the hallways at the school. Student was also ordered as a condition of his attendance at George Washington, to be subject to search before he could enter the school. Therefore San Francisco's claims that the restraining orders against Student precluded his placement at George Washington were not reasonable.

58. On April 21, 2017, San Francisco provided prior written notice to Student proposing that a change of Student's placement was required because it would be

impossible to implement Student's IEP at George Washington because of the restraining orders. San Francisco asserted that because the change of placement was due to the impossibility of implementation of Student's IEP, San Francisco was not required to obtain Student's written consent to the reassignment.

59. The only authority cited for San Francisco's assertion that Student's permission for the change of placement was not needed, is the case of Ms. Sex rel. G. v. Vashon Island Sch. Dist. (9th Cir. 2003) 337 F.3d 1115, 1133-1135 (*Vashon*). The cited case is distinguishable from the present case. In *Vashon*, the court found that the school district did not violate procedural safeguards requiring the district to ensure parental opportunity to participate in IEP meetings because the district provided a meaningful opportunity for mother to participate in the IEP process, developed an IEP plan to the best of its ability after mother and the district could not come to a consensus about an IEP, and afforded mother two due process hearings to establish the validity of its proposed plan. In the present case there has been no involvement of Student or Parent, no IEP's or IEP team meetings, and therefore no participation in the IEP process. San Francisco's reliance on the protective orders is therefore unpersuasive since those orders did not prohibit Student from attending school at George Washington. San Francisco cannot use the protective orders to circumvent Student's procedural right to participate in the IEP process.

60. Student had been successfully passing his Spanish 2 class, with the assistance of his paraprofessional. There were two other paraprofessionals working with SOAR students at George Washington that could have worked with Student so that he could have completed his Spanish 2 credits, graduated with a diploma, and walked the stage with his peers while complying with the protective orders and protecting Mr. Marman, Ms. Warner, and Ms. Faustino. If an IEP team meeting was held, several other options could have been discussed and consented to by Student which also would have

allowed Student to complete his graduation requirements at George Washington in a way consistent with the protective orders against him. The protective orders issued on April 19, 2017, were tailored to allow him to return to George Washington. San Francisco's unilateral decision to remove Student from his placement at George Washington, without Student and Parent participation in any IEP team meeting, based on a claim that his IEP implementation was impossible due to the protective orders issued on April 19, 2017, was unreasonable and was a blatant disregard for Student's procedural due process rights.

61. Student established by a preponderance of the evidence that San Francisco unilaterally changed his placement and denied Student and Parent the opportunity to meaningfully participate in the IEP process. This resulted in a denial of FAPE because Student was prevented from returning to his placement without any due process, and was unable to complete his credits for graduation.

REMEDIES

1. School districts may be ordered to provide compensatory education or additional services to a student who has been denied a FAPE. (*Parents of Student W. v. Puyallup School Dist., No. 3* (9th Cir. 1994) 31 F.3d 1489, 1496.) These are equitable remedies that courts may employ to craft "appropriate relief" for a party. (*Ibid.*) An award of compensatory education need not provide a "day-for-day compensation." (*Id.* at p. 1497.) The conduct of both parties must be reviewed and considered to determine whether equitable relief is appropriate. (*Id.* at p. 1496.) An award to compensate for past violations must rely on an individualized assessment, just as an IEP focuses on the individual student's needs. (*Reid v. District of Columbia*, (D.D.C. Cir. 2005) 401 F.3d 516, 524.) The award must be fact-specific and be "reasonably calculated to provide the educational benefits that likely would have accrued from special education services the school district should have supplied in the first place." (*Ibid.*)

2. Staff training can be an appropriate remedy for a Student who was denied a FAPE; the IDEA does not require compensatory education services to be awarded directly to a student. (*Park v. Anaheim Union High School Dist.*, *supra*, 464 F.3d 1025, 1034 [student, who was denied a FAPE due to failure to properly implement his IEP, could most benefit by having his teacher appropriately trained to do so].) Appropriate relief in light of the purposes of the IDEA may include an award that school staff be trained concerning areas in which violations were found, to benefit the specific pupil involved, or to remedy procedural violations that may benefit other pupils. (*Ibid*; *Student v. Reed Union School District*, (Cal. SEA 2008) 52 IDELR 240 [109 LRP 22923] [requiring training on predetermination and parental participation in IEPs].)

3. Student prevailed on all issues. He asked for the following relief: 1) an order that San Francisco reconvene a manifestation determination review meeting with Student and determine if his disciplinary conduct was a direct result of San Francisco's failure to implement his IEP; 2) allow Student to return to George Washington; and 3) provide staff training on implementation of IEPs and behavior intervention plans and on student mental health issues.

4. Student and Parent were denied their right to meaningfully participate in the manifestation determination review team meeting and San Francisco unilaterally changed Student's placement at the manifestation determination review meeting in violation of the manifestation determination procedures following a finding that Student's conduct was a manifestation of his disability of emotional disturbance. San Francisco must therefore return Student to George Washington, the placement from which Student was removed, or permit him to earn the Spanish 2 credits he needs to graduate, at any other school site in the District, or any approved credit recovery program of his choice. Unless Student does not agree, he shall be provided necessary supports and services to allow him to complete his Spanish 2 credits at the school site of

his choosing. Should that site be George Washington, supports must be provided in a way that complies with the protective orders against him.

5. San Francisco shall also modify Student's behavior intervention plan, with input from Student and Parent, to address Student's behavior that impedes his learning and the learning of others if necessary for Student to complete his Spanish 2 class. Student shall notify San Francisco if he believes this is necessary, and an IEP team meeting to discuss a modified behavior intervention plan shall be held within 10 days of the request.

6. Student's steady educational decline and ultimate suspension and removal from his educational placement evidenced a lack of a cohesive and comprehensive behavior intervention plan. Therefore, if a functional behavior assessment is needed for Student to receive benefit from his special education services it shall be conducted by a nonpublic agency of Student's choice, at San Francisco's expense, including attendance of the assessor at an IEP team meeting, and development of a draft behavior intervention plan to be discussed at the IEP team meeting.

7. Should Student complete his Spanish 2 requirements and meet the requirements for a San Francisco high school diploma, a nonpublic agency of Student's choice shall conduct an assessment to determine the services Student may need to successfully pursue employment or higher education. The cost of this assessment shall not exceed \$7,000. The assessment may be multi-disciplinary, or conducted by a school psychologist or other qualified professional who meets San Francisco's requirements for an independent educational evaluation. The purpose of the assessment is to determine what accommodations Student may need to pursue his goals after high school graduation, be they academic, or employment.

8. Multiple procedural violations and substantive violations were committed by San Francisco personnel, both at George Washington, and by San Francisco special

education administrators. San Francisco shall provide George Washington special education staff and administrators one hour of training on the disciplinary requirements, pursuant to the IDEA, that must be met when a student with an IEP is to be suspended more than 10 days, or expelled, including training on manifestation determination meeting requirements. The training shall be provided by outside special education attorneys or other trained individuals who are not employed or retained by San Francisco.

ORDER

1. San Francisco shall modify Student's behavior intervention plan to address Student's identified behaviors impeding learning.

2. If Student returns to school at a San Francisco high school, San Francisco shall fund an independent functional behavior assessment by a nonpublic agency including the development of a behavior intervention plan, and 10 hours of support and training for staff implementation, within 20 days of Student's return to school.

3. San Francisco shall return Student to his placement at George Washington High School to work towards completion of necessary credits for a regular high school diploma, consistent with his IEP and the civil harassment orders against him.

4. San Francisco shall provide a three-hour district-wide training for its entire special education staff on the substantive and procedural requirements of IDEA and on the positive behavior interventions and best practice restorative justice methodologies for students with emotional disturbance. San Francisco shall fund the training by a non-public agency or by attorneys who have not previously represented San Francisco in any legal proceedings. San Francisco shall provide the training by no later than October 31, 2017.

5. Student's request for an order that San Francisco convene another manifestation review team meeting for him is denied as unnecessary.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student prevailed on all issues heard and decided.

RIGHT TO APPEAL

This decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, 56505, subd. (k).)

DATED: June 22, 2017

/s/
RITA DEFILIPPIS
Administrative Law Judge
Office of Administrative Hearings