

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

RIVERSIDE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2017030772

EXPEDITED DECISION

On March 16, 2017, Student filed an expedited due process hearing request with the Office of Administrative Hearings, State of California, naming Riverside Unified School District (District).¹

Administrative Law Judge Sabrina Kong heard this matter in Riverside, California on April 18, 19, 20, and 24, 2017.

Attorney Wendy Housman represented Student. Mother and advocate Peter Attwood attended the hearing on all days.

Attorney Maria Gless represented District. District's Assistant Superintendent of Pupil Services Timothy Walker attended the hearing on all days, except the last day; Charity Plaxton-Hennings, District's Director of Psychological Services attended the last day of the hearing. On the last day of hearing, April 24, 2017, the matter was submitted for decision. The ALJ allowed the parties to submit written closing argument by May 1, 2017. The parties timely filed closing briefs and the record was closed.

¹ The complaint contained only expedited claims. The expedited claims proceeded to hearing with no continuances. (34 C.F.R. § 300.532(c)(2).)

ISSUES²

1. Did District provide meaningful parent participation in the manifestation determination review meeting?
2. Did District predetermine the outcome of the manifestation determination review meeting?
3. Did District consider whether Student's lock throwing had a direct and substantial relationship to Student's disability?
4. Did District consider whether Student's lock throwing was the direct result of District's failure to implement the behavior intervention plan in Student's individualized education program?

SUMMARY OF DECISION

Student contends that the March 8, 2017 lock throwing incident was both a manifestation of his attention deficit hyperactivity disorder (ADHD), and a direct result of District's failure to implement his IEP. Student also contends that District's manifestation determination review outcome was incorrect and resulted from predetermination and District's denial of parental participation. District contends Mother and her advocate participated in all discussions and shared their opinions at the manifestation determination meeting. District also contends that it considered Student's ADHD and all the circumstances regarding the lock throwing incident and properly concluded that it was not directly and substantially related to Student's disability. District further contends that it properly implemented Student's IEP, which

² The issues have been rephrased and reorganized for clarity. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443.)

only addressed Student's classroom behaviors. District also contends that even if it did not fully implement the IEP, the lock throwing incident was not caused by District's IEP implementation failures.

Student met his burden of persuasion that Student's lock throwing was directly and substantially related to his disability. Student did not meet his burden of persuasion that District denied parental participation and predetermined the manifestation determination review outcome. Student also did not meet his burden of persuasion that Student's lock throwing directly resulted from District's failure to implement his IEP.

FACTUAL FINDINGS

1. Student was a sixteen-year-old boy at the time of the hearing and resided within District's boundaries at all relevant times. He was eligible for special education under the classification of other health impairment because of his ADHD and need for special education services. Student was a sophomore at Martin Luther King High School up until his manifestation determination review meeting.

2. The September 30, 2016 IEP included a behavior intervention plan and was Student's last operative IEP. Mother consented to it on October 17, 2016. Student's IEP placement consisted of four periods of special education in special day classes. Student had: math with Veneda Yeager; world history with Harold Janes; English literature with Mark Vanta; and biology with Kevin Corridan. Student also had two general education classes with Patrick Meech, a physical education class and a psychology/personal growth class. Student had lunch, breaks, assemblies, and field trips with his general education peers. Student had one social/emotional goal in his IEP which addressed classroom distractions and interruptions by using the seven social skills steps in his behavior intervention plan to seek positive attention eight out of ten trials. In September 2016, Student's baseline for the social/emotional goal stated that Student

required up to 25 times of redirection per class period for blurting out, getting out of his seat and walking around the classroom. All of Student's teachers, except for Mr. Meech, observed Student exhibiting non-aggressive, attention seeking, impulsive, and distracted behaviors in their classes. Mr. Meech was the only teacher who did not observe Student engaging in impulsive behaviors.

3. The behavior intervention plan identified: blurting out, making disruptive noises and getting out of his seat as behaviors interfering with Student's learning; and attention seeking as the communicative function of Student's behavior. It identified seven social steps of seeking positive attention: (i) wait for adult/authority figure's attention; (ii) look at the person; (iii) wait for acknowledgment; (iv) appropriately ask for time to talk; (v) discuss positive events/activities; (vi) not seek attention by blurting out, making disruptive noises, or getting out of seat; (vii) request a pass to seek out adult guidance. The social skills would be modeled with a teacher or aide; and Student would be provided time to learn and role play them with his case carrier. Student would be rewarded appropriately for demonstrating the social skills steps by being provided an opportunity for class seat selection and food snacks. Student's negative attention seeking behaviors would be addressed through redirection (including redirection to the appropriate step on the seven social skills steps), and physical, verbal and gestural prompts.

4. Ms. Yeager, who was also Student's case carrier, provided a copy of Student's IEP and the behavior intervention plan to all of his teachers shortly after Mother consented to the IEP. She did not know whether the teachers implemented Student's behavior intervention plan. She did not role play the seven social skills steps with Student, but met with him once regarding those seven social skills steps as his case carrier. While Student was in her math class, Ms. Yeager also sat with Student and provided verbal redirection to Student to wait for adult/authority figure's attention; to

wait for acknowledgment; to appropriately ask for time to talk; and to not seek attention by blurting out, and/or making disruptive noises. She categorized Student's disruptive behaviors in her class as attention seeking, which included constant movements, pencil tapping, speaking loudly and excitedly interrupting her while she taught by exclaiming her name repeatedly when attention was not specifically on him.

5. Mr. Janes worked on the Student's IEP goals and social skills steps with Student, and worked on social skills with all the students in his class. Mr. Janes used verbal cues such as "Is there a better way to say that", prompted students to raise their hands before speaking, and modeled the act of a raised hand to all the students in his class. Student's impulsive behaviors in Mr. Jane's class consisted of interruptions.

6. Mr. Vanta did not recall the seven social skills steps at hearing, but generally worked with the entire class on social skills which included turn taking, hand raising and not interrupting while others were speaking. He rewarded Student by praising him for his insights even when Student spoke out of turn. He worked with Student in waiting for adult/authority figure's attention by ignoring Student when he did not; redirected Student to look at the person when speaking, to wait for acknowledgment, and to appropriately ask for permission to talk; and gave Student several alternative seats in his classroom to keep Student in his seat. Mr. Vanta did not recall discussing positive events/activities with Student. Student never requested a pass to seek out adult guidance when he was in Mr. Vanta's class.

7. Mr. Corridan described Student's attention seeking behaviors included getting out of seat, unnecessary talking, and conversing about topics that were irrelevant to the classroom instruction. He was unaware of the social skills steps and did not recall specifically working on Student's social/emotional IEP goal. However, Mr. Corrigan worked with Student on minimizing classroom interruptions daily by asking Student to wait for adult/authority figure's attention; prompting Student to look at the

person when speaking; discussing positive events/activities; prompting Student not to seek attention by blurting out, making disruptive noises. Student did not have issues staying in his seat in Mr. Corridan's class. Student never requested a pass to seek out adult guidance in Mr. Corridan's class because when Student had an issue he usually asked to speak with Mr. Corridan directly. Mr. Corridan also worked with his entire class, including Student, on waiting for acknowledgment and appropriately asking for permission to talk. Mr. Corridan managed Student's inappropriate behaviors by talking to Student in the classroom, and sometimes talking to Student outside of the classroom.

8. Mr. Meech did not specifically work on Student's social/emotional goal or on the seven social skills steps with Student. He did not notice the social skills steps in Student's IEP. Mr. Meech described Student's disruptive and attentions seeking behaviors included getting out of seat to sit next to another student instead of doing his classwork. Mr. Meech prompted and redirected Student to work approximately five to 10 times during one period, and provided verbal reinforcement such as "good job" during his psychology/personal growth class. He did not observe Student blurting out in his classroom, and found Student interacted well with others in his class. In Mr. Meech's physical education class, Student generally did what the other kids did in class, but at times eloped to another physical education class when the other class was engaging in a preferred activity. Mr. Meech described occasions when Student appeared for physical education without being properly dressed in his physical education clothes.

MARCH 8, 2017 LOCK THROWING INCIDENT

9. On March 8, 2017, Student found a Masters combination lock on the ground as he walked to lunch at the end of Mr. Vanta's fourth period class. Student kicked the lock, and apologized when it struck another student's foot. One student offered Student 10 dollars to throw the lock into a trashcan located around the covered

lunch area. A small group of three to four students stood behind Student, watched, and taped with their cell phones as Student picked up the lock and attempted to throw it into a trashcan close to a covered lunch area, and struck two students. Student did not realize he had struck anyone after he threw the lock until he heard people yelling that he had hit someone. The lock bounced off one student and struck another student in the head, seriously injuring the second student. Student found the lock at the beginning of the lunch period and the entire incident, culminating with him throwing the lock, happened within five or ten minutes after lunch period began.

10. Student left the lunch area approximately 25 seconds after he threw the lock. District personnel found Student and escorted him to the Silent Study Room. Student left the Silent Study Room when District personnel told him he could not use his cell phone to call his Mother. District personnel then found Student heading off campus. Student ran when he saw a police officer. Student stopped running when he recognized that the police officer was Jeff Mattson, the school resource officer. Student initially told Officer Mattson that it was another student who threw the lock. When Officer Mattson told Student that he had seen a video of the incident, Student told Officer Mattson that he threw one lock, and another student threw a second lock; and it was the lock thrown by the other student that caused injury. After speaking with Officer Mattson, Student provided a written statement of the incident to assistant principal David Waldram where Student admitted to "being stupid...and thought it would be a great idea to throw a lock, [make it into the trashcan, and] not hit anyone." Student expressed remorse in the statement he provided to Mr. Waldram.

11. District's special education student advisor, Richard Grogan, organized and invited the necessary individuals to the March 15, 2017 manifestation determination review meeting as the administrative designee. None of the District's personnel or teachers had any substantive conversations about the circumstances surrounding the

March 8, 2017 lock throwing incident or Student's manifestation determination review in advance of the manifestation determination review meeting. In preparation for the manifestation determination review, Mr. Grogan determined that Student's IEP had been implemented by all his teachers based on Ms. Yeager's representation that Student's IEP had been provided to all of Student's teachers.

MARCH 15, 2017 MANIFESTATION DETERMINATION REVIEW MEETING

12. Mr. Grogan, school psychologist Lysette Cerda, Mr. Meech, Mr. Vanta, Mother, Student and advocate Mr. Attwood attended the March 15, 2017 manifestation determination review meeting. Mr. Grogan started the meeting by stating the purpose of the meeting was to determine: (i) whether the March 8, 2017 lock throwing incident had a direct and/or substantial relationship to Student's disability; and (ii) whether the March 8, 2017 lock throwing incident was the direct result of a failure to implement Student's IEP. Mr. Attwood requested to see the video of the incident. Based on advice from other District personnel, Mr. Grogan informed Mr. Attwood that the video was not available for the manifestation review team to view, but would be available for viewing during the Pre-Expulsion Review Conference scheduled for the following day.

13. Mr. Meech and Mr. Vanta provided information on Student's classroom behaviors, sharing that in recent months Student's inappropriate behaviors had gotten worse. Student had not properly dressed for his physical education class five days in a row; required increased prompting to work in Mr. Meech's class; appeared increasingly distracted in Mr. Vanta's class; and either showed up late, or not at all, to Mr. Vanta's class. Mother shared that she noticed that Student was depressed at around the same time that his two teachers reported an increase in Student's inappropriate classroom behaviors. Mother attributed Student's depression to an on-campus altercation with another student who used a racial slur against Student. Mother also shared that on another occasion Student had yogurt thrown in his face by other kids while Student was

on his way to school. Mother shared that she had reached out to District for help with Student's depression and other school issues, recently consented to a functional behavior assessment, and that the IEP team had scheduled a meeting to discuss her concerns.

14. Mr. Grogan shared that all of the teachers had a copy of Student's IEP, including the behavior intervention plan, and that Student had been receiving all of the services in his IEP. Mr. Grogan assumed that if the IEP had been provided to the teachers, the teachers would have implemented it. Mr. Grogan had a copy of the IEP on his computer at the manifestation determination review meeting. District did not distribute copies of Student's IEP at the manifestation determination review meeting, but provided a copy of Student's IEP, including Student's behavior intervention plan, when Mr. Attwood requested it. Upon review of the behavior intervention plan, Mr. Attwood criticized the behavior intervention plan for being unclear as to who would implement and the strategies as deficient. Ms. Cerda explained that the behavior intervention plan was implemented by each of Student's teachers when the inappropriate attention seeking behaviors identified in the behavior intervention plan arose. Ms. Cerda noted that the behavior intervention plan addressed the attention issues reported by Student's teachers, and did not address Student's aggression. Ms. Cerda also shared that Student's October 2015 assessment results showed that Student qualified for disability under other health impairment because of his ADHD and that Student had difficulties with written expression and fine motor skills.

15. Mother and Mr. Attwood shared their opinion that Student's impulsivity and ADHD caused the lock throwing incident. Mother brought printouts of ADHD characteristics and a note from Student's therapist to share with the manifestation determination review team. Mother felt ignored by District team members because when she asked them if they would like to read the documents, no one took her

documents. Mother read a note from Mr. Janes who described Student as big hearted and impulsive. Mr. Attwood insisted that the manifestation determination review team discuss Student's past history whereupon Mr. Grogan briefly discussed prior incidents where Student had been suspended for a knife possession; engaging in an obscene act; and battery. Mr. Attwood also insisted on discussing whether Student acted intentionally and/or maliciously when throwing the lock into the crowd. Mr. Attwood concluded that if Student did not act intentionally or maliciously when Student threw the lock, Student should not be expelled.

16. Mr. Grogan disagreed with Mr. Attwood and explained that intent and maliciousness were irrelevant in a manifestation determination review meeting; that the purpose of the meeting was to determine the relationship of the lock throwing incident to Student's disability; and expulsion was a subject of another meeting set for the next day, and not the manifestation determination review meeting. Mr. Grogan redirected the meeting to Student's behavior intervention plan, summarizing Student's placement and health/medical history as stated in the IEP. Several District personnel had different recollections of the subjects that were discussed at the manifestation determination review meeting. However, the meeting transcript supported that the relevant two questions as summarized by Mr. Grogan at the beginning of the meeting were discussed and answered. Throughout the meeting, Mr. Attwood steered the discussion towards areas which he thought were relevant in responding to the two questions including: that District had predetermined the result of the manifestation determination review meeting by not distributing a copy of the IEP to the team; not allowing the team to view the video of the incident; not discussing Student's intent/maliciousness; not discussing the circumstances that led up to the lock throwing incident; and not reviewing Student's past discipline incidents. Mr. Grogan explained at hearing that his use of the word "predetermined" when he responded "I predetermined, yes, that the IEP

was implemented correctly” to Mr. Attwood’s statement, “I think it’s pretty evident that you predetermined the result...”, was the result of poor word choice.

17. Mr. Grogan concluded that Student’s act of throwing a lock into a crowd and seriously injuring another was not related to Student’s disability. Student then shared that he was not taking his ADHD medication on March 8, 2017 and when he did not take his medications he “did stupid things.” Ms. Cerda shared that Student chose not to take his medication, and agreed with Mr. Grogan that the lock throwing incident was unrelated to Student’s disability. Mr. Meech and Mr. Vanta declined to opine on whether the lock throwing incident was related to Student’s disability because they did not witness the incident. However, by the end of the meeting Mr. Vanta opined that the lock throwing incident was unrelated to Student’s ADHD disability because, based upon his classroom observations of Student, he believed Student was capable of differentiating and choosing between right and wrong. Mr. Grogan and Ms. Cerda also concluded that the lock throwing incident did not result from District’s failure to implement Student’s IEP which dealt with inappropriate classroom behaviors, and the lock throwing incident resulted from Student’s conscious choice to engage in aggressive behavior not observed by any of his teachers in the classroom. Mother and Mr. Attwood expressed their disagreement, and their reasons for disagreeing with the District members who concluded that the lock throwing incident was unrelated to Student’s disability, and unrelated to District’s failure to implement Student’s IEP.

STUDENT’S EXPERT PEDRO VILLA

18. Student’s expert Pedro Villa held a master’s degree in special education, a moderate to severe special education teaching credential, a graduate certificate in applied behavior analysis, and was a board certified behavior analyst. He taught special education students for approximately seven years, drafted over 100 IEPs and behavior intervention plans. Over 50 of the behavior intervention plans he drafted were for

students with ADHD, and over 100 of them were for students with attention seeking behaviors as a behavior function. He provided behavior consulting to Inland Regional Center clients. He was the chief board certified behavior analyst therapist for kids with special needs at the Riverside Youth Judo Club for four years where he provided clinical supervision for board certified behavior analyst trainees, and direct behavior intervention for kids with special needs.

19. Mr. Villa worked with Student since March 12, 2017. Student was referred by the juvenile court to complete probation hours at the Riverside Youth Judo Club because of the March 8, 2017 lock throwing incident. Since March 12, 2017, Student volunteered six hours a week, three hours each on Fridays and Saturdays to help kids and adults with special needs who take Judo classes at the Riverside Youth Judo Club. Student's tasks at the Riverside Youth Judo Club included playing tag, or other games, with kids before class and helping kids with basic Judo techniques during class. Student received one-to-one adult supervision at all times when he worked at the Riverside Youth Judo Club.

20. Mr. Villa reviewed Student's cumulative school records from elementary school onwards including suspension notices/reports (focusing on those from the 2016-2017 school year), a 2015 functional behavior assessment checklist, the September 2016 IEP and behavioral intervention plan and his 2015 psycho-educational report to understand and target Student's behavior skill deficits at the Riverside Youth Judo Club. Mr. Villa concluded from the records review that Student exhibited a history of inappropriate attention seeking behaviors and impulsivity including: difficulty differentiating safe from unsafe behaviors; inappropriate responses to racial epithets and/or encouragement from others to engage in inappropriate behaviors; and difficulty observing boundaries concerning females.

21. Mr. Villa opined that the inappropriate behaviors he reviewed in Student's cumulative file from school were consistent with those he observed Student engaging in at the Riverside Youth Judo Club. Mr. Villa described that Student consistently sought attention from everyone at the Riverside Youth Judo Club whenever the attention deviated from Student. Student was also eager to showcase his skills without regard for the safety of other kids around him. This included running too fast in tag and using too much strength in mat activities with younger kids. He observed Student engaging in impulsive unsafe behaviors such as picking up any item in the studio which caught his attention and placing it on the Judo mat, violating the no objects on the Judo mat rule. Student had difficulty complying with the rule that any item on the Judo mat was not permitted as it could cause injury. Mr. Villa reported that Student improved with direct interventions from Mr. Villa which included repeated prompts and redirection.

22. Mr. Villa opined that Student had difficulty evaluating and considering the consequences of his behaviors and attributed them to Student's impulsivity and need for attention. Student had difficulty distinguishing between right and wrong when a situation was presented in evaluating whether a behavior was safe, or unsafe. Mr. Villa was familiar with the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) diagnostic criteria for ADHD, even though he was not trained to provide a medical diagnosis. The DSM-5 identified inattention and hyperactivity-impulsivity as the two categories which interfered with functioning and development. Mr. Villa opined that impulsivity was a medical diagnosis and attention seeking was the behavior function based on the medical diagnosis of impulsivity. He concluded that both involved the same symptomatology. He also concluded that the lock throwing incident was the attention seeking function of Student's impulsivity which manifested in Student throwing the lock without thinking through the consequences. Because of Student's impulsivity, he lacked the judgment to properly evaluate the environment to appreciate

that he was engaging in unsafe behavior when he threw the lock specifically: the weight of the lock; his strength/abilities; that there was a crowd in the area where he aimed the lock; and the long distance of the trashcan (approximately 15 yards) from where he threw the lock. Mr. Villa concluded that the lock throwing incident was directly related to Student's ADHD.

23. He also opined that Student's 2016 behavior intervention plan addressed the same behaviors Student exhibited at the Riverside Youth Judo Club. He criticized the 2016 behavior intervention plan as deficient because it did not provide details as to where the role play would occur or any details regarding the role play; and did not monitor Student's behaviors outside of the classroom, addressing only classroom behaviors. Specifically, Mr. Villa opined that Student needed another social/emotional goal to address positive attention seeking and the seven social skill steps to address behaviors outside so that Student could learn to employ those skills in all environments. He opined that Ms. Yeager's review of the seven social skills steps with Student once did not constitute implementation of the behavior intervention plan; and that redirection/prompting alone was ineffective in addressing attention seeking behaviors, as redirection/prompting provided the attention that Student often sought.

24. Mr. Villa also opined that the seven social skills steps in the behavior intervention plan needed to be implemented consistently to be effective in decreasing Student's inappropriate behaviors and in preventing them from escalating both in frequency and severity. If Student's inappropriate classroom behaviors were not properly addressed through proper implementation of the behavior intervention plan, Student would be unable to generalize appropriate behaviors to an unstructured outside environment. Therefore, failure to consistently implement the seven social skills steps in the behavior intervention plan would have caused Student to engage in the more dangerous attention seeking behavior of throwing the lock on March 8, 2017. He

concluded that District should have engaged in frequent role play and/or consistently referred Student to employ the seven social skills steps because Student's baseline of requiring redirection up to 25 times per class period was too frequent to be considered insignificant. Mr. Villa opined that District did not implement the behavior intervention plan consistently because, had District done so, Student would have demonstrated positive changes after approximately five months, from October 2016 to March 2017, of consistent intervention.

25. Mr. Villa observed Student at the Riverside Youth Judo Club and at home with his parents, and did not observe Student engaging in any aggressive behaviors. He did not observe Student in school, or speak with any of Student's teachers, or anyone from school. He did not conduct formal assessments of Student. He was aware that Student's cognitive ability was average as indicated in the 2015 psycho-educational report. He reviewed the March 8, 2017 incident reports, including the police report, and witness statements.

DISTRICT'S EXPERT DR. CHARITY PLAXTON-HENNINGS

26. Dr. Charity Plaxton-Hennings held a bachelor's, a master's, and a doctorate degree, and a credential in psychology. Her doctorate degree emphasis was in school psychology and post-doctoral fellowship was in neurodevelopmental psychology, with an emphasis in neuropsychological assessment. She also taught school psychology at a local university. She was a clinical psychologist and licensed to diagnose using the DSM-5. She had diagnosed 80-100 cases of ADHD in her clinical work. She worked for District since August 2015, and at the time of hearing was District's Director of Psychological Services and Mental Health and in charge of secondary special education. She received behavior training, but was not a board certified behavior analyst. She did not assess Student and did not speak with his teachers.

27. She opined that the lock throwing incident was unrelated to Student's ADHD disability because Student understood the consequences of his behavior and did not act impulsively. Student demonstrated he understood the consequences of his behavior by running after the incident when he saw a police officer and by lying as to who threw the lock and/or providing different versions of the incident to minimize his culpability in injuring other students. She believed that Student had the lock from the second period to the fourth period, a total of two hours, before throwing the lock supporting that the decision to throw the lock was, planned, and not impulsive. Her opinion was unchanged even if Student had the lock for three to five minutes because it was enough time for Student to interact with the lock and plan what to do with it. Dr. Plaxton-Hennings concluded that planning was demonstrated in the sequence of actions Student had taken before throwing the lock: (i) Student kicked the lock while it was on the floor; (ii) saw that the lock hit another student's foot; (iii) apologized to that student; (iv) then picked up the lock and threw it into a crowd. She opined that impulsivity would be more likely if Student threw the lock within seconds of picking it up. She concluded that no bright line rule existed for determining the amount of time Student had the lock before throwing it for the act to be considered impulsive, and that her opinion was based on all the information she reviewed of the incident and of Student. She reviewed the 2015 psycho-educational report, the March 8, 2017 incident reports, including the police report, and witness statements.

28. She further opined that impulsivity, a neurological deficit, was a characteristic of the DSM-5; attention seeking behavior, a coping skill, was not a listed specifically as a characteristic of the DSM-5. She opined that attention seeking behavior was different than impulsivity because attention seeking behavior could be controlled and involved planning to actually seek the needed attention. Although lack of judgment was related to the impulsivity component of ADHD, Student's average to above average

executive function test scores demonstrated that Student was capable of using appropriate judgment to problem solve, to plan throwing the lock, and understanding the outcome.

29. Dr. Plaxton-Hennings also opined that the behavior intervention plan only addressed Student's impulsivity and need for redirection in the classroom. She agreed that the behaviors identified in the behavior intervention plan had characteristics of ADHD. However, she disagreed with the behavior intervention plan characterizing Student's classroom behaviors as attention seeking because the behavior intervention plan did not identify the cause of Student's behaviors as attention seeking, and did not set a goal related to the attention seeking behavior. She opined that Student's attention seeking behaviors were not part of his ADHD, and that any attention seeking behaviors Student exhibited were a mild manifestation of Student's distractibility. Her opinion was not as persuasive because distractibility was a component of ADHD. She concluded that even if District failed to implement the behavior intervention plan, this failure did not cause the lock throwing incident because Student was capable of planning and understanding the outcome of that behavior.

DISTRICT'S EXPERT LYSETTE CERDA

30. Ms. Cerda held a bachelor's degree in psychology, a master's degree in educational psychology, and a credential in school psychology. She had been District's school psychologist since August 2016 and drafted five behavior intervention plans since she became District's school psychologist, and 15 more as an intern. She drafted Student's behavior interventional plan to address inattention and impulsive behaviors reported by teachers and after observing Student a couple of times. Teachers reported that Student used negative attention to draw the teachers' attention away from other students. Ms. Cerda characterized Student's ADHD as mild because his behaviors caused insignificant class disruption. She attended his October 2016 IEP. She described

Student as: compliant because he complied with redirection on the occasions she observed him; social; polite; having average cognition; and capable of differentiating right from wrong.

31. She opined that the lock throwing incident was unrelated to Student's ADHD because attention seeking behavior was not a characteristic of ADHD under the DSM-5 even though attention seeking behavior played a part in the lock throwing incident. Attention seeking behavior required planning and control to seek the attention. While lack of self-control was a characteristic of ADHD, Student was capable of controlling his behaviors because his 2015 psycho-educational report showed he had average cognitive scores and capable of differentiating right from wrong. Although impulsivity was a characteristic of ADHD, she also concluded that the lock throwing incident was not impulsive because it required effort and planning multiple steps: (i) Student had the lock from the second to the fourth period; (ii) chose a trash can far away to throw the lock; (iii) planned to throw the lock a distance from where he was and into a crowd; and (iv) waited for others around him to record before throwing it into a crowd. She assumed the teachers implemented the behavior intervention plan because it had been provided to them. She also opined that any failures to implement the behavior intervention plan did not cause the lock throwing incident because the behavior intervention plan only addressed inappropriate classroom behaviors interfering with his education.

32. Ms. Cerda recalled Mother discussing the printouts she brought to the manifestation determination review meeting, but did not see the papers. She characterized Mr. Attwood's participation in the manifestation determination review meeting as disruptive to a point where it prevented her from providing more information about Student.

DISTRICT'S EXPERT KRISTI MCPHAIL

33. Kristi McPhail assessed Student in 2015 and drafted the psycho-educational report. She held master's degrees in education with specializations in special education and school psychology, a multiple subject teaching credential, and a school psychology credential. She was qualified to administer the psycho-educational evaluation test instruments and interpret the results. She did not utilize the DSM-5 when assessing Student because the DSM-5 was a tool used for medical diagnosis and she did not medically diagnose Student. In performing the 2015 psycho-educational assessment, Ms. McPhail also reviewed and summarized Student's 2012 cognitive ability assessment results as follows: (i) Student scored in the average range in all processing areas except for planning where he scored below the average range; (ii) Student was easily distracted, had a short attention span, overactive and off task about 60 percent of the time, and distracted his teachers; and (iii) had a significant history of behavior incidents.

34. In the 2015 psycho-educational assessment Student also scored average or above average in all areas of cognitive development, except: (i) in the area of attention/concentration, he scored in the low average range; (ii) in the area of social skills and functional communication, he scored in the "at-risk" range; (iii) in area of executive planning, monitoring and sustained attention, he scored in the low average range; (iv) in the area of visual-perceptual skills and coordination, he scored in the deficit range; and (v) in the area of phonological abilities measuring his ability to understand language and read, he scored in the low average range. At risk behaviors reported by teachers included hyperactivity, attention, social skills, study skills, and functional communication. Behaviors targeted for intervention included inability to wait and take turns; interrupting others when they spoke; and purposely annoying others. Teachers also reported Student had significant difficulty staying on task; difficulty

focusing to complete assignments; was disruptive; made noises; and had great difficulty staying in his seat. The results revealed a significant weakness in attention, and the ability to filter distractions hindering his ability to sustain focus. Ms. McPhail opined that Student had the cognitive ability to understand right and wrong, to follow rules, to make good choices, and to understand the consequences of his actions.

35. All District personnel opined that Student exhibited attention seeking behaviors and could differentiate between right and wrong. Mr. Janes and Mr. Meech did not attribute Student's attention seeking behaviors to his disability, opining that attention seeking behaviors were typical in teenagers and/or manifested in everyone. Mr. Corrigan observed attention seeking behavior in Student, but did not know whether it was related to Student's disability. Both Ms. Yeager and Mr. Vanta opined that Student's attention seeking behaviors were unrelated to his disability because Student consciously chose to engage in the attention seeking behaviors. This opinion contradicted the behavior intervention plan which identified attention seeking behaviors as interfering with Student's education.

36. Although Mother shared she had never seen the seven social skills steps, this was unlikely as they were set forth in the behavior intervention plan and part of the IEP to which she consented. Student also shared he had never seen the seven social skills steps which was more likely a recall issue because Ms. Yeager only went through the steps with Student once. Student was unaware that his teachers worked with him on the seven social skills steps which was also likely because his teachers also worked on those general social skills steps with other students in their classes. Mother shared that Student also engaged impulsive behaviors at home such as sprinting out of a parking lot to showcase his speed without regard to the surrounding traffic. Student explained that he ran when he saw a police officer and lied about not throwing the lock because he was scared that he would go to jail for injuring another student. Student preferred

going to Ramona High School, another school located within District, instead of returning to Martin Luther King High School.

LEGAL CITATIONS AND ANALYSIS

INTRODUCTION – LEGAL FRAMEWORK FOR STUDENT DISCIPLINE UNDER THE IDEA³

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 (2006)⁴ et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.) Under the IDEA and California law, children with disabilities have the right to a free appropriate public education. (20 U.S.C. § 1400(d); Ed. Code, § 56000.) A free appropriate public education is defined as appropriate special education, and related services, that are available to the child at no cost to the parent or guardian, that meet the state educational standards, and that conform to the child’s individualized education program. (20 U.S.C. § 1401(9); Ed. Code, §§ 56031 & 56040.) A child’s unique educational needs must be broadly construed to include the child’s academic, social, health, emotional, communicative, physical and vocational needs. (*Seattle Sch. Dist. No. 1 v. B.S.* (9th Cir. 1996) 82 F.3d 1493, 1500, citing H.R. Rep. No. 410, 1983 U.S.C.C.A.N. 2088, 2106.)

2. Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations section 300.530 govern the discipline of special education students. (Ed. Code, § 48915.5.) A local educational agency may suspend or expel a student receiving special education services from school as provided by federal law. (20 U.S.C. §1412(a)

³ Unless otherwise indicated, the legal citations are incorporated by reference into the analysis of each issue decided below.

⁴ All references to the Code of Federal Regulations are to the 2006 version.

(1) (A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k) (1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

3. For disciplinary changes in placement greater than 10 consecutive school days (or that are a pattern that amounts to a change of placement), the disciplinary measures applicable to students without disabilities may be applied to a special education student if the conduct resulting in discipline is determined not to have been a manifestation of the special education student's disability. (20 U.S.C. § 1415(k)(C); 34 C.F.R. §§ 300.530(c) & 300.536(a)(1),(2).) School personnel may remove a student to an interim alternative educational setting for not more than 45 school days, regardless of whether the student's behavior is determined to be a manifestation of the student's disability, under certain circumstances. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).)

4. A parent of a special education student may appeal a school district's determination that particular conduct resulting in a disciplinary change of placement was not a manifestation of the child's disability by requesting an expedited due process hearing. (20 U.S.C. § 1415(k)(H)(3)(A); 34 C.F.R. 300.532(a) & (c).) The 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)(H)(4)(B); 34 C.F.R. 300.532(c)(2).)

5. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student is the filing party and has the burden of persuasion on all issues.

ANALYSIS OF ISSUES 1 AND 2: PARENTAL PARTICIPATION AND PREDETERMINATION

6. Student contends District denied parental participation and predetermined the manifestation determination review meeting outcome. District contends Mother and her advocate participated and shared their opinions during the manifestation determination review. District also contends that it did not predetermine the outcome, but merely disagreed with Mother and her advocate.

7. 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).) The parents of a child with a disability must be afforded an opportunity to participate in meetings with respect to the identification, evaluation, and educational placement of the child; and the provision of FAPE to the child. (34 C.F.R. § 300.501(a); Ed. Code, § 56500.4.) A parent has meaningfully participated in the development of an IEP when he or she is informed of the child's problems, attends the IEP meeting, expresses disagreement regarding the IEP team's conclusions, and requests revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3d Cir. 1993) 993 F.2d 1031, 1036 [parent who has an opportunity to discuss a proposed IEP and whose concerns are considered by the IEP team has participated in the IEP process in a meaningful way].) Predetermination occurs when an educational agency has decided on its offer prior to the IEP meeting. (*Deal v. Hamilton County Bd. of Educ.* (6th Cir.2004) 392 F.3d 840, 858.)

8. District personnel did not take Mother's documents listing the ADHD characteristics and a therapist's note because Ms. Cerda did not see the documents. Nonetheless, Mother had an opportunity to share her views and discuss Student's behaviors that she believed were characteristic of his ADHD. She also read a note from

an absent teacher about Student's impulsive classroom behaviors to the manifestation determination review team. Both Mother and Mr. Attwood expressed their disagreement that the March 8, 2017 lock throwing incident was unrelated to his disability. Mr. Attwood shared repeatedly: why the manifestation determination review team was wrong in not considering Student's intent when throwing the lock; his belief that District engaged in predetermination by not distributing a copy of Student's IEP; and requested and received a printout of the IEP and the behavior intervention plan. When Mr. Attwood requested to see the video of the incident, Mr. Grogan declined but explained that it would be provided the following day in a pre-expulsion meeting. Meaningful participation did not require that District agree with, or acquiesce to, all of Mother's or Mr. Attwood's requests. Although District did not agree that the March 8, 2017 lock throwing incident was related to Student's disability, or that it occurred because of District's failure to implement Student's IEP, the evidence showed that Mother and Mr. Attwood attended and meaningfully participated in the manifestation determination review meeting.

9. Mr. Grogan's statement "I predetermined, yes, that the IEP was implemented correctly" at the manifestation determination review meeting was more an expression of frustration at unrelenting exclamations throughout the meeting that District had predetermined the outcome of the manifestation determination review meeting than evidence that predetermination actually occurred. None of District's personnel had any substantive discussions about Student's manifestation determination review meeting in advance of the meeting. The fact that District had scheduled a pre-expulsion meeting for the day after the manifestation determination review meeting was not persuasive evidence that District had engaged in predetermination. The only discussion District had in advance of the meeting was Mr. Grogan's inquiry into whether Student's IEP had been provided to all his teachers. Student did not provide any

evidence supporting that District decided the outcome of the manifestation determination review meeting in advance of the meeting.

10. Student did not meet his burden of persuasion that District did not provide meaningful parent participation, or that District predetermined the outcome of the manifestation determination review meeting.

ANALYSIS OF ISSUES 3 AND 4: MANIFESTATION DETERMINATION REVIEW MEETING

11. Student contends that the lock throwing incident resulted from his impulsivity and inappropriate attention seeking behaviors, and was a manifestation of his ADHD. Student also contends that the lock throwing incident resulted from District's failure to implement his IEP. District contends the March 15, 2017 manifestation review team's decision was correct, and that the lock throwing incident was unrelated to Student's ADHD. District also contends that it properly implemented Student's IEP, but any failures in implementation did not cause Student to throw the lock on March 8, 2017.

12. 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).) The removal of a special education student from the student's placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a)(i).)

13. When a district seeks to change a special education child's educational placement for more than 10 days as a result of a violation of a student code of conduct, the district must convene a meeting to determine whether the child's violation was a manifestation of the child's disability. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530.) This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E).) 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 manifestation determination must be accomplished within 10 school days of the decision to change the student's placement.

(Ibid.)

14. Conduct is a manifestation of the student's disability: (i) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (ii) if the conduct in question was the direct result of the local education agency's failure to implement the IEP. (34 C.F.R. § 300.530(e)(1) & (2).) The manifestation determination analyzes the child's behavior as demonstrated across settings and across times. 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); 34 C.F.R. § 300.530(e)(1); Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46540, 46720 (Aug. 14, 2006) (Comments on 2006 Regulations).)

15. If it is determined that the student's conduct was not a manifestation of the student's disability, then regular school disciplinary procedures may be used to address the incident in the same way the procedures would be applied to non-disabled students. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c).)

16. If the IEP team determines that the conduct was a manifestation of the child's disability, the district must: conduct a functional behavioral assessment, unless one had been conducted before the behavior that resulted in the change of placement, and implement a behavioral intervention plan for the child; or review the child's behavioral intervention plan and modify it, as necessary to address the behavior. (20 U.S.C. § 1415(k)(1)(F)(i) and (ii); 34 C.F.R. § 300.530(f)(1)(i) and (ii).)

March 8, 2017 Lock Throwing Incident and Relationship to Student's ADHD

17. The manifestation determination review team considered whether the lock throwing incident had a direct and substantial relationship to Student's disability on March 15, 2017. District's conclusion that the lock throwing incident was unrelated to Student's ADHD was wrong. District's conclusions were based on: Student's cognitive ability to distinguish right from wrong; his decision to throw the lock into a crowd was not impulsive, because it required multi-step planning; and that even if the lock throwing was attention seeking behavior, Student made a conscious choice to throw the lock.

18. Student's expert, Mr. Villa, persuasively opined that the lock throwing incident was directly related to Student's ADHD disability because Student was impulsive and seeking attention from his peers. Although Student could differentiate between right and wrong, Student had difficulty evaluating what was safe or unsafe behavior because of his impulsivity. As a result of that impulsivity Student did not accurately evaluate how unsafe throwing the lock into a crowd of people, where a trashcan with a small opening from the distance from where he stood would be, and how difficult, and unlikely, it would be for him to successfully land the lock in the trashcan. Mr. Villa's opinion correlated with Student's 2015 cognitive testing results where he scored average in most areas of cognitive processing, but lower in executive planning and showed a deficit in visual-perceptual skills and coordination. This reasonably explained why Student had the cognitive ability to know right from wrong, and was afraid of the consequences of injuring someone, but was still unable to properly evaluate, determine and understand that it would be unsafe to throw a lock into a crowd of people from at least 15 yards away.

19. District's experts opined that the act of throwing the lock was not impulsive and required planning was not as persuasive. Both Ms. Cerda's and Dr.

Paxton-Hennings' premise that Student had the lock for over two hours was wrong. District did not dispute that Student found the lock during the beginning of lunch and threw it approximately 5-10 minutes afterwards when the entire lunch period was approximately 35 minutes. Dr. Paxton-Hennings' opinion that it was of little import whether Student had the lock for two hours or five minutes, as long as Student had time to plan what to do with the lock, was not as persuasive in light of Mr. Villa's explanation that Student was incapable of differentiating right from wrong when it required evaluating whether a behavior was safe or unsafe.

20. Mr. Villa and Mother both observed instances where Student was incapable of properly gaging safe/unsafe behaviors: placing items on the Judo mat; running too fast without regard to the safety of younger kids at the Riverside Youth Judo Club, or in a parking lot without regard to his own safety just to showcase his speed; and using too much strength when working with younger kids on basic Judo techniques. However, because District did not monitor Student's impulsive behaviors outside of the classroom, it had no data on Student's impulsivity and its impact on his ability to evaluate safe/unsafe situations. Although it was undisputed that generally Student had the cognitive ability to know right from wrong, District's experts did not have data that extended to situations involving Student's ability to properly evaluate the safe/unsafe nature of an activity. Therefore, District's experts' opinion that because Student had the cognitive ability to plan and make the decision to throw the lock, Student also had the cognitive ability to control his impulsivity (which manifested as attention seeking and receiving the negative attention from his peers) and could properly evaluate that throwing the lock into a crowd would hurt someone if he missed the trashcan was unsupported by District data, and attenuated.

21. Dr. Paxton-Hennings' and Ms. Cerda's opinion that because attention seeking behavior was not an ADHD characteristic enumerated under the DSM-5, to the

extent the lock throwing incident was attributed to Student's attention seeking behavior, it was unrelated to Student's ADHD disability was also unpersuasive. Both impulsivity and attention seeking behaviors interfered with Student's education and were identified and targeted in Student's IEP social/emotional goal and behavior intervention plan; so they were related to Student's disability. The fact that Dr. Paxton-Henning disagreed with labelling the function of Student's behavior as attention seeking in the behavior intervention plan was irrelevant to whether such behavior was related to Student's ADHD. Further, Mr. Villa persuasively explained that impulsivity was a category of the ADHD medical diagnosis under the DSM-5 and that attention seeking was a behavior function based on the ADHD medical diagnosis of impulsivity—basically two sides of the same proverbial ADHD coin. Student's impulsivity manifested in the attention seeking behavior function which led him to throw the lock. Therefore, Student's choice of seeking the negative attention of his peers was directly related to his ADHD disability.

22. Mr. Villa's opinion was based on a thorough review of Student's records and disability history from his elementary school years onwards, and based on spending six hours per week working with Student on his impulsivity and attention seeking behaviors. Because Mr. Villa spent more time with Student than Ms. Cerda and Dr. Paxton-Hennings (who did not spend any time with Student), and was engaged in direct behavior interventions with Student, Mr. Villa's opinions about the behavioral aspects of Student's ADHD disability was more credible. Further, Mr. Villa was also a board certified behavior analyst and had more experience with behaviors and their functions than any of District's experts in that area.

23. District considered whether the lock throwing incident was related to Student's disability at the manifestation determination review meeting, but its conclusion that the lock throwing incident was unrelated to Student's ADHD disability was incorrect. Student met his burden of establishing that the lock throwing incident

was substantially and directly related to his ADHD disability, and would be entitled to the remedy discussed in the Remedies section.

March 8, 2017 Lock Throwing Incident and Relationship to District's IEP Implementation Failures

24. Minor failures by a school district in implementing an IEP should not automatically be treated as violations of the IDEA. (*Van Duyn v. Baker School Dist.* (9th Cir. 2007) 502 F. 3d 811, 821.) Rather, a material failure to implement an IEP violates the IDEA. (*Id.* at p. 822.) "A material failure occurs when there is more than a minor discrepancy between the services a school provides to a disabled child and the services required by the child's IEP." (*Id.* at p. 822.) "[T]he materiality standard does not require that the child suffer demonstrable educational harm in order to prevail." (*Id.* at p. 822.) "We also emphasize that nothing in this opinion weakens schools' obligation to provide services "in conformity with" children's IEPs." (*Id.* at p. 822.)

25. Student's IEP social/emotional goal and behavior intervention plan provided for prompting, redirecting and role playing appropriate attention seeking behaviors and minimizing impulsive behaviors in the classroom. The seven social skills steps were so general that they applied to most of Student's peers and utilized by all of Student's general education and special education teachers. Therefore, it was persuasive that Mr. Janes, Ms. Yeager, Mr. Vanta and Mr. Corrigan all worked on most of those seven social skills steps with Student while he was in their classes even though they did not recall the specific steps. Similarly, it was also persuasive that Mr. Meech implemented the behavior intervention plan even though he was not aware that the social skills steps were in Student's IEP.

26. Mr. Villa's criticism that the behavior intervention plan was detail deficient was irrelevant in determining on whether District implemented the behavior intervention plan as written. The behavior intervention plan implementation did not require one-to-

one support for Student. Therefore, District implemented the behavior intervention plan when the teachers worked on the seven social skills steps with Student, whether individually, or in his classes with the rest of his peers. The behavior intervention plan also did not specify a time period or a specific District personnel to perform each of the steps, so District implemented the behavior intervention plan when his teachers worked on the inappropriate behaviors observed in their classes as they arose. Although Ms. Yeager did not role play with Student and met with Student only once to go over the steps, this was immaterial because the behavior intervention plan was so broadly written for addressing behaviors on an as needed basis. Even though Ms. Yeager did not role play with Student, Student's other teachers implemented the role playing aspect of the behavior intervention plan by raising a hand to teach Student the appropriate way to request time to speak. Further, Student's teachers all used some of those seven social skills steps to elicit appropriate behavior from Student: either by intentionally following those steps, or unintentionally employing those steps because they involved common sense *e.g.* giving positive verbal reinforcement such as "good job" when Student acted appropriately.

27. Even if District failed to implement Student's IEP, such failure did not directly result in his decision to throw the lock into a crowd. Dr. Paxton-Hennings' and Ms. Cerda's opinion that Student's behavior intervention plan only addressed inappropriate classroom behaviors was consistent with the language of the behavior intervention plan and therefore persuasive. Because the behavior intervention plan addressed impulsive and attention seeking classroom behaviors such as blurting out, making disruptive noises and getting out of his seat, any IEP implementation failures would not have directly affected Student's ability to properly gage whether throwing the lock into a crowd was an appropriate behavior outside the classroom. Mr. Villa's opinion that District should have written another social/emotional goal and another set

of social skills steps to address Student's behaviors outside of the classroom supported that Student's current IEP did not deal with Student's impulsive behaviors outside of the classroom. Mr. Villa's opinion that if District had consistently implemented Student's IEP, Student would have learned to generalize the behavioral skills he learned in the classroom to other unstructured environments and not throw the lock into a crowd on March 8, 2017, was not as persuasive. For purposes of this hearing, whether this should have been a goal in Student's IEP was irrelevant; the relevant issue was that Student's IEP did not address appropriate behaviors in an unstructured environment outside the classroom. Therefore, even if District had failed to implement Student's IEP, any failure in implementation would have been too attenuated to directly affect Student's impulsive decision to throw the lock into a crowd.

28. Student did not meet his burden of persuasion that District failed to implement his IEP, or that any IEP implementation failures directly resulted in the lock throwing incident.

REMEDIES

1. Student prevailed on Issue 3. As a remedy, Student requested placement in Ramona High School, another school located in District. Student also requested in his closing brief that the ALJ order District to assess Student in the areas of academic, social-emotional, and functional behavior, and modify Student's IEP and behavior intervention plan.

2. An ALJ may order that a special education student be returned to his or her original placement if the ALJ determines that the conduct was a manifestation of the student's disability or the result of the failure to implement the student's IEP. (20 U.S.C. § 1415(k)(H)(3)(B); 34 C.F.R. § 300.532(a) & (c).) If the conduct was a manifestation of the child's disability, the district must: conduct a functional behavioral assessment, unless one had been conducted before the behavior that resulted in the change of placement,

and implement a behavioral intervention plan for the child; or review the child's behavioral intervention plan and modify it, as necessary to address the behavior. (20 U.S.C. § 1415(k)(1)(F)(i) and (ii); 34 C.F.R. § 300.530(f)(1)(i) and (ii).)

3. Because District's decision that the lock throwing incident was unrelated to Student's disability was wrong and thus invalid, Student is entitled to be returned to his original placement at Martin Luther King High School. Despite Student's personal preference, the ALJ has no reasonable basis to decide whether placement at Ramona High School would be appropriate for Student.

4. Additionally, District shall conduct a functional behavior assessment of Student's disability and modify Student's behavioral intervention plan as necessary to address any inappropriate behaviors. The ALJ has no reasonable basis to order an academic or a social-emotional assessment because these issues were not part of this expedited hearing. Therefore, Student's requests for these other assessments are denied.

ORDER

1. District's manifestation determination that the lock throwing incident was unrelated to Student disability is reversed. Student shall be reinstated at District's Martin Luther King High School as of the date of this Order.

2. District shall conduct a functional behavior assessment which shall begin by May 15, 2017 because Mother had already consented to District's conduct of a functional behavior assessment. District shall convene an IEP team meeting in accordance with the procedural requirements of the IDEA after the functional behavior assessment is completed. Any assessment delays caused by Student's unavailability will toll the timeline for the functional behavior assessment and the date for the subsequent IEP team meeting for the corresponding number of days.

3. All other requests for relief are denied.

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. Student is the prevailing party as to Issue 3. District is the prevailing party as to Issues 1, 2 and 4.

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: May 8, 2017

/s/

SABRINA KONG

Administrative Law Judge

Office of Administrative Hearings