

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2022110710

PARENTS ON BEHALF OF STUDENT,

v.

BELLA MENTE MONTESSORI CHARTER ACADEMY.

EXPEDITED DECISION

JANUARY 31, 2023

On November 23, 2023, Parents on behalf of Student filed a due process hearing request, called a complaint, with the Office of Administrative Hearings, called OAH. Student's complaint named Bella Mente Montessori Academy, called Bella Mente, and appealed a Bella Mente school disciplinary manifestation determination regarding Student's October 2022 violation of Bella Mente's code of student conduct.

Administrative Law Judge Robert G. Martin heard this matter by videoconference on January 10, 11, 12, 17, and 18, 2023.

Attorneys Gabriella Torres and Amanda Miller represented Student. Student's Mother attended all hearing days, and Father attended the hearing on January 17, 2023. Attorneys Maryam Rastegar and Kevin Davis represented Bella Mente. Bella Mente Executive Director Erin Feeley attended all hearing days on Bella Mente's behalf.

On January 18, 2023, the record was closed, and the matter submitted. The Administrative Law Judge granted the parties' requests to file written closing briefs during the submittal time. The parties timely filed timely closing briefs on January 23, 2023.

EXPEDITED ISSUES

The issues for determination have been renumbered to address procedural issues first, and reframed. The administrative law judge has authority to renumber and redefine a party's issues, so long as no substantive changes are made. (*J.W. v. Fresno Unified Sch. Dist.* (9th Cir. 2010) 626 F.3d 431, 442- 443.)

1. Did Bella Mente predetermine the outcome of Student's November 7, 2022 manifestation determination meeting and fail to conduct a procedurally compliant meeting?
2. Did Bella Mente erroneously conclude that Student's behavior was not a manifestation of his disability at Student's November 7, 2022 manifestation determination meeting?
3. Did Bella Mente erroneously conclude that Student's behavior was not a result of its failure to implement Student's individualized education program, called an IEP?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called the IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

Title 20 United States Code section 1415(k), title 34 Code of Federal Regulations, part 300.530, et seq., and Education Code section 48915.5 govern the discipline of special education students. A student receiving special education services may be suspended or expelled from school as provided by federal law. (20 U.S.C. §1412(a)(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, if 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).)

For disciplinary placement changes of more than 10 consecutive school days, 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)(1)(C); 34 C.F.R. § 300.530(c) & 300.536(a)(1)(2).)

The parent of a child with a disability who disagrees with the manifestation determination may appeal the decision by requesting a hearing. (34 C.F.R. § 300.532(a).)

The hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed. 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).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f) (3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and bore the burden of proof. The factual statements in this decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 13 years old and in the eighth grade at the time of hearing. Student resided at all relevant times within the boundaries of Vista Unified School District, referred to as Vista Unified. In August 2022, Student began attending Bella Mente, a public charter school located within the boundaries of Vista Unified. While he attended Bella Mente, Bella Mente was the public agency responsible for Student. (34 C.F.R. 300.33.)

BACKGROUND

Student was eligible for special education under the category of other health impairment, due to his attention deficit hyperactivity disorder, called ADHD. Student was sometimes inattentive and acted impulsively. Student was also eligible under the category of specific learning disability, due to an auditory processing disorder which affected his reading skills. Student did not have a behavior intervention plan in place at

Bella Mente. Student's most recent behavior intervention plan was developed in December 2019, before Vista Unified switched to distance learning in response to the COVID-19 pandemic. That plan addressed Student's vocal disruptions, off-task behaviors, pattern of refusing to follow adult directions, and defiance toward adults directing him.

Bella Mente suspended and subsequently expelled Student for violating Bella Mente's code of student conduct when he threatened to physically injure another person, including a school employee. Bella Mente's actions were based on Student's statements to classmates on October 17, 2022, and during the two prior weeks, in which Student threatened to commit a school shooting. Student also said he would target a specific classmate and teacher.

ISSUE 1: DID BELLA MENTE PREDETERMINE THE OUTCOME OF STUDENT'S NOVEMBER 7, 2022 MANIFESTATION DETERMINATION MEETING AND FAIL TO CONDUCT A PROCEDURALLY COMPLIANT MEETING?

Student contends Bella Mente predetermined that Student's conduct was neither caused by, or directly and substantially related to, his disabilities, nor the direct result of Bella Mente's failure to implement Student's individualized education program, called an IEP. Student contends Bella Mente then conducted a manifestation determination review meeting that failed to comply with the IDEA's procedures for making such determinations.

Bella Mente contends it did not predetermine the outcome of Student's manifestation determination review meeting, and complied with all IDEA procedures when it conducted the meeting.

REQUIRED DUE PROCESS PROCEDURES FOR MANIFESTATION DETERMINATIONS

A “change of placement” is a fundamental change in, or elimination of, a basic element of a child’s educational program. (34 C.F.R. § 300.536(a).) Expulsion or suspension for more than 10 days is a “change of placement.” (*Honig v. Doe* (1988) 484 U.S. 305.) A manifestation determination must be made 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).)

A manifestation determination review meeting is not an IEP team meeting, and different rules apply to notice and attendance requirements. A manifestation determination review must be conducted, and a determination made, made by a team consisting of the local educational agency, the parents, and relevant members of the student’s IEP team, as determined by the parents and the local educational agency. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1) & (h).) The local educational agency must notify the 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, subds. (a)-(c).) The notice must inform the parents of the decision to change the student’s placement and must include a copy of the parents’ procedural safeguards. (20 U.S.C. § 1415(k)(1)(H).)

The manifestation determination review team must review all relevant information in the student’s file, including the IEP, any observations by teachers, and any relevant information from the parents, to determine if the student’s 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).) The manifestation determination should analyze the child's behavior as demonstrated across settings and across times. (United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS), Analysis of Comments and Changes to 2006 IDEA part B Regulations, 71 Fed.Reg. 46591, 46720 (Aug. 14, 2006).) Conduct that is a manifestation of the child's handicap occurs only if the handicap significantly impairs the child's behavioral controls. It does not include conduct that bears only an attenuated relationship to the child's handicap. (*Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470, 1480, fn. 8, *affd. sub nom. Honig v. Doe* (1988) 484 U.S. 305 [98 L.Ed.2d 686].)

If a student's misbehavior is properly determined not to be a manifestation of his disability, he can be expelled. (*Doe v. Maher, supra*, 793 F.2d at p. 1482.)

"When a child's misbehavior does not result from his handicapping condition, there is simply no justification for exempting him from the rules, including those regarding expulsion, applicable to other children ... To do otherwise would amount to asserting that all acts of a handicapped child, both good and bad, are fairly attributable to his handicap. We know that that is not so." (*Ibid.*)

REQUIREMENT OF MEANINGFUL PARENT PARTICIPATION

"[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])

(*Winkelman*).) Protection of parental participation is “[a]mong the most important procedural safeguards” in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.)

Parental participation is also central to the manifestation determination process that governs disciplinary changes to the educational placement of a student with a disability. The Education Code requires a local educational agency to 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 student’s educational placement. (Ed. Code, § 56342.5.) The IDEA requires the school district to conduct a meaningful manifestation determination meeting with the appropriate parties. (*W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485 (*Target Range*).)

STUDENT’S PRE-INCIDENT BEHAVIOR AT BELLA MENTE

Student started eighth grade at Bella Mente on August 18, 2022. Bella Mente held Student’s 30-day amendment IEP team meeting on September 12, 2022. The amendment IEP was based on Student’s seventh grade annual IEP held by Vista Unified in November 2021. Bella Mente added new comments, updated Student’s present levels of performance, and added a new behavioral goal. Student’s general education teacher described him as a sweet and thoughtful young man trying to be well behaved and do well in school. She observed an improvement in his behavior both socially and emotionally since the beginning of the school year. At the beginning of the school year, Student did not want to follow directions, but was improving. Student was trying to

focus on his work. He purposely isolated himself from students he knew were bad influences. He stepped in and helped others when he noticed they needed help.

However, Student had trouble paying attention and following directions in large groups, small groups, and in one-to-one situations. He needed constant redirection to tasks, which he usually did not complete. He engaged in off-task, distracting behaviors, such as

- keeping his head down on his desk,
- not completing his work,
- drawing during instruction,
- using too much hand sanitizer, and
- sharpening pencils.

He would sometimes try to find ways to leave the classroom. For example, he purposely created a mess with the pencil sharpener so that he had a reason to go to the restroom to wash his hands.

To address Student's off-task, distracting behaviors, Student's IEP team developed a self-regulation goal for Student to self-monitor these inappropriate behaviors, and recognize when he was engaging in inappropriate behavior 80% of the time. Student's baseline when the goal was developed was 50% success.

However, Student's October 6, 2022 progress report indicated Student regressed, and was only able to achieve this self-monitoring goal with about 10% accuracy with prompting. Student's teachers and the school psychologist who counseled him in support of the goal found Student was easily influenced by his peers, and would act out

if encouraged to do so or if he thought it would be funny. To support the goal, Student was given squeeze balls to use instead of engaging in distracting behavior, and help with developing mindfulness techniques to self-regulate.

Student was involved in two minor behavior incidents in September and October 2022, neither of which led to formal discipline. On September 7, 2022, Student brought a plastic knife to school with his lunch to cut fruit. When a classmate bet Student the plastic knife was not sharp enough to cut a person, Student drew the knife across the classmate's palm, causing a small cut. Student's IEP team attributed the incident to an impulsive act, caused by Student's ADHD and the classmate's encouragement. Also, in early October, 2022, Student took a broken wooden chair leg from a school chair placed in a hallway to be picked up for repair, and began sharpening it with a pair of scissors. After his teacher, Daniela Valdez, disposed of the chair leg, Student retrieved it from the trash and put it in his backpack to take home.

THE SCHOOL SHOOTING THREATS

On October 17, 2022, a Bella Mente student entering the school campus, referred to as Classmate 1, heard someone behind him say he was going to "bring a gun to school and kill everyone and shoot the teacher's head off." On October 18, 2022, the mother of Classmate 1 called Bella Mente and told staff what her son had overheard.

Bella Mente staff immediately interviewed Classmate 1, who said he had heard the statement while entering Bella Mente's main gate for the start of the school day. He said another student, referred to as Classmate 2, probably had more information. Bella

Mente then interviewed Classmate 2, who said Student had asked him a week before, "What teacher would you kill?" Classmate 2 also said Student told him he would kill a female classmate, referred to as Classmate 3. Classmate 2 also said Student had said he had "an AK at home and a Glock," and was "gonna shoot up the school."

Based on this information, Bella Mente's school counselor pulled Student from class to conduct a threat assessment. Student denied making comments about shooting people at Bella Mente, and said other students were making things up. Bella Mente also notified the City of Vista Police Department of the threats. Police deputies participated in interviews of Student and Classmate 2. Bella Mente's Director of Compliance, Patrick Broughton, called Student's mother to school to take Student home. Broughton reviewed video footage of Bella Mente's main gate and confirmed Student was one of three students who entered the main gate behind Classmate 1 the previous day.

As Bella Mente continued its investigation, it initially suspended Student on October 19, 2022 for three days. Broughton and Assistant Principal Adriana Hartwell interviewed eight classmates who said Student had discussed how he would shoot people at Bella Mente. Broughton obtained written statements from seven of those classmates. Student submitted two written statements denying he ever said such things. Broughton prepared an incident report summarizing the results of Bella Mente's investigation, and attached copies of the collected written statements to the report.

Based on the interviews and written statements of Student's classmates, Student made, at a minimum, the following statements to classmates between approximately October 3, 2022 and October 17, 2022:

- Student told a classmate he had an AK assault rifle and a Glock pistol at home.
- Student told at least four classmates he would shoot up the school.
- Student asked a classmate if he knew how easy it would be to shoot up the school and how easy it would be to get weapons.
- Student told another classmate it would be easy to break into the school because the doors could be easily swung open, and the cameras shot out or broken.
- Student said he would kill his teacher, whom he named, because she was a bitch.
- Student told at least four classmates he would kill Classmate 3, whom he also named.
- Student told Classmate 3 she was so annoying that when he shot up the school, he was going to shoot her first.
- Student said he was going to bring his Glock pistol to school on October 19, 2022, and shoot Classmate 3 first, but that he would not shoot the boys.

On October 20, 2022 police told Broughton they had conducted a search of Student's home, and found dozens of weapons, including knives and samurai swords; a BB gun frame, BB handguns, and empty cartridge cases. They also found a list of student names and the school address; and drawings of people with weapons, labeled gun parts, and a human figure with body parts labeled with weapons next to the body.

10-DAY SUSPENSION NOTICE AND DRAFT MANIFESTATION DETERMINATION

On October 20, 2022, Bella Mente extended Student's suspension and recommended him for expulsion, pending a manifestation determination review meeting, for threatening to cause physical injury to another person, including a school employee. Bella Mente gave Parents written notice of the suspension and recommendation for expulsion.

To prepare for the manifestation determination meeting, Bella Mente School Psychologist, Diarra Taylor, reviewed Broughton's incident report, other investigation materials, and some of Student's educational records. She did not speak with Student, Parents, or with the classmates who provided the statements attached to the incident report. Based on her review, Taylor filled in a draft manifestation determination form dated October 26, 2022.

Taylor's draft manifestation determination form contained information and conclusions, but virtually no analysis of how the information related to the conclusions. In the space on the form calling for "Description of behaviors/actions of student resulting in this analysis," Taylor summarized Student's threats, and the list of items the police told Broughton they had found at Student's home.

In the space for "Teacher observations of the student," Taylor described the incident in early October 2022 with the sharpened chair leg, and teacher Valdez's observations of Student's strong interest in knives, a famous army sniper, and guns, which he liked to draw. In the space for "the Student's IEP," Taylor listed the frequency and amount of related services offered to Student. These services included educationally

related mental health services, called ERMHS. Taylor also noted Student received specialized academic instruction in math, science, and English/language arts, although the amounts of the specialized academic instruction indicated did not match what was indicated on Student's current IEP dated September 12, 2022. In the same "IEP" space on the form, Taylor included Student's new self-regulation goal from that IEP, which was to identify his inappropriate behavior 80% of the time, but did not reference his October 6, 2022 progress report that indicated Student's reported performance on that goal had fallen from a 50% success rate to a 10% success rate in a month. In the space for "relevant information provided by the parents," Taylor quoted from a statement provided to Broughton by Parents. Parents reported Student was traumatized by the situation and felt the school had acted on a rumor and had not responded appropriately.

In a large space on the form titled "Other," Taylor included a detailed description of Student's threats, and information from Broughton's investigation showing Student had used a school computer on six days to conduct online searches for information about guns, snipers, and samurai swords. Taylor also listed the special education eligibility category recommendations for Student from Vista Unified's 2013, 2016 and 2018 assessments, which included speech and language impairment, other health impairment, and specific learning disability. Taylor noted Vista Unified had given Student a self-regulation goal and put Student on a behavior intervention plan in 2018. Taylor further noted that in January 2019 Vista Unified had recommended Student receive ERMHS counseling, but Taylor indicated the ERMHS assessment report summary was not available for her to review.

Taylor also listed 21 test scores from five of the standardized tests administered to Student in his November 2021 evaluation by Vista Unified. These tests measured Student's performance in the areas of intelligence and achievement, auditory processing,

visual and motor integration, social emotional functioning, and self-concept. Taylor did not include an explanation of these test scores. Taylor noted Student had a perfect attendance record at Bella Mente, and had no known health concerns, other than a medical diagnosis of ADHD, for which Student was not taking medication. Finally, Taylor noted Student's current eligibility categories of specific learning disability and other health impairment.

In the space on the form calling for the manifestation determination team's decision on whether Student's conduct was caused by, or had a direct and substantial relationship to his disability, Taylor checked the box for "No," with the comment, "[Student] qualifies for special education services under the categories of Other Health Impairment and Specific Learning Disability." In the space for the manifestation determination team's decision on whether Student's conduct was a direct result of the district's failure to implement Student's IEP, Taylor checked the box for "No," with the comment, "[Student's] IEP has been implemented with fidelity."

Taylor checked the box on the form indicating that, based on the findings that Student's behavior was neither caused by his disability, nor by a failure to implement his IEP, Student's behavior was not a manifestation of his disability. The accompanying instructions on the form completed by Taylor stated the conclusion, "Proceed with disciplinary proceedings, all conditions have been met. (Behavior not a manifestation of student's disability, student understood impact and consequences of behavior, student could control behavior, and services and supports were correct at time of incident.)"

Taylor included three additional comments in areas on the draft manifestation determination form that were not directly associated with one of the required determinations. First, "[Student] has a Behavior Intervention Plan dated 12/18/18, that

addresses vocal disruption, non-compliance, defiance, and off-task behavior.” Second, Student’s November 2021 evaluation found “[Student] has auditory processing deficits that cause difficulties in his ability to progress academically and has cognitive abilities within the average range with attention.” Third,

“Student has a diagnosis of ADHD and is very impulsive. The evidence provided ... suggests that Student has made several comments over the past two weeks stating he would shoot the school and specific people. Local PD searched [Student’s] home to find several weapons including swords, knives, bb guns, labeled parts of a gun. a list of names. and the school address. School computer search history revealed several searches of guns, swords, and snipers.”

On October 25, 2022, Parents asked Bella Mente to reschedule Student’s manifestation determination review meeting scheduled for October 26, 2022, because Bella Mente had not given them the statements of Student’s classmates and other information that Parents believed they needed to meaningfully participate in the meeting. On October 26, 2022, Bella Mente rescheduled the manifestation determination review meeting, and sent Parents Taylor’s draft manifestation determination report, and Student’s September 12, 2022 Amendment IEP. On October 27, 2022, Bella Mente sent Parents written notice of a manifestation determination review meeting scheduled for November 7, 2022 from 2:00 p.m. to 3:00 p.m., along with copies of

- Student’s November 2021 multidisciplinary evaluation,
- Broughton’s incident report with attached classmate statements, redacted to remove names of the affiants,
- Student’s discipline records,

- Student's internet search history for violence related subjects, and
- the two suspension notices previously issued.

On November 5, 2022, Parents returned a signed notice of the manifestation determination review meeting. Parents indicated they planned to attend the meeting. They checked boxes indicating they would bring advocate Moira Albritton to the meeting, required the assistance of a Spanish interpreter, and would be recording the meeting.

NOVEMBER 7, 2022 MANIFESTATION DETERMINATION REVIEW MEETING

On November 7, 2022, at 2:00 p.m., Bella Mente convened Student's manifestation determination review meeting. Parents attended with Albritton. Broughton attended the meeting as Bella Mente's administrative designee. Bella Mente's Interim Director of Special Education, Dr. Christine Suh, attended in the capacity of a special education teacher. Dr. Suh did this so that Bella Mente special education teacher Kristen Eagle could attend in the capacity of a general education teacher, to replace Student's general education teacher, Nichole Salvo, who was unavailable. Bella Mente brought in school psychologist Zoha Fazel, an independent contractor, to attend the meeting in place of school psychologist Taylor, who no longer worked at Bella Mente. Attorney Kevin Davis also attended for Bella Mente.

Prior to the manifestation determination review meeting, all the Bella Mente members of the team had reviewed Taylor's draft manifestation determination report. Dr. Suh had reviewed only the draft report. Broughton, Eagle, and Fazel had reviewed

Student's September 30, 2022 IEP in addition to Taylor's draft report, but no other documents. At the manifestation determination review meeting, the team members relied solely on Taylor's draft report and reviewed no additional documents.

Bella Mente contracted with a remote Spanish language interpreter, Maca Davis, to interpret for Mother by telephone. At the start of the meeting, Dr. Suh explained that because Davis had to leave at 3:00 p.m., the meeting would only be one hour long.

Albritton said she had a short statement she could read that might conserve some time. She began by saying Parents had read Bella Mente's manifestation determination report, and would stipulate they had reviewed it and its contents did not need to be read aloud at the meeting. She stated Parents believed they had information the team needed to consider that was not included in the manifestation determination report created by Taylor without Parents' input. Albritton noted Student had poor judgment, tended to act immaturely, had a history of inappropriate behaviors, and was unsuccessful in many academic areas. Student was new to Bella Mente, and trying to be accepted and respected by his peers. She questioned why Bella Mente added a goal to Student's September 12, 2022 IEP for Student to recognize when he was engaging in unacceptable behavior, while at the same time removing Student's prior behavior intervention plan from his IEP.

Albritton noted Student was only able to recognize his unacceptable behavior 10% of the time as of October 6, 2022. Albritton also stated that Student's September 12, 2022 IEP contained an unclear and inadequate offer of a free appropriate public education, called a FAPE, that Bella Mente could not possibly implement. Albritton suggested this failure to implement Student's IEP caused Student to receive inadequate support and insufficient services, which led to his increasingly inappropriate behaviors. These

culminated in Student's impulsive verbal threats to shoot up the school. Albritton urged the team to find that Student's behavior was both a manifestation of his disability and a result of a failure to implement his IEP.

The Bella Mente team members never discussed Albritton's suggestion that Student's threats appeared to be a manifestation of his long time and continuing inability to recognize his own inappropriate behavior and self-regulate. Instead, most of the hour-long meeting was devoted to a discussion between Albritton and Dr. Suh concerning Bella Mente's difficulty obtaining and deciphering information from Vista Unified about Student's prior IEP, behavior intervention plan, and related services, and how Bella Mente was interpreting and implementing the confusing related services described in Student's September 12, 2022 IEP. This discussion casts doubt on whether Bella Mente was implementing Student's IEP with fidelity. However, the manifestation determination review team did not discuss whether, assuming Bella Mente did fail to implement Student's IEP, Student's conduct could be a direct result of the failure.

Two-thirds of the way through the hour scheduled for the meeting, Albritton asked whether the team was going to discuss the issues raised in her opening statement, because "I get the sense that this is kind of a fait accompli. Are we ever going to have a conversation about whether either of those questions is going to be answered differently?" In response, Dr. Suh indicated that Bella Mente was willing to add additional notes to the manifestation determination based on Parent input, but the team did not believe that Student's behavior was due to any sort of impulsiveness related to Student's ADHD.

Albritton responded, "I think it would be appropriate to then start adding some information that's woefully missing from your document. And I don't know that we can

do it in 20 minutes, but we can at least start.” She suggested, based on Student’s educational history, and childhood medical history, which included an injury possibly causing a lack of oxygen to his brain, that “something broader than a simple ADHD diagnosis [might be] going on here.” Albritton suggested Bella Mente needed to consider and assess Student for possible additional disabilities in the areas of traumatic brain injury, autism, and emotional disturbance.

Dr. Suh responded that school psychologist Taylor had already looked at Student’s specific learning disability and auditory processing deficits. Deferring to Taylor’s draft manifestation determination, Dr. Suh summarized that Taylor had reviewed Student’s November 2021 multidisciplinary evaluation, which found he had auditory processing deficits causing difficulties in ability to progress academically, cognitive abilities within the average range with attention, and then the diagnosis of the ADHD, which is under the OHI category. Dr. Suh stated, “so with both of those items indicated, it was determined that it was not a manifestation of the student's disability.... I don't know if Dr. Fazel has anything she would want to add or any other thoughts to consider.”

Dr. Fazel did not have anything to add. She stated:

I was not the one that reviewed any of this information. I was not the one that did the manifestation write-up. If I were to have looked at this information and if I were to see things that were missing, possibly at that point I may have requested more information or more testing, but I was not the one that was on campus and reviewed the document. So I can't really answer any more for you.

Albritton stated there were some cultural issues the team had not considered that might affect Bella Mente's conclusion that Student was actually planning a school shooting. Albritton offered to go through those issues, but the hour set aside for the meeting had expired. Attorney Davis suggested Bella Mente insert in some of the boxes on the manifestation determination that Parents disagreed and had provided a statement. Attorney Davis asked, "Does the school MD team want to make their findings?" Dr. Suh stated, "The school did," and Davis said the form should indicate Parents disagreed.

The Bella Mente members of Student's manifestation determination review team made no changes to Taylor's report, which concluded Student's conduct was not caused by, or had a direct and substantial relationship to, Student's disabilities, and was not a direct result of Bella Mente's failure to implement Student's IEP.

Bella Mente proceeded with an expulsion hearing on December 2, 2022. The hearing officer at that hearing found Student had committed the offense of threatening to cause physical injury to another person, including a school employee. Student was expelled from Bella Mente as of December 6, 2022.

BELLA MENTE'S MANIFESTATION DETERMINATION REVIEW MEETING DID NOT COMPLY WITH REQUIRED IDEA PROCEDURES

Bella Mente's manifestation determination review did not comply with IDEA procedures. The IDEA requires the manifestation determination review team to review all relevant information in the student's file, and use that information to arrive at a

determination whether the student's 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.

School psychologist Taylor's draft manifestation determination report did not constitute such a review. The report simply listed Student's services, goals, previous special education eligibility categories, and assessment scores from prior IEP's, teacher observations of non-violent but alarming behaviors and interest in snipers and weapons, and statements by Parents that Student was traumatized and believed Bella Mente was acting on rumors, that Parents made before Bella Mente provided them any guidance or information to let them know what information from Parents might be helpful to the manifestation determination.

While some of the listed information might have been relevant to the question of whether Student's conduct was caused by, or had a direct and substantial relationship to, Student's ADHD, there was no analysis applying the information to those issues.

Similarly, the draft report simply listed items found by the police in Student's home, including swords, knives, bb guns, labeled parts of a gun, a list of names. and the school address. Presumably this was to show Student was acting pursuant to a plan, rather than on impulse, when he made his threats to shoot up the school, but the draft report again does not explain how the items found relate to the report's conclusions.

The report contained no analysis of the relevance of the information, or how it led Taylor to check the boxes on the form indicating that Student's conduct was not caused by, or had a direct and substantial relationship to, Student's disabilities, and was not a direct result of Bella Mente's failure to implement Student's IEP manifestation.

There was no analysis of how the information led Taylor to conclude Student understood the impact and consequences of his behavior and could control it, or that Student's services and supports were correct at time of incident.

INFORMATION NOT REVIEWED BY THE MANIFESTATION DETERMINATION REVIEW TEAM

From August 18, 2022, to October 17, 2022, Student had only attended Bella Mente 41 school days before making the threat to conduct a school shooting that led to his school discipline and manifestation determination review. Bella Mente's teachers and staff had not had time to become familiar with Student's behaviors and how his disabilities might influence them. They were aware, as Taylor's draft manifestation determination report stated, that Student had a diagnosis of ADHD and was very impulsive, but not aware of all of the ways Student's impulsivity had previously manifested itself. The draft report also indicated Student's teachers had found him very interested in knives, a famous army sniper, and guns, which he liked to draw, but there was no information on why Student found these subjects interesting. Information in both of these areas was available, from Student's school records and from Parents, and the manifestation determination review team should have considered it before reaching a decision.

STUDENT'S BEHAVIOR IN KINDERGARTEN THROUGH SEVENTH GRADE

Looking across setting and times at Student's behavior from kindergarten through seventh grade, Student demonstrated early issues with aggression, and continuing issues of inattention, distractibility, and disruptive behavior. However,

none of Student's behaviors approached the seriousness of his October 2022 school shooting threats. Student's manifestation determination review team never reviewed this information to analyze whether Student's threats were consistent with prior behaviors associated with his disability.

Student was disciplined 36 times from kindergarten through second grade for hitting other students, or exhibiting disruptive behavior. In second grade, Vista Unified provided Student adult supervision at recess and lunch, which almost completely eliminated his physical aggression towards peers. In third grade, Student was disciplined only once, for injuring a friend when their play-fighting became too rough. In fourth through sixth grade, Student was disciplined a total of seven times. However, only one incident involved hitting a classmate. In Student's seventh grade year, 2021-2022, Student was disciplined twice for using his cell phone at school, once for rough play that injured a classmate, and once for disruptive and defiant behavior. Student made threats at school only once prior to October 2022, when he called a classmate a jerk and threatened to break the classmate's phone. This occurred when Student was in fourth grade.

At the end of second grade, Vista Unified conducted a functional behavior assessment to identify behaviors that were interfering with Student's learning and to seek recommendations for a plan to reduce or replace those negative behaviors. The assessment identified maladaptive behaviors of vocal disruptions, off-task behaviors, and non-compliance with adult directions. Student's vocal disruptions included speaking out of turn, blurting out comments, interrupting conversations, asking frequent off-topic questions, and arguing. Student engaged in these behaviors to gain peer or adult attention, and to avoid tasks. Student's off-task behaviors included leaving the location where he was supposed to be, touching items belonging to his

teacher or other students, crying, and telling on other students for not doing their work. Student engaged in these behaviors to avoid tasks, gain preferred items or outcomes, and gain peer or adult attention. Student engaged in non-compliant refusals to follow adult directions to escape tasks and protest being told what to do. The functional behavior assessment did not identify physical or verbal aggression as behavioral areas of concern.

Based on the functional behavior assessment, Vista Unified developed a behavior intervention plan for Student that was incorporated into his June 2017 IEP. The purpose of Student's behavior intervention plan was to teach Student replacement behaviors for his vocal disruptions, off-task behaviors, and non-compliance with adult directions. The behavior intervention plan encouraged Student to model good behavior, such as raising his hand in class before speaking, expressing his needs verbally by asking for help, a break, or other needs. The plan also encouraged Student to follow directions the first time he was asked to do something. The behavior intervention plan required staff to give Student specific verbal praise when he demonstrated the desired behaviors, such as being where he was supposed to be located, raising his hand in class before speaking, and following directions. If Student acted inappropriately, Staff were to prompt him verbally to use his replacement behaviors, and follow up with visual cues, like a picture of a raised hand.

Student's third, fourth and fifth grade IEP's all included behavior intervention plans similar to the June 2017 plan. These plans addressed Student's vocal disruption, off-task behaviors, and non-compliance with adult directions. Student did not demonstrate other behaviors that required a behavior intervention plan.

Student's progress on his behavior-related IEP goals in fourth through fifth grade showed improved behavior in most areas. Student's fourth grade December 2018 IEP baselines on goals noted Student was frequently off-task, failed to follow directions, and argued with his teacher about having to follow directions. He was often vocally disruptive, and engaged in name-calling peers. Student did not have eye contact with classmates when speaking with them. He frequently disagreed with peers disrespectfully and got into arguments.

To address these issues, Student's December 2018 IEP included goals for self-regulation, self-control, following directions, and pragmatic speech and social skills. Student met three of these four goals by his fifth grade December 2019 IEP. He displayed self-control by raising his hand and waiting quietly with no more than two prompts. He followed directions with one prompt. Student worked and participated well in activities. His eye contact and confidence when engaging with classmates improved. He demonstrated a good understanding of behavioral expectations, and was able to make inferences in social situations and identify and use appropriate behavior with 80% accuracy.

Student did not meet his self-regulation goal. He was able to recognize when he was agitated, but needed more than one prompt to communicate his feelings and needs. He still sometimes acted impulsively. The December 2019 IEP gave Student new goals in self-regulation, self-control, following directions, and pragmatic speech and social skills that required him to meet more ambitious objectives with less or no prompting. Due to distance learning instituted in response to the COVID-19 pandemic, Student's December 2020 sixth grade IEP did not measure Student's progress on his goals, but instead carried them over to be measured at his 2021 annual IEP.

Student's seventh grade annual IEP was held by Vista Unified in November 2021. Student's problem behaviors continued to be relatively mild, and he continued to meet most of his behavioral goals. He demonstrated self-control by sitting and raising his hand quietly 80% of the time without prompting. He met his self-regulation goal by using a calming strategy when he was frustrated or agitated, with no more than two prompts 90% of the time. When presented with social scenarios, Student could identify or state relevant clues and make inferences about appropriate behavior, verbal responses, or feelings, and displayed appropriate behavior, verbal responses, and feelings in role-playing situations, 80% of the time with minimal prompts. Student did not meet his goal for following directions 80% of the time without prompting. He followed directions 50% of the time without prompting, but required two prompts to reach 80% success. Vista Unified did not develop any new behavioral or social skills goals for Student's November 2021 IEP.

PARENTS' EXPLANATIONS REGARDING ALARMING ITEMS FOUND BY THE POLICE AND BELLA MENTE

Testifying at hearing, Student's mother and stepfather offered explanations regarding alarming items found by the police and in Bella Mente's review of the online searches that Student conducted on his school computer. Parents did not have time to offer this information in the one-hour manifestation determination review team meeting. They testified that Student's father and stepfather had both been in the military, and Student wanted someday to join the military. They testified there were no real guns or live ammunition in Student's home, but many knives, because the family, including Student, made and sharpened knives that they then sold at swap meets. Mother testified that she, not Student, wrote down Bella Mente's address and the list of

classmate names found by police, while questioning Student about the reasons for his suspension. Student's expert, school psychologist and board-certified behavior analyst Karen de Bie, testified that the military and knives were an interest of hyperfocus for Student. She explained having hyperfocused interests was common for students with ADHD, and drove Student to learn as much as he could about these subjects.

Taylor and the Bella Mente members of Student's manifestation determination apparently concluded the alarming items found by the police and in Bella Mente's review of the online searches that Student conducted on his school computer were evidence of planning by Student to conduct a school shooting. Before doing so, they should have reviewed and weighed Parents' alternative explanations offered provided by Parents and de Bie.

THE MANIFESTATION DETERMINATION REVIEW TEAM MEETING DID NOT INCLUDE ALL THE APPROPRIATE PARTIES, OR ALLOW SUFFICIENT TIME TO CONDUCT AN APPROPRIATE REVIEW

School psychologist Taylor was not available at Student's manifestation determination review meeting to explain her analysis. School psychologist Fazel and the other Bella Mente members of Student's manifestation determination review team deferred entirely to Taylor's draft manifestation determination and were unable to engage in any meaningful discussion or review with Albritton and Parents regarding the information Parents provided or how the team was arriving at its manifestation determination.

Moreover, even if the Bella Mente team members had been prepared to enter into a substantive analysis of how Student's ADHD had manifested itself over time and might have influenced his behavior in making the shooting threats, or whether a failure to implement a behavior intervention plan or other services might have caused the behavior, the one hour allotted for the meeting was insufficient time for the team to do so. Advocate Albritton's sense that the meeting was "kind of a fait accompli" was correct. The purpose of the meeting appeared to be to document that Parents had been given an opportunity to provide input.

Bella Mente did not conduct a meaningful meeting with the appropriate parties, as required by *Target Range, supra*, 960 F.2d at p. 1485. Bella Mente denied Parents the informed involvement they were entitled to. (*Winkelman, supra*, 550 U.S. at p. 524.) Student showed that Bella Mente had predetermined the outcome of the November 7, 2022 manifestation determination meeting, and failed to conduct a meeting that complied with IDEA procedures.

ISSUE 2: DID BELLA MENTE ERRONEOUSLY CONCLUDE THAT STUDENT'S BEHAVIOR WAS NOT A MANIFESTATION OF HIS DISABILITY AT STUDENT'S NOVEMBER 7, 2022 MANIFESTATION DETERMINATION MEETING?

ISSUE 3: DID BELLA MENTE ERRONEOUSLY CONCLUDE THAT STUDENT'S BEHAVIOR WAS NOT A RESULT OF ITS FAILURE TO IMPLEMENT STUDENT'S INDIVIDUALIZED EDUCATION PROGRAM, CALLED AN IEP?

Because the evidence established Bella Mente predetermined the outcome of the November 7, 2022 manifestation determination meeting, failed to follow IDEA procedures, and denied Parent's meaningful participation in the manifestation

determination process required for a disciplinary change of Student's placement, it is not necessary to address Issues 2 and 3 in this Decision. (*Anchorage School Dist. v. M.P., supra*, 689 F.3d 1047, 1054.) (It is unnecessary for a court to address substantive inadequacies of an IEP if it has identified procedural inadequacies that seriously infringe upon the parents' opportunity to participate in the IEP formulation process.) Issues 2 and 3 involve the same manifestation determination that is the subject of Issue 1 in this case. Since Bella Mente denied Parents' meaningful participation in the manifestation determination process, no legally appropriate manifestation determination could be developed from the November 7, 2022 manifestation determination review meeting.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

ISSUE 1:

Bella Mente predetermined the outcome of Student's November 7, 2022 manifestation determination meeting, and failed to conduct a procedurally compliant meeting.

Student prevailed on Issue 1.

ISSUE 2:

Because Bella Mente predetermined the outcome of the November 7, 2022 manifestation determination meeting, and it failed to conduct a manifestation determination review meeting that complied with IDEA

procedures, it was unnecessary to rule on Issue 2, which involved the same manifestation determination decision that is the subject of Issue 1 in this case.

Therefore, there is no prevailing party for Issue 2, which was not decided.

ISSUE 3:

Because Bella Mente predetermined the outcome of the November 7, 2022 manifestation determination meeting, and it failed to conduct a manifestation determination review meeting that complied with IDEA procedures, it was unnecessary to rule on Issue 3, which involved the same manifestation determination decision that is the subject of Issue 1 in this case.

Therefore, there is no prevailing party for Issue 3, which was not decided.

REMEDIES

Student and Parents are entitled to a procedurally appropriate manifestation determination review meeting, which the hearing officer may order. (20 U.S.C. § 1415(F)(3)(E)(iii).) Because Student is in a current placement outside Bella Mente, Bella Mente is no longer the local educational agency responsible for Student. Therefore, the usual statutory timelines for conducting a manifestation determination review do not apply, and the parties may be given extra time to prepare for a meaningful meeting with the appropriate parties.

1. Bella Mente is ordered to conduct a new manifestation determination review meeting for Student, complying with all IDEA procedures, within 45 days of this order.
2. All Student's other requests for relief are denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Robert G. Martin

Administrative Law Judge

Office of Administrative Hearings