

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

LODI UNIFIED SCHOOL DISTRICT.

CASE NO. 2026070329

EXPEDITED DECISION

AUGUST 18, 2026

On July 7, 2026, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Lodi Unified School District. The complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for hearings on separate days. The expedited claims proceeded to hearing with no continuances. This Decision addresses only the expedited claims.

Administrative Law Judge Tiffany Gilmartin heard this matter by videoconference on August 4, 5, and 6, 2026. The Administrative Law Judge is called ALJ.

Attorney Molly Watson represented Student. Parent attended the first day of hearing until the lunch break on Student's behalf. Parent did not return to the hearing following the August 4, 2026, lunch break. Attorney Colleen Villarreal represented Lodi Unified School District. Attorneys Erica Navarro attended on August 4, 2026, and Cristy Williams attended on August 5, and 6, 2026 also attended on Lodi's behalf. Paul Warren, SELPA director, attended the hearing on August 4, and 5, 2026. Lodi's Special Education Director Erin Aitken attended the hearing on all days on Lodi's behalf.

On August 6, 2026, the last day of hearing, the record was closed, and the matter was submitted for decision.

EXPEDITED ISSUE

Did Lodi incorrectly determine Student's conduct on March 3, 2026, was not a manifestation of his disability?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as 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.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and

- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq. (2006), govern the discipline of special education students. (Ed. Code, § 48915.5.) A student receiving special education services may be suspended or expelled from school as provided by federal law. (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 their 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).)

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)(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)(4)(B); 34 C.F.R. 300.532(c)(2).) The rules for a due process hearing under title 20 United States Code section 1415(k), must be consistent with those for other IDEA hearings. (34 C.F.R. § 300.532(c)(1)(a) (2006).)

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.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and has the burden of proof.

The factual statements in this Expedited 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 11 years old and a rising sixth grader at the time of the hearing. Student resided within Lodi's geographic boundaries at all relevant times. Student was eligible for special education under other health impairment due to his medical diagnosis of attention deficit hyperactivity disorder and executive functioning challenges with inattention, impulsivity, working memory, planning and organization, task completion skills, and emotional regulation.

Student's operative IEP provided 83 percent of his time was in a general education environment. He received 60 minutes per day of specialized academic instruction and two 15-minutes monthly sessions of counseling and guidance. He had six annual goals, one of which addressed behavior.

Student has a history of behavior related incidents. During the 2025-2026 school year, Student was suspended eight times for violations of the code of conduct. The violations of the code of conduct ranged from willfully using force on another, threatening another with physical injury, and habitual profanity or vulgarity. Lodi held three other manifestation determination reviews on December 10, 2025, February 19, 2026, and February 26, 2026. This Decision makes no findings on the appropriateness of the previous manifestation determination review meetings.

On March 9, 2026, a manifestation determination review team meeting was held where the Lodi team members concluded Student's conduct was not a manifestation of his disability. They also concluded Student's conduct was not the result of Lodi failing to implement his IEP.

PARENT'S TESTIMONY

Parent started her testimony on the first day of hearing. Parent did not return following the lunch break on the first day of hearing. A brief recess was held to allow counsel an opportunity to contact Parent. Those efforts were not successful. The hearing was continued until the next day.

When the hearing reconvened on day two, Student's counsel still had not made contact with Parent. At this juncture Lodi made a motion to dismiss for failure to prosecute. Lodi further argued Parent's failure to reappear impacted Lodi's ability to cross-examine the witness. Student's counsel opposed Lodi's motion and requested to move forward on Student's behalf.

Both parties were heard. It was unclear why Parent had not returned. Student's counsel argued that dismissing the case, particularly when the reason of Parent's absence was unknown, was prejudicial to Student. Student's counsel filed a Notice of Representation on Student's behalf. Nothing in the notice limited the representation to only when Parent was present. Lodi provided no legal authority supporting its motion to dismiss. The undersigned denied Lodi's motion and ruled that Student would be irreparably harmed by a dismissal with prejudice at this juncture.

Lodi was given leave to present any argument regarding the weight of Parent's testimony. Lodi argued Parent's testimony should be stricken from the record, or in the alternative, given no weight since Parent abandoned her testimony midway through her direct examination with no opportunity for cross-examination. Parent testified for almost three hours on the first day of hearing.

As discussed above, one of Student's issues proceeded on an expedited basis; however, evidence solicited during the expedited hearing may also be relied upon during the non-expedited hearing. Parent may also appear at the non-expedited hearing and her testimony be subjected to cross examination. Cross examination is a fundamental aspect of the examination of a witness. (Evid. Code § 761.) As Parent's expedited hearing testimony was not subjected to cross examination, no weight was given to her testimony in the expedited hearing. Lodi's motion to strike Parent's testimony is denied.

ISSUE: DID LODI INCORRECTLY DETERMINE STUDENT'S CONDUCT ON MARCH 3, 2026, WAS NOT A MANIFESTATION OF HIS DISABILITY?

Student contends his conduct for which Lodi suspended him was a manifestation of his disability. Student contends his disabilities include attention deficit hyperactivity disorder, challenges with executive functioning, inattention, impulsivity, working memory, planning and organization, task completion skills, and emotional regulation control. Student's attention deficit hyperactivity disorder also results in Student having difficulty controlling his impulsivity and that it can lead to verbal and physical aggression. Student argued the manifestation determination review team meeting was flawed because the meeting did not include the correct personnel, specifically counselor

Steve Yang. Student further argued the team based its decision on video footage that was reviewed by assistant principal Jennifer Becerra and principal Joseph Ward. Student alleged the video footage was too blurry to properly identify Student.

Lodi contends Student's conduct was not related to his identified disability of other health impairment. Lodi argued Student's behavior was a deliberate decision. Lodi asserts the manifestation determination review team was properly convened, with the proper parties, and arrived at the correct determination. Lodi asserts it conducted an appropriate manifestation determination review, reviewed all relevant information in Student's file, and correctly determined the fight Student started after school on March 3, 2026, was not a manifestation of his disability.

A manifestation determination must be accomplished within 10 school days of the decision to change the placement of a student with a disability because of a violation of a code of conduct. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).) All relevant information in the student's file, including the IEP, any observations of teachers, and any relevant information from the parents must be reviewed to determine if the conduct was caused by or had a direct and substantial relationship to the student's disability, or was the direct result of the district's failure to implement the student's IEP. If either of these determinations are made by the manifestation team, the conduct shall be determined to be a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(E)(i) and (ii); 34 C.F.R. § 300.530(e)(1) and (2).) If the local educational agency, the parent, and relevant members of the IEP team make the determination that conduct for which a student was disciplined was a manifestation of his disability, the IEP team shall conduct a functional behavior assessment and implement a behavioral intervention plan for the student provided that the local educational agency had not conducted such an

assessment prior to such determination before the behavior that resulted in the proposed change of placement of over 10 days. (20 U.S.C. § 1415 (k)(1)(F); 34 C.F.R. § 300.530(f)(1)(i).) In the situation where a behavioral intervention plan has been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior and return the student to the placement from which the student was removed, unless the parent and the local educational agency agree to a change of placement as part the modification of the behavioral intervention plan. (20 U.S.C. § 1415 (k)(1)(F); 34 C.F.R. § 300.530(f)(1)(ii).)

For disciplinary changes in placement that would exceed 10 consecutive school days, if the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. (20 U.S.C. § 1415 (k)(1)(C); 34 C.F.R. § 300.530(c).)

Jaime de los Santos Romero was the school site supervisor who broke up the fight on March 3, 2026. Romero testified at hearing. During school dismissal, Romero was out front of the school gates observing all students. Romero testified he witnessed the altercation, jogged briskly to break up the fight, and radioed for administrative support. Romero witnessed Student throw the first punch. Student's punch was blocked by the other student. Romero then separated the students with the assistance of another administrator. While Romero was separating the students, Romero was struck by Student who swung at the other student again. Romero then escorted the other student to the school office. Romero's testimony was corroborated by the security footage that showed both students in the moments leading up to the fight. The video footage was screened at the hearing, and as discussed below, Principal Ward went

through the video point by point. The fight was not on the screen of the security footage. Romero's firsthand account was shared with the manifestation determination review team. His testimony was given great weight.

Ward participated in Student's manifestation determination review. He also reviewed the security footage for the investigation into the events that occurred. Ward reported his findings to the manifestation determination team. As part of his testimony, the security footage was played for all hearing participants. Despite Student's argument otherwise, Ward identified Student and the other student on the video. Ward's identification of both students on the video was based on personal knowledge and persuasive.

The findings below regarding the incident are based on Ward and Romero's testimony which were corroborated by the video. The incident occurred at the conclusion of the school day when all students were released to travel home. Ward identified Student with a small group of friends in front of the campus. Student was wearing a backpack and carrying a jacket. Ward then identified the other student who was walking alone behind Student at a reasonable distance. While the video played, Student, accompanied by his friends, was observed turning around and walking toward the other student in a manner that resulted in the other student backing away. Student then turned around and, with his friends, walked towards the street over the grass in front of the school. The other student walked over the sidewalk not directly following Student. Student again turned around and exchanged words with the other student, who again, back peddled away from Student. Student then turned around and walked towards his friends. The other student also walked in the same direction approximately twenty feet behind Student. The students exited the camera frame. About twenty

seconds later, Romero, the site supervisor, is seen on screen jogging toward the altercation while speaking into his radio. Romero is then seen bringing the other student to the office.

Romero testified to what occurred once the Student and the other student could no longer be seen on the security footage. Fifteen seconds elapsed from the time both students left the video frame and Romero entered to break up the fight. Student swung at the other student who caught Student's first punch with his hands. The other student kicked at Student. By this point, Romero had arrived at the altercation and physically intervened between Student and the other student. Student swung again at the other student hitting Romero in the process. Romero escorted the other student to the office. Another administrator escorted Student in a different direction. The other student was upset, but uninjured. He was released home.

As principal, Ward and assistant principal Becerra conducted the investigation into the incident. Ward testified he recounted what he saw to the manifestation determination review team. Ward acknowledged he was not as familiar with Student as other people on Student's team. Ward testified that he also relied on his training as a positive behavior intervention supports trainer to influence what he saw on the video. Ward described how he saw Student wait around for the other student, approach the other student several times, and Student had multiple opportunities to break away from the incident. Ward testified he was surprised by the intentionality of Student's actions. Ward testified he shared his insights and results of the investigation with the manifestation determination review team. Ward's credibility was bolstered by his candor and reflection of both the strengths of his testimony and the weaknesses of his

testimony as it related to how well he knew Student. Ward's credibility was further enhanced by his acknowledgment that the ultimate decision was a team decision. His testimony was given great weight.

Crystal Williams, the school psychologist, prepared the manifestation determination report for the team. Williams testified at hearing. Williams, an educational psychologist with 14 years of experience also conducted Student's February 19, 2026, psychoeducational re-evaluation. Williams also participated in Student's three previous manifestation determination review meetings. Williams addressed how Student struggled with his executive functioning, impulsivity, and his difficulties with transitions. Williams testified persuasively that there was an observable difference in Student's body language and appearance when he was dysregulated. She explained that herself, Student's teachers, and other school personnel were trained to observe and intervene when Student displayed emotional dysregulation. Williams testified what Student's body language transmitted when he was emotionally dysregulated. Williams established Student's dysregulation was visible at a distance as his shoulders tensed towards his ears and his body would appear stiff. Williams distinguished between Student's impulsivity when emotionally dysregulated and the events on March 3, 2026.

First, the precipitating event of March 3, 2026, was that Student stepped on another student's foot accidentally. The student whose foot was stepped on was the other student in the after-school altercation. Williams thoughtfully pointed out, Student was not the one whose foot was stepped on. Second, Williams pointed out the fight occurred after release for the day and not temporally close to the precipitating incident. Williams also referred to the February 19, 2026, manifestation determination review.

She distinguished Student's behavior on February 19, 2026, to his behavior on March 3, 2026. According to Williams, the prior incident involved another student copying Student which angered him. During the February 19, 2026, incident the other child and not Student was the initial aggressor. In response, Student became emotionally dysregulated and immediately pushed the other child to the ground, scratching his face, and putting him into a chokehold. By contrast, on March 3, 2026, Student inadvertently stepped on another child's foot earlier in the school day. He was not the victim or the aggrieved party. Moreover, Williams noted during the February incident Student's physical response was in close proximity to the other child's provocation. Whereas, in March, the foot stepping incident occurred hours before the incident for which Student was suspended. In watching the video, Williams did not observe any of the physical hallmarks noted when Student is dysregulated. Williams' testimony was given great weight.

Student argued the manifestation determination review team did not understand how Student's impulsivity and difficulty transitioning from activating events impacted his behavior. Student called no witnesses who testified to such. This explanation is also unsupported by the evidence. Lodi personnel understood Student's behavior and demonstrated understanding what behaviors were consistent for Student. Williams participated in all four of Student's manifestation determination reviews. She also thoroughly described Student's behavior when regulated and dysregulated. This distinction drove her opinion of when Student's conduct is and is not a manifestation of Student's disability.

Student further argued the manifestation determination review team was comprised of people who did not know Student well enough and members who might have known Student better, such as his counselor, were excluded. Student's mental

health counselor, Steve Yang, testified at hearing. Yang was not present at Student's manifestation determination review meeting because he was supporting another student. He testified Student is receptive to counseling, attentive, and believed he had a good relationship with him.

Manifestation determination review teams must be conducted by the local education agency and be made up of relevant members of Student's IEP team. (34 C.F.R. 300.530(e).) The manifestation determination review meeting on March 9, 2026, included Parent and Student, school psychologist Crystal Williams, school principal Joseph Ward, special education specialist Gagandeep Kaur, program specialist Jennifer Jasper, and an assessment team member, Jennifer Plaster.

Williams, Kaur, Plaster, and Jasper were part of Student's IEP team. Yang's interactions with Student were limited to one-on-one counseling. Yang testified he had never observed Student during unstructured play time such as recess or after school. Yang was not a necessary member of the manifestation determination review team when the manifestation determination review team was comprised of four members of Student's IEP team as well as Student and Parent.

Lodi provided Parent an assessment plan on February 26, 2026, for a functional behavior assessment. This Decision makes no finding on the appropriateness of the February 19, 2026, manifestation determination review or the timeliness or appropriateness of offering the functional behavior assessment.

Conduct is a manifestation of the student's disability if the conduct was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct was the direct result of the school district's failure to implement the student's IEP. (34 C.F.R. § 300.530(e)(1) & (2). (2006.)

In *Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470, fn. 8, (*Maher* *affd.* *Sub. nom. Honig v. Doe* (1988) 484 U.S. 305 [98. L.Ed.2d 686], the Ninth Circuit discussed the meaning of "conduct that is a manifestation of the child's handicap." The court explained:

As we use them, these phrases are terms intended to mean the same thing. They refer to conduct that is caused by, or has a direct and substantial relationship to, the child's handicap. Put another way, a handicapped child's conduct is covered by this definition only if the handicap significantly impairs the child's behavioral controls ... it does not embrace conduct that bears only an attenuated relationship to the child's handicap..... If the child's misbehavior is properly determined not to be a manifestation of his handicap, the handicapped child can be expelled. [Citations.] ... 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.

Student did not meet his burden to demonstrate the actions of March 3, 2026, were caused by or had a direct and substantial relationship to his disability. Student further did not meet his burden that Lodi failed to implement Student's IEP.

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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:

Student failed to prove Lodi incorrectly determined Student's conduct on March 3, 2026, was not a manifestation of his disability. Lodi prevailed on the sole issue.

ORDER

1. All Student's requests for relief in the expedited hearing 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.

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings