

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
SPECIAL EDUCATION DIVISION
STATE OF CALIFORNIA

In the Matter of:

STUDENT,

Petitioner,

v.

PLEASANTON UNIFIED SCHOOL
DISTRICT and DUBLIN UNIFIED
SCHOOL DISTRICT,

Respondents.

OAH CASE NO. N 2006070239

DECISION

Administrative Law Judge (ALJ) Gary A. Geren, State of California Office of Administrative Hearings, Special Education Division (OAHSED) heard this expedited matter in Pleasanton, California, on August 4, 2006.

Petitioner's mother (Mother) represented Petitioner Student (Student).

Karen E. Samman and Summer D. Dalessandro, Attorneys at Law, Lozano Smith, represented the Pleasanton Unified School District (Pleasanton). Sandie Betts, Assistant Director of Special Education, attended on behalf of Pleasanton.

Dora Dome, Attorney at Law, Miller, Brown and Dannis, represented the Dublin Unified School District (Dublin). David Marken, assistant superintendent, attended on behalf of Dublin.

On July 7, 2006, the Office of Administrative Hearings (OAH) received from Petitioner requests for an expedited hearing and a due process hearing, naming the above listed respondents. Petitioner requested an expedited hearing seeking a review of whether

Respondents followed appropriate procedural safeguards when they suspended and initiated expulsion proceedings against Student. This Decision only addresses whether Respondents followed appropriate disciplinary procedures and whether they correctly determined that Student's negative conduct was not a manifestation of his disability.

Testimony and documents were received into evidence. The record was held open until August 10, 2006, to allow the parties to file closing briefs. Each party submitted a brief; they are included in the record.

ISSUES

1. Were appropriate disciplinary procedures followed?
2. Was Student's threat to shoot a fellow student with a gun the direct result of Respondents' failure to implement Student's Individualized Education Plan (IEP)?
3. Was Student's threat to shoot a fellow student with a gun caused by, or directly related to, his disability (manifestation determination)?

FACTUAL FINDINGS

GENERAL FINDINGS

1. Student resides with Mother within the jurisdictional boundaries of Dublin. He is qualified to receive special education and related services as a student with a specific learning disability. His eligibility is based on a severe discrepancy between his age/intellectual ability and his achievement in the areas of basic reading, mathematics calculation, and mathematics reasoning, as well as, a psychological processing disorder in the area of sensory motor skills.
2. As of March 5, 2006, Student was 18 years old. Student granted Mother permission to act on his behalf regarding his educational matters.
3. On May 2, 2006, Student threatened to shoot a fellow student with a gun while on the campus of Village High School (Village), Pleasanton, California.

4. Although Student resided in Dublin at the time of the incident, he attended Village by agreement of the parties reached in March 2006.

WERE APPROPRIATE DISCIPLINARY PROCEDURES FOLLOWED?

5. Following the threat Student made on May 2, 2006, and the decision to suspend and expel him because of it, Dublin was obligated to convene an IEP meeting within 10 school days. (Legal Conclusion Number One). On May 4, 2006, Dublin provided Student a, "Notice of Misconduct IEP Meeting" informing him that a manifestation determination meeting would be held on May 8, 2006. That meeting occurred. Student and Mother attended, as did all other appropriate IEP team members. Accordingly, Respondents followed the appropriate disciplinary procedures.

WAS STUDENT'S THREAT TO SHOOT A FELLOW STUDENT WITH A GUN THE DIRECT RESULT OF THE FAILURE TO IMPLEMENT STUDENT'S INDIVIDUALIZED EDUCATION PLAN (IEP)?

6. On April 4, 2006, the IEP team held a 30 day review of Student's placement at Village. Eldon L. "Dutch" Anderson, Student's special education teacher, reported to the team that, "After 4 weeks, [Student's] attendance has been excellent and he has been appropriate and productive." The IEP team concluded that Student's IEP appeared appropriate and that it was properly implemented. Mr. Anderson provided persuasive testimony that Student responded well to his instruction, interacted appropriately with his peers and teachers, and that his IEP was appropriate and properly implemented by Respondents.

7. At the may 8, 2006, manifestation determination meeting, the IEP team specifically discussed Student's IEP, including his behavioral support plan. The notes from that meeting state, "The team agreed that the [Student] was appropriately placed at Village with a Behavior Support Plan implemented." Both Student and Mother attended this meeting, signed the IEP, and took no exception to this statement.

8. Ken Wyatt, Director of Special Education for the Castro Valley Unified School District (who has 15 years of experience in special education), and Tinh-My Hoang, a Dublin school psychologist familiar with Student and his IEP, also attended the May 8, 2006 meeting. Their testimony also established that Student's threat was not made as a direct result of Dublin failing to implement his IEP.

9. No evidence was presented that Respondents failed to implement any portion of Student's IEP. Accordingly, there is no basis to conclude that Student's threat to shoot a fellow Student was related to Respondents' failure to implement his IEP.

WAS STUDENT'S THREAT TO SHOOT A FELLOW STUDENT CAUSED BY, OR DIRECTLY RELATED TO, HIS DISABILITY?

10. Petitioner contended that the IEP in place, including the April 4, 2006 addendum, did not fully identify all of Student's areas of unique needs, and therefore, it was inappropriate. Specifically, Student alleged that this IEP addendum should have addressed Student's needs stemming from his attention deficit hyperactivity disorder, irritable bowel syndrome with accompanying diarrhea, adolescent Bount's Disease, and diabetes. Had the IEP team addressed these alleged areas of need, it would have concluded that such disabilities were the cause of, or directly related to, Student making the threat. This contention was not persuasive. Both Student and Mother believed his IEP accurately defined Student's eligibility at the meeting of April 4, 2006. It does not logically follow that the IEP Petitioner agreed was adequate on April 4, 2006, was inadequate on May 2, 2006, less than one month later. Also, the evidence failed to establish how any of Student's alleged disabilities listed above were related to his making the threat. Petitioner failed to establish that Student had disabilities and unique needs, not identified in his IEP, which would have caused him to threaten to shoot a fellow student.

11. Petitioner failed to establish that Student's specific learning disability caused, or directly related to, him threatening to shoot a fellow student. Moreover, Petitioner failed to establish how any of the disabilities from which he allegedly suffered caused, or

directly related to, his threat to shoot a fellow student. The evidence established that at the May 8, 2006 meeting, the IEP team discussed, analyzed, and assessed, any potential relationship between Student's disabilities and his making the threat. The team concluded, "There is no relationship between his Learning Disability and the incident." Petitioner failed to establish that the IEP team's conclusion was erroneous.

12. The manifestation determination reached at the IEP meeting of May 8, 2006, was correct.

LEGAL CONCLUSIONS

1. Section 1415(k)(1)(E)(i) provides that within 10 days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct that specified parties shall convene and review relevant information in the student's file to determine if the conduct in question "was caused by, or had a direct and substantial relationship to, the child's disability" or the child's conduct "was the direct result of the local educational agency's failure to implement the IEP."

2. Section 1415(k)(3)(A) states that the child's parent who disagrees with any decision regarding placement or the manifestation determination under this subsection may request a hearing.

3. While the standards in Section 1415(k)(1)(E) for determining whether a child's behavior was a manifestation of the disability are new, the principle behind them is not. The court in *Doe v. Maher, supra*, (9th Cir. 1986) 793 F.2d 1470, 1480, discussed the meaning of various phrases describing "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." The court went on to say: "If the child's misbehavior is properly determined not to be a manifestation of his handicap, the handicapped child can be expelled. [cites] ... 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." (Emphasis original.) (*Doe v. Maher, supra*, at 1482.)

4. Student, as the petitioner and appellant, has the burden of proof in this proceeding. (*Schaffer v. Weast* (2005) 128 S. Ct. 528; 163 L.Ed.2d. 387.)

DETERMINATION OF ISSUES

1. Because of Factual Findings 1, and 3-5, and Legal Conclusions 1-5, Petitioner did not establish that Respondents failed to follow appropriate disciplinary procedures.

2. Because of Factual Findings 6-9, and Legal Conclusions 1-5, Petitioner did not establish that Student's threat to shoot a fellow student with a gun was due to Respondent's failure to implement his IEP.

3. Because of Factual Findings 1, and 10-12, and Legal Conclusions 1-5, Petitioner did not establish that Respondents made an erroneous conclusion at the manifestation determination IEP meeting.

ORDER

For the foregoing reasons, Petitioner's requests for relief are denied.

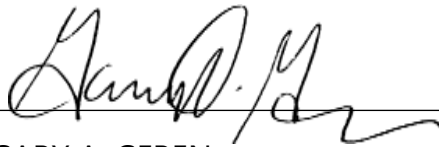
PREVAILING PARTY

Education Code section 56507, subdivision (d), requires this decision to indicate the extent to which each party prevailed on each issue heard and decided. Respondents prevailed on all issues.

RIGHT TO APPEAL THIS DECISION

The parties to this case have the right to appeal this Decision to a court of competent jurisdiction. If an appeal is made, it must be made within 90 days of receipt of this decision. (Ed. Code § 56505, subd. (k).)

Dated: August 21, 2006

A handwritten signature in black ink, appearing to read "Gary A. Geren", written over a horizontal line.

GARY A. GEREN

Administrative Law Judge

Office of Administrative Hearings

Special Education Division