

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2016030901

EXPEDITED DECISION

On March 8, 2016, Student, by and through his parents, filed a request for due process hearing request (complaint) naming William S. Hart Union High School District. The complaint stated claims that required both an expedited and non-expedited hearing.¹

Administrative Law Judge Cole Dalton heard the expedited issues in this matter in Santa Clarita, California on April 25, 26, and 27, 2016.

Attorney Kathy Greco represented Student. Parents attended all hearing days. Student did not attend.

Attorneys Ian Wade and Laila Tafreshi represented District. District's Special

¹ OAH set the expedited and non-expedited claims for separate hearings. The expedited claims proceeded to hearing with no continuances. (34 C.F.R. § 300.532(c)(2).) This Expedited Decision resolves only the expedited claims.

Education Director Sharon Amrhein attended all hearing days.

The hearing concluded on April 27, 2016. At the parties' request, the ALJ allowed the parties to submit written closing arguments during the submission period by May 2, 2016.

ISSUES²

1. Did District fail to comply with title 20 United States Code section 1415(k)(1)(G)(iii) by finding that Student's behavior during a March 3, 2016 incident at school constituted a special circumstance, namely, infliction of serious bodily injury, permitting District to remove Student to an interim alternative educational setting for not more than 45 school days?

2. Did District fail to comply with title 20 United States Code section 1415(k)(1)(E) by:

- a. Not holding a procedurally appropriate manifestation determination review on March 8, 2016;
- b. Failing to determine that Student's behavior on March 3, 2016, was caused by, or had a direct and substantial relationship to Student's disability; or
- c. Failing to determine that Student's behavior on March 3, 2016, was a direct result of District's failure to implement Student's individualized education program?

² The issues have been rephrased and reorganized for accuracy and clarity. Because this hearing arises under title 20 United States Code section 1415(k), the ALJ added specific statutory citations 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.)

SUMMARY OF DECISION

Student prevailed on Issue 2, as District stipulated that it did not hold a manifestation determination review meeting. District contended that it was not required to hold a review meeting after the March 3, 2016 incident, because it was entitled to enforce a 45-day interim alternative educational setting without regard to whether the behavior was determined to be a manifestation of Student's disability. The contention is not persuasive. District's failure to hold the review meeting significantly violated procedural requirements in title 20 United States Code section 1415(k)(1)(E). Student is entitled to a manifestation determination meeting regarding the March 3, 2016 event.

Student did not meet his burden on Issue 1. District persuasively demonstrated that Student's behavior incident of March 3, 2016, resulted in his speech language pathologist suffering a concussion, which manifested in word finding problems, delayed thought organization, and balance issues, over a two-month period of time. Student did not present any evidence that disputed these injuries. The injuries to Student's speech language pathologist met the legal standard for serious bodily injury, justifying Student's removal to an interim alternative educational setting.

FACTUAL FINDINGS

JURISDICTION AND BACKGROUND

1. Student was a 14-year-old boy who resided with Parents in District's boundaries at all relevant times. He was eligible for special education under the category of autism. Student began seventh grade in District's Rio Norte Junior High School on August 13, 2015. He was placed in a special day class for students with mild to moderate cognitive delays, utilizing a functional academics and life skills curriculum. He received direct speech and language services, occupational therapy consultation, one-on-one support from a special circumstance instructional assistant, and consultative

support from District's behavioral intervention unit.

2. Student had significant delays in verbal expression, typically using one-word phrases when initiating communication. Communication deficits, coupled with needs in sensory processing and self-regulation, impacted Student's behavior.

3. District conducted a functional behavior analysis assessment from September through early November 2015, due to isolated aggressive behaviors including biting his own arm; scratching, pinching, grabbing, and kicking staff and peers; elopement; and loud, high pitched screaming. Student's IEP team found it difficult to determine the function of Student's behavior, as they did not observe consistent triggers.

4. The functional behavior assessment data showed that Student was more likely to be triggered while in the classroom, due to environmental factors such as close proximity of staff and peers, high noise levels, and work demands. Student was also tested in an alternate environment, which was a quiet space with fewer adults and peers. The assessment report, dated November 2, 2015, recommended placement in a highly structured environment. District did not offer an updated behavior intervention plan based upon the assessment. Neither party submitted a behavior intervention plan into evidence.

5. An annual review IEP team meeting was held February 23, 2016. District offered home study for three hours per week; attendance in Student's third period mild to moderate special day class for 90 minutes on a block schedule (alternating two days for one week and three days the following week); 15 minutes of speech and language therapy, push-in, each day Student attended the block schedule; and 30 minutes of individual speech and language per week. District offered special circumstance instructional aide assistance and occupational therapy consultation. Parents consented to the offer of placement and services. The IEP did not offer a behavior intervention

plan.

INCIDENT OF MARCH 3, 2016

6. On March 3, 2016, Student attended school for a 30-minute speech session with his speech language pathologist, Debbie Dole. Ms. Dole had been working as a speech language pathologist for 27 years. She holds a bachelor of arts in human development and psychology, and a master of arts in communicative disorders. She is licensed by the State of California and certified by the American Speech and Language Association.

7. On the day of the incident, Student was in his special day class receiving speech services from Ms. Dole, while the special education teacher, Shaila Ohlman, instructed other special education students. Student was receiving his speech services in an active classroom, as opposed to the quieter multi-purpose room, which provided fewer triggers to Student's behavior. Student's instructional aide, Chris Kallistad, senior behavior assistant, Danielle Rohan, and behavior intervention specialist, Courtney Duncan, were assisting Student while he received speech and language services from Ms. Dole.

8. Student arrived at the session nine minutes late, with his grandmother, who attended speech sessions with him. He was shown his visual schedule and began the session. Within two minutes, he began to scream. His instructional aide redirected him and provided sensory input. Student had at least two other outbursts, but was redirected and the session continued. Finally, he reached across the table, grabbed Ms. Dole's head by her hair and slammed her head onto the wooden tabletop, then shook her head back and forth for a matter of seconds. Student had hold of Ms. Dole's hair for approximately 15 seconds. Mr. Kallistad grabbed Student's wrist and pried Student's fingers away from Ms. Dole's hair. During that time, Student bit Mr. Kallistad on the inside of his right bicep.

9. Mr. Kallistad suffered a bite mark and punctured skin as a result of the incident. He described his injuries as painful, with bruising that resolved within days

10. Ms. Dole was dazed, disoriented, and crying after the incident. She sustained a visible bump on her forehead from the force of the impact. The involved employees went to assistant principal Francine Dos Remedios' office to fill out paperwork. Ms. Remedios has worked in the educational field since 1992, and has been an administrator for the past seven years. She described Ms. Dole's condition after the incident as being shaken and unbalanced. She had to steady Ms. Dole, who was leaning against shelves in the office. Ms. Dole's hair was in disarray, she was crying and had scratch marks on her face from where her glasses broke. She appeared to be in shock, was disoriented and could not answer questions being asked of her. Ms. Dos Remedios had never seen an incident this bad before.

11. Ms. Dole drove herself to an urgent care facility where x-rays were taken, she was prescribed a muscle relaxer and a pain killer. She was off work for two days and returned the following Monday. She had a work restriction of not lifting anything over five pounds. She returned to urgent care the following week and was advised to continue using the medication and ice packs. She was asked to return in another week. At the third visit, she was given a referral to see a neurologist and advised to take a week or two off work. She waited until spring break, April 4 – 8, 2016, to rest. The neurologist diagnosed a concussion and ordered follow up appointments. She continued to see the neurologist by the time of the hearing.

12. Ms. Dole described her pain as a five on the universal pain scale of 0 – 10, on the Monday after the incident. By that Friday, her pain reached a level eight and stayed there for about one month. Though the medication she was prescribed helped alleviate her pain, she did not feel that she could take it before driving or while at work. She had significant pain when driving, sitting for prolonged periods of time, and with

sudden movement. She could no longer turn her head to the left, as her neck was stiff and the movement was painful.

13. In the weeks following the incident, Ms. Dole suffered from word-finding problems, delayed thought-organization, and difficulty finishing her paperwork at school. She was described as being “foggy” and not herself. She had memory problems, to the extent of getting lost on the way to the house of a friend whom she had known for several years. She could not do push-in speech therapy as she could not tolerate sudden movements, which caused her pain. In all, Ms. Dole saw doctors five times after the incident. She continued to have stiffness and pain in her neck and was prescribed physical therapy, three times per week, for one month, by an orthopedist.

14. Sharon Amrhein, director of special education for District, described Ms. Dole as being “off” since the incident. According to Ms. Amrhein, Ms. Dole was an avid bike rider and had been training for a cycling event, prior to the incident. Since the incident, Ms. Dole had fallen off the bike a couple of times. Ms. Dole did not relate difficulties riding her bike during her testimony. However, she also presented as someone who was minimizing her injuries.

15. Ms. Rohan kept behavior logs for Student. Entries for the date of the incident indicate that Student, “[r]eached across the table, grabbed Debbie’s hair, pulled her down so she made forceful contact with the desk. Her glasses caused abrasions on face and fell off.” Ms. Rohan also filled out a Behavioral Emergency Report after the incident, where she described an abrasion and small puncture wound from Ms. Dole’s glasses and trauma to Ms. Dole’s head, neck and scalp.

MARCH 8, 2016 EMERGENCY BEHAVIOR MEETING

16. District stipulated at hearing that it did not hold a manifestation determination meeting after Student’s March 3, 2016 behavior incident. Rather, it held an emergency meeting to discuss Ms. Dole’s injuries and a change in placement for

Student. Initially, District offered placement in a nonpublic school. However, when Parents rejected that, District offered a 45-day interim alternative educational setting, consisting solely of home study. District did not respond to Parents' request for behavior services in the home during the interim placement.

17. District failed to review all relevant information in Student's file to determine whether his conduct on March 3, 2016, was a manifestation of his disability or whether it was the result of a failure of District to implement his IEP. It did not review Student's most recent behavior intervention plan to determine whether modifications were needed.

LEGAL AUTHORITY AND CONCLUSIONS

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 FAPE is defined as appropriate special education, and related services, that are available to the pupil at no cost to the parent or guardian, that meet the state educational standards, and that conform to the pupil's IEP. (20 U.S.C. § 1401(9); Ed. Code, §§ 56031 & 56040; Cal. Code Regs., tit. 5 § 3001, subd. (o).) A child's unique educational needs are to be broadly construed to include the child's academic, social,

³ Unless otherwise indicated, the legal citations in the introduction 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.

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)(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).)

4. 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).) A student who is removed from his current placement to an interim alternative educational setting must continue to receive a FAPE, so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to make progress toward meeting the goals set forth in the student's IEP. (20 U.S.C. § 1415(k)(1)(D)(i); 34 C.F.R. §

300.530(d)(1).) Additionally, the IDEA requires that a child with a disability who has been removed to an interim alternative educational setting receive, as appropriate, behavioral intervention services and modifications designed to address the behavior violation so that it does not recur. (20 U.S.C. § 1415(k)(1)(D)(ii); 34 C.F.R. § 300.530(d)(1)(ii).)

5. A parent of a special education student who disagrees with any decision regarding placement in an interim alternative educational setting, or the manifestation determination, may appeal the decision by requesting an expedited due process hearing.⁵ (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).)

6. 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 proof on all issues.

ISSUE 1: INTERIM ALTERNATIVE EDUCATIONAL SETTING – SPECIAL CIRCUMSTANCES

7. Student contends District’s decision to implement a 45-day interim

⁵ In its closing brief, District argued that Student should not be returned to his educational setting as Student is “substantially likely to injure himself or others.” A school district may request a due process hearing to authorize a change of placement if the district “believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others....” (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) Here, District did not avail itself of the right to file a request for due process hearing, and is not entitled to relief, in this decision.

alternative educational setting was not supported by special circumstances, namely, serious bodily injury. District contends that its speech language pathologist sustained a concussion and strain to her neck, which resulted in extreme physical pain for over two months, memory problems and a loss of balance and that these factors constitute serious bodily injury, justifying the interim alternative educational placement.

Legal Authority

8. A district may place a student in 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 child's disability, under "special circumstances" defined as (i) carrying or possessing a weapon to or at school, on school premises, or at a school function; (ii) knowingly possessing or using illegal drugs, or selling or soliciting the sale of a controlled substance, while at school, on school premises, or at a school function; or (iii) inflicting serious bodily injury upon another person while at school, on school premises or at a school function. (20 U.S.C. § 1415(k)(1)(G); 34 C.F.R. § 300.530(g).) The student's IEP team determines the interim alternative educational setting. (20 U.S.C. § 1415(k)(2); 34 C.F.R. § 300.531.)

9. The term "serious bodily injury" for the purpose of these disciplinary measures is the same as that found in title 18 United States Code section 1365(h)(3). (20 U.S.C. § 1415(k)(7)(D); 34 C.F.R. § 300.530(i)(3).) The term is defined as: bodily injury that involves a substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty. (18 U.S.C. § 1365(h)(3).) "Serious bodily injury" is not simply a cut, abrasion, bruise, burn, or disfigurement; physical pain, illness, or impairment of the function of a bodily member, organ, or mental faculty. (See 18 U.S.C. § 1365(h)(4).)

10. Whether there has been a serious bodily injury is a question of fact based upon the totality of the circumstances. (*United States v. Johnson* (9th Cir. 1980) 637 F.2d

1224, 1246.) Specific injuries, such as unconsciousness or broken bones, are but one factor and, standing alone, are not necessarily determinative. (*Ibid*; see also Cal. Pen. Code, § 243(f)(4) ["Serious bodily injury" means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness; concussion; bone fracture; protracted loss or impairment of function of any bodily member or organ; a wound requiring extensive suturing; and serious disfigurement].)

11. The IDEA does not require parental consent to placement in the interim alternative educational setting, or that a district must place a student in the interim alternative educational setting that parents prefer. (See *Adams v. State of Oregon* (9th Cir. 1999) 195 F.3d 1141, 1149.)

Analysis and Conclusions

12. Student did not meet his burden of proof on Issue 1. Student had the burden of establishing that District erred when it determined he had inflicted "serious bodily injury" upon Ms. Dole, specifically the "protracted loss or impairment of the function of a bodily member, organ, or mental faculty."⁶ Ms. Dole credibly described her diagnosed concussion and symptoms that were consistent with that diagnosis. Ms. Dole had visible head trauma after Student slammed her head into a wooden desk. She was shaky, experienced a loss of balance, and was not responding to questions asked of her after the incident. She remained "foggy" and not herself over the following two months, as evidenced by her co-workers and supervisor. The symptoms described by Ms. Dole and observed by District witnesses are of a nature that competent persons with firsthand knowledge of the injury, recovery, and changes in behavior over the passage of time can attest to. Student offered no evidence to counter this testimony.

⁶ There was no evidence of the other types of serious bodily injury, namely bodily injury that involves a substantial risk of death or protracted and obvious disfigurement.

13. Generally, testimony from medical providers, the injured party, or lay witnesses can be sufficient to establish a serious bodily injury, however, each case turns on the particular facts established. (See, *United States v Muyet* (S.D.N.Y. 1998) 994 F.Supp. 501, 519.)

14. Here, co-workers and medical documentation corroborated Ms. Dole's uncontroverted evidence, that she sustained a concussion, which resulted in severe headaches, lack of energy, difficulty focusing, loss of balance, and impaired thought processes. Similar symptoms resulting from a concussion were sufficient to establish serious bodily injury in the matter of *In re: Student with a Disability* (SEA NH 2014) 115 L.R.P. 44815.⁷ In that case, the paraprofessional exhibited symptoms consistent with a concussion for at least one week after the incident. Here, Ms. Dole's symptoms continued from March 3, 2016, through the date of the hearing.

15. Based upon the totality of the circumstances, the concussion and related symptoms Ms. Dole suffered as a result of the behavior incident constitute a protracted impairment of the function of a bodily member, organ, or mental faculty. Thus District was in compliance with title 20 United States Code section 1415(k)(1)(G)(iii) by finding that Student's behavior during a March 3, 2016 incident at school constituted a special circumstance, namely, infliction of serious bodily injury, and District was permitted to remove Student to an interim alternative educational setting for not more than 45 school days.

ISSUE 2(A) – (C): MANIFESTATION DETERMINATION REVIEW MEETING

16. Student and District stipulated that District failed to hold a manifestation determination review meeting. However, District contends that it was not required to

⁷ Though special education administrative law decisions are not binding authority, they can be instructive. (Cal. Code Regs., tit 5, § 3085.)

conduct a manifestation determination as it was entitled to implement the 45-day interim alternative educational placement, without regard to whether the behavior was determined to be a manifestation of Student's disability. District concedes that Student's behavior leading to the 45-day placement was a manifestation of his disability, but contends that its failure to conduct the manifestation determination review meeting did not interfere with the rights of Student or his Parents.

Legal Authority

17. 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.*)

18. 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).)

19. If the local educational agency, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team shall, in a situation where a behavioral intervention plan has been developed, review the behavioral intervention plan if the child already has such a behavioral intervention plan, and modify it, as necessary, to address the behavior. (20 U.S.C. § 1415(k)(1)(f).)

20. In *Board of Education of the Hendrick Hudson Central School District v. Rowley* (1982) 458 U.S. 176, 201 [102 S.Ct. 3034, 73 L.Ed.2d 690] ("*Rowley*"), the Supreme Court recognized the importance of adherence to the procedural requirements of the IDEA. (*Rowley, supra*, at pp. 205-06.) Among the most important procedural safeguards are those that protect the parent's right to be involved in the development of their child's educational plan. (*Doug C. v. Hawaii Dept. of Educ.* (9th Cir. 2013) 720 F.3d 1038, 1043-1044.) 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.)

21. A procedural violation results in a denial of a FAPE if the violation significantly impedes the parent's opportunity to participate in the decision-making process. A procedural violation does not automatically require a finding that a FAPE was denied. A procedural violation results in a denial of a FAPE only if the violation: (1) impeded the child's right to a FAPE, (2) significantly impeded the parent's opportunity to participate in the decision-making process, or (3) caused a deprivation of educational

benefits. (20 U.S.C. § 1415(f)(3)(E)(ii); see Ed. Code, § 56505, subd. (f)(2); *W.G. v. Board of Trustees of Target Range School Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1484 (*Target Range*) , *superseded by statute on other grounds, as stated in R.B. v. Napa Valley Unified School Dist.* (9th Cir.2007) 496 F.3d 932, 939.) This standard applies to manifestation determination meetings. (*Danny K. ex rel. Luana K. v. Department of Educ., Hawai'i* (D.Hawai'i 2011 Civ. No. 11– 00025 ACK–KSC) 2011 WL 4527387, * 15.)

Analysis and Conclusions

22. Student met his burden of proof on Issue 2, subparts (a) through (c). District was required to conduct a manifestation determination review after District decided to implement a 45-day interim alternative education setting, as this resulted in a disciplinary change of placement of more than 10 days. Its failure to do so was a procedural violation, which deprived Parents of the opportunity to participate in a manifestation determination meeting.

23. District erroneously believed it was somehow relieved of the obligation to conduct a manifestation determination meeting because, under section 1415(k)(1)(G), it was allowed to remove Student to an interim placement without regard to whether the behavior was determined to be a manifestation of Student's disability. District has not proffered any legal authority that supports its reading of the IDEA.

24. A plain reading of section 1415(k) shows that a manifestation determination meeting is required whenever a disciplinary change of placement exceeds 10 school days. Section 1415(k)(1)(F)(i) and (iii), governing manifestation determination meetings, internally reference subdivision (G) and do not excuse such meetings where the change in placement is made under "special circumstances." (See also, 34 C.F.R. § 300.530(e), (f)(2), and (g); Assistance to States for the Education of Children with Disabilities and Preschool Grants for Children with Disabilities, 71 Fed. Reg. 46720 (Aug. 14, 2006)(Comments on 2006 Regulations.)) The code, regulations and comments to the

regulations consistently maintain that a manifestation determination review is necessary for disciplinary removals over 10 school days. As it relates to 45-day placements, such manifestation determination review will not result in immediately returning the student to his prior placement where the student's behavior is shown to be a manifestation of his disability. (20 U.S.C. § 1415(k)(1)(G).) It would be unnecessary to have this language where a manifestation determination review was not required in the first place.

25. Finally, the Office of Special Education and Rehabilitative Services in the U.S. Department of Education has put this issue to rest in its *Questions and Answers on Discipline Procedures*, issued January 2007. There, OSERS confirms that an IEP team is required to hold a manifestation determination review each time that a student is removed for more than 10 school days, even in cases where the removal is made for violation of 34 C.F.R. § 300.530(g)(removals for weapons, drugs, or serious bodily injury). (See also, *Moon Township Area School District* (2012) 113 L.R.P. 3142 (manifestation determination meeting required, even where student is removed unilaterally under 34 C.F.R. 300.530(g).)

26. District's argument that it would have found the behavior in question to be a manifestation of Student's disability is unavailing. Parents had a right under the IDEA to participate in development of Student's educational programming. Failure to conduct the manifestation determination process, here, resulted in Parents not being able to invite providers of their choosing to attend the meeting to review Student's IEP's, review and propose changes to Student's behavior intervention plan, to address the behavior that gave rise to the 45-day placement. Parents were denied participation in a process that would involve a review of all relevant information in Student's file, and information provided by Parents, and teachers. They were denied participation in the determination of whether District's failure to implement Student's IEP gave rise to the behavior at issue.

27. Based on the foregoing, District significantly impeded Parents' right to meaningfully participate in Student's educational program when it failed to hold a manifestation determination meeting; and failed to determine, as a team, whether Student's behavior on March 3, 2016 was caused by, or had a direct and substantial relationship to either Student's disability, or District's failure to implement his IEP. Student proved that District violated section 1415(k)(1)(E).

REMEDIES

1. An ALJ may order a school district to conduct a manifestation determination under section 1415(k) if the ALJ determines District failed to do so. (20 U.S.C. § 1415(k)(3)(A) & (B)(1); 34 C.F.R. 300.532(a) & (c).) Section 1415(k)(3) does not limit a hearing officer from awarding other equitable remedies to craft appropriate relief. (20 U.S.C. § 1415(k)(3); *Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

2. District denied parental participation in the process and Student is therefore entitled to and District shall convene a manifestation determination meeting with Student's relevant IEP team members as of March 2016. As an equitable remedy for District's denial of parental participation, Parents may, at District's expense, bring a psychologist or psychotherapist of Parents' choosing, to the manifestation review, whom District shall permit to actively participate as part of the team in the review process. In compliance with title 20 United States Code section 1415(k)(1)(E), District shall objectively evaluate, considering all available information, whether Student's behaviors on March 3, 2016, were the direct result of or significantly related to either Student's autism; or whether they were the result of District's failure to implement his IEP. If the team determines that Student's conduct was a manifestation of the child's disability, the IEP team shall review Student's behavioral intervention plan and modify it, as necessary, to address the behavior. (20 U.S.C. § 1415(k)(1)(f)).

3. District shall return Student to his last agreed upon and implemented placement immediately after expiration of his 45-day interim alternative educational placement.

4. The evidence established that District had a systemic misunderstanding of its obligations to special education students and their parents, in regards to disciplinary changes of placement and manifestation determination meetings. There is therefore a need to have District staff trained in these areas. Accordingly, District is ordered to provide training to special education staff who act as IEP team administrative designees and special education case managers in the areas of requirements and best practices for implementing disciplinary changes of placement, including interim alternative educational placements and ensuring that manifestation determination meetings are conducted at the appropriate time, with the appropriate team members, and in an appropriate manner, as specified under 20 U.S.C. § 1415(k) and 34 C.F.R. § 300.530, et seq. The training shall be provided by a nonpublic agency, and shall be a minimum of four hours in length.

ORDER

1. District shall conduct a manifestation determination meeting within 15 calendar days of the date of this Order to determine whether Student's conduct on March 3, 2016, was a manifestation of his disability or caused by District's failure to implement his IEP, pursuant to 20 U.S.C. § 1415(k)(1)(E). If the local educational agency, the parent, and relevant members of the IEP team make the determination that the conduct was a manifestation of the child's disability, the IEP team shall review Student's behavioral intervention plan and modify it, as necessary, to address the behavior. (20 U.S.C. § 1415(k)(1)(f)).

2. District shall, at District's expense, invite a psychologist or psychotherapist of Parents' choosing to attend and participate at the manifestation review. District shall

ensure that the psychologist or psychotherapist has access to Student's educational records, including assessments, behavior logs, and IEP's, before the meeting. District's obligation to fund expenses shall be limited to a maximum of eight hours of the professional's time for preparation and meeting attendance, and round trip travel to the meeting, at the professional's normal hourly rate for treating patients.

3. District shall return Student to his last agreed upon and implemented placement upon expiration of the 45-day interim alternative educational placement, unless Parents and District agree otherwise.

4. District is ordered to provide training to special education staff who act as IEP team administrative designees and special education case managers in the areas of requirements and best practices for implementing disciplinary changes of placement, including interim alternative educational placements and ensuring that manifestation determination meetings are conducted at the appropriate time, with the appropriate team members, and in an appropriate manner, as specified under 20 U.S.C. § 1415(k) and 34 C.F.R. § 300.530, et seq. The training shall be provided by a nonpublic agency, and shall be a minimum of four hours in length.

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 was the prevailing party on issue 2(a)-(c). District prevailed on Issue 1.

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 10, 2016

/s/

COLE DALTON

Administrative Law Judge

Office of Administrative Hearings