BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of: PARENT ON BEHALF OF STUDENT, v. SAN DIEGUITO UNION HIGH SCHOOL DISTRICT.	OAH Case No. 2018021017

EXPEDITED DECISION

On February 26, 2018, Parent on behalf of Student filed a due process hearing request (complaint) with the Office of Administrative Hearing naming San Dieguito Union High School District.[1]

Administrative Law Judge Chris Butchko heard the expedited portion of this matter in San Diego, California, on March 22, 27, and April 17, 2018.

Student's parent represented Student at hearing. Student did not attend.

Jennifer Fant, Attorney at Law, appeared on behalf of District. Tiffany Hazlewood, Program Supervisor for District, was present as the District's representative during all days of the hearing.

Student moved to admit records from the County of San Diego Child Welfare Services on March 26, 2018. District filed an opposition on March 29, 2018, and Student

[1] The complaint contained expedited and non-expedited claims. OAH set the expedited and non-expedited claims for separate hearings. The expedited claims timely proceeded to hearing on the sixteenth school day after filing of the complaint. (34 C.F.R. §300.532(c)(2).) This Expedited Decision resolves only the expedited claims.

replied on the same day. The records were admitted for use at hearing by order dated April 10, 2018. When the records were submitted at hearing on April 17, 2018, District objected to their admission on multiple grounds, including relevance, hearsay, and lack of foundation. District's objections were taken under advisement, except for the objection that the records as submitted were incomplete. Parent had omitted portions of the records, stating that Parent believed that the records contained statements of Student and his siblings that were irrelevant and should be omitted to protect their privacy. Student was directed to provide District with a complete set of the CWS records, and District was given until April 24, 2018, to file a statement informing the ALJ of how it wished to proceed based upon its review of the complete records. After review, District filed a response on April 24, 2018, stating that it would accept the CWS records as redacted by Parent and would withdraw its objection based on completeness. Further, District stated that it did not wish to put on additional testimony in response to the admission of the records.

By order dated April 25, 2018, the CWS records were received into evidence and the hearing completed on that date. Final briefing was received from both parties on April 28, 2018.

EXPEDITED HEARING ISSUE

Following a disciplinary incident at school on January 24, 2018, did District's decision to change Student's educational placement and to hold an expulsion hearing without conducting a manifestation determination review meeting violate Student's discipline procedural rights under the Individuals with Disabilities Education Improvement Act because, although he was not eligible for special education and related services at the time, District had a basis of knowledge that Student was a child with a disability before the behavior that precipitated the disciplinary action occurred?

SUMMARY OF DECISION

Student failed to meet his burden of persuasion because Student failed to establish that District had knowledge before the January 24, 2018 disciplinary incident, that Student was a child with a disability entitling him to the protections of title 20 section 1415, subdivision k. Student did not establish that Parent expressed in writing concern that Student needed special education services, that Parent requested an evaluation of Student for special education services, or that a teacher or other District personnel expressed specific concerns about Student's behavior to District's special education Director or other District supervisory personnel. While it was established that District had knowledge of Student's drug use, that does not equate to a basis of knowledge that Student might be a child with a disability.

Accordingly, Student is not entitled to any relief.

FACTUAL FINDINGS

1. Student is a 16-year-old male who attended school in District as a tenth-grader prior to his suspension. Student was briefly eligible for special education services while in elementary school and had an IEP due to a speech impairment causing poor production of the /r/ sound. Student was exited from special education in sixth grade in elementary school and has not since been found eligible for special education services by District.

2. Intellectually, Student is gifted. His classes in high school were college preparatory. Student has never failed a class, and had never received a grade below a B in any high school class until fall of this year when he received a C in Chemistry. In addition, before this year Student had actively participated in school sports and other extracurricular functions.

3. Although the timeline of events was not laid out at hearing, references within the record indicate that Student's parents have been in the process of divorcing

for approximately eight years. A set of Findings and an Order after Hearing regarding the divorce was entered in Superior Court on October 11, 2016, setting, among other items, the priority of choosing "special days" through 2018. That order also set out that the parent appearing here has decisionmaking power for educational decisions for Student and his siblings, and the other parent has that power for medical care decisions.

4. The divorce has been rancorous, and the children have not been spared the consequences of their parents' animosity toward each other. Parent acknowledges that the divorce has likely been the cause of Student's difficulties over the last year. Similarly, District has been aware of the ferociousness of the ill feeling between Student's parents.

5. Parent believes that the other parent has made false allegations of abuse or neglect as a strategy to gain advantage in the divorce proceedings. The CWS records introduced at hearing list by referral ID seven distinct investigated allegations of abuse or neglect of Student and his siblings between 2011 and 2014.[2]

6. Toward the end of Student's freshman year of high school, Parent became aware that Student was experimenting with marijuana. Parent informed student's school counselor, who offered in June 2017 to enroll Student in READI, the school's drug education program. Student's Counselor did not recall Parent raising Student's emotional issues or the effect of his parents' divorce in the course of their communications and Student's Counselor believed drug and alcohol abuse was Student's only issue.

7. Student's Counselor believed that Student had good attendance at school and was a high performing student. She "checked in" with Student approximately 4 to 5

[2] In a letter, Parent told District that the other parent made 22 false CWS complaints, eight false complaints to the police, and was four times denied domestic violence restraining orders.

times from that time and found him to be mature and well-spoken. She discussed his drug use with him and was aware that his home life was a source of frustration and anger. It was "not close" for Student's Counselor whether Student should be referred for special education for emotional problems as she believed a child could not be referred unless their problems adversely affected their academic performance or attendance, which was not the case with Student at that time.

8. In the fall of the following school year, Student got in trouble at school for cutting class on September 26, 2017 to buy alcohol. The next day, the school's assistant principal Mr. B[3] pulled Student from class and talked with him for over an hour. Mr. B learned about Student's stresses at home and that Student was using Xanax, alcohol, and other drugs. Mr. B believed that Student's behavior was a "cry for help" and notified Student's parents.

9. The school planned to have Student enroll in the drug education program. When Parent learned of this, Parent objected. As Parent held decisionmaking power for Student's educational decisions, Parent revoked the other parent's consent for Student to attend the program. Instead, Parent wrote in an email on September 29, 2017, that a suspension would be "NECESSARY, APPROPRIATE, AND [would] DO THE MOST LONG TERM GOOD." [Emphasis in original]

10. Two hours later, Parent sent an email covering "a formal demand letter." In it, Parent referenced Student's "admitted drug use, truancy, and drug dealing." The letter stated that Parent had requested that Student be enrolled in the school's drug course last year, but had been countermanded by the other parent and Student's Counselor. Parent was not now willing to have Student just enter the drug program. Parent wanted

[3] Because this case involves allegations of abuse in CWS reports, school personnel are not identified by name. As multiple assistant principals at Student's school were involved in this matter, they will be referenced by initials.

Student to suffer consequences.

11. Parent proposed that Student be suspended, but that the suspension be expunged if Student met certain obligations. Student would have to complete the drug program, have no truancy, maintain a 3.25 grade point average, play a school sport, and participate in a school club.

12. In the letter, Parent referenced Mr. B's belief that Student's behavior was a cry for help. Parent stated that the "true solution" for Student was "to marginalize the [other parent] from his life." Parent explained Student's problems as follows:

> My son has what is known as an anhedonic personality. This not-well known form of personality, [sic] is characterized by the inability to gain joy from normal activities. This diagnosis was made when he was nine years old, by a mental health professional. Those with anhedonia often believe that life is senseless. [Student's] case, at least inherently, is not that profound. However, he was caught in the middle of an entirely vicious and unnecessary custody dispute.

13. Mr. B talked with Parent that day, and formalized his response in an email hours later. Responding to an oral statement by Parent, Mr. B noted that the school had not seen any behavior or actions that made them think that Student was at risk of harming himself. He declined to suspend Student or have him arrested. Mr. B believed that Student should "utilize a learning opportunity" and enter the drug education program. He stated that "[t]his behavior can often be seen as a cry for help," and the school would refer Student and parents to the school social worker to provide "wrap around" support. He asked Parent to let the school know "the steps you are taking outside of school to get him help as well." No response to that query appears in the

record. Student was enrolled in an on-line "making decisions" class, rather than the drug program.

14. On October 14, 2017, Parent wrote to Mr. B, Student's Counselor, and the school's principal, telling them that Parent had been contacted by the police because Student had run away from the other parent's house for the second time that week. After noting that Student's absences all occurred when he was at the other parent's house, Parent told them that they would not succeed in helping student "unless the real problem is addressed." It was clear to all that Parent was referring to the other parent's influence. Parent described the making decisions class as "wholly improper" and "ineffective."

15. Student had attended the decisions class. One assignment was to write a "making decisions" essay, which Student wrote on October 15, 2017. In it, he wrote that in the days prior to the late September incident he had binged on "alcohol, weed, xanax, adderall, and possibly other drugs that I just don't recall taking." He wrote:

> I went wrong when I decided to use drugs to sort of self medicate and rather only [sic] recreationally as I used to at parties and such. Once I decided to consume pills and alcohol daily I noticed that my view on the world changed as I became even more anhedonic than I had ever been before. The only way I could handle being at school and home was to sedate myself so heavily to the point where I would sleep all day and stay up at night only because of the cocktail of drugs I would consume. My decision making is directly correlated to substance abuse because I would become overly confident and truly scared of nothing like being chased by cops for curfew violations or driving without a

> license on school nights with a lot of drugs in the car at 2 or 3 in the morning all while going upwards of 90 mph.
>
> … Also due to my pretty addictive personality I know that I will have to stay sober for a very long amount of time to make sure my substance abuse doesn't get worse because this past month has already spiraled out of control with situations such as driving under the influence and doing drugs daily.
>
> … I don't think that I am someone who learns from my mistakes because consequences don't really bother me….

16. Mr. B received a copy of Student's essay. On October 16, 2017, he wrote to Student's parents, Student's Counselor, and the Principal to commend it as "eloquent and honest," and attached a copy of Student's essay. He was proud of Student for being so forthcoming. Because he was concerned about Student's description of his drug use, he again offered to enroll Student in the READI program and asked Parent for permission to so 5 do. He characterized the offer of the READI program as "our attempt to provide [Student] with help."

17. Instead, the next day Parent escalated the matter to the District's Superintendent, asking by email for him to intervene to endorse Parent's solution from the demand letter. Parent called the response to Parent's proposal "fatuous argumentation" that favored the other parent's position. Parent told the Superintendent that he could read in the essay that Student was at risk of killing himself.

18. The Superintendent's response, which suggested Student attend READI and left management of Student's issues to the Principal and Mr. B, did not satisfy Parent. Parent responded that District had failed Student, and the Superintendent

replied that if Parent believed that Student would harm himself Parent should get him professional assistance as soon as possible. Parent then wrote to say that "the root of the problem" was Student's other parent. "The boy will kill himself while with [the other parent]. Nothing I can do. Let's watch him die together." All of these emails were exchanged on October 17, 2017.

19. In response to this, Student's Counselor, Mr. B and another staff member were directed by the Principal to conduct a suicide assessment of Student. Although Student's Counselor considered Student's out-of-class behavior "concerning," the team found no evidence that he wished to hurt himself and concluded he was not a threat to himself. This was reported to Parent and the Superintendent by email on October 18, 2017. Mr. B wrote that Student "has stated that he is using drugs, although has [sic] clearly stated this is not in an attempt to harm himself." Mr. B again offered to put Student in the READI program and suggested that Parent contact the police or have Student "assessed by a medical institution" if Parent suspected Student might harm himself.

20. On October 17, 2017, a telephone referral was made to CWS that Student was suffering severe neglect. The structured decision-making form in the CWS records for the hotline report of that date[4] has checked boxes indicating that the reporting party had concerns of emotional abuse such that "caregiver actions have led or are likely to lead to child's severe anxiety, depression, withdrawal, or aggressive behavior towards self or others." In addition, under neglect the boxes were checked under severe neglect indicating concerns that "child's health/safety is endangered" and under general neglect that the child had "inadequate supervision."

[4] There was also an intake form for a referral on October 21, 2017, but the form indicates that it was a duplicate referral and it was closed with no further action.

21. The CWS records' narrative reports that the reporting party was concerned that Parent would not allow Student to participate in the in-school substance abuse diversion program. It noted that the other parent consented, but Parent wanted Student suspended, expelled, or arrested. "The RP stated that they will not comply with the [Parent's] request as the school did not witness any of the substance abuse and therefore cannot act. The RP stated that the [Parent] is refusing to accept any professional help for Student." It is stated that the reporting party had never met Student.

22. Under a section entitled Provisional Harm, it was noted that Student was using marijuana, Adderall, Xanax, and alcohol, and would drive fast late at night while under their influence. As Provisional Danger, the listed concerns were that Student might overdose or that his driving would cause serious injury to himself or others. A wellness check was made on October 17, 2017, at the other parent's home, where Student was asleep.

23. CWS conducted an interview of Student the next day at his school. Student told the interviewer that he liked high school better than middle school, and that he had friends and a girlfriend. Student reported that he bought Xanax from a person he met on Snapchat and left school to buy alcohol from the same person when he cut class on September 26, 2017. When asked about his late-night high-speed driving, Student is reported to have said "it is just a thrill thing. Not depression." Student denied current substance use or suicidal ideation, and "denied that he needed help with anything."

24. The CWS interviewer also spoke with another assistant principal at Student's school, who referred to Parent as "toxic." Other than the inability to get Parent to agree to enroll Student in the school drug program, the assistant principal had "no further concerns at this time for [Student]." The interviewer than talked with the other parent and suggested that the family court be petitioned to alter Parent's educational rights. The interviewer noted that the other parent was getting counseling advice on

how to help the children deal with the divorce, but Student was not receiving counseling or on any medications. The report states that Parent was contacted, but Parent hung up after calling the agency corrupt and refusing to talk.

25. CWS closed out the inquiry without taking further action. It reported the outcome of the inquiry into the allegation of severe neglect of Student by Parent as "inconclusive," because of Parent's unwillingness to be interviewed. A Safety Assessment was also completed, which indicated that the children at issue were not in immediate danger of serious harm. A follow-up Risk Assessment was done on November 28, 2017, with similar findings, and a letter dated December 20, 2017, was sent to the both parents stating that the referral had been closed on December 4, 2017.

26. Student was accused of using drugs on school property on November 18, 2017. After other pupils came to Mr. B and told him that Student was smoking and drinking alcohol, Mr. B went and searched Student, but found nothing. Student was also given a blood alcohol test, which he passed. Parent told Mr. B not to contact Parent directly; they would communicate strictly through email.

27. Parent informed Mr. B and the Principal by email on November 28, 2017, that Student had been taken to Parent's house after an affray at the house of the other parent. Student may have been drinking alcohol. Student was arrested on suspicion of burglary after attempting to sneak into a friend's house through a window. Parent reported this anecdote to District, believing it showed that "the police have figured out what I hope you figure out too. His substance abuse is a symptom of being force[d] to live with [the other parent] who is unable to afford him the proper guidance through these teenage years."

28. After this, Mr. S, another assistant principal, took over Mr. B's duties in supervising Student. This was done to try to "cool down" the relationship with Parent. Around this time Student's Counselor, as well, was instructed that contact with Parent would be escalated to other staff and she was instructed not to communicate with him.

Parent had at this time a number of civil lawsuits in progress against District and the County of San Diego.

29. On January 23, 2018, Parent informed the District's superintendent and the Principal by email that Parent was filing a government tort claim against the school for "conspiracy, extortion, civil rights violations, negligent infliction of emotional distress, negligence, and failure to protect." Parent asserted that the school was negligent in its response when it was informed of Student's drug use in June of 2017 and that it had failed to protect Student from drug dealing near campus.

30. On January 24, 2018, Student was accused of selling marijuana to a classmate and of being under the influence himself. Another pupil reported that Student offered to sell him marijuana and Xanax on campus. On January 25, 2018, Parent was informed that Student was suspended for five days pending a recommendation for expulsion. The suspension was extended on January 26, 2018, until District's Board of Trustees decided whether or not Student should be expelled.

31. Following consultation with an attorney, Parent requested that Student be assessed for special education eligibility due to emotional disturbance. On or about February 9, 2018, District provided to both parents an assessment plan. Parent was not willing to have District personnel conduct the assessment because Parent believed that District was biased against Student. Parent requested to be provided the names of three independent assessors from to select. District declined to offer independent assessment by letter dated February 13, 2018, and again proffered an assessment plan for Parent to sign.

32. The other parent signed and returned the assessment plan on February 15, 2018, and Parent returned a signed assessment plan on February 17, 2018. However, Parent made changes to the assessment plan, adding an adaptive behavior assessment and an assessment for post-traumatic stress disorder. In addition, Parent added to the assessment plan that the IEP team should consider "school retaliation" as part of the

assessment information.

33. By letter dated February 23, 2018, District agreed to do an adaptive behavior assessment, although it saw no concerns about Student's self-help skills. District did not agree to do a post-traumatic stress disorder assessment or consider school retaliation. When District attempted to set up a schedule for the assessments a further complication arose with Parent. When District sent a schedule on March 1, 2018, Parent responded, in full, "Short answer no. We'll discuss during mediation." Mediation was to take place on March 8, 2018

34. District cancelled the mediation on March 2, 2018, but District offered to work with the family to find a new date. Parent sent an email on March 2, 2018, stating that the assessment plan was not acceptable and a further email later that night stating that District was using the assessment process to discover information for civil litigation. Parent maintained on March 8, 2018, that Parent was not refusing to consent to the assessments, but was not in agreement with the assessment plan.

35. Student's expulsion hearing was held on March 9, 2018, and culminated in a recommendation of expulsion. On March 10, 2018, Parent sent a letter informing District that its proposed schedule for assessment would not work because Student was entering a residential mental health facility. Student was admitted to the facility on March 12, 2018.

36. Student was expelled from District on March 15, 2018. No manifestation determination hearing was ever held.

LEGAL CONCLUSIONS

LEGAL FRAMEWORK OF STUDENT DISCIPLINE UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

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

2. Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A child with a disability may be suspended or expelled from school as provided by federal law. (20 U.S.C. §1415(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a child with a disability violates a code of student conduct, school personnel may remove that 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 a pattern of disciplinary action that amounts to a change of placement), the IDEA requires that certain procedural steps be taken. Disciplinary measures imposed on students without disabilities may be applied to a child with a disability if the conduct resulting in discipline is determined not to have been a manifestation of the child's

[5] All references to the Code of Federal Regulations are to the 2006 version.

disability. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. §§ 300.530(c) & 300.536(a)(1) & (2).) If the conduct was a manifestation of the child's disability, the child must be returned to the placement from which the child was removed, with limited exceptions. (20 U.S.C. § 1415(k)(1)(F).)

4. A student who has not previously been determined to be a child with a disability eligible for special education and related services, and who has engaged in behavior that violates a code of student conduct, may assert any of the protections provided for under the IDEA if the local educational agency had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. (20 U.S.C. § 1415(k)(5)(A).)

5. A local educational agency shall be deemed to have knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred: (i) the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; (ii) the parent of the child has requested an evaluation of the child pursuant to title 20 United States Code section 1414 (a)(1)(B); or (iii) the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education of such agency or to other supervisory personnel of the agency. (20 U.S.C. § 1415(k)(5)(B).)

6. A local education agency shall not be deemed to have knowledge that the child is a child with a disability if the parent of the child has not allowed an evaluation of the child pursuant to title 20 United States Code section 1414 or refused special education services for the child, or if the child has been evaluated and found not to be a child with a disability. (20 U.S.C. § 1415(k)(5)(C).) Title 20 United States Code section 1414 provides for the assessment of students to determine if they are eligible for special education and services as a child with a disability under the specific eligibility criteria of

the IDEA. A local educational agency must obtain informed consent from the parent before conducting an evaluation. (20 U.S.C. § 1415(a)(1)(D)(i)(I).)

7. Student contends that District had a basis of knowledge for suspecting that Student had a disability prior to the January 24, 2018 disciplinary incident that triggered his suspension.[6] District denies having knowledge, and further argues that Parent's refusal to allow assessment of Student after the disciplinary incident relieves it of any possible basis of knowledge. District's argument is not well-taken.

8. District's basis of knowledge is measured as it stands "before the behavior that precipitated the disciplinary action occurred." If, prior to the occurrence of the act that is the basis of discipline, parents refused to allow a district to assess their child, they would be preventing District from *knowing* their child's status. For that reason, districts are shielded from failure to consider a child's possible status as a person with a disability when assessments are refused prior to the date of the triggering event. If parents request assessment of their child after such event, the child is only entitled to stay in the interim placement designated by the district until completion of the assessment. (20 U.S.C. § 1415(k)(5)(D)(2).) The statute relieves the District of its basis of knowledge where a "parent has not allowed an evaluation of the child," not where a parent does not allow assessment following the disciplinary event.

9. Nothing in the statute would allow Parent's refusal to assess at any date after the disciplinary event to relieve the District from its otherwise statutory responsibility to act on it basis of knowledge. Although Parent has so far effectively

[6] Following Student's suspension, an additional charge of violation of school rules was added to the cause for expulsion. It was alleged that Student made an on-line threat against the well-being of the student witnesses against him. The effect of that subsequent charge on establishing the date on which District may have had a basis of knowledge of Student's potential disability is not at issue here.

refused to agree to an assessment of Student, it does not affect consideration of whether District has a basis of knowledge as of January 24, 2018.

PART (I) - WRITING EVIDENCING NEED FOR SPECIAL EDUCATION SERVICES

10. District will be found to have a basis of knowledge that Student may be a child with a disability if parent expressed concern in writing to a teacher or administrator that Student was in need of special education and related services. That requirement is strict; it does not allow for oral expressions of concern and it specifies that the request must seek services related to special education. Student argues that he has met this burden.

11. Following the September 26, 2017 incident when Student cut class to attempt to buy alcohol, Parent sent a letter on September 29, 2017, which attempted to explain Student's situation to the Principal. In the letter, Parent reported that Student had an anhedonic personality, which made Student unable to gain joy from normal activities. The diagnosis was said to have been made by a medical professional approximately six years earlier. Parent states that letter was "inartfully drafted," as it continues to say that Student's "case, at least inherently, is not that profound." Parent then notes that Student was caught up in his parents' divorce.

12. This does not constitute an expression of need for special education services. Parent is describing Student, for purposes of putting his actions in the context of the contentious custody dispute between his parents. Student did not establish that under the IDEA a parent's description of a potentially disabling aspect of their child's personality creates a basis of knowledge on District. Further, Student did not establish that an uncategorized case of anhedonia constitutes a disabling condition. Parent was not writing to seek help for Student's education, seeking services or support. Parent wanted assistance in imposing discipline on Student which Parent believed would improve Student's character.

13. Student contends that Parent's email of October 14, 2017, constitutes a writing expressing need for special education and services. The email described Parent being contacted by police because Student had run away from the other parent's house and been arrested on suspicion of burglary. Student contends that this notified District of a disturbing pattern of behavior. That, too, does not satisfy the statute.

14. The October 14 email did not set out Student's actions in a context designed to have District consider his need for special education. The purpose of the email was to remind District of Parent's view that the other parent was "the real problem" in Student's life.

15. Student then turns to the statements in his "making decisions" essay. A number of concerning statements appear in the essay. Student cites the references to his decision to "self-medicate" with drugs and alcohol and the fact that he does not learn from his behavior because consequences do not bother him. Student argues that District clearly found the essay "troubling" because Mr. B forwarded it to other staff, including Student's Counselor.

16. In forwarding the email, Mr. B was raising concerns about Student's drug use, and he did state that District was offering the READI program as its attempt to help Student. Concern for a student binging on drugs and alcohol does not equate knowledge of a disabling condition. Most significantly, Student's essay does not meet the statutory requirement for a basis of knowledge. It was not written by Student's parents to express concern about his need for special education or services.

17. Although not specifically put forth by Student, Parent did repeatedly write to District to assert that Student would kill himself. Parent twice expressed this in writing to the District Superintendent on October 17, 2017, which sparked District to conduct a suicide assessment of Student. That assessment concluded that Student was not expressing suicidal ideation, as happens with persons suffering from depression or other mental illness. The risk to Student's well-being, as set forth in his essay, was from

recklessness and overconfidence, not from despair.

18. Student has not established that any parent expressed concern in writing to a teacher or to supervisory or administrative personnel that Student was in need of special education and related services. Student is not entitled to relief under 20 U.S.C. § 1415(k)(5)(B)(i).

PART (II)- PARENT REQUESTED FOR EVALUATION OF THE CHILD

19. Student does not contend that this subsection applies.

PART (III) - EXPRESSION OF CONCERN BY DISTRICT PERSONNEL TO THE DIRECTOR OF SPECIAL EDUCATION OR TO OTHER SUPERVISORY PERSONNEL

20. The third means by which a basis of knowledge can be assigned to a district is where a district employee has directly expressed specific concerns about a child's pattern of behavior to the director of special education of such agency or to other supervisory personnel of the agency. This involves the internal workings of a district. Student asserts in his briefing that District has hid information as to this prong, accusing District's witnesses of being "heavily coached."

21. Parent does find some support in the record. Mr. B, an assistant principal, included the Principal in a group of people to whom he forwarded Student's "making decisions" essay on October 16, 2017. The essay related how Student would binge on drugs and "sedate" himself so he could handle being at home or at school. However, the email was addressed to Parent and only cc:'d to the Principal. It may not be a direct communication, as it is unclear whether a communication can express something directly to someone if it does not address them. More significantly, the statement therein that Student was in need of help with substance abuse does not express specific concerns about a pattern of behavior that would indicate an educational disability. District is only expressing concern about Student's admitted drug use.

22. Similarly, Student's citation of the October 18, 2017 letter by Mr. B also fails to establish a basis of knowledge. The letter was written following Parent's reaction to the sharing of the "making decisions" essay and reports the outcome of District's suicide assessment. It does not add anything not present in the October 16, 2017 email, was again sent directly only to Parent and only cc:'d to District staff, and, other than noting Student's drug use, does not express concerns about Student's behavior to constitute a basis of knowledge that Student has a disability.

23. Student argues that these letters and the CWS referral cumulatively show that supervisory personnel were "put on notice" that Student had emotional problems. However, Student has failed to meet the requirement imposed in the IDEA to show that District personnel expressed specific concerns directly to a supervisor about a pattern of behavior demonstrated by Student, which indicated Student might be a child with a disability as defined by the IDEA. What the CWS records demonstrate is District's concern that Parent was not addressing Student's use of illegal drugs because of Parent's fixation on issues concerning Parent's divorce.

24. Parent argues that the CWS referral was an escalation of District's staff's concern about Student's emotional issues. Student contends that the referral was made by District. Although the statutory confidentiality of a mandated reporter prevented Student from asking about who made the referral to CWS, Parent stated at hearing that Parent knows who was the reporting party for the referral because of contextual clues in the CWS records.[7] Parent may or may not be correct, but that is not a proper area of inquiry.

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[7] District has objected to the admission of the CWS records on the basis of hearsay. Although its admission does not change the outcome of this analysis, District's objection is overruled as the CWS material qualifies as official records. (Evidence Code §1280.)

25. For purposes of analysis, it will be assumed that District personnel made the referral. The CWS records' narrative states that the reporting party stated that "they" would not comply with Parent's request regarding punishing Student for the September 26, 2017 incident "because the school did not witness" any substance abuse. The reporting party appears to have spoken on behalf of the school and have knowledge of both what the school would do and what the school knew. The reporting party did not know Student, being unable to report what was working well for Student "since never having met [Student]." [sic]

26. Weighing the statements present in the records to determine whether they would constitute a basis of knowledge of Student's claimed disability on District's part, Student did not establish that District had a basis of knowledge. The intake records for the hotline report that the initial assessment was that the child was at risk of severe anxiety, depression, withdrawal or aggressive behavior toward self or others due to the caregiver's abuse. If that were the substance of the referral, it would indicate concerns implicating the need for special education services. However, that language was chosen from a preprinted structured decision making intake form and is not a statement by the reporting party.

27. Investigation of Student's case revealed a much different situation. Student reported that his risky behavior was "a thrill thing," and not suicidal. When District was contacted by the CWS investigator, it was found that District had no concerns about Student other than its inability to get Parent to agree to enroll Student in the drug education program.

28. If it was District that made the referral to CWS, it did not do so out of concern for Student but instead to use CWS to leverage Parent into consenting to put Student in the READI program. Unfortunately for Student's case, this does not demonstrate that there was a discussion between District staff and administration about specific concerns about Student's pattern of behavior to establish a basis of knowledge

that Student was potentially a child with a disability.

29. For the foregoing reasons, Student has failed to carry his burden of proof that District had knowledge before January 24, 2018, that Student was a child with a disability entitling him to the protections of title 20, section 1415, subdivision (k).

ORDER

All relief sought by Student is denied.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, District prevailed on the single issue.

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).)

DATE: May 7, 2018

/s/

CHRIS BUTCHKO

Administrative Law Judge

Office of Administrative Hearings