

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

CASE NO. 2019120123

PARENT ON BEHALF OF STUDENT,

v.

FORTUNA UNION HIGH SCHOOL DISTRICT.

EXPEDITED DECISION

JANUARY 28, 2020

On December 2, 2019, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student naming Fortuna Union High School District as respondent. Administrative Law Judge Rita Defilippis heard this matter in Fortuna on January 8, 9, 10, and 14, 2020.

Attorney Rick Ruderman represented Student. Father attended the hearing each day on Student's behalf. Mother attended the last two days of hearing. Attorney Jennifer Nix represented Fortuna Union High School District. Michelle Roslosnik,

Assistant Principal of Fortuna High School, attended hearing each day on Fortuna's behalf. Mr. Glen Senestraro, Superintendent, attended hearing on the afternoon of the first day of hearing on Fortuna's behalf.

The record was closed and the matter was submitted for this expedited decision on January 14, 2020.

ISSUE

The issue has been reorganized for the purpose of analysis in this decision. The ALJ has authority to reword and re-organize 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.)

1. Did Fortuna conduct an inappropriate manifestation determination meeting on November 5, 2019, by:
 - a. inaccurately determining that Student's conduct was not a manifestation of his disability;
 - b. inaccurately determining that Student's conduct was not the result of Fortuna's failure to implement Student's IEP; and
 - c. predetermining the outcome of the meeting?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. §1400 et. seq.; 34 C.F.R.

§300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

The main purposes of the Individuals with Disabilities Education Act, referred to as the IDEA, are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. §1400(d)(1); See Ed. Code, §56000, subd. (a).)

The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, assessment, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.)

At issue in this case is an appeal of a manifestation determination review team meeting. In such instances, parents and local educational agencies may request an expedited due process hearing of claims based upon a disciplinary change of educational placement under section 1415(k). An expedited hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed, and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. §1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. §1415(i)(2)(C)(iii).) Student filed for hearing and has the burden of proof in this hearing. The factual statements below constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. sec. 1415(i)(4); Ed. Code, sec. 56505, subd. (e)(5).)

Student is a 17-year-old eleventh grader who attends high school and resides within the boundaries of Fortuna Union High School District. He is eligible for special education services as a Student with autism.

ISSUE 1(A): DID FORTUNA CONDUCT AN INAPPROPRIATE MANIFESTATION DETERMINATION MEETING ON NOVEMBER 5, 2019, BY INACCURATELY DETERMINING THAT STUDENT'S CONDUCT WAS NOT A MANIFESTATION OF HIS DISABILITY?

Student contends that his conduct for which Fortuna seeks to expel him is a manifestation of his autism and other indicated comorbid mental health conditions, including depression. Student contends that these disabilities were known to the manifestation determination review team based on Student's recent, serious, and sudden changed behavior, and evidenced by Student's multiple clinically significant social emotional test scores on his initial evaluation for special education in April 2017. Fortuna contends that Student's conduct is not related to Student's disability of autism.

Fortuna asserts that the manifestation determination review team had no reasonable basis to conclude that Student's conduct was a manifestation of other disabilities, such as depression. Fortuna asserts that it was incumbent on Parents to present any such information at the manifestation determination review team meeting, and they failed to do so.

VIOLATION OF CONDUCT CODE

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 student receiving special education services may be suspended or expelled from school as provided by federal law. (Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, the local educational agency may remove the student from his or her educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities.) (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1).) A local educational agency is required to provide services during periods of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. (34 C.F.R. § 300.530(d)(3).) If a special education student violates a code of conduct and the local educational agency changes the educational placement of the student for more than 10 days, the local educational agency must meet the requirements of section 1415(k).

Student was suspended for three days, October 15, 16, and 17, 2019, pursuant to Education Code Section 48900(a)(1), for causing, attempting to cause, or threatening to cause injury to another person. On October 23, 2029, Student was suspended for five days, October 23-28, 2019, pursuant to Education Code Section 48900(a)(1) and 48900.7, for causing, attempting to cause, or threatening to cause physical injury to another person and for terroristic threat against school officials or school property, or both. On October 29, 2019, Student was recommended for expulsions. Student's suspension was extended until Fortuna's governing board has rendered a decision on the recommendation for expulsion.

The details of the forgoing incidents will be discussed further in determining whether they were a manifestation of Student's disability or disabilities. The evidence established, however, that Student violated a code of conduct for which Fortuna changed his educational placement for more than 10 days.

MANIFESTATION DETERMINATION REVIEW

A manifestation determination must be accomplished within 10 school days of the decision to change the placement of a student with a disability because of a violation of a code of conduct. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).) All relevant information in the student's file, including the IEP, any observations of teachers, and any relevant information from the parents must be reviewed to determine if the conduct was caused by or had a direct and substantial relationship to the student's disability, or was the direct result of the district's failure to implement the student's IEP.

If either of these determinations are made by the manifestation team, the conduct shall be determined to be a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(E)(i) and (ii); 34 C.F.R. § 300.530(e)(1) and (2).)

A manifestation determination review is not an IEP team meeting and different rules apply to notice and attendance requirements. 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 school district must notify parents of a manifestation determination review team meeting early enough to ensure that they will have an opportunity to attend, and must schedule the meeting at a mutually agreed upon time and place. (34 C.F.R. § 300.322(a)(1), (2); Ed. Code, § 56341.5, subs. (a)-(c).) In the case of a manifestation determination review team meeting, the notice must inform the parent of the decision to change the student's placement and must be accompanied by a copy of the parent's procedural safeguards. (20 U.S.C. § 1415(k)(1)(H); 34 C.F.R. § 300.530(h).)

If the local educational agency, the parent, and relevant members of the IEP team make the determination that conduct for which a student was disciplined was a manifestation of his disability, the IEP team shall conduct a functional behavior assessment and implement a behavioral intervention plan for the student provided that the local educational agency had not conducted such an assessment prior to such determination before the behavior that resulted in the proposed change of placement of over 10 days. (20 U.S.C. § 1415 (k)(1)(F); 34 C.F.R. § 300.530(f)(1)(i).) In the situation where a behavioral intervention plan has been developed, the IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior and

return the student to the placement from which the student was removed, unless the parent and the local educational agency agree to a change of placement as part the modification of the behavioral intervention plan. (20 U.S.C. § 1415 (k)(1)(F); 34 C.F.R. § 300.530(f)(1)(ii).)

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

On October 30, 2019, Fortuna gave Parents notice of a manifestation determination meeting to be held November 5, 2019. The meeting was held as scheduled. In attendance were Parents; Ms. Michelle Roslosnik, Assistant Principal and Director of Special Education; Mr. Rossman, Dean of Students; Mr. Vanderpool, Student's Special Education Case Manager; Mr. Wilson, Student's Chemistry teacher; and Ms. Ambrosini, Student's English teacher. The meeting was recorded by Parents and Fortuna. The recording and a transcript of the recording were admitted as evidence at hearing.

The Fortuna members of the manifestation determination review team determined that the Student's conduct that violated the school's conduct code was not a manifestation of his disability, namely autism. Parents disagreed. Parents appealed the determination and this hearing followed.

ACCURACY OF MANIFESTATION DETERMINATION REVIEW TEAM'S CONCLUSION

The following information was available to the manifestation determination review team either through school records, from Student's teachers, or parents.

In April 2017, Humboldt County Office of Education conducted Student's initial special education assessment. The autism assessment resulted in scores well above the autism cutoff, placing Student on the autism spectrum. On April 25, 2017, an individualized education program team meeting, called an IEP team meeting, was held to review the results of the assessment. Student qualified for special education services under the eligibility category of autism. Student was offered special education services which his Parents declined, opting to keep him in his private school for the rest of eighth grade.

In January 2018, Student enrolled in Fortuna High School. He has attended Fortuna High School since that time, up to the incidents at issue in this case. Student's current IEP is dated April 23, 2019. He is eligible for special education as a student with autism and attends all general education classes with special education supports.

The overwhelming and undisputed evidence presented at hearing, including his prior IEP's and testimony of teachers and administrators, established that during the 2017-2018 and 2018-2019 school years, Student was generally a bright, capable, and motivated student who participated in class. He was motivated to learn, got along with his peers and teachers, had a great sense of humor, passing grades, and no discipline incidents.

Ms. Hannah Gomez, Student's academic counselor, testified at hearing. She met with Student several times in the 2018-2019 school year. She established that Student is a pleasure to work with, enjoyed school, was respectful, sweet, and motivated young man. Student took the initiative to ask for passes to meet with his case manager, Janice Lorenzo, at least twice a month, often on a one-to-one basis. Student appreciated Ms. Lorenzo's support and felt comfortable going to her if he needed anything.

In the beginning of the 2019-2020 school year, the overwhelming evidence at hearing established that Student's mental state significantly changed. He became withdrawn, unmotivated, slept in class, stopped participating in his classes, and did not want to go to school, preferring to sleep. Concurrent with this presentation, Student's school support also changed. Ms. Lorenzo was no longer working for the district. Student's case manager was now Mr. Tom Vanderpool. Mr. Vanderpool met with Student only once, for a few minutes in mid-September, to introduce himself to Student. Mr. Vanderpool is responsible for Student's IEP specialized academic instruction and career awareness services.

On September 18, 2019, Ms. Hannah Gomez received an email from Student's first period History teacher, Ms. Robyn Haynes, asking her to check in with Student and to give her any suggestions for how to better support Student. She informed Ms. Gomez that Student often missed school or was tardy and had an 'F' in her class. In response, Ms. Gomez met with Student for approximately five minutes. Student informed Ms. Gomez that he was struggling in his classes. Student's schedule was rearranged to give him a study hall first period, instead of an academic class.

Ms. Gomez met a second time with Student later in September for approximately 20 minutes. Student reported that he was not feeling himself, was overwhelmed with his workload, and did not care about school. He mentioned his medication was “off” and he was having a hard time getting to school because he just wanted to sleep. Student appeared depressed, and was not the same student she experienced him to be before. He didn’t like classes, church, coming to school, and lacked the motivation he displayed before. Ms. Gomez was concerned and considered his behavior unusual. She got Student’s permission to talk to his parents, his teachers, and the student support counselor. Ms. Gomez was soon to be going on maternity leave and she wanted to make sure that Student’s service providers were aware of the situation.

Ms. Gomez contacted Student’s Mother. She gave Mother the contact information for the new student support counselor, Ms. Felicia Stansbury. Ms. Gomez also personally met with Ms. Stansbury after the call to Mother. One of Ms. Stansbury’s duties was to support the social and emotional wellness of students.

Mother got Student a doctor’s appointment the next day, September 25, 2019, and Student’s Lexapro medication, an anti-depressant, was doubled from 10 mg. to 20 mg. Fortuna was aware of the medication increase on September 30, 2019, when Mother conveyed the information to Ms. Stansbury during Ms. Stansbury’s follow-up phone call. Ms. Ambrosini became aware of the medication increase on October 31, 2019, in her interview of Ms. Stansbury in preparation of the manifestation determination report and team meeting.

Ms. Gomez emailed all of Student's teachers and his case manager, Tom Vanderpool, on September 25, 2019. The email read:

I just wanted to let you know that I met with *Student* yesterday and he is not doing well. His antidepressants are not working and he admitted that he has no motivation to be here or to do well in school. He has given up and doesn't seem to care. This is not like him so I did call home (with his permission) and talked to his mom. He has an appointment with his Dr. on Monday, but she was going to try to get him in sooner. *Student* has been feeling very overwhelmed too in his classes and at home. He is not good at asking for help and he was also out sick recently and missed four days of school, so that didn't help either. Please keep an eye on him in class and check in on him/let him know you are there to support him. He was fine with me emailing all of you and I put in a referral to our new student support counselor. She plans on checking in on him tomorrow but please let me know if you have any concerns.

On September 30, 2019, Ms. Stansbury contacted Mother to follow up on the referral from Ms. Gomez and to introduce herself. Mother expressed concerns regarding Student's lack of motivation; struggle with recent transitions, including a new case manager, drop in academic performance, and increase in his Lexapro medication. Mother explained to Ms. Stansbury how hard it is to get Student to school in the morning and how Student is depressed and overwhelmed.

On October 1, 2019, Ms. Stansbury met with Student for 10-20 minutes. He reported his disappointment and frustration regarding his poor academic performance. He told her about his change in medications and lack of ability to sleep, and wanting to sleep more. Ms. Stansbury discussed coping strategies with Student.

On October 3, 2019, Ms. Stansbury followed up with Mother who reported issues consistent with Student's reports of lack of motivation, depression, and wanting to sleep.

PHYSICAL FIGHT AND SUBSEQUENT HOSPITALIZATION

On October 14, 2019, Student entered his classroom and saw that his friend was sitting in the seat in which Student always sits. Student told his classmate that he was in his chair and had to move. The student explained that he needed to charge his phone and the seat was close to a plug. The classmate did not move. Student warned the classmate that he was going to hit him and when he did not move, Student punched him in the face four to five times. Student weighs approximately 190 pounds and is six feet five inches tall. This was the first act of aggression ever demonstrated by Student at school and it was against a classmate who Student considers a friend and with whom he has always been friendly.

Student was sent to the office and was questioned about the incident by Mr. Rossman, Dean of Students. When asked, Student was unable to think of any other way that he could have handled the situation. Mr. Rossman thought that his response was odd. Prior to the incident, Student and the classmate had been conversing and there was nothing to indicate that Student might be upset with the classmate. Student was described to be "stoic", described as calm, slumped back in his chair when

questioned. Student was suspended for three days, October 15, 16, and 17, 2019, pursuant to Education Code Section 48900(a)(1), for causing, attempting to cause, or threatening to cause injury to another person. Father picked Student up from school. As a further consequence for his behavior against his classmate, Father took Student's phone away from him.

The loss of Student's phone agitated Student in a way and to a degree never seen before by Parents. His agitation continued and he repeatedly asked for his phone and was swearing at his Parents, also not normal for Student. Student grabbed a steak knife in the kitchen and waved it around toward Parents. He held the knife to the throat of his dog and threatened to kill the dog. Mother did not believe that Student would harm the dog and refused to return the phone. Student eventually put the knife on the table. 20 minutes later in the living room, Student aggressively waved a pocket knife at his mother which scared her. Father called the police to ask for advice as to what to do. Parents had never seen Student act this way.

Parents took Student to the emergency room at Redwood Hospital. Student was found to be a threat to himself and others and was placed on a Welfare and Institutions Code 5150 gravely disabled hold. The hold was released the next afternoon, on September 15, 2019, by a physician who Mother described had a good understanding of autism. The doctor explained that antidepressant medication changes can make a child act out and be frustrated.

On October 15, 2019, before Student was released from the 5150 hold, Mother called Ms. Stansbury to inform her about the incident and the decision to hold Student and transfer him out of the area for psychiatric evaluation. Mother called her to obtain

a copy of Student's IEP so the psychiatric facility would be informed. Ms. Stansbury informed Parent that Ms. Roslosnik, Assistant Principal and Special Education Director, would also have to be informed about the incident in the process of getting Student's IEP. Mother consented to Ms. Roslosnik being informed.

On October 15, 2019, Ms. Stansbury informed both Ms. Roslosnik and Mr. Rossman about the incident requiring Student's hospitalization.

On October 16, 2020, Ms. Stansbury contacted Mother and was informed that Student was able to return home and that county mental health was involved and Student will be tapering off his medication. Student had a doctor's appointment on October 18, 2019, and his Lexapro was reduced to 10 mg.

Father, after dropping Student's brother off at school, went to Mr. Rossman's office and told Mr. Rossman of the incident on the evening of October 14, 2019, including Student's waving a knife in the air, threatening the family dog, himself, and his wife with a knife, and subsequent hospitalization and 5150 hold. Father wanted Mr. Rossman to know that Student has bigger problems than just school.

Student returned to school on October 21, 2019. Mother contacted Mr. Vanderpool to inform him that Student is struggling badly and to request an immediate assessment and IEP team meeting with all of Student's teachers because she did not want to wait until his triennial evaluation in April 2020. An IEP team meeting was set up for October 23, 2020.

TERRORIST THREAT

On October 22, 2019, two students reported to Mr. Dustin Rossman that they had knowledge of text messages involving Student and another classmate regarding planning a school shooting. The text messages were reported to be the week of October 14, 2019, the same timeframe as Student's discipline incident for punching a classmate on October 14, 2019. This was also the time during which Student's medication was at 20mg, and he reported feeling that it was "off."

Student was one of the two students involved in the shooting discussion. Immediately following the students' report, the police were contacted and Student was brought to the high school office for questioning. He admitted that he had the electronic conversation. Student was arrested at school and brought to juvenile hall.

On October 23, 2019, Student was suspended for five days, October 23-28, 2019, pursuant to Education Code Section 48900(a)(1) and 48900.7, for causing, attempting to cause, or threatening to cause physical injury to another person and for terroristic threats against school officials or school property, or both.

On October 29, 2019, Student was recommended for expulsion as Fortuna determined that Student's presence at school would cause a danger to persons, or a danger to property, and/or a threat of disrupting the educational process. Student's suspension was extended until Fortuna's governing board has rendered a decision on the recommendation for expulsion.

MANIFESTATION DETERMINATION REVIEW TEAM MEETING

CONCLUSIONS

Ms. Ambrosini is a school psychologist for Fortuna. Ms. Ambrosini testified at hearing. The 2019-2020 school year is Ms. Ambrosini's first year as a school psychologist. She worked at Fortuna High School during the 2018-2019 school year as an intern. As an intern, Ms. Ambrosini met Student in the course of attending his intake meeting with the Department of Rehabilitation as part of the Transition Partnership Program at Fortuna. She had little interaction with Student and has had no contact with him since.

Ms. Ambrosini was charged with reviewing Student's records and interviewing Student's teachers and Fortuna staff who were involved with Student in order to produce a manifestation report to inform the manifestation determination team at the meeting. As an intern, Ms. Ambrosini prepared three manifestation reports and presented them at the manifestation determination meetings, with supervision.

Ms. Ambrosini reviewed Student's initial psychoeducational assessment report from April 2017, his current IEP, dated April 23, 2019, and attendance and discipline records. Ms. Ambrosini also interviewed two of Student's teachers; Mr. Wilson, Student's chemistry teacher; and Ms. Kajtaniak, who was Student's English teacher for the 2019-2020 school year and the 2017-2018 school year, when he was a Freshman. Ms. Ambrosini also interviewed Ms. Stansbury and Mr. Rossman.

Ms. Kajtaniak reported in her interview that Student was very different this year as compared to his Freshman year. In his Freshman year, Student completed tasks with

redirection. This year he was unable to complete tasks even with the support of breaking down the task into smaller steps. This year, Student was melancholy and did not want to be at school. He gave up in class and slept in class.

Mr. Wilson concluded Student's behavior definitely changed during the first quarter of the 2019-2020 school year between the first and second progress report period. Student was doing slightly better in the first progress report period, but then he stopped working and it was tough to get him to do anything. Whenever he was assigned labs, he just stayed in the lecture and would not interact with the labs. Student was often withdrawn, quiet, and did not complete and turn in his assigned classwork.

Ms. Stansbury informed Ms. Ambrosini that Student became highly agitated the night of Student's October 14, 2019, suspension, and threatened his father resulting in his being taken to the hospital overnight. Ms. Stansbury reported that Student's medication had been increased. Following his hospitalization, he was connected to county mental health.

In the course of Ms. Ambrosini's interview of Mr. Rossman, he detailed his discussions with Student regarding each of his suspensions. He provided details about his initial investigation of Student's alleged threats against students and the school.

Ms. Ambrosini reviewed Student's initial and most recent, assessment from April 2017, including scores she termed "significant" on the Behavior Assessment System for Children.

Ms. Ambrosini reviewed Student's current IEP, dated April 23, 2019, which identified Student's disability as autism. His IEP, stated that Student's autism affects his involvement and progress in the general curriculum as it impairs social communication, which impedes his ability to ask for assistance and clarification when needed.

Ms. Ambrosini discussed her interviews with Mr. Wilson, Mr. Rossman, and Ms. Stansbury; but failed to report her interview with Ms. Kajtaniak to the manifestation determination review team. She also did not include in her report Ms. Kajtaniak's interview information that Student had been melancholy, gave up trying in class, slept in class, and did not want to be at school. At hearing, the reason given for this omission by Ms. Ambrosini was that Ms. Kajtaniak was highly emotional when speaking about Student.

Ms. Ambrosini also failed to discuss the information provided to her by Ms. Stansbury regarding Student's threats against his father, subsequent need for hospitalization, and medication changes. At hearing, Ms. Ambrosini conceded that this information would have been important for the manifestation determination review team to have known. She attempted to justify the omission of this information because Ms. Stansbury told her that Mother requested the information to be kept confidential at the time she shared the information on October 15, 2019.

The conduct reviewed at the manifestation determination was Student's conduct for which he was suspended on October 14, and October 23, 2019.

After identifying Student's conduct, Ms. Ambrosini then discussed her opinion that Student's conduct was not a manifestation of his disability because his conduct was not caused by and did not have a direct, substantial relationship to Student's disability

of autism. She explained, referring to the express language of Student's IEP, that this is because the impact of his autism is impairment in his social interaction, which impairs his educational program and his ability to ask for assistance and clarification when needed. She opined that his threats to students and the school, and fight incident, were not related to his impairment in social interaction. She added that Student acknowledged that fighting is wrong and fighting and making threats are not allowed at school. Lastly, Ms. Ambrosini underlined that Student has no history of fighting or threatening behaviors and his only other discipline incidents were for being tardy to school.

After much discussion by Parents regarding their concerns about the discipline and arrest of their son, Ms. Roslosnik delegated the ultimate manifestation determination decision to Mr. Rossman as to whether Student's conduct was caused by or related to his disability, because he is the administrator. Mr. Rossman answered, "I do not believe that it caused him to do the act." Ms. Roslosnik then asked Mr. Rossman if the conduct was the direct result of a failure to implement the IEP. Mr. Rossman answered, "Direct result? No." Having answered no to each of the questions, Ms. Roslosnik stated that the manifestation determination team determined that the conduct was not a manifestation of Student's disability. Parents disagreed.

THE CONDUCT WAS A MANIFESTATION OF STUDENT'S DISABILITY

The overwhelming evidence presented at hearing established that the manifestation determination team had substantial information, shortly into the 2019-2020 school year, that Student was evidencing a significant decline in his mental state. Even an untrained adult would have interpreted the multiple teacher and

counselor reports as an indication that Student was depressed and feeling hopeless. This was before the end of September.

The evidence presented at hearing established that both Mr. Wilson and Ms. Kajtaniak confirmed this drastic change in Student, with Mr. Wilson pinpointing a big change between first two progress reports for the 2019-2020 school year.

Ms. Ambrosini knew that Student's daily dose of anti-depressants was doubled before the end of September, 2019. Within two weeks of that medication change, Student demonstrated serious and unexpected aggressive behavior for the first time ever against his family dog, his Parents, and a classmate Student identified as a friend. At this time, also known to members of the manifestation determination team, Student was hospitalized pursuant to the 5150 gravely disabled hold.

Given all of the above alarming and significant disability information, it was not reasonable for the manifestation determination team to narrow its analysis by defining Student's disability to only autism. It was also not reasonable to narrow the manifestation of Student's autism, based only on the express language of the IEP, namely, impaired social interaction and ability to ask for help. This restricted the team's question to whether the physical altercation and terrorist threat were a manifestation of autism, specifically Student's impaired social interaction and his ability to ask for help. That over restriction led to the wrong conclusion.

The determination of whether a student's conduct is related to his disability is an individualized analysis based on all relevant information, including student's records, observations of teachers, and information from Parents. The manifestation

determination review team here ignored significant and clear evidence that Student was experiencing an abrupt decline in his mental state, and he was being medicated for depression. Ms. Ambrosini's conclusion that Student had not previously demonstrated threatening behavior, knowing that Student had previously threatened his Parents with a knife and threatened and punched his friend at school, was also incorrect. The failure of the manifestation determination review team to consider the specific and unique circumstances of Student's alleged conduct prevented meaningful discussion of whether Student's conduct was a manifestation of his disability or disabilities.

The overwhelming evidence presented at hearing, instead, established that Student's conduct was caused by, and had a direct and substantial relationship to Student's disabilities. Specifically, his conduct was related to his depression and suddenly deteriorating mental state, over a short period of time, combined with his impaired social communication related to his disability of autism, and exacerbating factors, including doubled medication, reduced special education supports, and new special education service providers.

SUBSEQUENT CORROBORATING ASSESSMENT

Following the manifestation determination review team determination, Student was assessed by Dr. Paula Solomon. Dr. Solomon testified at hearing. Student's assessment by Dr. Paula Solomon, following the manifestation determination review meeting, corroborates the legal conclusion that Student's behavior was the direct result of his autism and a sudden and serious mental health decline.

Dr. Paula Solomon received her Ph.D. in Clinical Psychology in 1991, and her Masters of Arts in Clinical Psychology in 1985, from Pacific Graduate School of

Psychology in Palo Alto, California. She received her Bachelor of Arts Degree in Psychology from Temple University, in Philadelphia, Pennsylvania in 1978. She has been a licensed psychologist for over 25 years. Dr. Solomon is currently in private practice and conducts psychological assessments, primarily for children and adolescents. She specializes in Emotional Disturbance, including Mood Disorders, Thought Disorders, and Posttraumatic Stress Disorders, as well as Pervasive Developmental Disorders, Attention Deficit Disorders, and Learning Disabilities. From 2007 to present, she has been a consultant to Multiplicity Therapeutic Services, an agency that provides support and treatment services for clients with developmental disabilities and autism. From 1991 to 2015, she served as Clinical Director of TLC Child and Family Services in Sebastopol, California, which provides residential treatment, out-patient treatment, school, and foster care programs for children and adolescents with emotional disturbance. She has performed hundreds of psychological assessments in her career. Based on her extensive training and experience, her testimony was given great weight.

Dr. Solomon assessed Student between December 13 and December 30, 2019. The purpose of her assessment was to understand Student's psychological functioning to determine whether Student's behavior was a manifestation of his disability. She also conducted a threat assessment in terms of his likelihood to act on the language attributed to him, contained in his records, given the Fortuna High School protocols, structure, and environment. This was to determine his readiness to return to that environment.

Based on her assessment of Student, Dr. Solomon diagnosed Student with Attention Deficit/Hyperactivity Disorder, Autism Spectrum Disorder, and Major Depressive Disorder, recurrent, moderate. Student has a family history of Bipolar Disorder or Schizophrenia, Dyslexia, Depression, and Anxiety. Dr. Solomon noted that Student is at the age typical for onset of Schizophrenia. She testified that based on his test performance, there is a high probability of Schizophrenia, but additional information is required to rule it and other serious conditions out.

Dr. Solomon testified that Student's conduct for which Fortuna is considering him for expulsion may have evidenced a psychotic break. Her clinical findings are generally consistent with the information known to Fortuna employees at the time the manifestation determination review team met. Namely, that Student was suffering from a severe mental decline causing him to behave as he never had before either at home or school. Her opinion that his conduct was a manifestation of his disabilities was convincing and supported by the record.

In sum, the manifestation determination review team reached the wrong conclusion. The conduct for which Student was subject to discipline was a manifestation of his disabilities.

Following a determination that the conduct was a manifestation of Student's disability the law requires that the, "IEP team shall conduct a functional behavior assessment and implement a behavioral intervention plan for the student provided that the local educational agency had not conducted such an assessment prior to such

determination before the behavior that resulted in the proposed change of placement of over 10 days.” (20 U.S.C. § 1415 (k)(1)(F)(i); 34 C.F.R. § 300.530(f)(1)(i).) In the situation where a behavioral intervention plan has been developed, the “IEP team shall review the behavioral intervention plan and modify it as necessary to address the behavior, and return the student to the placement from which the student was removed, unless the parent and the local educational agency agree to a change of placement as part the modification of the behavioral intervention plan.” (20 U.S.C. § 1415 (k)(1)(F)(ii) and (iii); 34 C.F.R. § 300.530(f)(1)(ii) and (2).)

There was no evidence presented that a functional behavior assessment has been completed or a behavioral intervention plan developed. Given the conclusions reached herein, Student is entitled to such.

In making a determination in an appeal of a manifestation determination, a hearing officer may return the student to the placement from which he or she was removed. Alternatively, the hearing officer may order a change in placement to an appropriate interim alternative educational setting for not more than 45 school days, if it is determined that maintaining the current placement of such child is substantially likely to result in injury to the child or to others. (20 U.S.C. § 1415(k)(3)(B)(ii)(I) and (II); 34 C.F.R. § 532(b)(2)(i) and (ii).)

The question of whether maintaining Student in his current placement is substantially likely to result in injury to Student or others is not reached in this decision. Even if such were true, there was no evidence presented at hearing regarding any

possible interim alternative educational settings, nor any request for such by the parties. Accordingly, Student is ordered back to the placement from which he was removed unless the parties reach an agreement otherwise.

REMAINING ISSUES

Having found that Student's conduct was a manifestation of his disability, no further analysis of Student's remaining issues is conducted. Specifically, no conclusions are reached regarding whether Fortuna inaccurately determined that his conduct was not the result of failure to implement his IEP, or if Fortuna predetermined the outcome of the manifestation determination meeting.

CONCLUSIONS AND 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 prevailed on Issue 1(a), the sole issue decided.

ORDER

1. Fortuna shall provide Parents an assessment plan within ten days of this decision, to conduct a functional behavior assessment.
2. The functional behavior assessment shall be expeditiously conducted following parental consent followed by an IEP team meeting to review the assessment.

3. Student is to return to Fortuna High School unless the parties agree otherwise.

RIGHT TO APPEAL THIS DECISION

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

/S/

Rita Defilippis

Administrative Law Judge

Office of Administrative Hearings