

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

SEQUOIA UNION HIGH SCHOOL DISTRICT.

CASE NO. 2023110714

EXPEDITED DECISION

January 5, 2023

On November 21, 2023, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Sequoia Union High School District, called Sequoia Union. At the expedited prehearing conference, the undersigned determined Student's complaint raised one expedited claim that alleged a procedural error at the manifestation determination review meeting. Administrative Law Judge Marlo Nisperos heard this matter by videoconference on December 19, 20, and 21, 2023.

Attorneys Evan Goldsen and Carly Christopher represented Student. Parent attended all hearing days on Student's behalf. Student attended a part of the hearing

on December 20, 2023. Attorneys Eliza McArthur and Justin Manganiello represented Sequoia Union. Kimberly Zilles, Coordinator of Special Education, attended all hearing days on Sequoia Union's behalf.

On December 21, 2023, the record was closed, and the matter was submitted. The undersigned allowed the parties to submit a written list of the cases and statutory authority they referenced during the oral closing arguments. The parties timely submitted their lists by December 27, 2023.

EXPEDITED ISSUE

Did Sequoia Union fail to conduct a legally compliant manifestation determination review on May 8, 2023, by not determining whether Student's conduct on April 28, 2023, was a direct result of Sequoia Union's failure to implement Student's individualized education program, called IEP?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, called IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) 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. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, school personnel may remove the student from their educational placement without providing services for a

period not to exceed 10 days per school year, provided typical children are also without services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3) (2006).)

For disciplinary changes in placement greater than 10 consecutive school days (or that are a pattern that amounts to a change in 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)(1)(C); 34 C.F.R. §§ 300.530(c) & 300.536(a)(1)-(2) (2006).)

The parent of a child with a disability who disagrees with the manifestation determination may appeal the decision by requesting a hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) 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) (2006).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 17 years old and was in the 11th grade, but was not attending school, at the time of the hearing. Student resided within Sequoia Union's school boundaries at all

relevant times. Student was eligible for special education under the primary category of emotional disturbance and secondary category of speech or language impairment.

EXPEDITED ISSUE: DID SEQUOIA UNION FAIL TO CONDUCT A LEGALLY COMPLIANT MANIFESTATION DETERMINATION REVIEW ON MAY 8, 2023, BY NOT DETERMINING WHETHER STUDENT'S CONDUCT ON APRIL 28, 2023, WAS A DIRECT RESULT OF SEQUOIA UNION'S FAILURE TO IMPLEMENT STUDENT'S IEP?

Student contended that at the manifestation determination review meeting on May 8, 2023, the school psychologist attempted to address Sequoia Union's failure to implement Student's IEP and was prevented from doing so by members of the team. Student argued that the team was required to determine if Student's IEP was not implemented and whether that failure was directly related to Student's behavior during the disciplinary incident of April 28, 2023.

It is undisputed that the manifestation determination review team concluded that the April 28, 2023, incident for which Student was disciplined, was a manifestation of Student's disability. Sequoia Union contended that once the team concluded the conduct was caused by Student's disability, it was not required to discuss whether or not there was a failure to implement Student's IEP. Sequoia Union further argued that even if such a requirement existed, the manifestation determination review team engaged in a lengthy discussion of the incident, which included discussing whether Student's conduct was a direct result of its failure to implement his IEP. Sequoia Union claimed that the entire team unanimously agreed to cease discussion of the implementation issues once it determined Student's behavior was caused by his disability.

Conduct is a manifestation of the student's disability if the conduct was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct was the direct result of the school district's failure to implement the student's IEP. (20 U.S.C. §1415(k)(1)(E)(i)-(ii); 34 C.F.R. § 300.530(e)(1)-(2) (2006).)

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

As we use them, these phrases are terms intended to mean the same thing. They refer to conduct that is caused by, or has a direct and substantial relationship to, the child's handicap. Put another way, a handicapped child's conduct is covered by this definition only if the handicap significantly impairs the child's behavioral controls ... it does not embrace conduct that bears only an attenuated relationship to the child's handicap ... If the child's misbehavior is properly determined not to be a manifestation of his handicap, the handicapped child can be expelled. [Citations.] ... When a child's misbehavior does not result from his handicapping condition, there is simply no justification for exempting him from the rules, including those regarding expulsion, applicable to other children ... To do otherwise would amount to asserting that all acts of a handicapped child, both good and bad, are fairly attributable to his handicap. We know that that is not so.

When a school district seeks to discipline a child with a disability for violating a code of student conduct, it must convene a meeting to determine whether the child's conduct was a manifestation of the child's disability. (20 U.S.C. § 1415(k); 34 C.F.R.

§ 300.530 (2006).) This is known as a manifestation determination review. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e) (2006).) It must be accomplished within 10 school days of the decision to change the student's placement. (*Ibid.*)

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) (2006); *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*).) The manifestation determination review team analyzes the child's behavior as demonstrated across settings and across times. (*Comments to 2006 Regulations, supra*, 71 Fed. Reg. 46720.) All relevant information in the student's file, including the IEP, observations of teachers, and any relevant information from the parents, must be reviewed as part of the manifestation determination process. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1) (2006); *Comments to 2006 Regulations, supra*, 71 Fed. Reg. 46720.)

STUDENT DID NOT APPEAL THE DECISION OF THE MANIFESTATION DETERMINATION REVIEW TEAM

On May 8, 2023, Student's manifestation determination review team met to discuss whether Student's behavior on April 28, 2023, was caused by, or had a direct and substantial relationship to his disability, or if his conduct was the direct result of Sequoia Union's failure to implement his IEP. (20 U.S.C. §1415(k)(1)(E)(i)(I)-(II); 34 C.F.R. § 300.530(e)(1)(i)-(ii) (2006).) Parent, Student's attorney, Student's private investigator, and Student's advocate and mentor attended the meeting on Student's behalf. Sequoia Union's attorney, staff, teachers, and service providers also attended the meeting.

Kimberly Zilles, Coordinator of Special Education, began the manifestation determination review meeting by summarizing Student's current IEP. Student's private investigator, Dan Molieri, asked why Student did not have a behavior goal in his current IEP. Scott Kirk, Student's case manager since October 2021 and teacher, explained that based on Student's progress at the time the IEP was developed, Student did not demonstrate a need for a behavior goal.

The manifestation determination review team discussed the disciplinary incident that occurred in the vice principal's office on April 28, 2023. There is some dispute between the parties regarding the specifics. It is undisputed that Student went to the office asking for his water shooting device and it was not returned to him. According to school personnel, the situation escalated and included Student entering a prohibited area, yelling, making threats, and pushing vice principal Emmi backward. Another vice principal intervened and attempted to deescalate the situation, but ultimately a school resource officer and local law enforcement were called. Student left the office before law enforcement arrived. Student was suspended for five days for violating a code of student conduct.

The manifestation determination review team discussed the relationship between Student's behavior and his disability. Cynthia Downey, School Psychologist, explained the function of Student's behavior was to retrieve the water shooting device. Downey related Student's behavior to his primary disability, emotional disturbance, and secondary disability, speech or language impairment. Based on Downey's review of prior psychoeducational reports, she stated that Student struggled with processing and regulating emotions when he was upset and that was related to his primary disability, emotional disturbance. Additionally, reports showed that Student had difficulty expressing himself, reading faces, and had challenges with perspective taking. Downey

informed the team that prior reports noted Student demonstrated severe reactions under normal circumstances, his emotions were unpredictable, he showed extreme mood swings, and challenges with processing impacted his ability to make decisions especially when escalated.

Downey informed the team that they must answer the question of whether Student's behavior, that was subject to disciplinary action, was a direct result of, or did it have a substantial relationship to his disability. Sequoia Union's counsel suggested she believed the answer was yes. The entire manifestation determination review team agreed that Student's conduct on April 28, 2023, was caused by, or had a direct and substantial relationship to his disability.

Here, Student's manifestation determination review team determined that his behavior on April 28, 2023, was caused by, or had a direct and substantial relationship to his primary disability, emotional disturbance. (20 U.S.C. § 1415 (k)(1)(E)(i)(I); 34 C.F.R. § 300.530(e)(1)(i) (2006).) Student did not disagree with the manifestation determination review team's conclusion, nor did he seek to appeal the team's determination. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532 (a) (2006).) As a result, this Decision makes no findings regarding the manifestation determination review team's decision that Student's behavior was a manifestation of his disability.

STUDENT'S MAY 8, 2023, MANIFESTATION DETERMINATION REVIEW TEAM MEETING WAS LEGALLY COMPLIANT

Student contended that after the team determined that his conduct was caused by, or had a direct and substantial relationship to his disability, the team was also required to determine whether his behavior was the direct result of Sequoia Union's

failure to implement Student's IEP. Sequoia Union contended the team's discussion satisfied legal requirements because they discussed not only implementation on the date of the incident and before it, but the team discussed developing a behavior intervention plan. Sequoia Union also argued that at the meeting, Student's representatives did not object or voice disagreement to moving the conversation forward to discuss supports and services after the team determined the behavior was a manifestation of his disability.

After the team determined Student's behavior was caused by his disability, Downey asked if the team needed to consider the second question: whether Student's behavior was a direct result of Sequoia Union's failure to implement his IEP. (20 U.S.C. § 1415(k)(1)(E)(i)(II); 34 C.F.R. § 300.530(e)(1)(ii) (2006).) Jennifer Roberts, Program Specialist, told the team that since they agreed that Student's behavior was a direct result of his disability, they could move forward to discuss supports and interventions. Roberts suggested to move the discussion along due to team members' time constraints.

Sequoia Union's counsel informed the team that the matter was resolved without asking the second question because the answer to the first question was in the affirmative. Sequoia Union's counsel told the team that the district was prohibited from any further disciplinary action due to finding Student's behavior was a manifestation of his disability. The manifestation determination review team, including Student's representatives, agreed to move on to discuss services and supports in anticipation of Student returning to school.

Once a determination is made that the behavior was a manifestation of the student's disability, the IEP team must conduct a functional behavioral assessment and

implement a behavioral intervention plan. If a behavioral intervention plan already exists, the team must review it, and if necessary, modify it to address the behavior. Absent special circumstances, the IEP team must return the student to the former placement unless parent and the school agree otherwise. (20 U.S.C. 1415(k)(1)(F).) In this matter, Student did not allege that Sequoia Union failed to follow the section 1415(k)(1)(F) procedures. Rather, Student only alleged that after finding the conduct was caused by his disability, the review team needed to determine if Student's April 28, 2023, conduct was the direct result of Sequoia Union's failure to implement his IEP. Accordingly, no findings are made in this Decision regarding whether Sequoia Union followed the procedures in section 1415(k)(1)(F).

Student failed to provide controlling authority that established a manifestation determination review team was required to answer both questions stated in title 20 United States Code section 1415(k)(1)(E)(i). Student's argument is not persuasive, that a manifestation determination review team is required to determine if a student's behavior was the direct result of a failure to implement student's IEP, after the team determines student's behavior was caused by their disability. Under the IDEA, there is no additional protection or benefit to a student to require the team to answer question two after it finds a student's behavior was caused by their disability when answering question one. The protection of section 1415(k) is achieved once the team finds a student's behavior was a manifestation of their disability because after that is determined, the school district is prohibited from removing student from their placement for more than 10 days and it is unable to impose additional discipline.

Additionally, Student's argument that both questions must be answered by the manifestation determination review team is not supported by employing the canons of statutory construction when reading section 1415(k). In determining the meaning of a

federal statute, a court must ascertain the intent of Congress in enacting the statute. First, the court looks to the plain language of the statute in light of the entire statutory scheme. The plain meaning of the statute controls unless its application leads to unreasonable or impracticable results. (*E.M. ex rel. E.M. v. Pajaro Valley Unified School Dist.* (U.S. Dist. Ct., N.D. Cal., Mar. 16, 2012, No. C-06-4694 MMC) 2012 WL 909514, pg. 10, citing *Black & Decker Corp. v. Commissioner* (4th Cir. 1993) 986 F.2d 60, 65.)

The plain language of section 1415(k)(1)(E)(i)(I)-(II) states the manifestation determination review team is only required to answer yes to one of the two questions because they are connected with the disjunctive proposition “or”, rather than the conjunctive “and”. As a result, the plain meaning of the statute requires the team to answer only one question in the affirmative, not both. Once the team answers yes to either question in section 1415(k)(1)(E)(i)(I)-(II), it has satisfied the statutory requirement. This interpretation is consistent with the IDEA’s statutory scheme, as discussed above, because a student receives the protections of section 1415(k), once one of the questions in section 1415(k)(1)(E)(i)(I)-(II) is answered in the affirmative.

Here, the manifestation determination review team determined that Student’s conduct was caused by his disability. As a result, the team was not required to answer the second question regarding Sequoia Union’s failure to implement Student’s IEP because the team answered the first question in the affirmative. Student failed to prove by a preponderance of the evidence that Sequoia Union failed to conduct a legally compliant manifestation determination review on May 8, 2023, by not determining whether Student’s conduct on April 28, 2023, was a direct result of its failure to implement Student’s IEP.

CONCLUSIONS AND PREVAILING PARTY

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

Expedited Issue: Sequoia Union conducted a legally compliant manifestation determination review on May 8, 2023, when it failed to determine whether Student's conduct on April 28, 2023, was a direct result of Sequoia Union's failure to implement Student's IEP.

Sequoia Union prevailed on the Expedited Issue.

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.

Marlo Nisperos

Administrative Law Judge

Office of Administrative Hearings