

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

PANAMA-BUENA VISTA UNIFIED SCHOOL DISTRICT.

CASE NO. 2024030698

EXPEDITED DECISION

MAY 15, 2024

On March 19, 2024, Parents on behalf of Student filed a request for due process hearing, referred to as a complaint, with the Office of Administrative Hearings. The complaint named Panama-Buena Vista Unified School District, called Panama-Buena Vista. The Office of Administrative Hearings is referred to as OAH.

On March 21, 2024, OAH designated this case as a dual matter with expedited and non-expedited issues. Administrative Law Judge Alexa Hohensee heard the expedited issues in this matter by videoconference in an expedited due process hearing on April 23, 24, 25, and 30, and May 1, 2024. On April 29, 2024, Student withdrew the non-expedited issues.

Attorneys Amanda Miller, Lindsay Appell, Lauren-Ashley Mendez, and Gabriela Torres represented Student. Mother attended all hearing days on Student's behalf. Attorneys Dee Anna Hassanpour, Anisha Asher, and Lucy Nadzharyan represented Panama-Buena Vista. Denita Maughn, Assistant Superintendent, attended all days on Panama-Buena Vista's behalf.

The parties filed written closing briefs on May 7, 2024. However, OAH did not grant a continuance because this is an expedited matter. The record was closed, and the matter was submitted on May 1, 2024.

EXPEDITED ISSUES

1. On February 28, 2024, when Panama-Buena Vista removed Student from his placement due to an alleged code of conduct violation, did Panama-Buena Vista fail to provide Parents with a copy of their procedural safeguards?
2. Did Panama-Buena Vista fail to provide Parents with written notice of the March 6, 2024 manifestation determination review meeting and provide them verbal notice just hours before the meeting?
3. Did the March 6, 2024 manifestation determination review fail to include all required participants?
4. Did Panama-Buena Vista fail to reach a manifestation determination before the required 10 school days deadline?

5. At the March 6, 2024 manifestation determination review meeting, did Panama-Buena Vista fail to review all relevant information in Student's file?
6. On March 14, 2024 – eight days after the manifestation determination review meeting – did Panama-Buena Vista erroneously and unilaterally determine that the February 25, 2024 incident was not a manifestation of Student's disabilities?
7. Did Panama-Buena Vista predetermine the March 14, 2024 manifestation determination decision?
8. Since removing Student from his placement for more than 10 school days, as of March 13, 2024, did Panama-Buena Vista fail to provide a functional behavioral assessment and behavioral intervention plan?
9. At the March 6, 2024 manifestation determination review meeting, did Panama-Buena Vista fail to select an interim alternative educational setting for Student?

Minor changes were made in the expedited issues for consistency. In this Decision, an individualized education program is called an IEP. An IEP team meeting is attended by IEP team members. A manifestation determination review is called a manifestation determination review or manifestation determination review meeting, attended by participants. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (J.W. v. Fresno Unified School Dist. (9th Cir. 2010) 626 F.3d 431, 442-443.)

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 free appropriate public education, referred to as FAPE, to the child. (20 U.S.C. § 1415(b)(6) & (f); 34 C.F.R. § 300.511; Ed. Code, §§ 56501, 56502, and 56505; Cal. Code Regs., tit. 5, § 3082.) 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 requested the expedited hearing and had the burden of proof on the expedited issues. 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 13 years old and in seventh grade at the time of hearing. Student resided with Parents in Panama-Buena Vista's geographic boundaries at all relevant times. Student was eligible for special education under the categories of autism and speech or language impairment.

ISSUE 1: ON FEBRUARY 28, 2024, WHEN PANAMA-BUENA VISTA REMOVED STUDENT FROM HIS PLACEMENT DUE TO AN ALLEGED CODE OF CONDUCT VIOLATION, DID PANAMA-BUENA VISTA FAIL TO PROVIDE PARENTS WITH A COPY OF THEIR PROCEDURAL SAFEGUARDS?

Student contends Panama-Buena Vista had a duty to give Parents a copy of IDEA procedural rights, but failed to do so, when Student was suspended for five days on February 28, 2024. Panama-Buena Vista contends that there was no requirement to give Parents a copy of their procedural rights when Student was suspended for less than 10 days.

School personnel may remove a student with a disability who violates a code of student conduct from their current placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days. (20 U.S.C. § 1415(k)(1)(B).)

A disciplinary change of placement is defined as removal of a student with disabilities from the student's current educational placement for either more than 10 consecutive school days, or as a series of removals that constitute a pattern of removal because:

- the series of removals total more than 10 school days in a school year,
- the student's behavior is substantially like the student's behavior in previous incidents that resulted in the series of removals, and
- such additional factors as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. (34 C.F.R. § 300.536(a)(1) & (2).)

On the date on which a decision is made to make a removal that constitutes a disciplinary change of placement for a student with disabilities, the school district must notify the parents of that decision and provide them a copy of the procedural safeguards. (20 U.S.C. § 1415(k)(1)(h); 34 C.F.R. §§ 300.504(a)(3), 300.530(h).)

During the 2023-2024 school year, Student was in seventh grade and attended Warren Junior High School, called Warren, in Panama-Buena Vista. Student was on the autism spectrum, lonely, and did not know how to make friends. At school, Student was too shy to speak. Student communicated with teachers and peers using gestures like a thumbs up for yes and a thumbs down for no, short written notes, and an occasional word or two. He carried around stuffed toy animals, called stuffies, and generally acted much younger than his age.

At an IEP team meeting on January 16, 2024, Parent reported that Student said mean things he thought were funny and had to be consistently reminded to treat others how he wanted to be treated. Student's educational records documented a history of laughing at inappropriate things. Year after year, Student's teachers described him as a sweet and polite boy who was well liked by his peers and adults, but very socially awkward. Student had no record of lying.

An assessment of Student conducted by Panama-Buena Vista in January 2024, found Student's cognitive ability to be in the low to very low range, well within the range of intellectual disability. Student's reasoning ability scores were particularly low. Student's assessor concluded that Student demonstrated well below expected levels to reason with logic or identify relationships or patterns that could be generalized with logic to new situations. The assessor also concluded that Student had clinically significant deficiencies in reciprocal social behavior that led to substantial interference with everyday social reactions.

On the weekend of February 24 and 25, 2024, another student at Warren, called Classmate A, contacted Student on the social media platform TikTok. Classmate A told Student it would be funny if Student posted scary videos on TikTok. Classmate A told Student what to say and do in those videos and gave Student the passcode to post videos on a TikTok account called @im.coming.warren666. Student wanted to connect with Classmate A and thought the videos would be funny. Student posted a blank video with audio of Student saying, "I'm coming Warren" and giggling, and a video of a stuffie being stabbed with a knife. Student also posted or reposted a picture sent by Classmate A of an unidentified person holding what appears to be an assault rifle. Classmate A posted threatening comments on @im.coming.warren666 such as "I love school

shootings,” and “I want to end the lives of many students.” Student thought the entire TikTok account was funny and linked it to his personal TikTok account. Classmate A subsequently deleted the account used to contact Student and post comments on @im.coming.warren666.

Parent found out about the posted videos on Monday, February 26, 2024, before taking Student to school, and told Student what he had done was wrong. After picking Student up from school in the afternoon, Parent continued to stress that he had done something wrong and could get in trouble for it.

Warren staff contacted the Bakersfield Police Department and reported the posts on @im.coming.warren666. By Tuesday, February 27, 2024, the police identified Student as the user of the account, interviewed Student and Parent, and determined that Student did not pose a credible threat. Parents did not own any guns, and Student had no access to guns or other weapons. Student had never intended his posts to be threatening, just scary and funny. Student could not remember the account name Classmate A had used, and the police found no activity on Classmate A’s personal TikTok account over the previous weekend.

Of approximately 900 students at Warren, 600 did not attend school on Monday, February 26, 2024, and another 150 went home as soon as they found out about the school shooting threats. School attendance did not return to normal until Wednesday, February 28, 2024, after the principal sent a message to all Warren parents that the police had identified the 12-year-old child who made the threats and determined they were not credible. When Warren administration found out Student was at school on Wednesday, February 28, 2024, they called Parent and sent Student home.

On Thursday, February 29, 2024, the vice principal in charge of discipline, Julie Graves, issued a discipline notice suspending Student for five school days, through March 6, 2024, for violating a school code of student conduct, including the following:

- Education Code 48900.4 – engaging in harassment, threats, or intimidation, and
- Education Code 48900.7 - making terrorist threats against school officials.

Student's February 28, 2024 suspension was for less than 10 school days and did not, at that time, constitute a disciplinary change of placement. The evidence did not demonstrate that any decision had been made on February 28, 2024, to remove Student for more than five days.

Because Panama-Buena Vista had not decided on February 28, 2024, to remove Student for more than five days, Panama-Buena Vista had no obligation to give Parents a copy of the procedural safeguards on February 28, 2024.

Student did not meet his burden of proving that on February 28, 2024, when Panama-Buena Vista removed Student for five days from his placement due to a code of conduct violation, Panama-Buena Vista was required to provide Parents with a copy of their procedural rights. Panama-Buena Vista prevailed on Issue 1.

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ISSUE 2: DID PANAMA-BUENA VISTA FAIL TO PROVIDE PARENTS WITH WRITTEN NOTICE OF THE MARCH 6, 2024 MANIFESTATION DETERMINATION REVIEW MEETING AND PROVIDE THEM VERBAL NOTICE JUST HOURS BEFORE THE MEETING?

Student contends Panama-Buena Vista failed to provide Parents with written notice of the manifestation determination review and instead gave her a few hours' notice of the meeting without revealing the meeting's purpose. Panama-Buena Vista contends there was no requirement to give written notice of the manifestation determination review meeting.

When a decision has been made to change a student's placement because of a violation of a student code of conduct, the school district, the parent, and relevant members of the student's IEP team must review all relevant information in the student's file to make a determination of whether the conduct in question was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(2).)

The manifestation determination review participants analyze the student's behavior as demonstrated across settings and across times. All relevant information in the student's file, including the IEP, any observations of teachers, and any relevant information from the parents must be reviewed to determine if the conduct was caused by, or had a direct and substantial relationship to the student's disability, or was the direct result of the district's failure to implement the student's IEP. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e); *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).)

A manifestation determination review is not an IEP team meeting and different rules apply to notice and attendance requirements. (See 34 C.F.R. § 300.530 [discipline procedures].) The regulations promulgated by the U.S. Department of Education, which is charged by Congress with enforcing the IDEA's discipline provisions, often incorporate regulations from other sections of the IDEA. (See, e.g., 34 C.F.R. § 300.530(d)(1)(i), incorporating 34 C.F.R. § 300.101(a)[students with disabilities subject to discipline must continue to receive educational services].) However, the Department of Education could have, but did not, incorporate the notice provisions applicable to IEP team meetings into disciplinary procedures. Deference may be extended to an agency's perspective when it is authorized to administer a statute and interprets its own regulation or the statute by other means. (*E.M. ex. Rel. E.M. v. Pajaro Valley Unified School District Office of Administrative Hearings* (9th Cir. 2014) 758 F.3d 1162, 1175.)

A school district could be held to IEP team meeting notice requirements if it conducted the manifestation determination review as part of an IEP team meeting. However, Panama-Buena Vista did not convene an IEP team meeting on March 6, 2024. Although it attached the manifestation determination review form to a student information page, meeting summary page, and meeting participation page from its IEP template, and referred to participants as IEP team members, Panama-Buena Vista held only a manifestation determination review. After the manifestation determination review, Panama-Buena Vista's special education administrator Dr. Russell Van Dyke told Parent an IEP team meeting would be scheduled to discuss Student's services considering the manifestation determination.

School psychologist Ashley Colbert testified convincingly that she was in contact with Parent on March 4, 5, and 6, 2024, to schedule a meeting to discuss Student's suspension and any further disciplinary action by the school district. In a conversation

with Parent on the morning of March 6, 2024, Colbert proposed a meeting that afternoon or later, and Parent agreed to a meeting later in the afternoon. Parent wanted an advocate from the Regional Center to join her at the disciplinary meeting because Student was a client of the local Regional Center, which provided services to disabled community members. Parent also wanted her cousin, a psychologist, to accompany her to the meeting. However, Parent was not able to arrange for them to join her on short notice. Parent did not testify as to what role these persons would have in the meeting, or what information they would bring that Parent herself could not convey, but Parent did not request a delay in the meeting to arrange their participation. Colbert testified persuasively that, had Parent asked, she would have rescheduled the meeting for the Regional Center advocate and cousin to attend.

The IDEA's discipline provisions and implementing regulations contain no specific notice requirements. However, Parent was aware from conversations with Colbert over a course of days that a meeting was being scheduled to discuss disciplinary action against Student for his conduct in the TikTok incident. Parent and Student had been interviewed by the police and by vice principal Graves. Parent had copies of the recent three-year assessment of Student and IEP from a month earlier in January 2024. Parent had reasonable notice of the meeting, consented to the proposed date and time, was aware of the purpose of the meeting, and had as much, if not more, information about the incident than Panama-Buena Vista staff. The weight of the evidence did not establish that Parent required written notice of the meeting, or additional time to prepare, to meaningfully participate in the manifestation determination review.

Student cites regulations for notice of IEP team meetings to parents to ensure parental involvement in placement decisions. However, a manifestation determination review is not a placement decision, and the requirements for notice of a placement decision do not apply to the manifestation determination review.

Student also cites OAH decisions holding school districts to the standards of written notice found in the non-discipline provisions of the IDEA. However, prior administrative decisions are not binding precedent (Cal. Code Regs., tit. 5, § 3085), and this Decision declines to apply those standards to a manifestation determination review.

Written notice of a manifestation determination review is not required by statute or regulation. Accordingly, Panama-Buena Vista did not have an obligation to provide Parents with written notice of the March 6, 2024 manifestation determination review.

Student failed to meet his burden of proving by a preponderance of the evidence that Panama-Buena Vista was required to give Parents notice of the manifestation determination review in writing. Panama-Buena Vista prevailed on Issue 2.

ISSUE 3: DID THE MARCH 6, 2024 MANIFESTATION DETERMINATION REVIEW FAIL TO INCLUDE ALL REQUIRED PARTICIPANTS?

Student contends the March 6, 2024 manifestation determination review did not include all required members, specifically, the speech-language pathologist. Panama-Buena Vista contends that different procedural rules apply to a manifestation determination review than an IEP, and it was not necessary to have the speech-language pathologist present at the manifestation determination review.

Within 10 school days of any decision to change the placement of a child with a disability because of a code of conduct violation, the school district, the parent, and relevant members of the child's IEP team must convene a manifestation determination review for the student and determine whether the behavior is a manifestation of their disability. (34 C.F.R. § 300.530(e).) The relevant members of the student's IEP team are determined by the parent and the school district. (34 C.F.R. § 300.530(e)(1).)

Unlike an IEP team meeting, for which the IDEA and California law require specific mandatory members (see, e.g., 34 C.F.R. § 300.321(a); Ed. Code, § 56341, subd. (b)), a manifestation determination review need only include relevant members of the student's IEP team as determined by the parents and school district. Here, neither Parent nor Panama-Buena Vista determined that Student's speech-language pathologist was a relevant member of Student's IEP team required to participate in the manifestation determination review. As discussed at Issue 6, the speech-language pathologist would have had valuable information to share with the team about Student's pragmatic language deficits and missed speech sessions, but she was not a mandatory member and Panama-Buena Vista did not commit a procedural violation by failing to have the speech-language pathologist present.

Student did not meet his burden of proving by a preponderance of the evidence that the March 6, 2024 manifestation determination review failed to include required participants. Panama-Buena Vista prevailed on Issue 3.

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ISSUE 4: DID PANAMA-BUENA VISTA FAIL TO REACH A MANIFESTATION DETERMINATION BEFORE THE REQUIRED 10 SCHOOL DAYS DEADLINE?

Student contends Panama-Buena Vista was required to, but did not, reach a manifestation determination within 10 days of Student's initial suspension on February 28, 2024. Panama-Buena Vista contends Student was suspended on February 29, 2024, and it timely held a manifestation determination review on March 6, 2024, within five school days.

Although Student was formally suspended on February 29, 2024, for five school days, he was also sent home from school on February 28, 2024, for a total suspension of six school days. However, the evidence was unclear on when Panama-Buena Vista made the decision to extend Student's removal to more than 10 school days, effecting a change of placement.

A manifestation determination review is not required to take place until a decision to make a disciplinary change of placement is made. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e).) The IDEA and its implementing regulations do not calculate the time for holding a manifestation determination from the first day of removal, but from the decision to extend the removal beyond 10 school days.

A rule calculating the time for a manifestation determination review from the first day of a student's suspension would be unworkable because a student may be disciplined in a series of short suspensions throughout the school year that may total less than 10 days. (See 34 C.F.R. § 300.530((b)(1) [permitting a series of removals for separate incidents of misconduct].) Such a rule, followed to its logical conclusion,

would require that the school district be either prescient or conduct a manifestation determination review after each day of suspension, on the possibility of a student being suspended for a total of more than 10 school days over the course of the school year.

It can reasonably be inferred from the evidence that once Panama-Buena Vista began arrangements to convene a manifestation determination review, the decision had been made to extend Student's removal to at least March 13, 2024, or what would constitute 11 consecutive school days of suspension. If Student's suspension ended as noticed, a manifestation determination would not have been required.

The earliest Panama-Buena Vista planned to schedule a manifestation determination review was March 4, 2024, the same day Graves interviewed Parent and Student and began discussing possible disciplinary meeting dates with Parent. Therefore, Panama-Buena Vista decided on March 4, 2024, to extend Student's suspension beyond 10 school days, which would effect a disciplinary change of placement. Accordingly, Panama-Buena Vista had 10 school days from March 4, 2024, or through March 18, 2024, to make a manifestation determination.

Panama-Buena Vista emailed its manifestation determination to Parent on March 14, 2024. Panama-Buena Vista's manifestation determination was timely made within 10 school days of its decision to make a disciplinary change of placement for Student.

Student did not meet his burden of proving by a preponderance of the evidence that Panama-Buena Vista failed to reach a manifestation determination within the 10 school days deadline. Panama-Buena Vista prevailed on Issue 4.

ISSUE 5: AT THE MARCH 6, 2024 MANIFESTATION DETERMINATION REVIEW MEETING, DID PANAMA-BUENA VISTA FAIL TO REVIEW ALL RELEVANT INFORMATION IN STUDENT'S FILE?

Student contends Panama-Buena Vista failed to review any documents from Student's records during the March 6, 2024 manifestation determination review meeting. Panama-Buena Vista contends the manifestation determination review participants reviewed all relevant information in Student's file, including Student's current IEP and input from Parent, and made an appropriate determination based on their review and discussions.

The school district, the parent, and the relevant members of the student's IEP team must review all relevant information in the student's file, including the student's IEP, any teacher observations, and any relevant information provided by the parents, to determine:

- if the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability, or
- if the conduct in question 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)(i) & (ii).)

The manifestation determination should analyze the child's behavior as demonstrated across settings and across times. (U.S. Department of Education, Office of Special Education and Rehabilitative Services (OSERS), *Analysis of Comments and Changes to 2006 IDEA part B Regulations*, 71 Fed.Reg. 46591, 46720 (Aug. 14, 2006).)

The weight of the evidence established that the March 6, 2024 manifestation determination review meeting participants did not review all relevant information in Student's file. Nobody brought a copy of Student's current or past IEPs, or copies of Student's assessments, to look at Student's behavior across settings and times. Although Colbert had recently conducted a psychoeducational assessment of Student in January 2024, and both Colbert and Student's special education teacher Jeff Gray had attended Student's January 16, 2024 IEP team meeting, the other Panama-Buena Vista participants had little if any knowledge of Student.

Shelby Carter, Student's general education teacher for physical education, knew Student was autistic with speech impairments, but was unfamiliar with Student's IEP goals and services. Carter did not look at Student's educational records in preparation for the meeting but shared that she had caught Student flipping off other students in her class. Vice principal Graves had never met Student prior to investigating the TikTok incident and had never attended an IEP team meeting for Student or reviewed Student's educational records. Graves did not bring copies of a written interview she had done with Student on March 4, 2024, and did not recall at hearing whether she shared the interview information at the March 6, 2024 meeting. Special education administrator Dr. Van Dyke never met Student, never attended any IEP team meetings for Student, and did not review any of Student's records in preparation for the March 6, 2024 meeting, although as Colbert's supervisor, he confirmed that Colbert had prepared. Dr. Van Dyke was also the supervisor of Student's speech-language pathologist but did not look at the services log to confirm if and when Student had received his speech services.

The primary document reviewed by the participants at the March 6, 2024 manifestation determination review was a four-page draft manifestation determination review form, half of which was filled out by Colbert. One questionable aspect of this document was that Colbert completed it based on multiple hearsay, such as what Graves said that Parent said that Student said. Student's responses to Graves's investigation in his own handwriting were not provided to the participants in the manifestation determination review meeting, including Parents, and the summary on the draft form was sometimes incorrect. For instance, it said Student had admitted to Graves he created the @im.coming.warren666 account, when Student had written repeatedly for Graves that Classmate A created the account, not Student.

The draft document was also problematic because it attempted to summarize relevant information in Student's file in one paragraph, and referenced only a social emotional goal, to identify emotions and thoughts, from October 2021 through January 2023. That goal was discontinued when Student no longer made disruptive vocal noises in the classroom. Colbert testified that the draft document contained another page summarizing Student's educational history, but that page was not contained in either the copy of the draft document or the final document prepared by Dr. Van Dyke from the draft. Colbert's testimony that a more robust draft was prepared for the manifestation review was inconsistent with the final document, uncorroborated, and not credible.

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As discussed at Issue 6, there was extensive information in Student's file over a period of years about Student's well below average cognitive ability, social deficits, lack of foresight, inability to plan, and lack of perspective taking skills relevant to his conduct in the TikTok incident. None of that information was discussed or considered in the March 6, 2024 manifestation determination review.

Notably, the March 6, 2024 meeting participants testified that their opinions were based in part on Student admitting that he knew what he did was wrong. However, the draft document did not give details about when or how Student knew this. Student's expert, neuropsychologist Dr. Vindia Fernandez, interviewed Parent and Student, and opined persuasively that Student likely learned that he did something wrong from Parent after the event and did not have the cognitive capacity or reasoning skills to know that he was doing something wrong on February 24 and 25, 2024.

Dr. Fernandez had a professional demeanor, outstanding credentials, extensive experience assessing students with neurodevelopmental disabilities such as autism, and answered all questions thoroughly and with explanations and examples as needed. Dr. Fernandez was well-prepared and readily identified where information was located in Student's educational records. She reviewed several years of Student's IEPs and assessments, and very persuasively testified about information in Student's educational records that was relevant to Student's conduct in the TikTok incident. Although Dr. Fernandez did not herself assess Student and had limited interaction with Student during her interview with him, her opinion of Student's educational needs as reflected in Student's educational records, and concerning whether Student's conduct for which he was being disciplined was a manifestation of his disabilities, was accorded great weight.

The problems of insufficient and incorrect information at the meeting were necessarily compounded because no decision was reached at the March 6, 2024 manifestation determination review. Instead, the manifestation determination was deferred to Panama-Buena Vista administrators who were not at the March 6, 2024 meeting and did not participate in any of the manifestation determination review discussions.

Student met his burden of proving by a preponderance of the evidence that the participants in the March 6, 2024 manifestation determination review meeting failed to review all relevant information in Student's file. Student prevailed on Issue 5.

ISSUE 6: ON MARCH 14, 2024 – EIGHT DAYS AFTER THE MANIFESTATION DETERMINATION REVIEW MEETING – DID PANAMA-BUENA VISTA ERRONEOUSLY AND UNILATERALLY DETERMINE THAT THE FEBRUARY 25, 2024 INCIDENT WAS NOT A MANIFESTATION OF STUDENT'S DISABILITIES?

Student contends Panama-Buena Vista's own assessments and records have consistently described Student's difficulties with reciprocal social interactions, understanding pragmatics, and identifying behaviors expected in social situations, which are the very difficulties that caused him to be talked into posting threatening videos. Student also contends his conduct was caused by Panama-Buena Vista's failure to implement the speech services in his IEP specifically intended to address these difficulties. Lastly, Student contends Panama-Buena Vista violated manifestation determination review procedures by determining the outcome of the manifestation

determination review after the meeting ended and outside the presence of Parent and the other manifestation determination review participants. Panama-Buena Vista contends the manifestation determination review was timely and appropriately made.

At the manifestation determination review, the team must review all relevant information in the student's file to determine whether the conduct was caused by, or had a direct and substantial relationship to, the child's disability, or was the direct result of the local educational agency's failure to implement the IEP. (34 C.F.R. § 300.530(e).) If the team answers yes to either question, the conduct was a manifestation of the student's disability. (*Ibid.*)

If the parents of a child with a disability, the school district, and the relevant members of the child's IEP team cannot reach consensus or agreement on whether the child's behavior was or was not a manifestation of the disability, the school district must make the determination and provide the parent with prior written notice pursuant to 34 C.F.R. § 300.503. (*Questions and Answers on Discipline Procedures*, OSERS (June 1, 2009).) The regulations, in 34 C.F.R. § 300.532(a), provide that the parent of a child with a disability who disagrees with the manifestation determination under 34 C.F.R. § 300.530(e), may appeal the decision by requesting a hearing. (*Ibid.*, Question F-2.)

MANIFESTATION DETERMINATION MADE AFTER THE MARCH 6, 2024 MEETING WAS NOT A PROCEDURAL VIOLATION

At the March 6, 2024 manifestation determination review meeting, Parent disagreed with other relevant members of Student's IEP team that Student's conduct was not a manifestation of his disabilities. The final determination was deferred to

Panama-Buena Vista's assistant superintendent of educational services. Parent was notified of Panama-Buena Vista's final manifestation determination on March 14, 2024, when Dr. Van Dyke emailed Parent the final manifestation determination document for Parent to sign that she agreed or disagreed with the determination.

Because the participants in the March 6, 2024 manifestation determination review meeting could not reach consensus, Panama-Buena Vista administration appropriately made the decision on Panama-Buena Vista's behalf and notified Parent. This unilateral decision was not a procedural violation of the IDEA's disciplinary procedures. Whether the manifestation determination paperwork sent to Parent on March 14, 2024, met the requirements of prior written notice is not an expedited issue in this case, and is not decided here.

PANAMA-BUENA VISTA'S MANIFESTATION DETERMINATION WAS IN ERROR

Student verbally told Parent, and wrote to Graves in response to her questions, that he posted two TikTok videos based on Classmate A's statement they would be funny, and under the mistaken belief that the videos would make anyone looking at the social media site laugh. Student did not have a history of lying, and Student's educational records supported that Student acted inappropriately to be accepted by his peers, and lacked the understanding of the perspective of others that might have informed him of his misguided attempt to be funny.

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Dr. Fernandez opined persuasively, with citations to specific examples in the record, that Student's conduct was the type of disability-related behavior that Panama-Buena Vista consistently described across years in Student's assessment reports and IEP documents. Panama-Buena Vista documented difficulties with

- reciprocal social interactions,
- understanding non-verbal communication,
- identifying typical behaviors expected in a social situation,
- inappropriate laughter and mimicking others, and
- susceptibility to peer influence.

During the 2023-2024 school year, Student engaged in inappropriate behaviors that he believed would make others laugh and enable him to be accepted. Special education teacher Gray testified that Student liked to initiate actions he thought would make his classmates laugh, such as placing a stuffie in an empty seat as though it was attending to instruction. Both Student's art teacher and Gray caught Student passing inappropriate notes to his classmates. Parent testified that Student explained he engaged in these behaviors because he thought they were jokes that would make his peers laugh. Parent presented at hearing as a concerned and caring parent, and her testimony was repeatedly corroborated by contemporaneous Parent and teacher reports in Student's IEPs and assessments.

Dr. Fernandez explained Student's autism interfered with his ability to communicate socially and interfered with meaningful interactions with others. Her overall opinion from a review of Student's assessments and IEPs was that Student was quite impaired by cognitive and social deficits. Student's cognitive scores were routinely in or near the intellectually disabled range, and he had deficits in adaptive functioning

that could qualify him for an intellectual disability eligibility. Student had trouble with reasoning skills and could not understand the consequences of his actions. Student had great difficulty interacting with peers and mimicked them in a rudimentary attempt to connect. Student tended to engage in disruptive behavior to get a laugh and was easily influenced by others. Student was highly anxious and had selective mutism in the school setting. During Fernandez's interview with him, he did not want to speak with her and collapsed on the ground like a toddler, which was not behavior expected of a 13-year-old boy. Dr. Fernandez pointed again and again to documentation of these deficits and behaviors in Student's IEPs and assessments over the past few years.

Dr. Fernandez also noted that Student's January 17, 2023 IEP offered Student 25 monthly minutes of speech and language services, and his January 16, 2024 IEP offered 50 minutes monthly, to support communication goals of interacting with peers and adults. But Student's services log showed that he had not received speech and language services from January 2023 through September 2023, or in January 2024. She opined persuasively that Panama-Buena Vista's failure to implement Student's speech and language services would have adversely affected his ability to progress on his communication goals and would likely have resulted in a high degree of regression.

At hearing, Dr. Van Dyke opined that the service logs, which were used by Panama-Buena Vista for Medi-Cal billing, might not have been accurately completed by Student's service providers. Dr. Van Dyke's testimony was speculative and contradicted in part by speech-language pathologist Jennifer Austin's testimony that no speech-language pathologists delivered speech services at Warren for the first few months of the 2023-2024 school year. The service log showed no entries by Austin before October 4, 2023, and a contemporaneous October 31, 2023 statement by Austin in a progress report on Student's speech goals attached to the January 16, 2024 IEP stated Student had just

begun speech sessions. It can also be reasonably inferred from Panama-Buena Vista's failure to produce any evidence that Student received his speech services between January 2023 and October 2023, or in January 2024, that such services were not provided. (See *Williamson v. Superior Court of Los Angeles County* (1978) 21 Cal.3d 829, 836, fn. 2 [If a party does not produce evidence that naturally would have been produced, he must take the risk that the trier of fact will infer, and properly so, that the evidence, had it been produced, would have been adverse].)

Dr. Fernandez opined persuasively that Student's very low cognitive ability, lack of reasoning skills, social communication disorder, difficulty in perceiving the perspective of others, and inability to understand the consequences of his actions caused or had a direct and substantial relationship to Student's conduct in posting the TikTok videos for which he was being disciplined. She also opined that Student's lack of understanding of social communication due to Panama-Buena Vista's failure to implement Student's speech and language services directly resulted in Student's conduct.

Colbert opined that Student's conduct was not a manifestation of his disabilities, although she did not articulate her reasons for those conclusions other than the limited information shared in the March 6, 2024 meeting. Colbert admitted she had not known that Student missed a significant number of speech and language sessions. Gray worked with Student daily and was Student's case manager for the 2023-2024 school year, but did not prepare for the March 6, 2024 meeting, and was similarly lacking in detail regarding his conclusion that Student's conduct was not a manifestation of his disabilities.

Besides Parent, the other participants in the March 6, 2024 manifestation determination review meeting were surprisingly unfamiliar with Student or his educational history. Although Colbert had assessed Student in January 2024,

Dr. Fernandez demonstrated a greater familiarity than Colbert with the information contained in years of Student's IEPs and assessments. Therefore, Dr. Fernandez's opinions on whether Student's conduct in question was a manifestation of his disabilities was accorded greater weight than that of Colbert, Gray, and other school district staff and administration at the March 6, 2024 manifestation determination review.

Accordingly, the weight of the evidence established that Student's conduct in the TikTok incident was caused by or had a direct and substantial relationship to Student's disabilities, and that conduct was a direct result of Panama-Buena Vista's failure to implement Student's IEP during portions of the 2022-2023 and 2023-2024 school years.

Panama-Buena Vista's unilateral manifestation determination was not a procedural violation. However, Student met his burden of proving by a preponderance of the evidence that Panama-Buena Vista's determination that the February 25, 2024 incident was not a manifestation of Student's disabilities was in error. Student prevailed on Issue 6.

ISSUE 7: DID PANAMA-BUENA VISTA PREDETERMINE THE MARCH 14, 2024 MANIFESTATION DETERMINATION REVIEW DECISION?

Student contends the outcome of the manifestation determination review was predetermined. Panama-Buena Vista contends the manifestation determination was based on a review of all relevant documents, incidents, and feedback about Student.

Student cites case law concerning placement decisions, not manifestation determinations, in support of his argument that the manifestation determination review was predetermined. A manifestation determination must be made on review

of information by participants determined by the parent and school district and is not the equivalent of a placement decision by statutorily mandated IEP team members. Student cites no statute, regulation, or case law applying the concept of predetermination to a manifestation determination. Accordingly, Student failed to establish that Panama-Buena Vista committed a procedural violation by predetermining the manifestation determination review decision.

Student did not meet his burden of proving by a preponderance of the evidence that Panama-Buena Vista predetermined the March 14, 2024 manifestation determination review decision. Panama-Buena Vista prevailed on Issue 7.

ISSUE 8: SINCE REMOVING STUDENT FROM HIS PLACEMENT FOR MORE THAN 10 SCHOOL DAYS, AS OF MARCH 13, 2024, DID PANAMA-BUENA VISTA FAIL TO PROVIDE A FUNCTIONAL BEHAVIORAL ASSESSMENT AND BEHAVIORAL INTERVENTION PLAN?

Student contends by March 13, 2024, he should have received a functional behavioral assessment or behavioral intervention plan because he had been removed from school for more than 10 days. Panama-Buena Vista contends Student's conduct was not found to be a manifestation of his disability and so a functional behavioral assessment or behavioral intervention plan were not required, and the referral for counseling instead was appropriate.

There are two IDEA discipline statutes that refer to a functional behavioral assessment and a behavioral intervention plan. One allows the manifestation determination review participants to decide whether a functional behavioral

assessment or behavioral intervention plan are appropriate, and the other makes the assessment and behavioral intervention plan mandatory in certain circumstances.

Where disciplinary changes in placement would exceed 10 consecutive school days, the student with a disability must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. (34 C.F.R. § 300.530(d)(1)(ii).) The IEP team determines appropriate services upon a student's disciplinary change of placement. (34 C.F.R. § 300.530(d)(5).)

If the school district, parent, and relevant members of the student's IEP team determine that the conduct in question was a manifestation of the student's disability, then the IEP team must either:

- conduct a functional behavioral assessment, unless the school district conducted one before the behavior that resulted in the change of placement occurred and implemented a behavioral intervention plan for the student, or
- if a behavioral plan was already developed, review the behavioral intervention plan and modify it, as necessary to address the behavior, and return the student to his or her previous placement unless the parent and school district agree to a change of placement as part of the modification of the behavioral intervention plan. (34 C.F.R. § 300.530(f)(1) & (2).)

Student does not argue that the mandatory provisions apply. Rather, Student argues that a functional behavioral assessment and behavioral intervention plan were appropriate to address Student's conduct to prevent that behavior from recurring. However, the weight of the evidence did not establish that the March 6, 2023 manifestation determination review team should have found it appropriate to conduct a functional behavioral assessment and develop a behavioral intervention plan as part of Student's continued services to prevent a future behavior violation.

Student's actions in violation of the school's code of conduct had a direct and substantial relationship to his autism and speech and language impairment. Student had both a social communication disorder, and pragmatic language deficits. Student's difficulties with maintaining peer-to-peer conversations and his inability to understand the perspective of others resulted in consistent documentation of Student's difficulties with peer interactions and inappropriate humor. Nonetheless, the evidence did not establish that a functional behavioral assessment or a behavioral intervention plan were appropriate ways to address Student's communication and social skills needs.

Colbert testified that in March 2024, counseling was a more appropriate way to address Student's conduct. She noted that Student did not have a pattern of problematic behaviors that needed to be addressed by rote behavior interventions and supports. Rather, Student needed to work on understanding behavior expectations and internalize the types of behavior that were acceptable or unacceptable. Colbert opined persuasively that counseling, rather than a behavioral intervention plan, would better ensure that Student was not involved in any further disciplinary action.

Student's physical education teacher noted that Student had flipped off other students in her class, but she had addressed it by speaking with him. Gray testified Student thought a note to other students to "run" was a joke, and that was the type of misunderstanding of behavior expectations and perceptions of humor Colbert opined were better addressed by counseling than a behavioral intervention plan.

Humor was also the type of communication Student's speech provider would address, although speech-language pathologist Austin testified she had not had sufficient opportunity to work in that area with Student before she left Panama-Buena Vista in March 2024.

Colbert had conducted many functional behavior assessments, and explained persuasively that they were performed to see if a pattern of problematic behavior existed that could be addressed with behavior interventions and supports, and not to address one-time incidents such as Student's TikTok postings. Teachers' testimony and educational documents established that Student was quiet and generally kept to himself and was easily redirected if he was off task or distracted in the classroom. Student's expert Fernandez noted that Student responded to positive reinforcement generally and did not opine that a functional behavioral assessment or behavioral intervention plan were appropriate after the TikTok incident. Rather, Fernandez stressed that Student needed social skills instruction and increased language and speech services to teach him to appropriately connect with his peers. In these circumstances, a functional behavioral assessment and behavioral intervention plan were not appropriate to address Student's language and social skills deficits, or to ensure that the behavior violation did not recur.

Student failed to meet his burden of showing by a preponderance of the evidence that Panama-Buena Vista was required to provide him with a functional behavioral assessment and behavioral intervention plan. Panama-Buena Vista prevailed on Issue 8.

ISSUE 9: AT THE MARCH 6, 2024 MANIFESTATION DETERMINATION REVIEW MEETING, DID PANAMA-BUENA VISTA FAIL TO SELECT AN INTERIM ALTERNATIVE EDUCATIONAL SETTING FOR STUDENT?

Student contends Panama-Buena Vista had no authority to remove Student to an interim alternative educational setting because it failed to discuss an alternative placement during the manifestation determination review meeting. Panama-Buena Vista contends there is no obligation to select an interim alternative educational setting at the manifestation determination review meeting.

If it is determined that the conduct is not a manifestation of the student's disability, then normal school disciplinary procedures may be used to address the incident in the same way as they would be applied to non-disabled students. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c).) However, a student with a disability must continue to receive educational services to enable the student to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the student's IEP. (34 C.F.R. § 300.530(d); *Questions and Answers on Discipline Procedures, Answer C-1*, (OSERS, June 1, 2009).)

The student's IEP team determines the interim alternative setting for receipt of educational services after a disciplinary removal. (34 C.F.R. § 300.531.)

Parent and the relevant members of Student's IEP team did not agree at the March 6, 2024 meeting whether Student's conduct was a manifestation of his disabilities or not. That determination was deferred to Panama-Buena Vista's assistant superintendent of educational services.

In the interim, Dr. Van Dyke emailed Shelly Tiffin, the administrator of alternative programs, that the outcome of the manifestation determination review was likely that Student's conduct was not a manifestation of his disability and asked her to follow up on the discipline process for non-disabled students with Parent. Tiffin was out of the office and received the message on Monday, March 11, 2024.

On Friday, March 8, 2024, Parent emailed Dr. Van Dyke about returning Student to Warren on Monday, March 11, 2024. Dr. Van Dyke responded by offering Panama-Buena Vista's alternative education program and saying that he would call Parent Monday to schedule an IEP team meeting to discuss services at that program.

After Parent rejected the offer of placement in the alternative education program, Panama-Buena Vista initiated expulsion proceedings on March 18, 2024, extended Student's suspension pending an expulsion hearing, and placed Student on independent study. On April 12, 2024, after Parent filed for a due process hearing, Panama-Buena Vista rescinded the expulsion and Student returned to Warren on April 15, 2024, where Parent testified he is doing well.

Participants in a manifestation determination review meeting need only decide whether the student's conduct is a manifestation of the student's disability. A full IEP team is required to determine Student's placement and services after the

manifestation determination. Accordingly, the participants in the March 6, 2024 manifestation determination review meeting were not required to select an alternative educational setting for Student.

In addition, Student's suspension did not constitute a change of placement until he had been removed from his current placement for more than 10 school days, or March 13, 2024. For that reason, too, Panama-Buena Vista was not required to decide on different educational setting in which Student would receive his services on March 6, 2024.

Student did not meet his burden of proving by a preponderance of the evidence that Panama-Buena Vista was required to select an interim alternative educational setting at the March 6, 2024 manifestation determination review meeting. Panama-Buena Vista prevailed on Issue 9.

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.

ISSUE 1:

On February 28, 2024, when Panama-Buena Vista removed Student from his placement due to an alleged code of conduct violation, Panama-Buena Vista was not required to provide Parents with a copy of their procedural safeguards.

Panama-Buena Vista prevailed on Issue 1.

ISSUE 2:

Panama-Buena Vista was not required to provide Parents with written notice of the March 6, 2024 manifestation determination review meeting instead of verbal notice hours before the meeting.

Panama-Buena Vista prevailed on Issue 2.

ISSUE 3:

The March 6, 2024 manifestation determination review included all required participants.

Panama-Buena Vista prevailed on Issue 3.

ISSUE 4:

Panama-Buena Vista did not fail to reach a manifestation determination before the required 10 school days deadline.

Panama-Buena Vista prevailed on Issue 4.

ISSUE 5:

At the March 6, 2024 manifestation determination review meeting, Panama-Buena Vista failed to review all relevant information in Student's file.

Student prevailed on Issue 5.

ISSUE 6:

On March 14, 2024 – eight days after the manifestation determination review meeting – Panama-Buena Vista unilaterally determined that the February 25, 2024 incident was not a manifestation of Student's disabilities, but the unilateral determination was not a procedural error. Panama-Buena Vista erroneously determined the February 25, 2024 incident was not a manifestation of Student's disabilities, which was a substantive error.

Student prevailed on Issue 6.

ISSUE 7:

Panama-Buena Vista did not predetermine the March 14, 2024 manifestation determination review decision.

Panama-Buena Vista prevailed on Issue 7.

ISSUE 8:

Since removing Student from his placement for more than 10 school days, as of March 13, 2024, Panama-Buena Vista did not fail to provide a functional behavioral assessment and behavioral intervention plan.

Panama-Buena Vista prevailed on Issue 8.

ISSUE 9:

At the March 6, 2024 manifestation determination review meeting, Panama-Buena Vista was not required to select an interim alternative educational setting for Student.

Panama-Buena Vista prevailed on Issue 9.

REMEDIES

Student prevailed on his expedited claim at Issue 5 that the March 6, 2024 manifestation review team did not consider all relevant information in Student's educational records, and at Issue 6 that Panama-Buena Vista erroneously determined that Student's conduct was not a manifestation of Student's disabilities.

Hearing officers conducting due process hearings on expedited due process complaints have the authority and responsibility to order relief that is appropriate to remedy the alleged violations based on the facts and circumstances of each individual complaint. This is so even though 34 C.F.R. § 300.532(b)(2) authorizes certain specific actions related to placement that a hearing officer also may take in resolving an expedited due process complaint. For example, in a matter alleging an improper manifestation determination, a hearing officer may find that the child did not receive a FAPE if a disciplinary removal was improper and adversely impacted the child. (See 34 C.F.R. § 300.513(a)(2)(iii).) In addition to a conclusion that the child must return to the placement from which they were removed, the hearing officer could further conclude that, during the removal, the child was denied required instruction and services, and that the denial had an adverse impact. In such circumstances, a hearing officer could order the school district to provide compensatory services to remedy the impact of the loss

of instruction and services on the child's receipt of FAPE. (*Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, Question K-6* (OSERS, July 19, 2022).)

However, in instances where a parent's expedited due process complaint includes issues that must be handled in an expedited manner, and includes issues outside of the scope of discipline provisions, the hearing officer may choose to bifurcate the issues and rule on the discipline-related matters in the expedited due process complaint within the shorter timeline. (See 34 C.F.R. § 300.532(c)(2).) Any issues raised in the complaint that are unrelated to discipline could then be resolved in the same manner and timelines as non-expedited complaints. (*Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions, Question K-6* (OSERS, July 19, 2022).)

Student seeks compensatory education for a denial of FAPE during his disciplinary removals. Here, Student's complaint appealed disciplinary decisions that must be heard on an expedited basis, but sought compensatory remedies for denials of a FAPE which are non-expedited claims. OAH bifurcated Student's hearing into an expedited hearing of disciplinary claims on shorter timelines, and a non-expedited hearing of denial of FAPE claims on a non-expedited timeline. This decision decides claims involving Student's disciplinary appeal on a shortened timeline and declines to decide if and to what extent, Student was denied a FAPE during the period of Student's removal, or the amount of compensatory education to be awarded for a denial of FAPE during that period.

Dr. Fernandez opined that Student required an hour of individual educational therapy for every hour of school missed, but did not explain how she calculated

the number of missed school days and whether she was including the five days of suspension, the 10-day period that was not a change of placement, or accounted for Panama-Buena Vista's offer of an interim placement. She also failed to explain how educational therapy would address Student's need for intensive speech and language services or social skills. These factors are better decided after a non-expedited hearing to determine if, or to what extent, Student was denied a FAPE by Panama-Buena Vista's actions or inaction.

The Education Code provides Student with procedures for expunging documents from Student's educational records (see, e.g., Ed. Code § 48923, subd. (c) [expungement of pupil records]), and this Decision declines to decide which documents in Student's file should be expunged or retained.

Student also seeks independent educational evaluations as a remedy for an improper manifestation determination. However, as the determination was found erroneous based on information already in Student's record, it is unclear how a new evaluation would be appropriate relief for the manifestation determination error. (See *Student W. v. Puyallup School Dist.* (9th Cir. 1994) 31 F.3d 1489, 1496.)

Lastly, Student seeks the remedy of legal requirements training ordered for Panama-Buena Vista's staff. However, as Panama-Buena Vista prevailed on all but one alleged procedural claim, and Panama-Buena Vista's loss on the substantive claim was due to the lack of adequate preparation by the participants to the manifestation determination review rather than a misunderstanding of the law, this Decision declines to award legal training as remedy for Student prevailing on Issue 6.

Student's requested remedy of a return to the placement from which he was removed is moot. Student's expulsion was rescinded on April 12, 2024, and Student returned to his placement at Warren on April 15, 2024.

ORDER

All of Student's requests for expedited relief are denied.

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.

ALEXA HOHENSEE

Administrative Law Judge

Office of Administrative Hearings