BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

V.

DOWNEY UNIFIED SCHOOL DISTRICT.

CASE NO. 2025010823

EXPEDITED DECISION

MARCH 10, 2025

On January 23, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Downey Unified School District. Student's complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. This Expedited Decision resolves only the expedited claims.

Administrative Law Judge Tiffany Gilmartin heard the expedited matter via videoconference on February 25, 2025. Father represented Student. Stepmother was also in attendance. Attorney Alefia Mithaiwala represented Downey Unified School District. Jayro Roman, Program Administrator for the Office of Student Services, attended the hearing on Downey's behalf. The record, to include testimony and evidence submitted by the parties, was closed on February 25, 2025.

ISSUES

1. Did Downey Unified School District have a basis of knowledge that Student was a child with a disability prior to when the behavior that precipitated the disciplinary action occurred;

2. Did Downey Unified School District fail to conduct a manifestation determination review of Student prior to removing him from his current school setting for more than 10 school days?

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.)

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing 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, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Student filed the complaint and bears 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).)

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Student was eight years old and in second grade at the time of hearing. Student resided within Downey's geographic boundaries at all relevant times. Student was a general education student who did not have an eligibility determination for special education at the time of hearing.

ISSUE 1: BASIS OF KNOWLEDGE

Student contends that although he had never been assessed and made eligible for special education and related services, he was entitled to the protections of the IDEA relating to discipline, suspension, and expulsion. An incident occurred on December 18, 2024, where Student was alleged to have made inappropriate statements to another student. Downey personnel directed Student to participate in a threat assessment or risk assessment process prior to Student returning to his class. Father objected. Student contends this was a disciplinary removal, that Downey knew Student may have been a child with a disability. and was entitled to the protections of the IDEA including holding a manifestation determination review meeting.

Downey contends Student was not entitled to the IDEA's protections related to discipline. Downey asserts it did not have a "basis of knowledge," that Student may have a disability. Downey argues Father had never expressed any concerns regarding Student's need for special education and related services, nor ever requested Student be assessed for special education. Further, Downey contends Student's teachers never expressed specific concerns about a "pattern of behavior" demonstrated by Student directly to the director of special education or other supervisory personnel, within the meaning of those statutory phrases as interpreted by relevant case law. Downey further argues, Student was never suspended or expelled from school. Downey contends

Father misunderstood the request that Student participate in a risk assessment or threat assessment prior to returning to his classroom as a suspension. Student was and is entitled to return to school.

Title 20 United States Code section 1415(k), and 34 Code of Federal Regulations part 300.530 et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A child with a disability may be suspended or expelled from school as provided by federal law. (Ed. Code, § 48915.5, subd. (a).) If a child with a disability violates a code of student conduct, school personnel may remove that student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3).)

Under federal and state special education law, students found eligible for special education are afforded certain rights in disciplinary matters. Among those rights is the right to a determination of whether the student's misconduct "that led to a disciplinary change of placement" was caused by or directly related to a child's disability. (20 U.S.C. § 1415 (k)(1)(E)(i)(I); 34 C.F.R. § 300.530.) The removal of a special education student from the student's placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a)(1).) For disciplinary changes in placement greater than 10 consecutive school days, or greater than 10 non-consecutive school days that are a pattern amounting to a change of placement, the disciplinary measures applicable to students without disabilities may only 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).) The IDEA prohibits the expulsion of a student with a disability for conduct that is a

manifestation of her disability. (20 U.S.C. §1415(k); 34 C.F.R. § 300.530 et seq.; *Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470, 1481-2, affd. sub. nom. *Honig v. Doe* (1988) 484 U.S. 305 [108 S.Ct. 592, 98 L.Ed.2d 686]).)

These protections extend to students not previously identified as eligible for special education and related services if the school district had knowledge, or is deemed to have had knowledge, that the student was a child with a disability "before the behavior that precipitated the disciplinary action occurred." (20 U.S.C. § 1415 (k)(5)(A); 34 C.F.R. § 300.534(a).) A district that meets the statutory criteria for having the requisite knowledge is considered to have a "basis of knowledge." (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).) A local educational agency is deemed to have knowledge that a student is a child with a disability if, before the behavior that precipitated the disciplinary action occurred, either

i. the parent of the child has expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services; or

ii. the parent of the child has requested an evaluation of the child pursuant to title 20 United States Code section 1414(a)(1)(B); or

iii. the teacher of the child, or other personnel of the local educational agency, has expressed specific concerns about a pattern of behavior demonstrated by the child, directly to the director of special education or other supervisory personnel. (20 U.S.C. § 1415(k)(5)(B); 34 C.F.R. § 300.534(b).)

Here, Student failed to establish that Downey had a "basis of knowledge" that prior to the December 18, 2024, incident, Student was a child with a disability entitling Student to protections under the IDEA. No testimony or evidence supports Father, Stepmother, or Student's teachers had expressed any concern about Student's behavior nor had there been a request for Student to be assessed for special education.

DECEMBER 18, 2024 INCIDENT

On December 18, 2024, Student was reported by a third party to have made an inappropriate statement to another student. Specifically, Student was accused of telling another student he was going to break a ruler and stab the other student with the sharp point. He was also accused of saying he was going to jujitsu all over the other student and stomp his foot till it bled. Downey personnel attempted to verify the veracity of the allegations by speaking with Student; however, Student was not present on campus.

Assistant Principal Dr. Tamara Quinn contacted Father to discuss the incident on December 18, 2024. The statement Student was alleged to have made was serious enough for Downey personnel to want to conduct a potential threat assessment for the safety of other students and a risk assessment to ensure Student's safety. Quinn sent an email to Father on December 18, 2024, where she told Father Student would be unable to return to class until the threat assessment or risk assessment was completed. December 19, 2024, was the last day students were on campus until the winter break ended on January 6, 2025. Student has not yet returned to campus.

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Downey contends Student was never suspended. Student never received a notice of suspension from Downey. School principal Garry Naval testified Student was welcome to return and testified he left voicemails for Father explaining Downey's position.

Jayro Roman, Office of Student Services Program Administrator, echoed Naval's position that Student was not barred from campus, but that Downey's protocols called for a threat or risk assessment to be conducted when reports are received that students may have made potentially threatening statements.

This is in conflict to the email provided by Dr. Quinn to Father on December 18, 2024. Dr. Quinn's email unequivocally states Student would need to participate in a threat or risk assessment prior to returning to class. Dr. Quinn's email directive was never rescinded nor was a subsequent writing provided to Student clarifying Downey's position.

In this case, it is not necessary to determine if the email constituted a disciplinary removal from school unless Student first established he was entitled to the protections of the IDEA. As determined below, Student did not meet that burden.

Student provided no evidence Father or Stepmother had expressed concerns about Student needing special education or related services to any supervisory or administrative personnel at Downey. Nor did Father and Stepmother introduce any evidence they had expressed any concerns to Student's teachers about his need for special education and related services. Neither Stepmother or Father had ever requested Student be assessed for special education or related services prior to the December 18, 2024 incident.

In first grade, Student was invited to participate in Healthy Friendships, a small group, eight-week program offered as part of the general education curriculum to help children create positive and supportive relationships with other students and develop ethical decision making and social responsibility. Father described this program as a punitive program for students with behavior problems. Father argued Student did not have any behavior problems. Father also argued Student's use of classroom fidget tools and gum chewing to help him concentrate during writing time was sufficient to put Downey on notice that Student was a child with a disability. Father's position was not persuasive.

Student's teachers did not identify any specific patterns of behavior that were concerning. Student's first-grade teacher, Michelle Venegas, testified at hearing. She taught first grade for 22 years. She described Student as a fun kid with a great vocabulary who was at or above grade level in all subject areas. She expressed no concerns about his academics. She remembered discussing one incident with Student's family where Student got very frustrated by his backpack. Another adult recognized Student's upset and checked on him. Venegas recognized Student would at times be more frustrated by situations than a typical first grader. The evidence demonstrated Student relayed to her recent changes in his family home life were a potential source of his emotional disruptions. Despite Student's occasional encounters with frustration, Venegas did not consider Student to have a potential disability requiring assessment for special education and related services. Venegas' testimony was credible and given significant weight.

Student's second-grade teacher Ana Jones also testified at hearing. Jones had taught second grade at Student's school since 2020. Prior to 2020 she taught special education at the elementary school level for 24 years. She was well versed in identifying

students who may have potential disabilities requiring assessment for special education. Jones described Student as a smart and hard-working child who was performing at grade level in his subjects. Prior to the December 18, 2024 incident Student had missed almost half of his required school days with excused absences. She argued Student would perform even better than he already was if he was present in class. Father seemed genuinely pleased to hear Jones thought Student to be smart and capable.

Student developed coping strategies for when he got frustrated with activities, like writing, that required sustained attention. Student had no history of disciplinary behavior. Other than the December 18, 2024 incident there were no other reported incidents involving Student during his tenure at Downey. Jones' testimony reflected her knowledge of Student and significant classroom experience teaching second graders. Her testimony was persuasive and given significant weight.

The gravamen of this complaint rests on Quinn's email and the choice Father seemed to understand he was left with which was to either allow his eight-year-old be subjected to an interview by a crisis team or not be permitted to return to school. Despite Father's concerns, Student did not establish any evidence that put Downey on notice that Student was a child with a disability and entitled to protections under the IDEA. Student did not meet his burden to demonstrate Downey had a "basis of knowledge" prior to the December 18, 2024 incident that Student was a child with a disability and entitled to the protections of the IDEA.

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Student failed to establish he was a child with a disability, and thus entitled to the protections under the IDEA. This decision makes no finding on the appropriateness of the email or the impact of the email on Father's understanding of Student's right to return to school. Nothing in this Decision precludes Father from seeking redress through another venue.

FAILURE TO HOLD A MANIFESTATION DETERMINATION REVIEW

Student contends he was entitled to, and not provided, a manifestation determination review meeting under the IDEA prior to his removal from school following the December 18, 2024 incident. Downey contends no manifestation determination review meeting was required because there was no basis of knowledge that Student was entitled to the protections of the IDEA.

As established above, Student failed to meet his burden that Downey had a basis of knowledge that Student was a child with a disability entitled to the protections of the IDEA. Student failed to establish the threshold requirement that Downey had a basis of knowledge, thus, Downey had no obligation to conduct a manifestation determination review pursuant to the IDEA's protections.

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:

Did Downey Unified School District have a basis of knowledge that Student was a child with a disability prior to when the behavior that precipitated the disciplinary action occurred.

Downey prevailed on Issue 1.

ISSUE 2:

Did Downey Unified School District fail to conduct a manifestation determination review of Student prior to removing him from his current school setting for more than 10 school days.

Downey prevailed on Issue 2.

ORDER

1. All Student's requests for relief in the expedited hearing 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.

Tiffany Gilmartin
Administrative Law Judge
Office of Administrative Hearings