

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT

v.

SAUGUS UNION SCHOOL DISTRICT

CASE NO. 2025060318

EXPEDITED DECISION

July 15, 2025

On June 9, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Saugus Union School District, called Saugus. The complaint contained expedited and non-expedited hearing claims. OAH set the expedited and non-expedited matters for separate hearings. The expedited claims proceeded to hearing with no continuances. This Decision addresses only the expedited claims.

Administrative Law Judge Chris Butchko heard this matter by videoconference on July 1 and 2, 2025. The Administrative Law Judge is called ALJ.

Parent represented Student at hearing. Student did not attend the hearing. Attorney Sundee Johnson represented Saugus. Darcie Quinn, Saugus' Director of Student Services, attended all hearing days on Saugus' behalf.

On July 2, 2025, the last day of hearing, the record was closed, and the matter was submitted for decision. The ALJ allowed the parties to file closing briefs by July 8, 2025, but did not continue the matter. Both parties timely filed closing briefs.

EXPEDITED ISSUES

With input from both Student and Saugus, the ALJ rephrased and clarified the issue for expedited hearing from those stated in the parties' prehearing conference statements, as allowed by the holdings in *J.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442-443, and *Ford v. Long Beach Unified School Dist.* (9th Cir. 2002) 291 F.3d 1086, 1090. (But see *M.C. v. Antelope Valley Union High School Dist.* (9th Cir. 2017) 858 F.3d 1189, 1196, fn. 2 [dictum].) No change in substance has been made.

Was Saugus required to conduct a manifestation determination review before making a disciplinary change of placement, specifically before requiring Student to eat lunch alone in an office following behavior incidents?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as IDEA, pursuant to its regulations and California's governing 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 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).)

A parent of a special education student may appeal any decision regarding a student's placement under §§ 300.530 and 300.531, including a decision not to hold a manifestation determination review under § 300.530(e), by requesting an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. 300.532(a) & (c).) 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).)

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 has the burden of proof. The factual statements in this Expedited 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 seven years old and had just completed first grade at the time of the hearing. Student resided within Saugus' geographic boundaries at all relevant times. Student's primary eligibility for special education was as a student with a speech or language impairment. Student also qualified for special education under other health impairment, due to characteristics of attention-deficit/hyperactivity disorder.

ISSUE: WAS SAUGUS REQUIRED TO CONDUCT A MANIFESTATION DETERMINATION REVIEW BEFORE MAKING A DISCIPLINARY CHANGE OF PLACEMENT, SPECIFICALLY BEFORE REQUIRING STUDENT TO EAT LUNCH ALONE IN AN OFFICE FOLLOWING BEHAVIOR INCIDENTS?

Student contends Saugus made a disciplinary change of placement when it required him to eat his lunch alone in an office as punishment for rude comments he made to the adult assistant, called a paraeducator, giving him academic support. Student argues the removal during lunchtime and social isolation imposed because he repeatedly said inappropriate things constituted a change in placement. Student contends that any disciplinary change of placement requires a school to conduct a manifestation determination review.

Saugus counters that no manifestation determination review was necessary, as Student has not been removed from his placement and there has been no change in placement. It argues Student was sent to the office once in response to a specific instance of misbehavior, and returned the next day to write an apology note as a restorative justice practice. Saugus does not concede that these two removals from

class were disciplinary in nature. Saugus further argues that the removals, even if disciplinary in nature, were very brief, and therefore it was not required to hold a manifestation determination review meeting.

MANIFESTATION DETERMINATION REVIEW

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq. (2006), 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 not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. §§ 300.530(b)(1) & (d)(3).)

For disciplinary changes in placement greater than 10 consecutive school days or that are a pattern that amounts to a change of 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)(C); 34 C.F.R. §§ 300.530(c) and 300.536(a)(1).) The district is required to conduct a review to determine if the conduct that is subject to discipline is a manifestation of the student's disability. This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e).)

A manifestation determination review must be accomplished within 10 school days of the decision to change the student's placement. (Ibid.) A disciplinary removal constitutes a change in placement for a child eligible for special education services only if the removal is for more than 10 consecutive days or if there have been more than 10 removals during a school year that constitute a pattern of removals. (20 U.S.C. § 1415(k)(B) and (E)(i); 34 C.F.R. § 300.536(a)(1).) To constitute a pattern, the removals must have happened more than 10 times, involve substantially the same behavior, and must consider the length of each removal, the total time the student was removed from the placement, and the proximity of the removals to one another. (Ibid.)

STUDENT'S INITIAL IEP, PLACEMENT, AND SERVICES

Saugus held an initial meeting to consider Student's eligibility for an individualized education program, known as an IEP, on February 25, 2025, because his speech was very difficult to understand and his difficulty initiating and maintaining attention. The IEP team found Student eligible for special education services under the speech or language impairment and other health impairment categories. Parent believed Student displayed characteristics of autism, but the IEP team found only that Student had "ADHD-like characteristics that impact his alertness" and affected his academic performance. No behavior issues were raised.

In preparation for Student's initial IEP, Saugus conducted psychoeducational and speech and language assessments. The team did not note any behavioral issues and the psychoeducational assessment did not find any maladaptive behaviors, although it reported Student had difficulty sustaining attention, organizing tasks, and staying seated.

The speech assessment found Student's speech was delayed, leading to "observable communication breakdowns." Student's speech was difficult to understand and his receptive and expressive language abilities were below average, ranking in the fifth and second percentiles. The assessor found that he "occasionally exhibits some interpersonal difficulties."

The IEP team agreed Student required support for speech and academics. Student remained in a general education setting and Saugus gave him speech and academic support services. Saugus provided 60 minutes per week of language and speech services in a group setting to work on articulation and expressive and receptive language skills. Saugus also provided 150 minutes per week, delivered in 30-minute sessions, to work on academics, primarily reading and writing.

Parent agreed to the placement and services Saugus offered at the meeting, signing the IEP on February 25, 2025.

STUDENT'S MISBEHAVIOR

A paraeducator began providing part of Student's academic support after Parent consented to the February 25, 2025 IEP. The paraeducator met with Student three times a week on a pull-out basis, removing Student from his classroom to work with him in a separate room. With increasing frequency as the year went on, Student behaved inappropriately with the paraeducator. Student commented on the paraeducator's weight and would touch her arms. The paraeducator told Student not to make those comments and to respect her personal space. The paraeducator disliked being touched.

Student's touching and inappropriate comments occurred frequently, but only with the paraeducator. The paraeducator estimated that Student made 10 inappropriate

comments in the short time that they worked together. On June 5, 2025, when the paraeducator returned Student to his classroom, the paraeducator reported Student's comments to his classroom teacher. On that same day, the teacher brought Student to the principal's office, where he met with the assistant principal. Student's teacher was aware of two other incidents where Student made inappropriate comments to the paraeducator. The assistant principal told Student that his comments were hurtful and unacceptable and that he would come back the next day to write an apology to the paraeducator. Student was very remorseful. Student was in the office for about 15 minutes.

Student returned to the office on June 6, 2025, during his lunch period. Student met with the principal, who had been out at training the previous day. He brought his lunch with him, and worked on his apology to the paraeducator, which included a drawing of a dinosaur. Student ate his lunch in the office. Student was released to the play yard once his apology was written.

Student had some other disciplinary incidents in his first grade year, although the principal viewed him as a typical first-grade student. School staff sent Student to the office once early in the 2024-2025 school year for being aggressive and using inappropriate language with another student. The principal estimated that staff sent Student to the office a total of five or six times during the school year for various disciplinary reasons. Only once, on June 5, 2025, was Student sent to the office for incidents involving the paraeducator.

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STUDENT'S DISCIPLINE

Student did not dispute the testimony presented by Saugus that there had not been 10 disciplinary removals over the course of the school year. Parent testified that Student reported being sent to the principal's office "a lot," but did not quantify the amount. Instead, Student's briefing argues that a manifestation determination should have been held even on the facts as presented by Saugus.

Contrary to Saugus' assertion in briefing, Student was removed from his placement for disciplinary reasons. Being sent to the principal's office is a removal from Student's normal placement, and Student was sent to the office for discipline for making a hurtful comment. Discipline consists of strategies applied to manage student behavior and encourage compliance with the school's rules and expectations. Imposing discipline through restorative justice practices is still discipline.

Saugus also asserts that it did not need to hold a manifestation determination review because Student was out of his placement only for a brief period of time. The length of time students are removed from their placements is a factor to be weighed in evaluating whether a series of removals constitutes a pattern. There is no exclusion from the requirement to hold manifestation determination reviews if students are removed from their placements only for a "brief" time. A loss of educational opportunity for any period of time can trigger a manifestation determination review.

Student's contention that a manifestation determination was required here because there was a single removal from class, however, is not supported under the law or facts. Student argues that title 34 Code of Federal Regulations section 300.536 mandates a manifestation determination review following any disciplinary change of

placement. Instead, that section defines what constitutes a change of placement for purposes of title 34 Code of Federal Regulations section 300.530(e), which requires holding a manifestation determination review following a disciplinary change of placement.

In full, 34 Code of Federal Regulations section 300.536(a) reads:

(a) For purposes of removals of a child with a disability from the child's current educational placement under §§ 300.530 through 300.535, a change of placement occurs if—

(1) The removal is for more than 10 consecutive school days; or

(2) The child has been subjected to a series of removals that constitute a pattern—

(i) Because the series of removals total more than 10 school days in a school year;

(ii) Because the child's behavior is substantially similar to the child's behavior in previous incidents that resulted in the series of removals; and

(iii) Because of such additional factors as the length of each removal, the total amount of time the child has been removed, and the proximity of the removals to one another.

Student was not removed for more than 10 consecutive school days, so he was not subjected to a change of placement under subsection (1). Likewise, Student did not establish he was subjected to a series of removals that constituted a pattern under subsection (2), all of which needed to be met to constitute a change of placement.

Saugus did not remove Student from his placement for more than 10 school days. Student did act inappropriately towards the paraeducator on 10 or more separate occasions, but not all of those were reported to his classroom teacher, only one was reported to school administration, and Student was only disciplined once. A manifestation determination is not triggered by the number of acts of misbehavior, but by the number of disciplinary removals imposed. Student was sent to the office five or six times during the 2024-2025 school year for misbehavior, but that falls short of the 10 removals required to consider whether a series of disciplinary removals constitutes a pattern.

Further, Student has failed to meet the other requirements of the subsection. Student has presented no evidence regarding the other disciplinary events outside of the characterization of one as involving aggressive behavior and inappropriate language toward other students. Accordingly, those events have not been shown to be substantially similar to the June 5, 2025 incident with the paraeducator. Likewise, no analysis can be made of their length, total time, and proximity to each other because Student has not presented evidence about them.

Student failed to meet his burden of proof that Saugus should have conducted a manifestation determination review.

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.

Saugus was not required to conduct a manifestation determination review before making a disciplinary change of placement, specifically before requiring Student to eat lunch alone in an office following behavior incidents.

Saugus prevailed on the sole issue.

ORDER

All Student's requests for 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.

Chris Butchko

Administrative Law Judge

Office of Administrative Hearings