

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

MANHATTAN BEACH UNIFIED SCHOOL DISTRICT.

CASE NO. 2025060927

EXPEDITED DECISION

AUGUST 5, 2025

On June 25, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Manhattan Beach Unified School District, called Manhattan Beach. 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 Tiffany Gilmartin heard this matter by videoconference on July 22, 23, and 24, 2025. The parties' request for written closing briefs was granted, they were timely submitted on July 28, 2025, and the record was closed. The matter was not continued for the closing briefs. The Administrative Law Judge is called ALJ.

Attorney Edwin Egelsee and Danielle Augustin represented Student. Father attended the hearing on Student's behalf. Attorneys Julie Coate, Siobhan Cullen, and Fiona Murphy represented Manhattan Beach. Special Education Director Dr. Kristopher Vegas attended the hearing on Manhattan Beach's behalf.

## EXPEDITED ISSUES

1. Did Manhattan Beach Unified School District conduct an inappropriate manifestation determination meeting on March 31, 2025, by:
  - a. Inaccurately determining that Student's conduct was not a manifestation of his disability; and
  - b. Inaccurately determining that Student's conduct was not the result of Manhattan Beach's failure to implement Student's IEP?

## JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as IDEA, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) 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).)

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 in placement), the disciplinary measures applicable to students without disabilities may be applied to 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) (2006) & 300.536(a)(1)(2) (2006).)

The parent of a child with a disability who disagrees with the manifestation determination may appeal the decision by requesting a hearing. (34 C.F.R. § 300.532(a) (2006).) The hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. 300.532(c)(2) (2006).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f)(3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and 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 13 years old and in seventh grade at the time of the hearing. Student resided within Manhattan Beach's geographic boundaries at all relevant times. Student was eligible for special education under autism. Student had a medical diagnosis of Autism Spectrum Disorder. He had challenges in peer socialization, social-emotional reciprocity, cognitive and behavioral rigidity, self-regulation, specifically attention. Student's operative individualized education program, called IEP, provided that 89 percent of his time was in the general education environment. He received 225 minutes weekly of specialized academic instruction, 1350 minutes of group aide support to help with inattentive behavior during academic class periods, and 40 minutes monthly of group counseling with individual check-ins as needed.

Student was suspended for five school days on March 19, 2025, pursuant to Education Code Sections 48900, possession of a firearm, and 48915(c)(1) recommendation for expulsion of a student determined to have a firearm at school. On May 30, 2025, the Manhattan Beach Unified School District notified Parent of its decision to expel Student for one year.

## MARCH 19, 2025 BEHAVIOR INCIDENT

On March 19, 2025, Student was overheard by other students and adults on campus stating he had a knife in his backpack. His physical education teacher, Susan Steinmetz, reported this information to principal Luke Olesiuk. Olesiuk initiated security practices to isolate Student's backpack and investigate the allegations. Student was brought to Olesiuk's office where he determined no weapons were on Student's person. Student's backpack was searched and a handgun and an empty ammunition magazine designed for another type of handgun were discovered in his backpack. The weapon was secured and the matter was forwarded to Manhattan Beach Police Resource Officers. Neither Student nor Olesiuk testified at this hearing.

Student initially reported he did not know who put the firearm into his backpack. School personnel reviewed security cameras and determined Student's statement was false. When confronted with this information, Student admitted he purposely brought the weapon and ammunition magazine to school.

### ISSUE 1a: DID MANHATTAN BEACH UNIFIED SCHOOL DISTRICT INACCURATELY DETERMINE STUDENT'S CONDUCT WAS NOT A MANIFESTATION OF HIS DISABILITY?

Student contends Manhattan Beach inaccurately determined Student's conduct was not a manifestation of his disability. Specifically, Student argues Manhattan Beach completed a cursory investigation and failed to consider any facts or circumstances that led to Student's behavior and his objective in bringing a weapon to school. Student argued the manifestation determination review was flawed because Parent did not receive a copy of Student's May 23, 2024 final IEP. Parent did not feel like an equal

member of the manifestation determination review team. Student alleged the manifestation determination team did not review how Autism impacts Student's behavior and life. Student asserts the review team failed to identify Student's objective for bringing the weapon and ammunition magazine to school on March 19, 2025. Student argued none of the Manhattan Beach review team members reviewed any witness statements, investigation reports, threat assessments, outside evaluations, spoke to Student, spoke to Parent, spoke to Student's treating therapist, or reviewed the disability of Autism and its manifestations. Finally, Student alleges Manhattan Beach was on notice Student had mental health concerns, and failed to explore fully how his mental health might have caused or had a direct and substantial relationship to the behavior.

Manhattan Beach asserts it conducted an appropriate manifestation determination review, reviewed all relevant information in Student's file, and correctly determined bringing a gun and an ammunition magazine to school was not a manifestation of Student's disability. Manhattan Beach contends the manifestation determination review satisfied the procedural requirements as established in the IDEA when it convened a review within 10 days of suspending Student.

The manifestation determination review meeting convened on March 31, 2025. Present for the team meeting included

- Parent,
- physical education teacher Steinmetz,
- school principal Olesiuk,
- special education representative Zulma Biddle,
- school psychologist Emilie Haft,

- special education coordinator Allison Desfor,
- director of special education Kristopher Vegas, and
- attorneys for Parent and Manhattan Beach.

Student's May 23, 2024 IEP provided Student with 225 minutes weekly of specialized academic instruction, 1,350 minutes weekly of a group aide for assistance with inattentive behavior during academic classes, and 40 minutes monthly of group counseling and guidance, with individual check-ins. Student had seven goals, four goals related to academics and work completion, one social skills goal to work on his inattentiveness during class time and using appropriate language in a classroom environment, a focus goal to develop on-task behavior, and a counseling and guidance goal to work on self-determination while navigating unfavorable or challenging academic or social situations. Specifically, Student struggles to accept personal responsibility and tends to blame external factors for his academic and behavioral challenges.

Dr. Vegas facilitated the manifestation determination review. As the special education director at Manhattan Beach since 2020 he is responsible for overseeing special education programs in the district. Dr. Vegas facilitated five manifestation determination reviews in his career. He holds a doctorate in educational psychology. During the manifestation determination review meeting, Dr. Vegas gave each member of the manifestation determination review team an opportunity to provide input. He then went around the room again and asked each member for their findings. Student argued Dr. Vegas lacked the necessary training and experience to lead a manifestation determination review, but provided no evidence to demonstrate any deficiencies of Dr. Vegas' skills and experience. Dr. Vegas did not impose his position on any member of the team and listened to team members as they grappled with their decision, to

include acknowledging doubt. His testimony was consistent with the evidence and given significant weight. Ultimately, the Manhattan Beach members of the manifestation determination team agreed that Student's conduct was not caused by or had a direct or substantial relationship to Student's disabilities on March 19, 2025.

School psychologist Haft prepared the manifestation determination report for the team to review. Her report included input from Student's general education academic teachers, resource teacher, and physical education teacher. Haft's report was read during the meeting. The team reviewed Student's strengths, a discussion of the incident, Student's current IEP services and goals, academic progress, present levels, and teacher input. Parent shared during the meeting Student recently became eligible for Regional Center services. Student's documented behaviors at school included calling other students names and punching a student who took his hat.

How Student's autism impacted his functioning was addressed by Haft. Haft holds a master's degree in school psychology and is a credentialed school psychologist. Haft also was the service provider for Student's IEP counseling services and counseling goal. Haft recognized other providers on campus, specifically Student's resource teacher, had stronger connections to Student. Haft reviewed Student's reactive behavior as part of her analysis. Haft's testimony was thoughtful and given credibility for acknowledging the strengths and weaknesses of her relationship with Student and was consistent with the evidence. Her testimony was given significant weight.

Student's expert Robin Morris holds a Doctor of Psychology. Dr. Morris completed a private psychological evaluation of Student on June 16, 2025, after the incident. As part of her psychological evaluation, Dr. Morris completed a records review, a battery of standardized testing of Student, and an interview with him and Parent.



Dr. Morris testified at the hearing and provided a copy of her report. Dr. Morris determined that Student's conduct was caused by and had a direct and substantial relationship to his disability.

Dr. Morris' testimony was not persuasive. Bringing a weapon and ammunition magazine to school required deliberateness. Student systematically searched his Parent's home for the weapon. Morris' own report stated Student searched the home for the weapon. The weapon was in a locked closet, in a locked gun box, with a key hidden in Parent's bedroom. Student continued to search for the ammunition magazines Parent testified he kept stored separately from the weapons. Student then concealed the weapon from discovery. It is unknown how long Student was in possession of the weapon prior to it being discovered at school. Ultimately, Student placed the weapon and ammunition magazine in his backpack, brought them to school, and told others he had a weapon, albeit a knife, in his backpack. Dr. Morris was unable to explain how Student's historical behaviors, including lack of self-control, sensory processing, and misunderstanding group dynamics, were consistent with the deliberateness needed to bring the weapon to school. Morris' testimony glossed over the calculation and deliberateness of Student's behavior in searching for, finding, concealing, and ultimately bringing a weapon to school. She had no credible answer for how Student's demonstrated calculated and deliberate behavior were manifestations of or caused by his autism.

Dr. Morris attempted to reconcile the weapon situation by testifying that if Student were "savvy," he would have claimed someone else put the weapon into his bag. This further undermined Morris' persuasiveness because, despite conducting

review of Student's record and the manifestation determination review report, Morris' testimony indicated she was unaware Student initially claimed such an occurrence. Her testimony was given little weight.

Student argues Manhattan Beach failed to consider the specific circumstances of the incident, specifically, that the manifestation determination team did not determine Student's motive for bringing a weapon to school. Parent testified at hearing that Student was motivated to bring the weapon to school to impress another student in his afterschool program. Student cites no authority establishing the requirement for a manifestation determination review team to determine a student's motive for engaging in the behavior. Student seeks to impose a different burden than is required by law. Additionally, even had Student brought the weapon to school to impress a friend, Student did not establish that would make it more likely a manifestation of his disability.

Further, Student argued the manifestation determination review team's findings were based only on the conclusion that Student brought a weapon to school and did not provide any specific considerations to where the behavior arose. Student makes a case comparison to the facts presented in *Bristol Township School District v. Z.B* (No. 15-4604, 2016 WL 161600 at E.D. Pa. Jan 14, 2016). Here, Student's argument is misplaced. First, the facts in dispute in *Bristol Township* involve an in-the-moment argument between a student and a teacher. At the manifestation determination review meeting in *Bristol Township*, the team concluded student's aggressive behavior was inconsistent with ADHD and no one had witnessed such behavior from student in the past. What the hearing officer identified as error was the fact the manifestation determination review

team's judgment was clouded by a student's assault on a teacher. Further, the hearing officer found sufficient evidence to support student did exhibit more aggressive and uninhibited behaviors when his ADHD was not well managed.

Here, the facts are patently distinguishable. Student's behavior was not an in-the-moment reaction. As discussed above, Student's behavior happened over an extended period of time and included numerous steps. Student's behavior was not impulsive, and not related to a lack of self-control. In contrast, Student's behavior demonstrated a fixed purpose and a calculated effort to systematically find the locked gun box, find the key, find the ammunition magazines, and then hide the gun in his backpack. Moreover, the evidence established the Manhattan Beach members of the manifestation determination review team were reflective in their decision-making process and not blinded by the egregiousness of Student's behavior.

Student further argues the manifestation determination team did not understand how Student's autism impacted his behavior. This is unsupported by the evidence. Manhattan Beach personnel understood Student's behavior and demonstrated understanding on what was consistent behavior for Student. Olesiuk and Steinmetz participated in the manifestation determination review. Steinmetz was the teacher who reported Student's claims of having a knife on his person during PE. Olesiuk had a history of dealing with Student in other disciplinary scenarios and identified the weapon as a severe escalation. Steinmetz, as well, described her history with Student and his age-typical behaviors such as foul language or not dressing for class. His resource teacher, Biddle, described Student's typical behavior during her sessions and his need

for focus prompting and tendency to play games rather than completing his assignments. She never encountered any behaviors consistent with bringing a weapon to school.

Conduct is a manifestation of the student's disability if the conduct was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct was the direct result of the school district's failure to implement the student's IEP. (34 C.F.R. § 300.530(e)(1) & (2). (2006.)

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

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

Student raises for the first time in his closing brief that Manhattan Beach should have delayed the manifestation determination review meeting because it did not have enough information to make a determination. Student argues a previous OAH decision found the District erred by not pausing the manifestation determination review meeting until further evidence was gathered.

Student provided no legal basis for Manhattan Beach to pause its requirement to hold the manifestation determination within the statutory legal timeline. OAH decisions are not binding authority. (Cal. Code Regs., titl. 5 § 3085.). Student misses a key distinction in the case cited. Student in that case put on sufficient evidence that her conduct was a manifestation of her disability. In the instant case, Student failed to meet his burden. Student points to a statement in the manifestation determination report from Student's English teacher, who did not testify at this hearing, that stated she had heard from the administration Student was struggling with mental health. The evidence supported this statement and the views reflected were not shared by other members of the manifestation determination review team, including Parent. Student provided no evidence that Manhattan Beach failed to consider any recent mental health changes, hospitalizations, periods of emotional and behavioral dysregulation or new diagnosis made through his personal medical providers.

Student did not meet his burden to demonstrate the actions of March 19, 2025, were caused by or had a direct and substantial relationship to his disability, specifically autism.

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ISSUE 1b: DID MANHATTAN BEACH UNIFIED SCHOOL DISTRICT  
INACCURATELY DETERMINE STUDENT'S CONDUCT WAS NOT THE RESULT  
OF ITS FAILURE TO IMPLEMENT STUDENT'S IEP?

Student contends Manhattan Beach failed to consistently implement the 40 minutes monthly of group counseling. Manhattan Beach contends the May 23, 2024 IEP was implemented and any missed counseling sessions were the result of Student's absence from school or Student no show.

Student had the burden of proving Student's conduct during the March 19, 2025 incident was a direct result of Manhattan Beach's failure to implement his May 23, 2024 IEP, specifically, the 40 minutes monthly of group with individual check-in designated instructional service counseling Student's IEP provided. Student missed his monthly check-ins in August and November due to absence. Student received 20 minutes in January, but failed to attend two times when Haft sent for him.

Manhattan Beach offered the counseling to address, among other behaviors, Student

- accepting responsibility for his actions,
- showing self-determination in navigating unfavorable or challenging academic or social situations,
- recognizing and prioritizing his strengths, and
- brainstorming possible solutions and selecting the best one with no more than two prompts.

Haft established she met with Student except when he was not at school or did not respond to her call slip. She further explained that they worked on the behavior identified in his goal which was showing self-determination and working on issues he felt he could not control.

Student did not establish that as a matter of law, Manhattan Beach failed to implement his counseling services. A question exists regarding whether absences or a Student's refusal to access services constitutes a failure to implement an IEP. However, even assuming that a failure to implement Student's IEP was established, Student did not meet his burden to demonstrate that Manhattan Beach's failure to provide all counseling minutes had a causal relationship to Student systematically searching his home, including a locked closet, finding a locked gun box, searching for the key, and then hiding the weapon in his backpack before bringing it to school.

Student did not prove his conduct on March 19, 2025, was a direct result of Manhattan Beach's failure to deliver counseling service pursuant to his May 23, 2024 IEP.

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## 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 1a:

Student failed to prove Manhattan Beach Unified School District failed to accurately determine Student's conduct on March 19, 2025, was a manifestation of his disability.

Manhattan Beach prevailed on Issue 1a.

### ISSUE 1b:

Student failed to prove Manhattan Beach Unified School District failed to accurately determine Student's conduct was not the result of its failure to implement Student's IEP.

Manhattan Beach prevailed on Issue 1b.

## ORDER

1. The March 31, 2025 manifestation determination that Student's conduct was not caused by, or a direct or substantial relationship to, Student's disabilities is affirmed.



2. The March 31, 2025 manifestation determination that any failure to implement the IEP was not a direct result of Student's conduct is affirmed.
3. All relief sought by Student from the expedited hearing is 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