

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL DISTRICT.

CASE NO. 2026010230

EXPEDITED DECISION

February 19, 2026

On January 8, 2026, the Office of Administrative Hearings, called OAH, received a due process hearing request from Parent on behalf of Student, naming Capistrano Unified School District, called Capistrano. The complaint contained expedited and non-expedited claims. OAH set the expedited and non-expedited matters for separate hearings. The expedited claims proceeded to an expedited hearing with no continuances. This Decision addresses only the expedited claims.

Administrative Law Judge Alexa Hohensee heard this expedited matter by videoconference on February 3 and 4, 2026.

Parent represented Student, assisted by Stepparent. Parent and Stepparent attended all hearing days on Student's behalf. Attorney Ernest Bell represented Capistrano. James Crowell, Capistrano's Coordinator of Special Education, attended all hearing days on Capistrano's behalf.

On February 4, 2026, the last day of hearing, the record was closed, and the matter was submitted for decision. The ALJ allowed the parties to file closing arguments by February 12, 2026, but did not continue the matter. Student and Capistrano filed timely closing arguments.

EXPEDITED ISSUES

Student's expedited issues are stated below. An individualized education program is called an IEP.

1. Was Student's conduct reviewed at the manifestation determination review meeting on December 1, 2025, caused by or have a direct and substantial relationship to, his disability, or the direct result of Capistrano's failure to implement his IEP?
2. Did Capistrano predetermine that Student would be expelled prior to the December 1, 2025 manifestation determination review?

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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 et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) All references in this Decision to the Code of Federal Regulations are to the 2006 edition. 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., 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 allowed by federal law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).)

When a school district seeks to discipline a student with a disability for violating a code of student conduct, and such discipline results in a change of placement, the school district must convene a meeting to determine whether the student's conduct was a manifestation of the student's disability. (20 U.S.C. § 1415(k); 34 C.F.R. § 300.530(e).)

This is known as a manifestation determination review. The manifestation determination must be made by the school district, the parents, and relevant members of the IEP team, as determined by the parents and the school district. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e).)

An ALJ may order that a special education student be returned to his or her pre-disciplinary placement if the ALJ determines that the conduct was a manifestation of the student's disability or the result of the failure to implement the student's IEP. (20 U.S.C. § 1415(k)(3)(B); 34 C.F.R. § 300.532(a) & (c).)

The parent of a special education student may appeal a school district's determination that the conduct resulting in a disciplinary change of placement was not a manifestation of the child's disability 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 rules for a due process hearing under title 20 United States Code section 1415(k), must be consistent with those for other IDEA hearings. (34 C.F.R. § 300.532(c)(1)(a) (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 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 12 years old and in seventh grade at the time of the hearing. Student resided with Parent and Stepparent within Capistrano's geographic boundaries at all relevant times. Student was eligible for special education under the category of other health impairment due to deficits in attention and executive functioning, or decision-making. These deficits resulted from Student's attention deficit hyperactivity disorder, called ADHD, that adversely affected his educational performance.

ISSUE 1: WAS STUDENT'S CONDUCT REVIEWED AT THE MANIFESTATION DETERMINATION REVIEW MEETING ON DECEMBER 1, 2025, CAUSED BY OR HAVE A DIRECT AND SUBSTANTIAL RELATIONSHIP TO HIS DISABILITY, OR THE DIRECT RESULT OF CAPISTRANO'S FAILURE TO IMPLEMENT HIS IEP?

Student contends Capistrano members of the manifestation determination review team disregarded Parent's input and incorrectly determined the conduct for which Student was disciplined was not a manifestation of his disability. Student also asserts Capistrano members of the review team failed to appropriately consider the two questions of whether his conduct was caused by the disability itself, or the result of a failure to implement his IEP.

Student asserts his conduct was a manifestation of his disability. He contends he acted during a panic attack he experienced as a result of being bullied, combined with impulsivity as a symptom of ADHD and chemical imbalances in his brain due to a medication change.

Capistrano contends it considered all relevant information during the manifestation determination review, and correctly determined the conduct for which Student was disciplined was not a manifestation of his disability.

Within 10 days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the school district must convene a manifestation determination review meeting. The members of the manifestation determination review must include a school district representative, the parent, and relevant members of the Student's IEP team. (20 U.S.C. § 1415(k)(1)(E).)

At the manifestation determination review, the participants must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents. (20 U.S.C. § 1415(k)(1) (E).) Based on that review, the participants must determine if the conduct in question was:

1. caused by, or had a direct and substantial relationship to, the child's disability; or
2. the direct result of the school district's failure to implement the IEP.

(20 U.S.C. § 1415(k)(1)(E)(i)(I) & (II).) If the members of the manifestation determination review find either one applicable to the conduct for which the special education student was disciplined, the conduct must be determined to be a manifestation of the student's disability. (20 U.S.C. § 1415(k)(1)(E)(ii).)

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 student's behavior was or was not a manifestation of the disability, the school district must make the determination itself. (*Questions and Answers on Discipline Procedures* (Office of Special Education and Rehabilitative Services, June 1, 2009) 52 IDELR 231, Question F-1.)

THE INCIDENT

Student attended middle school in Capistrano. On November 7, 2025, Student was suspended for assaulting another middle school student, Student A. The events surrounding the assault are not in dispute. There were many witnesses, Student confessed, and the assault was videorecorded on a school security camera and on at least one other student's cell phone.

Two days prior to the incident, Student was upset that Student A told other students Student had stolen Student A's bike helmet and called Student a thief. On November 5, 2025, Student confronted Student A and told him if Student A did not stop calling Student a thief, Student would beat him up. Student A did not stop calling Student a thief.

On the morning of Friday, November 7, 2025, approximately 10 minutes before school started, Student told several students that he was going to beat up Student A when Student A arrived at school. Student walked to the area where students park their bikes and waited for Student A. Approximately two minutes later, Student A arrived and was parking his bike when Student came up behind him, put Student A into a chokehold and hit him repeatedly in the head. Student then wrestled Student A to the ground and kicked Student A in the head and stomped on Student's neck. At that point, adults arrived and stopped the attack.

After the incident, Parent picked up Student and drove him home, leaving Student's bike at the middle school. Capistrano gave Parent written notice that Student was suspended for five school days, starting November 10, and returning November 18, 2025.

The notice stated that Student would not be allowed on the middle school campus during school hours. Instead, for the period of suspension, Capistrano offered Student classes at its alternate suspension program on a different campus.

PENDING FUNCTIONAL BEHAVIOR ASSESSMENT

At the time of the incident, Capistrano was completing a functional behavior assessment of Student. The functional behavior assessment was conducted in fall 2025 at Parent's request. Parent was concerned that Student's teachers were reporting Student was off task and failed to comply with academic requests by

- putting his head down,
- pulling his hoodie over his head,
- talking to peers,
- throwing objects,
- whispering instigating things to peers, and
- being on his phone.

Student was also frequently absent and did not complete homework, which resulted in poor grades.

The functional behavior assessment was conducted by Dr. Zeina Yousof, who had doctorate degrees in special education and school psychology, practiced as a psychologist for over 15 years, and taught classes in educational psychology at the university level, including on how to conduct assessments. Dr. Yousof assessed Student three times over a two-year period. She conducted a functional behavior assessment of Student in late 2024, the psychoeducational portion of a multidisciplinary assessment in

February 2025, and a functional behavior assessment in November 2025. Student frequently visited Dr. Yousof's school counseling office during fall 2025. Dr. Yousof personally investigated the incident by viewing videos of the attack, interviewing Student, and interviewing witnesses.

Dr. Yousof testified at hearing with a professional demeanor, and answered all questions readily and thoroughly. She explained the results of her assessments of Student and how those results affected Student's educational performance and social interactions at school. She described the symptoms of ADHD exhibited by Student and her observations of Student during fall 2025. Dr. Yousof was familiar with Student and his diagnoses, and was a credible and convincing witness. Her opinions on Student's processing deficits, diagnoses, and whether certain psychological factors caused or contributed to Student's conduct for which he was disciplined, were uncontradicted by another mental health professional and given great weight.

Dr. Yousof conducted the functional behavior assessment in fall 2025 by interviewing Parent and teachers, reviewing Student's educational records including prior assessments, observing Student in the classroom and on the playground, and analyzing data collected during observations.

Parent told Dr. Yousof she was concerned about Student's inability to focus due to ADHD, which made it difficult for him to complete assignments. Parent worried that academic expectations caused Student to have panic attacks and leave the classroom.

Teachers interviewed by Dr. Yousof stated consistently that Student struggled with focus and turning in work, and distracted his classmates. Several teachers noted that Student was frequently absent, left school early due to physical ailments, and often

left the classroom. Each of the teachers said Student had the ability to do the work and perform well, but was receiving poor grades by failing to make up missed classwork. One teacher stated Student appeared overwhelmed by missed instructional content.

Among the records reviewed by Dr. Yousof was a private psychological assessment obtained by Parents in October 2024, in which Parents' concerns were Student's dishonesty, sneaking out of the house, disregard for rules, and noncompliance at school. The author of the private psychological assessment did not testify, and appears to have relied on Parent and Student reports without input from Student's teachers. Student's teachers had received questionnaires from the private psychologist, but Parent refused to allow Student's teachers to return them to the private psychologist directly, and collected them herself instead.

The private psychologist's assessment report concluded Student had high-average cognitive ability. However, the private psychologist also diagnosed Student with ADHD and conduct disorder because Student exhibited hyperactivity, aggression, and conduct problems by

- cheating,
- rule-breaking,
- deception,
- being argumentative, and
- being defiant.

The private psychologist recommended Student's school create a behavior management plan for Student. After receipt of this report, Capistrano conducted a functional behavior assessment in spring 2025, but the resulting functional behavior assessment report was not offered into evidence and no testimony about that assessment report was given at the expedited hearing.

Dr. Yousof reviewed educational records completed by Parent, including a December 2024 health and developmental history and a January 2025 parent input form, which stated Student had a short attention span and

- was impulsive,
- disruptive,
- unmotivated,
- defiant,
- overreacted when faced with a challenge,
- lacked self-control, and
- had problems with homework.

Parent did not indicate on either form that Student was aggressive or experienced peer difficulties.

Dr. Yousof observed Student for 30 minutes during his English class, where Student was paying attention and on task the entire time. During a 10-minute break, Dr. Yousof observed that Student stood in line to get a snack, and smiled, laughed, and responded to conversation with his friends.

Data on Student's behaviors was collected for 20-to-30-minute intervals in various classrooms observations over nine days from October 16, through November 5, 2025. Targeted behaviors included off-task behavior, non-compliance with teacher directions of classroom expectations, and leaving the classroom. On average during each observation, Student was off task every seven to 10 minutes, non-compliant less than once per observation, and left the classroom during half the observations. Antecedents to Student's behaviors were teacher instruction or academic demands.

As a consequence of his behaviors, Student received teacher and peer attention, redirection, or permission to leave the classroom. Dr. Yousof concluded on this data that Student was engaging in the identified behaviors to escape academic demands and get attention, and proposed a behavior intervention plan to address those behaviors and replace them with appropriate functional equivalent behaviors.

Capistrano convened an IEP team meeting on November 12, 2025, to review the functional behavior assessment and develop a behavior intervention plan. The proposed November 12, 2025 IEP, including a behavior intervention plan, was not offered into evidence at the expedited hearing.

On November 13, 2025, middle school assistant principal Lisa Maulorico notified Parent by email and by written notice that the middle school had finished investigating the November 7, 2025 incident and was moving forward with a recommendation for expulsion. The notice informed Parents that Capistrano would hold a manifestation determination review on November 19, 2025, and that Student's suspension was extended to November 19, 2025.

Capistrano and Parent rescheduled the manifestation determination review to December 1, 2025, at Parent's request, with a concurrent extension of Student's suspension.

MANIFESTATION DETERMINATION REVIEW MEETING

Capistrano convened a manifestation determination review on December 1, 2025. Parent, Stepparent, and Student's advocate attended. Assistant principal Maulorico also attended, as did one of Student's general education teachers, one of Student's special education teachers, and Dr. Yousof.

The manifestation determination review team noted that Student's alleged November 7, 2025 violations of the student code of conduct included use of force or violence and causing, attempting, or threatening physical injury. They reviewed the evidence of the alleged conduct, including video footage, Student's statement and statements of two student witnesses.

Student's records review included Parent's report that Student had been receiving therapeutic and psychiatric services to help him cope with the sudden and unexpected passing of Student's biological father in March 2024. However, those services had stopped due to insurance funding limits. Health records included Parent's report that Student was on medication for ADHD, although Parent declined to give consent for the school nurse to contact Student's psychiatrist or therapist to confirm medications, symptoms, or side effects. Student's fall 2025 functional behavior assessment had identified being off-task, being non-compliant, and leaving the

classroom as behaviors requiring intervention. The November 12, 2025 IEP included a behavior implementation plan, but Parent had not given Capistrano consent to implement the proposed IEP at the time of the December 1, 2025 manifestation review.

A review of Student's disciplinary record for the 2025-2026 academic school year showed 12 disciplinary entries. These included the current conduct under review, and entries related to

- attendance,
- using curse words,
- spitting, bullying,
- harassment,
- theft or attempted theft, and
- inappropriate language.

Student had also received 20 disciplinary referrals during the 2024-2025 school year, with three days of suspension.

The manifestation determination review team noted that Capistrano's recent February 2025 multidisciplinary assessment had found Student's ADHD-related attention and executive functioning deficits adversely impacted his educational performance and Student qualified for special education under the category of other health impairment. The multidisciplinary assessment ruled out eligibility under the categories of specific learning disability, emotional disability, and speech language impairment.

The manifestation determination team reviewed Student's then-current IEP, including the annual goals to attend class and complete work, accommodations, and services. Services included specialized academic instruction for two periods a day in general education classes co-taught by a general education and a special education teacher, and for one period per day in a resource classroom with a special education teacher.

Parent and Student's advocate told the team Student's conduct was due to a medication change the day before the incident, but would not disclose the medication. They told the team Student got into the fight because he had been bullied and was not mentally stable.

The December 1, 2025 manifestation review team reviewed all relevant information in Student's file, including Student's IEP, teacher observations, and relevant information provided by Parent with the assistance of Stepparent and Student's advocate.

At the time of the December 1, 2025 manifestation determination review, Student struggled with task perseverance, initiating and completing work, and had executive functioning deficits related to his ADHD. ADHD caused Student to be distractable and take impulsive actions, and in the school setting interfered with Student's attention to task and work completion. The team discussed impulsivity, which is an act done on the spur of the moment. Dr. Yousof explained to the team that Student's conduct for which he was disciplined was premeditated and planned, which was inconsistent with impulsivity. Instead, Student's assault of Student A demonstrated a calculated and thought out plan. Capistrano team members found that Student's conduct was not caused by and did not have a substantial relationship to his disability.

The members of the manifestation determination review team considered whether Student's conduct was a direct result of Capistrano's failure to implement Student's IEP. The fight occurred at 8:05 a.m., and school did not begin until 8:15 a.m. Student's IEP called for specialized academic instruction and accommodations to be implemented during the school day. Capistrano team members concluded that Capistrano had implemented Student's IEP with fidelity, the fight occurred outside of school hours, and Student's conduct was not the direct result of a failure to implement the IEP.

Capistrano members of the manifestation determination review team recommended that Capistrano continue with the discipline process applicable to nondisabled students because Student's conduct was not a manifestation of his disability.

Capistrano proceeded with the middle school's recommendation for expulsion and convened an expulsion hearing on January 8, 2026.

CONDUCT NOT A MANIFESTATION OF STUDENT'S DISABILITY

Student was eligible for special education under the category of other health impairment as a result of attention and executive functioning deficits due to ADHD that adversely affected Student's educational performance. The weight of the evidence established that Student's attack on Student A was an intentional act planned over the course of two days, and the assault was not the result of distraction or impulsive behavior.

Student's attention and executive functioning deficits caused him to struggle to inhibit impulsive action. He exhibited these struggles in school by being off task, not complying with academic demands, and leaving the classroom. Planning a violent physical assault on another Student was a calculated act, and not an impulsive act caused by or with a direct and substantial relationship to Student's disabilities.

Even Student's private psychological evaluation from October 2024, which diagnosed Student with ADHD and conduct disorder, concluded that Student exhibited hyperactivity, aggression, and conduct problems by:

- cheating,
- rule breaking,
- deception,
- being argumentative, and
- being defiant.

Student's planned and violent physical assault was not one of the identified symptoms of Student's ADHD or conduct disorder as described in the October 2024 private psychological evaluation.

Student argues in his closing brief that his actions were the result of his disability for several reasons:

- he was influenced by recent medication changes,
- he had ADHD and conduct disorder diagnoses,

- he experienced multiple anxiety attacks at school, and
- his actions were the result of prolonged mental health issues.

Parent testified there was a change to Student's ADHD medication on November 6, 2025, the day prior to the incident, and Student could not be expected to perfectly regulate his behavior after a change in brain chemistry. However, Student planned his attack and warned Student A on November 5, 2025, two days before the incident or any medication change. In addition, the School Nurse, who was a licensed practical nurse with over 30 years of nursing experience, testified knowledgably and credibly that a change in the ADHD medications of the types and dosages described by Parent at hearing would not likely show side effects, let alone cause behavior changes, within one day. A medication change was not responsible for, and did not contribute to, Student's planned assault on Student A.

Capistrano did not dispute Student had ADHD and conduct disorder diagnoses. However, Dr. Yousof testified knowledgeably and persuasively that the diagnostic and eligibility features of other health impairment and ADHD do not include assaultive conduct. Student's attention and executive functioning needs presented at school as task avoidance and difficulties with work completion, not planning and carrying out fights.

Student's therapist before and after the incident, a licensed Associate Marriage and Family Therapist who testified at hearing, disagreed that Student had conduct disorder. The therapist opined, based on his knowledge, experience, and therapy sessions with Student, that Student did not have conduct disorder because Student

experienced remorse for bad actions and was reported not to be consistently defiant. Student's assaultive conduct was not explained by, or due to, either of his medical diagnoses.

No evidence corroborated Parent's testimony that Student had a medication change addressing either diagnosis. Parent had a history of refusing to sign releases of information to allow Capistrano's school nurse to contact Student's psychiatrist regarding Student's medications, which would have confirmed the alleged medication changes, types of medications, and dosages. At hearing, Parent offered into evidence partial and possibly redacted pages from Student's alleged psychiatry and therapy records without calling Student's psychiatrist to explain them, and which were excluded as incomplete, unauthenticated, and not helpful to the trier of fact without expert testimony.

If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, such as medication changes confirmed to School Nurse by Student's medical professionals, the evidence offered should be viewed with distrust. (Evid. Code, § 412; see also Judicial Council of California Civil Jury Instructions 203, *Vallbona v. Springer* (1996) 43 Cal.App.4th 1525, 1537 [the trier of fact may reasonably disbelieve a party's self-serving assertions].) Parent's uncorroborated testimony that Student had undergone a medication change, the names of the new medications, the dosages, and the side effects of those changes, were self-serving and not credible.

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The weight of the evidence did not establish that Student experienced multiple anxiety attacks at school. Student submitted nursing logs to show he frequently visited the school nurse's office during the prior 2024-2025 school year, with complaints of

- nausea,
- vomiting,
- abdominal pain,
- headaches, and
- assorted physical discomforts.

Student contends this evidence established he was suffering from anxiety-induced chronic vomiting and panic attacks and was medically unstable at the time of the attack on Student A. However, the logs from October 2024 through March 2025 were remote in time and failed to establish that Student was experiencing those symptoms, let alone anxiety or a panic attacks, at the time of the incident in November 2025.

School Nurse and Dr. Yousof admitted at hearing that Student visited School Nurse's office or Dr. Yousef's counseling office more frequently than most students during the 2025-2026 school year. However, both had significant experience with students experiencing nausea, abdominal pain, and headaches as symptoms of anxiety, and testified credibly that although Student reported these physical symptoms, they never observed Student appearing anxious. Student complained of vomiting, but School Nurse never saw Student vomit or appear sick except once when Student had a fever. School Nurse and Dr. Yousof testified convincingly that when Student visited their offices, he would sit in a chair, try to use his cell phone, happily chat with other students coming through the office, and generally appear upbeat and sociable rather than

anxious. Student planned his attack of Student A over two days, told other students of the planned attack before it occurred, and laid in wait for Student A before assaulting him. Student's conduct on November 7, 2025, was not the result of a panic attack.

The weight of the evidence did not establish that Student had prolonged mental health issues that caused or had a relationship to the planned assault of Student A. Student argues his October 2024 diagnosis of conduct disorder had defining symptoms of aggression, rule-breaking, and poor impulse control, but the only mental health professional who provided weekly therapy for Student at or near the time of the assault opined convincingly at hearing that Student did not have conduct disorder.

Rather, Student's therapist opined that Student had ADHD, the core symptom of which is an inability to regulate impulses. He also observed Student exhibited trauma related behaviors, but did not testify that trauma explained a planned physical assault on another student. Student's therapist opined that Student had the tools to ask for help if he was having a problem. He taught Student to address the symptoms of his ADHD by

- talking about his inner voice,
- taking deep breaths,
- using grounding techniques,
- breaking down academic tasks into smaller parts, and
- reducing impulsiveness by stopping, thinking, and then acting.

With these learned skills and techniques, Student's argument that his ADHD and conduct disorder caused him to plan the physical assault of another student is unconvincing.

There was no persuasive evidence that Student was impulsively violent at school. Parent had not reported to Capistrano that Student was physically aggressive or had difficulty with peers in the December 4, 2024 Health and Developmental History or the January 24, 2025 Parent Input forms. Student's 2025-2026 discipline record, aside from the November 2025 incident and a slapping incident, included nonviolent entries, such as

- disruptive activity,
- curse words,
- spitting,
- harassment,
- theft,
- inappropriate language, and
- sexual harassment.

The lack of a history of violence at school undermines Student's argument that impulsive violence is a symptom of his disability, and that the physical assault on Student A was a manifestation of his disability.

In his closing brief, Student references a transcript that was excluded from evidence as irrelevant. That undated and unauthenticated transcript purported to demonstrate that an unidentified man cursed at Student in a park, invoking a "fight or flight" reaction by Student. There was no evidence that the conflict at the park happened on the morning of November 7, 2025, before school, or in any way related to or caused Student's conduct on the morning of the physical assault on Student A.

Student's conduct surrounding the incident was premeditated. Two days before the incident, Student located Student A at school and expressly threatened him with future physical violence. On the morning of the assault, Student took the time to tell other students at school that he was going to beat up Student A. Student then took the time to walk to the school's bike parking area, and waited for an additional two minutes for Student A to arrive before assaulting him. Student's conduct was not impulsive or due to a lack of self-control. It was intentional.

The cumulative evidence established that Student's conduct was not caused by and did not have a direct and substantial relationship to his disability.

CONDUCT NOT A DIRECT RESULT OF CAPISTRANO'S FAILURE TO IMPLEMENT IEP

The weight of the evidence did not establish Student's conduct on November 7, 2025, was the direct result of Capistrano's failure to implement Student's IEP. Student argues he should have been offered a behavior intervention plan prior to the incident, which is not a question of whether Capistrano failed to implement Student's IEP, and not a question the manifestation determination review team was required to answer.

Student presented no evidence that Capistrano failed to implement Student's then-current IEP on or around November 7, 2025. The incident occurred in the school's bike parking area prior to the start of the school day, and the services and accommodations in Student's IEP were limited to support and specialized instruction in the classroom and during the school day.

Student's argument that his conduct was caused by Capistrano's failure to include a behavior intervention plan in Student's IEP prior to November 7, 2025, is unconvincing. The behaviors interfering with Student's educational performance at the time of the incident, as identified in the then-pending functional behavior assessment, were off-task behavior, non-compliance, and leaving the classroom. There was no proof that the existence of a behavior intervention plan addressing Student's identified behaviors would have had any effect in deterring Student's intentional and planned assault on Student A.

The law on discipline of special education students required the manifestation determination review team to decide if Student's conduct was a direct result of Capistrano's failure to implement Student's then-current IEP, not to speculate whether a behavior intervention plan should have been offered in an earlier IEP.

Student also contends that Parent did not have an opportunity to meaningfully participate in the manifestation determination review. The evidence established that Parent had an opportunity to meaningfully participate in the manifestation determination review. The manifestation determination review was rescheduled to a later date at Parent's request. Parent attended the meeting with the support of Stepparent and Student's advocate. Parent and Dr. Yousof testified extensively about discussions between Parent and Capistrano's team members at the meeting. The fact that Capistrano's team members did not agree with Parent does not establish that Parent was denied an opportunity to meaningfully participate.

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Lastly, Student argues the manifestation determination review team failed to consider alternative placements for Student at the manifestation determination review meeting. However, Student cites no authority requiring Capistrano to consider alternative placements as part of the manifestation determination review.

In summary, Student failed to prove by a preponderance of the evidence that Student's conduct reviewed at the manifestation determination review meeting on December 1, 2025, was caused by or have a direct and substantial relationship to his disability, or was the direct result of Capistrano's failure to implement his IEP.

Capistrano prevailed on Issue 1.

ISSUE 2: DID CAPISTRANO PREDETERMINE THAT STUDENT WOULD BE EXPELLED PRIOR TO THE DECEMBER 1, 2025 MANIFESTATION DETERMINATION REVIEW?

Student contends Capistrano team members committed a procedural error at the manifestation determination review by predetermining the outcome of the manifestation determination review and recommending expulsion before the meeting was held on December 1, 2025.

Capistrano contends it did not predetermine the outcome of the manifestation determination.

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If the manifestation determination review team determines that a student's conduct was a manifestation of the child's disability, the school district must:

- conduct a functional behavior assessment and implement a behavior intervention plan for the child unless the school district conducted such an assessment prior to the determination,
- review a child's behavior intervention plan if the child already has one, and modify it as necessary, and
- except in circumstances inapplicable here, return the child to the placement from which the child was removed unless the parent and school district agree to a change of placement as part of the modification of the behavior intervention plan.

(20 U.S.C. § 1415(k)(F)(i)-(iii); 34 C.F.R. § 300.530(f)(i).)

If the manifestation determination review team determines the behavior that gave rise to the violation of the school code is not a manifestation of the student's disability, school personnel may apply disciplinary procedures to the student in the same manner and for the same duration as those procedures would be applied to students without disabilities, except the student must continue to receive special education and related services. (34 C.F.R. § 300.530(c).) This includes expulsion from school. (Ed. Code, § 48915.5, subd. (a).)

Protection of parental participation is among the most important procedural safeguards in the IDEA. (*Amanda J. v. Clark County School Dist.* (9th Cir. 2001) 267 F.3d 877, 882.) A parent must be included on the manifestation determination review team. (20 U.S.C § 1415(k)(1)(E).)

Inclusion in the manifest determination review team is fundamentally different from the requirement that the parent of a student with disabilities be a member of any group that makes decisions about the student's educational placement. (See Ed. Code, § 56342.5; *W.G. v. Board of Trustees of Target Range School Dist. No. 23, Missoula, Mont.* (9th Cir. 1992) 960 F.2d 1479, 1485.) The manifestation determination review team does not decide educational placement. Their review is limited to determining if the conduct for which the student was disciplined was a manifestation of the student's disability. (20 U.S.C § 1415(k)(1)(E)(i)&(ii).)

Parents have meaningfully participated in the development of the student's educational program when they are informed of their child's problems, attend the IEP team meeting, expresses their disagreement with the IEP team's conclusions, and request revisions in the IEP. (*N.L. v. Knox County Schools* (6th Cir. 2003) 315 F.3d 688, 693; *Fuhrmann v. East Hanover Bd. of Educ.* (3rd Cir. 1992) 993 F.2d 1031, 1036.) By analogy, a parent who attends and has an opportunity to discuss the information reviewed by the manifestation determination review team, and whose concerns are considered by the team, has participated in the manifestation determination review in a meaningful way.

Predetermination occurs when a school district has decided on its offer prior to an IEP team meeting and is unwilling to consider other alternatives. (*Deal v. Hamilton County Bd. Of Educ.* (6th Cir. 2004) 392 F.3d 840, 858.) A school district may not arrive at an IEP team meeting with a "take it or leave it" offer. (*J.G. v. Douglas County School Dist.* (9th Cir. 2008) 552 F.3d 786, 801, fn. 10.)

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In this matter, Parent, Stepparent, and Student's advocate attended the December 1, 2025 manifestation determination review. The manifestation determination review was rescheduled from November 19, 2025, at Parent's request. Both Parent and Dr. Yousof testified with good recall that Parent was very insistent at the manifestation determination review that Student's conduct was the result of panic attacks and a medication change. Parent, assisted by Stepparent and Student's advocate, who were knowledgeable about Student and his disabilities, attended the manifestation determination review, was informed of the two-prong determination being considered, and expressed her disagreement with the manifestation determination. Parent participated meaningfully in the manifestation determination review.

Student contends the manifestation determination was predetermined because middle school assistant principal Maulorico recommended expulsion. Student's contention is speculative and unpersuasive. It was not the middle school's decision whether Student would be expelled. It was not the manifestation determination review team's decision whether Student would be expelled. Even with a determination that Student's November 7, 2025 conduct was not a manifestation of his disability, whether or not Student would subsequently be expelled was dependent on the outcome of the expulsion process, and Maulorico was not a member of the expulsion panel. The manifestation determination review and the expulsion hearing involved different decision makers, took place approximately one month apart, and involved different inquiries.

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Capistrano members of the manifestation determination team included Student's middle school assistant principal Desirae Brucato, who held both general and special education teaching credentials, Student's special education teacher, one of Student's general education teachers, and school psychologist Dr. Yousof, who had assessed Student three times over two years. These Capistrano team members were familiar with Student, Student's disabilities, and how those disabilities presented at school. With the participation and input of Parent, Stepparent, and Student's advocate, this knowledgeable team was tasked with deciding only two questions, that is, whether Student's conduct was caused by his disability or due to a failure to implement Student's IEP.

Once the manifestation determination team concluded that Student's conduct on November 7, 2025, was not a manifestation of his disability, Student was subject to the same disciplinary processes as a nondisabled student. The expulsion process was a separate and different process from the manifestation determination. (Ed. Code, §§ 48915, et seq.) The expulsion decision was made by a disciplinary panel unrelated to Student's manifestation determination team.

Expulsion is not governed by special education law, and the decision of the expulsion panel is not an issue in this expedited Decision. Student may appeal the expulsion decision by a procedure separate from, and unrelated to, a special education due process hearing. (See Ed. Code, § 48919, et seq.)

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Student's evidence of predetermination was equally unconvincing. It consisted of Maulorico's November 13, 2025 email notifying Parent that the school had decided to move forward with a recommendation for expulsion, a telephone call to Stepparent purporting to tell him Student had been expelled, and the fact that Student was not allowed on school premises during suspension to retrieve his bike.

The principal of a school in which the student is enrolled may recommend expulsion if a student willfully used force or violence on another student, or caused or attempted to cause physical injury to another student. (Ed. Code, § 48900(a)(1)&(2).) Here, the principal's recommendation that Student be expelled for such conduct triggered the manifestation determination review because Student was eligible for special education and expulsion would result in a change of placement from his IEP. (20 U.S.C. § 1415(k)(1)(E).)

Maulorico's email to Parent and written notice of the manifestation determination review was a procedural requirement for both the proposed change of placement, and to advise Parent of the offenses Student was accused of committing. (20 U.S.C. § 1415b)(3); 34 C.F.R. § 300.503(a)(1); Ed. Code, § 48900.) Capistrano's compliance with these notice requirements does not raise an inference of a predetermined outcome.

Parent testified that Maulorico called Stepparent and told him that Student was being expelled. Neither Maulorico nor Stepparent testified, but Brucato testified she called and spoke with Stepparent. She told Stepparent the school was recommending expulsion, and a manifestation determination had been scheduled for November 19, 2025. Brucato was familiar with the manifestation determination review process and had good recall of the conversation. Brucato did not tell Stepparent that Student had already been expelled, or that the decision to expel Student had already been made.

As to the recovery of Student's bike, Capistrano's November 7, 2025 suspension notice to Parent clearly stated that Student would not be permitted on the middle school campus during school hours while the suspension was in effect. Presumably, Parent could have retrieved the bike during school hours, or Student could have retrieved the bike after school hours. The fact that the middle school would not allow Student on campus during the school day to retrieve his bike did not suggest that Capistrano had predetermined the outcome of the manifestation determination review with the intention of expelling Student. Parent's testimony otherwise was unsupported speculation.

As discussed at Issue 1, Student's conduct on November 7, 2025, was not a manifestation of his disability. Accordingly, Capistrano was authorized to continue with the discipline process available to nondisabled students, including expulsion proceedings.

Student did not prove by a preponderance of the evidence that Capistrano predetermined Student would be expelled prior to the December 1, 2025 manifestation determination review.

Capistrano prevailed on Issue 2.

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:

Student's conduct reviewed at the manifestation determination review meeting on December 1, 2025, was not caused or have a direct and substantial relationship to his disability, and was not the direct result of a failure by Capistrano to implement his IEP.

Capistrano prevailed on Issue 1.

ISSUE 2:

Capistrano did not predetermine that Student would be expelled prior to the December 1, 2025 manifestation determination review.

Capistrano prevailed on Issue 2.

ORDER

1. The December 1, 2025, manifestation determination that Student's conduct for which he was disciplined was not caused by, or a direct or substantial relationship to, Student's disability is affirmed.
2. The December 1, 2025, manifestation determination that Student's conduct for which he was disciplined was not a direct result of Capistrano's failure to implement Student's IEP is affirmed.
3. All relief requested 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.

ALEXA HOHENSEE

Administrative Law Judge

Office of Administrative Hearings