

Student Discipline: The Manifestation Determination

February 11, 2011



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A Word of Caution

No two cases are exactly alike. This material is designed to provide special educators with a broad understanding of certain aspects of the law pertaining to the discipline of students with educational disabilities. This material does not include every aspect of the law. You are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case.

I. Overview

This material is designed to provide special educators with a broad understanding of certain aspects of the law pertaining to the discipline of students with educational disabilities. This material focuses on the manifestation determination under the Individuals with Disabilities Education Act (IDEA). This material does not include every aspect of the law and you are strongly encouraged to seek a legal opinion from your school district's legal counsel regarding any specific case.

II. Understanding the Federal Presumption: Preservation of a FAPE

The Individuals with Disabilities Education Improvement Act [IDEA] as amended in 2004 requires that all children with disabilities be afforded a "free appropriate public education." The IDEA is predicated on the goal of preserving the requirement of a FAPE. The presumption extends to students who have suspended or expelled by a school district. 20 U.S.C. 1412(a)(1)(A) explicitly states that local school districts must ensure that a FAPE is available to "*children with disabilities who have been suspended or expelled from school*" (emphasis added).¹

Any removal from school in excess of ten (10) days triggers a panoply of procedural rights and rules. The simple rule of thumb to follow is that a long-term suspension will **always** require the provision of a FAPE, will **always** have to be preceded by a finding that the disciplined behavior was **not a manifestation** of the educational disability, will always have to be preceded by a **functional behavioral assessment**, and will always have to be preceded by parental assent to a change in placement.

¹ Children who have not been determined to be eligible for special education and related services under the IDEA and who have engaged in behavior that violated a code of conduct may assert any of the IDEA protections if the district had knowledge that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. 34 CFR 300.534(a).

A district has knowledge that a child is a child with a disability if, before the behavior that precipitated the disciplinary action occurred:

- The parent of the child 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;
- The parent of the child requested an evaluation of the child; or
- The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education or to other supervisory personnel of the agency.

34 CFR 300.534(b).

III. The Components of the Manifestation Determination Review Meeting

A. Who Attends the Meeting?

The Manifestation Determination Review Meeting is conducted by the IEP Team. Ed 1102.03(s). Parents **MUST** be invited to attend the Manifestation Determination Review Meeting. The LEA must give the parent(s) five (5) days notice of the Manifestation Meeting.

B. What Material Should the Team Consider?

The IEP Team should consider “all relevant information,” including, but not limited to, the material listed in the following checklist:

- Relevant information provided by the parents;
- Evaluation and diagnostic results;
- Prior disciplinary history;
- Description of the behavior;
- Observations of the student;
- The child’s IEP;
- Any teacher observations;
- The placement.

C. How does the Team make a Manifestation Determination?

During the manifestation meeting, the Team will review the information set forth above to determine whether:

- The conduct in questions was caused by the child’s disability; or,
- The conduct in question had a direct and substantial relationship to the child’s disability; or,
- The conduct in question was the direct result of the local educational agency’s failure to implement the child’s IEP.

If any of the above inquiries are answered in the affirmative, then the child’s

conduct shall be determined to be a manifestation of the child's disability.

If the Team determines that the child's conduct was not a manifestation of his/her disability, then school personnel may apply the relevant disciplinary procedures to the student in the same manner and for the same duration as the procedures would be applied to children without disabilities. 34 CFR 300.530(c). However, the child must continue to receive educational services, so as to enable him/her to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP. 34 CFR 300.530(d)(1)(i). In addition, the child must receive, as appropriate, a functional behavioral assessment, and behavioral intervention services and modifications that are designed to address the behavior violation so that it does not recur. 34 CFR 300.530(d)(1)(ii). The child's IEP Team determines what services are appropriate. 34 CFR 300.530(d)(5).

If the Team determines that the child's conduct was a manifestation of his disability, the Team shall:

- Conduct a functional behavioral assessment, and implement a behavioral intervention plan for the child, provided that the Local Educational Agency had not conducted a functional behavioral assessment prior to the determination; or,
- If the child has already had a behavioral intervention plan, then the Team shall review the plan and modify it, as necessary to address the behavior.

34 CFR 300.530(f)(1).

Except under "special circumstances," the child must be returned to the placement from which he was removed, unless the parent and Local Educational Agency agree to a change of placement as part of the modification of the behavioral intervention plan. 34 CFR 300.530(f)(2).

With every meeting, but particularly in the event there is a determination of no manifestation, the parents must be apprised of their rights under the IDEA to appeal this decision to an impartial due process hearing.

IV. Case Studies

A. No Manifestation

1. In Re: Student with a Disability, 51 IDELR 231 (Va. SEA Aug. 13, 2008).

Facts: Student was a 13 year old, 7th grader in the public school system during the 2007-2008 school year. He received services under the IDEA as a result of an

emotional disability; in particular, student had “been observed to verbally and physically attack others without apparent reasons.”

On March 11, 2008, the student’s IEP Team agreed to amend the student’s IEP. Prior to the end of the school day, the student’s case manager discussed the changes with the student for approximately 30 minutes. The student did not appear to be upset over the changes to his IEP. On the bus ride home that afternoon, the student kicked another student in the head, resulting in the victim’s need for medical attention. The event was filmed and the recording established that the student planned the attack, that he communicated his intent to other students on the bus, and that “he delivered the blow at a pre-determined point in time.” The student’s “purported reason for the batter was simply that his victim ‘was gay.’”

The District convened a manifestation meeting and determined that the student’s act – kicking the other student in the head – was not a manifestation of the student’s disability. Instead, the Team believed that the act was a premeditated, anti-social act of violence. Parents requested due process, seeking an order expunging the incident from the student’s educational records.

Holding: For the District. The Hearing Officer found that the parents offered no evidence, expert or otherwise, to support a finding that the students kicking was a manifestation of his disability. The parents’ explanation – that the student’s behavior occurred because he was upset about the change to his IEP and that his behavior was encouraged by other students on the bus – was not consistent with a manifestation of the student’s disability. The District provided testimony from its educators that the student was cognizant of the consequences of his behavior and that his attack was a deliberate, premeditated act of violence and not a manifestation of the student’s disability. Thus, the Hearing Officer affirmed the District’s decision. The Hearing Officer noted that had the parents prevailed, the relief that they sought (expungment of the incident from the school records) was not within the Hearing Officer’s authority or discretion.

2. Fitzgerald v. Fairfax County Sch. Bd., 556 F. Supp. 2d 543, 50 IDELR 165 (E.D. Va. 2008).

Facts: The student, a senior in high school, was eligible for services under the IDEA as a result of an emotional disability. On December 16, 2006, the student and friends met at a restaurant. At the student’s suggestion, the group decided to drive by the high school and shoot at the buildings with paintball guns. The student had a paintball gun in his car and offered to drive the four other boys to the school. On the way to the school, the student detoured to another boy’s car to retrieve two more paintball guns. The 5 boys then proceeded to the high school where they shot paintballs at the windows of the school building and various vehicles parked on school property.

At some point during this visit, one of the paintball guns malfunctioned, so the

student drove to retrieve supplies from a vehicle belonging to one of the other boys. The group then made a second trip to the school and the student, who was driving, shot at the school while one of the boys held the wheel of the student's car. After this trip, two boys asked the student to drive them to another location. The student did so and he and the remaining two boys then returned to the school to shoot paintballs at the school for a third time. On their way home from the school, the student failed to obey a stop sign and was stopped by a police officer. The officer noticed the paintball guns and questioned the boys, who denied any wrongdoing. Later, when the officer heard reports of paintball vandalism at the school, he informed the District that he believed that the student and his friends had been involved. The student admitted to his involvement in the affair.

In accord with state law, the School Board is required to expel students for one year if they are determined to have possessed a pneumatic gun on school property. A paintball gun meets this definition; thus, the principal suspended the student and recommended expulsion. A manifestation meeting was held and the District Team members determined that the student's behavior was not a manifestation of his disability. As a result, the student was suspended for the remainder of the school year. Thereafter, parents requested due process seeking a review of the determination that the behavior was a manifestation of the student's disability.

Holding: For the District. The court rejected the parents' argument that the District violated the IDEA by failing to give them an "equal right" to determine whether the student's conduct was a manifestation of his disability. The court found that "the IDEA emphasis on parental involvement does not give parents the right to veto or otherwise block the LEA's ability to implement an IEP or to discipline a student. . . accordingly, the IDEA does not require the LEA and the parents to reach a consensus regarding the education or discipline of a disabled child. Instead, if a consensus cannot be reached, the LEA must make a determination, and the parents' only recourse is to appeal that determination."

With regard to the substance of the manifestation determination, the court found that the behavior was not a manifestation. The student's anxiety "was the 'primary basis for his disability classification' rather than the occasional 'juvenile outbursts' of acting inappropriately in class with friends." Even assuming that the student's disability caused him to be drawn into inappropriate behaviors at times, the record established that the student played a predominant role in planning and executing the paintball incident. In particular, the student: 1) suggested the idea of shooting the school with paintball guns; 2) offered to drive; 3) used a paintball gun stashed in his own car; and 4) drove to the school three times. The entire incident lasted for several hours and there is no indication that the student was impulsively drawn into the paintball incident by his friends as a result of his disability." Thus, the Team's decision that the behavior was not a manifestation of the student's disability was upheld.

3. Lancaster Elem. Sch. Dist., 49 IDELR 53 (Ca. SEA Aug. 28, 2007).

Facts: The student was a 13 year old who was eligible for services under the IDEA as a result of a specific learning disability. In the areas of basic reading, mathematics calculation, and mathematics reasoning, as well as a psychological processing disorder in the area of sensory motor skills. On June 1, 2007, a school security guard stops student on school grounds. The student was searched and the security guard found that he was in possession of marijuana and tobacco. As a result, the student was suspended for five days. A manifestation meeting was held on June 8, 2007. The Team reviewed the student's placement and his IEP and found that they were both appropriate. The Team also found that the student's disability did not impair his ability to understand the impact and consequences of his behavior or his ability to control the behavior that was the subject of disciplinary action. The Team determined that the student's behavior was not a manifestation of his disability. As a result, the District recommended the student for expulsion. Parents requested due process.

Holding: For the District. During the manifestation meeting, the school psychologist informed the Team that she believed that the student's behavior was not caused by or directly related to his disability because his disability did not impact his ability to understand and follow school rules. The student failed to establish that his specific learning disability and his need to more appropriately express his frustration with his school work or social situations was related to his possession of a controlled substance and tobacco. Thus, the student's behavior, which violated the Student Code of Conduct was not a manifestation of his disability and the student could be subjected to discipline.

4. MAST Community Charter School, 47 IDELR 23 (Pa. SEA Dec. 26, 2006).

Facts: The student had been identified as eligible for special education and related services while in was in fourth grade due to a specific learning disability and ADHD. He had made significant academic and behavioral progress during the period of fourth through ninth grade. During that time, the student had been taking medication to assist in controlling his impulsive behavior. At the end of his ninth grade year, the student's parents took him off of the medication.

In October 2006 (tenth grade), the student was suspended for ten days after he took a folded hunting knife with a 3-inch blade to school. The student and his parents were informed that the student may be expelled as a result of his actions. The district convened a manifestation meeting, which was initially postponed at the request of his parents, who had obtained an emergency evaluation. At the student's manifestation meeting, the team reviewed his records, IEP, and the evaluation. The evaluation indicated that the student had been diagnosed with post-traumatic stress disorder, oppositional defiant disorder, and impulse control disorder. During the meeting, the student informed school officials that he carried the knife to protect himself when he walked in his neighborhood. The student's Team determined that the weapons

violation was not a manifestation of the student's disability. Therefore, the Team recommended placement in a 45-day interim alternative setting. The Team also agreed to amend the student's IEP to acknowledge the additional diagnoses. The parents disagreed with the placement decision and the District requested a due process hearing.

Holding: For the District. The SEA agreed with the team, noting that since there was no dispute that the district had been implementing the IEP, the behavior would be a manifestation only if the disability caused, or had a substantial relationship to, the conduct in question. The SEA held that the student's deliberate decision to bring the knife to school on a regular basis, was not caused by, or substantially related to, his disability which was largely due to impulsive behaviors. The SEA noted that the Team had not determined that the new medical diagnoses were sufficient to establish that the student had an other health impairment under the IDEA, since there was no evidence that the diagnoses had an adverse effect on the student's educational performance. Accordingly, the student could be disciplined in the same manner as children without disabilities.

5. Baltimore County Public Schools, 46 IDELR 179 (Md. SEA May 25, 52006).

Facts: The student, a sixteen year old with psychiatric and behavioral disorders, who was eligible for special education services under the IDEA as a result of an emotional disturbance, was suspended for using illegal drugs prior to going to school. On the day he was suspended, the student had taken psychiatric medication, which he had not taken for three-weeks. After taking the medication, the student became drowsy and lethargic. The student's instructional assistant noticed that the student had his head on his desk, and after asking the student to come to his desk, told him "You are high as a kite." The student replied "No sh___, you're just noticing?"

The instructional assistant brought the student to the nurse, who believed that the student's drowsiness and slower reactions were caused by his psychiatric medication. The student was sent back to class; when the behavior continued, his teacher sent him back to the nurse's office and the assistant principal ordered the nurse to conduct an impairment assessment. Following the assessment, the nurse determined that he was impaired; the student subsequently told the nurse that he had smoked a joint before school. He was suspended and sent home; the district later recommended that he be expelled because of his use of illegal drugs.

The District convened a manifestation meeting and determined that the student's behavior was not a manifestation of his disability. His parents appealed that decision, arguing that the student's therapist had opined that his conduct was substantially related to, or caused by, his disability.

Holding: For the District. The SEA rejected the parents' argument, noting that the opinion that the "student has a major psychiatric disability which has had a

significant impact on his psychological, social and academic development" was not the equivalent of an opinion that the student's "specific behavior was caused by, or had a direct and substantial relationship to student's disability." The Hearing Officer also noted that the District Team members had appropriately focused on the child's educational disability – emotional disturbance – rather than on his medical diagnoses, such as Bipolar Disorder.

6. Norwalk (CT) Bd. of Educ., 110 LRP 19920 (OCR Sept. 4, 2009).

Facts: Parents filed a complaint with OCR, alleging that the District discriminated against their son, a student with ADHD, in violation of Section 504 of the Rehabilitation Act by failing to properly conduct a manifestation determination.

The student was suspended for 10 days. The District convened a manifestation meeting, and determined that the behavior was not a manifestation of the student's disability. The parent alleged that the determination was improper because the Team "ignored" a letter from the student's doctor, which stated that "the Student's 'functioning may be impaired by his distractibility and poor impulse control during his medication change and he can benefit from additional help at school additional individual educational and behavioral help in class and in between classes, meeting with the social worker to discuss behavioral issues, extended time on tests, etc.'"

Holding: For the District. OCR noted that under Section 504, Districts are required to conduct a manifestation meeting before any action is taken which results in a significant change in placement. A significant change in placement can occur by a disciplinary exclusion that exceeds ten days, or a series of suspensions within a school year that are each ten or fewer days in duration but that exceed ten days in the aggregate and create a pattern of exclusions. In order to implement a disciplinary suspension that constitutes a change in placement a District must first conduct a re-evaluation of the student; in the disciplinary context, the re-evaluation is the manifestation determination. Under Section 504, a manifestation determination must be conducted by a team of persons knowledgeable about the student, the evaluation data, and the placement options. The team must draw upon information from a variety of sources, and documentation from all sources must be carefully considered.

OCR found that during the manifestation meeting, the Team discussed the note, which indicated that the student's medication changes may lead to "distractibility" or "impulse control." The District indicated that the Team determined that the disciplinary incident did not show "distractibility" or "impulse control," because there was evidence that it was premeditated act. In particular, the student had told another student on the morning of the incident that he planned to commit the act for his he was later disciplined. That same day, a second student informed the District that the student was planning the act for which he was subsequently disciplined. Thus, while the Team considered the documentation, they disagreed with this applicability to the incident for which the student was disciplined. As a result, there was insufficient evidence that the District violated Section 504.

B. Manifestation

1. San Diego Unified Sch. Dist., 52 IDELR 301 (Ca. SEA July 29, 2009).

Facts: The student is a 13 year old with a specific learning disability in the area of math calculations/fluency, as well as attention problems and weaknesses in areas subserved by various executive functions. In addition, student has been diagnosed with ADHD. From November 2008 through May 22, 2009, the student attended a public school in the District. On May 22, 2009, between 3rd and 4th period, the student acted as a middle man in a transaction where one student (Student A) purchased seeds from another student (Student B). Student A approached the student and asked him where he could find Student B. Student led Student A to Student B and Student B told Student A that he could obtain marijuana seeds from Student C. Student then took Student A to Student C. Student was given the marijuana by Student C and he handed it to Student A. Student then collected money for the seeds from Student A to give to Student B. However, student did not have time to give the money to Student B before 4th period started and as a result, student had the money in his possession at the end of the school day.

That afternoon, several students who were reported to have been involved in the selling and purchasing of marijuana were interviewed by school administration. When the student was interviewed, he admitted that he had sold marijuana to another student. Ultimately however the evidence established that the student had not brought marijuana to school and not in possession of marijuana. Instead, he was in possession of two to three dollars that he intended to give to Student B from the sale of the seeds to Student A by Student C. As a result, the student was suspended with a recommendation for expulsion. The District convened a manifestation meeting. The student and his mother told the Team that the student had stopped taking his ADHD medication for a week or two prior to May 22, 2009, because he believed that the medication was giving him headaches at night and making it difficult for him to sleep. Mom produced a laboratory report that established that on May 22nd, the student had tested negative for his ADHD medication.

During the meeting, the Team also discussed that in the weeks prior to May 22nd, the student had acted out in class on at least one occasion. The principal indicated that he saw the student receive money during that period and when he confronted the student about it, the student told him that the money was the return of a loan of lunch money. Thus, the principal was of the opinion that since the student had lied about the source of the money and had the money in his possession at the end of the day, his participation in the transaction was not a manifestation of his disability. In addition, other students had reported to the District that the student had been involved in a similar transaction prior to the start of that school day. Thus, the District determined that the student's behavior was not a manifestation of the student's disability. The parents requested due process to challenge this decision.

Holding: For the parents. During the hearing, the parents presented credible testimony from a psychologist who testified that the student's behavior had a direct and substantial relationship to his ADHD. The doctor testified that because the student had stopped taking his medication, he did not think through the consequences of his actions before becoming involved in the transaction. The student testified that if he had taken his medication, when Student A approached him and asked him where Student B was, student would have simply pointed to Student B and would not have been involved any further.

In addition, at the time of the manifestation meeting, District staff believed that the student had been involved in a similar incident earlier that same day. However, ultimately it was determined that that was not the case. Thus, the Hearing Officer believed that the District would have been more inclined to find the student's conduct was a manifestation of his disability had they been convinced that the student had just been involved in a single transaction. In addition, the staff did not understand the significance of the laboratory report pertaining to the student's drug testing.

Thus, the Hearing Officer found that the evidence established that the student's ADHD causes him to be impulsive and to act without thinking, and that the evidence established that the student did not think about the consequences in getting involved in a transaction that could be construed as drug related. Thus, the evidence established that the conduct was an impulsive act caused by his ADHD and the fact that he had not taken his medication. Thus, the Team's decision was in error.

The Hearing Officer also noted that the District's focus on the student's specific learning disability rather than his ADHD was in error. "The District provided no authority, nor can any be found, that the focus and the manifestation determination IEP Team should be on a student's primary handicapping condition, and that other disabilities that are not primary handicapping conditions cannot also be considered."

2. Manteca Unified Sch. Dist., 50 IDELR 298 (Ca. SEA June 27, 2008).

Facts: The student is a 17 year old girl who was eligible for services under the IDEA as a result of a traumatic brain injury due to an acquired brain injury suffered in December 2000. At that time, student was hospitalized due to a brain hemorrhage caused by an arteriovenous malformation. Part of her brain was permanently damaged by the hemorrhage; the part that was damaged is partially responsible for executive functioning and impulse control. Student has exhibited some difficulties with executive functioning and impulse control since the hemorrhage. In addition, the student suffered from PTSD due to a sexual assault that occurred on May 5, 2007. On that date, the student was sexually assaulted by a boy while walking to school. The boy grabbed the student's breasts and pinned her arms over her head and held her against a fence. She kned him in the groin and escaped. Since then, student has been treated by a psychiatrist for PTSD and depression.

On April 23, 2008, during lunch, student kicked a boy in the groin. The boy had been sexually harassing the student, teasing her about a cold sore on her face, and teasing her about her facial paralysis. Prior to kicking the boy, the student warned him that she was having a bad day and that he should leave her alone. The boy was not seriously injured; however, student was arrested and suspended. Thereafter, the District initiated expulsion proceedings. The District convened a manifestation meeting and the Team determined that the student's behavior was not caused by, nor did it have a direct and substantial relationship to, the student's disability. The Team also determined that the student's conduct was not a result of the District's failure to implement the student's IEP. Thus, the behavior was not a manifestation of the student's disability. In particular, District's staff noted that the student had never acted violently towards another student. Parents requested due process, and argued that the student's behavior had a direct and substantial relationship to her problems with impulsivity, executive functioning, PTSD and/or depression.

Holding: For the parents. The parents provided credible testimony from the student's physician that her conduct of kicking a child in the groin had a direct and substantial relationship to her PTSD and depression. The doctor testified that one of the core symptoms of PTSD is anger outbursts, especially when confronted with something that is symbolic of the traumatic event that caused the PTSD. He indicated that the student's behavior was very likely related to her PTSD because the boy who student kicked was sexually harassing her immediately before she kicked him, and her PTSD was caused by sexual assault. In addition, the doctor testified that hyper-vigilance is symptomatic of PTSD, and that the student was likely hyper-vigilant at the time she kicked the boy because of the sexual nature of his comments. The Hearing Officer believed that the student's physician's testimony had more credibility than the neuropsychologist who testified on behalf of the District. That doctor opined the student's conduct did not have a direct and substantial relationship to the student's disabilities, primarily because she had never attacked another student prior to the incident in question. However, that doctor had never assessed, treated, or met the student, and did not support her opinion that the student's conduct was not directly and substantially related to her PTSD and depression.

3. Swansea Pub. Schs., 47 IDELR 278 (Mass. SEA April 4, 2007).

Facts: The student was a 17 year old boy with a specific learning disability in the areas of reading comprehension, mathematics reasoning, mathematics calculation, and written expression. The student had also been diagnosed with ADHD and Oppositional Defiant Disorder (ODD). The parties agreed that the ODD, by itself, would not qualify the student for special education services, but that it should be considered as part of his "constellation of disabilities for purposes of determining the services and accommodations to be provided pursuant to his IEP." During the 2006-2007 school year, the student was in the 11th grade at Swansea's Alternative Center for Education, an alternative program that is physically located within the high school, and that is intended to serve students with behavioral, emotional, or learning disabilities. During

the first half of the 2006-2007 school year, the student was involved in a number of incidents where he used profane and abusive language, lost his temper, became angry and refused to comply with requests from those in authority.

On December 11, 2006, the student was eating in his math class. His math teacher instructed the student to put away his food and in response the student became angry and rude. His teacher then directed the student to go to the back of the classroom so that he could de-escalate. The student became verbally confrontational, but went to the back of the classroom.

The assistant principal responsible for discipline was present during that incident, and shortly after it happened, he escorted the student to his office. He informed the student that he would be suspended and instructed him to stay in his office while he phoned the student's mother. The student left the office without permission, and called his mother from his cell phone in the hallway near the main office of the school. Student was speaking with his mother in a highly agitated manner, using expletives and a loud, shouting, and hysterical voice. Another assistant principal heard the student and instructed him to go into the main office. Student refused and the assistant principal reiterated the request. The student became highly agitated and threw his phone to the ground. The assistant principal picked up the phone and the student began shouting "Gimme my f____ing phone!" The assistant principal told the student to go to the main office. The student then lunged at the assistant principal and prohibited her from leaving. Additional teachers arrived and intervened in the situation.

By letter dated December 12, 2006, the principal informed the parents that the student had been suspended for 10 days for threat of assault. A manifestation meeting was held on January 3, 2007 and the Team determined that the conduct was not a manifestation of his disability. On January 9, 2007, the student was expelled. Thereafter, his Team met to discuss his educational services. The District proposed that the student attend a separate program. Parents disagreed and sought a home-based program with tutoring and continuation of counseling services.

Holding: For the parents, the student's conduct was a manifestation of his disabilities. The Hearing Officer found that while the conduct that resulted in the long-term suspension and ultimately, expulsion was the student's threatening behavior towards the assistant principal, "in order to understand this conduct, one must view it within the context of the proceeding events. By the time of the confrontation between student and [the assistant principal], the student had become highly agitated and oppositional as a result of the math class incident and suspension by [the assistant principal]." The Hearing Officer found "that there was a direct and substantial relationship between the student's disabilities (ADHD and ODD) and his agitated and oppositional conduct prior to his confrontation with [the assistant principal]." The Hearing Officer also found that "there was a direct and substantial relationship between student's disabilities and his subsequent threatening and potentially dangerous behavior towards [the assistant principal]." The Hearing Officer rejected the testimony from the District that the student should have been able to control himself to avoid the

threatening behavior, since he had been able to self-regulate his conduct in the past. The Hearing Officer noted that previously, the student had been able to regain control of his behavior by backing off, leaving the area, or obtaining support from staff. However, on December 11th, the student was unable to leave the area and there were no special education staff in the area who understood his disabilities and how to assist him to de-escalate. "Student was provided no . . . opportunity to avoid an escalation of the original confrontation with [the assistant principal], with the result that a spiraling of confrontational, out-of-control behavior occurred." Thus, the Hearing Officer reversed the Team's decision and determined that the student's behavior was a manifestation of his disability.

4. Philadelphia City School District, 47 IDELR 56 (Pa. SEA Jan. 10, 2007).

Facts: During the 2005-06 school year, the student, who had been identified as eligible for services since 1998 (due to an emotional disturbance), engaged in serious threatening behavior. This behavior resulted in the student's placement being changed to a private school for students with emotional disabilities. During the first part of the 2006-07 school year, the student broke into the private school on several occasions, to use the school computers to download pornography. Eventually, the student broke into the school and stole the school's computer server and related equipment. He was caught after he offered to sell the stolen items to other students. On October 11, 2006, he was suspended for three days, and the school officials recommended transferring the student to a remedial disciplinary setting.

On October 12, 2006, the school called the parents and informed them that they would be convening a manifestation meeting on October 18, 2006. A District representative, two teachers, and the parents attended the manifestation meeting. The District and school representatives determined that the student's behavior was not a manifestation of his disability, and the parents were given notice that the district was recommending placement in a remedial disciplinary setting. The parents disagreed with this decision and requested due process.

Holding: For the Parents. The SEA found that the District failed to follow the procedural requirements of the manifestation process, in that it did not give the parents proper notice of the manifestation meeting, it did not provide the parents with a copy of their procedural safeguards, and it did not review "any, much all" of the relevant information in the student's file. The SEA noted that the cumulative effect of the procedural violations significantly impeded the parents' opportunity to participate in the decision-making process.

In addition, the SEA found that the student's conduct had a direct and substantial relationship to his disability. The SEA believed that it was "more likely than not" that the student's ED, which was marked by inappropriate behaviors, attention-seeking and ODD, caused or was substantially related to his repeated break-ins, which culminated in theft of items. Because the behavior was a manifestation of the student's

disability, the district could not change his placement without parental consent.

V. Appeals

Parents who disagree with the placement decision or the manifestation determination may request a due process hearing. If the LEA believes that maintaining the current placement of the child is substantially likely to result in injury to the child or to others it may request a hearing. 20 U.S.C. § 1415(k)(3)(A); 34 CFR 300.532(a). The hearing officer may order that the child be returned to the placement from which he was removed or, if the hearing officer determines that maintaining the current placement is substantially likely to result in injury to the child or to another, she may order that the child's placement be changed to an appropriate interim alternative educational setting for not more than 45 school days. Id. at § 1415(k)(3)(B)(ii).