

**IMPARTIAL DUE PROCESS HEARING
BEFORE THE HEARING OFFICER
APPOINTED BY THE STATE SUPERINTENDENT OF PUBLIC SCHOOLS
STATE OF NEVADA**

In the Matter of
STUDENT¹, by and through
Educational Decision Maker
Petitioners,
v.
SCHOOL DISTRICT
Respondent

Date: November 8, 2024

Hearing Officer
Colleen Platt

FINDINGS OF FACTS, CONCLUSIONS OF LAW AND DECISION AND ORDER

This matter came for a hearing on October 29, 2024. The School District was represented by Paul Anderson, counsel for the School District, and the Student was represented by the Parent. Colleen Platt, Esq. served as the hearing officer (“Hearing Officer”) in this matter. The following Findings of Facts, Conclusions of Law and Decision are hereby rendered by the Hearing Officer.

I. PROCEDURAL HISTORY

On September 30, 2024, the Parent filed a due process complaint (“Complaint”) requesting an impartial due process hearing to resolve the following issues: (1) a dispute concerning the disciplinary action taken by the School District against the Student and the change in placement of the Student; and (2) the failure of the School District to design an appropriate program to meet the Student’s individual and unique needs. On October 3, 2024, this Hearing Officer was appointed to hear the Complaint. After a review of the Complaint, this Hearing Officer determined that the Complaint contained matters that are required to be heard on an expedited timeline and matters that were required to be heard on a non-expedited timeline. As such, this Hearing Officer bifurcated the issues and the hearing and this decision only involve the expedited issues. Pursuant to 20 USC §1415(k)(4), 34 CFR §300.532(c)(2) and NAC 388.308, a

¹ Personally identifiable information is attached as Appendix A to this Order and must be removed prior to public distribution.

hearing must be expedited to resolve a dispute concerning: (1) the determination of whether the conduct of a student with a disability was a manifestation of the student's disability; or (2) regarding the disciplinary change of placement of the student pursuant to 34 CFR §300.530 or 300.531. Such hearing must be conducted within 20 school days of the due process complaint being filed and the decision of the hearing officer assigned to the hearing must be rendered within 10 school days of the hearing being conducted. (NAC 388.308, 24 CFR 300.532(c)(2)).

On October 4, 2024, this Hearing Officer filed a Preliminary Order and Notice of Status Conference setting a status conference for October 7, 2024.² The parties indicated that they were not available on October 7, 2024, and a second Notice of Status Conference was issued setting a status conference for October 9, 2024. On October 9, 2024, the School District filed its answer to the Complaint.

On October 9, 2024, a status conference was held in this matter wherein a prehearing conference was scheduled for October 18, 2024, and a hearing was scheduled for October 29, 2024. A Status Conference Report and Order was filed on October 9, 2024. On October 11, 2024, this Hearing Officer sent a Notice of Prehearing Conference and draft issues for the hearing. On October 18, 2024, a Pre-hearing Conference was held wherein the parties discussed the issues that would be heard at the hearing, as well as other formalities related to the hearing. The parties indicated that they had reached a resolution, but they needed additional time to answer questions that the Parent had. A Pre-Hearing Conference Report and Order was filed by this Hearing Officer on October 18, 2024.

² At the time of the Preliminary Order and Notice of Status Conference until October 28, 2024, the Parent was represented by counsel John Schaller. Mr. Schaller withdrew from representing the Parent on October 28, 2024, the day before the hearing in this matter was scheduled.

On October 28, 2024, former counsel for the Parent filed a Notice of Withdrawal of Attorney and Notice of Attorney Lien wherein counsel provided notice that he had withdrawn his representation of the Parent. On October 28, 2024, a Status Conference was scheduled to discuss the withdrawal and its impact on Parent. At the Status Conference, the Parent indicated that she had received the notice that morning. This Hearing Officer explained that because this matter was expedited and had to be heard on the 20th school day after filing the Complaint, the hearing was required to be held on October 29, 2024, because that was the 20th school day. The Parent indicated that she understood and would be ready to proceed the next day provided that she could participate by videoconference because she did not have arrangements for someone to care for her son on October 29, 2024. That request was granted.

On October 29, 2024, beginning at 9:00 a.m. a hearing was held on the Complaint. The School District presented five witnesses: (1) School District's Executive Director of Special Services; (2) Assistant Principal of Middle School; (3) Student's Paraprofessional; (4) Student's Special Education Teacher; and (5) Board Certified Behavior Analyst. Parent provided testimony. The parties stipulated to the admission of Joint Exhibits 1 through 13. At the hearing, Petitioner's Exhibits 1, 5, 8, 9, 12, 14 (only pages 84 to 85, inclusive), 22, and 24 were admitted into evidence. Respondent's Exhibits 1, 3 (only pages 2 and 3), 4, 6, 8 through 13, inclusive, 19, 20, and 22 through 37, inclusive were admitted into evidence.

II. ISSUES TO BE DECIDED

The issues to be determined are as follows:

1. Did the School District deny the Student a FAPE when it failed to hold a manifestation meeting to determine whether the Student's conduct on May 8, 2024, was a manifestation of the Student's disability or a failure to implement the Student's IEP?

2. Did the Student inflict serious bodily injury to a person on May 8, 2024, while at school, on school premises, or at a school function under the jurisdiction of the School District (34 C.F.R. §300.530(g))?
3. Did the School District deny the Student a FAPE when the Student's placement was changed from the current placement on or about May 22, 2024, and the School District did not provide the Student with services?

III. FINDINGS OF FACT

After considering the testimony presented at the hearing and the admitted exhibits, this Hearing Officer makes the following findings of fact:

1. The Student was enrolled in Middle School for the 2023-2024 school year.
(Testimony of Assistant Principal, Special Education Teacher)
2. On May 1, 2024, the multidisciplinary team ("MDT") met to discuss the Student's IEP that was created on March 21, 2024. (Joint Exhibit 2, p. 1)
3. The MDT consisted of the Parent who participated by videoconference, the Principal, the Special Education Teacher, the Student's Regular Education Teacher; the Director of Special Services, and the Board Certified Behavior Analyst. (Joint Exhibit 2, p. 1)
4. The IEP was not revised at the May 1, 2024, meeting, and the March 21, 2024, IEP remained in place. (Joint Exhibit 2, p. 1, Testimony of Special Education Teacher and Director of Special Services)
5. The MDT scheduled a second IEP meeting to discuss the March 21, 2024, IEP for May 10, 2024. (Testimony of Special Education Teacher and Director of Special Services)
6. The Student's March 21, 2024, IEP was not admitted into evidence, so it is unclear what services the Student was receiving and where those services would be provided.

7. The Student attended school on three partial days per week for about 3 hours each day but could have an extra hour of school if the Student was behaving appropriately. (Testimony of Special Education Teacher and Parent)
8. The Student had a “Behavioral Intervention Plan” that was last revised on February 20, 2024, and was in effect on May 8, 2024. (Testimony of Board Certified Behavior Analyst)
9. The Board Certified Behavior Analyst, in preparation for the May 1, 2024, IEP meeting, prepared a revised “Behavioral Intervention Plan” and a draft “Student Safety Plan” that could be used as a starting point for discussion. (Joint Exhibit 1; Petitioner’s Exhibit 1; Testimony of Board Certified Behavior Analyst)
10. On May 8, 2024, the Student arrived at the Middle School outside of the Student’s normal arrival time and when the Student arrived at the Middle School, Student was in a dysregulated state. (Testimony of Assistant Principal and Paraprofessional)
11. The Student was first led to the Middle School office where Student stated that he had a vape and pulled out a nerf gun. (Testimony of Assistant Principal)
12. The nerf gun did not have any darts inside the gun. (Testimony of Assistant Principal)
13. The Student was led through the general education hallway by the Assistant Principal where Student engaged in derogatory and profane language to other students. (Testimony of Assistant Principal and Paraprofessional)
14. The Student was led outside to the basketball courts because on prior occasions playing basketball was a way to de-escalate the Student and calm the Student down. (Testimony of Assistant Principal and Paraprofessional)

15. While outside, Student took off his shirt and then put it back on, Student engaged in throwing rocks and shooting basketballs. (Testimony of Assistant Principal and Paraprofessional)
16. The Assistant Principal was the “lead” in the situation and the Paraprofessional was observing the Student and taking data. (Respondent’s Exhibit 1, p. 1; Testimony of Assistant Principal and Paraprofessional)
17. While playing basketball, Assistant Principal texted the Principal and while the Assistant Principal was texting, the Student walked up to Paraprofessional and threatened to hit her. (Testimony of Assistant Principal and Paraprofessional)
18. The Student returned to playing basketball with the Assistant Principal. (Testimony of Assistant Principal and Paraprofessional)
19. While the Assistant Principal was texting with the Principal, Student approached the Paraprofessional again and hit the Paraprofessional three times, for the first two attempts, the Paraprofessional was able to block the attempts, but the third attempt hit the Paraprofessional on the nose, which caused the nose to swell and bleed.
(Respondent’s Exhibit 1, p. 1; Respondent’s Exhibit 3, p. 2 and 3; Testimony of Assistant Principal, Paraprofessional and Special Education Teacher)
20. Each time the Student approached the Paraprofessional, the Student approached the Paraprofessional in a boxing stance. (Testimony of Paraprofessional)
21. After hitting the Paraprofessional, the Assistant Principal took the Student to the cafeteria to de-escalate the situation. While in the cafeteria the Student engaged in profane language and grabbed another student’s t-shirt. The Assistant Principal instructed the other students in the cafeteria to use another exit. The Student

- continued to use inappropriate sexual language regarding the Student's crush. The Assistant Principal then moved the Student to the office and waited for the Parent to arrive to pick up the Student. (Petitioner's Exhibit 12, p. 1; Testimony of Assistant Principal)
22. The Paraprofessional went to the local urgent care on May 8, 2024, after the incident for treatment, which included x-rays, and was released for full duty. (Respondent's Exhibit 4, p. 5 and 6, Testimony of Paraprofessional)
 23. On May 9, 2024, while the Paraprofessional was eating breakfast, she felt a sharp pain in her nose and went to the local emergency room. (Testimony of Paraprofessional)
 24. At the emergency room the Paraprofessional had a CT done of the facial bones which showed no acute fracture. (Respondent's Exhibit 4, p. 15)
 25. The Paraprofessional also had a CT done on her head which showed no acute intracranial abnormality (Respondent's Exhibit 4, p. 19)
 26. The Paraprofessional was directed to remain off work until May 16, 2024. (Respondent's Exhibit 4, p. 25)
 27. On May 15, 2024, the Principal created a Behavior Detail Report of the May 8, 2024, incident which indicated that the Student had been suspended for 10 days beginning on May 10, 2024, pending an MDR. (Petitioner's Exhibit 5, p. 1)
 28. On May 15, 2024, the Assistant Principal created a Behavioral Detail Report of the actions by the Student after the May 8, 2024, incident. (Petitioner's Exhibit 12, p. 1)
 29. The May 10, 2024, meeting to discuss the March 21, 2024, IEP was cancelled by the Director of Special Services. (Testimony of the Director of Special Services)

30. On May 10, 2024, the Director of Special Services met with the Assistant Principal, Special Education Teacher and the Board Certified Behavior Analyst to discuss the May 8, 2024, incident involving the Student. (Testimony of the Director of Special Services, Special Education Teacher and Board Certified Behavior Analyst)
31. On May 10, 2024, the Parent emailed the Special Education Teacher, the Board Certified Behavior Analyst, the Director of Special Services, the Assistant Principal, the Middle School principal and one other person regarding the status of the May 10, 2024, IEP meeting. The email indicated that she had reached out to the Director of Special Services by telephone and email but had not received a response and was inquiring regarding the status of the meeting originally scheduled that day. The Special Education Teacher emailed the Parent stating that the meeting was cancelled but did not provide an explanation as to why the meeting was cancelled. (Petitioner's Exhibit 8, p. 1-3)
32. A manifestation determination review ("MDR") was scheduled for May 15, 2024, wherein the School District was proposing to review the relationship between the Student's disability and the conduct that occurred on May 8, 2024³. (Joint Exhibit 5, p. 1, Respondent's Exhibit 6, p. 1)

³ 34 C.F.R. §300.503 requires that a prior written notice be given to a parent before the public agency: proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of FAPE to the child; or refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of FAPE to the child. The prior written notice must contain certain information found in 34 C.F.R. §300.503(b). Specifically, a description of each evaluation, procedure, assessment, record, or report the agency used as a basis for the proposed or refused action, and a description of other options that the IEP Team considered and the reasons why those options were rejected. (34 C.F.R. §300.503(b)(3) and (6)) The prior written notice used by the School District likely does not satisfy the requirements set forth in 34 C.F.R. §300.503. This prior written notice used in this matter was given before any discussion or evaluation was given. In general, a prior written notice is given *after* any meeting to discuss such changes, not predetermined ahead of any meeting.

33. An MDR was initiated on May 15, 2024, the Parent participated in the MDR by videoconference, however, the MDR was not completed because the Parent stopped participating in the MDR because she wanted to review the video of the May 8, 2024, incident. (Respondent's Exhibit 8, p. 1-2; Testimony of Special Education Teacher, Director of Special Services, and Parent)
34. On May 16, 2024, the School District provided the Parent with a "Parental Prior Written Notice/Notification of Meeting" wherein it notified the Parent of its proposed action to revise the Student's IEP and change the Student's special education placement, describing the proposed or refused change "Per IDEA 34 C.F.R. 300.530(g)" and setting the date for the meeting as May 22, 2024, at 1:30 pm. (Respondent's Exhibit 7, p. 1. Respondent's Exhibit 11, p. 2)
35. On May 17, 2024, the Director of Special Services sent a letter indicating that there would be an IEP meeting held on May 22, 2024, at 1:30 pm and that the meeting would be to discuss the placement for the Student per 34 C.F.R. §300.530(g). (Respondent's Exhibit 12, p. 1)
36. On May 20, 2024, the Parent requested to review and inspect the education records of the Student, including any video and audio recordings of the incident on May 8, 2024, that is prompting the change in placement, witness statements to the incident, and all other documents or correspondences regarding the incident. The Parent requested the information prior to the May 22, 2024, meeting in order to fully participate in the May 22, 2024, meeting. (Respondent's Exhibit 13, p. 1)
37. On May 21, 2024, at 11:33 am, the Director of Special Services emailed the Parent informing her she could review the video on May 21, 2024, between 1:00 pm and

3:00 pm in the Principal's office, but indicated that the Parent could not review the witness statements because they were a part of the confidential investigation file and are not part of the Student's educational record. The Director of Special Services' email indicated that there was a report that could be reviewed by the Parent.

(Respondent's Exhibit 13, p. 1; Testimony of Director of Special Services)

38. At some point after May 16, 2024, the Director of Special Services determined that the School District would not move forward with disciplinary action against the Student but instead would seek a change in placement for the Student, believing that the best path forward for the Student was to change the Student's placement to homebound, but did not inform the Parent of this decision until the May 22, 2024, meeting. (Testimony of Director of Special Services)

39. On May 22, 2024, the School District convened the meeting and did not conduct an MDR because the Director of Special Services determined the best path forward for the Student was to change the placement of the Student from the Student's current placement to homebound services. (Joint Exhibit 10, Petitioner's Exhibit 22, Testimony of Director of Special Services, Special Education Teacher, and Board Certified Behavior Analyst)

40. Present at the May 22, 2024, meeting were the Parent, Special Education Teacher, Principal (as the School District representative), Regular Education Teacher, Board Certified Behavior Analyst, and Director of Special Services. (Joint Exhibit 10, Petitioner's Exhibit 22)

41. At the May 22, 2024, meeting, the Parent was prepared to discuss the incident on May 8, 2024, the MDR, and the behavioral information identified on the May 16, 2024, “Parental Prior Written Notice/Notification of Meeting.” (Testimony of Parent)
42. When the meeting began, the Parent was confused as to why they were talking about the IEP and not discussing the MDR or the May 16, 2024, “Parental Prior Written Notice/Notification of Meeting” at which point the Director of Special Services informed the Parent that the School District would not be moving forward with disciplinary action against the Student and instead would be discussing the Student’s IEP and a change in placement of the Student to homebound placement. (Testimony of Director of Special Services and Parent)
43. A draft IEP was created at the May 22, 2024, meeting wherein the Student’s placement was changed to 100% homebound beginning May 22, 2024, and ending on June 17, 2024, which coincided with the end of the school year. (Joint Exhibit 10, p. 25, Petitioner’s Exhibit 22, p. 27, Testimony of Special Education Teacher, Director of Special Services and Board Certified Behavior Analyst)
44. The intent of placing the Student on homebound services for the rest of the school year was to allow the MDT time to meet and discuss how to best ensure that the Student could return to school in safe manner with the services and supports in place to make the Student successful. (Testimony of Director of Special Services and Board Certified Behavior Analyst)
45. At the May 22, 2024, meeting, the Parent verbally agreed to the change in placement. (Testimony of Special Education Teacher and Director of Special Services)

46. The Parent signed the draft May 22, 2024, IEP, in the section titled “IEP Participation” and “Procedural Safeguards” but did not sign the IEP in the section titled “IEP Implementation.” (Joint Exhibit 10, p. 28, Respondent’s Exhibit 22, p. 30).
47. Parent did not agree to the placement of the Student in the May 22, 2024, IEP wherein the Student’s placement was homebound because the Parent was unable to implement the services, she did not have a computer or other supplies, and she did not believe that the Student’s goals could be achieved in a homebound setting.
(Testimony of Parent)
48. The procedure the School District implements for revising an IEP is to have a copy of the current IEP at any meeting, handwrite any changes onto the document and then later, incorporate those changes into a final complete document which is then signed.
(Testimony of Special Education Teacher and Director of Special Services)
49. The Special Education Teacher incorporated all the changes to the Student’s IEP discussed at the May 22, 2024, meeting, and emailed the Parent a copy of the IEP.
(Respondent’s Exhibit 19 p. 1; Testimony of Special Education Teacher)
50. On May 22, 2024, at the conclusion of the meeting, the School District provided the Parent with a “Prior Written Notice/Notification of Meeting” wherein it indicated that the School District would implement the IEP developed on May 22, 2024, on that date and that it was changing the placement of the Student to homebound, beginning on May 22, 2024. (Joint Exhibit 11, p. 1, Testimony of Special Education Teacher)
51. On May 24, 29, 2024, June 3, 5, and 11, 2024, the Special Education Teacher emailed the Parent indicating that the finalized IEP was ready and that she had the homebound paperwork that the Parent needed to complete. The Parent did not respond to those

- emails. (Respondent's Exhibit 22, p. 1; Respondent's Exhibit 23, p. 1, Respondent's Exhibit 24, p. 1; Respondent's Exhibit 25, p. 1; Respondent's Exhibit 26, p. 1; Testimony of Special Education Teacher)
52. On June 11, 2024, the Director of Special Services emailed the Parent to discuss services for the Student. The Parent did not respond to the email. (Respondent's Exhibit 25, p. 1, Testimony of Director of Special Services)
53. On August 21, 2024, the School District sent Parent a "Parental Prior Written Notice/Notice of Meeting" which indicated that they would be implementing the IEP developed on May 22, 2024, until the IEP team could convene to revise the IEP as necessary. The Parent did not respond. (Joint Exhibit 13, p. 1, Testimony of Director of Special Services)
54. On August 22, 2024, the Director of Special Services sent Parent a letter indicating that the School District would continue to implement the IEP developed on May 22, 2024, until the IEP team could convene to revise the IEP as necessary which included the "Prior Written Notice/Notice of Meeting" and "Special Education Rights." The Parent did not respond to the letter. (Respondent's Exhibit 28, p. 1; Testimony of Director of Special Services)
55. On September 3, 2024, the Director of Special Services emailed the Parent to discuss the homebound services for Student. The Parent did not respond to the email. (Respondent's Exhibit 29, p. 1; Testimony of Director of Special Services)
56. On September 12, 2024, an occupational therapist for the School District emailed the Parent and Director of Special Services inquiring when the occupational therapist

- could meet with Parent to discuss Student's services. The Parent did not respond to the email. (Respondent's Exhibit 30, p. 1; Testimony of Director of Special Services)
57. On September 13, 2024, a homebound instructor for the School District emailed the Parent to discuss setting up the Student's homebound instruction. The Parent did not respond to the email. (Respondent's Exhibit 31, p. 1; Testimony of Director of Special Services)
58. On September 18, 2024, the homebound instructor emailed the Director of Special Services to indicate that the Parent had inquired about the Student's IEP and whether that IEP was updated and inquiring as to a time to meet to update the IEP. (Respondent's Exhibit 33, p. 1; Testimony of Director of Special Services)
59. On September 19 and 25, 2024, the Director of Special Services emailed the Parent to set up a meeting to discuss the Student's IEP and discuss implementing the Student's homebound services. The Parent did not respond to the emails. (Respondent's Exhibit 34 and 35, p. 1; Testimony of Director of Special Services)
60. On September 12, 2024, an occupational therapist for the School District emailed the Parent and Director of Special Services inquiring when the occupational therapist could meet with Parent to discuss Student's services. The Parent did not respond to the email. (Respondent's Exhibits 36, p. 1; Testimony of Director of Special Services)
61. The Student has not been in the Middle School since the May 8, 2024, incident and has not received any services since that date.

62. The Parent retained counsel on or about May 23, 2024, and her counsel instructed her not to respond to any emails from the School District or communicate with the School District. (Testimony of Parent)

IV. CONCLUSIONS OF LAW

Based upon the above Findings of Fact, this Hearing Officer's Conclusions of Law are as follows:

The Individuals with Disabilities Education Act ("IDEA") was enacted for, among other reasons, to "ensure that 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." (20 U.S.C. §1400(d)(1)(A) A school district's compliance with the procedural safeguards set forth in the IDEA is "essential to ensuring that every eligible child receives a FAPE, and those procedures which provide for meaningful parental participation are particularly important." (*Amanda J. v. Clark County School District*, 267 F.3d 877, 891 (9th Cir. 2001)). Though a school district may have engaged in a procedural violation of the IDEA, not every procedural violation will be the denial of a FAPE to a student. *Amanda J.*, 267 F.3d at 892. However, where the procedural violation of the IDEA results in the "loss of educational opportunity" or "seriously infringes the parents' opportunity to participate" in the process or "caused a deprivation of educational benefits" the procedural violation is a denial of a student's FAPE. *Id.* (citing *W.G. v. Board of Trustees of Target Range School District No. 23*, 960 F.2d 1479, 1484 (9th Cir. 1992) and *Roland M. v. Concord School Committee*, 910 F.2d 983, 994 (1st Cir. 1990)).

NAC 388.265 sets forth the procedure pursuant to which a pupil with a disability may be suspended, expelled, or excluded from attendance by a school district. Before initiating any

suspension, expulsion, or exclusion that will result in a change of placement for the pupil with a disability, the school district shall convene a meeting of the relevant members of the committee that developed the pupil's IEP but must include the parent of the pupil. (NAC 388.265(2)). This committee is generally referred to as the "manifestation determination review team" ("MDRT").

The MDRT shall:

(a) Consider all information relevant to the behavior subject to disciplinary action, including, without limitation:

(1) Evaluations and diagnostic results, including, without limitation, relevant information supplied by the parents of the pupil;

(2) Observations of the pupil; and

(3) The pupil's individualized educational program and placement.

(b) Determine whether the behavior of the pupil was a manifestation of the disability of the pupil. In carrying out the requirements of this paragraph, it must be determined whether the conduct in question was:

(1) Caused by or directly and substantially related to the disability of the pupil; or

(2) The direct result of the public agency's failure to implement the pupil's individualized educational program.

→If the public agency, the parent and the relevant members of the committee determine that either subparagraph (1) or (2) is applicable to the pupil, the conduct must be determined to be a manifestation of the disability of the pupil.

(c) Prepare a report containing their findings and conclusions. (NAC 388.265(3)(a), (b) and (c)).

NRS 388.467 provides that when a "due process hearing is held pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. §§ 1400 et seq., regarding the identification, evaluation, reevaluation, classification, educational placement or disciplinary action of or provision of a free appropriate public education to a pupil with a disability, and a school district is a party, the school district has the burden of proof and the burden of production."

A. Did the School District deny the Student a FAPE when it failed to hold a manifestation meeting to determine whether the Student's conduct on May 8, 2024, was a manifestation of the Student's disability or a failure to implement the Student's IEP?

This Hearing Officer finds that the School District denied the Student a FAPE when it initiated an MDR but failed to conclude the MDR. NAC 388.265(3)(a), (b) and (c) requires the MDR team to review certain documents regarding a student, determine if the behavior of the student is a manifestation of the student's disability or a failure of the school district to implement the student's IEP and then prepare a report of their findings and conclusions. The School District in this case did not determine whether the Student's behavior on May 8, 2024, was a manifestation of the Student's disability or a failure of the School District to implement the Student's IEP; nor did the School District prepare a report of its findings and conclusions. The Special Education Teacher and Director of Special Services testified that the Parent disengaged from the discussion and refused to participate until she was able to review video of the May 8, 2024, incident. At that point, the Director of Special Services ended the meeting. The School District then did not reschedule the MDR or move forward with the MDR without the Parent's participation. The School District cannot "eschew its affirmative duties under the IDEA by blaming the parents." (*Doug C. ex rel. Spencer C. v. State of Hawaii, Dep't of Educ.*, 720 F.3d 1038; 1045 (9th Cir. 2013)). Nothing in the IDEA prevents a School District from continuing with the MDR after it has begun with the proper parties present, including the Parent, and completing the MDR in a situation where the Parent is present and ceases participation. In this case, the Parent was there, was participating, and then ceased participating, the School District should have continued the MDR to its conclusion. Instead, the School District simply ended the

MDR with no determination as to whether the conduct was a manifestation of the Student's disability or failure to implement the IEP and no report. The School District did not reschedule the MDR, even though the School District still had time to do so.

Instead, on May 16, 2024, the School District then provided the Parent with a "Parental Prior Written Notice/Notification of Meeting" that informed the Parent there would be a meeting on May 22, 2024, to discuss the Student's change in placement because of the "IDEA 34 C.F.R. §300.530(g)."⁴ Nothing in that notice provided the Parent with any information as to whether or not the School District would continue with the MDR or what actions the Student had engaged in that resulted in the School District seeking a change in placement as a result of 34 C.F.R. §300.530(g).

At some point after the May 16, 2024, letter was provided to Parent and the May 22, 2024, meeting, the Director of Special Services determined that disciplinary action was not appropriate and that a change in placement was the best for the Student. However, she did not provide any notice of this decision to the Parent ahead of the May 22, 2024, meeting. Instead, the Parent arrived at the May 22, 2024, meeting prepared to discuss the Student's conduct, complete an MDR, and discuss the how to move forward.

At the May 22, 2024, meeting, no MDR was held, and no evidence was presented at the hearing that indicates that there was a discussion on how the Student had engaged in behavior to trigger a removal to an interim alternative education setting as set forth in 34 C.F.R. §300.530(g).

⁴ The School District seems to use this "Prior Written Notice/Notification of Meeting" form for a dual purpose—for providing a parent notice of a meeting, but also as a prior written notice required by 34 C.F.R. §300.503. This form, as used in this matter, likely does not meet the requirements for a prior written notice required by 34 C.F.R. §300.503 because it was used before any sort of meeting was held to make any change to the Student's IEP or placement, it does not appear to be revised to account for any discussions at a meeting held pursuant to the notice (no evidence was presented at the hearing to indicate that the notices provided in this matter were revised after the meetings). Nor does the notice contain any description of each evaluation, procedure, assessment, record, or report the agency used as a basis for the proposed or refused action, and a description of other options that the IEP Team considered and the reasons why those options were rejected.

Instead, the Director of Special Services told the Parent that none of those things would be discussed, despite the notices indicating otherwise, and instead the meeting would involve revising the Student's IEP to change the placement to homebound. After the conclusion of the meeting, the Special Education Teacher handed the Parent a "Parental Prior Written Notice/Notification of Meeting" which indicated that the School District was implementing the May 22, 2024, IEP and that the change in placement of the Student was to homebound. 34 C.F.R. §300.503(a) requires the School District to provide the Parent with notice "a reasonable time **before**" the School District changes the placement of a student. (emphasis added). Providing notice to the Parent that the Student's placement is changed effective on that date of the notice is not a "reasonable time before" the implementation of that change in placement. In addition, as previously stated, 34 C.F.R. §300.503(b) sets forth what that prior written notice must contain and the notice provided to the Parent on May 22, 2024, does not contain that information.

While not every procedural violation of the IDEA will be the denial of a FAPE to a student, here, the Student has demonstrated that each of the above procedural violations is a denial of FAPE. (*Amanda J.*, 267 F.3d at 892). Procedural violations must "actually interfere with the provisions of a FAPE to that child." (*Dibuo v. Board of Education of Worcester County*, 309 F.3d 184, 190 (4th Cir. 2002)). The evidence submitted indicates that this was a difficult situation where the School District and Parent want what is best for the Student. The School District convened the MDR on May 15, 2024, but did not complete it. Its argument for why it did not complete it was because the Parent ceased participation. Then, it notified the Parent on May 16, 2024, that it would hold a meeting on May 22, 2024, which indicated that the School District would be looking to remove the Student from his current educational setting as a result of the

Student's conduct. It then sent another letter on May 17, 2024, which indicated that the meeting would be an IEP meeting, due to recent events and citing to 34 C.F.R. §300.530(g) as the reason for the meeting. When the meeting convened on May 22, 2024, the Director of Special Services, for the first time, told the Parent that they would not be moving forward with disciplinary action against the Student and instead believed a homebound setting was what was best for the Student.

“When confronted with the situation of complying with one procedural requirement of the IDEA or another, we hold that the agency must make a reasonable determination of which course of action promotes the purposes of the IDEA and is least likely to result in the denial of a FAPE. In reviewing an agency's action in such a scenario, we will allow the agency reasonable latitude in making that determination.” (*Doug C. v. Haw. Dep't of Educ.*, 720 F.3d at 1046). In this case, however, the School District did not notify the Parent of any of its determinations or why they made such determinations. The School District led the Parent to believe, through its notice on May 16, 2024, and May 17, 2024, that the May 22, 2024, meeting was to discuss the discipline of the Student. No MDR was conducted on that date, the MDR on May 15, 2024, was not completed, no report regarding that MDR was prepared, and the School District did not provide notice to the Parent that the May 22, 2024, meeting would not involve a discussion of any disciplinary action regarding the Student. While the above are procedural violations, compiled together, these procedural violations interfered with the provisions of FAPE to the Student.

B. Did the Student inflict serious bodily injury to a person on May 8, 2024, while at school, on school premises, or at a school function under the jurisdiction of the School District (34 C.F.R. §300.530(g))?

34 C.F.R. §300.530(g) provides that a school district may remove a student from the student's current educational setting and place the student in an interim alternative educational setting for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the student's disability if the student: (1) carries a weapon to or possesses a weapon at the school, on school premises, or at a school function; (2) knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance at the school, on school premises, or at a school function; or (3) has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function. If a school district determines that the student satisfies one of the three grounds for placing the student into an interim alternative educational setting, the school district must still hold an MDR. (*see Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, U.S. Department of Education, Office of Special Education and Rehabilitation Services, Question E-1; July 19, 2022)

In this case, the School District provided notice to the Parent on May 16, 2024, that the School District would be discussing a change in placement of the Student as a result of behavior that could satisfy the provisions of 34 C.F.R. §300.350(g). However, the Director of Special Services testified that the School District would not be seeking disciplinary action against the Student and as such, no MDR was held and no determination of whether the Student satisfied one of the three grounds for placing the Student in an alternative educational setting set forth in 34 C.F.R. §300.350(g) was made. Because the School District did not proceed with moving the Student to an interim alternative educational setting as a result of the May 8, 2024, incident, this issue is moot and this Hearing Officer does not render a decision on this issue.

C. Did the School District deny the Student a FAPE when the Student’s placement was changed from the current placement on or about May 22, 2024, and the School District did not provide the Student with services?

The School District provided notice to the Parent on May 22, 2024, that it would be implementing the IEP developed on May 22, 2024, on May 22, 2024. The May 22, 2024, IEP provided that the Student would receive “virtual home based academic services” for 5 hours per week at home beginning on May 22, 2024, and ending on June 14, 2024. Those services were never implemented because the Parent ceased communications with the School District at the direction of her attorney. The School District made several attempts from May 22, 2024, through June 11, 2024, to set up a time where the Parent could sign the required paperwork to begin the homebound services for the Student. The Parent did not respond to those attempts. 34 C.F.R. 300.322(d) sets forth the procedure by which a School District can conduct an IEP meeting without the parent in attendance. No such evidence was offered in the hearing to indicate that the School District had attempted to hold an IEP meeting without the Parent present.

Prior to the start of the 2024-2025 school year, the School District again attempted to contact the Parent to set up a time to discuss the Student’s IEP. The Parent again did not respond to those attempts. As of the date of the hearing, the Student had not been returned to the Middle School and was not receiving services. While parental participation in a student’s education is one of the cornerstones of the IDEA, it presumes that the parent does in fact participate in the provision of the student’s education. “The critical nature of the provisions protecting parental involvement is highlighted when they are considered in light of the stated purposes of the IDEA. To accomplish the IDEA's goal of ensuring that ‘all children with disabilities have available to them . . . a free appropriate public education which emphasizes special education and related

services designed to meet their unique needs,' 20 U.S.C. §1400(c), those individuals who have first-hand knowledge of the child's needs and who are most concerned about the child must be involved in the IEP creation process." (*Amanda J.* 267 F.3d at 891).

In this case, the Parent's lack of communication with the School District has made it impossible for the School District to implement the services for the Student. As such, the School District has not denied the Student a FAPE for not providing services to the Student after the Student's change in placement. The School District, however, could, if it so chose to, move forward with reviewing the IEP of the Student (because the IEP itself indicates that the services were only to be provided from May 22, 2024, through June 14, 2024, and testimony indicated this was intentional because the team wanted to discuss the best path for the Student to receive services), provided that the School District complied with 34 C.F.R. §300.322(d).

V. DECISION AND ORDER

Based on the above Findings of Fact and Conclusions of Law, this Hearing Officer's decision is that the School District denied the Student a FAPE when it failed to hold a manifestation meeting to determine whether the Student's conduct on May 8, 2024, was a manifestation of the Student's disability or a failure to implement the Student's IEP, the issue of whether the Student inflicted serious bodily injury to a person on May 8, 2024, is moot because the School District presented no evidence of its analysis or determination that the Student had inflicted serious bodily injury to a person and it declined to move forward with moving the Student to an interim alternative educational setting as a result of the Student's conduct on May 8, 2024; and the School District did not deny the Student a FAPE when the Student's placement was changed from the current placement on or about May 22, 2024, and the School District did

not provide the Student with services because the School District engaged in several attempts to provide those services, but the Parent did not respond to those attempts. It is hereby ordered:

IT IS HEREBY ORDERED that the School District shall hold a manifestation determination review to determine whether the Student's conduct on May 8, 2024, was a manifestation of the Student's disability or a failure of the School District to implement the Student's March 21, 2024, IEP and conduct an IEP meeting to review and if necessary revise the Student's May 22, 2024, IEP within 15 days of the entry of this Decision and Order.⁵

VI. NOTICE OF RIGHT TO APPEAL

Any party aggrieved by this Decision has the right to appeal within thirty (30) days of the receipt of this decision by filing with the Nevada Department of Education, Superintendent of Public Instruction, a notice of appeal which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of appeal to the other parties within 30 days after receiving the decision. A party to the hearing may file a cross appeal by filing a notice of cross-appeal with the Superintendent which identifies the specific findings and conclusions being appealed and forwarding a copy of the notice of cross appeal to the other parties within 10 days after receiving notice of the initial appeal. At the parties' request, this decision is being delivered to the parties both by e-mail and U.S. Postal Service. Receipt of this Decision and Order will be determined by either the date of actual delivery, or the date of the first attempt to deliver, by the U.S. Postal Service.

⁵ Pursuant to 34 C.F.R. §300.513(a) nothing precludes a hearing officer from ordering a school district to comply with the procedural requirements of the IDEA.

Date: November 8, 2024

Colleen Platt

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