

XXXX XXXX,

STUDENT

v.

BALTIMORE COUNTY

PUBLIC SCHOOLS

* BEFORE MARC NACHMAN

* AN ADMINISTRATIVE LAW JUDGE

* OF THE MARYLAND OFFICE

* OF ADMINISTRATIVE HEARINGS

* OAH NO: MSDE-BCNY-OT-06-31279

* * * * *

DECISION

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STATEMENT OF THE CASE

This case arises from a request by XXXX XXXX (“Parent”) on behalf of XXXX XXXX (“Student”), for a hearing contesting the expulsion of the Student from [School 1] (“[School 1]”). The Individualized Education Program (“IEP”) team found that the Student’s behavior leading to his disciplinary suspension was not a manifestation of his disability and his expulsion could proceed. The IEP team also decided on an alternative placement if the Student were to be expelled by the Superintendent’s designee.

The request for a due process hearing and mediation to challenge these determinations was filed with the Baltimore County Public Schools (“BCPS”) on July 11, 2006, and, after attempted resolution meetings failed to result in a satisfactory conclusion, the BCPS transmitted the request to the Office of Administrative Hearings (“OAH”) for mediation and a hearing on July 31, 2006.

On July 17, 2006, BCPS challenged the sufficiency of the Complaint, in accordance with 20 U.S.C. § 1415(c)(2)(A).¹ On July 20, 2005, Administrative Law Judge (“ALJ”) J. Bernard McClellan denied the BCPS challenge, and the matter was scheduled for a hearing.

Mediation was scheduled for July 31, 2006, at the OAH, Hunt Valley, Maryland, before the hearing on the merits of this case.² Because the mediation did not resolve the matter, the hearing at the OAH was held before ALJ Marc Nachman on July 31, 2006, immediately following the mediation.

Stephen Cowles, Esquire, counsel for BCPS, 6901 N. Charles Street, Towson, Maryland 21204, represented BCPS. The Parent and Student appeared and were represented by David Ellin, Esquire, 20 South Charles, Street, Baltimore, Maryland 21201.

The hearing was held pursuant to the following laws: Individuals With Disabilities Education Improvement Act of 2004 (“IDEA”), 20 U.S.C.A. § 1415 (Supp. 2005); 34 C.F.R. § 300.507 (2004); Md. Code Ann., Educ. § 8-413 (2004); Code of Maryland Regulations (“COMAR”) 13A.05.01; and Maryland State Department of Education Guidelines for Maryland Special Education Mediation/Due Process Hearings.

Procedure in this case is governed by the contested case provisions of the Administrative Procedure Act, and the Rules of Procedure of the OAH. Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2004 & Supp. 2005); COMAR 28.02.01.

¹ This subsection of the IDEA states that a due process complaint “shall be deemed to be sufficient unless the party receiving the notice notifies the [Administrative Law Judge] and the other party in writing that the receiving party believes the [complaint] has not met the requirements of subsection (b)(7)(A) of this section.” Nothing in the law provides the Parent with the right to respond to such a challenge.

² In accordance with the standards and procedures of the OAH, the mediation was conducted by a different ALJ than the one who conducted the hearing in this case. At no time did the two ALJs discuss this case.

ISSUE

The issue is whether the IEP team followed proper procedures and made an appropriate decision in determining that the Student's behavior was not a manifestation of his disability and that the proposed placement was appropriate.

SUMMARY OF THE EVIDENCE

Exhibits

The following six documents were admitted into evidence on behalf of BCPS:³

BCPS # 1. Correspondence from BCPS Superintendent's Designee, XXXX XXXX, addressed to the Parent, dated June 5, 2006

BCPS # 3. Incident Report by XXXX XXXX, Assistant Principal, [School 1], dated May 18, 2006

BCPS # 4. BCPS Suspension Form A-I Special Education Student, dated May 19, 2006

BCPS # 6. IEP Team Summary (A-I Manifestation Meeting), dated May 19, 2006

BCPS # 8. BCPS Behavior Management Plan, dated May 19, 2006

BCPS # 11. IEP, dated February 1, 2006

The following two documents were admitted into evidence on behalf of the Parent:⁴

Parent Ex. # 1. BCPS Student Information Reports (4), dated May 18, 2006

³ BCPS pre-numbered all of the exhibits that it intended to submit into evidence, but at the hearing decided to only submit some of those exhibits. For simplicity, these exhibits retain the exhibit numbers assigned by BCPS.

⁴ The regulations covering prior disclosure of documents offered at due process hearings provide at COMAR 13A.05.01.15C:

(11) At least 5 business days before the hearing conducted in accordance with 34 CFR §300.507 and §C of this regulation, each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing.

(12) An impartial hearing officer may bar a party that fails to comply with §C(11) of this regulation from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.

Although the Parent did not comply with the "5-day rule" in this case, BCPS did not oppose the admissibility of these documents under that rule, even though it had the right to do so.

Testimony

The Parent and the Student testified on their own behalf. XXXX XXXX, Assistant Principal, [School 1], was admitted as an expert in school administration, and testified on behalf of BCPS.

FINDINGS OF FACT

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Student suffers from a specific learning disability ("SLD"). He is seventeen years old, born on XXXX, 1989.
2. During the 2005-2006 school year, the Student attended [School 1].
3. At the time of the misconduct which is the subject of this matter, as well as at all other relevant times, the Student received special education services at [School 1] pursuant to an Individualized Education Program ("IEP") dated February 1, 2006.
4. On May 17, 2006, the Student was involved in an altercation with two other students on [School 1] school grounds.⁵
5. One of the other students involved in the altercation was a senior at [School 1], the other was not. Neither of these students will be educated at [School 1] in the upcoming school year.

⁵ The parties identified the date of the altercation as either May 17 or May 18, 2006. The "Parent's Request for Mediation/Due Process Hearing" and the Suspension Letter (BCPS Ex. # 1) identified the date of the incident as May 17, 2006. The Assistant Principal's Report (BCPS Ex. # 3) called it the "Event of Thursday, May 18, 2006." It was clear from the evidence adduced at the hearing that there was only one altercation immediately preceding the Student's expulsion. Because the manifestation determination and IEP team meetings took place on May 19, 2006, within in ten days after the event, this decision does turn on the date of the incident. It is therefore immaterial whether the incident occurred on May 17 or 18. For the purposes of consistency, however, I will adopt the Parent's position, which references the earlier date.

6. For the 2005-2006 school year, the Student was mainstreamed in classes with some additional supports, such as extended time allowed to complete tasks and assessments if he requested it.
7. The IEP Team determined that the Student did not need positive behavior support (BCPS Ex. # 11, page 10 of 12).
8. For the 2005-2006 school year, the Student did not require a Behavior Intervention Plan (“BIP”) and no Functional Behavior Assessment (“FBA”) was conducted.
9. From the beginning of the 2005-2006 school year through May 17, 2006, the Student attended [School 1] and was educated in accordance with his IEP. On that date, the Student was summarily suspended from school pending a hearing by the Superintendent’s designee to determine whether the Student should be suspended or expelled from school.
10. Prior to that hearing, an IEP team meeting was held on May 19, 2006, to consider whether the Student’s misconduct on May 17, 2006, was a manifestation of his disability.
11. The meeting was attended by the Student, the Student’s Parent, IEP Chairperson and Assistant Vice Principal XXXX XXXX, Special Educator XXXX XXXX, Case Manager XXXX XXXX, School Psychologist XXXX XXXX and classroom teacher XXXX XXXX.
12. The IEP team determined that there was no relationship between the Student’s disability and his behavior. The team also found that the school implemented the Student’s IEP effectively.
13. The IEP team developed an FBA and recommended placement in an alternative school if there were a suspension or expulsion.

14. On May 23, 2006, BCPS convened a suspension hearing (BCPS Ex. # 1). The Parent and Student were present at the hearing, as well as Assistant Principal XXXX XXXX, School Counselor XXXX XXXX, and XXXX XXXX, the BCPS Superintendent's Designee.

15. The participants at the suspension hearing were allowed to present testimony and ask questions. As a result of the hearing, the Student was found responsible for violating Board of Education Policy # 5550 – Disruptive Behavior, having been found guilty of the following charges:

- Violent behavior which created a substantial danger to persons or property;
- Threat(s), on individual(s);
- Disruptive behavior that results in the interference with the normal school program, including repeated Category I or II offenses;
- Participating in and/or inciting a school disruption;
- Fighting;
- Refusing to cooperate with school rules and regulations;
- Using obscene or abusive language .

16. As a result of that finding, the Student was expelled from school as of May 23, 2006. The expulsion was to last for two terms, or until January 2007.

17. The Student was administratively transferred from [School 1] to [School 2] (“[School 2]”). The Student was required to attend [School 2] until his expulsion expired in January 2007.

18. The program at [School 2] is smaller than [School 1], with approximately seventy-five students attending the program. There are less than ten students per class with two teachers. The Student would be able to attend classes necessary to fulfill his graduation requirements.

19. During the expulsion, the Student is not allowed to be on any BCPS property except to attend an alternative program, and he was not allowed to participate in any on or off-site school property.
20. The Student was actively involved in sports at [School 1], participating in the football and wrestling teams. He will not be able to participate in these teams during his expulsion.
21. The Student has the ability to control his behavior and understands the consequences of his actions.
22. The Student's misconduct on May 17, 2006, was not a manifestation of his disability.
23. The Student's placement at [School 2] was appropriate.

DISCUSSION

I. BACKGROUND

A. THE ALTERCATION AND THE RESULTING INVESTIGATION

On May 17, 2006, the Student was involved in an altercation on school grounds. [School 1] Assistant Principal XXXX XXXX investigated the altercation, finding that that the Student had prior confrontations with "C*," an [School 1] senior, with whom he was involved in the May 17 incident (BCPS Ex. # 3):

Approximately three weeks ago, there was an argument in the school cafeteria during lunch between [the Student] and C* ..., the other student involved in this matter before the Superintendent's Designee. [The Student] made the remark that he was going to shoot C* in the head.

As a result of that confrontation, both students were suspended, but both were returned to school after school officials met with their respective parents. The students and parents agreed to take steps to avoid future confrontations. Despite this agreement, tensions continued between the students.

On May 17, 2006, an altercation occurred between the Student, C* and T*, a student who attended [School 3], another BCPS school. Mr. XXXX investigated the incident of May 17, 2006, finding that when C* and his friend T* came to [School 1], they confronted the Student outside the school. Mr. XXXX further wrote:

Over the next several minutes, fighting takes place between T*, [the Student] and C* on and off school property including the middle of the street. At one point, [the Student] pulls C* from the driver's side of C*'s van which then continues to drift down the street until a police cadet on the scene jumps in and stops it preventing major damage to other vehicles or injury to other students.

The police were called and the Student and the other student were taken to a hospital for injuries sustained in the altercation. Mr. XXXX concludes that the Student:

...has demonstrated serious anger management tendencies on several occasions at school. Specifically, two episodes have occurred with C* at school.⁶ The most recent incident endangered not only himself but other students as well. Despite his injuries and the initial confrontation by T* from [School 3], there is much evidence that [the Student] has a lot to do behind the scenes to stir up trouble.

[School 1] is no place for such unsafe, confrontational events resulting in serious potential injury to others. For this reason, repeated violations of the Student Behavior Handbook and previous efforts to work with [the Student] on such matters, this Administration presents this concern to the Superintendent's Designee for review and assistance.

At the hearing on July 31, 2006, the Parent and the Student asserted that the Student did not initiate the fight, that he was jumped first and that he was injured in the altercation. In their testimony, neither the Parent nor the Student addressed the aspects of the altercation which were addressed by Mr. XXXX, such as that the Student continued the fight, attacking after the fight was over.

⁶ The Parent questioned whether there were two or three incidents between C* and the Student. For the purposes of this decision, this fact is immaterial, as such a determination would not alter the outcome of this decision.

B. IEP TEAM MEETING AND SUPERINTENDENT'S SUSPENSION HEARING.

On May 19, 2006, the IEP team met to determine whether the Student's misconduct was a manifestation of his disability and to consider an alternative placement if the Student were removed from [School 1] after a disciplinary hearing. Once the IEP team determined that the misconduct was not a manifestation of the Student's disability, the team decided that if the Student were sent to an alternative school after a suspension hearing, that [School 2] would be an appropriate placement. The appropriateness of these decisions will be discussed in detail, below.

On May 23, 2006, the Parent, Student and school employees participated in a suspension hearing. After considering the Assistant Principal's investigation and other testimony presented by the Student, the Superintendent's designee found the Student to be guilty of most of the violations with which he was charged (Finding of Fact No. 15). The Student was expelled from school, banning him from school property and activities other than attending classes at [School 2], the placement determined to be appropriate by the IEP team that met on May 19, 2006 (Finding of Fact Nos. 16 and 169).

This appeal ensued and a hearing was held on July 31, 2006.

II. BCPS MOTION FOR JUDGMENT

At the close of the Parent's case, BCPS moved for judgment, asserting that the Parent's complaint should be dismissed because it does not state a claim for relief under the IDEA. BCPS argued that the Parent is merely seeking to challenge the length of the Student's expulsion, and that there should have been lesser sanctions that would allow him to attend [School 1] instead of his current placement at [School 2].

The Rules of Procedure of the OAH permit a party to make a Motion for Judgment under COMAR 28.02.01.16E:

E. Motion for Judgment.

- (1) A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party. The moving party shall state with particularity all reasons that the motion should be granted. Objection to the motion for judgment is not necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.
- (2) When a party moves for judgment at the close of the evidence offered by an opposing party, the judge may:
 - (a) Proceed to determine the facts and to render judgment against an opposing party; or
 - (b) Decline to render judgment until the close of all evidence.

In the present case, the ALJ reserved ruling on the motion, declining to render judgment until the presentation of all evidence in this case.

In the section of the Parent's Complaint entitled "Description of the problem and relevant facts," the Parent wrote as follows:

[The Student] was suspended on May 17, 2006 due to an altercation involving 2 seniors at [School 1]. Subsequently, [the Student] was expelled from school. A later decision by BCPS found [the Student] to be disruptive by way of violent behavior.

The Parent proposed the following solutions:

[The Student] seeks reinstatement and a shorter period of expulsion.

The Parent also checked the box on the first page of the Complaint that stated:

The dispute is over a manifestation determination, or a change in placement due to behaviors resulting in disciplinary action.

The Parent argued that the expulsion was excessive, and that the Student should not be expelled, but instead returned to [School 1]. Implicit in this argument, however, was that the conduct was a manifestation of the Student's disability.

BCPS argues that the complaint implies that, even if BCPS correctly determined that the Student's misbehavior was not a manifestation of his disability, the discipline was disproportional. According to the BCPS interpretation of this argument, the Parent is questioning the choice of discipline under the Education Article § 7-305, which is not an issue subject to complaint under IDEA. Md. Code Ann., Educ. § 7-305 (Supp. 2005). In essence, BCPS argues that OAH has no jurisdiction to hear the merits of the case because it lacks statutory jurisdiction to hear a case merely involving expulsions that have no special education components.

I agree with the BCPS that if there were no manifestation determination, the only remaining issue concerns the specific punishment imposed, and I have no jurisdiction to make such a determination under the IDEA or COMAR regulations. The Parent did, however, assert that the Student's behavior was a manifestation of his disability, so I cannot grant their motion for judgment. I find that the Parent requested a due process hearing to contest the IEP team's determination that the Student's behavior on May 17, 2006, was not a manifestation of the Student's disability and I am prepared to rule on that question.

III. MANIFESTATION DETERMINATION.

The Parent requested a due process hearing after BCPS held an IEP meeting on May 19, 2006, and determined that the Student's actions on May 17, 2006 were not a manifestation of his

disability. BCPS summarily suspended the student pending the conclusion of a Superintendent's suspension hearing, and, after that hearing, expelled the Student, effective May 23, 2006.

A. APPLCABLE LAW

In *Honig v. Doe*, 484 U.S. 305, 108 S.Ct. 592, 98 L.Ed.2d 686 (1988), the Supreme Court held that suspension of a disabled child for more than ten days is a significant change in placement under the Education of the Handicapped Act, and therefore a school system could not suspend a child for ten days or longer unless all of the proper procedures were followed. Such procedures include a determination of whether the behavior resulting in discipline was a manifestation of the child's special education disability. This provision is a means of protecting the integrity of the child's IEP, which the Supreme Court characterized as "the center-piece of the [IDEA's] educational delivery system for disabled children..." *Honig*, 108 S.Ct. at 598.

Similarly, the law provides that short term suspensions, appropriate interim settings, or other settings may be ordered for not more than ten school days without being considered a change in placement. 34 C.F.R. § 300.520. If a child is removed from his or her educational placement for more than ten consecutive days, however, this is considered a change in placement, and all of the statutory procedures for disabled students are activated. 34 C.F.R. § 300.519; COMAR 13A.08.03.05.

The IDEA at 20 U.S.C. § 1415(k)(4), provides, in pertinent part, as follows:

(C) Conduct of review

In carrying out a review described in subparagraph (A), the IEP team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team -

- (i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including –
 - (I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child;

- (II) observations of the child; and
 - (III) the child's IEP and placement; and
- (ii) then determines that –
- (I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement;
 - (II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and
 - (III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action.

In addition to the requirement that an IEP team conduct a manifestation review, the regulations, at 34 CFR § 300.121 and COMAR 13A.08.03.03B(2), also extend to students with disabilities who have been removed from school for more than ten (10) days, the protection that the IEP team and appropriate school personnel determine the necessary services to be provided the student to enable him to appropriately progress in the general curriculum and advance towards achieving the goals of the student's IEP. The regulations also require an IEP team to meet within ten (10) business days of removing a student for disciplinary reasons for more than ten days to develop an assessment plan and implement the assessment if the IEP team has not previously conducted a functional behavioral assessment or implemented a behavior intervention plan. Subsequently, the IEP team is required to meet to develop and implement appropriate behavioral interventions. 34 CFR § 300.520(b); COMAR 13A.08.03.07A, B.

Before a determination is made that a behavior warrants a disciplinary change in placement, the IDEA requires that the local educational agency, the parent, and relevant members of the IEP Team review all relevant information in the Student's file to determine if the misconduct is a manifestation of the Student's disability. 20 U.S.C. § 1415(k)(1)(E).

In addition to the requirement that an IEP team conduct a manifestation review, the regulations, at 34 CFR § 300.121 and COMAR 13A.08.03.03B(2), also extend to students with disabilities, who have been removed from school for more than ten (10) days, the protection that the IEP team and appropriate school personnel determine the necessary services to be provided the student, in order to enable him to appropriately progress in the general curriculum and advance towards achieving the goals of the student's IEP. The regulations also require an IEP team to meet within ten (10) business days of removing a student for disciplinary reasons for more than ten days to develop an assessment plan and implement the assessment if the IEP team has not previously conducted a FBA or implemented a BIP. Subsequently, the IEP team shall meet to develop and implement appropriate behavioral interventions. 34 CFR § 300.520(b); COMAR 13A.08.03.07A, B.

In the instant case, the Parent is seeking to overturn the decision of the IEP team, both in the manifestation determination as well as the placement decision. The burden of proof in this case is on the Parent: "Absent some reason to believe that Congress intended otherwise, therefore, we will conclude that the burden of persuasion lies where it usually falls, upon the party seeking relief." *Schaffer ex rel. Schaffer v. Weast*, ___ U.S. ___, 126 S.Ct. 528, 535 (U.S.2005).

B . FAPE AND THE CONDUCT OF THE IEP MEETING

1. FAPE REQUIREMENTS

The IDEA provides federal assistance to state and local agencies in the education of children with disabilities. It was enacted to insure that children with disabilities are provided with a free appropriate public education ("FAPE"). 20 U.S.C.A. §§ 1400 –1487 (2005). IDEA defines FAPE as follows:

The term ‘free appropriate public education’ means special education and related services that (A) have been provided at public expense, under public supervision and direction and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool elementary, or secondary education in the State involved; and (D) are provided in conformity with the individualized program required under section 1414(d) of this title.

A FAPE for an educationally disabled child must be “tailored to the unique needs” of such a student. That is, it must include educational instruction specifically designed to address these requirements for the child, “...supported by such services as are necessary to permit the child ‘to benefit’ from the instruction.” *Board of Educ. v. Rowley*, 102 S.Ct. 3034, 3038, 3042 (1982). This education must be done in the “least restrictive environment.” *Briggs v. Board of Educ.*, 882 F.2d 688, 692 (2nd Cir. 1989).

2. IEP MEETING OF MAY 19, 2006

On May 19, 2006, within days of the altercation, the IEP team met to determine whether the Student’s misbehavior was a manifestation of his disability. The Student, the Parent and school personnel attended the meeting (Finding of Fact No. 101). The Parent waived her right to the required ten day notice of the meeting.

Ms. XXXX testified that, at its May 19 meeting, the IEP team reviewed the Student’s file in order to determine if he had a history of inappropriate behavior. They reviewed the Student’s existing IEP from February 2006 (BCPS Ex. # 12), in which the Student was not found have needed positive behavior supports (Finding of Fact No. 7). There was no FBA or BIP in place, as the student did not have the need for such interventions as a result of his SLD. The IEP team reviewed four Student Information Reports from the Student’s classroom teachers and no violent behavioral issues were noted (Parent Ex. # 1). The Parent did not present any additional information.

In order to determine whether there was a relationship between the Student's disability and the misconduct the IEP team was asked to answer two questions on the "Suspension Form A-1 Special Education/504 Student":

If the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or

If the conduct in question was the direct result of the public agency's failure to implement the IEP

BCPS Ex. # 4 [emphasis in original]. In answering both of these questions in the negative, the IEP team determined that the misconduct was not a manifestation of the Student's disability and that the Student received FAPE under his IEP. The IEP team made additional findings to support its decision:

[The Student] was in a fight after school. The fight ended and [the Student] went after the [other] student. The [other] student got into a car and [the Student] hit a car window and he pulled the [other] student out of a moving car. This had been brewing for some time and it had been dealt with and the parents had been involved in trying to solve the problem. Apparently threats continued and it came to a head.

....

[The Student] has a learning disability. He does have a history of having some behavior problems, but *his learning disability does not make him violent or cause him to fight*. We discussed the question of whether [the Student] knew that he was not supposed to fight in school and if he knew that once the fight has stopped that he was not supposed to start the fight again.

The team determined that there was no relationship between his disability and the behavior. In addition, *the school has implemented his IEP effectively* because he is in inclusion classes and he was getting academic help to meet his needs.

BCPS Ex. # 6 [emphasis added]. The Parent, who was a participating member of the IEP team, signed the form agreeing to the determination without dissent. At the hearing, the Parent did not present any evidence, through documentation or expert or lay witness, challenging this determination nor putting into question her concurrence with it. The relevant information regarding the Student's conduct was considered, along with the appropriateness and

implementation of the existing IEP. Accordingly, the IEP team properly conducted its review in accordance with 20 U.S.C. § 1415(k)(4)(C).

The Parent also assented to the IEP team's determination that the Student would benefit from the program at [School 2] were he suspended or expelled:

If he is sent to an alternative school, the team feels that appropriate supports will be provided through small group instruction provided in that setting. Additionally, he does not need related services, and he will benefit from completing English 11, World History, English 10, and Earth science.

BCPS Ex. # 6. The issue of FAPE was addressed and the team decided that the Student would receive an appropriate education at [School 2].

The IEP team also developed an FBA to address his anger problem (BCPS Ex. # 8). The Parent was present during the development of this plan and signed that plan as well, assenting to its implementation.

In the present case, BCPS adduced extensive evidence of the process by which it developed the Student's 2006-2007 IEP, with the Parent's input. The Parent attended the meeting, voiced no objections to the new IEP, and signed off on it. The record supports the IEP team's finding that the Student's behavior was not a manifestation of his disability. The evidence presented at that meeting was properly considered and the IEP team made supported findings and designed a plan to provide the Student with a FAPE. An FBA was conducted and a BIM was designed as required (BCPS # 8). The Parent did not challenge the procedure followed in scheduling or conducting this meeting.

IV. PARENT'S REQUEST FOR MITIGATION

Still, the Parent questions whether the Student should be reinstated or could have a shorter period of expulsion. She testified that the Student was a good athlete, and that his

continued participation in athletics at [School 1] would lead to college scholarship opportunities. The Student also testified that he was now motivated to do better in school so that he can participate on the football and wrestling team where he excels. The Student testified that he has plans for majoring in marketing in college, and his removal from [School 1] would keep him off of the sports teams and thereby thwart his efforts to better himself by getting a college education. The Parent also attempted to show that the Student's grades were marginally better during the sports seasons. However, there was little convincing testimony that the Student would not receive FAPE if he did not participate in sports. Even if the Student's participation in sports might enhance his chances for a college scholarship, that is not the standard by which the IEP is judged. The IEP is designed to provide FAPE in an LRE, and the Parent has not successfully challenged that it does.

The IEP team determined that, although disabled with an SLD, the Student's behavior is not a manifestation of his disability. The IDEA addresses the discipline of children with disabilities, where the misconduct is determined not a manifestation of disability in relevant part, as follows:

If school personnel seek to order a change in placement that would exceed 10 school days and the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability . . . the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities
20 U.S.C. § 1415(k)(1)(C)(Supp. 2005).

The Student is subject to the same disciplinary actions as any other student misbehaving in a similar way. The Student was disciplined pursuant to the school rules and under Md. Code Ann., Educ. § 7-305 (Supp. 2005). Any mitigation needs to be addressed under that law. As it is not an IDEA matter, I cannot consider it.

IV. CONCLUSION

I conclude that the Student was able to control his behavior, and that his disability does not impair his ability to understand the consequences of his behavior.

I further conclude that the IEP team meeting making the manifestation determination and placement decision was conducted in compliance with applicable law. 20 U.S.C.

§1415(k)(1)(E). The IEP team reviewed the Student's record, and progress, and determined that his behavior on May 17, 2006, was not a manifestation of his disability. I further conclude that this determination was correct. The Student's placement at [School 2] during the expulsion was designed to provide him with FAPE. Further, I decline to find that the Parent's requested adjustments in the expulsion is not properly before me, as no manifestation determination was made.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact and Discussion, I conclude, as a matter of law that the IEP team's determination that the Student's SLD does not impair his ability to control his behavior, or his ability to understand the consequences of his behavior. I further conclude that the IEP team's determination that the Student's behavior on May 17, 2006, was not a manifestation of his disability was proper and consistent with applicable law and regulations. 20 U.S.C. 1415(k) (Supp. 2005); COMAR 13A.08.03.03, COMAR 13A. 08.03.08 and COMAR 13A.05.01.10C.

ORDER

I **ORDER** that the Individualized Education Plan Team's determination on May 19,

2006, that the Student's behavior was not a manifestation of his disability, be **AFFIRMED**.

August 8, 2006

Date

Marc Nachman

Administrative Law Judge

REVIEW RIGHTS

Within 180 calendar days of the issuance of the hearing decision, any party to the hearing may file an appeal from a final review decision of the Office of Administrative Hearings to the federal District Court for Maryland or to the circuit court for the county in which the student resides. Md. Code Ann., Educ. §8-413(h) (2004).

Should a party file an appeal of the hearing decision, that party must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing, of the filing of the court action. The written notification of the filing of the court action must include the OAH case name and number, the date of the decision, and the county circuit or federal district court case name and docket number.

The Office of Administrative Hearings is not a party to any review process.