

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

CAPISTRANO UNIFIED SCHOOL  
DISTRICT AND JOURNEY CHARTER  
SCHOOL.

OAH Case No. 2014060007

**EXPEDITED DECISION**

Parent on behalf of Student filed a due process hearing request with the Office of Administrative Hearings, State of California, on May 29, 2014, naming the Capistrano Unified School District (Capistrano) and the Journey Charter School (Journey).

Administrative Law Judge Paul H. Kamoroff heard the expedited portion of the hearing for this matter in San Juan Capistrano, California, on June 24 and 25, and July 1, 2014.

Student's mother appeared on behalf of Student. Student attended the hearing for part of one day.<sup>1</sup>

Ernest Bell, Attorney at Law, appeared on behalf of Capistrano and Journey. Shaheer Faltas, executive director of Journey, and Capistrano legal specialist Linda Griffith, attended the hearing.

The record closed on July 8, 2014, upon receipt of written closing briefs from the parties.<sup>2</sup>

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<sup>1</sup> Student presented testimony during the time he attended the hearing.

<sup>2</sup> The Parties' joint request for the ALJ to obtain, identify, and receive the transcripts from the OAH case entitled Capistrano Unified School District v. Student, OAH Case No. 2014030104, is denied. The request is overly burdensome, cumulative, and not relevant to the present case.

## EXPEDITED HEARING ISSUES

1. Whether Capistrano failed to conduct a manifestation determination for all impacted days when Student was suspended in excess of 10 days in a school year?
2. Whether Capistrano failed to provide instruction for Student during his days of suspension in excess of 10 days as required by law?

## SUMMARY OF DECISION

Student primarily complains that Capistrano failed to conduct a manifestation determination for each day he was suspended in excess of 10 days during the 2013-2014 school year. Student characterizes any removal from class, including situations which were not disciplinary in nature, such as counseling and state-wide testing, as a suspension. Capistrano avers that it did not impose, or attempt to impose, a disciplinary change of placement, or suspend Student in excess of 10 days during this school year. For these reasons, Capistrano asserts that it was not obligated to conduct a manifestation determination for Student.

Based upon the following, this Decision finds that Student erred in his characterization of every removal from class as a suspension and that Student was not suspended in excess of 10 days during the school year. Consequently, Capistrano did not commit a procedural or substantive violation by failing to conduct a manifestation determination for Student, or by failing to provide him instructional services.

## FACTUAL FINDINGS

1. Student was an 11-year-old male who has been and continues to be eligible for special education under the eligibility categories of other health impairment due to attention deficit hyperactivity disorder, autistic-like behaviors, and specific learning disability. During the applicable time frame, Student resided with Mother within Capistrano's boundaries.
2. Student has attended Journey throughout his educational career, from kindergarten through the time of the hearing. Journey received its charter through Capistrano, which operated as Student's local educational agency.
3. Student had a history of social and behavioral problems. He had average cognitive abilities, yet he had concomitant difficulty in paying attention and poor impulse control. As a consequence, Student had pervasive problems with peers and school staff, often misunderstood interpersonal communication, and became easily agitated during social interactions.

4. On May 29, 2013, Journey provided Student an updated behavior intervention plan. The behavior intervention plan identified three specific maladaptive behaviors: (1) hitting; (2) throwing objects; and (3) eloping. The function of Student's maladaptive behaviors was to gain attention or obtain an object. In response to the targeted behaviors, the behavior intervention plan recommended modifications of antecedent events and ecological factors, which included, amongst other recommendations, that Student would be given breaks, choices of preferred activities, and/or provided a quiet place to go, when he felt overwhelmed or agitated. Nonetheless, Student's behaviors continued to deteriorate during the 2013-2014 school year.

#### *The 2013-2014 School Year*

5. Student began his fifth grade on September 3, 2013. He was one day shy of his 11th birthday. Student almost immediately began having behavioral difficulty with peers and staff. On September 6, 2013, Journey staff removed Student from class for drawing an inappropriate picture, speaking inappropriately to the teacher, and for locking staff and students out of the classroom. During his removal from class, Gavin Keller, assistant director at Journey, provided Student administrative counseling.

6. Mr. Keller was an experienced teacher who served as a site administrator at Journey. The purpose of the September 6, 2013 administrative counseling was to calm Student and to determine whether he posed a threat to himself or others, not to discipline Student. Mr. Keller met directly with Student outside of the classroom, where he and Student filled out a "reflection card." A reflection card was a tool that Journey staff utilized to quickly describe and assess the nature and seriousness of a behavioral problem. Mr. Keller returned Student to his class following the completion of the reflection card and counseling, which was within 30 minutes after his removal.

7. On September 10, 2013, Student used profanity during class, refused to follow instructions, injured himself with a stapler, made suicidal threats, and made homicidal threats towards his father. Mr. Faltas, the executive director at Journey, briefly removed Student from class to deescalate his behavior. Mr. Faltas briefly counseled Student, and then returned him to class.

8. On September 11, 2013, as a result of the threats Student had made against himself and his father, Orange County Sheriff's Deputy Darren Braham met with Student. Deputy Braham was a member of the School Mobile Assessment and Resource Team (SMART). SMART was called upon by Journey to conduct threat assessments of its pupils when serious behavioral incidents occurred. Deputy Braham met individually with Student outside of his classroom for approximately 30 minutes. Based upon this meeting, Deputy Braham determined that Student did not pose a serious threat to himself or others, and that his conduct was likely attributable to his autistic-like characteristics.

### *The First Suspension*

9. On September 18, 2013, Student became agitated with a school aide and impulsively threw a rock at her as a result of feeling frustrated. The aide suffered an injury to her leg. The incident occurred at approximately 10:30 a.m. on a minimum school day, which ended at 12:30 p.m. Immediately following the rock throwing, staff provided Student a break to deescalate, and then placed him in a specialized academic instruction room, where he received instruction for the remainder of the day. The specialized academic instruction classroom, which Journey also referred to as a resource specialist program (RSP) classroom, was part of Student's normal school program. This classroom, along with some general education classes, was last agreed upon by the parties in Student's November 1, 2012 individualized education program (IEP).<sup>3</sup>

10. As a consequence of the rock throwing, Journey disciplined Student by suspending him from school for two days, which he served on September 19, and 20, 2013.

### *The Second Suspension*

11. On Friday, October 4, 2013, Student brought a knife to school. At 2:50 p.m. that day, Student was removed from class by Mr. Keller, who investigated the reported knife possession. Student did not return to class that day. Other than Wednesdays, which were minimum days at Journey, the school day normally ended at 3:00 p.m. Following Mr. Keller's investigation, Journey suspended Student for five days and recommended that he be expelled.

12. Student served five formal days of suspension, from Monday, October 7 to Friday, October 11, 2013. However, Student was not permitted to return to school until after a manifestation determination review had begun, which commenced on October 14, 2013. Mr. Faltas testified that Student was permitted to return to school the morning of October 14, 2013, prior to the manifestation determination review. However, Journey's lead school psychologist Pamela Ender and Mother more persuasively recalled that Student was not permitted to return to school until October 15, 2014. Consequently, Student received six days of suspension as a result of the knife possession.

### *The Manifestation Determination Review*

13. On October 14 and 16, 2013, Journey conducted a manifestation determination IEP meeting. When a special education student is suspended for disciplinary reasons for more than 10 days, or considered for expulsion, the suspension or expulsion constitutes a change of placement. Relevant members of the IEP team must then meet to determine whether the student's conduct was a manifestation of his disability. That determination must

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<sup>3</sup> An IEP is a written document, prepared annually, that outlines the educational plan for the disabled student. (20 U.S.C. § 1414(d).) Student's most recent IEP offer at that time, dated June 6, 2013, had not been agreed upon by Mother.

take place within 10 school days of the decision to change the placement. In making the manifestation determination, the IEP team is required to answer two questions: (1) was the student's conduct caused by, or did it have a direct and substantial relationship to, his disability; and (2) was the student's conduct a direct result of the district's failure to implement the student's IEP? If the answer to either question is yes, then the student's conduct is deemed a manifestation of his disability and the school district may not remove him from his current placement without an order of an ALJ. If the answer to both questions is no, then the school district may change the student's placement in the same manner, and for the same duration, that it could change the placement of a student not in special education.

14. The facts surrounding Student's manifestation determination IEP meeting are not in dispute. After the incident of October 4, 2013, Mr. Faltas and Ms. Ender realized that Student's knife possession was an expellable offense and that an expulsion would constitute a change in placement, and require a manifestation determination review. Consequently, Ms. Ender investigated the incident and prepared a Manifestation Determination Report. After interviews with relevant parties, including Student and Student's teachers, Ms. Ender determined that Student's disabilities had a direct and substantial relationship to his actions.

15. At the October 14 and 16, 2013 manifestation determination IEP team meeting, the IEP team members, including Mother, reviewed and discussed the documents in Student's file, including but not limited to Student's functional strengths and weaknesses, the results of his most recent assessments including Ms. Ender's report, the nature of his disability, his behavior intervention plan, and his IEP. The IEP team then concluded that Student's conduct in bringing a knife to school was caused by, and did have a direct and substantial relationship to his disabilities. Specifically, Student planned to bring a knife to school, and did so, to show a group of boys that he wished to befriend, not thinking through the consequences of having a knife at school. Student did not have sufficient understanding as to the potential seriousness of his conduct. The IEP team determined that Student's thought process and conduct was attributable to his autistic-like characteristics. In addition, the IEP team concluded that Student's conduct was the direct result of Journey's failure to implement his IEP. Specifically, Ms. Ender found that Student's behavior intervention plan was not being implemented with fidelity at the time of the incident. She explained that Student's behavior intervention plan was impossible to implement, with consistency, at Journey due to the nature of the school environment.

16. As a result of the manifestation determination IEP team meeting, Journey did not expel Student. However, the school IEP team members determined that Student's unique needs could no longer be met at Journey. Rather, they asserted that Student required a therapeutically embedded program in a smaller classroom. Therefore, the Journey IEP team offered placement in a behavior intervention classroom at Wood Canyon Middle School, a Capistrano school. Mother consented to Student's goals and behavior plan modifications contained in the IEP, however, she did not agree with the proposed change of placement. Mother believed that, with appropriate modifications of Student's behavior intervention plan, and consistent implementation of that plan, Student could be successful at Journey. As a

result of Mother's disagreement with the proposed change of placement, Student remained enrolled at Journey.

#### *The Third Suspension*

17. On Monday, March 17, 2014, during a social interaction while in his general education class, Student became agitated with a peer, hit the peer, and then threw him to the floor. The incident took place during the last hour of the school day, and Journey staff removed Student from the classroom to deescalate. As a result of the altercation, Journey suspended Student for one day, March 18, 2014.

#### *The Fourth Suspension*

18. On April 30, 2014, Student threw hot water at a classmate. Student was trying to get the attention of a peer, and did not understand that hot water could have injured his classmate. The peer was not injured. Journey staff discovered the incident at approximately 11:30 a.m., on May 1, 2014, and provided Mother a suspension notice which stated that Student would be suspended for part of May 1 and all of May 2, 2014. However, Student remained at school for the remainder of May 1, 2014, where he continued to receive instructional support individually, and in the RSP class. He was also permitted to participate with typical peers during lunch and breaks.

19. As a result of the hot water incident, Journey suspended Student for one day, which Student served on May 2, 2014. This was Student's last suspension during the 2013-2014 school year. In total, Student served 10 days of suspension during the school year.

#### *The State-Wide Testing*

20. On May 14, 2014, Journey administered the state-wide Standardized Testing and Reporting for all of its pupils. The Standardized Testing and Reporting program measured performance of students undergoing primary and secondary education in California. Per Student's November 1, 2012 IEP, Parents and Capistrano had agreed that Student would participate in the California Modified Assessment (CMA) version of the state-wide testing. The CMA was an alternate assessment of the California content standards based on modified achievement standards for children with an IEP who met the eligibility criteria adopted by the State Board of Education. Journey provided the CMA testing in the RSP classroom. The test was administered by Student's RSP teacher, Stacy DeSalvo.

21. Mr. DeSalvo was Student's RSP teacher and IEP case carrier during the 2013-2014 school year. Mr. DeSalvo had meticulously planned the CMA testing for eligible pupils to take place in his classroom. For May 14, 2014, Mr. DeSalvo had prepared to administer the science component of the CMA. In total, Mr. DeSalvo was responsible for proctoring the CMA testing for six IEP pupils, including Student. The remaining fifth grade students were prearranged to take the state-wide testing, without accommodation or modification, in the general education classroom. Journey had previously informed Mother

that Student would be administered the CMA in Mr. DeSalvo's class and she walked Student to the classroom the morning of the testing.

22. In the weeks preceding the CMA, Student had been having a difficult time getting along with Mr. DeSalvo. As a result, Student intermittently avoided the RSP classroom. On the morning of May 14, 2014, Mother and Student met with Mr. DeSalvo directly outside of the RSP classroom just prior to the CMA testing, however, Student refused to enter the RSP classroom. Administration of the CMA required formal and unmalleable planning, which Journey was unable to duplicate in a separate classroom at that time. Consequently, Student did not take the CMA until the following day. Based upon Student's refusal to attend the RSP classroom, and the fact that the general education classes were occupied in the administration of the Standardized Testing and Reporting program, Student spent the school day in an empty conference room, under the supervision of a teacher's aide.

23. On May 15, 2014, Mr. Keller individually administered the CMA in science to Student. The testing was administered in the conference room.

#### *The May 16, 2014 Incident*

24. On May 16, 2014, Student engaged in a verbal altercation with his general education teacher, Jennifer Morrison. Ms. Morrison had been a general education teacher at Journey for six years, and she was one of Student's teachers during the 2013-2014 school year.

25. There were 29 students in Ms. Morrison's general education class and, on this particular occasion, she was unable to redirect Student or to diminish his outburst. As a result, Student refused to follow the teacher's instruction and disrupted the classroom. After several minutes, Mr. Faltas came to the classroom in an unsuccessful attempt to calm Student. Sarah Beebe, who was a teacher's aide at Journey and a private babysitter for Student, arrived after Mr. Faltas and was able to persuade Student to accompany her to the hand-working class. The hand-working class was a general education art class, and was considered by Journey staff to be a preferred classroom, or activity, for Student. This class was a normal part of Student's school program. Student eventually calmed down and remained in the hand-working class for two class periods, after which Ms. Beebe returned him to his regularly scheduled class.

#### *Mother's Testimony*

26. The core of Mother's concern arises from her belief that any removal of Student from class constituted a suspension. On this basis, Mother considered the counseling Student received from Mr. Keller on September 6, 2013, and the meeting conducted by Deputy Braham on September 11, 2013, as in-school suspensions. Mother erred in this characterization. Each incident took less than 30 minutes, and neither was disciplinary in nature. Rather, Mr. Keller's conduct of providing Student a short break

from class to deescalate his behavior comported with Student's IEP and behavior intervention plan. Deputy Braham's interaction with Student was to assess whether Student posed a threat to himself or others. The meeting was brief and reasonable, given the seriousness of Student's threats of self-harm and to kill his father, and did not constitute a disciplinary removal of Student from his class.

27. Mother also asserted that Student was suspended for a combined 12 days for the rock throwing, knife possession, fighting, and water throwing incidents. Specifically, she asserted that Student received an additional half-day of in-school suspension for each incident, which occurred either prior to or immediately following each respective off-campus suspension. However, Mother failed to provide any evidentiary support for this allegation. For this reason, her testimony concerning this particular allegation was less persuasive than testimony from Journey staff, including Mr. Faltas, Mr. Keller, Ms. Ender, and Mr. DeSalvo, along with school attendance transcripts, all of which supported that Student did not receive additional in-school suspensions for these incidents.

28. In regard to the CMA, Mother complained that Student's time in the conference room on both May 14 and 15, 2014, was tantamount to an in-school suspension. Mother erred in this conclusion. Student spent May 14, 2014 in the conference room because he refused to attend his normally scheduled class, Mr. DeSalvo's RSP classroom, and because there was no alternative classroom available because of the school-wide testing. This is different than a situation where a school district unilaterally removes a student from his or her classroom for the purpose of disciplining the student, and did not constitute either a disciplinary removal or an in-school suspension. Similarly, Student was separated from his class on May 15, 2014 for the purpose of participating in the CMA, per his IEP, and not based upon a disciplinary episode.

29. Finally, Mother testified that Student's removal from class on May 16, 2014, constituted an in-school suspension. However, Journey staff acted in comportment with Student's IEP and behavior intervention plan when they took him to the hand-working class, a preferred activity, where he was able to deescalate, rather than allow him to deteriorate in Ms. Morrison's classroom.

30. Mother presented as a diligent and thoughtful advocate for Student. Nonetheless, the evidence submitted at hearing overwhelmingly showed that Student served no more than 10 days of suspension during the 2013-2014 school year.

## LEGAL CONCLUSIONS

### *Introduction – Legal Framework under the Individuals with Disabilities Education Act*<sup>4</sup>

1. This hearing was held under the Individuals with Disabilities Education Act (IDEA), its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000, et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a FAPE that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)<sup>5</sup>

2. A FAPE means special education and related services that are available to an eligible child at no charge to the parent or guardian, meet state educational standards, and conform to the child's IEP. (20 U.S.C. § 1401(9); 34 C.F.R. § 300.17; Cal. Code Regs., tit. 5, § 3001, subd. (p).)

3. The IDEA affords parents and local educational agencies the procedural protection of an impartial due process hearing with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a FAPE to the child. (20 U.S.C. § 1415(b)(6); 34 C.F.R. 300.511; Ed. Code, §§ 56501, 56502, 56505; Cal. Code Regs., tit. 5, § 3082.) At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 56-62 (*Schaffer*) [126 S.Ct. 528, 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is a preponderance of the evidence].) In this case, Student is the petitioning party and therefore had the burden of persuasion.

4. There are two principal considerations in claims brought pursuant to the IDEA: substantive denial of FAPE and procedural denial of FAPE. Unlike substantive failures, procedural flaws do not automatically require a finding of a denial of a FAPE. A procedural violation constitutes a denial of FAPE only if it impeded the child's right to a FAPE, significantly impeded the parent's opportunity to participate in the decision-making process regarding the provision of a FAPE to the child, or caused a deprivation of educational benefits. (20 U.S.C. § 1415(f)(3)(E); Ed. Code, § 56505, subd. (f); see also, *W.G. v. Board of Trustees of Target Range Sch. Dist. No. 23* (9th Cir. 1992) 960 F.2d 1479, 1483-1484; *M.L., et al., v. Federal Way School Dist.* (9th Cir. 2004) 394 F.3d 634, 653.)

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<sup>4</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>5</sup> References to the Code of Federal Regulations are to the 2006 version unless otherwise indicated.

*Determination of Issue: Whether Capistrano denied Student a FAPE by failing to provide him a manifestation determination for each day he was suspended in excess of 10 days?*

5. Student argues that he was suspended in excess of 10 school days during the 2013-2014 school year. On this basis, Student complains that he was denied manifestation determinations to determine whether the basis of his conduct was attributable to his disability, or to a failure by school staff to implement his IEP. Capistrano and Journey respond that they did not suspend Student for more than 10 days and therefore were not required to hold additional manifestation determinations.

6. A special education student's placement is that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to him. (Cal. Code Regs., tit. 5, § 3042(a).) The removal of a special education student from his placement for more than 10 consecutive school days constitutes a change of placement. (34 C.F.R. § 300.536(a)(i)(2006).

7. A student receiving special education services may be suspended or expelled from school as provided by federal law. (Ed. Code, § 48915.5, subd. (a).) When a school district changes the placement of a student receiving special education services for specific conduct in violation of a student code of conduct, the student is entitled to certain procedural protections. The district is required to conduct a review to determine if the conduct that is subject to discipline is a manifestation of the student's disability. This is known as a manifestation determination. (20 U.S.C. § 1415(k)(1)(E).) It must be accomplished within 10 school days of the decision to change the student's placement. (*Ibid.*)

8. A manifestation determination must be made by the district, the parent, and relevant members of the IEP team as determined by the parent and the district. (20 U.S.C. § 1415(k)(1)(E)(i).) The manifestation determination analyzes the pupil's behavior as demonstrated across settings and across times. All relevant information in the student's file, including the IEP, any observations of teachers, and any relevant information from the parents must be reviewed to determine if the conduct was caused by, or had a direct and substantial relationship to the student's disability, or was the direct result of the district's failure to implement the student's IEP. (34 C.F.R. § 300.530(e)(2006); 71 Fed.Reg. 46720 (Aug. 14, 2006).)

9. If the IEP team decides that the student's conduct was caused by, or had a direct and substantial relationship to the student's disability, then the conduct must be determined to be a manifestation of the student's disability. If the IEP team determines the conduct is not a manifestation of the student's disability, then normal school disciplinary procedures may be used to address the incident in the same way as they would be applied to non-disabled students. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c)(2006).)

10. A parent who disagrees with any decision regarding the manifestation determination may request a hearing. (20 U.S.C. § 1415(k)(3)(A).) In appropriate circumstances the ALJ hearing the dispute may order a change in placement of the student,

and may return the student to the placement from which he was removed. (20 U.S.C. §1415(k)(3)(B)(ii).)

11. Here, it is undisputed that Capistrano and Journey conducted a manifestation determination IEP team meeting on October 14 and 16, 2013, based upon Student's knife possession at school, which they believed was an expellable offense. There is no question that the IEP team determined that Student's conduct was attributable to his disability, and directly related to the school's failure to implement the IEP and behavior intervention plan with fidelity. For these reasons, Student was not expelled from his educational placement.

12. The dispute herein lies in Mother's allegation that, following the October 14 and 16 manifestation determination, Capistrano and Journey were required to conduct additional manifestation determinations, specifically, for each day Student was suspended in excess of 10 days during the 2013-2014 school year. Mother's allegation is fatally flawed in light of a preponderance of evidence which showed that Student was not suspended in excess of 10 days during the school year.

13. Mother relies upon her characterization of any removal of Student from class as an in-school suspension. Mother errs in this characterization for the following reasons: First, the 30 minute long removal by Mr. Keller on September 6, 2013, was in conformity with Student's IEP and behavior intervention plan, as it was to deescalate his behavior and provide counseling. Second, Deputy Braham's threat assessment of Student on September 11, 2013, was also not an in-school suspension as it was not a removal from the educational setting for disciplinary purposes. Third, on May 14, 2014, Student's absence from an instructional setting was due to his refusal to enter Mr. DeSalvo's classroom for the CMA testing, and not because Capistrano or Journey were removing Student due to disciplinary measures. Fourth, Student was then removed from class on May 15, 2014, for the purpose of participating in the CMA, per his IEP, and not for disciplinary reasons. Finally, Student's removal from class on May 16, 2014, did not constitute an in-school suspension. Rather, Journey staff acted in comportment with Student's IEP and behavior intervention plan when they took him to the hand-working class, a preferred activity, where he was able to deescalate. None of the foregoing represented a substantial departure from Student's IEP. To the contrary, each instance reflected Capistrano and Journey's efforts to implement Student's IEP and behavior intervention plan.

14. Finally, Mother argued that Student was suspended for a combined 12 days for the rock throwing, knife possession, fighting, and water throwing incidents. However, she failed to provide sufficient evidentiary support for this allegation. Consequently, her allegation was less persuasive than testimony from Mr. Faltas, Mr. Keller, Ms. Ender, and Mr. DeSalvo, along with school attendance transcripts, all of which showed that Student was suspended for no more than 10 days during the 2013-2014 school year. As the party filing the complaint, Student had the burden of persuasion by a preponderance of the evidence. Student failed to meet this burden.

15. For the foregoing reasons, Capistrano and Journey did not deny Student a FAPE by failing to conduct a manifestation determination for each day Student was

suspended in excess of 10 days during the 2013-2014 school year. A preponderance of the evidence showed that Student was not suspended in excess of 10 days during the school year.

*Determination of Issue 2: Whether Capistrano denied Student a FAPE by failing to provide instruction for Student during his days of suspension in excess of 10 days?*

16. As found in Legal Conclusions 1-15, Student was not suspended in excess of 10 days during the 2013-2014 school year. Consequently, Capistrano did not deny Student a FAPE by failing to provide him instructional services during days in which he was suspended.

#### ORDER

Student's claims for relief are denied.

#### PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Capistrano and Journey prevailed on all issues heard and decided.

#### RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

Dated: July 25, 2014

\_\_\_\_\_/s/\_\_\_\_\_  
Paul H. Kamoroff  
Administrative Law Judge  
Office of Administrative Hearings