

STATE OF ARIZONA
OFFICE OF ADMINISTRATIVE HEARINGS

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2
3 [REDACTED], a Student, by and through
4 Parent [REDACTED],

No. 11C-DP-022-ADE
EXPEDITED

5 Petitioners,

ADMINISTRATIVE
LAW JUDGE
DECISION

6 -v-

(Dismissing Due Process
Complaint)

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8 **Yuma Elementary School District,**

9 Respondent.

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11 Student is eligible for special education services under the Individuals with
12 Disabilities Education Act ("IDEA") as a student with a Specific Learning Disability.
13 Parent filed an appeal of a school district decision (hereinafter "appeal") with the
14 Respondent School District on December 8, 2010. The appeal challenges a December
15 2009 manifestation determination/change of placement decision by Respondent School
16 District with regard to a violation of the student code of conduct in which Student
17 brought illegal drugs to school.¹ The manifestation determination concluded that
18 Student's violation of the code of conduct was not a manifestation of a disability.
19 Student was then given a long-term suspension and sent to an alternative school for
20 the rest of the school year, from December 2009 to May 2010. Student then graduated
21 to the Yuma Union High School District and began attending school in that district in
22 August 2010 under a current individualized educational program ("IEP").

23 Respondent School District has filed a motion to dismiss this action on the basis
24 that the appeal has been filed too late to obtain the relief provided for in the IDEA.
25 Parent has responded and the motion has been argued at a telephonic conference held
26 January 10, 2011. This tribunal makes the following ruling, granting the motion:

27 When a child with a disability violates a student code of conduct, a school district
28 may discipline that child in the same manner as any other child unless the discipline
29 causes a change of placement.² A change of placement occurs in general when the

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¹ The complaint also challenges the school disciplinary process in general, but this tribunal only has authority to hear the IDEA claims.

² 34 Code of Federal Regulations ("C.F.R.") § 300.530(b).

1 student is removed from school for 10 days or more.³ When a change of placement
2 occurs, a manifestation determination is held by a team composed of the school district,
3 parents, and relevant members of the student's IEP team (as chosen by the district and
4 parents).⁴ If it is determined that the violation of student code of conduct is not a
5 manifestation of the student's disability, the district may discipline the student in the
6 same way that it would for a non-disabled student.⁵ This prevents a student's disability
7 from being a basis for serious discipline. Even then, services must still be given the
8 student who has been removed.⁶

9 Here, the undisputed facts show that Student was found in violation of the
10 student code of conduct, that a team determined that the violation was not a
11 manifestation of Student's disability, and that Student was given a long-term
12 suspension and educated at an alternative school. Student then completed that
13 suspension and moved on to high school, where Student now attends.

14 IDEA regulations provide that the parent of a child with a disability "who
15 disagrees with any decision regarding placement under [the interim alternative setting]
16 or the manifestation determination . . . may appeal the decision by requesting a
17 hearing."⁷ The hearing process for such an appeal is expedited.⁸ The regulations then
18 provide that, upon rendering a determination upon appeal, the student may be returned
19 to the placement the student had prior to removal.⁹ Thus, the procedure for an appeal
20 by a parent challenging a manifestation determination/disciplinary change of placement
21 is fast and can only result in returning the student to the former placement.

22 In this case, Parent filed the challenge one year after Respondent School
23 District's actions.¹⁰ By the time of the challenge, Student had completed the

24 ³ 34 C.F.R. § 300.536.

25 ⁴ There are certain "special circumstance," described in 34 C.F.R. § 300.530(g), in which a manifestation
26 determination may not be necessary.

27 ⁵ 34 C.F.R. § 300.530(c).

28 ⁶ 34 C.F.R. § 300.530(d).

29 ⁷ 34 C.F.R. § 300.532(a).

30 ⁸ 34 C.F.R. § 300.532(c).

⁹ 34 C.F.R. § 300.532(b). The only other outcome mentioned in the regulation (paragraph (b)(2)(ii)) is
relevant only when the school district has filed an appeal based on safety issues.

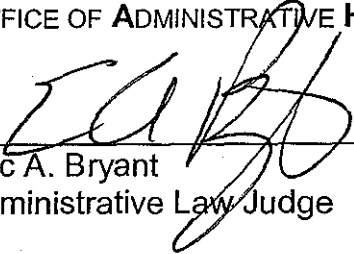
¹⁰ IDEA regulations allow up to two years to file a complaint challenging an IEP or an appeal challenging a
manifestation determination/disciplinary change of placement. 34 C.F.R. § 300.507(a); § 300.532(a).
Thus, Parent's appeal is within the limitations period for filing appeals.

1 suspension and graduated into the high school district. As noted, the only relief
2 available under an appeal like the one filed here is returning Student to the former
3 placement. If that placement is viewed as the junior high school from which Student
4 graduated, such a result is absurd. If viewed to be Student's regular high school with
5 special education and services, that result has been achieved since August 2010. This
6 tribunal can provide no other relief for this appeal. Therefore,

7 IT IS HEREBY ORDERED that Parent's appeal is **dismissed**.

8 Done this 13th day of January 2011.

9 OFFICE OF ADMINISTRATIVE HEARINGS

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11 
12 Eric A. Bryant
13 Administrative Law Judge

14 **RIGHT TO SEEK JUDICIAL REVIEW**

15 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this
16 Decision and Order is the final decision at the administrative level.
17 Furthermore, any party aggrieved by the findings and decisions made
18 herein has the right to bring a civil action, with respect to the complaint
19 presented, in any State court of competent jurisdiction or in a district court
20 of the United States. Any action for judicial review must be filed within 90
21 days of the date of the Decision or, if the State has an explicit time
22 limitation for bringing this type of action, in such time as the State law
23 allows.
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25 Copy sent by **electronic mail** this 13 day of January 2011,
26 and mailed this 13 day of January 2011, to:



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Copy sent by **electronic mail** this ___ day of January 2011,
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Copy mailed by interdepartmental mail this 13 day of January 2011, to:

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Arizona Department of Education
ATTN: Kacey Gregson
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By 