

1 **IN THE OFFICE OF ADMINISTRATIVE HEARINGS**

2
3 Yuma Union High School District
4 Petitioner,

No. 16C-DP-047-ADE

5 v.

ADMINISTRATIVE LAW JUDGE

6 [REDACTED], a Student, by and through Parents
7 [REDACTED] and [REDACTED].
8 Respondents.

DECISION

9 **HEARING:** April 22, 2016, with the record left open for receipt of transcripts
10 until May 2, 2016

11 **APPEARANCES:** Petitioner Yuma Union High School District was represented
12 by C. Ben Hufford. Respondents Student and Parents [REDACTED] and [REDACTED] (Parents) were
13 represented by Wm. Michael Smith. Certified Court Reporter Amy S. Richardson,
14 Yuma Court Reporters, recorded the proceedings as the official record of the hearing.

15 **WITNESSES:**¹

16 Petitioner School District: **Lisa Anderson**, Petitioner School District’s Executive
17 Director of Student Services; Tom Safranek, **Principal** with Petitioner School District;
18 Linda Coronado, **Assistant Principal** of Student Services with Petitioner School
19 District; and Walter Flores, **Instructional Leader** with Petitioner School District;
20 Respondents: Teri Rademacher, **Advocate**; [REDACTED] **Father**; and [REDACTED]
21 **Mother**.

22 **ADMINISTRATIVE LAW JUDGE:** Tammy L. Eigenheer

23 Petitioner School District brought an expedited due process action to affirm the
24 move of Student from San Luis High School to Vista Alternative High School following a
25 disciplinary action. The law governing these proceedings is the Individuals with
26 Disabilities Education Act (IDEA), 20 United States Code (U.S.C.) §§ 1400-1482 (as re-
27 authorized and amended in 2004),² and its implementing regulations, 34 Code of
28 Federal Regulations (C.F.R.) Part 300, as well as the Arizona Special Education

29 ¹ Throughout this Decision, proper names of Parents and Student’s teachers are not used in order to
30 protect confidentiality of Student and to promote ease of redaction. Pseudonyms (appearing above in
bold type) will be used instead. Proper names of administrative personnel, service providers, and expert
witnesses are used.

² By Public Law 108-446, known as the “Individuals with Disabilities Education Improvement Act of
2004,” IDEA 2004 became effective on July 1, 2005.

1 statutes, Arizona Revised Statutes (A.R.S.) §§ 15-761 through 15-774, and
2 implementing rules, Arizona Administrative Code (A.A.C.) R7-2-401 through R7-2-406.

3 A prehearing conference was held April 12, 2016,³ during which the issue to be
4 decided was set forth as follows:

5 Whether Petitioner School District's proposed interim
6 alternative educational setting (IAES) at Vista Alternative
7 High School with transportation provided is in conformity
8 with the provisions of the IDEA, specifically 34 C.F.R. §
9 300.530 – 34 C.F.R. § 300.533.⁴

10 The parties presented testimony and exhibits at the expedited hearing on April
11 22, 2016. Petitioner School District presented testimony from the witnesses noted
12 above and Exhibits 1 through 7, which were admitted into the record. Respondents
13 presented testimony from the witnesses noted above and exhibit A, which was admitted
14 into the record. The Administrative Law Judge has considered the entire record,
15 including all testimony and exhibits,⁵ and now makes the following Findings of Fact,
16 Decision, and Order.

17 **FINDINGS OF FACT**

18 1. Student is a [REDACTED] in high school who receives special education and
19 services from Petitioner School District under the eligibility categories of Other Health
20 Impairment and Emotional Disability. Under his October 2015 individualized
21 educational program (IEP), Student's placement was within a general education
22 classroom for more than 80 percent of the day. In the section of the IEP entitled
23 "Special Education Services to be Provided," all special education services and
24 supplementary aids/assistive technology and services for Student was identified as
25 being provided in a general education classroom with support services. The related
26 service of counseling was identified as being provided in a special education classroom
27 for 30 minutes per week.

28 ³ Counsel for Respondents did not participate in the April 12, 2016 prehearing conference due to a
29 purported technical issue. Another prehearing conference was held on April 19, 2016, during which
30 counsel for Petitioner School District and counsel for Respondents both participated.

⁴ The evidence adduced at hearing established that the statement of the issue set forth at the prehearing
conference was not an accurate reflection of the issue to be determined as discussed *infra*.

⁵ The Administrative Law Judge has considered each Exhibit, even if not mentioned in this Decision.

1 2. Since Student began attending San Luis High School in his freshman
2 year, Student has exhibited behavior issues including harassment, fighting, sexual
3 harassment, assault, bullying, inappropriate language, and insubordination. Student's
4 behavior has escalated over time and become more violent towards his peers and more
5 inappropriate with his teachers. This has caused Petitioner School District reasonable
6 concern about the safety of Student and others.

7 3. On February 2, 2016, Student reportedly approached a female student
8 and stated that he was going to follow her home and rape her. Petitioner School
9 District imposed a one day out of school suspension.

10 4. On February 3, 2016, Petitioner School District intended to hold a
11 manifestation determination review in anticipation of imposing further discipline.⁶
12 During the meeting, Parents raised questions regarding why the people there had been
13 invited, the individuals' experience and qualifications, and other questions so that the
14 parties never addressed the questions relevant to a manifestation determination
15 review.

16 5. On February 18, 2016, Student reportedly entered a classroom and
17 began harassing the Gear Up Tutor. Student "tried to grab Christian's chest and
18 Christian was able to block it." Petitioner School District did not impose any discipline.

19 6. On February 26, 2016, Student reportedly approached a teacher outside
20 of a classroom between periods and deliberately bumped into the teacher. When the
21 teacher asked Student to back away and respect the teacher's personal space, Student
22 bumped into the teacher again. Student then told teacher that he would get someone
23 to do a shooting at the Harkins Theater when the teacher, who also worked in the
24 Harkins Theater front office, was present.⁷

25
26
27
28 ⁶ After the one day out-of-school suspension, Student had been suspended for a total of nine days during
29 the school year. Had any further out-of-school discipline been imposed, a manifestation determination
30 review would have been required pursuant to 34 C.F.R. § 300.530(e).

⁷ Between the date of the incident and the due process hearing, the teacher involved passed away. His
death was unrelated to the conduct of Student.

1 7. On March 1, 2016, Petitioner School District personnel held a conference
2 with Student and Parents. At the conference, Student refused to give a statement
3 about the events of February 26, 2016, without his attorney present.

4 8. According to the testimony at the due process hearing, the teacher
5 obtained a temporary restraining order against Student. Based on the conditions of the
6 temporary restraining order, Student was not allowed to be on the San Luis High
7 School campus.⁸

8 9. Because Student was not allowed on campus pursuant to the temporary
9 restraining order, on or about March 2, 2016, Student began receiving services for one
10 hour a day after school.⁹ Mother testified that on a number of occasions, no one was
11 available to provide services to Student after school.¹⁰

12 10. On March 11, 2016, Petitioner School District issued a Prior Written
13 Notice (PWN) indicating that Petitioner School District proposed the long-term
14 suspension of Student based on his violation of the code of conduct. Exhibit 4 page
15 107.

16 11. On March 24, 2016, a manifestation determination review was held to
17 determine if Student's conduct was caused by, or had a direct and substantial
18 relationship to, Student's disability. Student's IEP team concluded that the offense was
19 a manifestation of Student's disability and that the conduct was not a direct result of
20 Petitioner School District's failure to implement the IEP as written. It was also
21 determined that illegal drugs/controlled substances were not involved; that a weapon
22 was not involved; and serious bodily injury was not involved. Exhibit A. However,
23 Petitioner School District proposed transporting Student to Vista Alternative High
24 School in Yuma, Arizona as the 45-day IAES.

25 12. As of the date of the due process hearing, Student had not attended any
26 classes at Vista Alternative High School.

27
28 ⁸ The temporary restraining order was not entered into evidence.

29 ⁹ It was not explained why Petitioner School District allowed Student to be present on campus after the
30 school day if Student was not allowed to be present on campus during the school day.

¹⁰ Any possible failure to provide Student a free appropriate public education prior to the manifestation
determination review is not a subject of this hearing and will not be addressed.

1 13. Prior to the proposed change, Student's placement was in a general
2 education classroom with an aide. After the proposed change, Student's placement
3 would have been in a general education classroom with an aide.

4 14. At the hearing, Petitioner School District provided testimony that at Vista
5 Alternative High School, Student would receive the services identified in his IEP as
6 written; Student would be educated with non-disabled peers to the same extent;
7 Student would have the same opportunity to participate in nonacademic and
8 extracurricular activities;¹¹ and that it was the same placement option on the continuum
9 of alternative placements.

10 **CONCLUSIONS OF LAW**

11 1. A party who files for a due process hearing under the IDEA must bear the
12 burden of proving its position.¹² The standard of proof is "preponderance of the
13 evidence," meaning evidence showing that a particular fact is "more probable than
14 not."¹³ Therefore, Petitioner School District bears the burden of proving by a
15 preponderance of evidence that it complied with the IDEA in its proposed placement of
16 Student at Vista Alternative High School.

17 2. Pursuant to 34 C.F.R. § 300.530(a)(2), after a child with a disability has
18 been removed from his or her current placement for 10 school days in the same school
19 year, during any subsequent days of removal, the public agency must provide special
20 education services to the student.

21 3. Pursuant to 34 C.F.R. § 300.530(e), within 10 school days of any decision
22 to change the placement¹⁴ of a child with a disability because of a violation of a code of
23

24 ¹¹ From the evidence provided, it does appear that Vista Alternative High School has fewer
25 extracurricular activities available. However, the evidence established that Student does not participate
26 in any extracurricular activities at San Luis High School.

27 ¹² *Schaffer v. Weast*, 546 U.S. 49, 126 S. Ct. 528 (2005).

28 ¹³ *Culpepper v. State*, 187 Ariz. 431, 437, 930 P.2d 508, 514 (Ct. App. 1996); *In the Matter of the Appeal*
29 *in Maricopa County Juvenile Action No. J-84984*, 138 Ariz. 282, 283, 674 P.2d 836, 837 (1983).

30 ¹⁴ For purposes of removals of a child with a disability from the child's current educational placement, in
the context of discipline, a "change of placement" occurs if "[t]he removal is for more than 10
consecutive school days;" or "[t]he child has been subjected to a series of removals that constitute a
pattern . . . [b]ecause the series of removals total more than 10 school days in a school year; . . .
[b]ecause the child's behavior is substantially similar to the child's behavior in previous incidents that
resulted in the series of removals; and . . . [b]ecause of such additional factors as the length of each
removal, the total amount of time the child has been removed, and the proximity of the removals to one

1 student conduct, the local educational agency (LEA), the parent, and relevant members
2 of the child's IEP Team must review all relevant information in the student's file,
3 including the child's IEP, and teacher observations, and any relevant information
4 provided by the parents to determine if the conduct in question was caused by, or had
5 a direct and substantial relationship to, the child's disability; or if the conduct in
6 question was the direct result of the LEA's failure to implement the IEP.

7 4. 34 C.F.R. § 300.530(f) provides as follows:

8 (f) *Determination that behavior was a manifestation.* If the LEA, the
9 parent, and relevant members of the IEP Team make the determination
10 that the conduct was a manifestation of the child's disability, **the IEP
Team must –**

11
12 (2) Except as provided in paragraph (g) of this section, **return the
13 child to the placement from which the child was removed**, unless the
14 parent and the LEA agree to a change of placement as part of the
15 modification of the behavioral intervention plan.

16 Bold emphasis added.

17 5. If an LEA believes that maintaining the current placement of the child is
18 substantially likely to result in injury to the child or others, it may request a hearing. 34
19 C.F.R. § 300.532. After a hearing, the hearing officer may

20 (i) Return the child with a disability to the placement from which the
21 child was removed if the hearing officer determines that the removal was
22 a violation of § 300.530 or that the child's behavior was a manifestation of
23 the child's disability; or

24 (ii) Order a change of placement of the child with a disability to an
25 appropriate interim alternative educational setting for not more than 45
26 school days if the hearing officer determines that maintaining the current
27 placement of the child is substantially likely to result in injury to the child
28 or to others.

29 34 C.F.R. § 300.532(b)(2).

30 6. Petitioner School District argued that pursuant to 34 C.F.R. §
300.532(b)(2)(ii), this tribunal should order that Student be placed at Vista Alternative

another." 34 C.F.R. § 300.536. This is distinct from the continuum of alternative placements described
in 34 C.F.R. § 300.115 and a determination of student's educational placement described in 34 C.F.R. §
300.116.

1 High School because keeping Student at San Luis High School is substantially likely to
2 result in injury to Student or to others.

3 7. While the initial statement of the issue was presented as whether
4 Petitioner School District's "proposed [IAES] at Vista Alternative High School with
5 transportation provided is in conformity with the provisions of the IDEA, specifically 34
6 C.F.R. § 300.530 – 34 C.F.R. § 300.533," the evidence presented does not support that
7 statement of the issue.

8 8. The parties agreed at the manifestation determination review that
9 Student's conduct was a manifestation of his disability. Upon such a finding, Petitioner
10 School District was required to "return [Student] to the placement from which [he] was
11 removed." See 34 C.F.R. § 300.530(f)(2).

12 9. In this context, "placement" refers to Student's educational placement on
13 the continuum of alternative placements. In this case, Student's educational placement
14 was the general education classroom with supports.

15 10. It is settled law that a Student's "educational placement" is an IEP Team
16 decision, whereas the physical "location" is an administrative decision. See *Deer*
17 *Valley Unified School District v. L.P.*, 942 F.Supp.2d 880 (D. Ariz. 2013).

18 [T]he term "educational placement" in the regulations refers only to the
19 general type of educational program in which the child is placed.
20 "Educational placement" refers to the general educational program – such
21 as the classes, individualized attention and additional services a child will
22 receive – rather than the "bricks and mortar" of the specific school.
23 [T]here is no requirement in the IDEA that the IEP name a specific school
24 location. [A]n IEP's failure to identify a specific school location will not
25 constitute a per se procedural violation of the IDEA. The location of
26 services in the context of an IEP generally refers to the type of
27 environment that is the appropriate place for provision of the service. For
28 example, is the related service to be provided in the child's regular
29 classroom or resource room?

30 *Id.* at 887 (alterations in original) (citations and quotations omitted).

11. It is possible for a change in location to constitute a change of
educational placement. To determine whether such a change has occurred, the effect
of the change in location on the following factors must be considered:

- a. whether the educational program set out in the child's IEP has been revised;
- b. whether the child will be able to be educated with nondisabled children to the same extent;
- c. whether the child will have the same opportunities to participate in nonacademic and extracurricular services; and
- d. whether the new placement option is the same option on the continuum of alternative placements.

Letter to Fisher, 21 IDELR 992 (OSEP July 6, 1994); see also *Student v. Isaac Elementary Sch. Dist.*, 15C-DP-006-ADE (Ariz. Office of Admin. Hrg. 2015).

12. In this case, the factors weigh in favor of a finding that the move from San Luis High School to Vista Alternative High School was a change of location and not a change of placement.¹⁵

13. Because Petitioner School District complied with the requirements of 34 C.F.R. § 300.530(f)(2) in that, upon a finding that Student's conduct was a manifestation of his disability, it returned Student to the placement from which he was removed, it is not necessary to address whether Petitioner School District had the authority to place Student in an IAES.

ORDER

Based on the findings and conclusions above, IT IS HEREBY ORDERED that Petitioner School District's due process complaint be granted because it had the legal authority under the IDEA to return Student to the same educational placement at a different location after the manifestation determination review.

Done this 16th day of May 2016.

OFFICE OF ADMINISTRATIVE HEARINGS

/s/ Tammy L. Eigenheer
Administrative Law Judge

RIGHT TO SEEK JUDICIAL REVIEW

¹⁵ This should not be interpreted as a finding that the change of location was appropriate as that issue was not before Tribunal.

1 Pursuant to 20 U.S.C. § 1415(i) and A.R.S. § 15-766(E)(3), this Decision
2 and Order is the final decision at the administrative level. Furthermore,
3 any party aggrieved by the findings and decisions made herein has the
4 right to bring a civil action, with respect to the complaint presented, in any
5 State court of competent jurisdiction or in a district court of the United
6 States. Pursuant to Arizona Administrative Code § R7-2-405(H)(8), any
7 party may appeal the decision to a court of competent jurisdiction within
8 thirty-five (35) days of receipt of the decision.

9 Copy sent by **electronic mail** this 16th day of May 2016 to:

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