



# The University of the State of New York

## The State Education Department

State Review Officer

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No. 12-164

**Application of the XXXXXXXXXXXXX for review of a determination of a hearing officer relating to the provision of educational services to a student with a disability**

### **Appearances:**

Courtenaye Jackson-Chase, Special Assistant Corporation Counsel, attorneys for petitioner, Neha Dewan, Esq., of counsel

## **DECISION**

### **I. Introduction**

This proceeding arises under the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. §§ 1400-1482) and Article 89 of the New York State Education Law. Petitioner (the district) appeals from a decision of an impartial hearing officer (IHO) which annulled a determination made by a manifestation team and, as a result, annulled the student's expulsion from his charter school. The appeal must be sustained.

### **II. Overview—Administrative Procedures**

When a student in New York is eligible for special education services, the IDEA calls for the creation of an individualized education program (IEP), which is delegated to a local Committee on Special Education (CSE) that includes, but is not limited to, parents, teachers, a school psychologist, and a district representative (Educ. Law § 4402; see 20 U.S.C. § 1414[d][1][A]-[B]; 34 CFR 300.320, 300.321; 8 NYCRR 200.3, 200.4[d][2]). If disputes occur between parents and school districts, incorporated among the procedural protections is the opportunity to engage in mediation, present State complaints, and initiate an impartial due process hearing (20 U.S.C. §§ 1221e-3, 1415[e]-[f]; Educ. Law § 4404[1]; 34 CFR 300.151-300.152, 300.506, 300.511; 8 NYCRR 200.5[h]-[l]).

New York State has implemented a two-tiered system of administrative review to address disputed matters between parents and school districts regarding "any matter relating to the identification, evaluation or educational placement of a student with a disability, or a student suspected of having a disability, or the provision of a free appropriate public education to such student" (8 NYCRR 200.5[i][1]; see 20 U.S.C. § 1415[b][6]-[7]; 34 CFR 300.503[a][1]-[2], 300.507[a][1]). First, after an opportunity to engage in a resolution process, the parties appear at an impartial hearing conducted at the local level before an IHO (Educ. Law § 4404[1][a]; 8 NYCRR 200.5[j]). An IHO typically conducts a trial-type hearing regarding the matters in dispute in which the parties have the right to be accompanied and advised by counsel and certain other individuals with special knowledge or training; present evidence and confront, cross-examine, and compel the attendance of witnesses; prohibit the introduction of any evidence at the hearing that has not been disclosed five business days before the hearing; and obtain a verbatim record of the proceeding (20 U.S.C. § 1415[f][2][A]-[B], [h][1]-[3]; 34 CFR 300.512[a][1]-[4]; 8 NYCRR 200.5[j][3][v], [vii], [xii]). In typical proceedings, the IHO must render and transmit a final written decision in the matter to the parties not later than 45 days after the expiration period or adjusted period for the resolution process (34 CFR 300.510[b][2], [c], 300.515[a]; 8 NYCRR 200.5[j][5]). A party may seek a specific extension of time of the 45-day timeline, which the IHO may grant in accordance with State and federal regulations (34 CFR 300.515[c]; 8 NYCRR 200.5[j][5]). In matters involving disciplinary changes in placement of a student having or suspected of having a disability, a parent may request an expedited impartial hearing in which shorter timelines are imposed (see 20 U.S.C. § 1415[k][3][A]; 34 CFR 300.532[c]; 8 NYCRR 201.11[a][3]-[4]). The decision of the IHO is binding upon both parties unless appealed (Educ. Law § 4404[1]).

A party aggrieved by the decision of an IHO may subsequently appeal to a State Review Officer (SRO) (Educ. Law § 4404[2]; see 20 U.S.C. § 1415[g][1]; 34 CFR 300.514[b][1]; 8 NYCRR 200.5[k]). The appealing party or parties must identify the findings, conclusions, and orders of the IHO with which they disagree and indicate the relief that they would like the SRO to grant (8 NYCRR 279.4). The opposing party is entitled to respond to an appeal or cross-appeal in an answer (8 NYCRR 279.4[b], 279.5). The SRO conducts an impartial review of the IHO's findings, conclusions, and decision and is required to examine the entire hearing record; ensure that the procedures at the hearing were consistent with the requirements of due process; seek additional evidence if necessary; and render an independent decision based upon the hearing record (34 CFR 300.514[b][2]; 8 NYCRR 279.12[a]). The SRO must ensure that a final decision is reached in the review and that a copy of the decision is mailed to each of the parties not later than 30 days after the receipt of a request for a review, except that a party may seek a specific extension of time of the 30-day timeline, which the SRO may grant in accordance with State and federal regulations (34 CFR 300.515[b], [c]; 8 NYCRR 200.5[k][2]).

### **III. Facts and Procedural History**

The hearing record reflects that the student received diagnoses of an attention deficit hyperactivity disorder (ADHD), "dysgraphism," learning disability, and expressive language delay; additionally, the student exhibited deficits in receptive and expressive language and academics (including reading, math, and writing skills) and demonstrated clinically significant

scores on measures of behaviors in the areas of anxiety/depression, social problems, and attention (Dist. Exs. 3; 8 at pp. 3-4, 6; 9 at p. 1; 10 at pp. 1, 10; 11 at pp. 1, 5; 12 at pp. 1-2; 14 at pp. 1-2). The student's performance on the Wechsler Intelligence Scale for Children, Fourth Edition (WISC-IV) in June 2011 revealed a full scale IQ of 79, in the borderline range of intellectual functioning (Dist. Ex. 8 at p. 2).<sup>1</sup>

At the time of the events relevant to this proceeding, the student received special education and related services pursuant to an IEP dated October 20, 2011 (Dist. Ex. 14 at p. 11).<sup>2</sup> The October 2011 CSE found the student eligible for special education and related services as a student with an other health-impairment (*id.* at p. 1).<sup>3</sup> The October 2011 IEP recommended placement in a general education classroom with five sessions per week of group special education teacher support services (SETSS) in English language arts (ELA) in a separate location, as well as the following related services: two 30-minute sessions per week of group speech-language therapy and one 30-minute sessions per week of individual counseling (*id.* at p. 8). The IEP further identified the student's "placement recommendation" as a "[c]harter [s]chool" (*id.* at p. 11). The hearing record reflects that the student attended a charter school for the 2011-12 school year leading up to the relevant events (*see, e.g.*, Dist. Exs. 4, 5).<sup>4</sup>

According to an incident report completed by the charter school's dean of students on May 3, 2012, the dean was approached by two students at the end of the school's recess period, who alleged that the student indicated to them that he was carrying a knife (Dist. Ex. 5 at p. 1). According to the incident report, the dean of students located the student, opened his backpack, and discovered a "swiss army/utility" knife that contained "lots of gadgets" including "several knives" (*id.*). The report states that the dean of students confiscated all of the student's belongings, including the knife, and directed the student to complete an incident report (*id.*).<sup>5</sup>

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<sup>1</sup> According to a June 2011 psychological evaluation, the student scored in the extremely low range on the working memory subtest of the WISC-IV, which skewed his overall full scale IQ (Dist. Ex. 8 at p. 2). As such, the evaluator indicated that the student's score on the General Ability Index (GAI) may have been a more appropriate reflection of the student's ability, as it did not include working memory and processing speed scores (*id.*). The student's GAI score (86) in June 2011 was in the low average range of functioning (*id.*).

<sup>2</sup> The evidence in the hearing record reflects that the student attended a district public school for first and second grade in a general education classroom with no special education services (Dist. Ex. 9 at p. 1). For the student's third grade year, the evidence in the hearing record shows that he received integrated co-teaching (ICT) services in a general education classroom in a district public school until he transferred to a charter school in January 2010 (*id.*).

<sup>3</sup> The student's eligibility for special education programs and related services as a student with an other health-impairment is not in dispute (*see* 34 CFR 300.8[c][9]; 8 NYCRR 200.1[zz][10]).

<sup>4</sup> New York State permits the establishment and operation of charter schools pursuant to the New York Charter School Act (Educ. Law § 2850). The Charter School Act states that "[s]pecial education programs and services shall be provided to students with a disability attending a charter school in accordance with the [IEP] recommended by the [CSE] of the student's school district of residence" (Educ. Law § 2853[4]). The Charter School Act provides various options for the district of residence and the charter school to effectuate delivery of special education services to students with disabilities (Educ. Law § 2853[4]; *see also* Educ. Law §§ 2856[1][b], 4410-b[4]). There is no dispute that the district was the local educational agency (LEA) under the IDEA and, further, that it was responsible for conducting the MDR in this case.

<sup>5</sup> This incident report completed by the student, although discussed at the impartial hearing, was not introduced

According to the incident report, the dean of students proceeded to contact the student's parent, informing her of the events and requesting that she pick the student up immediately (id.). Upon the parent's arrival at the school, the report states that the dean of students handed her a letter indicating that the student could "not return to school until further notice" (id.).

In a letter to the district dated May 4, 2012, the director of special education at the charter school requested a manifestation determination review (MDR) and informed the district that she would send the incident report completed by the charter school to the district, as well as a functional behavioral assessment (FBA) and a behavior intervention plan (BIP) (Dist. Ex. 4 at p. 1).

Also on May 4, 2012, the charter school developed a "[s]uspension [p]lan" indicating that the student was to be "suspended for a period not to exceed ten days for bringing a weapon to school" (Dist. Ex. 5 at p. 2). This suspension plan further indicated that the student would receive two and one-half hours of daily instruction at the charter school (id.). The document also identified two school administrators who would "oversee all matters" regarding the MDR (id.). The plan also stated that, if the student's conduct was found to be "part of [the student's] disability," the student would return to school the day after the hearing but that if the conduct was not found to be a manifestation of the student's disability, the student would be subject to an "expulsion hearing" (id.).

On May 10, 2012, the charter school conducted an FBA of the student and developed a BIP based thereon (Dist. Ex. 6 at pp. 1-2; see Dist. Ex. 7 at p. 2). According to the director of special education at the charter school, these documents were reviewed by the district school psychologist who served on the manifestation team (Tr. pp. 25-26).

Although the hearing record is unclear, it appears that a superintendent's disciplinary hearing took place (see Tr. pp. 45-47). The head of school at the charter school explained that, prior to the MDR, the student's guilt in the matter was "established in the dean's area" (Tr. p. 45; see Tr. pp. 45-47).

On May 21, 2012, a manifestation team convened, consisting of a district school psychologist, as well as both the director and assistant director of special education at the charter school (Dist. Ex. 7 at p. 1; see Tr. p. 24). The parent and student also attended (Tr. p. 24; Dist. Ex. 7 at p. 1). The manifestation team concluded that the student's conduct was not a manifestation of his disability (Dist. Ex. 1). Later that day, the hearing record shows that an "expulsion hearing" took place and it was determined that the student "could not return" to the charter school (Dist. Ex. 1; see Tr. pp. 41-42). While the precise chronology is unclear, at some point, the head of school of the charter school informed the parent that the student would be expelled if she did not withdraw him (Tr. p. 42). As a result, the parent withdrew the student (see Tr. p. 42).<sup>6</sup> It appears from the hearing record that the student subsequently attended a district public school (Tr. p. 31).

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into the hearing record (see Tr. pp. 47, 53).

<sup>6</sup> At the impartial hearing, the parties disputed whether, under these circumstances, the change in placement occurred because student was ultimately expelled though the action of the public charter school or due to the

### **A. Due Process Complaint Notice**

In a due process complaint notice dated May 22, 2012, the parent requested an impartial hearing for the purpose of challenging the outcome of the May 21, 2012 MDR (Dist. Ex. 2 at pp. 1-2). Specifically, the parent contended that the manifestation team met later than 10 days after the school decided to expel the student in contravention of legal requirements (id. at p. 1). The parent further indicated that she and the student's doctors disagreed with the manifestation team's determination (id.). For relief, the parent sought a review of the student's conduct by someone without "any past relationship" with the charter school or the student and sought the student's re-enrollment in the charter school (id.).

### **B. Impartial Hearing Officer Decision**

The parties proceeded to an impartial hearing on July 9, 2012 (Tr. pp. 1-81). In a decision dated July 13, 2012, the IHO found that the manifestation team properly determined that the student's conduct was not a manifestation of his disability (IHO Decision at p. 4). However, the IHO also found that the district convened the MDR 12 days after it decided to suspend the student, two days later than the deadline imposed by the IDEA and federal and State regulations (id. at p. 5). Based on this failure, the IHO annulled the determination made by the manifestation team (id. at p. 6).

As to the manifestation team's determination, although the IHO found the "exact details . . . far from clear," he determined that the manifestation team "did not err in concluding that [the] [s]tudent's action[s] . . . w[ere] not a manifestation of his disability" (IHO Decision at pp. 3-4). The IHO found that the student's decision to place the knife in his bookbag was "a clear, calculated decision" and that nothing related to the student's "diagnosed disabilities entered into that decision" (id. at p. 4). While the IHO recognized that the parent and district offered divergent accounts of the conversation leading to the student's revelation of his possession of the knife to the other students, he deemed this information "irrelevant" to his review (id.).

The IHO next considered the parent's allegation that the MDR took place after the 10-day timeline (IHO Decision at p. 5). The IHO found that the 10-day deadline in State regulations to be an "imperative," which "require[d]" that he find the MDR "a nullity and of no effect" (id.). The IHO additionally noted that the IDEA and its accompanying regulations contain "[s]imilar provisions" (id.). The IHO further annulled the charter school's determination to expel the student because it was "based upon" the manifestation team's determination and, thus, "equally flawed" (id.).

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parent's action of voluntarily withdrawing the student. Because the determination in this case does not rest upon this distinction, this issue need not be resolved. However, for purposes of clarity and based upon the practical effect thereof, the student's permanent departure from attendance at the charter school, which was clearly the outcome sought by the charter school, is referred to in this decision as an expulsion.

#### IV. Appeal for State-Level Review

The district appeals and asserts that the IHO erred by annulling the determination of the manifestation team. The district admits that it convened an MDR beyond the 10-day requirement imposed by the IDEA, as well as federal and State regulations; however, it argues that this was a procedural error that resulted in no prejudice to the parent or the student. Specifically, the district argues that the delay did not affect the process or outcome of the MDR. Further, the district contends that both the parent and student attended the MDR and were afforded an opportunity to participate. Therefore, argues the district, there was no harm to the student under these circumstances and the IHO erred by annulling the determination of the manifestation team.

In an answer, the parent alleges that the district failed to convene an MDR within the 10-day timeline despite multiple requests from the parent to do so.<sup>7</sup>

#### V. Applicable Standards

The procedure under the IDEA (20 U.S.C. §§ 1400-1482) relevant to this case involves the process by which school officials may seek a disciplinary change in placement of a student with a disability who violates a code of student conduct (see 20 U.S.C. § 1415[k]; Educ. Law § 3214[3][g]; 34 CFR 300.530-300.537; 8 NYCRR Part 201).<sup>8</sup> State regulations provide that a disciplinary change in placement means a "suspension or removal from a student's current educational placement that is either: (1) for more than 10 consecutive school days; or (2) for a period of 10 consecutive days or less if the student is subjected to a series of suspensions or removals that constitute a pattern because they cumulate to more than 10 school days in a school year" (8 NYCRR 201.2[e]; see 20 U.S.C. § 1415[k][1][B]; 34 CFR 300.530[b][2], [c]).<sup>9</sup>

If a district is considering a disciplinary change in placement for a student with a disability, the district must conduct an MDR meeting "within 10 school days of any decision to

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<sup>7</sup> This answer contains an affidavit of service that does not comply with State regulations governing the practice on review of hearings for students with disabilities (see 8 NYCRR 279.5). Additionally, the answer alludes to issues that were not raised in the parent's due process complaint notice. Pursuant to the IDEA, as well as State and federal regulations, these newly raised issues cannot be considered on appeal (20 U.S.C. § 1415[c][2][E][i][II], 1415[f][3][B]; 34 CFR 300.508[d][3][i]-[ii], 300.511[d]; 8 NYCRR 200.5[i][7][i][b], [j][1][ii]; see R.E. v. New York City Dep't of Educ., 694 F.3d 167, 187-88 n.4 [2d Cir. 2012]; N.K. v. New York City Dep't of Educ., 961 F. Supp. 2d 577, 584 [S.D.N.Y. 2013]; J.C.S. v Blind Brook-Rye Union Free Sch. Dist., 2013 WL 3975942, at \*8-\*9 [S.D.N.Y. Aug. 5, 2013]; B.M. v. New York City Dep't of Educ., 2013 WL 1972144, at \*6 [S.D.N.Y. May 14, 2013]).

<sup>8</sup> The procedures also apply to a student presumed to have a disability for discipline purposes (20 U.S.C. § 1415[k][5]; 8 NYCRR 201.2[n], 201.5; see 34 CFR 300.534).

<sup>9</sup> If a district proposes to suspend a student with a disability for more than five school days for alleged misconduct, a superintendent's hearing is conducted in which it is first determined whether the student engaged in the alleged misconduct and, upon such a finding, it is then determined whether a disciplinary change in placement will be considered as a possible penalty (Educ. Law § 3214[3][c]; 8 NYCRR 201.9[c][1]).

change the placement of a child with a disability because of a violation of a code of student conduct" (20 U.S.C. § 1415[k][1][E][i]; 34 CFR 300.530[e][1]; 8 NYCRR 201.4[a]). An MDR meeting must also be conducted within 10 school days after a superintendent or IHO decides to place a student in an interim alternative educational setting (IAES) (see 8 NYCRR 201.4[a][1]-[2], 201.7[e], 201.8[a]; see also 20 U.S.C. § 1415[k][1][G], [3][[B][ii][II]; Educ. Law § 3214[3][g][3][iv], [vii]; 34 CFR 300.530[b][1], [e], [g], 300.532[b][2][ii]). The participants at the MDR meeting must include a district representative, the parents, and the "relevant members" of the CSE as determined by the parent and the district (20 U.S.C. § 1415[k][1][E][i]; Educ. Law § 3214[3][g][2][ii]; 34 CFR 300.530[e][1]; 8 NYCRR 201.4[b]). State regulations additionally require that the parent must receive written notification prior to any manifestation team meeting "to ensure that the parent has an opportunity to attend" (8 NYCRR 201.4[b]). Further, State regulations require that such written notice inform the parent of the purpose of the meeting, the names of the people expected to attend, and the parent's right to have relevant members of the CSE participate at the parent's request (*id.*).

Within 10 school days of any decision to change the placement of a student with a disability because of a violation of a code of student conduct, the manifestation team must "review all relevant information in the student's file including the student's IEP, any teacher observations, and any relevant information provided by the parents to determine if: "(1) the conduct in question was caused by or had a direct and substantial relationship to the student's disability; or (2) the conduct in question was the direct result of the school district's failure to implement the IEP" (8 NYCRR 201.4[c]; see 20 U.S.C. § 1415[k][1][E]; 34 CFR 300.530[e][1]). While courts have not interpreted 8 NYCRR 201.4(c) to be exhaustive, requiring review of every piece of information contained in a student's educational file, a manifestation team must "review the information pertinent to that decision" (*Fitzgerald v. Fairfax County Sch. Bd.*, 556 F. Supp. 2d 543, 559 [E.D. Va. 2008]).

If the result of the MDR is a determination that the student's conduct was not a manifestation of his or her disability, "the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities" (20 U.S.C. § 1415[k][1][C]; 34 CFR 300.530[c]; see Educ. Law § 3214[3][g][vi]). However, if the result of the MDR is a determination that the student's conduct was a manifestation of his or her disability, the CSE is required to conduct an FBA and implement a BIP; or if the student already has a BIP, review the BIP and modify it as necessary to address the behavior (20 U.S.C. § 1415[k][1][F][i]-[ii]; 34 CFR 300.530[f][1][i]-[ii]; 8 NYCRR 201.3). Except under "special circumstances" as defined in the IDEA and State and federal regulations, the district must also return the student to the placement from which he or she was removed or suspended (20 U.S.C. § 1415[k][1][F][iii]; Educ. Law § 3214[3][g][3][viii]; 34 CFR 300.530[f][2]; 8 NYCRR 201.4[d][2][ii]).<sup>10</sup> If the manifestation team determines that the student's conduct was the direct result of the school district's failure to implement the student's IEP, the district must take immediate steps to correct the deficiencies in the implementation of the student's IEP (34 CFR 300.530[e][1][ii], [3]; 8 NYCRR 201.4[e]).

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<sup>10</sup> A district and parents may agree to a change in the student's placement and, under certain circumstances, a district may continue to maintain the student in an IAES for up to 45 days (20 U.S.C. § 1415[k][1][F][iii], [G]; 34 CFR 300.530[f][2], [g]; 8 NYCRR 201.7[e], 201.8[a], 201.9[c][3]).

If the parent of a student with a disability disagrees with: (1) a school district's decision regarding the student's placement, including but not limited to the decision by the district to place the student in an IAES; or (2) a determination of the manifestation team, the parent may request an expedited impartial hearing (20 U.S.C. § 1415[k][3][A]; 34 CFR 300.532[c]; 8 NYCRR 201.11[a][3]-[4]; see Coleman v. Newburgh Enlarged City Sch. Dist., 503 F.3d 198, 201-02 [2d Cir. 2007]).

## **VI. Discussion**

### **A. Scope of Review**

On appeal, the parent does not cross-appeal the IHO's adverse determination that the manifestation team correctly concluded that the student's conduct was not a manifestation of his disability. Accordingly, this determination by the IHO is final and binding on the parties and will not be addressed (see 34 CFR 300.514[a]; 8 NYCRR 200.5[j][5][v]; J.F. v. New York City Dep't of Educ., 2012 WL 5984915 at\*6 [S.D.N.Y. Nov. 27, 2012] [explaining that "[a] particular finding that is not cross-appealed is waived"]).

### **B. Timing of Manifestation Review**

On appeal, the district argues that the IHO's annulment of the manifestation team's conclusion was in error because it was based solely upon the fact that the manifestation team convened two days later than the deadline set by the IDEA and federal and State regulations. The parties appear to agree that a decision was made "to impose a suspension that constitute[d] a disciplinary change in placement" on May 3, 2012 (see 8 NYCRR 201.4[a][3]). Therefore, the MDR meeting on May 21, 2012 exceeded this 10-day deadline by two days (see 8 NYCRR 201.4[a] [providing that an MDR "must be made immediately, if possible, but in no case later than 10 school days . . ."]; see also 8 NYCRR 201.2[d][1] [defining "[s]chool day" as "any day, including a partial day, that students are in attendance at school for instructional purposes"]).<sup>11</sup>

Under these circumstances, the district is correct that the IHO erred by finding that the district's two-day delinquency mandated nullification of the manifestation team's determination. A technical violation of the procedures for disciplining a student with a disability does not automatically render the determination of a manifestation team invalid (Danny K. v. Dep't of Educ., 2011 WL 4527387, at \*15 [D. Haw. Sept. 27, 2011]; Sch. Bd. of the City of Norfolk v. Brown, 769 F. Supp. 2d 928, 946-47 [E.D. Va. 2010]; Fitzgerald, 556 F. Supp. 2d at 551; A.P. v. Pemberton Twp. Bd. of Educ., 2006 WL 1344788, at \*4 [D.N.J. May 15, 2006]; Farrin v. Maine Sch. Administrative Dist. No. 59, 165 F. Supp. 2d 37, 51 [D. Me. 2001] [holding that the delay in conducting an MDR meeting under the circumstances did not result in harm]; cf. A.C. v. Bd. of Educ., 553 F.3d 165, 172 [2d Cir. 2009] [noting that not all procedural errors render an IEP legally inadequate under the IDEA]; Matrejek v. Brewster Cent. Sch. Dist., 471 F. Supp. 2d 415,

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<sup>11</sup> The district asserts for the first time on appeal that the student's school was not open on May 10, 2012, thus rendering the MDR 11 days late, instead of 12. Assuming for purposes of argument that this is true, it would not affect the below determination.

419 [S.D.N.Y. 2007] [same]). Several courts have held that procedural errors are harmless if such errors do not impede a parent's ability to participate in the MDR process or negatively affect a student in any way (Farrin, 165 F. Supp. 2d at 51; see Danny K., 2011 WL 4527387, at \*15; A.P., 2006 WL 1344788, at \*3-\*4; see also Shelton v. Maya Angelou Pub. Charter Sch., 578 F. Supp. 2d 83, 88 [D.D.C. 2008] [reciting an IHO's determination that a delay in the MDR was justified but declining to revisit the issue since neither party contested this portion of the IHO's findings]).

Here, there is no indication in the hearing record that the two-day delay impeded the parent's ability to participate in the MDR or otherwise resulted in harm to the student. One district court reviewed a substantially similar fact pattern where, as here, a manifestation team convened two days later than required under the IDEA (Farrin, 165 F. Supp. 2d at 51). The court rejected the parents' argument that the delay necessitated annulment of the manifestation team's findings, noting that "[d]espite the delay, both parents attended the [MDR] meeting" (id.). Additionally, there was "no evidence that holding the meeting two days late affected its outcome, or the method by which the [manifestation team] addressed the issues" (id.). The court also determined that the student did not "suffer[ ] any ill effects from the tardiness of the meeting" because "his parents and teacher arranged for him to receive remedial reading instruction to make up for [the] lost time" (id.).

Here, as in Farrin, the parent does not dispute that she received notice of the MDR meeting, attended, and participated in the MDR process (see Tr. pp. 25, 35). The parent testified that she and the student "were the only ones who spoke" at the MDR meeting (Tr. p. 35). This was corroborated by testimony from the charter school's director of special education who testified that the student and parent "mostly . . . spoke about the incident" (Tr. p. 25). The parent does not argue that she was prohibited from participating in the MDR or from offering information relevant to the MDR proceeding (see 8 NYCRR 201.4[c]). Additionally, there is no indication in the hearing record that the delay affected the procedure or outcome of the MDR. Finally, as in Farrin, it appears that the student received services during these two additional days in accordance with a suspension plan generated by the charter school on May 4, 2012 (Dist. Ex. 5 at p. 2). Therefore, the evidence in the hearing record does not support a determination to annul the manifestation team's determination based solely upon a two-day delay in convening the meeting (see A.P., 2006 WL 1344788, at \*4 [finding "no indication that [the district's] failure to provide a manifestation hearing within ten days of [the student's] suspension caused a deprivation of educational benefits."]) [internal quotation marks omitted].<sup>12</sup>

## VII. Conclusion

Based upon the evidence in the hearing record, I conclude that the district's two-day delay in convening an MDR was a procedural violation that did not impede the parent's ability to participate in the MDR or otherwise result in harm to the student. Therefore, the IHO's determinations to the contrary must be reversed.

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<sup>12</sup> Additionally, because the student "possess[ed] a weapon" on school grounds, it was within the district's discretion to place the student in an IAES for up to forty-five days regardless of whether the student's conduct was a manifestation of his disability (20 U.S.C. § 1415[k][1][g][i]; see 34 CFR 300.530[g][1]; 8 NYCRR 201.7[e][ii]; see A.P., 2006 WL 1344788, at \*4).

**THE APPEAL IS SUSTAINED.**

**IT IS ORDERED** that the IHO's decision, dated July 13, 2012, is modified by reversing those portions which annulled the determination of the manifestation team and the expulsion of the student.

**Dated:** Albany, New York  
May 21, 2014

  
**JUSTYN P. BATES**  
**STATE REVIEW OFFICER**