STATE OF MAINE
SPECIAL EDUCATION DUE PROCESS HEARING

PARENTS,	)	
individually and as parents and legal guardians of xx, a minor,	)	
	)	**Hearing # 15.060X**
v.	)	
	)	
LEWISTON SCHOOL DEPARTMENT	)	
	)	

HEARING ORDER

This decision is issued pursuant to Title 20-A M.R.S.A. §7202 *et seq*., Title 20 U.S.C. §1415 *et seq.* and accompanying regulations. A due process hearing was held on June 9 and 10, 2015 in Lewiston, Maine. Those present for the entire proceeding were: the Parent; Atlee Reilly, Esq., and Benjamin Jones, Esq., attorneys for the Parent; Jill Hastings, Director of Special Education for the Lewiston School Department; Hannah King, Esq., attorney for the Lewiston School Department; Melanie Frazek, Esq., Hearing Officer. Foxfire Buck, law clerk for Disability Rights Maine, accompanied attorneys for the Parent as an observer.

Individuals testifying at the hearing were:

Mother	Parent
Deanna Etienne	xx Classroom Teacher
Anne Sanders	Special Education Supervisor/Case Manager/504 Coordinator
Althea Walker	Principal, Farwell Elementary School
Cathryn Bigley	Guidance Counselor, Farwell Elementary School
Jill Hastings	Director of Special Education, Lewiston School Department

All testimony was taken under oath.

I. PROCEDURAL BACKGROUND

On May 14, 2015 the Parents filed an expedited due process hearing request on behalf of their son, (hereinafter, "Student"). A prehearing conference was held on June 2, 2015 in

Lewiston, Maine. Participating in the conference were: Atlee Reilly, Esq., counsel for the Parents; Hannah King, Esq., counsel for the Lewiston School Department; Jill Hastings, Director of Special Education for the Lewiston School Department; Melanie Frazek, Esq., Hearing Officer. Foxfire Buck, law clerk for Disability Rights Maine, accompanied Attorney Atlee Reilly as an observer. Documents were exchanged. There was discussion of narrowing the issue for hearing as well as discussion of the witness lists. Attorneys for the parties requested an additional day in which to frame the sole remaining issue in language suitable to both and to coordinate the witness lists. The hearing officer received the parties' *Joint Statement and Stipulations Following the Prehearing Conference* on June 3, 2015 and issued the *Prehearing Report and Order* on June 5, 2015.

The Parents distributed 73 pages of documents/exhibits (referenced as S1-S73) and the School Department distributed 394 pages of documents/exhibits (referenced as 1-61, A1-A201, B1-B36 and C1-C96). In their *Joint Statement* the parties agreed that there was no stipulation to the admissibility of documents into the hearing record. They agreed that each party should raise objections to admissibility as warranted during the hearing proceedings. Further, the parties agreed any document not objected to by either party during the hearing as well as any document objected to but overruled by the hearing officer shall become part of the record. On the first day of the hearing, prior to commencement of opening statements and witness testimony, the parties agreed to exclude pages S-2 through S-5 from the Parents' exhibits. Of the School Department's exhibits, there were no objections to all of pages 1-61 and Appendix C (C1-C96) being admitted into the record. Appendices A and B were subject to being entered via witness testimony. During the proceeding, specifically during the testimony of the Parent, Appendix B documents

(B1-B36) were entered into the record in their entirety upon motion by the School Department and no objection by the Parent.

As determined at the prehearing conference, the hearing record remained open until June 18, 2015 for the parties to prepare post-hearing memoranda. Suggested limitation for the memoranda was 30 pages, not including attached cases cited in support of their respective arguments. The record closed upon receipt of these documents on June 18, 2015. The parties further agreed that the hearing officer's decision would be issued on June 26, 2015.

II. ISSUE

Was the Student subjected to a change in placement within the meaning of 34 C.F.R. 300.536 and in violation of 34 C.F.R. 300.530 and 300.531?

III. FINDINGS OF FACT

1. Student is x years old (d.o.b. xx/xx/xxxx), very slight in stature for his age, gets along best with adults and loves attention from adults, attends xx at Farwell Elementary School and likes school. [Testimony of Parent.]

2. Student was initially fostered by Parents off and on at an early age and was ultimately adopted by Parents at age xx. Student's biological parents have histories of drug abuse, bipolar disorder, schizophrenia, ADHD and anger management issues. Student reportedly suffered neglect while in the care of his biological mother. [Testimony of Parent; Rec. at 8.]

3. Student has demonstrated signs of aggression, hyperactivity and impulsivity since he was very young. He has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Obsessive Compulsive Disorder (OCD) and Oppositional Defiance Disorder. Student has been

on at least 15 to 20 medications in his young lifetime. Initiation of various medications and regulating dosages has frequently resulted in mood swings and unpredictable behavior, including behaviors of a destructive and violent nature. [Testimony of Parent.]

4. Parent has taken Student for treatment by psychiatrist, Jennifer Mogul, M.D. [Testimony of Parent; Rec. at 24, B1-B36.]

5. At an IEP meeting on August 17, 2012, Student was determined eligible for special education services through Child Development Services (CDS). Student's eligibility at that time was developmental delay. The recommended program was a special purpose preschool to address Student's high activity levels, impulsivity and aggressive behaviors which interfered with Student's ability "to interact with peers and participate in learning activities". Parent consented to the special education services scheduled to begin September 4, 2012. [Rec. at C13-C19].

6. At an IEP meeting held on February 10, 2014, Student's IEP Team at his CDS xx site determined that he was no longer eligible to receive special education services. The Written Notice states that unlike earlier in that school year, Student was no longer demonstrating the significant behavioral difficulties and that his IEP goals were met. [Rec. at C57-C60].

7. In the spring of 2014, a transition meeting was held between the CDS program and staff from Farwell Elementary School of the Lewiston School Department. Deanna Etienne, the Farwell xx teacher who would receive Student in her classroom the next fall, was present. Anne Sanders, Supervisor of Special Education/Case Manager/504 Coordinator for Farwell Elementary, was also at the transition meeting. [Testimony of Etienne, Sanders.] Etienne and Sanders were apprised of Student's history. They were likewise informed of Student's pattern of behavioral issues increasing as the school year wore on. [Testimony of Etienne.]

8. Student coped fairly well in Etienne's classroom but did exhibit inappropriate behaviors typical of his history and experienced "melt-downs" at the beginning of the school year. In these situations Etienne gave Student her personal attention to enable him to calm down and redirect himself to the school tasks at hand. Very often these efforts by Etienne involved her taking Student for walks in the school hallway to talk about what was happening. [Testimony of Etienne.]

9. On October 23, 2014 a 504 meeting was held attended by Parent, Etienne and Sanders. A 504 Plan was developed for Student. For the most part, the accommodations in the Plan affirmed/memorialized the strategies being used by Etienne. [Rec. at 1-3].

10. Student's physically aggressive/destructive behaviors and melt-downs became more frequent and more severe as the year progressed. Etienne was spending more and more time attending to Student's needs. Etienne did not file any disciplinary reports as a result of Student's behaviors. Her teaching philosophy is to deal with the situation at the moment and that learning socially acceptable behaviors is part of the xx learning experience. [Testimony of Etienne.]

11. Principal Walker also took Student under her wing when he needed to be removed from his class to regulate his mood and behavior. Walker frequently spent time with Student in her office allowing him to work beside her as he calmed down from a just-prior incident. [Testimony of Walker.]

12. Parent was experiencing more frequent and more severe behavioral incidents at home. [Testimony of Parent; Rec. at 8.]

13. Parent initiated a special education referral on March 24, 2015. [Testimony of Parent, Sanders; Rec. at 5-6.] At the initial referral meeting on March 24, 2015 Parent shared with staff

an incident that morning at home involving the children and animals kept in the home. Said incident resulted in harm to the animals. [Testimony of Parent, Sanders.] In what appeared to be a perfect storm of escalating aberrant behaviors, Sanders terminated the IEP meeting and very strongly suggested that Parent take Student to St. Mary's for crisis intervention. [Testimony of Parent, Sanders.]

14. Sanders stated that if Student were not taken for crisis intervention she would contact the Department of Health and Human Services. [Testimony of Parent, Sanders.] Sanders, as a mandatory reporter by law, believed the totality of the circumstances would trigger her obligation if Student did not receive emergency crisis intervention. [Testimony of Sanders.]

15. Parent took Student to St. Mary's on March 24, 2015. Etienne, Bigley and Sanders either met Parent and Student at St. Mary's or arrived a little later, staying with the family and Student as Student was processed for admission. [Testimony of Parent, Etienne, Bigley, Sanders.]

16. On March 27, 2015 Walker contacted Parent to explain and obtain consent for a Risk Assessment. Parent consented to the assessment. [Testimony of Parent, Walker; Rec. at 18-21.]

17. On March 27, 2015 Walker also issued a letter confirming her telephone conversation with Parent and instructed Parent that Student "will be suspended from school until a risk assessment is completed. [Testimony of Parent, Walker; Rec. at 22.]

18. Student remained at St. Mary's until his discharge on March 31, 2015. [Testimony of Parent.] The risk assessment was conducted with Student on April 1, 2015. [Testimony of Parent, Sanders; Rec. at 23-24.]

19. An IEP meeting was scheduled for April 2, 2015. [Rec. at 22.] At that meeting staff recommended that Student receive tutoring for 2 hours daily at Renaissance School, beginning on April 23, 2015, while special education evaluations were completed. [Testimony of Parent, Etienne, Sanders, Walker; Rec. at 28-30.] Parent expressed reservations and disagreement with the recommended placement. [Testimony of Parent; Testimony of Sanders, Walker as to Parent's reservations and unhappiness with the recommended placement.]

20. Parent informed the School Department of the family's planned vacation from April 9, 2015 through April 19, 2015. [Testimony of Parent.] The School Department was on Spring Break from Monday - Friday, April 20 - 24, 2015. [Testimony of Sanders; Rec. at S-24.]

21. Parent signed the consent for release of information of records from the School Department to Renaissance School at the urging of Sanders as a matter of convenience but Parent simultaneously reserved the right, verbally and in writing, to issue final consent pending her visit to Renaissance School. [Testimony of Parent, Sanders; Rec. at 22.]

22. Parent toured Renaissance School and asked questions of school staff on April 27, 2015. [Testimony of Parent.] Thereafter, Parent phoned Sanders and stated that she did not want Student to attend Renaissance School. Parent stated that under the circumstances she would prefer to tutor Student at home. [Testimony of Parent, Sanders.] The School provided daily work for Parent to pick up for at-home tutoring. [Testimony of Parent, Etienne, Sanders.]

23. Neither party requested another IEP meeting as a result of Parent's denial of consent for placement at Renaissance School or Parent's decision to tutor Student at home. [Testimony of Parent, Sanders.]

24. On May 14, 2015 Parent filed this expedited due process request.

25. Student has not returned to his xx classroom as of the dates of this hearing. [Testimony of Parent, Etienne, Sanders, Walker.]

IV. SUMMARY OF THE PARTIES' ARGUMENTS

A. Brief summary of the Parents' position:

Parents assert that the School Department removed Student from his regular XX grade classroom as a matter of discipline for behavioral incidents in violation of the school's Code of Student Conduct. Parents assert the removal constituted a change of placement in violation of the procedural protections of the IDEA, specifically 34 C.F.R. 300.350, 300.351 and 300.356. Moreover, Parents contend that said placement was not an IEP decision and no parental consent was given for the change in placement.

B. Brief summary of the School Department's position:

The School Department asserts that Student's removal from his xx classroom was not a disciplinary measure in response to his behaviors. The School Department contends that removal to an alternative placement was in the best interests of Student while special assessments, for both a threat of risk and special education services, were completed. The School Department maintains that Student's removal did not exceed 10 school days.

V. LEGAL STANDARD AND ANALYSIS

A. Burden of proof

Although the Individuals with Disabilities Education Act (IDEA) is silent on the allocation of the burden of proof, the Supreme Court has held that in an administrative hearing challenging an IEP, the burden of persuasion, determining which party loses "if the evidence is

closely balanced," lies with the party seeking relief. *Schaffer v. Weast*, 126 S.Ct. 528, 537 (2005). In the instant case there is no IEP in place. Rather, a 504 plan was established at a meeting on October 23, 2014 which lists accommodations and related aids/services to address Student's Attention Deficit Hyperactivity Disorder (ADHD), Obsessive Compulsive Disorder (OCD) and Mood Dysregulation Disorder. [Rec. at 1-3]. For the record, Student has a history of special education services through Child Development Services (CDS). [Rec. at C48-56; Testimony of Parent, Etienne, Sanders].

Additionally, 34 C.F.R. 300.536 incorporates the provisions of §§300.530 – 300.535 as having potential applicability to changes of placement because of disciplinary referrals. [See quote of 34 C.F.R. 300.356 *infra*.] Under §300.356's umbrella reference, 34 C.F.R. 300.534 states in pertinent part:

> (a) *General*. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
>
> (b) *Basis of knowledge*. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action concerned –
> (2) The parent of the child requested an evaluation of the child pursuant to §§300.300 through 300.311; or
> (3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

34 C.F.R. 300.354.

Parents initiated a special education referral on March 24, 2015 [Rec. at 5-6] prior to Student's removal from his XX grade classroom on March 27, 2015. [Rec. at 22]. Thus, Student

is entitled to the protections under §300.354. The parties also stipulated to Student being known to the School Department as a child with a disability pursuant to C.F.R. 300.534(b). [*Joint Statement and Stipulation Following the Prehearing Conference*, 2]. Therefore, the burden of proof shall comport with the holding in *Schaffer v. Weast, supra*. As such, Parents bear the burden of proof.

B. Analysis

The threshold question to be answered in this analysis is whether Student's removal from school constituted a change in placement within the meaning of 34 C.F.R. 300.536. Section 300.356 states in pertinent part:

> §300.356 Change of placement because of *disciplinary* removals.
>
> (a) For purposes of removals of a child with a disability from the child's current educational placement under §§300.530 through 300.535, a change of placement occurs if-
> (1) The removal is for more than 10 consecutive school days;

34 C.F.R. 300.356(a)(1). *(Emphasis added.)*

There was much testimony regarding whether or not Student was removed for disciplinary reasons. Parents' post-hearing memoranda argues that Student was suspended on March 27, 2015 and could not return to his classroom until a Risk Assessment was completed. [Rec. at 20, 22.] Furthermore, Student has not returned to his school xx class since that date through the dates of this hearing. [Testimony of Parent, Etienne, Sanders, Walker.] Granted, in a school setting, suspension is regarded as a term of discipline. The School Department responded that the letter used to inform Parents of Student's removal from school was merely a form letter used throughout the School Department in conformity with its policy. [Testimony of Sanders,

Walker.] Clearly the School Department's stock form letter was poorly worded. Given the testimony of Anne Sanders and Althea Walker (Farwell Elementary School's Special Education Supervisor and Principal, respectively) that their actions were sensitive to the best interests of Student, said letter could have been easily modified in order to demonstrate sensitivity to *any* parents whose special needs children are subject to removal from school for non-disciplinary reasons.

Parents argue that Student was removed from his classroom for behaviors that violated the school's Student Code of Conduct. Parent elicited testimony from school personnel that Student demonstrated conduct that was inappropriate and jeopardized a safe classroom environment, *e.g.*, pouring milk over another student, throwing scissors, punching a student, engaging in disruptive outbursts, having severe "melt-downs". [Testimony of Etienne, Walker.] The School Department rebutted this argument with testimony that no disciplinary anecdotals or reports were written on Student as a result of his conduct in school even though significant incidents of his dysregulated behaviors (typically considered in violation of the Code of Student Conduct) had occurred over an extended period of time. [Testimony of Etienne, Walker.] Conversely, the School Department offered testimony that instead of treating Student's behaviors as disciplinary infractions, Student was offered individual attention pursuant to his 504 plan to assist him with regulating his behavior. [Testimony of Etienne, Walker.] As Student's behaviors escalated in frequency and intensity during February and March, 2015, Anne Sanders testified she believed Student was in crisis.

In summary to this point, Parents argued that Student's removal was for disciplinary reasons. Although the School Department disagreed that discipline motivated Student's removal, the fact remains that behaviors and conduct demonstrated by Student triggered an entire

chain of events, including but not limited to, a special education referral by Parents, admission to St. Mary's Regional Medical Center, a Threat Assessment Referral and subsequent Risk Assessment Evaluation, and a recommended alternative placement at Renaissance School. Therefore, I find that §300.536 applies to this case no matter which side of the disciplinary coin a party positions itself. Thus, the fact that the word "disciplinary" appears in the heading of §300.356 shall not disqualify the section from applicability to this case.

The next point for analysis is the requirement in §300.356(a)(1) that a change of placement occurs only if it is for more than 10 consecutive school days. See citation *supra*. Parent maintains that Student's removal from school commenced on Friday, March 27, 2015 pursuant to Principal Walker's referral for a Threat Assessment on that day and Parent's consent for said assessment on that day. [Rec. at 17-21.] Parent likewise received a letter from Principal Walker dated March 27, 2015 stating that Student "…will be suspended from school until the risk assessment is completed". [Rec. at 22; Testimony of Parent, Walker.] Principal Walker's letter also stated that an IEP meeting would be held the morning of April 2, 2015. [Rec. at 22.] The Risk Assessment was conducted on April 1, 2015 at the Lewiston School Department's Dingley (Administration) Building. [Testimony of Parent, Sanders]. The April 2, 2015 IEP meeting commenced as scheduled. At that meeting the School Department recommended that, as a result of the Risk Assessment, Student be placed at Renaissance School where he would receive tutoring for 2 hours daily in a more therapeutic environment able to address his behavioral needs while the IEP team conducted its special education evaluations in response to Parents' existing referral for special education on March 24, 2015. [Rec. at 29-30; Testimony of Parent as to placement; Testimony of Sanders as to placement and reason.]

There was differing testimony at hearing regarding what placement options were

discussed at that meeting. However, the question at issue is whether the child was removed from school for a period greater than 10 consecutive school days. Testimony pertinent to the 10 day timeline continues as follows. Parent was dissatisfied with, and did not consent to, the Renaissance School recommendation. [Testimony of Parent. Testimony of Sanders as to Parent being unhappy with the recommendation.] Parent testified that she felt overwhelmed at the meeting and stated, "Things are moving too fast." Although Parent signed the consent for release of information by the School Department to Renaissance School (purportedly for her convenience so as not to have to return to school to ultimately do so), Parent verbally and in writing withheld that consent from being implemented until she had an opportunity to visit Renaissance School and follow up with her final assent. [Rec. at 28-30, S-12; Testimony of Parent, Etienne, Sanders.] The Written Notice of the April 2, 2015 IEP meeting also states that services at Renaissance would commence on April 23, 2015. [Rec. at 30]. The record reflects that Parents and Student would be on a family vacation from Thursday, April 9, 2015, through Sunday, April 19, 2015. [Testimony of Parent, Sanders.] The School Department's Spring Break was scheduled for Monday, April 20, 2015, through Friday, April 24, 2015. [Testimony of Sanders; Rec. at S-24.]

Parent cancelled and rescheduled appointments to visit Renaissance School but did tour the facility and speak with staff on April 27, 2015. [Testimony of Parent.] Parent testified that following her visit to Renaissance School, she phoned Anne Sanders and informed her that Renaissance School was too restrictive. If Student was only going to receive 2 hours of tutoring in an isolated room with no student interaction, Parent informed Sanders that she would rather home school (tutor) Student until the special education evaluations were completed. [Testimony of Parent, Sanders.] Thereafter, daily assignments were provided for Parent to pick up at school

to use for at-home tutoring. [Testimony of Parent, Etienne, Sanders, Walker.] To dates of this hearing, Student has not returned to his xx classroom. [Testimony of Parent, Etienne, Sanders, Walker.]

The School Department argues that it cannot be responsible for the ticking away of days school was in session but Parents and Student were on vacation. [Lewiston School Department's Post-Hearing Memorandum, 20.] I agree. For good or for naught, Student did not access educational services because of the family's planned vacation, not because of the School Department's recommended placement at Renaissance School. Therefore, April 9, 10, 13, 14 15 16 and 17, 2015 do not count toward the 10 day removal period required to trigger a change of placement pursuant to 34 C.F.R. 300.356(a)(1). Further, the five days from Monday through Friday, April 20 – 24, 2015, are not school days on the school calendar. [Rec. at S-24]. Likewise, those five days do not contribute to an accumulation of 10 consecutive school days.

I find that Student was removed from his current educational placement, *i.e.*, his xx classroom, for 9 consecutive school days from March 27, 2015 through April 8, 2015, seeing as the School Department had arranged at the April 2, 2015 meeting for tutoring services at Renaissance to begin on April 23, 2015, accommodating Parents' planned vacation and pending Parent's visit and final consent. I find that Student was not removed from his current educational placement for more than 10 consecutive school days and hence, a change in placement under §300.356 did not occur.

It should also be noted that Renaissance services were further delayed by the fact that Parent did not visit Renaissance School until Monday, April 27, 2015. [Testimony of Parent.] Thereafter, Parents changed Student's placement to tutoring at home while the special education evaluations were conducted. [Testimony of Parent, Sanders.] Although it is understandable and

easy to empathize with Parent's feelings of defeat in advocating some other placement for Student during the April 2, 2015 IEP conference [Testimony of Parent], the School Department did inform Parent that another IEP meeting could be convened if she did not want Student to receive tutoring at Renaissance School after visiting the facility. [Rec. at 30; Testimony of Sanders.] Similarly, having received a personal communication from Parent on April 5, 2015 following the April 2, 2015 IEP meeting, Cathryn Bigley (Guidance Counselor) responded to Parent via e-mail indicating that if Parent had any questions or thoughts regarding the April 2 meeting, she should "…contact Anne (Sanders) and she can set something up." [Rec. at 33; Testimony of Bigley.] Bigley's message also contained the supportive words, "…I am certain the team would be open to listening." *Id*. Thus, Parent was given the opportunity to revisit the recommended alternate placement by calling another IEP meeting to discuss her findings and concerns regarding the Renaissance tutoring program rather than unilaterally choosing an at-home tutoring placement for Student.

Because Student was **not** removed from his current educational placement for greater than 10 consecutive school days under 34 C.F.R. 300.536, analysis of §300.350 and §300.351 is, for all practical purposes, moot. To clarify, 34 C.F.R. 300.530(b) states as follows:

> (b) *General*. (1) School personnel under this section may remove a child with a disability who violates a code of student conduct from his or her current placement to an appropriate alternative educational setting, another setting, or suspension, for not more than 10 consecutive school days…

34 C.F.R. 300.350(b)

As discussed *supra*, Parents argued that Student was suspended for violations of the School Department's Code of Student Conduct. The School Department disagreed with the interpretation that its action removing Student from his XX grade class was disciplinary. Notwithstanding, because I find that the School Department did not remove Student from his

current placement for greater than 10 consecutive school days, §300.530(b) does not apply and does not advance Parents' case.

Similarly, Parents argued that no manifestation determination was conducted for Student. [Testimony of Parent, Sanders; Parents' Post-Hearing Memorandum, 7.] A manifestation determination is only required pursuant to 34 C.F.R. 350(e) in the following situation:

> (e) *Manifestation determination*. (1) Within 10 school days of any decision *to change the placement of a child* with a disability because of a violation of a code of student conduct, the LEA, the parent, and relevant members of the child's IEP Team (as determined by the Parent and the LEA) must review all relevant information in the student's file…

34 C.F.R. 300.350(e). *(Emphasis added.)*

In the instant case, there was no change of placement from Student's current educational placement lasting greater than 10 school days as defined by 34 C.F.R. 300.356. The School Department was not obligated to conduct a manifestation determination at the point of the April 2, 2015 conference. Thus, Parent's argument regarding no manifestation determination having been conducted is premature and inapplicable.

Parents also argued that no functional behavioral analysis was conducted. Here again, the argument is premature and inapplicable. A functional behavioral analysis is required under 34 C.F.R. 300.350(f) once a manifestation determination has been accomplished:

> (f) *Determination that behavior was a manifestation*. If the LEA, the parent, and relevant members of the IEP Team make the determination that the conduct was a manifestation of the child's disability, the IEP Team must-
>
> (1) Either-
>
> (i) Conduct a functional behavioral assessment,…

34 C.F.R. 300.350(f).

The analysis need go no further because the School Department was not required to conduct a manifestation determination; the School Department was in compliance with 34 C.F.R. 300.530(e). Because there was no requirement for a manifestation determination to be conducted, there was no subsequent requirement for the School Department to conduct a functional behavioral analysis. The School Department did not violate 34 C.F.R. 300.350(f). No other paragraphs contained in 34 C.F.R. 300.530 are relevant to the issue in this case and therefore need no description or mention.

Finally, the issue raised by the parties questions whether Student was subjected to a change in placement in violation of 34 C.F.R. 300.531 which states:

> §300.531. Determination of setting.
>
> The child's IEP Team determines the interim alternative educational setting for services under §300.530(c), (d)(5), and (g).

34 C.F.R. 300.531.

Section 300.530(c) addresses disciplinary changes in placement greater than 10 consecutive school days. That section is not applicable to this case in light of my finding that there was no change in placement greater than 10 consecutive school days. Section 300.530(d)(5) addresses removals as a change of placement under §300.536. This section is not applicable in light of my finding that Student was not subject to a change in placement under 34 C.F.R. 300.356. Section 300.530(g) addresses special circumstances involving weapons, illegal drugs and infliction of serious bodily injury upon another while at school. These special circumstances are not at issue in the instant case; therefore, this section is likewise inapplicable. Because 34 C.F.R. 300.531 is found inapplicable to the instant case, no violations can be found.

VI. ORDER

After consideration of the evidence presented during this due process hearing, **it is hereby ordered** that Student was not subjected to a change in placement within the meaning of 34 C.F.R. 300.536 nor in violation of 34 C.F.R. 300.530 or 300.351.

Dated: June 29, 2016

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Melanie Frazek, Esq.
Hearing Officer