This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.

Pennsylvania

Special Education Hearing Officer

EXPEDITED DECISION

Child's Name: G.R.

Date of Birth: [redacted]

Date of Hearing: 05/12/2017

ODR File No. 19036-1617AS

CLOSED HEARING

Parties to the Hearing:	Representative:
Parents Parent[s]	Student Attorney Michael D. Raffaele, Esq. Frankel & Kershenbaum, LLC 1230 County Line Road Bryn Mawr, PA 19012
Local Education Agency Colonial School District 230 Flourtown Road Plymouth Meeting, PA 19462	LEA Attorney Karl A. Romberger, Jr., Esq. Sweet, Stevens, Katz & Williams, LLP 331 E. Butler Ave. New Britain, PA 18601
Date of Decision:	05/26/2017
Hearing Officer:	Brian Jason Ford, JD, CHO

Introduction and Procedural History

This special education due process hearing was requested by the Parents, on behalf of their child (the Student) against the School District (District).[1] This matter arises under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400 *et seq*. The Parents appeal the District's imposition of discipline, following an incident in which the Student brought a [weapon] to school. The Parents claim that the Student was "thought-to-be eligible" — an IDEA term of art discussed below — at the time of the incident.

This is an appeal of a disciplinary action pursuant to 20 U.S.C. § 1415(k). Consequently, it is expedited. The Complaint was filed on April 10, 2017, and was originally scheduled for April 18, 2017. The matter was then continued upon the parties' motions until May 12, 2017. The hearing then convened as scheduled during a single hearing session.

Between the filing and the hearing, the District moved to limit the scope of the hearing. H-1. The Parents responded. H-2. On May 3, 2017, I issued a Pre-Hearing Order. H-3. In the Pre-Hearing Order, I struck a demand for a determination that the Student's actions were a manifestation of the Student's disability. The Pre-Hearing Order speaks for itself. For context, however, that particular demand was premature. All other demands remained in place.

Issues

1. Was the Student "thought-to-be eligible" at the time of the disciplinary incident?

2. Must the District fund an independent educational evaluation (IEE) of the Student?

3. Is the District required to maintain the Student's pre-incident placement?

Stipulations

Just prior to the hearing, the Parties submitted 34 joint factual stipulations. H-4. I accepted those stipulations during the hearing session, and now adopt them as if they were my own findings. What follows is an edited version of those stipulations, changed only to omit identifying information. I have also removed citation to the pleadings.

1. [Student] is a resident within the [District].

2. [Student] is currently an 11th Grade student at [the District's high school].

3. [Student] also attends [a regional vocational-technical school (the Vo-Tech)] focusing on [a trade].

4. [The Vo-Tech] is formed under the Pennsylvania School Code as a joint operating board with the [District] as a member and is a constituent part.

5. [The Student] has no significant disciplinary history.

[1] Except for the cover page, identifying information is omitted to the extent practicable.

6. [The Student] has a great passion for [redacted] and wants to be [redacted] upon graduation.

7. About September 2013, [the Student's] mother stated that [the Student] was a "slacker" and that they would need "to stay on top of [the Student]."

8. [The Student's] teachers in [the high school] have allowed Student to hand in work late, complete homework in class, and leave tests incomplete (while permitting Student to complete those tests at a later time), all with no penalty to [the Student's] ultimate grade in Student's classes.

9. [The Student] suffered a concussion playing [a sport] in or about April 2014, during [the] 8th Grade year.

10. [A medical doctor] … treated [the Student] for the concussion and reported via letter dated May 9, 2014 that [the Student's] "memory is still very poor and mental processing speed is slow – Impact scores are very low." [The Student's] concussion symptoms resolved in or about June 2014; the inattention, distractibility, and persistent failures to complete assignments that [the Student] had exhibited prior to Student's concussion did not resolve.

11. Prior to [the Student's] concussion, [the Student's] mother requested a parent-teacher conference with [the] entire eighth grade teaching team. The team leader, [Teacher 1], requested the attendance of [the middle school Guidance Counselor].

12. At that time, in March 2014, [the middle school Guidance Counselor] was a member of the [middle school] Child Study Team.

13. One of [the Student's] teachers, [Teacher 2], believes [the Student] was capable of much more than [the Student] delivered, lacked a strong work ethic, and would leave work behind and forget to hand it in. [Teacher 2] has also opined that [the Student's] forgetfulness was, in her estimation, typical of [redacted].

14. Following the parent-teacher conference in March 2014, [Teacher 2] compiled weekly reports from all of [the Student's] teachers regarding … grades, as well as … failures to complete work on time, hand in assignments, and complete tests and quizzes on time. [Teacher 2] sent these weekly reports to [the Student's] mother, all of the teachers on [the Student's] teaching team, [the middle school Guidance Counselor], [Assistant Principal 1], and [Assistant Principal 2].

15. During the 2013-2014 school year, [Assistant Principal 2] was, like [the middle school Guidance Counselor], a member of the [middle school] Child Study Team.

16. All of [the Student's] PSSA results throughout [the Student's] time in the [the District] have been Advanced or Proficient, except for Basic on 5th Grade Writing and 4th Grade Reading.

17. [The Student] has achieved Proficient on the 10th Grade Literature and Advanced on the 10th Grade Biology Keystone Exams and Advanced on the 11th Grade Algebra 1 Keystone Exam.

18. On the night of March 22, 2017, [the Student] left a [weapon] in Student's back pocket after work.

19. This brand and style of [weapon] is commonly used by [trade persons].

20. The next morning, on March 23, 2017, [the Student] put on the same outfit with the [weapon] still in the back pocket.

21. On the morning of March 23, 2017, [the Student] drove to [the District's high school] with the [weapon] still in the back pocket.

22. [The Student] is accused of violating the District's weapons policy by bringing the [weapon] to [the high school].

23. [The District] scheduled an expulsion hearing for April 19, 2017, which was rescheduled to April 24, 2017 after parents requested a continuance.

24. [The Student] is permitted back in, and has returned to, [to the high school] and to [the Vo-Tech] subject to re-entry conditions pending the result of expulsion proceedings.

25. Since returning to [the High School], [the Student] has had no disciplinary infractions.

26. [The District] has also offered Parents expulsion waiver agreement and placement at [two possible alternative schools]. Neither placement would permit [the Student] to continue in [the] vo-tech program during the year of expulsion. [The District] would not offer Parents a placement that permitted [the Student] to continue in the vo-tech program during the year of expulsion.

27. [The District] did not conduct a manifestation determination regarding [the Student's] possession of the [weapon] on March 23, 2017.

28. [The District] has never evaluated [the Student] to determine disability/handicap and need for accommodations and/or special education and related services.

29. On April 6, 2017 Parents requested, in writing, an evaluation.

30. On April 7, 2017, [the District's Director of Pupil Services], spoke to [the Student's] mother by phone.

31. On April 10, 2017 [the District] issued Prior Written Notice for Initial Evaluation and Request for Consent Form to Parents, together with the procedural safeguards notice and parental rating scales.

32. Parents timely consented to the evaluation.

33. Prior to the March 23, 2017, incident, beginning in 2008, parents have requested evaluations and reevaluations for [the Student's] younger siblings, and have received notice of their Procedural Safeguards.

34. Following the filing of the Complaint and litigation of the expulsion hearing in this matter, the District proposed exiting [the Student's] younger sibling … from special education entirely.

In addition to those 34 factual stipulations, at my prompting, the parties entered an additional stipulation regarding the nature of expulsion waivers to provide additional context. H-5. That stipulation is:

> A waiver agreement is an agreement between the parties to waive expulsion proceedings and place student in an alternative educational program for an agreed time and agreed terms, during which time a student would be barred from District properties, programs, and activities, and after which a student would have no expulsion on his or her educational record.

I genuinely appreciate the parties' efforts to draft stipulations in advance of the hearing. In all cases, but especially in expedited cases, there is no need to spend time in a hearing establishing facts that are not in dispute.

Findings of Fact

All evidence was carefully considered, but I make findings only as necessary to resolve the issues presented. A portion of the evidence (both testimony and documents) substantiated and contextualized the foregoing stipulations. I decline to catalogue that evidence in detail here, as the stipulations are sufficient. Rather, in addition to the stipulations, I make the following findings of fact.

1. For reference (see also NT at 101):
    a. 2013-14 School Year - 8th Grade - Middle School
    b. 2014-15 School Year - 9th Grade - High School
    c. 2015-16 School Year - 10th Grade - High School
    d. 2016-17 School Year - 11th Grade - High School
2. Between 2015 and 2017, the Parents and the District communicated by email regarding the Student's school performance. Those emails were predominantly for the purpose of coordinating between home and school, keeping the Parents informed about the Student's academic assignments, and occasionally about the Student's study habits and work completion. S-I.
3. The Student's grades show that the Student struggled academically in 9th grade, but improved in 10th grade. The Student did well in the Vo-Tech program. *See, e.g.* P-C.
4. The Student has an affinity for [a trade] specifically, and for the Vo-Tech program in general. Participation in the Vo-Tech program is the Student's primary academic motivator — that is, going to the Vo-Tech program keeps the Student in school. *Passim.*
5. IST is a regular education intervention in which students receive additional supports from a team of teachers. NT *passim;* P-G.
6. The record does not reveal exactly when the Parents provided consent for the District to evaluate the Student. *See, e.g.* NT at 60. Regardless, I find that the Parents provided consent on or about April 10, 2017.
7. The District has provided no assurances as to when the evaluation will be complete, but the District believes that it will be finished "hopefully before the end of the school year." NT 61.

8. I take judicial notice that the last day of the 2016-17 school year in the District is June 15, 2017.[2]

Legal Principles

The Burden of Proof

The burden of proof, generally, consists of two elements: the burden of production and the burden of persuasion. In special education due process hearings, the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). The party seeking relief must prove entitlement to their demand by preponderant evidence and cannot prevail if the evidence rests in equipoise. *See N.M., ex rel. M.M. v. The School Dist. of Philadelphia*, 394 Fed.Appx. 920, 922 (3rd Cir. 2010), citing S*hore Reg'l High Sch. Bd. of Educ. v. P.S.*, 381 F.3d 194, 199 (3d Cir. 2004). In this particular case, the Parent is the party seeking relief and must bear the burden of persuasion.

Student Discipline Under the IDEA
Thought-to-Be Eligible Students

The IDEA includes disciplinary protections for students with disabilities. 20 U.S.C. § 1415(k). The IDEA's federal implementing regulations extend those protections to "thought-to-be eligible" children. More specifically, in certain circumstances, the IDEA protects children who have "not been determined to be eligible for special education and related services" in school discipline matters. 20 U.S.C. § 1415(k)(5), 34 C.F.R. § 300.534.[3] Those protections are triggered when the local educational agency (LEA) — the District in this case — had knowledge "that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred." 34 C.F.R. § 300.534(a). If the LEA had no basis of knowledge, it can impose the same discipline that it would on any other student.

The regulations explain when LEAs "must be deemed to have knowledge that a child is a child with a disability…" 34 C.F.R. § 300.534(b). If any of three conditions occur before "the behavior that precipitated the disciplinary action," the LEA had knowledge. *Id.* Those conditions are:

(1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;

(2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

[2] Exhibit S-53 was labeled "School Calendars." These were actually photo copies of informational pages of the calendars, explaining various services that the District offers. No calendars were entered into evidence. However, the District publicly publishes its calendar online at https://www.colonialsd.org/calendar?cal_date=2017-06-01 (last visited May 26, 2017).
[3] The statute and the regulations are substantively identical. I cite to the regulations for convenience.

(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. § 300.534(b).

The regulations also provide two exceptions which, if applicable, result in a determination that the LEA did not have knowledge. *See* 34 C.F.R. § 300.534(c). Neither are applicable in this case.[4] However, even if the LEA had no basis of knowledge, there are additional rules that apply when a request for a special education evaluation is made while a child is subject to discipline. In such cases, the LEA must expedite the evaluation and, if the evaluation concludes the student is eligible, the LEA must provide special education. *See* 34 C.F.R. § 300.534(d). However, "until the evaluation is completed, the child must remain in the educational placement determined by school authorities, which can include suspension or expulsion without educational services." *Id*.

Student Discipline Under the IDEA
General Provisions

Regarding the IDEA's general disciplinary provisions, LEAs must continue to provide appropriate special education to IDEA-eligible children during disciplinary placements. *See* 20 U.S.C. § 1415(k)(1)(D). Further, if a disciplinary action constitutes a change in placement, the child's IEP Team must conduct a manifestation determination. The function of a manifestation determination is to determine "if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or … if the conduct in question was the direct result of the local educational agency's failure to implement the IEP." 20 U.S.C. § 1415(k)(1)(E)(i)(I),(II). If the behavior was a manifestation, the LEA must conduct a functional behavioral assessment or revise the child's behavior intervention plan. Moreover, if the behavior was a manifestation, the LEA must "return the child to the placement from which the child was removed, unless the parent and the local educational agency agree to a change of placement as part of the modification of the behavioral intervention plan." 20 U.S.C. § 1415(k)(1)(F).

Special circumstances provide exceptions to these general provisions. If those special circumstance apply, LEAs may place a child into alternative educational settings for a maximum of 45 school days even if the child's the behavior is a manifestation of his or her disability. 20 U.S.C. § 1415(k)(1)(G). One of those exceptions is for cases where a child "carries or possesses a weapon to or at school" 20 U.S.C. § 1415(k)(1)(G)(i). "The term "weapon" has the meaning given the term "dangerous weapon" under section 930(g)(2) of title 18." 20 U.S.C. § 1415(k)(7)(C).

In turn, under 18 U.S.C. § 930(g)(2), the "term "dangerous weapon" means a weapon, device, instrument, material, or substance, animate or inanimate, that is used for, or is readily capable of, causing death or serious bodily injury, except that such term does not include a pocket knife with a blade of less than 2½ inches in length." *Id*.

[4] The exceptions concern parental refusals of evaluations or services, and prior evaluations concluding that the Student does not have a disability.

Discussion

Basis of Knowledge

If the District had a basis of knowledge that the Student had a disability prior to March 23, 2017, the Student is protected. If the Student is protected, the District cannot expel the Student unless the District concludes that the Student's behaviors were not a manifestation of the Student's disability.[5] Such a conclusion can only happen via a manifestation determination. As indicated in my Pre-Hearing Order, the District cannot make that determination before the Student is evaluated.

If the District had no basis of knowledge, the Student is not protected and the District may impose discipline. However, the Parents requested an evaluation during the disciplinary process. The District, therefore, must expedite the Student's evaluation and, if the Student is found eligible, must provide appropriate special education. However, the District may impose discipline until the evaluation is complete.

The Parents look to various events during the 2013-14 school year (8th grade) as evidence of the District's basis of knowledge. It is possible in theory that the events in 8th grade should have triggered Child Find.[6] However, theoretical Child Find violations, occurring more than three years ago, are beyond the scope of this hearing. Elements that can form the basis of the District's knowledge are similar to elements that substantiate Child Find claims, but they are not the same and should not be conflated. Child Find is triggered by signals, so called "red flags" that a child may have a disability. The basis of a school district's knowledge in a disciplinary appeal is limited to three, relatively precise circumstances.

The first circumstance is triggered if the Parents "expressed concern in writing" that the Student "is in need of special education and related services" before the discipline-triggering incident. 34 C.F.R. § 300.534(b)(1). Unlike a Child Find claim, the question is not whether the Parents were saying things that caused the District to suspect a disability. The basis of knowledge test is more precise. In this case, the Parents did not express concerns in writing that the Student was in need of special education prior to March 23, 2017. In making this determination, it is not my intention to place form over function, or punish the family for failing to use "magic words." Rather, I hold only that the applicable regulation requires more than a generalized statement of educational concerns. The applicable regulation (again, not Child Find) requires some statement indicating a belief on the Parents' part that special education is necessary. No such statement was made in this case.

The second circumstance is triggered if the Parents requested a special education evaluation prior to the March 23, 2017 incident. 34 C.F.R. § 300.534(b)(2). Both parties agree that no such request was made.

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[5] The Parents would then have a right to appeal such a determination.

[6] "Child Find" is a term of art describing a school's obligations under 34 U.S.C. § 300.111 and 22 Pa. Code § 14.121. Those regulations require LEAs to have in place procedures for locating all children with disabilities, including those suspected of having a disability and needing special education services although they may be "advancing from grade to grade." 34 U.S.C. §300.111(c)(1). The Child Find regulations require LEAs to evaluate children suspected of having a disability. *See* 34 C.F.R. § 300.111(a)(1)(i).

The third circumstance is triggered if school personnel "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. § 300.534(b)(3). Again, the Parents point back to 8th grade in an effort to establish that school personnel were discussing the Student's pattern of behavior. At that time, District personnel were discussing the Student's patterns, but it is not clear that the patterns were behavioral. Although this is a very close call, I find that the Parents did not satisfy their burden to establish that District personnel were discussing a *behavioral* pattern. Difficulties with work completion (both in school and at home) can be symptoms of behavioral problems. Such difficulties can also be symptoms of purely academic problems, executive functioning problems, or problems unrelated to a disability. Given the Parents' burden in this case, the precision of the "basis of knowledge" standard, and the evidence presented, I cannot conclude that District personnel were discussing a behavioral pattern during the 2013-14 school year.

Despite the foregoing, I acknowledge that work completion difficulties are often viewed as behavioral problems. To be clear, I find that the Parents did not satisfy their burden in regard to the "specific concerns about a pattern of behavior" in 8th grade. I am compelled to note, however, that this finding is responsive to the Parents' argument, but is not outcome-determinative. Assuming, for the sake of argument, that teachers "expressed specific concerns about a pattern of behavior" during 8th grade, such a finding would not protect the Student in 11th grade. Neither the statute nor the regulations explicitly specify how much time there can be between the "concerns about a pattern of behavior" and the disciplinary incident. The structure of the regulations, however, illustrates that there must be some temporal connection between the two. Otherwise, most discussions amongst school personnel about a child's behavior, and certainly most referral to IST, would make the child thought-to-be eligible in perpetuity. I decline to create a bright-line rule about the timing between the "specific concerns" and the behavioral incident. Rather, I find that they must be connected in some way to each other, and I find no such connection in this case.

The majority of evidence, both of parental concerns and of teacher concerns, relates to 8th grade. Some similar evidence relates to 9th, 10th, and 11th grades. That evidence does not satisfy the Parent's burden for the same reasons that the 8th grade evidence did not satisfy the Parent's burden.

For all of the above reasons, I find that the District had no basis of knowledge for the Student to have been thought-to-be eligible at the time of the March 23, 2017 incident. Consequently, I find that the Student was not entitled to a manifestation determination before the District imposed discipline, and I will not require the District to conduct a manifestation determination now.

For the same reasons, the IDEA does not require the District to maintain the Student's pre-incident placement while the Student's evaluation is pending.[7] *See* 34 C.F.R. § 300.534(d).

[7] Nothing in the IDEA *prevents* the District from maintaining the Student's pre-incident placement either.

Independent Educational Evaluation (IEE)

There is no doubt that the District is obligated to conduct an expedited educational evaluation of the Student. On April 7, 2017, during the disciplinary process, the Parents requested an evaluation. The District must expedite the evaluation because the request was made during the disciplinary process. 34 C.F.R. § 300.534(d).

The District is correct that neither the IDEA nor its regulations specify a timeline for an expedited evaluation. The same is true in Pennsylvania's regulations. *See* 22 Pa. Code § 14. It is clear, however, that an expedited evaluation must be faster than the regular evaluation timeline. Under the regular evaluation timeline, "initial evaluation shall be completed and a copy of the evaluation report presented to the parents no later than 60-calendar days after the agency receives written parental consent for evaluation, except that the calendar days from the day after the last day of the spring school term up to and including the day before the first day of the subsequent fall school term will not be counted." 22 Pa. Code § 14.123(b).

Since the Parents provided consent on or about April 10, 2017, under the regular IDEA timeline, the evaluation would be due on or about June 9, 2017 — before the end of the 2016-17 school year. Consequently, the District's hopefulness that the evaluation would be completed before the end of the 2016-17 school year is actually an expression of the possibility that the District will go past the regular evaluation deadline.

It is particularly telling that by May 12, 2017 (the date of the hearing), the evaluation was already underway. *See* NT at 61. Despite the fact that the evaluation had already started, the District still could not provide assurances that the evaluation would be finished before the end of the school year, let alone before June 9, 2017. All of this compels me to conclude that the District has not agreed to provide an expedited evaluation.

In sum, the Student's evaluation must be expedited. The Student's right to an expedited evaluation is in no way contingent upon the Student's thought-to-be eligible status. The IDEA does not specify a timeline for expedited evaluations but, in this case, an expedited evaluation must be completed sometime before June 9, 2017. Despite this, the District has provided no assurance that the evaluation will be expedited and, through testimony, concedes that it may not comply with the regular (non-expedited) timeline.

The Parents argue that they are entitled to an IEE because the District has not expedited the evaluation.[8] In IDEA school discipline appeals, Hearing Officers have awarded IEEs under extraordinary circumstances. An example cited by the Parents, and addressed in the Pre-Hearing Order, is *L.C. v. Chichester School District*, ODR No. 14856-1314KE. In that case, the District's three top administrators staunchly believed that IDEA evaluations were only necessary when children have academic problems. That belief filtered down through the school district, and resulted in the school district's failure to evaluate a child despite an unambiguous need for

[8] The Parents also argue that they are entitled to an IEE because the District retaliated against the family by attempting to exit one of the Student's siblings from special education after this hearing was requested. The Student's other sibling also has an IEP, and the District has not proposed exiting the other sibling. NT at 56. Moreover, appropriateness of the District's proposal regarding the Student's sibling is beyond the scope of this case.

an evaluation. Hearing Officer Valentini did "not believe the District is able, at least for this child, to conduct an appropriate multidisciplinary evaluation to determine eligibility for special education." *Id* at 16. Hearing Officer Valentini ordered an IEE for that reason.

Although the District has not agreed to an expedited evaluation, nothing in the record suggests that the District is not able to conduct an appropriate multidisciplinary evaluation of the Student. The only criticism of the evaluation that the District is currently conducting concerns its speed.[9] Consequently, I will not order the District to fund an IEE. This does not preclude the Parents from requesting an IEE at the District's expense if they disagree with the District's evaluation once it is complete.

Conclusions

I am deeply concerned about what will happen to the Student going forward. Testimony in this case reveals that the District was compelled to initiate expulsion because of Act 26 (24 P.S. § 13-1317.2).[10] Act 26 requires schools to expel students who bring weapons to school for at least one year. *Id.* However, nothing in Act 26 "shall be construed as limiting the authority *or duty* of a school or area vocational-technical school to make an alternative assignment or provide alternative educational services during the period of expulsion." *Id* at (e), emphasis added. Moreover, Act 26 provides discretion, especially in IDEA cases:

> The superintendent of a school district or an administrative director of an area vocational-technical school may recommend modifications of such expulsion requirements for a student on a case-by-case basis. The superintendent or other chief administrative officer of a school entity *shall*, in the case of an exceptional student, take all steps necessary to comply with the [IDEA].

Id at (c), emphasis added. Consequently, it is incorrect for the District to assert that its hands are tied. The Student has no prior disciplinary history, it is possible that the Student has a disability, and it is possible that the disciplinary incident was a manifestation of the Student's disability. Under the unique facts of this case, the District technically had no "basis of knowledge" that the Student was thought-to-be eligible at the time of the incident. Consequently, the District was not required to conduct a manifestation determination and may impose a disciplinary placement while the Student's evaluation is pending. But nothing, not even Act 26, compels this result. Bluntly, neither Act 26 nor the IDEA force the District to take the Vo-Tech program away from the Student. Regardless of the Student's IDEA protections, I am persuaded that removing the Vo-Tech program will have potently disastrous consequences for the Student.

The District is cautioned that it may incur significant liability down the road by creating a situation in which the Student can no longer participate in the Vo-Tech program. If the pending evaluation concludes that the Student has a disability and is in need of specially designed instruction, it will be the District's obligation to offer an IEP that addresses the Student's post-secondary transition goals. Expulsion notwithstanding, based on the record of this case, it is very difficult for me to see how such an IEP could be appropriate without addressing the Student's affinity for Vo-Tech, Vo-Tech's function as a motivating factor for the Student's other educational pursuits, and the Student's desire to [pursue the specific trade] after graduation.

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[9] Despite the District's testimony, it is possible that the evaluation was completed between the hearing session and this decision.

[10] I have no direct jurisdiction over any Act 26 matter.

I commend the District for maintaining the Student's pre-incident placement during the pendency of these proceedings. I urge the District to carefully consider all options going forward, regardless of the outcome of the pending evaluation.

The Parents are also cautioned that the circumstances of this case suggest that the District is empowered to place the student in an alternative program for 45 days, even if the incident was a manifestation of the Student's disability (if any). Both parties, therefore, have tremendous incentives to complete the evaluation quickly and, if the Student is eligible, work together to find an appropriate program and placement for the Student's senior year.

An order consistent with the foregoing follows.

ORDER

Now, May 26, 2017, it is hereby **ORDERED** as follows:

1. The Student is not currently entitled to an IEE at the District's expense. This order does not prohibit the Parents from obtaining an IEE at their own expense, and does not preclude the Parents from demanding an IEE at public expense should they disagree with the District's evaluation once it is complete.

2. Under the IDEA's disciplinary rules, the District is not "deemed to have knowledge that a child is a child with a disability" prior to the March 23, 2017 incident. Consequently, the Student was not a thought-to-be eligible for IDEA disciplinary purposes.

3. With the significant caution expressed above, the District is not obligated to maintain the Student's pre-incident placement until the currently-pending evaluation is complete.

4. The currently-pending evaluation has not been expedited. The District's failure to expedite the evaluation is contrary to IDEA mandates, regardless of the Student's disability or eligibility status.

5. After the currently-pending evaluation is complete, if the multidisciplinary team determines that the Student is a child with a disability and in need of specially designed instruction, the Student's IEP team shall convene without delay, and shall determine an appropriate program and placement for the Student, with consideration for the Student's post-secondary transition goals.

It is **FURTHER ORDERED** that any claim not specifically addressed in this order is **DENIED** and **DISMISSED.**

/s/ Brian Jason Ford
HEARING OFFICER