

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

WILLIAM S. HART UNION HIGH SCHOOL
DISTRICT.

OAH Case No. 2017081232

EXPEDITED DECISION

Student filed an expedited due process hearing request with the Office of Administrative Hearings, State of California, on August 29, 2017, naming William S. Hart Union High School District. Administrative Law Judge Tara Doss heard this matter in Santa Clarita, California, on September 26, 27, and 28, 2017, and October 2 and 3, 2017.

David Grey, Attorney at Law, represented Student. Parent attended the hearing on behalf of Student. Ian Wade, Attorney at Law, represented District. Sharon Amrhein, Director of Special Education, attended the hearing on behalf of District.

Sworn testimony and documentary evidence was received at the hearing. On October 3, 2017, the last day of hearing, the record was closed and the matter was submitted for decision. The parties filed written closing arguments on October 6, 2017.

ISSUE

Was Student's conduct on April 20, 2017, which resulted in District's recommendation for expulsion, caused by, or had a direct and substantial relationship

to, Student's disability?

SUMMARY OF DECISION

Student proved District failed to review all relevant information as part of its manifestation determination meeting, when it determined Student's conduct on April 20, 2017, was not a manifestation of her disabilities. Student also proved her conduct on April 20, 2017, which involved sending Snapchat messages to friends with photos depicting a gun, with text telling them not to come to school the next day, and making reference to the anniversary of the Columbine High School shootings, was caused by, or had a direct and substantial relationship to, her disabilities related to attention deficit hyperactivity disorder, Tourette syndrome, obsessive-compulsive disorder, and executive functioning deficits. Student's remedies include reversal of District's manifestation determination and recommendation for expulsion, and expungement of all reference to the expulsion from her cumulative records.

FACTUAL FINDINGS

1. Student was a 15-year-old female at the time of the hearing. She resided with her parents within District at all relevant times, and was eligible for special education under the category of other health impairment due to diagnoses of attention deficit hyperactivity disorder, Tourette syndrome, obsessive-compulsive disorder, and generalized anxiety disorder.

2. Tourette syndrome is a tic disorder that causes sudden, rapid, recurrent, nonrhythmic motor movements or vocalizations. Symptoms of Tourette may include twitching, head movements, obscene gestures or words, grunting, and repeating words or phrases. Student's Tourette syndrome manifested itself in various ways, including grunting, profanity, and other involuntary motor and vocal tics. She also exhibited disinhibition, or the inability to impose restraint on certain behaviors or thought

processes.¹ Individuals with Tourette, often have other conditions, as did Student, including attention deficit hyperactivity disorder, obsessive-compulsive disorder, and an anxiety disorder.

3. Attention deficit hyperactivity disorder involves a persistent pattern of inattention and/or hyperactivity-impulsivity that interferes with functioning or development. Inattention may include difficulty sustaining focus and being disorganized. Hyperactivity may include excessive motor activity, fidgeting or talkativeness. Impulsivity may include hasty actions that occur in the moment without forethought and making decisions without consideration of long-term consequences. Student's attention deficit hyperactivity disorder manifested itself in various ways, including inattentive behavior, the need to move around, and engaging in impulsive actions that occurred in the moment.

4. Obsessive-compulsive disorder is characterized as the presence of obsessions and/or compulsions. Obsessions are recurrent and persistent thoughts, urges, or images that are experienced as intrusive and unwanted. Compulsions are repetitive behaviors or mental acts that an individual feels driven to perform in response to an obsession or according to rules that must be applied rigidly. Student's obsessive-compulsive disorder manifested itself in frustration if she could not meet a particular compulsion.

5. Generalized anxiety disorder involves excessive anxiety, worry, or physical symptoms that cause significant distress or impairment in social, work, school, or other

¹ The ALJ also took official notice of the definition of disinhibition from Merriam-Webster Dictionary.

areas of functioning.² Student generally experienced anxiety from being in the school or classroom environment.

STUDENT'S 2016-2017 INDIVIDUALIZED EDUCATION PROGRAM AND CONDUCT PRIOR TO APRIL 20, 2017

6. In eighth grade, Student struggled with classroom behavior, such as socializing at inappropriate times, resistance to teacher direction, and impulsive behaviors. The IEP team added school counseling to teach her how to use positive coping strategies to manage feelings of anxiety.

7. During the 2016-2017 school year, Student was in the ninth grade at Valencia High School within District. At the beginning of the school year, Parent provided a letter to Student's teachers and school administrators regarding how Student's disabilities affected her behavior. Parent explained the complexity of Student's disorders and described many of her symptoms, including but not limited to, difficulty inhibiting thoughts and/or actions, uncontrollable motor and vocal tics, use of profanity, difficulty staying focused, and getting frustrated if she could not meet her compulsion. Apart from her disabilities, Parent and Valencia High School staff characterized Student as a bright, smart, thoughtful girl. Student was not characterized as a liar or being untruthful.

8. In September 2016, District school psychologist, Richard Trivitt, conducted a psychoeducational reevaluation of Student. Mr. Trivitt was a credentialed school psychologist for approximately 23 years and worked as a school psychologist at Valencia

² The ALJ took official notice of and obtained the definitions and symptomology of Tourette syndrome, attention deficit hyperactivity disorder, obsessive-compulsive disorder, and generalized anxiety disorder from the *Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition*.

High School for approximately 20 years. Mr. Trivitt conducted more than 1,000 assessments of students with various disabilities throughout his career. Parent expressed several concerns to Mr. Trivitt regarding Student's disabilities, including but not limited to, her executive functioning and how her Tourette syndrome impacted social interactions and academic performance.

9. Mr. Trivitt administered the Behavior Rating Inventory of Executive Function to better understand Student's self-control and problem solving skills. The assessment was a standardized but subjective measure of Student's executive functioning skills. Executive functioning skills are mental processes that direct a child's thought, action, and emotional responses, particularly during active problem solving. Executive functioning includes the ability to think before acting, as well as, taking accountability for one's actions. Three of Student's teachers filled out a questionnaire related to her behavior in the eight domains of executive functioning. Overall, each teacher's ratings indicated significantly elevated scores across domains, suggesting Student had significant difficulty with executive functions in the classroom. Specific concerns included her ability to inhibit impulsive responses; move freely from one situation, activity, or aspect of a problem to another; and self-regulate her emotions and behavior.

10. Parent completed the Achenbach Child Behavior Checklist, a standardized but subjective questionnaire that obtained her perception of Student's behavior. Parent rated Student in the clinically significant range in thought problems and attention problems. Thought problems referred to a student's difficulty with problem solving, ability to logically think through things, and weigh consequences of behavior before acting.

11. District convened Student's triennial IEP team meeting on September 19, 2016. All required IEP team members were present. Parent attended the meeting.

Student's school counselor, Wendy Jones, recommended continuing 30 minutes a week of counseling to address Student's anxiety management, coping skills, and self-regulation. The overall goal of counseling services was to raise Student's personal awareness and allow her to manage stress and behaviors related to tics, focus, academics, compulsion, and self-advocacy. The IEP team developed goals in coping skills and self-regulation that Ms. Jones worked on with Student. The purpose of the self-regulation goal was to help Student regulate her blurting out, impulsivity, tics, and plan thoughtful responses to a given stressful situation. The focus of the goal was to teach Student to "stop, pause, and think" before speaking.

12. Student's teachers reported various behavioral challenges in the classroom. She had frequent outbursts, arguments with other students, yelling, taking long breaks, and engaging in inappropriate behavior during breaks. Student's breaks ranged from 10 to 30 minutes, and were unstructured and unsupervised. The IEP team decided to limit the duration of Student's breaks and only allowed her to go the restroom, health office, or counseling office, and return with a signed note. The IEP team offered a program for Student that combined general education, resource specialist program, and special day classes.

13. Student had at least 10 reported discipline infractions throughout the 2016-2017 school year prior to April 20, 2017. Infractions included leaving class or school grounds without permission, being late or not attending class, using profanity towards students and staff, and refusing to do work. These infractions resulted in school staff counseling Student, or in-school suspension.

APRIL 20, 2017 SNAPCHAT INCIDENT

14. On April 19, 2017, Student and a friend joked about shooting at Valencia High School together with a shotgun. During the conversation, Student's friend referenced the Columbine High School shooting that occurred on April 20, 1999,

involving two high school students shooting and killing 12 students and one teacher.

15. On the evening of April 20, 2017, sometime after 5:30 p.m., Student sent at least four different Snapchat messages to approximately six friends with photos depicting a gun and text telling them not to come to school the next day.³ One snap was a photo depicting a hand reaching for a handgun with the text "Don't come tomorrow :)." Another snap was a photo depicting a gun lying next to a foot with the text "Don't come to school tomorrow you was chill [smiley face emoji]." A third snap was a photo with a hand reaching into a backpack, with scribble marks over the hand so one could not identify whether an object was being placed inside. The text on the snap was "Tomorrow's gon be f[---]king lit." The fourth snap was a photo of a hand turning pages in a school yearbook with the text "F[---]king c[---]ts lol AHHAHAHAHHABbhab...." On the same date, Student posted a video to her Snapchat account with the following text: "Today marks the 18th anniversary of the columbine high school shooting." In the video, Student was dancing to the song "Pumped Up Kicks" by Foster the People. The lyrics of the song included a reference to kids outrunning the bullets of a gun. Sometime later, but unclear whether on the same day, Student posted a snap with the text "Everyone who thinks the gun thing was real...it's not I made a joke to a couple of my sc[hool] friends and some people took it too far and believed me. I'm not a threat I would never hurt anyone. Everyone makes mistakes."

16. At least three of Student's friends who received the snaps were alarmed, notified their parents, and the police. The police arrived at Student's house at

³ Snapchat is an image and multimedia mobile application. Messages posted on Snapchat, called "snaps," are only available for a short time before they become inaccessible. Viewers of a snap can preserve it by taking a screenshot of the message or image.

approximately 8:30 p.m. on April 20, 2017, to investigate Student making possible criminal threats. Student explained she meant the snaps as a joke which is why she included a smiley face. She downloaded photos of guns from the internet to use in her snaps. The police searched Student's phone and room and did not see any activity related to weapons, shootings, manifestos, or any criminal activity. Student was very talkative, outgoing, cooperative, and willing to help with the investigation. She did not appear to show any remorse for her snaps, or the consequences related to them.

17. Valencia High School officials learned of Student's Snapchat messages on the night of April 20, 2017, when several assistant principals and the principal, John Costanzo, received phone calls and text messages indicating there had been a threat to the school over social media. After they learned the police were involved, school administrators sent a message to parents letting them know it was safe to send students to school the next day.

18. On April 21, 2017, Valencia High School had an increased security presence and news media on campus. Parent kept Student home to avoid negative reactions she might receive from other students. Mr. Costanzo instructed the assistant principals to conduct an investigation into the Snapchat incident. The investigation included gathering witness statements from Student and other students who knew about the incident.

19. On April 24, 2017, Student and Parent met with Mr. Costanzo and assistant principal, Josh McDonald. Mr. McDonald oversaw student discipline as part of his job duties. Mr. McDonald had an established relationship with Student. He interacted with her approximately once a week throughout the 2016-2017 school year. He was assigned to work with Student and her family during the investigation.

20. Just prior to the meeting, Mr. McDonald asked Student to write a statement regarding the Snapchat incident. Student admitted she sent three friends a

picture of a gun sticker with the text “don’t come to school tomorrow (laughing emoji)”. After receiving “funny” reactions from the friends, she sent three more snaps. Her obsessive-compulsive disorder caused her to send additional snaps but eventually she stopped herself. Student did not intend for her snaps to cause trouble. She joked often in this way with friends. She regretted and apologized for what happened.

21. Mr. Costanzo and Mr. McDonald reviewed Student’s written statement. Student apologized again and explained the snaps were meant as a joke. Mr. McDonald did not feel the need to interrogate Student about the snaps because she admitted what she did and apologized. Neither Mr. Costanzo nor Mr. McDonald asked the details of how Student planned the snaps, when she sent them, or who she sent them to. At the conclusion of the meeting, Mr. McDonald informed Parent in writing that Student was suspended for five days, and verbally informed Parent that District would convene an IEP team meeting and further discipline may be recommended.

22. Student experienced increased anxiety and tics in the days following the April 24, 2017 meeting. She had trouble regulating her emotions and had rage episodes that included kicking, screaming, and crying. Parent scheduled an emergency appointment with Student’s psychiatrist, Dr. Colleen Copelan, for April 26, 2017. During the appointment, Student and Parent explained Student’s conduct involving Snapchat on April 20, 2017. Parent also asked Dr. Copelan to write a letter that Parent could present to the District explaining why Student’s actions on April 20, 2017, were a manifestation of her disabilities.

23. Dr. Copelan was Student’s treating psychiatrist since 2013 and generally treated her once a month. Dr. Copelan became a licensed physician in 1971. She held licenses from the American Board of Psychiatry and Neurology and the American Board of Adolescent Psychiatry. She operated a private practice in Ventura County, California in general psychiatry of children, adolescents, and adults for over 40 years. Dr. Copelan’s

current practice focused primarily on medical psychiatry, which involved diagnoses, prescribing medication, and managing medication. Dr. Copelan did not provide psychotherapy to Student.

24. In Dr. Copelan's opinion, Student's conduct involving Snapchat on April 20, 2017, was a manifestation of her attention deficit hyperactivity disorder, Tourette syndrome, obsessive-compulsive disorder, and executive functioning deficits. Once the thought of creating the snaps went through Student's mind, she had the impulse to act on her thought, (symptom of attention deficit hyperactivity disorder), and was compelled to carry out her action until it was complete or "felt right" (symptom of Tourette and obsessive-compulsive disorder). Student could not control herself. She did not give any forethought to, or consider the consequences of, sending her snaps. She did not have any emotional connection or feel any responsibility for her snaps. She did not think she was doing anything wrong because in her mind, the snaps were a joke. Dr. Copelan attributed Student's lack of judgement and consideration of consequence to her executive functioning deficits. Dr. Copelan based her opinion on her knowledge of children's behavior in general, Student's diagnoses, past behavior, and current behavior. Dr. Copelan was a credible witness. She exhibited personal knowledge of Student, her testimony was thorough and consistent throughout, and was given significant weight.

APRIL 28, 2017 MANIFESTATION DETERMINATION MEETING

25. District scheduled and convened a manifestation determination meeting on April 28, 2017, to determine whether Student's conduct on April 20, 2017, was caused by, or had a direct and substantial relationship to, her disability; or was the direct result of District's failure to implement her IEP. Parent attended the meeting alone. Student did not attend. Relevant members of Student's IEP team attended, including, Mr. Trivitt (school psychologist), Mr. McDonald (assistant principal), Ms. Jones (school counselor), Justin Thomas (guidance counselor), Karin Ortiz (resource specialist

teacher/Student's case manager), and Lisa Licht (Student's art teacher). The meeting lasted approximately one hour.

26. In preparation for the manifestation determination meeting, Mr. Trivitt reviewed Student's September 2016 psychoeducational assessment report, Student's 2016-2017 IEPs, Student's 2016-2017 disciplinary records, the photographs of Student's snaps, and three witness statements. Mr. Trivitt did not review Student's written statement. Mr. Trivitt also did a Google search to research the relationship between Tourette syndrome and disinhibition. In Mr. Trivitt's opinion, Student's conduct on April 20, 2017, was not a manifestation of her disability because her snaps were purposeful, planned out, and choreographed over a period of time. Student's admission that her actions were a joke was an admission they were not due to a momentary lapse of judgement consistent with her Tourette syndrome, attention deficit hyperactivity disorder, or obsessive-compulsive disorder. Mr. Trivitt was not familiar with Snapchat or how long it generally took to create and send a message on Snapchat. Mr. Trivitt never asked Student the details of how and when she planned the April 20, 2017 snaps. He did not think it was necessary to interview Student because Mr. McDonald had done so.

27. Mr. McDonald held a Master of Arts in counseling, marriage and family therapy, and school psychology. He was a credentialed school psychologist and worked for District as a school psychologist for nine years prior to becoming an assistant principal. He was also a licensed educational psychologist. He assessed approximately 1,000 students as a school psychologist, attended nearly 3,000 IEP team meetings and approximately 100 manifestation determination meetings over the course of his career.

28. In preparation for the manifestation determination meeting, Mr. McDonald reviewed photographs of Student's snaps, Student's written statement regarding the incident, and written statements from other students regarding the incident. Mr. McDonald relied on information from these documents in forming his opinion regarding

Student's conduct. In Mr. McDonald's opinion, Student's conduct on April 20, 2017, was not a manifestation of her disability because her snaps were premeditated and involved planning, were not caused by an impulsive or disinhibited act, and Student had the ability to stop her actions. In reaching this conclusion, Mr. McDonald relied on the assumption Student sent out several snaps throughout the day, made choices on how to stage the snaps, and related the snaps to the anniversary of the Columbine High School shootings. In his opinion, Student's Tourette syndrome caused her to use profanity and display motor tics, such as flipping people off and moving her head. Student's attention deficit hyperactivity disorder caused her to have difficulty paying attention in class. He was not sure how Student's obsessive-compulsive disorder affected her because he had not seen her display any symptoms.

29. The remaining District team members at the manifestation determination meeting did not review any documents in preparation for the meeting, including photographs of Student's snaps, Student's written statement, written statements from other students, Student's September 2016 psychoeducational assessment report, Student's 2016-2017 IEPs, or Student's 2016-2017 disciplinary record. These items were also not available for review at the manifestation determination meeting. The remaining District team members were not familiar with how long it generally took to create and send a message on Snapchat. They also did not know the details of how and when Student planned the April 20, 2017 snaps. District did not provide Parent with copies of the photographs of Student's snaps, Student's written statement, or written statements from other students prior to the meeting.

30. Mr. Trivitt and Mr. McDonald did most of the talking during the meeting. Before the meeting, Mr. Trivitt created a pre-typed, draft manifestation determination document. The manifestation determination team referred to this document during the meeting. The draft document contained language that "[t]he IEP team agree[d]

[Student's] actions were not caused by or had a direct and substantial relationship to her disabilities." The document also contained the reasons why that determination had been made. Mr. McDonald explained to the team Student made threats to students on social media regarding bringing a gun to school. Mr. McDonald did not share information from Student's written statement or the statements from other students with the team. Mr. Trivitt reviewed Student's eligibility for special education and her various diagnoses. Parent presented Dr. Copelan's letter to the team. In Dr. Copelan's opinion, Student's conduct was a manifestation of her disabilities because she was prone to impulsive and ill-conceived actions consistent with attention deficit hyperactivity disorder; which was further aggravated by disinhibition and poor restraint of impulse typical of Tourette syndrome. The District team members reviewed Dr. Copelan's letter and briefly discussed why they disagreed with her findings. Ultimately, the District team members determined Student's conduct on April 20, 2017, was not a manifestation of her disability. They concluded that sending out the snaps required forethought and planning, Student understood the impact and consequences of her behavior, could control her behavior, and District was implementing her IEP. The District team members did not believe Student's conduct was impulsive consistent with attention deficit hyperactivity disorder, was not driven by obsession or compulsion consistent with obsessive-compulsive disorder, and was not a result of Tourette syndrome behaviors. Parent disagreed with the District team members' conclusion.

31. On May 1, 2017, Mr. Costanzo recommended Student for expulsion. District and Parent agreed to a stipulated suspended expulsion, which provided that Student would be on home study for the remainder of the 2016-2017 school year, and could enroll at a different District high school for the 2017-2018 school year.

LEGAL CONCLUSIONS

INTRODUCTION – LEGAL FRAMEWORK FOR STUDENT DISCIPLINE UNDER THE IDEA⁴

1. This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations intended to implement it. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 et seq.; Ed. Code, § 56000, et seq.; Cal. Code. Regs., tit. 5, § 3000 et seq.)⁵ Two main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living, and (2) to ensure that the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

2. Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. (Ed. Code, § 48915.5.) A local educational agency may suspend or expel a special education student from school as provided by federal law. (20 U.S.C. § 1412(a)(1)(A); Ed. Code, § 48915.5, subd. (a).) If a special education student violates a code of student conduct, the local educational agency may remove the student from his or her educational placement to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives are applied to children without disabilities.) (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1).) A local educational agency is required to provide services during periods

⁴ Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

⁵ All references to the Code of Federal Regulations are to the 2006 version.

of removal to a child with a disability who has been removed from his or her current placement for 10 school days or less in that school year, if it provides services to a child without disabilities who is similarly removed. (34 C.F.R. § 300.530(d)(3).) If a special education student violates a code of conduct and the local educational agency changes the educational placement of the student for more than 10 days the local educational agency must meet the requirements of Section 1415(k).

3. A special education student's educational placement is that unique combination of facilities, personnel, location, or equipment necessary to provide instructional services to the student, as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042, subd. (a).) A "change of placement" is a fundamental change in, or elimination of, a basic element of a student's educational program. A change of placement is defined as a removal for more than 10 consecutive school days. (34 C.F.R. § 300.536(a)(1).) A change of placement may also be found where there has been a series of removals that constitute a pattern because the series of removals total more than 10 school days in one school year; the child's behavior is substantially similar to the child's behavior in other incidents that previously resulted in removals; and other factors including the length of each removal, the total amount of time the child was removed and the proximity in time between removals. (34 C.F.R. § 300.536(a)(2).) Whether a pattern of removals constitute a change of placement is determined on a case-by-case basis. (34 C.F.R. § 300.536(b)(1).)

4. When a local educational agency seeks to change the placement of a child with a disability because of a violation of the student code of conduct, the local educational agency, the parent, and relevant members of the child's IEP team (as determined by the parent and the local educational agency) must review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents, to determine whether the conduct in

question (1) was caused by, or had a direct and substantial relationship to, the child's disability; or (2) was the direct result of the local educational agency's failure to implement the IEP. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e).) If the local educational agency, the parent, and relevant members of the IEP team determine either of these elements applies, the conduct in question must be determined to be a manifestation of the child's disability. (*Ibid.*) This is called a manifestation determination meeting.

5. The manifestation determination meeting is not an IEP team meeting and different rules apply to notice and attendance requirements. A manifestation determination meeting must be conducted within 10 school days of the decision to change the child's placement. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e).) The local educational agency must notify student's parents of the decision to take disciplinary action and provide parents' procedural safeguards no later than the date the decision is made. (20 U.S.C. § 1415(k)(1)(H).) A manifestation determination must consider the student's behavior as demonstrated across settings and across times. (71 Fed. Reg. 46720.)

6. If the manifestation determination team determines the conduct is not a manifestation of the child's disability, or is not due to the local educational agency's failure to implement the child's IEP, then the local educational agency may apply the same disciplinary procedures that would apply to a non-disabled child in the same manner and for the same duration. (20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c); see *Doe v. Maher* (9th Cir, 1986) 793 F.2d 1470, 1482, *affd.*, *sub nom.*, *Honig v. Doe* (1988) 484 U.S. 305 [when a child's misbehavior does not result from his disability no justification exists for exempting him from the rules applicable to other children].)

7. If the manifestation determination team determines the conduct was a manifestation of the child's disability, the child's IEP team must either: (1) conduct a

functional behavioral assessment and implement a behavioral intervention plan, unless one was conducted prior to the behavior that resulted in the change of placement; or (2) review the existing behavioral intervention plan, and modify it, as necessary, to address the behavior. (20 U.S.C. §§ 1415(k)(1)(F)(i) & (ii); 34 C.F.R. § 300.530(f)(1).) The IEP team must also return the child to the placement from which he or she was removed, unless special circumstances apply, or the parent and local educational agency agree to a change of placement. (20 U.S.C. § 1415(k)(1)(F)(iii); 34 C.F.R. § 300.530(f)(2).)

8. Parents and local educational agencies may request an expedited due process hearing of claims based upon a disciplinary change of educational placement under title 20 United States Code section 1415(k). An expedited hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed and a decision must be issued within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).) The rules for a due process hearing under title 20 United States Code section 1415(k) must be consistent with those of other IDEA due process hearings. (34 C.F.R. § 300.532(c).)

9. At the hearing, the party filing the complaint has the burden of persuasion by a preponderance of the evidence. (*Schaffer v. Weast* (2005) 546 U.S. 49, 62 [126 S.Ct. 528; 163 L.Ed.2d 387]; see 20 U.S.C. § 1415(i)(2)(C)(iii) [standard of review for IDEA administrative hearing decision is preponderance of the evidence].) Here, Student was the filing party and had the burden of proof.

ISSUE: MANIFESTATION DETERMINATION

10. Student contended the District members of the manifestation determination team did not review all relevant information when they concluded Student's conduct on April 20, 2017, was not a manifestation of her disabilities. Student also contended her conduct that involved sending Snapchat messages to friends depicting a gun, with text telling them not to come to school the next day, and making

reference to the anniversary of the Columbine High School shootings, was caused by, or had a direct and substantial relationship to, her disabilities. Student argued she was compelled to create and send the snaps consistent with her obsessive-compulsive disorder and Tourette syndrome; and she did not understand the consequences of her actions consistent with her executive functioning deficits. Student did not challenge whether District failed to implement her IEP.

11. District contended it considered all relevant information when they concluded Student's conduct on April 20, 2017, was not a manifestation of her disabilities. District also contended Student's conduct on April 20, 2017, was not a manifestation of her disabilities. District argued the time and effort and planning involved in making the threats towards students over social media were not substantially impulsive, consistent with attention deficit hyperactivity disorder; were not driven by obsession or compulsion, consistent with obsessive-compulsive disorder; and were not a result of Tourette syndrome behavior.

Analysis and Conclusions

12. Student met her burden by proving 1) District failed to review all relevant information when they determined Student's conduct on April 20, 2017, was not a manifestation of her disabilities, and 2) her conduct on April 20, 2017, was caused by, or had a direct and substantial relationship to, her disabilities.

District Did Not Review All Relevant Information

13. Mr. Trivitt and Mr. McDonald were the only manifestation determination team members who reviewed documents from Student's file before the April 28, 2017 meeting. Mr. Trivitt did not review Student's written statement. Mr. McDonald did not review Student's September 2016 psychoeducational assessment report or September 19, 2016 IEP. The remaining District team members did not review any documents,

including photographs of Student's snaps, Student's written statement, written statements from other students, Student's September 2016 psychoeducational assessment report, Student's September 19, 2016 IEP, or Student's 2016-2017 disciplinary record. These items were also not available for review during the meeting. While the IDEA does not require that all manifestation determination team members review every single document in a student's file, the IDEA requires the team to review all relevant information. Student's September 2016 psychoeducational assessment report and September 19, 2016 IEP contained information regarding Student's disabilities. Student's discipline record contained information regarding the history of her behaviors. Photographs of Student's snaps, Student's written statement, and relevant written statements from other students would have given the manifestation determination team a more complete picture of Student's conduct on April 20, 2017. All of this information was relevant when determining whether Student's conduct was a manifestation of her disabilities, and without it, the manifestation determination review was incomplete.

14. District argued that Mr. Trivitt's analysis of Student's prior IEPs, discipline record, observations and discussions with staff, and his report to the manifestation determination team of the information he believed was relevant, was sufficient. This argument was not persuasive. The law requires the team to review all relevant information and one individual does not make up the team. Here, Mr. Trivitt presented his opinion that Student's conduct was not caused by, or had a direct and substantial relationship to, her disabilities, to the team in a pre-typed draft document before any discussion had taken place. However, Mr. Trivitt did not review Student's written statement or interview Student. Thus, he formed his opinion without considering all relevant information. Mr. Trivitt and Mr. McDonald did most of the talking at the manifestation determination meeting. The team could have had a more informed discussion, and may have come to a different conclusion if the other team members,

including Parent, had access to additional information regarding Student's disabilities and how they manifested in, not only her past behavior, but also in her April 20, 2017 conduct. Instead, the team relied heavily on Mr. Trivitt and Mr. McDonald's incomplete review and opinions, without access to, or the benefit of, the relevant supporting information.

15. The District team members also relied upon the assumption that sending out the snaps required forethought and planning, Student understood the impact and consequences of her behavior, and she could control her behavior. However, none of the District team members knew the details of how and when Student planned the April 20, 2017 snaps. They also had no knowledge of how long it took Student to create and send the snaps. Neither Mr. Costanzo nor Mr. McDonald asked Student these details at the April 24, 2017 meeting. If the manifestation determination team had reviewed Student's written statement and the relevant written statements from other students, the team members would have been alerted that Student believed her obsessive-compulsive disorder caused her to send multiple snaps (implying she could not control her behavior); she did not foresee that her actions would cause trouble (implying she did not understand the impact or consequences of her behavior); and often joked in that manner with friends.

Student's Conduct Was a Manifestation of Her Disabilities

16. Student's conduct on April 20, 2017, which led to District's recommendation for expulsion, was a manifestation of her disabilities. Her disabilities included Tourette syndrome, attention deficit hyperactivity disorder, and obsessive-compulsive disorder. Student also had executive functioning deficits. The symptoms of these disorders are complex. Student's Tourette syndrome manifested itself in various ways, including grunting, profanity, and other involuntary motor and vocal tics. Student's Tourette syndrome also caused disinhibition, or the inability to impose

restraint on certain behaviors or thought processes. Student's attention deficit hyperactivity disorder manifested itself in various ways, including inattentive behavior, the need to move around, and engaging in impulsive actions that occurred in the moment. Student's obsessive-compulsive disorder manifested itself in frustration if she could not meet a particular compulsion. Student's executive functioning deficits interfered with her ability to inhibit impulsive responses, think before acting, and take accountability for, or consider the consequences of, her actions.

17. District had notice of the manner in which Student's disabilities manifested themselves. At the beginning of the 2016-2017 school year, Parent provided Student's teachers and Valencia High School administrators with a letter describing how Student's disorders affected her behavior. Parent informed the school Student had difficulty inhibiting thoughts and/or actions, had uncontrollable motor and vocal tics, used profanity, had difficulty staying focused, and was frustrated when she could not meet her compulsion.

18. Since at least eighth grade, Student displayed disruptive behavior at school. During eighth grade, she socialized at inappropriate times, was resistant to teacher direction, and exhibited impulsive behaviors. Student's disruptive behavior continued in ninth grade at Valencia High School. Prior to the April 20, 2017, Snapchat incident, she had at least 10 reported discipline infractions, including leaving class or school grounds without permission, being late or not attending class, use of profanity towards students and staff, and refusing to do work. Student's teachers also reported she had frequent outbursts, arguments with other students, yelled, took long breaks, and engaged in inappropriate behavior during breaks. Student's inappropriate behaviors during breaks were so significant the IEP team limited the duration of and restricted where she could go during breaks.

19. Student's September 2016 psychoeducational assessment made District

aware of her challenges with executive functioning. Specifically, on the Behavior Rating Inventory of Executive Function, Student's teachers indicated concerns regarding her ability to inhibit impulsive responses, move freely from one situation or activity to another, and self-regulate her emotions and behavior. Additionally, Parent's responses on the Achenbach Child Behavior Checklist rated Student in the clinically significant range in thought problems, which referred to Student's inability to logically think through things and weigh the consequences of her behavior before acting.

20. District developed two counseling goals in her 2016-2017 IEP, including one in self-regulation. The purpose of the self-regulation goal was to help Student regulate her blurting out, impulsivity, tics, and planning thoughtful responses to a given stressful situation. The focus of the goal was to teach Student to "stop, pause, and think" before speaking. To address this goal, Student received 30 minutes of school counseling a week. This goal further supports a finding that District knew Student had challenges with thinking through things before she acted, which was similar to her conduct on April 20, 2017.

21. On April 19, 2017, the idea of bringing a gun to school on the anniversary of the Columbine High School shootings began as a joke between Student and a friend. Student later acted upon that joke on the evening of April 20, 2017, by sending at least four different Snapchat messages to approximately six friends. Two of the snaps included profanity similar to language she used at school during her tics, and three of the snaps included an emoji or other reference implying Student meant the messages as a joke. On the same date, Student also posted a video of her dancing to a song that made reference to kids outrunning bullets of a gun, with text referencing the anniversary of the Columbine High School shootings. Student later posted an apology on Snapchat and indicated her snaps were meant as a joke. When the police investigated Student's perceived threats to the school, she was cooperative and told

them she meant the snaps as a joke. According to the police, Student did not appear to show any remorse for her snaps, or the consequences related to them.

22. Dr. Copelan's opinion that Student's conduct on April 20, 2017, was a manifestation of her disorders was credible. Student could not control herself. Once the thought of creating the snaps went through Student's mind, she had the impulse to act on her thought, and was compelled to carry out her action until it was complete or "felt right." Additionally, Student did not give any forethought to or consider the consequences of sending the snaps. She also did not have any emotional connection or feel any responsibility for her snaps. She did not believe she had done anything wrong because in her mind, the snaps were a joke. Dr. Copelan attributed Student's behavior to her attention deficit hyperactivity disorder, Tourette syndrome, obsessive-compulsive disorder, and executive functioning deficits.

23. Parent presented Dr. Copelan's letter to the manifestation determination team, in which Dr. Copelan stated her opinion that Student's conduct on April 20, 2017, was a manifestation of her disabilities. In the letter, Dr. Copelan noted Student was prone to impulsive and ill-conceived actions consistent with attention deficit hyperactivity disorder; which was further aggravated by disinhibition and poor restraint of impulse typical of Tourette syndrome. The District team members disagreed with Dr. Copelan's conclusions because they did not believe Student's conduct was impulsive, driven by an obsession or compulsion, and was not the result of Tourette syndrome behaviors. However, as discussed above, the District team members relied on an incomplete review of all relevant information to reach their conclusion.

24. District incorrectly determined Student's conduct on April 20, 2017, was not caused by, or had a direct and substantial relationship to, her disabilities. The manifestation determination team had substantial evidence available to it through Student's cumulative records to support a conclusion that her conduct was a

manifestation of her disabilities, including: the complexity of her disabilities and deficits; Parent's letter to school staff at the start of the 2016-2017 school year; Student's disruptive behaviors from eighth and ninth grade; the results from Student's September 2016 psychoeducational assessment; the self-regulation goal from the September 19, 2016 IEP; and Dr. Copelan's opinion of Student's behaviors.

25. Student's cumulative history demonstrated a consistent pattern of Student having difficulty with inhibiting or controlling her impulses, thinking before acting upon her impulses, and understanding the consequences of her actions. Student's actions on April 20, 2017, showed the same pattern. Dr. Copelan's opinions were consistent with the documentary evidence, and supported a finding that Student's conduct was a manifestation of her disabilities. District's witnesses were credible but less persuasive because they did not consider all relevant information as part of the manifestation determination.

26. Student proved her conduct on April 20, 2017, was a manifestation of her disabilities. Her remedies will be discussed below.

REMEDIES

1. Student prevailed on the only issue. Student requests an order rescinding the expulsion. Student also seeks an order that she be allowed to return to school.

2. An ALJ may return the student to the placement from which he or she was removed if the ALJ determines that the conduct was a manifestation of the student's disability or the result of the failure to implement the student's IEP. (20 U.S.C. §1415(k)(3)(B)(ii)(I); 34 C.F.R. § 300.532(b)(2)(i).) If a student's conduct is determined to be a manifestation of his or her disability, the student's IEP team must either: (1) conduct a functional behavioral assessment and implement a behavioral intervention plan, unless one was conducted prior to the behavior that resulted in the change of placement; or (2) review the existing behavioral intervention plan, and modify it, as necessary, to address

the behavior. (20 U.S.C. §§ 1415(k)(1)(F)(i) & (ii); 34 C.F.R. § 300.530(f)(1).) Title 20 United States Code section 1415(k)(3) does not limit a hearing officer from awarding other equitable remedies to craft appropriate relief. (20 U.S.C. § 1415(k)(3); *Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

3. Here, District recommended Student for expulsion on May 1, 2017. Parent agreed to a suspended stipulated expulsion which placed Student on home study for the remainder of the 2016-2017 school year, and allowed her to enroll at a different District high school for the 2017-2018 school year. Student proved District failed to consider all relevant information when making its determination that Student's conduct was not a manifestation of her disabilities; and her conduct on April 20, 2017, was caused by, or had a direct and substantial relationship to, her disabilities. As such, Student is entitled to return to Valencia High School. Because Student's conduct was a manifestation of her disabilities, District improperly recommended her for expulsion. As a remedy, Student is entitled to have her records expunged of all reference to District's recommendation to expel Student on May 1, 2017, and any other records related to Student's expulsion.

ORDER

1. Student's conduct on April 20, 2017, was caused by, or had a direct and substantial relationship to, her disabilities. District's finding at the April 28, 2017 manifestation determination meeting that Student's conduct was not a manifestation of her disabilities is reversed.

2. District shall immediately reinstate Student's enrollment and services at Valencia High School as provided for in her last agreed-upon IEP.

3. Within 45 days from the date of this Decision and Order, District shall conduct a functional behavioral assessment of Student and convene an IEP team meeting to discuss the results, and develop a behavioral intervention plan. If Student

has an existing behavioral intervention plan, District shall review the existing behavioral intervention plan, and modify it, as necessary.

4. Within 45 days from the date of this Decision and Order, District shall expunge from Student's cumulative school records all references to Student's expulsion resulting from the April 20, 2017 incident.

PREVAILING PARTY

Pursuant to California Education Code section 56507, subdivision (d), the hearing decision must indicate the extent to which each party has prevailed on each issue heard and decided. Here, Student was the prevailing party on the single issue presented.

RIGHT TO APPEAL

This Decision is the final administrative determination and is binding on all parties. (Ed. Code, § 56505, subd. (h).) Any party has the right to appeal this Decision to a court of competent jurisdiction within 90 days of receiving it. (Ed. Code, § 56505, subd. (k).)

DATED: October 13, 2017

_____/s/____

TARA DOSS

Administrative Law Judge

Office of Administrative Hearings