

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENTS ON BEHALF OF STUDENT,

v.

FILLMORE UNIFIED SCHOOL DISTRICT.

OAH Case No. 2018020337

EXPEDITED DECISION

Student filed a Due Process Hearing Request on February 7, 2018, appealing the outcome of a manifestation determination, with the Office of Administrative Hearings, State of California, naming Fillmore Unified School District. Administrative Law Judge Clifford H. Woosley heard the expedited appeal at District's facilities in Fillmore, California, on March 6, 7, and 8, 2018.

Franchesca S. Verdin and Monique L. Fierro, attorneys at law, appeared on behalf of Student. Mother attended and testified at the hearing. OAH provided a Spanish language interpreter. Leoda F. Valenzuela, a community worker with special knowledge and training regarding children with disabilities accompanied Mother at hearing.<sup>1</sup>

Kristin M. Myers and Carlos M. Gonzalez, attorneys at law, appeared on behalf of

---

<sup>1</sup> Ms. Fierro did not attend the third day of hearing. Mother excused herself during the third hearing day because of illness, stating that the hearing should continue in her absence.

Fillmore Unified School District.<sup>2</sup> Director of Special Education, Mary Williams, attended on behalf of District.

The parties filed written closing briefs on March 14, 2018.

## ISSUES<sup>3</sup>

1. Did District fail to hold an appropriate manifestation determination meeting on December 4, 2017, consistent with 20 U.S.C., section 1415, subdivision (k), 34 Code of Federal Regulations, section 300.530, and/or Education Code section 56500.4, when District failed to:

- a. Provide written notice of a reasonable time before the District proposed to initiate or change the educational placement of Student;
- b. Inform Parent of Student's right to attend the meeting as a relevant member of the IEP team;
- c. Meaningfully discuss and consider whether Student's violation of a code of student conduct was related to his disability;
- d. Meaningfully discuss and consider whether Student's violation of a code of student conduct was related to District's failure to implement Student's IEP at the time of the alleged expulsion incident and at all times prior; and/or
- e. Meaningfully discuss and consider whether or not Student's behavior intervention plan addressed Student's behavior or required modification?

2. Did District fail to hold an appropriate manifestation determination

---

<sup>2</sup> Mr. Gonzales did not attend the second and third hearing days.

<sup>3</sup> The issues have been reorganized for purposes of analysis. The ALJ has authority to redefine a party's issues, so long as no substantive changes are made. (*J.W. ex rel. J.E.W. v. Fresno Unified School Dist.* (9th Cir. 2010) 626 F.3d 431, 442–443.)

meeting by violating Educational Code section 56341.5(i), which denied Parent the ability to understand the proceedings and meaningfully participate in the meeting, because District did not provide effective translation of Student's December 2, 2017 psychological report?

3. Did District error in determining that Student's conduct, which was a violation of a student code of conduct, was not a manifestation of Student's disability?

## SUMMARY OF DECISION

Student did not prevail on the procedural violations in Issue 1. As to Issue 1(a), District provided proper notice of the manifestation determination meeting, telephonically and by mail. Mother was informed and aware of the meeting's purpose, having attended four determination meetings within the prior year. As to Issue 1(b), Mother was aware the Student could attend the meeting. Student's contention that District did not meaningfully discuss and consider whether Student's violation was related to his disability in Issue 1(c), to District's failure to implement the IEP in Issue 1(d), and to Student's intervention plan addressing his behaviors in Issue 1(e), were not supported by sufficient evidence. District demonstrated the manifestation determination team meaningfully discussed and considered whether Student's conduct was a manifestation of Student's disability. Further, even if Student successfully proved procedural error, Student did not submit evidence there would have been a different outcome. District prevailed on Issue 1.

Student did not prove in Issue 2 that District failed to provide Mother with effective translation of a manifestation report prepared by the school psychologist Jessica Siegel for the determination meeting. The report was not distributed amongst the team members but was, instead, orally presented by Ms. Siegel at the meeting. District provided Mother with a Spanish interpreter. Ms. Siegel reviewed her report, section by section, inviting questions and comment. Mother's testimony that the

interpreter did not translate everything that was said was unpersuasive. The evidence showed that Mother understood the proceedings and meaningfully participated. District prevailed on Issue 2.

Student did not prove in Issue 3 that District erred in determining that Student's possession of controlled substances, with the intent to sell, was not a manifestation of Student's disability. The manifestation determination team reviewed the behaviors associated with Student's eligibility of intellectual disability and his diagnosed attention deficit disorder. They noted that the behaviors which were targeted by his IEP and positive behavior intervention plan were outbursts and impulsive reactions. However, Student's conduct required planning and was not impulsive. Further, Student knew what he was doing was wrong, was aware of the consequences, and chose to possess the drugs on campus anyway. Student failed to present convincing evidence that he was self-medicating for disabilities of depression and anxiety. Student's conduct was not caused by, or have a direct and substantial relationship to, his disabilities.

Student also failed to meet his burden of proof that Student's conduct was a direct result of the local educational agency's failure to implement his IEP. Student's argument that District did not implement the IEP, despite Student's refusal to cooperate with two of the intervention plan's strategies, was unpersuasive. The evidence established that Student was consistently using his favored strategy of talking with preferred adults and Student's behaviors were improving because of the intervention plan's coping strategy. Student's conduct was not a direct result of Student's failure to implement his IEP. District prevailed on Issue 3.

## FACTUAL FINDINGS

1. At the time of the hearing, Student was a fourteen-year-old boy in ninth grade at Gateway Community School, located in Camarillo, California and operated by the Ventura County Office of Education. Gateway serves students, in sixth through

twelfth grades, who have been referred to the Gateway program from Ventura County school districts. Student first qualified for special education at age four as a student with a specific learning disability and speech and language impairment.

#### STUDENT'S 8TH GRADE, FILLMORE MIDDLE SCHOOL 2016-2017

2. District school psychologist Jessica Siegel prepared a September 1, 2016 psychoeducational assessment/multidisciplinary report for Student's triennial IEP. She testified at the hearing. Ms. Siegel had a bachelor's degree in psychology and a master's degree in psychology with a school psychology option. She was a licensed educational psychologist and had worked for District since 1999. At the time of hearing, Ms. Siegel was providing services to Fillmore High School. However, in September 2016, she serviced Fillmore Middle School, where Student was in eighth grade. Ms. Siegel's education, credentials, and experience qualified her to conduct Student's triennial psychoeducational assessment and prepare the report.

3. Ms. Siegel assessed Student's cognitive, social, emotional, and behavior functioning. Special education teacher Susan Rice measured Student's academic skills and speech pathologist Debra Longenbaugh evaluated his speech and language. Ms. Siegel recommended that Student's eligibility be changed from specific learning disability to intellectual disability. Her recommendation was consistent with at 2015 Regional Center assessment that also indicated intellectual disability eligibility was a more appropriate category for special education services to address Student's delays in cognitive, language, and adaptive skills.

#### September 2016 Triennial IEP

4. The triennial IEP team met on September 2, 2016. Mother, whose primary language was Spanish, attended and was supported by a Spanish language interpreter. The IEP team reviewed Student's behavioral history of acting out his anger by being

verbally and physically aggressive with others. The IEP team therefore included a behavior IEP goal, which was supported by accommodations and a positive behavior intervention plan.

5. The behavior plan addressed Student's name calling, use of profanity, slapping other students, and inappropriate "rough housing." The plan sought to have Student verbalize his anger instead of acting out. Strategies included Student asking for and taking more frequent breaks, opportunity to work independently in another room, and listening to music. Student would be provided individual counseling to teach Student better coping and communication skills. The strategies were supported by a point system, to be monitored in Student's special education class, so he could earn preferred activities or items.

6. The IEP team changed Student's eligibility to intellectual disability. Student was placed in a self-contained special education classroom, three periods a day, for specialized academic instruction in his core subjects. District would provide ninety minutes a month of individual counseling. Mother signed and agreed to the IEP.

#### December 5, 2016 Manifestation Determination

7. During the fall semester of the 2016-2017 school year, District suspended Student for five days for damaging school property and willfully defying authority. Subsequently, District suspended Student for three days because he attempted, and threatened, to cause personal injury. The most recent suspension resulted in Student being suspended beyond 10 days.

8. On December 5, 2016, District convened a manifestation determination meeting with relevant members of Student's IEP team. Mother was present and assisted by a Spanish language interpreter. Student was being suspended for harassing, threatening, or intimidating another student.

9. The manifestation determination team reviewed Student's intellectual

disability and the associated affects upon Student's decision making regarding his conduct. The team discussed with Mother the effects of Student's attention deficit hyperactivity disorder and associated medication. Mother did not see much benefit from ADHD medication. Student stated he understood what he was doing and that everything he did was for a reason. Student stated he had the ability to think about his actions, did so before he acted, and understood the consequence of his acts. Yet, he said he would have chosen to engage in the inappropriate behavior anyway. Student also expressed the desire to leave Fillmore Middle School and attend an alternative placement like Gateway, which was accessible through expulsion.

10. The team recognized that Student had demonstrated the ability to discuss his actions and reasonably understood the consequence of his actions. The team found that the conduct for which Student was being suspended was not a manifestation of his disability. The team also referred Student for an Intensive Social Emotional Services assessment by Ventura County Behavioral Health.<sup>4</sup> Mother agreed.

#### December 21, 2016 Manifestation Determination

11. On December 21, 2016, District convened a manifestation determination meeting with relevant members of Student's IEP team. Mother participated and was assisted by a Spanish language interpreter. Student was suspended for three days for damaging school property by writing graffiti in the boys' bathroom.

12. The team reviewed Student's disability, his understanding of his behaviors, and his ability to control his behaviors. The team discussed behaviors that were typical of Student's intellectual disability, as well as ADHD. Student was not taking medication.

---

<sup>4</sup> Ventura County Behavioral Health is part of Ventura County's Health Care Agency and contracts with District to provide students with educationally related social emotional services, such as assessments, therapy, and counseling.

He did not attend the meeting.

13. Student reported he was aware of what he was doing when he made the graffiti, knew the consequences of his actions, and made the choice to engage in the behavior anyway. He said he often becomes upset when he gets "caught." However, he was engaged in several other behaviors for which he was not caught or given a consequence. Student expressed a desire to leave Fillmore Middle School. Student said he had friends whose suspensions led to expulsion and they then went to an alternate placement.

14. The team concluded that Student demonstrated the ability to discuss his actions and reasonably understood the consequence of his actions. The team found and documented that the conduct for which Student was being suspended was not a manifestation of his disability.

#### February 21, 2017 Manifestation Determination

15. On February 21, 2017, District convened a manifestation determination meeting with relevant members of Student's IEP team. Mother was present and assisted by a Spanish language interpreter. Student was being suspended for causing, attempting to cause, or threatening physical injury. District called the manifestation determination review meeting because Student had previously been suspended more than 10 days in the school year. Student did not attend.

16. School psychologist Darlene Erhrich reviewed Student's recent suspensions and information collected in a manifestation determination report. The team discussed the consequences of his intellectual disability and that students with ADHD may be impulsive and act without thinking. In the school setting, Student engaged in coercion towards his peers as opposed to being coerced by them. Student did not engage in these behaviors by impulse and without thinking. Additionally, Student was observed participating in these aggressive behaviors across several days,



further evidencing that the behaviors were not of an impulsive nature.

17. The team concluded that Student's behaviors were not caused by, and did not have a direct and substantial relationship to, Student's disability. Further, District implemented Student's IEP and the conduct in question was therefore not caused by District's failure to implement the IEP.

18. The IEP team created a comprehensive behavior intervention plan, with behavior goals to help Student engage in appropriate behaviors. Student became more aggressive later in the school day. The IEP team discussed a modified schedule, with Student attending the first through fourth periods, while receiving all of his IEP services. Student's time in general education, which occurred after fourth period, would be reduced. The team noted that Ventura County Behavioral Health would complete Student's Intensive Social Emotional Services assessment by March 31, 2017.

#### February 2017 Intensive Social/Emotional Services Assessment

19. In January and February 2017, behavioral health clinician Maria Hurtado assessed and prepared an Intensive Social/Emotional Services assessment of Student. Ms. Hurtado worked at Ventura County Behavioral Health since 2008 and was a behavior health clinician since 2014. She held a bachelor's degree in Chicano studies and a Master of Social Work. Ms. Hurtado was a fluent Spanish speaker. She testified at the hearing.

20. Ms. Hurtado reviewed Student's educational file, IEP's, and the recent triennial psychoeducational assessment. She interviewed Student, Mother, and Student's teacher and consulted with the school psychologist. Ms. Hurtado observed Student in the classroom. Student displayed symptoms indicative of a mood disorder, such as difficulty controlling his emotions, unstable mood, low self-esteem, anxious feelings, depressed feelings, extreme anger, and irritable moods.

21. Ms. Hurtado found that Student's mood instability, defiant behavior,

inability to implement appropriate coping strategies, and low frustration tolerance interfered with his educational performance. She recommended goals to decrease the frequency and intensity of hostile and defiant interactions with peers and staff; and to develop and identify when to use appropriate coping skills (e.g., deep breathing, asking for a break, counting to ten, etc.) to regulate mood and stay on task. Ms. Hurtado recommended school based individual therapy, to encourage Student to accurately identify feelings and appropriate coping strategies.

#### February 28, 2017 IEP/Manifestation Determination Meeting

22. On February 28, 2017, the full IEP team met for purposes of making a manifestation determination regarding Student's most recent suspension and to review Ms. Hurtado's Intensive Social/Emotional Services assessment. Mother attended and was assisted by a Spanish language interpreter. Ms. Hurtado was present. Student did not attend.

23. Student received a three-day suspension for causing and threatening to cause physical injury, totaling 17 suspension days for the school year. Student had poked other students with toothpicks and was collecting and hiding toothpicks and a sewing needle. The IEP team concluded that the conduct was not impulsive and that Student thought about and planned his conduct. He understood the consequences of his actions but was undeterred, choosing to proceed. The team found that Student's behavior, which violated the code of conduct and resulted in suspension, was not a manifestation of his disability.

24. The IEP team adjusted behavior goals and the behavior intervention plan. The IEP provided individual therapy with Ms. Hurtado, weekly, for a total of 180 minutes a month. In addition, Student received 30 minutes a month of social work services, during which Ms. Hurtado would check in with teachers and families regarding Student's conduct and performance.

25. Mother was deeply worried that Student's suspension would result in his expulsion, which meant he would attend Gateway. Mother testified at the hearing. She believed that if Student was suspended for a 20th day, he would not only be suspended, but would be expelled. Mother asked the IEP team about alternatives, such as independent study and home hospital. District members of the team explained those alternatives. Mother believed that if Student was not in school, he could not violate student rules of conduct and be suspended. District team members emphasized that Student needed to receive his special education services.

26. The team therefore discussed having Student on a shortened school schedule, because his behaviors escalated after lunch. Student could begin the school day with physical education (Period 0) and then attend his next three periods of special academic instruction. Mother agreed and said that Student's aunt would be home at that time. Although not common, IEP teams have shortened school schedules to address problem behavior.

27. Ms. Hurtado started weekly individual therapy sessions with Student in February 2017. She also regularly talked with Mother, at least once a week. She let Mother know how Student was doing, including what was happening in school and his classes. She sought information about how Student was doing at home. Ms. Hurtado formed a close therapeutic relationship with Student and a strong professional connection with Mother.

#### May 2017 - Home Hospital

28. Student received a two-day suspension in April 2017, increasing his total suspended days to 19 for his eighth-grade school year. Mother therefore decided to have Student qualified for home hospital, which meant Student would remain home and receive five hours a week of special education instruction at home. Mother desperately wanted to avoid Student getting a 20th day of suspension, which she believed would

assure his expulsion and transfer to Gateway.

29. Home hospital required a written referral by a medical practitioner. Mother sought the referral from Sendi Flores, a certified physician's assistant with a family medicine practice at Community Memorial Hospital. Three medical doctors oversaw her practice. Ms. Flores had known Student since he was about eight years old. She testified at the hearing.

30. ADHD caused Student to have a short attention span and difficulties following directions and completing tasks. Ms. Flores treated Student for ADHD. She initially prescribed ADHD medication, but discontinued the medication because of side effects, including loss of appetite and difficulty sleeping. Mother also reported she and Student saw little benefit from the ADHD medication and Student refused to take it. Student stopped taking ADHD medication in July 2017.

31. Student's ADHD associated symptoms of depression and anxiety increased, as with many adolescents, as he approached his teen years. Ms. Flores agreed with Ms. Hurtado's observation that Student appeared to have a mood disorder, not otherwise specified, because of Student's difficulty with appetite, insomnia, and behavior. Ms. Flores did not diagnose Student with, or treat him for, anxiety or depression. She addressed Student's insomnia, which she believed was related to his depressive symptoms.

32. Ms. Flores knew Mother as a single parent who regularly made appointments after Student had difficulties at school. Ms. Flores was aware of Student's suspensions during eighth grade. She tried to connect with Student, encouraging him to stay in school and graduate. Student did not respond.

33. In Spring 2017, Ms. Flores provided the home hospital referral. District put Student on a home hospital program at the beginning of May 2017. Ms. Hurtado provided Student with his weekly therapy, once at home and the other sessions at her

office. Student remained in the home hospital program for the remainder of his eighth-grade school year.

#### June 6, 2017, Amendment to IEP

34. On June 6, 2017, District convened an administrative amendment IEP team meeting regarding Student's transition to Fillmore High School. For ninth grade, the IEP team placed Student in a special day class, mild to moderate, for his academic courses. Student's IEP otherwise remained unchanged. Mother consented to the IEP.

35. Student remained in the home hospital program for the remainder of his eighth-grade school year. Ms. Hurtado provided Student with his weekly counseling, once at home and the remaining sessions at her office. Student was not taking any ADHD medication as of summer 2017.

#### STUDENT'S NINTH GRADE, NOVEMBER 2017 CONDUCT, AND DECEMBER 2017 MANIFESTATION DETERMINATION

36. Student started ninth grade at Fillmore High School for the 2017-2018 school year on August 17, 2017. He was placed in special education teacher Allison Smith's mild-to-moderate special day class, first period, and a special education general biology class, fourth period. Ms. Smith was Student's case manager and was one of the individuals responsible for implementing Student's IEP. Ms. Smith, a credentialed mild-to-moderate education specialist, testified at the hearing.

#### August/September Annual IEP and Class Behaviors

37. The IEP team met for Student's Annual IEP, on August 31, 2017, but Mother did not appear. The meeting was reconvened on September 5, 2017; Mother attended and was assisted by a Spanish language interpreter. School personnel knew Mother as being reliable, responsive to school requests, attending and participating in all IEP meetings. Mother signed and approved the IEP.

38. The IEP team reviewed Student's high school schedule and present levels of performance. The team continued Student's accommodations and comprehensive behavior intervention plan, which included a teaching/action plan and active strategies to employ regarding problem behaviors. The targeted behavior outbursts included Student damaging school property, writing inappropriate things on himself and personal belongings, unexpectedly leaving the class without permission, threatening to cause personal injury to others, instigating fighting, using profanity, harassing other students by calling them names, and inappropriate physical interaction, such as choking. Student defied authority, verbally responded to directives in an inappropriate manner, wandered about the classroom without permission, and refused redirection. Most of the behaviors were daily, some multiple times a day. Since school had started two weeks before the meeting, Ms. Smith was able to update some of Student's behaviors.

39. The behavior intervention plan designated Student's favored and primary positive replacement behavior as checking in with a preferred adult, which he was doing about twice a day. In reinforcing Student's positive behavior, an identified strategy was for Ms. Smith to utilize a point system, where Student would earn points to enable participation in preferred activities. Ms. Smith could then collect and complete a daily point report, which she was to share with Mother. Another designated strategy included Student writing in a behavior reflection log.

40. Ms. Smith attempted to introduce Student to the point system before the IEP meeting. He refused to participate and told Ms. Smith to "go f--k herself." After the IEP, Student similarly responded and refused Ms. Smith's further attempts to start the point system. Also, Ms. Smith twice tried to get Student to write in a behavior log. Student aggressively refused each attempt, once throwing the logbook at Ms. Smith. Student would get upset with peers in Ms. Smith's class. He threw a chair, screamed profanities, threatened others by saying he would "kick their ass," and ripped a poster

from the wall.

41. Student would leave Ms. Smith's class to talk to a preferred adult at least twice a week, in addition to his scheduled counseling sessions. Student primarily talked to Ms. Hurtado, who was typically on campus. When she was unavailable, Student would speak to Ms. Siegel, who was now at Fillmore High School. Student would also talk to assistant principal Katrina Tafoya two to three times a week; sometimes he would just sit outside her office, taking some time alone without wandering the campus.

42. Ms. Smith observed Student's conduct improved as the semester progressed. His outbursts diminished. He was more responsive to completing a task, knowing he would thereafter be able to see Ms. Hurtado. A student must "buy into" the behavior intervention plan. Here, the positive behavior intervention plan was working, though Student refused to participate in the point reward system and behavior log strategies. The behavior intervention plan was not designed or intended to address behaviors associated with drugs. No one who knew or worked with Student at the school suspected that Student was in anyway connected with illegal drugs.

43. Ms. Smith, Ms. Siegel, and Student's biology teacher met in October 2017 to discuss Student's behaviors. They acknowledged Student's favored behavior intervention was leaving class and talking to a preferred adult. They agreed the teachers would continue to observe how Student responded to the other behavior strategies, such as the point system, accommodations, or behavior journal. They agreed to meet again and consider modifying the intervention plan at an IEP meeting.

44. The IEP required that District communicate Student's progress on his behavior intervention plan to Mother. Ms. Smith did not speak Spanish, so she asked the high school's Spanish-speaking community liaison Lupe Medina to help her communicate with Mother. Five to 10 times before November 2017, she sent Ms. Medina notes of what to tell Mother regarding Student's class conduct and

performance. Ms. Medina responded, informing Ms. Smith of what Mother said or that she left Mother a voicemail message. Ms. Smith also talked to Ms. Hurtado at least once a week, letting her know how Student was doing in class. She also asked Ms. Hurtado to share Ms. Smith's observations with Mother. Ms. Hurtado did as Ms. Smith requested. For example, Ms. Hurtado shared with Mother that Student refused to do the point reward system.

45. Ms. Hurtado met Student for his therapy in the two weeks that school was in session for August 2017. She was on vacation the first two weeks of September 2017 and Student did not show for the month's third session. Therefore, she provided only one therapy session in September. However, after her return, she provided additional sessions and made up the missed therapy by the end of October 2017. Ms. Hurtado provided all therapy sessions as required by Student's IEP while he was at Fillmore High School. Student made progress in applying coping skills, such as talking to an adult instead of getting aggressively angry.

46. Student received a two-day suspension, before November 2017, for being disruptive and defiant when his cell phone was taken away. Ms. Smith did not observe the incident but tried to incorporate his conduct into the behavior plan's coping skills goal.

#### Student's Conduct on November 28, 2018

47. In the late morning of November 28, 2017, assistant principal Tafoya received an email from a classroom teacher stating that Student smelled of marijuana. Ms. Tafoya knew Student, having attended his IEP. She possessed a professional level II teaching credential and an administrative credential, had worked since 2001 as a special education teacher at Fillmore High School, and became an assistant principal in 2014. She testified at the hearing.

48. Ms. Tafoya had Student brought to the school office, where she and the



campus resource officer (a Ventura County deputy sheriff) were waiting. She told Student he was brought to the office because he smelled of marijuana. Student said he had marijuana in his backpack over the weekend. Student allowed a search of his backpack, which had a strong marijuana odor, but no marijuana. Ms. Tafoya asked Student to empty his pockets, but Student declined. Ms. Tafoya had to leave, and principal Tom Ito continued the conversation.

49. Mr. Ito talked to Student, who then complied. Student had one marijuana vapor pen, two liquid refills of a marijuana concentrate, 11 Xanax pills, and five individually wrapped one-gram packets of Wax, which was an extremely potent concentrate of marijuana. Student admitted hiding the drugs in his waistband, pocket, and sock. When Ms. Tafoya returned, she found Student crying and the drugs on Mr. Ito's desk. Ms. Siegel arrived at the office and found Student with Ms. Tafoya and the resource officer.

50. Student wrote a short statement of about three lines, which was largely unreadable. He read aloud what he wrote and answered some questions. Student said that the drugs were for his personal use, not to sell. He claimed to have purchased the vaporizer pen the day before and brought it to school, bought the drugs at school during first period, and intended to use the drugs after school. He said that something bad happened with his friends the night before and he needed the drugs at that time. Though asked, he would not say from whom he claimed to have purchased the drugs. Ms. Siegel asked about what happened the night before, but Student refused to discuss the subject. The resource officer said that the amount and packaging of the drugs indicated that the drugs were for purposes of sale, not personal use. Also, the officer said that Student had been cited off campus, a few weeks before, for possession of controlled substances with intent to sell.

51. Student was suspended for five days for unlawfully possessing controlled

substances with the intent to sell. (Ed. Code, §§ 48900(c) and (j).) He was also recommended for expulsion for the unlawful possession of any controlled substance, except for the first offense, for the possession of not more than one avoirdupois (by weight) ounce of marijuana, other than concentrated cannabis, or the possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician. (Ed. Code, §§ 48915, subsection(a)(1)(C).) The Spanish-speaking resource officer called Student's home and told Mother or Student's sister about the suspension. The officer also issued Student another citation.

52. Student asked to meet with Ms. Hurtado. Ms. Hurtado and Student talked about what happened, primarily about him being suspended. Student did not tell her why he purchased the drugs. He was crying and covering his face; felt bad, saying he let people down. He acknowledged he should not have had drugs on the school campus and, when Ms. Hurtado was driving him home, apologized for having the drugs. He did not tell her anything of significance about what allegedly occurred the day before, other than his friends were sad about another friend. Ms. Hurtado concluded Student understood that what he did was wrong. He knew the consequences, saying he was going to get expelled and go to Gateway.

53. Ms. Hurtado informally spoke with Ms. Siegel and Ms. Tafoya about Student's conduct. They discussed whether the incident could be related to Student's disability. None had seen him under the influence of drugs. None had any suspicion that Student was involved with drugs. Ms. Hurtado's opinion was that his possession of drugs was not related to his disability. Student did not tell Ms. Hurtado that he was taking the drugs or what he intended to do with the drugs. Student never told Ms. Siegel, Ms. Smith, Ms. Tafoya, or Ms. Hurtado that he was taking drugs because he was depressed, was anxious, or could not sleep.

54. Mother initially testified under questioning by Student's counsel that she

felt that Student must be taking drugs to self-medicate for depression. On cross-examination, however, Mother acknowledged she did not know what “self-medication” meant. Mother never found evidence that Student used marijuana or other drugs. She was surprised he had drugs and had never seen him under the influence of drugs. Ms. Hurtado, who had a therapeutic relationship with Student, saw no indication that Student was self-medicating with drugs of any type, including marijuana or Xanax.

55. Though Ms. Flores had seen Student a couple of times over the few months before the incident, she never prescribed medication for depression or anxiety. She prescribed medication for Student’s sleeplessness and loss of appetite. Student was not taking any medication at the time of the incident. Ms. Flores did not know the identity of the drugs Student had in his possession until informed by Student’s attorney, two weeks before the hearing, even though she had seen Student two to three times in her offices after the incident. Ms. Flores said she was not surprised Student had marijuana and Xanax, considering his symptoms of anxiety and depression. However, Ms. Flores’s testimony in this regard carried little weight because she had never thought Student’s symptoms serious enough to warrant formal diagnosis and medication. She also had no knowledge that Student ever used illegal drugs.

#### Manifestation Determination Meeting of December 4, 2017

56. After November 28, 2017, Ms. Hurtado spoke to Mother a few times regarding how she and Student were doing. Ms. Hurtado and Mother discussed that there would be a manifestation determination meeting. Mother said she knew that Student was going to be expelled.

57. Ms. Siegel instructed the special education services clerk, Angel N. Cruz, to schedule a manifestation determination meeting regarding Student’s November 28, 2017 violation of a student code of conduct, because District intended to initiate expulsion proceedings. Ms. Siegel told Ms. Cruz who to include at the meeting. Ms. Cruz

was a native Spanish speaker and had worked for the District since 2000. Her duties included scheduling IEP and manifestation meetings, giving notice to all attendees. She testified at the hearing.

58. On November 30, 2017, Ms. Cruz completed a computerized input form, which produced a notice of the manifestation determination meeting, in both English and Spanish, for 4:00 p.m., December 4, 2017. Ms. Cruz called and talked with Mother, in Spanish. She told Mother about the manifestation determination meeting, reading the Spanish term exactly as indicated on the Spanish version of the notice, in order to review and discuss Student's behavior. She confirmed that Mother could attend at the scheduled date and time. After talking to Mother, Ms. Cruz then mailed the Spanish language version of the notice, with the long version of Parents' rights, on November 30, 2017. She also sent notice to the other attendees.

59. Mother testified that she never received any written notice of the manifestation determination meeting but, instead, only a phone call. She claims she was only told that there would be a meeting to discuss Student's problems at school. Mother said she was not told she could bring Student to the meeting. She was also told that there would be a later meeting regarding expulsion.

60. The manifestation determination team meeting convened as scheduled on December 4, 2017. Attending were: Ms. Tafoya, Ms. Siegel, Ms. Hurtado, Ms. Smith, and Mother, assisted by a Spanish language interpreter. District recommended that Student be expelled for possession of controlled substances with the intent to sell, which would result in a change of placement. The attendees acknowledged that the purpose of the meeting was to determine whether Student's behavior was caused by or substantially related to his disability or was a direct result of the District's failure to implement Student's IEP. Ms. Siegel was not surprised that Student did not attend. Student did not attend any of his IEP team meetings or previous manifestation determination review

meetings, although she knew he had once been directly asked to attend.

61. Ms. Siegel prepared a confidential psychological report for the manifestation determination meeting, dated December 2, 2017. She orally presented each section of her manifestation determination assessment report to the team, taking input and questions as she proceeded. Copies of the report were not distributed. She reviewed Student's cumulative educational file, special education documents, discipline record, health history, and social-emotional status. She observed Mother and the interpreter translating as she presented her report.

62. Ms. Siegel identified the drugs found on Student. The amount and packaging of the drugs indicated Student likely intended to sell the drugs. She reviewed Student's statements to Ms. Tafoya, the resource officer, and herself, on the day of the incident. The team discussed Student's claim about something happening with his friends the day before that made him feel bad. Ms. Siegel said she did not believe the drugs were for personal use. She reported the outcome of her conversations with Ms. Tafoya, Ms. Hurtado, Ms. Smith, and Student's teachers Janice Loya and Bobbi Roderick. She reported she twice talked on the phone with Mother, using Spanish-speaking counselor, Amalia Granados, as an interpreter. At that time, Mother said she was disappointed in Student's behavior and that he knew better.

63. Ms. Siegel referred to her triennial assessment of Student's social and emotional status. She considered if Student's possession of drugs was in anyway related to his characteristics of depression. She had not witnessed signs of anxiety apart from Student's ADHD related symptoms. No one indicated that Student had trouble sleeping at night. At the time of the incident, Student was not taking any medications.

64. Ms. Siegel reviewed Student's behavior intervention plan to address aggression, attention difficulties, conduct problems, and associated depressive symptoms. She discussed the intensive social-emotional services implemented to

address his behaviors. She shared that Student reported he did not like coming to Fillmore High School and wished he was back on home/hospital instruction. She reviewed the October 2017 meeting at which behavioral concerns and strategies were discussed to further clarify Student's behavior plan.

65. Mother cried or was teary-eyed during the meeting. Mother told the team Student was going through a depression. Otherwise, whenever a District team member asked Mother if she had questions or had anything to say, while Ms. Siegel presented her report, Mother repeatedly said no. Mother said that the interpreter did not interpret everything that was said. She did not identify who was not interpreted, when the interpreter did not translate, if the failure to interpret occurred more than once, or if the interpreter's actions caused her not to understand or participate.

66. Ms. Hurtado shared her professional opinion that Student's conduct was not caused by or related to his disabilities. She and the other District team members believed Student understood what he was doing and the consequences of his actions; he knew that his conduct was wrong. The team agreed that Student's conduct was planned. Student said he bought the drug paraphernalia the day before, brought it to school, purchased drugs at school, and intended to use the drugs after school. Student would not identify from whom he bought the drugs nor talk about what he said occurred with friends the day before. Student's own statement indicated that his conduct was not impulsive. The District team members found that Student's behavior was not caused by, or have a direct and substantial relationship to, Student's disabilities. When asked if she agreed, Mother said she preferred not to answer the question. She also said she had no questions or comments.

67. District team members stated they did not believe that Student's conduct was caused by the failure of District to implement his IEP. The entire team, including Mother, agreed that District implemented Student's IEP and that Student's behavior was

not a direct result of the District's failure to implement the IEP.

68. District members of the manifestation determination team concluded that Student's November 28, 2017 behavior of possessing controlled substances on campus, with the intent to sell, was not a manifestation of Student's disabilities. The meeting lasted one-and-a-half to two hours. Student's expulsion proceedings could proceed.

## LEGAL AUTHORITIES AND CONCLUSIONS

### INTRODUCTION – LEGAL FRAMEWORK UNDER THE IDEA<sup>5</sup>

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 (2006) et seq.<sup>6</sup>; Ed. Code, § 56000, et seq. Cal. Code Regs., tit. 5, § 3000 et seq.) The main purposes of the IDEA are: (1) to ensure that all children with disabilities have available to them with a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepares 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 student receiving special education services may be suspended or expelled from school as provided by federal law. (Ed. Code, § 48915.5, subd. (a).) If a

---

<sup>5</sup> Unless otherwise indicated, the legal citations in the introduction are incorporated by reference into the analysis of each issue decided below.

<sup>6</sup> All citations to the Code of Federal Regulations refer to the 2006 edition, unless otherwise noted.

special education student violates a code of student conduct, the local educational agency may remove the student from his/her educational placement to an appropriate interim alternate 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 of removal to a child with a disability who has been removed from his/her current placement for 10 days or less in the 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 1414(k).

3. Parents and local educational agencies may request an expedited due process hearing of claims based upon a disciplinary change of educational placement under 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 rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2).)

4. If the manifestation determination team determines the conduct is not a manifestation of the student's disability, or is not due to the failure to implement the student's IEP, then the local educational agency may use normal disciplinary procedures to address the incident in the same way as the procedures would be applied to non-disabled students. (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.)

5. The party requesting a due process hearing is limited to the issues alleged in the complaint unless the other party consents. (20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. §



300.511(d).) Subject to limited exceptions, a request for due process hearing must be filed within two years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request. (20 U.S.C. § 1415(f)(3)(C); 34 C.F.R § 300.511(e); Ed. Code, § 56505, subd. (1).) 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).)

6. A student may be suspended and recommended for expulsion for unlawfully possessing drug paraphernalia and controlled substances with the intent to sell. (Ed. Code, §§ 48900(c) and (j).) A student may be expelled for unlawful possession of any controlled substance, except for the first offense, for the possession of not more than one avoirdupois (by weight) ounce of marijuana, other than concentrated cannabis, or the possession of over-the-counter medication for use by the pupil for medical purposes or medication prescribed for the pupil by a physician. (Ed. Code, §§ 48915, subsection(a)(1)(C).)

#### ISSUE 1: DID DISTRICT COMMIT MATERIAL PROCEDURAL VIOLATIONS IN CONDUCTING THE MANIFESTATION DETERMINATION?

7. Student contends that District failed to hold a procedurally appropriate manifestation determination meeting, consistent with state and federal law, on December 4, 2017, warranting reversal of the team's decision. District asserts that it properly noticed and held the team meeting, fully and meaningfully considering whether Student's violation of a code of student conduct was related to his disability or District's failure to implement Student's IEP. As discussed below, Student did not prove by a preponderance of the evidence that District committed a material procedural violation in conducting the manifestation determination meeting.

8. When a local educational agency decides to change a special education

student's educational placement for more than 10 days as a result of a violation of a student code of conduct, the local educational agency, the parent and relevant members of the IEP team shall review all relevant information to determine whether the child's violation was a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e).)

9. The failure of a manifestation determination team to consider all relevant information is subject to the IDEA's harmless error analysis. (*Fitzgerald v. Fairfax County Sch. Bd.* (E.D. Va. 2008) 556 F.Supp.2d 543, 559; *Farrin v. Maine School Admin. Dist.* (D. Maine 2001) 165 F. Supp.2d 37, 51-55; *Danny K. ex rel. Luana K. v. Department of Educ., Hawai'i* (D. Hawai'i September 27, 2011, Civ. No. 11-00025 ACK-KSC.) 2011 WL 4527387, \*\*14-15.)

#### Issues 1(a) and 1(b): Failure to give proper notice

10. Student asserts in Issue 1(a) that District failed to provide proper notice of the December 4, 2017 manifestation determination meeting to Mother because the written notice was not a reasonable time before the District's proposal to initiate a change of placement (expel Student). District responds that Mother received proper notice, enabling Mother to attend and participate in the team meeting. Student failed to demonstrate that District's notice of the manifestation team meeting was procedurally insufficient or otherwise defective.

11. Student asserts that Mother did not receive written notice and was unaware of the meeting's purpose. The evidence does not support either assertion. Two days after Student's November 28, 2017 suspension, Ms. Siegel instructed Ms. Cruz to schedule and notice the manifestation determination meeting. On November 30, 2017, Ms. Cruz completed a computerized input form, which produced a notice of the manifestation determination meeting, in both English and Spanish, for 4:00 p.m., December 4, 2017. Ms. Cruz telephoned and spoke to Mother, in Spanish. She told

Mother about the manifestation determination meeting, reading the Spanish term exactly as indicated on the Spanish version of the notice, explaining the purpose of the meeting was to review and discuss Student's behavior. She confirmed that Mother could attend at the scheduled date and time. Ms. Cruz then properly mailed the Spanish notice to Mother, with the long Spanish version of Parents' rights, on November 30, 2017.

12. Mother testified that she did not receive written notice of the manifestation determination meeting but only a phone call. She claims she was only told that there would be a meeting to discuss Student's problems at school. Mother's testimony was not persuasive. Ms. Cruz unambiguously testified that she read the Spanish translation for "manifestation determination" meeting to Mother. Also, Mother had attended four prior manifestation determinations meetings within the year before; she was well aware that the purpose was to determine if Student's conduct was related to his disabilities or IEP implementation. Mother also attended and participated in the December 4, 2017 manifestation determination team meeting. Student did not provide persuasive evidence that District did not mail the notice or that Mother was unaware of the meeting's purpose. District gave Mother sufficient and proper notice of the manifestation determination review team meeting.

13. Student contends in Issue 1(b) that the notice was defective because District did not inform Mother of Student's right to attend the meeting as a relevant member of the IEP team. Mother testified she was not told she could bring Student to the meeting. However, the notice of the manifestation determination meeting, like those she had received before, stated Mother could bring anyone with knowledge regarding Student. Further, Mother knew that Student did not come to prior manifestation determination and IEP meetings, even when asked. Therefore, she was aware that Student could attend if he desired. Mother was sufficiently informed and aware that

Student could have attended the manifestation determination meeting.

14. Finally, Student did not submit evidence that if either alleged procedural insufficiency had occurred, there would have been a different outcome by the manifestation determination review team. Mother attended the meeting and, as discussed below, participated. She understood the purpose of the meeting, as evidenced by her prior conversation with Ms. Hurtado and her careful choice in answering the manifestation determination form questions at its conclusion (see Issue 3, below). Student did not submit evidence that Student would have attended the meeting if invited. Student further failed to provide evidence that, if he attended, he would have provided any information which differed from that presented and discussed at the meeting.

15. Accordingly, Student failed to meet his burden of proving by a preponderance of the evidence that District failed to give proper notice of the manifestation determination meeting or inform Parent of Student's right to attend. Further, Student did not submit persuasive evidence that either alleged error was material and would have affected the determination outcome. Student has failed to prevail on Issues 1(a) and 1(b).

Issues 1(c), 1(d) and 1(e): Failure to Meaningfully Discuss and Consider if Student's Conduct Was Related to His Disability or Failure to Implement His IEP

16. In Issue 1(c), Student contends that District did not meaningfully discuss and consider whether Student's possession of controlled substances with the intent to sell was related to his disability. District asserts that the manifestation determination team reviewed Student's IEP's, past assessments, disabilities, symptoms, behavior history, and implementation of his IEP, and meaningfully discussed and considered whether Student's conduct was related to his disability. The meeting took one-and-a-

half to two hours, further demonstrating meaningful consideration.

17. In Issue 1(d), Student contends that District did not meaningfully discuss and consider whether Student's possession of controlled substances with the intent to sell was related to District's failure to implement Student's IEP. District responds that the manifestation determination team reviewed Student's IEP's, implementation of his IEP and behavior intervention plan, and meaningfully discussed and considered whether Student's conduct was a direct result of District's failure to implement the IEP.

18. In Issue 1(e), Student claims that Student did not meaningfully discuss and consider whether or not Student's behavior intervention plan addresses Student's behavior or required modification.

19. The relevant information that must be reviewed at the manifestation determination includes the student's IEP, any teacher observations, and information provided by the parents. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e)). Failure to agree is not the same as failure to consider. Here, District demonstrated its team members complied and meaningfully considered if Student's conduct was related to his disability or caused by a failure to implement his IEP.

20. Regarding Issue 1(c), Ms. Siegel prepared a psychological report dated December 2, 2017 in preparation for the manifestation determination meeting. She identified the drugs found on Student. The amount and packaging of the drugs, indicating Student likely intended to sell the drugs. She reviewed Student's statements to Ms. Tafoya, the resource officer, and herself, on the day of the incident. She reported the outcome of her conversations with Ms. Tafoya, Ms. Hurtado, Ms. Smith, and Student's teachers Janice Loya and Bobbi Roderick. She twice talked on the phone with Mother, using Spanish-speaking counselor, Amalia Granados, as an interpreter. At the time of those conversations, Mother said she was disappointed in Student's behavior and that he knew better.

21. Ms. Siegel reviewed her September 2016 triennial assessment of Student's social and emotional status. She reviewed Student's cumulative educational file, special education documents, discipline record, health history, and social-emotional status. She reviewed and discussed Student's prior IEP's, current IEP, intellectual disability eligibility, ADHD diagnosis, associated symptoms, related services, intensive social emotional therapy, medication and health history, and the behavior intervention plan. She considered if Student's possession of drugs was in anyway related to his characteristics of depression.

22. Ms. Siegel orally presented each section of her manifestation determination assessment report to the team, taking input and questions as she proceeded. The team discussed Student's claim about something happening with his friends the day before that made him feel bad, so he bought the drugs to use after school. Ms. Siegel said she did not believe the drugs were for personal use. Ms. Hurtado, Ms. Tafoya, and Ms. Smith agreed.

23. Student asserts that the discussions were not meaningful because the team did not analyze whether Student was taking the drugs to self-medicate for his depression, anxiety, and lack of sleep. Yet, as more thoroughly discussed below in Issue 3, the team had no indication that Student was self-medicating. None of the attendees had reason to believe that Student was taking drugs. None of Student's assessments, IEP's, or educational records indicated Student had been diagnosed with, or prescribed medication for, depression or anxiety. Though Mother testified she thought Student might have been taking drugs to self-medicate, she admitted she did not know what "self-medicate" meant. She also never suspected Student had ever taken drugs. Student failed to present persuasive evidence that the team had reason to consider whether possession of the drugs was for self-medication.

24. The manifestation determination team meaningfully discussed and

considered whether Student's possession of controlled substances with the intent to sell was related to his disability. Student did not meet his burden of proof on Issue 1(c).

25. Regarding Issue 1(d), Student argues that District failed to implement Student's positive behavior intervention plan because Student was not participating in a point reward system, Mother was not receiving point reward system reports, and Student was not maintaining a behavior journal. Therefore, the failure to specifically discuss the intervention plan's point system and behavior journal meant District did not meaningfully discuss and consider its failure to implement the IEP.

26. Ms. Siegel reviewed Student's behavior intervention plan that was designed to address his aggression, attention difficulties, conduct problems, and associated depressive symptoms. She discussed the intensive social-emotional services implemented to address his behaviors. As more fully discussed in Issue 3, below, Student rejected the behavior plan's point system and behavior journal, two strategies designed to encourage Student to better cope with his impulsive outbursts. Student favored taking breaks to talk with a preferred adult and, as a result, his outbursts decreased and the plan was benefitting Student. Ms. Siegel referred to an October 2017 meeting at which behavioral concerns and strategies were discussed to further clarify Student's behavior plan.

27. Student did not provide evidence that the behavior intervention plan was not benefitting Student because Student rejected two out of several strategies. Further, Student provided no evidence that discussion regarding the point system and journal was necessary for determining if the plan was being successfully implemented or that such discussion would have changed the outcome. Ms. Smith, Ms. Hurtado, and Ms. Siegel all agreed that the plan was benefitting Student, despite his rejection of two strategies.

28. Student failed to meet his burden of proof by demonstrating by a

preponderance of the evidence that the team failed to meaningfully discuss and consider whether Student's possession of controlled substances with an intent to sell was caused by District's failure to implement Student's IEP or behavior intervention plan.

29. Regarding Issue 1(e), as discussed above in Issue 1(d) and below in Issue 3, the manifestation determination team discussed Student's behavior intervention plan and the behaviors that the plan was designed to address. The plan was benefiting Student.

30. The team did not discuss whether the intervention plan required modification. The statutory purpose of the manifestation determination meeting is to determine if Student's possession of controlled substances with an intent to sell was a manifestation of his disability, including whether the conduct was directly caused by a failure to implement his IEP. The meeting was not an IEP meeting. If the team determined there was a manifestation, the IEP team – not the manifestation determination team -- would then be obligated to address Student's behavior, including the creation or modification of a behavior intervention plan. (20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(f).) Here, the team determined Student's conduct was not a manifestation of his disability. Therefore, District was not obligated to modify or otherwise address Student's behavior intervention plan. Student did not meet his burden of proof on issue 1(e).

## ISSUE 2: DID DISTRICT DENY MOTHER THE ABILITY TO UNDERSTAND AND MEANINGFULLY PARTICIPATE BECAUSE DISTRICT DID NOT PROVIDE EFFECTIVE TRANSLATION OF MS. SIEGEL'S DECEMBER 2, 2017 REPORT?

31. Student asserts that Mother was unable to meaningfully participate in the manifestation determination meeting because District did not provide Mother with an effective Spanish translation of Ms. Siegel's December 2, 2017 report. Student cites to Educational Code, Code section 56341.5(i), which requires a district to ensure parent



understands the proceedings at a meeting by, if necessary, arranging for an interpreter when the parent's native language is other than English. Student argues that Mother was not given a Spanish translation of Ms. Siegel's December 2, 2017 manifestation determination report before or at the meeting and did not receive reliable interpretation during the meeting when the report was being discussed. Student's evidence failed to support his assertion.

32. Ms. Siegel assembled her December 2, 2017 report in anticipation of what needed to be presented and discussed at the December 4, 2017 manifestation determination team meeting. She did not recall distributing the written version of the report at the meeting; manifestation determination team's District members did not recall seeing or reviewing the written report before or at the meeting. Ms. Siegel orally presented her report, section by section, using the report to assure that she provided the necessary information and issues for the team discussion. Therefore, all the team members, including Mother, received the report in the same manner – via Ms. Siegel's oral presentation.

33. Student claims that the Spanish interpreter was unreliable, and that Mother was therefore unable to properly understand and participate in the December 4, 2017 meeting. Mother claimed that the interpreter did not interpret everything that was said. She did not identify who at hearing was not interpreted, when the interpreter did not translate, if the failure to interpret occurred more than once, or if the interpreter's actions caused her not to understand or participate. Student presented no relevant or credible evidence that the District-provided interpreter was deficient.

34. As Ms. Siegel presented each section of her report, she observed the interpreter translate for Mother. Team members, multiple times during the meeting, asked Mother if she wished to ask a question or say something. Mother declined, never asking that something be repeated or saying that she did not understand. After one-

and-a-half to two hours, the meeting was concluded. District team members stated they did not believe that Student's conduct was caused by the failure of District to implement his IEP. Mother preferred not to answer the question. The entire team, including Mother, agreed that Student's IEP was implemented and that Student's behavior was not a direct result of the District's failure to implement the IEP.

35. The evidence demonstrated that Mother received adequate Spanish interpretation, understood the proceedings, and was provided ample opportunity to, and did, participate. This was her fifth manifestation determination meeting in a year and Mother was very familiar with the issues to be discussed and decided. Her informed choices regarding the two questions asked of the team members at the meeting's conclusion further evidences Mother understanding and participation in the meeting.

36. Student failed to demonstrate, by a preponderance of the evidence, that District provided substandard Spanish interpretation that denied Mother the ability to understand and participate in the manifestation determination meeting.

### ISSUE 3: DID DISTRICT ERROR IN DETERMINING THAT STUDENT'S CONDUCT, WHICH WAS A VIOLATION OF A STUDENT CODE OF CONDUCT, WAS NOT A MANIFESTATION OF STUDENT'S DISABILITY?

37. Student contends his conduct on November 28, 2017, was caused by or directly related to his disability. Student also contends his conduct on November 28, 2017, was directly caused by District's failure to implement his IEP. District contends the manifestation determination team properly concluded that Student's possession of controlled substances with the intent to sell was not a manifestation of Student's disabilities.

38. A student's conduct is a manifestation of the student's disability if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability. (34 C.F.R. § 300.530(e)(i) & (ii).). A student's conduct is also a

manifestation of the student's disability if the conduct in question was the direct result of the local educational agency's failure to implement the IEP. (34 C.F.R. § 300.530(e)(i) & (ii).).

39. Regarding the first prong of the analysis, Student was eligible for special education as a child with intellectual disability, which means significantly subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior that adversely affects a child's educational performance. (Cal. Code Regs., tit. 5, § 3030(b)(6)). Ms. Siegel recommended at the September 2016 triennial IEP team change Student's eligibility to intellectual disability. Student also had a diagnosis of attention deficit hyperactivity disorder, with typically associated behaviors such as inattentiveness, inability to complete tasks, fidgeting, and difficulty following instructions. Student had a history of outbursts when he would impulsively become profane, toss furniture, threaten to harm others, and become generally aggressive. Beginning in February 2017, Student began intensive social/emotional services, receiving weekly therapy with Ventura County behavioral health clinician, Ms. Hurtado.

40. Student started ninth grade at Fillmore High School in August 2017 and was placed in the mild-to-moderate, first period, special day class of Ms. Smith, who was Student's designated case worker. He had a special education fourth period general biology class and was in general education for the remainder of his school day.

41. Student's September 2017 IEP addressed Student's impulsive behavior and outbursts with accommodations and a comprehensive behavior intervention plan. The targeted behavior included Student damaging school property, writing inappropriate things on himself and personal belongings, unexpectedly leaving the class without permission, threatening to cause personal injury to others, instigating fighting, using profanity, harassing other students by calling them names, and inappropriate physical interaction, such as choking. Student defied authority, verbally responded to directives

in an inappropriate manner, wandered about the classroom without permission, and refused redirection.

42. The behavior intervention plan was to provide coping strategies for impulsive outbursts and designated Student's favored and primary positive replacement behavior as checking in with a preferred adult, which he was doing about twice a day. In reinforcing Student's positive behavior, an identified coping strategy was for Ms. Smith to utilize a point system, where Student would earn points to participate in preferred activities. Ms. Smith could then collect and complete a daily point report, which she was to share with Mother. Another designated strategy included Student writing in a behavior reflection log.

43. Student continued to receive weekly therapy from Ms. Hurtado. He was observed to sometimes be depressed and anxious, which are comorbid symptoms of ADHD, especially with teens. District had no record of Student ever being diagnosed with, or treated for, depression or anxiety. Though Ms. Hurtado thought Student had some symptoms of mood disorder, not otherwise specified, she did not diagnose Student to have the disorder; neither did any other professional.

44. On December 4, 2017, the manifestation determination team evaluated Student's November 28, 2017 violation of possessing controlled substances on campus with an intent to sell. Student's statement indicated that his conduct was planned and premeditated. Student quickly said he did not have drugs to sell. He said he previously purchased the marijuana vapor pen, brought it to school, purchased the drugs, concealed the drugs in his clothing, and was going to use the drugs after school. He said that something bad happened regarding a friend the day before and he needed the drugs. He declined to identify the person from whom he claimed to have bought the drugs and refused to say what happened the day before.

45. Student was not under the influence of drugs at the time of incident.

Everyone – teachers, school staff, Ms. Hurtado, Mother – was surprised that Student was associated with drugs. No one, including Mother, had ever seen or suspected Student of using illegal drugs, such as marijuana and Xanax.

46. The amount of the drugs exceeded what one would have for personal use and the drugs were packaged for selling. A few weeks before, Student was cited off campus for possessing controlled substances for purposes of sale. Student's story about the drugs being for personal use was inconsistent with his conduct and the evidence.

47. The behaviors associated with Student's intellectual disability and ADHD were uncontrolled outbursts and impulsive behaviors. In contrast, Student's conduct in possessing controlled substances with the intent to sell was planned and premeditated. Student was aware that his conduct was wrong, that he would get in trouble if caught, and that he would then likely be suspended. This conduct was not consistent with the characteristics of his disabilities nor the impulsive behaviors and outbursts that were targeted by his behavior plan.

48. Student argued, for the first time on appeal, that he was using marijuana and Xanax to self-medicate and treat his disabilities of depression and anxiety, with associated sleeplessness. Student's contention was not supported by the evidence. Student failed to demonstrate that Student's symptoms of depression and anxiety were disabilities for which he required treatment or medication. Ms. Flores confirmed that Student had depressive and anxious symptoms, which are not uncommon with ADHD adolescents. Yet, she did not prescribe medication for depression and anxiety, but treated him for sleeplessness. Ms. Flores never diagnosed Student with depression or anxiety.

49. Ms. Hurtado had been providing therapy to Student since February 2017. Her testimony reflected a warm and caring therapeutic relationship with Student and was especially persuasive regarding Student's behaviors and conduct. She did not

believe that Student had disabilities of depression and anxiety for which he would take drugs to self-medicate.

50. Additionally, Student failed to submit direct or convincing evidence that he was using marijuana and Xanax to self-medicate. Other than Student's saying that he intended to use the drugs after school on November 28, 2017, Student did not offer any evidence that he ever used marijuana, Xanax, or any other illegal drug to self-medicate. Absent such evidence, Student's argument that he was self-medicating was not persuasive.

51. Student failed to meet his burden of proof. The District manifestation determination team members correctly concluded that Student's conduct was not caused by, or had a direct and substantial relationship to, his disabilities.

52. Regarding the second prong of the analysis, Student asserts that Ms. Smith's failure to employ the positive behavior point system and the behavior log was equivalent to failing to implement the behavior intervention plan. This argument was without merit. Student adamantly, profanely, and aggressively rejected Ms. Smith's attempts to start the point system or behavior log. Student's refusal did not mean that Ms. Smith did not pursue implementing these two strategies. More significantly, Student chose to use another identified positive behavior strategy, which was to take time out to talk to a preferred adult. Ms. Smith, Ms. Hurtado, and Ms. Siegel all agreed that, as a result, Student's impulsive outbursts were decreasing. The behavior intervention plan's goal of providing Student with useful coping strategies was working. Ms. Smith, Ms. Siegel, Ms. Tafoya, and Ms. Hurtado opined that Ms. Smith's inability to employ the point reward system and the behavioral log did not contribute in any way to Student's conduct of possessing controlled substances.

53. Student also argues that Mother did not receive regular reports of Student's positive behavior point system, to which she was entitled under the

intervention plan. However, Ms. Smith regularly communicated with Mother by directly providing updates on Student's progress through Spanish-speaking Ms. Medina. Also, Ms. Hurtado spoke to Mother on Ms. Smith's behalf, including discussing Student's refusal to do the point reward system. Mother was informed of Student's performance and progress on a regular basis, as intended by the intervention plan.

54. The manifestation determination team reviewed the implementation of Student's IEP. The District team members concluded, and the evidence supported a finding that, District fully implemented Student's IEP. Student's conduct was not caused by District's failure to implement Student's IEP. Mother agreed with their conclusions.

55. Student failed to meet his burden of proof that the manifestation determination team erred in deciding that Student's conduct was not a manifestation of Student's disabilities.

## ORDER

1. Student's request for relief is denied.
2. The December 4, 2017 determination that Student's November 28, 2017 possession of controlled substances, with the intent to sell, was not a manifestation of Student's disabilities is affirmed.

## PREVAILING PARTY

Education Code section 56507, subdivision (d), requires that this Decision indicate the extent to which each party prevailed on each issue heard and decided in this due process matter. District prevailed on all issues.

## RIGHT TO APPEAL THIS DECISION

This was a final administrative Decision, and all parties are bound by it. Pursuant to Education Code section 56506, subdivision (k), any party may appeal this Decision to

a court of competent jurisdiction within ninety (90) days of receipt.

DATED: March 21, 2018

\_\_\_\_\_  
/s/

CLIFFORD H. WOOSLEY

Administrative Law Judge

Office of Administrative Hearing