

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENTS ON BEHALF OF STUDENT,

v.

KERN HIGH SCHOOL DISTRICT.

CASE NO. 2024060613

EXPEDITED DECISION

JULY 24, 2024

On June 14, 2024, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Kern High School District. Student's complaint requested an appeal of a school disciplinary manifestation determination decision, and thus proceeded on an expedited timeline. Administrative Law Judge Tiffany Gilmartin heard this matter by videoconference on July 9, 10, 11, 12, and 15, 2024.

Attorneys Lindsay Appell, Munmeeth Soni, and Stephen Peters represented Student. Parents attended all hearing days on Student's behalf. Attorneys Monica Batanero and Anna Wood represented Kern High. Kern High Special Education Director Jennifer Anderson attended all hearing days.

On July 15, 2024, the record was closed, and the matter submitted. The ALJ granted the parties' joint request to submit written closing briefs during the submittal time. The parties timely submitted closing briefs on July 17, 2024.

EXPEDITED ISSUES

1. Did Kern High School District fail to conduct an appropriate manifestation determination review on April 4, 2024, by:
 - a. Failing to review all relevant information in Student's file; and
 - b. Erroneously determining Student's conduct on March 20, 2024, was not a manifestation of his disability?

JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, its regulations, and California statutes and regulations. (20 U.S.C. § 1400 et. seq.; 34 C.F.R. § 300.1 (2006) et seq.; Ed. Code, § 56000 et seq.; Cal. Code Regs., tit. 5, § 3000 et seq.)

A student receiving special education services may be suspended or expelled 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, school personnel may remove the student from his or her educational placement without providing services for a period not to exceed 10 days per school year, provided typical children are not provided services during disciplinary removal. (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1) & (d)(3) (2006).)

For disciplinary charges in placement greater than 10 consecutive school days (or that are a pattern that amounts to a change in placement), the disciplinary measures applicable to students without disabilities may be applied to special education student if the conduct resulting in discipline is determined not to have been a manifestation of the special education student's disability. (20 U.S.C. § 1415(k)(C); 34 C.F.R. § 300.530(c) (2006) & 300.536(a)(1)(2) (2006).)

The parent of a child with a disability who disagrees with the manifestation determination may appeal the decision by requesting a hearing. (34 C.F.R. § 300.532(a) (2006).) The 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) (2006).)

The party requesting the hearing is limited to the issues alleged in the complaint, unless the other party consents, and has the burden of proof by a preponderance of the evidence. (20 U.S.C. § 1415(f) (3)(B); Ed. Code, § 56502, subd. (i); *Schaffer v. Weast* (2005) 546 U.S. 49, 57-58, 62 [126 S.Ct. 528, 163 L.Ed2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).)

Here, Student filed the complaint and bore the burden of proof. The factual statements in this Decision constitute the written findings of fact required by the IDEA and state law. (20 U.S.C. § 1415(h)(4); Ed. Code, § 56505, subd. (e)(5).)

Student was 16 years old and in 10th grade at the time of hearing. Student resided within the Kern High School District's geographic boundaries at all relevant times. Student was eligible for special education under other health impairment. According to Student's school records, including his operative IEP, Student had

attention deficit hyperactivity disorder, called ADHD, with difficulties in behavioral control, communication, social distractions, and boundaries. Student received educationally related mental health counseling, called ERMHS, and had a goal in behavior and ERMHS. Student had a medical diagnosis of Autism Spectrum Disorder, Level 1, mild in degree with mild impairment in social interaction and moderate impairment in restricted and repetitive behaviors. Student also received support from the Kern County Regional Center and private mental health services. Academically, Student is on a diploma track and participates in Advanced Placement courses. Student also has a behavior intervention plan, called a BIP, that addresses Student's history of

- making threats,
- inappropriate comments and gestures,
- sharing inappropriate images, and
- inappropriate uses of technology during and after school.

Student was suspended for five school days starting on March 22, 2024, pursuant to Education Code Section 48900.7, terrorist threat against school officials or school property. On June 26, 2024, the Kern High School District board notified Parents of its intent to expel Student for the remainder of the 2023-2024 school year and the fall semester of the 2024-2025 school year.

THE MARCH 20, 2024, INCIDENT

The March 20, 2024, incident occurred at the end of baseball practice. Witness statements were introduced into evidence at hearing. They were hearsay. Hearsay evidence may be used to supplement or explain other evidence, although it is insufficient to support a factual finding. (Cal. Code Regs., tit. 5 § 3082, subd. (b).)

Student's role in the incident was corroborated by his Parents, district personnel, and law enforcement. Neither Student nor any other baseball team member testified at this hearing.

Student's behavior involved going into a teammate's backpack and taking out his cellphone while that teammate was running laps, using the teammate's cellphone to call the 911 emergency system, reporting an active shooter at a neighboring high school, alleging to be an eight-year-old boy to emergency personnel, and then departing the scene in a different direction than normal.

The direct evidence established baseball practice was concluding and the team members were completing their clean-up tasks. Student's end-of-practice duty was to sweep out the junior varsity dugouts. Coach Daniel Ruiz walked to the adjoining varsity field to retrieve the Gator, a small multi-use vehicle. He was away for approximately three minutes. The public address system notified personnel of an active shooter situation on campus. Ruiz did not know the phony emergency threat was made by Student. Ruiz hustled his team to the parking lot to safely release them to their parents. He was then approached by Bakersfield Police who inquired about two of his players, one of which was Student. Ruiz confirmed both players were on the team.

Student utilized his teammate's cellphone to make an emergency call to 911 at approximately 6:41 p.m. on March 20, 2024. The call was routed to the Bakersfield Police Department. Dispatchers took a report that there was an active shooting occurring at Centennial High School, a neighboring school. The caller claimed to be an eight-year-old boy. The cellphone location alerted police to Stockdale High School, where Student originated the call, and Bakersfield Police deployed units to Stockdale as well. School officials initiated lockdown procedures at Stockdale High School as there

were multiple campus activities occurring that evening. The police report concluded two student witnesses observed Student removing the cellphone from his teammate's bag and making the call.

ISSUE 1a: DID KERN HIGH FAIL TO REVIEW ALL RELEVANT INFORMATION IN STUDENT'S FILE?

Student contends Kern High failed to review all relevant information in his file during the April 4, 2024, manifestation determination review meeting. Kern High contends the manifestation determination review satisfied the procedural safeguard requirements as established in the IDEA when it convened a manifestation determination review within 10 days of suspending Student. This meeting was attended by

- both Parents,
- a general education teacher of Student,
- Student's case manager,
- his program specialist,
- his mental health clinician,
- his behaviorist,
- the school psychologist, and
- a school administrator.

The manifestation determination review meeting must involve a review of all relevant information in Student's file. Relevant information includes Student's IEP, teacher observations, and any relevant information provided by Parents. (34 CFR 300.530(e)).

Kern High assigned Kacy McCalla, a school psychologist, to review and prepare a manifestation determination report. Documents reviewed in preparation of her report included

- Student's IEP,
- behavior plan,
- cumulative file,
- multi-disciplinary reports,
- teacher feedback,
- discipline file,
- attendance,
- transcripts and grades,
- Student's schedule,
- independent assessments, and
- Parent input.

McCalla also reviewed a June 12, 2019, report diagnosing Student with Autism Spectrum Disorder, Level 1, mild in degree with mild impairment in social interaction and moderate impairment in restricted and repetitive behaviors and ruling out Student's previous diagnosis of ADHD, oppositional defiant disorder, disruptive mood dysregulation disorder, and intermittent explosive disorder. She also reviewed Student's initial psychoeducational evaluation report from 2018, as well as Student's most recent psychoeducational evaluation report from February 24, 2022.

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Student was eligible for special education under the category of other health impairment. Student's annual IEP team meeting was held on March 20, 2024, at 8:30 a.m. The 911 call that subjected Student to discipline and the manifestation determination review, occurred after school on the same day the IEP was drafted and signed. Parents consented to the IEP on March 20, 2024.

The March 20, 2024, IEP was signed approximately eight hours prior to the incident occurring. Discussed below in greater detail, evidence and witness testimony support Ruiz was provided and trained on Student's December 8, 2023, IEP and BIP. Ruiz was not a member of Student's IEP team on March 20, 2024, and no evidence demonstrates he had yet received a copy of the freshly consented to IEP of March 20, 2024. However, Student contends Ruiz failed to implement the environmental supports of Student's BIP. Specifically, Student contends Ruiz failed to "maintain supervision and intermittent proximity [of Student] to encourage on task behavior, focus on instruction, use of district approved websites, and discourage inappropriate comments or gestures."

A preliminary question arises, namely which IEP was operative at the time the incident occurred? Pursuant to the IDEA, an IEP must be implemented as soon as possible after development. (Ed Code section 56043(i)). In this instance, it is not necessary to determine if the same day is as soon as possible as a matter of law. Rather, Kern High held itself to that same-day standard. At the manifestation determination review meeting, McCalla and the other team members, including Parents, analyzed among other things, whether Student's conduct resulted from Kern High's failure to implement the March 20, 2024, IEP. Accordingly, for the purposes of this decision, the March 20, 2024, IEP is deemed to have been operative at the time the incident occurred. As it is also briefly explained below, the analysis regarding the IEP's implementation

would have not led to a different result even had the prior IEP governed. There was no change to supervision and proximity factors in the environmental factors section in Student's March 20, 2024, IEP and BIP from the December 8, 2023, IEP and BIP that Ruiz was trained on.

Student's March 20, 2024, IEP provided the following: 30 minutes monthly of specialized academic instruction consultation; 60 minutes monthly of individual counseling, and 30 minutes monthly of behavior intervention services. His accommodations included

- warnings before transitions,
- preferential seating,
- contact with Parents when behaviors occurred,
- options for activity when work is completed, and
- breaks.

He was also provided with an increased verbal response time. Student also received a behavior intervention plan to address his history of engaging in inappropriate comments and gestures, defined as making threats, sending or showing inappropriate images and statements, and inappropriate use of technology both during and outside of school hours. Student had four goals, two related to transition, one for educationally related mental health services, and one for behavior. Student otherwise participated in the general education curriculum 99 percent of the time.

The Kern High members of the manifestation determination team unanimously agreed with McCalla's recommendation and decided that Student's conduct was not caused by or had a direct or substantial relationship to Student's disabilities on March 20, 2024, and therefore not a manifestation of Student's disabilities. They also

found that Student's March 20, 2024 conduct was not a direct result of Kern High's failure to implement the IEP and allowed the expulsion to proceed. All manifestation determination team members that testified at hearing, except Parents, believed McCalla provided adequate information for the team to appropriately determine whether Student's behavior was a manifestation of his disabilities.

Student argued Kern High failed to review all relevant information in his file because the manifestation determination team reviewed only McCalla's report and Student's most recent IEP. Student further argued the report did not include IEP goals or present levels or include information from Student's BIP or standardized testing scores that showed Student had a social skills deficiency, and years of teacher's reports, IEPs, and 504 plans. Moreover, Student argues the fact the report failed to determine the length of the 911 call and failed to include peer statements that claimed Student's actions a joke. Finally, Student argued the inclusion of a statement that the 911 call was accompanied by text messages to 911 is a fatal error to the manifestation determination report.

Kern High argued the manifestation determination team reviewed all relevant documentation. Kern High further argued the law does not require each team member to review each document in Student's file individually.

Student's argument is unpersuasive. Student failed to establish any legal requirement for the manifestation determination team members to individually review every document in Student's file. McCalla was appointed to prepare the manifestation determination report, that testimony and evidence supported, she thoroughly prepared.

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The evidence established that the manifestation determination team members knew Student and understood Student's behavior over time. The following Kern High personnel participated in Student's April 4, 2024 manifestation determination review:

- Tamika Henry, behaviorist;
- Kelli Wells, program specialist;
- Katherine Graves, mental health clinician;
- Teddy Armijo, assistant principal;
- Kacy McCalla, school psychologist;
- Tyus Thompson, general education teacher;
- Carri Rohrbach, school nurse; and
- Mickey Padilla, case carrier.

Five of the eight Kern High members of Student's April 4, 2024, manifestation determination review team also participated in Student's November 7, 2023, manifestation determination review.

Tamika Henry, Student's behaviorist, and Kelli Wells, program specialist, attended all four of Student's manifestation determination reviews and all of Student's annual IEP team meetings since Student matriculated at Kern High during the 2022-2023 school year.

Mickey Padilla, Student's case carrier; and Tyus Thompson, Student's general education English teacher participated in both Student's November 7, 2023 and April 4, 2024 manifestation determination review meetings and Student's March 20, 2024 IEP team meeting.

Katherine Graves, Student's mental health clinician, attended both Student's March 20, 2024 IEP team meeting and the April 4, 2024 manifestation determination review.

In fact, the evidence overwhelmingly established Kern High personnel were familiar with the relevant information in Student's records. This decision makes no findings on the validity of the previous manifestation determination review meetings. The information is relied upon to establish the familiarity the team members had with Student, his needs, and access to prior records even before reviewing McCalla's report.

Contrary to Student's argument, the manifestation determination review team did consider the input of Student's teachers and service providers. Student provided no evidence that Kern High failed to consider any recent mental health changes, hospitalizations, periods of emotional and behavioral dysregulation or new diagnosis made through his personal medical providers.

The April 4, 2024, manifestation determination review included Student's behavior intervention plan. Student raises for the first time in his closing brief that Student's behavior intervention plan failed to address the predictors and functions of his behavior. No finding is made as to this argument as it is not at issue in the instant matter, but may be relevant to Student's non-expedited claims.

Student argues the manifestation determination team failed to determine the length of the 911 call is evidence that the team failed to consider all relevant information. Again, Student's argument is unpersuasive. It is undisputed Student took another student's cellphone without permission, called the emergency line, hid his identity, claimed a school shooting was happening at another campus, and then left the

scene to avoid the police. The duration of the call has no bearing on the decision of the manifestation determination review team. Furthermore, the inclusion of the allegation Student additionally sent text messages to 911 was not fatal. Dean of Student Behavior and Supports at Stockdale High School Stefanie Bye clarified the error during testimony. There is no evidence the manifestation determination review team relied on the fact text messages were sent to 911 as part of the decision-making process.

Finally, Student argues that some peers thought his behavior was a joke. Six members of Student's junior varsity baseball team provided written statements. The written statements do not support the position his teammates thought the 911 call was a joke. The two students' statements who referenced joking did not witness the incident. Rather, they described thinking the story was untrue and must be a joke, not that Student's conduct was intended as a joke.

Student did not meet his burden to demonstrate Kern High failed to review all relevant information in Student's file.

ISSUE 1b DID KERN HIGH ERRONEOUSLY DETERMINE STUDENT'S CONDUCT ON MARCH 20, 2024, WAS NOT A MANIFESTATION OF HIS DISABILITY?

Student contends Kern High improperly determined that Student's conduct on March 20, 2024, was not caused by or had a direct and substantial relationship to Student's disability related needs in the area of social skills, attention seeking behaviors, and lack of boundaries. Student further maintained the incident was caused and directly and substantially related to Student's impulsivity. Kern High improperly focused on

whether Student knew right from wrong, exaggerated the number of steps involved in the incident, and erroneously determined that the behavior was not impulsive as a result. Student argued Kern High cannot deny Student requires special education services to address Student's social skills needs. Student also argued that his conduct was the direct result of Kern High's failure to implement Student's March 20, 2024, IEP.

Kern High asserts that Student's behavior was not impulsive but deliberate and did not have a direct and substantial relationship to Student's disability. Kern High also contends the March 20, 2024, IEP was implemented.

Conduct is a manifestation of the student's disability if the conduct was caused by, or had a direct and substantial relationship to, the child's disability, or if the conduct was the direct result of the school district's failure to implement the student's IEP. (34 C.F.R. § 300.530(e)(1) & (2). (2006.)

Student's argument misconstrues the law to equate needs in social skills, attention seeking behavior, and lack of boundaries with the disabilities of ADHD and autism. This is not the legal inquiry at issue. Moreover, Student cites no authority establishing that the manifestation determination review team's failure to consider all of Student's needs individually is fatal to its determination. Moreover, the evidence established that the members of the manifestation determination review team knew well Student's needs in social skills, attention seeking behavior, and lack of boundaries.

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In *Doe v. Maher* (9th Cir. 1986) 793 F.2d 1470, fn. 8, (*Maher*) *affd. Sub. nom. Honig v. Doe* (1988) 484 U.S. 305 [98. L.Ed.2d 686], the Ninth Circuit discussed the meaning of “conduct that is a manifestation of the child’s handicap.” The court explained:

As we use them, these phrases are terms intended to mean the same thing. They refer to conduct that is caused by, or has a direct and substantial relationship to, the child’s handicap. Put another way, a handicapped child’s conduct is covered by this definition only if the handicap significantly impairs the child’s behavioral controls ... it does not embrace conduct that bears only an attenuated relationship to the child’s handicap If the child’s misbehavior is properly determined not to be a manifestation of his handicap, the handicapped child can be expelled. [Citations.] When a child’s misbehavior does not result from his handicapping condition, there is simply no justification for exempting him from the rules, including those regarding expulsion, applicable to other children To do otherwise would amount to asserting that all acts of a handicapped child, both good and bad, are fairly attributable to his handicap. We know that that is not so.

The evidence established that the members of Student’s manifestation determination review team, including Parents, correctly posited whether the conduct was caused by or had a direct and substantial relationship to Student’s disability, specifically ADHD.

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STUDENT'S PREVIOUS DISCIPLINARY ISSUES

Student's school records and witness testimony established that the members of Student's manifestation determination review team were aware of Student's behavior issues. Since matriculating at Kern High, Student had 11 reported behavioral issues that warranted Parental contact and discipline. He was the subject of three other manifestation determination reviews. Student argues the previous manifestation determination reviews demonstrate Student exhibited difficulty appropriately connecting to his peers, reading social cues, and controlling his behavior. No finding is made about the previous manifestation determination reviews. The last incident involving Student that rose to Parental contact and discipline was on November 28, 2023, where Student was disciplined for showing his mental health clinician a drawing of male genitalia he made while sitting in her office. In the 113 days between incidents, Student's behavior moderated, and he had zero reported incidents.

KERN HIGH'S CONDUCT CHARGES

Kern High suspended Student on March 22, 2024, for five days. On June 26, 2024, Scott Odlin, Director II of Instruction gave notice to Parent of the Governing Board's decision to expel under Education Code section 48900.7, terroristic threats on school property.

STUDENT'S CONDUCT WAS NOT CAUSED BY, OR A DIRECT OR SUBSTANTIAL RELATIONSHIP TO, STUDENT'S DISABILITIES

This Decision holds that there was no direct or substantial relationship between Student's ADHD and Student removing a cellphone from his teammate's backpack,

calling the emergency 911 line, and reporting a school shooting at another campus, while disguising himself as an eight-year-old boy. Student's conduct in this instance was not impulsive but calculated and required multiple steps to complete.

ATTENTION DEFICIT AND HYPERACTIVITY DISORDER

Student's conduct was not caused by or a direct substantial relationship to Student's ADHD. Student's cognitive ability is rated at the very high range on his current psychoeducational evaluation report. He is eligible for special education under other health impairment. Student struggles with distractibility and displaying unwanted behaviors in the classroom. Student's maladaptive behaviors have included inappropriate sexual comments and images and utilizing technology to send threatening or inappropriate messages to others.

His behavior goal baseline on his March 20, 2024 IEP established he was able to interact in a socially appropriate way to gain peer attention without any prompting. Student also had a mental health goal that required him to utilize his learned skills to refocus his attention to school tasks when he notices himself being off-task or distracted while around peers. Student's ADHD manifests as inappropriate comments and gestures and utilizing technology to share inappropriate images that can be threatening or sexually explicit.

Student's expert Jason Degtyrev holds a Doctor of Psychology in Educational Psychology testified on Student's behalf. There is a discrepancy in spelling of Degtyrev's name between his curriculum vitae and the Student's table of contents. For purposes of

this decision, the spelling used on Degtyrev's curriculum vitae will be used. Degtyrev is also employed full time as a school psychologist for the San Marcos Unified School District.

Degtyrev testified Student's conduct was caused by and had a direct and substantial relationship to his disabilities. Degtyrev agreed Student's BIP addressed Student's distractibility and impulsive verbalization.

He misrepresented the supervision element of Student's BIP that called for staff to maintain supervision and intermittent proximity. Instead, he claimed implementation of Student's BIP required Student to be closely monitored at all times. Degtyrev is the only witness who claims Student was prompted by his peers to steal another student's cellphone and place a false emergency call claiming that an active shooting situation was occurring at a neighboring high school. As noted, no observers corroborated this version of events.

What significantly undermined Degtyrev's credibility was his willingness to downplay the seriousness of Student's actions. Early on he referred to Student's false emergency call as "silly." When simply stringing school names like Columbine, Parkland, Uvalde, and Sandy Hook together leads most Americans to immediately think of school shootings, it defies logic that a false active shooter call could be credibly characterized as "silly." Moreover, his testimony was a contortionist act of circular testimony and logical fallacies. Degtyrev met Student for the first time on July 5, 2024, on the eve of hearing. He spent approximately one hour with Student. He then met with Student's Parents for approximately one and a half hours. He spent five hours reviewing Student's records. He never observed Student in a school environment or provided any type of

assessment. Degtyrev's opinions were speculative and unreliable. All these things negatively impacted Degtyrev's persuasiveness and the reliability of his opinions in this matter. Overall, Degtyrev's testimony is given little weight.

Conversely, Student's behaviorist Tamika Henry's testimony was consistent with the evidence. Henry worked as Student's behaviorist since he matriculated at Stockdale High School. Henry was a trusted adult for Student. She spent two years developing a rapport with Student. Henry reported Student never engaged in inappropriate or disrespectful behavior with her. Her testimony was reflective of the respect she demonstrated to Student while implementing his BIP. Her testimony was very credible and given significant weight.

Henry determined Student's behavior on March 20, 2024, was calculated. Henry supported her position with a clear explanation of her reasoning. Specifically, when Student breached the privacy of another student by going into that student's bag to steal his cellphone the behavior was not impulsive. Student had numerous opportunities to off-ramp his behavior. Student then made a 911 call on his teammate's cellphone and when emergency dispatch answered Student claimed to be an eight-year-old boy, lied about a school shooting taking place, and claimed the location was another school in the district. These steps taken in the aggregate demonstrate Student's behavior was calculated and not impulsive.

Student argues his manifestation determination team cannot focus on whether Student knew right from wrong. More specifically, the manifestation determination team cannot take Student's cognitive abilities into account. Student's argument is not persuasive. Student is a highly intelligent 16-year-old. He is not, for example, an intellectually disabled or an exceptionally young child unable to understand the severity

of calling 911 because he does not know better. Moreover, he cannot explain away a terroristic threat as a manifestation of his disability when the behavior is nothing more than an attenuated relationship to his actual disability.

Furthermore, Student's actions were not impulsive. Student's conduct demonstrated deliberate calculation, but the evidence did not demonstrate Student's deliberate calculation was a manifestation of ADHD as opposed to any other non-disability related rationale for engaging in such behavior.

AUTISM

Student also argued that the team's conclusion was wrong because in addition to ADHD, Student had a Level 1 medical autism diagnosis. Student asserted that his conduct was also caused by or had a direct or substantial relationship to his medical autism diagnosis. Student received a private medical autism diagnosis from Dr. Nick Garcia in June 2019. Dr. Garcia identified Student's deficits as difficulty reading social cues, limited eye contact, difficulty utilizing social and emotional reciprocity, low tolerance to routine changes, cognitive rigidity, and deviations from rules. Dr. Garcia did not testify at the hearing.

Katherine Graves, Student's mental health clinician, testified the opportunistic nature of Student's actions were inconsistent with behaviors expected of someone with autism. Graves testified she observed Student engage in anti-social behavior that is not related to his autism. Graves is a trusted adult for Student. She was candid about the strengths and weaknesses of her clinical relationship with Student. She recognized Student would only share with her information he wanted Graves to know. She also recognized Student would often fail to provide information if he believed it to be

negative. One example she gave was when she knew in advance Student had used his father's work computer to access pornography. When she met with Student, Graves testified it took her initiating the discussion about Student's use of his father's work computer for Student to admit to the behavior. Graves' testimony was thoughtful and consistent with the evidence, and knowledgeable of Student's mental health and disabilities. Her testimony was given significant weight.

Degtyrev's testimony was speculative and circular and as discussed above given little weight. Student did not meet his burden to demonstrate the actions of March 20, 2024, were caused by or had a direct and substantial relationship to his ADHD or medically diagnosed autism.

WAS STUDENT'S VIOLATION OF THE SCHOOL CODE OF CONDUCT ON MARCH 20, 2024, A DIRECT RESULT OF KERN HIGH'S FAILURE TO IMPLEMENT STUDENT'S IEP?

Student contends Kern High failed to implement Student's March 20, 2024 BIP because Ruiz failed to maintain supervision and intermittent proximity to Student resulting in a material failure to implement Student's IEP. Kern High's failure to implement the IEP, including the BIP, caused the behavior for which Student is being disciplined. Kern High maintained the IEP and BIP were implemented throughout the 2023-2024 school year. Student failed to show any direct relationship of any IEP or BIP failure to Student's conduct.

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STUDENT'S MARCH 20, 2024 CONDUCT WAS NOT A DIRECT RESULT OF ANY FAILURES OF KERN HIGH TO IMPLEMENT STUDENT'S IEP

Student's annual IEP team meeting was held on March 20, 2024, in the morning. This is the same day as the incident in question. Parents consented to the IEP and Kern High determined that IEP was the operative one for the incident and subsequent manifestation determination review.

The evidence established Kern High ensured all staff and service providers received Student's prior IEP. Student's case carrier Mickey Padilla emailed all of Student's teachers a copy of his IEP at a glance and behavior intervention plan at the beginning of the school year. She sent an updated email with the IEP at a glance and Student's BIP on December 12, 2023, following a December 8, 2023 IEP team meeting.

Student's March 20, 2024 BIP carried over the December 8, 2023 BIP environmental support requirement that staff maintain supervision and intermittent proximity to encourage on-task behavior, focus on instruction, use of district approved websites, and discourage inappropriate comments or gestures.

Dean Bye forwarded a copy of the December 12, 2023, email to Ruiz. She also printed him a copy and met with him personally to review Student's IEP and BIP.

As discussed above, the evidence established Ruiz was familiar with Student's BIP's supervision requirements. The evidence further established that the modifications to the March 20, 2024 BIP did not change Ruiz's supervision and proximity requirements. On the day of the 911 call, baseball practice was winding down. Ruiz assigned each player an end-of-practice task. Student's task was to sweep out the dugouts. Ruiz's task was to drag the infield with a Gator that was stored on the adjacent varsity field.

Student argued his expert's Degtyrev interpretation of the environmental support statement required Student to be under constant supervision and staff must periodically position themselves next to Student. However, Student's argument is misplaced. If Degtyrev's interpretation is to be believed, Student would require essentially a one-to-one adult aide.

The evidence showed Ruiz maintained supervision of his junior varsity team including Student. He could see his players while he walked to the adjacent field. Moreover, the evidence established it took Ruiz approximately three minutes to fetch the Gator. Student does not meet his burden to establish Ruiz failed to implement Student's IEP by fetching the Gator from an adjacent field.

Moreover, if an argument can be made Kern High failed to implement the environmental factors in Student's BIP at the time, Student failed to show a direct connection between Student's behavior and any BIP implementation. Student's environmental factors were designed to minimize Student's misuse of inappropriate websites, changing usernames or grades on computers, prohibiting Student from accessing other student's electronic accounts while doing group assignments, and allowing Student to complete an alternative task when working on activities that involve sensitive subjects. None of these environmental concerns raise the specter of Student stealing another student's cellphone, placing a fake emergency call, while claiming a shooting is occurring at another school site, and he is an eight-year-old boy.

In sum, Student did not meet his burden of proof in this appeal. The evidence established that the manifestation determination review team considered all relevant information in Student's file. The evidence further established that Student's conduct on

March 20, 2024, was not a manifestation of his disability. Specifically, the conduct was not caused by nor had a direct relationship to ADHD or autism. It was also not the result of Kern High's failure to implement his IEP.

CONCLUSIONS AND PREVAILING PARTY

As required by 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.

ISSUE 1a:

Student failed to prove Kern High failed to review all relevant information in Student's file.

Kern High prevailed on Issue 1a.

ISSUE 1b

Student failed to prove that Student's March 20, 2024, conduct was caused by, or had a direct or substantial relationship, to Student's disabilities.

Kern High prevailed on Issue 1b.

ORDER

1. The April 4, 2024, manifestation determination that Student's conduct was not caused by, or a direct or substantial relationship to, Student's disabilities is affirmed.

2. The April 4, 2024, manifestation determination that any failure to implement the IEP was not a direct result of Student's conduct is affirmed.
3. All relief sought by Student from the expedited hearing is denied.

RIGHT TO APPEAL THIS DECISION

This is a final administrative decision, and all parties are bound by it. Pursuant to Education Code section 56505, subdivision (k), any party may appeal this Decision to a court of competent jurisdiction within 90 days of receipt.

Tiffany Gilmartin

Administrative Law Judge

Office of Administrative Hearings