

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

PARENT ON BEHALF OF STUDENT,

v.

ORCUTT UNION SCHOOL DISTRICT.

CASE NO. 2025060356

EXPEDITED DECISION

August 1, 2025

On June 10, 2025, the Office of Administrative Hearings, called OAH, received a due process hearing request from Student, naming Orcutt Union School District, called Orcutt. The complaint contained expedited and non-expedited issues. OAH set the expedited and non-expedited matters for separate hearings. This Decision addresses only the expedited claims.

Administrative Law Judge Rita Defilippis heard this matter by videoconference on July 8, 9, 10, 11, 14, and 21, 2025. The Administrative Law Judge is called ALJ.

Attorney Daniel Shaw represented Student. Attorneys Alyssa Masterson, Brian Elliot-Pekrul, and Julia Baker, were also present on all days of hearing. Parents attended all hearing days on Student's behalf. Attorney Kidd Crawford represented Orcutt. Susan Salucci, assistant superintendent of Orcutt, attended all hearing days on Orcutt's behalf.

On July 21, 2025, the last day of hearing, the ALJ allowed the parties to file closing arguments by July 31, 2025, at the parties' request, but did not continue the matter. The parties were ordered to file their closing briefs by 3:00 p.m. on July 31, 2025. Orcutt timely submitted its closing brief on July 31, 2025. Student did not file his closing brief until 4:37 p.m. on July 31, 2025. Student gave no explanation for the late filing. Therefore, Student's closing brief was not considered. The record was closed and the matter was submitted for decision on July 31, 2025.

EXPEDITED ISSUE

1. Did Orcutt conduct an inappropriate manifestation determination at the May 5, and 14, 2025, manifestation determination meetings by:
 - a. Inaccurately determining Student's conduct was not related to his disability; and
 - b. Failing to consider all relevant information?

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JURISDICTION

This hearing was held under the Individuals with Disabilities Education Act, referred to as IDEA, 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.) The main purposes of the IDEA are to ensure:

- all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living, and
- the rights of children with disabilities and their parents are protected. (20 U.S.C. § 1400(d)(1); See Ed. Code, § 56000, subd. (a).)

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.Ed.2d 387]; and see 20 U.S.C. § 1415(i)(2)(C)(iii).) Here, Student filed the complaint and has 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 12 years old and a rising seventh grader at the time of the hearing. Student attended Orcutt pursuant to an inter-district transfer. Student was eligible for special education under autism as his primary eligibility category and emotional disability as his secondary eligibility category.

ISSUE 1(a) AND 1(b): DID ORCUTT CONDUCT AN INAPPROPRIATE
MANIFESTATION DETERMINATION AT THE MAY 5, AND 14, 2025
MANIFESTATION DETERMINATION MEETINGS BY INACCURATELY
DETERMINING STUDENT'S CONDUCT WAS NOT RELATED TO HIS
DISABILITY AND FAILING TO CONSIDER ALL RELEVANT INFORMATION?

Student contends his conduct on April 15, 2025, and May 9, 2025, for which he was disciplined, was caused by, or had a direct and substantial relationship to Student's disabilities. Student asserts the manifestation determination team's inaccurate determination otherwise was the result of its failure to consider all relevant information and unsupported speculation that Student's conduct on April 15, and May 9, 2025, was due to social maladjustment, and not his multiple disabilities.

Orcutt contends Student's conduct on April 15, and May 9, 2025, for which Student was disciplined, was accurately determined to be unrelated to his disabilities. Orcutt, instead, asserts Student's conduct on April 15, and May 9, 2025, was related to Student's social maladjustment and not his disabilities. Orcutt maintains it considered sufficient relevant information to support its manifestation determination conclusions.

Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq. (2006), 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. (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 their

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).)

If a special education student violates a code of conduct and the local educational agency decides to change the educational placement of the student for more than 10 days, as a result of the violation of the code of conduct, the local educational agency must meet the requirements of 20 U.S.C. § 1415(k), by conducting a manifestation determination review within 10 school days of such a decision. (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).) At the manifestation determination meeting, the local educational agency is required to consider all relevant information in the student's file, including the individualized education program, called IEP, any observations of teachers, and any relevant information from the parents, to determine if the conduct was caused by or had a direct and substantial relationship to the student's disability, or was the direct result of the district's failure to implement the student's IEP. If either of these determinations are made by the manifestation team, the conduct shall be determined to be a manifestation of the child's disability. (20 U.S.C. § 1415(k)(1)(E)(i) and (ii); 34 C.F.R. § 300.530(e)(1) and (2).)

A parent of a special education student may appeal a school district's determination that particular conduct resulting in a disciplinary change of placement was not a manifestation of the child's disability by requesting an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. 300.532(a) & (c).) 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).) The rules for a due process hearing under title 20 United States Code section 1415(k), must be consistent with those for other IDEA hearings. (34 C.F.R. § 300.532(c)(1)(a) (2006).)

Before the conduct at issue in this matter, Student had been suspended for a total of 10 days as the result of four different behavior incidents in the 2024-2025 school year. Student was suspended for further violations of Orcutt's code of conduct on April 15, 2025, which caused his total suspensions for the 2024-2025 school year to exceed 10 days. Accordingly, Orcutt held a manifestation determination review meeting, as required by 20 U.S.C. § 1415(k). On May 9, 2025, Student was suspended again for a violation of Orcutt's code of conduct, also necessitating a manifestation review meeting due to suspensions of over 10 days in the 2024-2025 school year. This expedited hearing concerns the legality of Orcutt's manifestation review decisions which found Student's conduct in both the April 15, and May 9, 2025, incidents to be unrelated to his disabilities.

This decision holds, based on the preponderance of the evidence, that both manifestation review teams inaccurately determined Student's conduct for which he was disciplined, was not a manifestation of his disabilities and that the May 5, 2025, manifestation determination team failed to consider all relevant information.

STUDENTS DISABILITIES AND BEHAVIORAL HISTORY

Student has diagnoses of autism, bipolar disorder, oppositional defiant disorder, and attention-deficit/hyperactivity disorder. Student was diagnosed with autism spectrum disorder at age three. At age six, Student's pediatrician documented Student's diagnoses to include autism, bipolar disorder, and attention-deficit/hyperactivity

disorder. At age six Student was prescribed medication and was receiving outside mental health services. Student's January 2024 triennial psychoeducational evaluation included Student's diagnosis of oppositional defiant disorder.

Student's January 2024 triennial evaluation scores were highly indicative of autism and emotional disturbance. On autism measures, based on both teacher and Parent ratings, Student's scores were most indicative of autism in the areas of adult socialization, behavioral rigidity, sensory sensitivity, and the scale for autism consistent with the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition. On emotional disability scales, based on teacher and Parent ratings, Student's scores were highly indicative of emotional disability in the areas of unsatisfactory interpersonal relationships, inappropriate behavior and feelings, unhappiness and depression, and schizophrenia and related disorders of thought. Based on all raters' responses, there was no indication Student presented with social maladjustment. Following Student's January 2024 triennial assessment, Student's IEP team determined he met the eligibility criteria under the categories of autism, emotional disability, and other health impairment, specifically bipolar disorder, attention-deficit/hyperactivity disorder, and oppositional defiant disorder.

In January 2024, Orcutt also conducted a functional behavior assessment. Valeria Ramirez-Gomez, a board-certified behavior analyst, completed the assessment. At the time of the assessment Student was 10 years old and attended a mild/moderate special day class taught by Special Education Teacher Steven Whitehair. At that time, Student

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spent most of his time in the special day classroom but attended physical education, music, and art with general education peers in the afternoon. A record review included Student's 2021 behavior intervention plan which targeted

- verbal behaviors of yelling, screaming, threats to others and threats of self-harm with example, "I'm going to kill myself";
- physical aggression;
- elopement;
- property destruction; and
- sleeping.

Past behaviors were noted to be disrobing, which was still occurring in the home.

Parent reported to Ramirez-Gomez that Student threatened violence or suicide when asked to do a non-preferred activity like getting up or going to bed; threatened to destroy things, evidenced by holes all over the walls of the house; and threatened to stab the babies, referring to Student's young siblings. Teacher Whitehair reported Student's behavior to include

- aggression,
- threats,
- noncompliance,
- struggle with flexibility, and
- liking to be in control.

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Student struggled with following directions, working extended periods of time and on any long academic task, social skills, coping skills, and following the rules of a game. Student was verbally communicative as to his wants and needs, and growled when angry. Student's triggers included

- transitions,
- interruption of routine,
- negative social interactions,
- when limits are set or consequences imposed,
- when redirected,
- embarrassed,
- not having preferred items such as his muscle shirt, bucket hat, or soda.

Whitehair reported Student purposely distracted other students, struggled with empathy, and would count down to give staff time to give Student what he wanted.

Based on the functional behavior assessment, a behavior intervention plan was developed with target behaviors of

- physical aggression;
- property aggression/destruction;
- wandering the classroom;
- verbal behavior of threats to others;
- threats of self-harm;
- cursing ("I'm going to f* you up"); and
- noncompliance/refusal.

Student's behavior served all four functions of behavior: escape/avoidance; access to preferred item/activity; attention; and automatic reinforcement or emotional release. The need for the behavior intervention plan was extreme.

ORCUTT FAILED TO CONSIDER ALL RELEVANT INFORMATION IN THE MAY 5, 2025 MANIFESTATION DETERMINATION

APRIL 15, 2025 BEHAVIOR INCIDENT

On April 15, 2025, Student engaged in conduct that subjected him to discipline. The evidence established that there were essentially two incidents, one involving sexual comments to peers in one location, and an explosive episode later in the classroom.

"During music class, [Student] unsolicitedly stroked the shoulders, arms, and hands of two female students. He stared at their chests and said to them, 'You are the type of fry I would eat out.' [Student] then stuck out his tongue and shook his head to simulate oral copulation towards the female students. [Student] left music and went back to his classroom, became escalated and the class was evacuated. [Student] barricaded himself in the room and took two pvc pipes and threatened serious injury to anyone who would try to enter the room. Additionally, [Student] said to Principal Dollahite, 'I will shove this pipe up your ass if you come in here (the classroom).'"

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Student was suspended for two days for the April 15, 2025 behavior incident for violating the following education code sections:

- 48900.2: sexual harassment, and
- 48900(a)(l): Caused, attempted to cause, or threatened serious physical injury to another person.

MANIFESTATION DETERMINATION REVIEW

Orcutt held a manifestation review team meeting on May 5, 2025. The conduct on April 15, 2025, for which Student was suspended was described in two settings on the school campus, music classroom and Student's special education classroom. This combined conduct was the basis of Student's suspension as described in the manifestation determination report and the conduct at issue in the manifestation determination review team meeting. Thus, Orcutt was required to consider the combined conduct to determine if it was a manifestation of Student's disabilities.

There was no reference in either the manifestation determination report, or the manifestation review team discussion regarding whether Student's April 15, 2025 conduct of causing, attempting to cause, or threatening serious physical injury to another person, by barricading himself in the classroom, and taking two pvc pipes and threatening serious injury to anyone who would try to enter the room, and saying to the Principal, "I will shove this pipe up your ass if you come in here (the classroom)" was a manifestation of his disabilities. Rather, the Orcutt members of the manifestation determination review team focused exclusively on the sexual comments and gestures. Student's mother urged the team, to no avail, to consider Student's conduct in both conduct violations resulting in his suspension.

As Orcutt failed to consider Student's explosive classroom behavior after the music room incident in its manifestation determination review, Student met his burden to establish that Orcutt failed to consider all relevant information as to Student's April 15, 2025 conduct. Thus, Student established the manifestation determination review was deficient. Student sustained his burden on Issue 1(b).

Orcutt failed to consider all of Student's April 15, 2025 conduct that resulted in Student's suspension. The team never analyzed whether the explosive classroom behavior was a manifestation of or unrelated to his disability.

As Student met his burden establishing Orcutt's manifestation determination review was deficient, it is not necessary to determine if the team accurately found the sexual comments and gestures were unrelated to his disabilities. However, this being an appeal of that decision, the determination is reviewed below.

STUDENT'S CONDUCT ON APRIL 15, 2025, INCLUDING SEXUAL HARASSMENT BEHAVIOR AND THREATENING PHYSICAL INJURY WAS A MANIFESTATION OF HIS DISABILITIES

Tyler Elswick testified at hearing. Elswick has worked as a paraeducator/classroom aide for students with disabilities over the last five years. Elswick was assigned as Student's one-to-one aide on March 28, 2025. Elswick had been Student's one-to-one aide for less than two weeks by April 15, 2025. Elswick received specific training on Student's behavior intervention plan, Student's behavior needs, and Student's behavior history.

Elswick's testimony evidenced his understanding of his role as Student's one-to-one aide and responsibilities in terms of identifying when he should step in and provide direct and close support, and when to give Student space from a further distance. Elswick documented his observations of Student's behaviors on an online chart, which was admitted as evidence at hearing. His testimony regarding the events at issue in this case were consistent with his documentation of Student's behavior at the time it occurred. Elswick regularly and promptly reported concerning behavior observations to supervising staff, and sought specific guidance from staff in the midst of a behavior incident to best support Student. Elswick's testimony at hearing was thoughtful, responsive, and factual, and evidenced an unbiased, neutral reporting of events at issue in this matter. His testimony was therefore accorded great weight.

Elswick was present as Student's one-to-one aide on April 15, 2025, during his music class. Prior to Student's conduct in music class at issue in this hearing, Elswick observed Student in close proximity to other students in class and engaging in verbal exchanges appearing to be silly and typical of middle school student interactions. The students were in each other's personal space, including touching one another. Elswick observed the communications to escalate from friendly to argumentative. Elswick stepped in between Student and his class peers and supported Student to step back and directed Student by saying, "Let's not do that" to prevent a potential fight. Elswick then moved away from Student to give Student space due to Student's upset from the incident. The teacher dismissed the class, and the students lined up by the door. The students continued to converse in line.

Student was talking to students in front of him and behind him. He was wearing a shirt from the food chain In-N-Out which had the words "small fry" on it. Elswick observed Student to say to a girl near him, "You're the type of fry I would eat out." The girl exclaimed, "Ew! [Student] wants to eat me".

Up until this point, Elswick did not have any concerns regarding Student as things seemed to be normal. Elswick also observed Student to make a gesture whereby he placed his fingers in a V shape over his mouth while sticking out and wiggling his tongue. Elswick immediately intervened and asked Student whether everything is alright. Elswick did not want to further embarrass Student, or other students, so he did not ask Student more questions.

The students left the music classroom and Elswick walked Student back to his special education class at which time Elswick took his lunch break. Elswick did not debrief the music room incident with Student. Elswick was not present when Student escalated in his classroom shortly after his arrival when his teacher prompted him to get to work.

When asked about the music class statement and gesture, Elswick responded that Student's statement came out of nowhere and appeared to him to be impulsive. Elswick contrasted this statement with examples of other statements Student has made that appear to be aggressive and not impulsive such as threats of harm to others. Elswick perceived the comment and gesture to be more like "smack talk". Elswick offered an example of a similar impulsive statement made by Student in the past to be when he suddenly stated, "Who's your daddy? I'm your daddy" while playing a game of four square with peers at recess. Elswick described the impulsive statements to appear to

come out of nowhere. Elswick did not observe the alleged touching or staring at the other Student's breasts which he stated was the likely result of his vantage point viewing Student from the side.

TESTIMONY OF SCHOOL PSYCHOLOGIST SAMANTHA FIELD

Samantha Field, Orcutt's school psychologist, testified at hearing regarding her experience with Student, her manifestation determination review, and her participation in Student's manifestation review team meeting on May 5, 2025. Field earned a bachelor's degree in December 2018, and a master's degree in school psychology in May 2022, both from California State Polytechnic University, Humboldt. Field holds a pupil personnel services credential in school psychology. She received crisis prevention intervention certification from the Crisis Prevention Institute. Field also holds a clinical training certification in the administration of the Autism Diagnostic Observation Schedule-2nd edition Introductory.

Field is employed by Orcutt as a school psychologist, where she has worked since August 2022. She worked as a school psychologist intern at South Bay Union School District during the last year of her master's program, from August 2021 to May 2022. Field has conducted approximately 180 evaluations, 45-60 of which involved autism special education eligibility determinations, 20-30 of which involved emotional disability and other health impairment special education eligibility determinations. In her career, Field conducted one manifestation determination in the 2023-2024 school year before conducting the manifestation review determinations at issue in this decision.

Following Student's April 15, 2025 behavior incidents, Field was asked by her supervisor, Christy Callaghan, Orcutt's director of special education, to conduct a manifestation determination review of Student's April 15, 2025 conduct. Callaghan encouraged Field to conduct interviews and data review but told Field she did not believe sexual harassment was related to Student's disability. Field began her manifestation determination review on May 2, 2025.

Field's manifestation determination report dated May 2, 2025, was admitted into evidence. The evidence established that Field reviewed Student's educational history, Student's operative individualized education program, evaluations, and discipline record to determine the types of behaviors with which Student struggled. Specifically, Field included 12 prior discipline incidents from May 12, 2022, to November 2, 2024. The prior discipline incidents included

- causing, attempts to cause, or threats to cause serious physical injury to another person;
- willfully using force or violence on another person;
- committing an obscene act or engaging in habitual profanity or vulgarity; and/or
- causing or attempting to cause damage to school or private property.

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Field reviewed Student's operative behavior intervention plan, previously discussed herein, which targeted Student's

- physical aggression;
- property aggression or destruction;
- wandering the room;
- verbal behavior of making verbal threats to others including use of profanity; and
- non-compliance and refusal.

Field interviewed Principal Dollahite. Field did not interview Parents, Student, Student's treating psychiatrist, mental health counselor, or one-to-one aide.

Field determined Student's conduct on April 15, 2025, to be unrelated to Student's disabilities of autism spectrum disorder, attention-deficit/hyperactivity disorder, or bipolar disorder. Field also considered Student's history of anxiety and panic attacks which were noted in Student's school medical file. Field's reasoning that Student's April 15, 2025 sexual harassment conduct was not related to his bipolar disorder was that Student was reported by multiple witnesses to be regulated and not significantly angry or agitated.

Field speculated that Student may have specifically targeted a student who had reported being inappropriately touched by Student during lunch recess the prior day while playing a game of tag, which had yet to be substantiated. Student was reported to be in control of his emotions at the time of the incident and not dysregulated until Student returned to his classroom afterwards. An additional staff interaction preceded

the escalation that resulted in the class evacuation. These reasons indicated to Field that Student was not experiencing a significant mood swing in music class that can be characteristic of his bipolar disorder.

Field opined Student's behavior was not related to his disabilities of attention-deficit/hyperactivity disorder or autism spectrum disorder because Student has not previously shown a pattern of sexually inappropriate behaviors with others in past discipline incidents. Additionally, Field noted that Student likely possessed knowledge of appropriate and inappropriate touch, such as asking staff members or others if he could give them a "side hug" and waiting until he had permission to do so. Field also noted Student's average pragmatic language scores meant he understood social language and concepts such as nonverbal communication, sarcasm, and picking up on social cues in various situations.

Field's testimony evidenced that she viewed the question presented through a narrow lens. Moreover, Field was extremely new in her career, having conducted only one prior manifestation determination review. Her supervisor, Callaghan, who had much more experience, told Field even before any information had been reviewed that Callaghan believed the conduct was not a manifestation of Student's disability. The evidence established Callaghan's opinion tainted Field's independent review. This was evidenced by Field omitting conduct other than sexual harassment from her analysis, and her sparse discussion of possible relation of Student's sexual harassment behavior to his multiple disabilities. Field reasoned that Student's sexual behavior was not impulsive behavior related to his disability of attention-deficit/hyperactivity disorder. She determined such because there was no prior pattern of sexually inappropriate behavior discipline incidents.

Her opinion was not persuasive. Impulsive behavior, which she defined as acting without thinking, can occur without such a discipline history. For these reasons, combined with Field's lack of experience in conducting manifestation determinations, Field's testimony regarding her opinions and conclusion that Student's conduct was not a manifestation of his disabilities was not persuasive. Her analysis was tainted by her supervisor's opinions and her explanation ruling out Student's disability of attention-deficit/hyperactivity disorder was not reasonable. Accordingly, her testimony was accorded little weight.

TESTIMONY OF DR. RANDAL BALL

Student called Dr. Randal Ball to testify as to his opinion regarding whether Student's conduct on April 15, and May 9, 2025, for which Student was disciplined, was related to Student's disabilities. Dr. Ball earned a doctorate in counseling and educational psychology (Ed.D.) from the University of San Francisco in 1988. Dr. Ball received his Master of Arts degree in education from California Polytechnic State University in San Luis Obispo in 1977 with a major in counseling and an emphasis in developmental psychology. Dr. Ball received his Bachelor of Arts degree from California Polytechnic State University in 1975 with a major in social science.

Dr. Ball has been licensed in California as a marriage and family therapist since 1988. As such, Dr. Ball is trained and qualified to diagnose mental disorders, practice psychotherapy, and administer and interpret psychological tests. Dr. Ball is also a board-certified behavior analyst at a doctoral level of competency as determined by the Behavior Analyst Certification Board which meets the standards for national certification programs as established by the National Organization for Competency Assurance in

Washington, D.C. Dr. Ball has provided in-service training and workshops to California Polytechnic State University and various agencies, school districts and local and state organizations regarding

- behavioral parent counseling,
- special education,
- functional analysis and functional behavioral assessment,
- positive behavior intervention,
- Learning Disorders,
- Oppositional Defiant Disorder,
- ADHD and
- Autism Spectrum Disorder.

Dr. Ball has been in private practice since 1990 specializing in evaluation and treatment of children and adults with psychological and developmental disabilities. He is an evaluator for independent education evaluations for functional analysis, behavioral, psychoeducational, and inclusion assessments. Dr. Ball worked for San Luis Obispo County Office of Education from 1988 to 2009 as a mental health consultant and behavior consultant. From 1988 to 2011, Dr. Ball was contracted with Tri-Counties Regional Center as a behavior analyst. Dr. Ball worked as a mental health and behavioral consultant with Head Start of San Luis Obispo County for 19 years.

Dr. Ball has conducted approximately 500 psychoeducational assessments over 40 years. Most of the psychoeducational assessments conducted included assessment of mental health. He has conducted at least 200 autism evaluations, and over 1,000 functional analysis or functional behavior assessments. Dr. Ball conducted approximately

800 assessments to determine special education eligibility under other health impairment, and about a dozen independent educational evaluations to determine special education eligibility under emotional disturbance only.

Dr. Ball's testimony evidenced his extensive training and experience. Dr. Ball testified as both a behaviorist and psychotherapist, regarding Student's multiple disabilities as they relate to the evolution of Student's behavior and response to interventions over time, up to the incidents at issue in this matter. His testimony was understandable, corroborated by Student's educational records, and well-reasoned. Based on Dr. Ball's extensive training and experience in behavior analysis, his experience in the diagnosis of mental health disorders, assessments for special education eligibility determinations, and as a marriage and family therapist, his testimony and professional opinions and conclusions were accorded great weight.

Dr. Ball reviewed Student's educational records including

- Student's IEP's dating back to preschool,
- his behavior intervention plans,
- Student's 2021 and 2024 psychoeducational evaluations,
- two manifestation determination reports,
- a work completion log,
- a school/home communication log,
- anecdotal notes,
- IEP progress reports, and
- one or two functional behavior assessments.

He also conducted interviews of Student and Parents.

Dr. Ball stressed the importance of reviewing a student's early IEP's in evaluating whether a student's conduct in a discipline incident is related to their disabilities.

Factors to consider include:

- how long the behavior has been going on,
- when it began,
- what has been done to address the behavior,
- how the function of the behavior has changed over time,
- what interventions have been effective and ineffective, and
- how well established the behavior is in a student's repertoire for dealing with situations that arise.

In other words, students who exhibit problematic behavior engage in the behavior because it is functional for them, fills a need for them, and serves as a skill for them. Determining the function of the behavior and changes in the function over time, provides insight into understanding a student's behavior. Behaviors that are reinforced continue. Behaviors that are not reinforced extinguish, and a student must replace the extinguished behavior with another behavior to achieve the Student's desired end result.

In Student's case, Dr. Ball explained Student's behaviors of aggression occurred in preschool and kindergarten and then in first grade his behaviors lessened. Thereafter, his behaviors increased in severity. In preschool or kindergarten he called people names like "stupid" or "idiot", then his behavior progressed to using profanity. He began with low-level threats to beat people up, which became death threats, and now he makes death threats that contain elaborate detail as to what he is going to do. Student self-reported to Dr. Ball that he began making death threats because they are more effective.

Dr. Ball discussed Student's disabilities. Attention-deficit/hyperactivity disorder is a neurodevelopmental disorder with symptoms of inattention and/or hyperactivity/impulsivity that are distinctly out of proportion for a child's developmental level, present for at least six months and which occur across at least two settings. Bipolar disorder is a complicated disorder with many subcategories that suggests a variability in mood. In adults, there must be a manic episode within the last six months lasting at least a week, demonstrated by an inordinate sense, risky behavior, or feeling "on top of the world". For children, it is a different clinical picture. The mania in children presents more as an irritable mood. Some individuals have bipolar disorder with anxious stress, some have bipolar disorder with psychotic features. There are 12 descriptors that a clinician can attach to a bipolar diagnosis. Without consulting with Student's psychiatrist, it is unknown what specific diagnosis Student received or how it affects him.

Dr. Ball explained that the educational eligibility criteria for emotional disability requires certain characteristics, for a long period of time, to a marked degree, that together affect a student's educational performance. A student needs only one to qualify for special education under emotional disability. Student had four of five.

Schizophrenia is an independent basis for qualification. If you have social maladjustment you cannot qualify. In other words, the term social maladjustment is used to describe behavior which occurs in the absence of other conditions that better explain the conduct. Social maladjustment is similar to the DSM-5 diagnosis of conduct disorder. There is no requirement for behavior related to emotional disability to be unintentional or out of one's control, or that a student express remorse or empathy.

Dr. Ball explained Student's reported lack of empathy to be related to either his autism or his automatic demonstrations of the same behavior so much that it's done without much forethought, combined with possible cognitive distortions that his behavior justified. For example, Student stated in one incident targeting his teacher that she was his worst enemy because she forces him to do and say things that he has never said or done before.

Dr. Ball explained autism as a neurodevelopmental disorder which begins in early childhood and involves persistent deficits in social communication and social interaction, with

- restricted, repetitive patterns of behavior, interests, or activities,
- insistence on sameness, and
- stereotypical behavior which is stigmatizing and nonfunctional.

Dr. Ball established that all of Student's behaviors at issue in this case were related to Student's disabilities. He explained that Field's conclusion that Student's behavior on April 15, 2025, was not related to his disabilities was flawed for multiple reasons. Dr. Ball credibly established Field's manifestation report omitted critical information from the summary and conclusions and therefore it was designed to reach a particular result. Field's summary ignored the January 12, 2024 triennial assessment's strong suggestion of emotional disability.

Information relied on in Field's conclusions was, in fact, inaccurate. Student had a history of at least five incidents of conduct of a sexual nature indicating an emerging behavior pattern of inappropriate sexual interactions in the 2024-2025 school year.

Dr. Ball established that such behaviors are part of Student's behavior topography over time, now worsened to include sexually inappropriate behaviors in his behavioral repertoire or toolbox, to meet his disability-related behavior needs.

Additionally, Dr. Ball explained that although Student may be able to demonstrate appropriate social communication in a clinical setting when given hypotheticals or on a standardized test, he lacks the social nuances such as how to engage in typical social banter, how to appropriately enter and exit a conversation in the moment when these situations occur. Student has major deficits in these skills due to his autism, compounded by his impulsivity related to his attention-deficit/hyperactivity disorder. This results in Student finding himself in communication situations and just blurting something out that comes into his mind. Student's conduct on April 15, 2025, in music class for which he was suspended was consistent with this scenario, and thus related to his disabilities.

Regarding the explosive classroom behavior, Dr. Ball opined Student likely knew that Principal Dollahite was responding to Student's escalated behavior which necessitated the classroom evacuation, and likely knew that he was there to intervene in Student's behavior. As Student wanted to avoid this situation, his stated desired outcome was to keep Dollahite out so that Student could avoid further confrontation about his behavior. Therefore, Student resorted to his long-established extreme behavior tool of making threats to harm the person he perceives as an obstacle to achieving his desired outcome. Thus Dr. Ball credibly established Student's conduct to be a manifestation of Student's longstanding and established disability-related behavior.

Dr. Ball's testimony, Elswick's testimony, and Student's educational records established Student's conduct on April 15, 2025, for which he was suspended, was caused by or had a direct and substantial relationship to Student's multiple disabilities. Student's sexual harassment behavior was related to his autism and attention deficit disorder, as the evidence supported Student's conduct as being impulsive and his attempt to engage in middle school banter with peers who were all talkative and touching each other and trading comments. Student reported to his Parents that before engaging in the sexually inappropriate comment and gesture, the girl had commented on his shirt by saying, "You're a small fry."

Additionally, all of Student's disabilities affect interpersonal communications. Student has historically been rejected by peers because of his inappropriate behavior and touching, invading other student's space, and making inappropriate comments for attention. If the girl called him a "small fry" and Student perceived it to be an insult, it would be difficult to parse out which disability contributed to his conduct, as all of his disabilities play a role.

The evidence presented at hearing also established Student's extreme conduct of threats of physical harm on April 15, 2025, were related to his complex disability package. The music room incident and the classroom escalation occurred close in time. Student was likely embarrassed by his classmate's exclamation to the entire music class, "Ew! [Student] said he wants to eat me!" Given Student's well documented tendency to ruminate regarding those who annoy him, and that embarrassment and peer rejection are behavioral triggers for Student, he was likely still affected by the music room incident when he returned to his special education classroom.

All of Student's diagnoses have characteristics that overlap and affect his behavior. For that reason, it is difficult to attribute a particular behavior to any one of his disabilities; nor does IDEA require this in manifestation determinations. That is why Dr. Ball referred to Student's disabilities as a disability package.

Student's behavior plans have detailed his worsening behaviors and have documented the increased effectiveness of Student's maladaptive behaviors to enable him gain control over his environment. His behavior intervention plans have also documented a lack of any significant change in staff's behavioral response to Student's maladaptive behaviors, or the intensity of interventions. As concluded by Dr. Ball, Orcutt has shaped Student's behavior over time.

Student demonstrated substantially similar behavior as the incidents at issue in this case on a regular basis throughout the school year. Student's detailed behavior data throughout the 2024-2025 school year established that sometimes Student was suspended, sometimes he was not. Student has gained control over the classroom with Students and teachers merely reacting to Student's unreasonable and threatening demands. Student has been allowed to dictate when a class gets evacuated, who is permitted to stay in the room, who is permitted to reenter the room. Teachers have daily tolerated and endured relentless insults, physical attacks, profanity, and threats of bodily injury by vulgar and offensive means. Student works when he wants, sometimes sleeps for hours at a time, yet is rewarded if afterward he happens to request a break or complete some work.

Based on the foregoing, Student's April 15, 2025 conduct of threats of physical harm was caused by, or had a direct and substantial relationship to, his disabilities.

MAY 9, 2025 BEHAVIOR INCIDENT

The following paragraphs describe the behavior incident as reflected in Student's May 12, 2025 notice of suspension as well as Field's May 12, 2025 manifestation determination report. Mrs. Richardson was Student's special education teacher for the 2024-2025 school year. After lunch, around 1:10 p.m., Student subsequently attempted to forcefully reenter Richardson's classroom by breaking the classroom window, first with a pencil and then with his shoe by repeatedly kicking and striking the window. School staff attempted to block Student multiple times from breaking the window and Student threatened them with severe bodily harm, saying to them that he would "go full rage on them" and "fuck them up." Student told Dollahite that he would kill him if he didn't let Student into Richardson's classroom. Student struck Dollahite multiple times in both of Dollahite's arms and chest while also repeatedly attempting to physically attack other school staff, including Leslie Fennell, and Elswick.

Student then threatened to attack a student if any student were to leave Mrs. Craft's neighboring classroom. Despite attempts to stop him, Student broke Richardson's classroom window lock by striking the window repeatedly with his shoe in his hand and by kicking the side of the window panel. He then forced open the window and blinds, physically threatened the nearby staff, all the classroom students, and Richardson, saying, "I'm going to fucking kill you," directed towards Richardson.

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Student continued speaking into the window, saying "if you let me in now, I won't hurt anyone. I won't even kill you. I'll let all the students go." He continued speaking quietly trying to talk to the students through the window. Student stated

"I will find you. I will find you wherever you go and I will fucking kill you.

You can't hide Mrs. Richardson. You can never hide. You'll never be safe.

I will fucking find you and I will fucking kill you."

He was speaking quietly and calmly at this point.

Student then flipped off Richardson, made cut across the throat motions, uttered profanity and vulgarity at her, including "Fuck you Mrs. Richardson," and "You're a fucking bitch".

At approximately 1:50 p.m., four deputy sheriffs arrived on campus. The deputies engaged in deescalated conversation with Student and escorted him to the field on the west side of campus. At approximately 2:15 p.m., the deputies safely escorted Student off the school campus and into the custody of Student's grandmother.

Student was suspended for five days for the May 9, 2025 behavior incident for violating the following education code sections:

- 48900(a)(1): Caused, attempted to cause, or threatened serious physical injury to another person;
- 48900(f): Caused or attempted to cause damage to school or private property;
- 48900(i): Committed an obscene act or engaged in habitual profanity or vulgarity;

- 48900(k): Disruption of school activities or willfully defying the valid authority of school personnel; and
- 48900.7: Made terrorist threats against school officials or school property.

Elswick was present for the May 9, 2025 behavior incident and directly involved throughout the incident to assist with de-escalation of Student due to his positive relationship with Student. Elswick testified that Student had tears running down his face during times that others who testified stated Student was calm and in control of his emotions and not dysregulated.

As found earlier, there is no requirement that a Student be out of control or dysregulated to have behavior related to attention deficit hyperactivity or emotional disturbance. In fact, a student can demonstrate behaviors consistent with all four of Student's disabilities without being in a dysregulated or out of control state.

SCHOOL PSYCHOLOGIST FIELD'S MANIFESTATION DETERMINATION

School Psychologist Field conducted a manifestation determination regarding Student's May 9, 2025 conduct for which he was suspended. Field's manifestation determination analysis and conclusions were included in her May 12, 2025 manifestation determination report. Field considered Student's 2021 and 2024 triennial evaluations, Student's then current IEP goals, services, and accommodations, and prior discipline

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incidents dating back to May 12, 2022. Field included a description of the behavior incident, the education code sections violated, and included the discipline consequence of a five-day suspension. Field interviewed

- Principal Dollahite;
- Elswick, Student's one-to-one aide;
- Student's Special Education Teacher Richardson; and
- Board-Certified Behavior Analyst Ramirez-Gomez.

Field did not interview Student or Parents.

Field concluded that Student's May 9, 2025 conduct for which he was suspended was not a manifestation of his multiple disabilities but instead was related to social maladjustment. Field opined Student's May 9, 2025 conduct was not a manifestation of his disabilities because Student had multiple instances of quick turning off and on anger and aggression, while clearly articulating his thoughts and plans to others. This indicated to Field that Student had control over his behavior, emotions, and words. Student calmly gave an ultimatum and countdown to Dollahite and Elswick before striking the window, attacking staff, and making death threats to others. To Field, this indicated forethought and planning by Student prior to his actions, and control over his conduct. Field contended that based on Student's prior death threats during the year, Student understood the consequences of such threats, understood that such threats were unacceptable, and yet chose to engage in the conduct.

Field noted that she and a school administrator conducted seven threat assessments of Student during the 2024-2025 school year. The threat assessments demonstrated to Field that Student understood what death and killing someone means. When told that police needed to be informed when it is reported that a student really

does intend to try to kill the threatened person, Student responded on multiple occasions that he still planned to kill the threatened person and described the method he would use to kill them. Field then gave an example of such a threat assessment, his descriptive fantasy and dream of seeing her dead, and his lack of remorse upon imagining the success of his plan, because his teacher would have deserved it, and he would have gotten what he wanted. Field described Student as calm throughout the threat assessment. Field interpreted this as evidence of Student's lack of remorse and empathy for others, and planning or forethought of attempts to kill his teacher. Student also shared he planned to kill his teacher on the last day of school when he can "Let it all out".

MAY 14, 2025 MANIFESTATION DETERMINATION TEAM MEETING

On May 14, 2025, the manifestation determination team reviewed Field's report and determined Student's behavior on May 9, 2025, for which he was disciplined, was not a manifestation of his disabilities. The reasons mirrored those stated in Field's report. Specifically, the form documenting the team finding stated:

"Student demonstrated examples of premeditation, understanding of the consequences of his actions, and frequent instances of emotional control, or being able to turn off and on anger and aggression quickly, which were not consistent with how his emotional disability manifests. Multiple staff interviews and past threat assessment data support the emotional control, consequence knowledge, and premeditation of the actions documented on May 9, 2025."

There was little discussion at the manifestation determination meeting. The findings of the team mirrored those contained in Field's manifestation determination report.

STUDENT'S MAY 9, 2025 CONDUCT, FOR WHICH HE WAS DISCIPLINED, WAS A MANIFESTATION OF STUDENT'S DISABILITIES

Field's manifestation determination findings as stated in her report and again in her testimony at hearing were accorded little weight for several reasons. Field is not qualified to diagnose or rule out mental health disorders. Orcutt provided no legal authority that emotional disability eligibility characteristics require a lack of control over emotions and behavior. This information was directly disputed by Dr. Ball's persuasive testimony. Dr. Ball's testimony also established that it is very difficult to determine a person's emotional state by observation. One can experience extreme anger and thoughts of rage without outward demonstrations. Orcutt's position that a Student must be dysregulated and out of control of emotions for his behavior to manifest bipolar disorder or an emotional disability is absurd as it suggests that his serious disabilities can come and go during the course of a Student's day.

Additionally, Field ignored Student's 2024 scores indicating a high probability of emotional disturbance qualifying him for special education eligibility. Instead, Field boldly asserted that the sole basis of Student's special education eligibility under emotional disturbance was an unsubstantiated Parent report. Student's school records, available to Field at the time of her manifestation determination review, contain Student's pediatrician's 2019 documentation of his disabilities. Field testified that she agreed with the 2024 triennial evaluation and had no reason to doubt its accuracy, including Student's scores highly indicating emotional disability, and ultimate conclusion

that Student met the eligibility criteria for emotional disability. Her manifestation report contained information otherwise, and therefore her testimony was inconsistent and not persuasive.

The testimony of Dr. Ball and Elswick established that Student's May 9, 2025 conduct for which he was disciplined, was a manifestation of his disabilities. Dr. Ball found Student's conduct on May 9, 2025, to be a continuous behavior chain, and substantially similar to Student's conduct on April 15, 2025, and his conduct in dozens of other behavior incidents contained in Student's daily behavior logs. On May 9, 2025, Student engaged in the same long-established disability-related behavior of making threats, physical aggression, and property destruction that he has demonstrated for years. Again, his goal was to control his environment and access his classroom.

Student's May 9, 2025 conduct went on for hours, frightening Students and staff, before sheriffs defused the situation and Student was released to his grandmother. Richardson, Student's special education teacher, responded that at the time, Student was determined to not be a danger to himself or others, and for that reason he could not have been physically restrained earlier in the incident.

The overwhelming evidence presented at hearing established Student's conduct on May 9, 2025, for which he was disciplined, was caused by or had a direct and substantial relationship to Student's multiple disabilities. The presence of substantially similar behavior in similar circumstances, to the behavior demonstrated on May 9, 2025, by Student, over a long period of time, in light of Student's four diagnoses, all affecting interpersonal communication, relationships, and emotional regulation, all demonstrate Student's May 9, 2025 behavior manifested his disabilities.

Student's May 9, 2025 conduct was better explained by his disabilities than by social maladjustment and not his disabilities. Dr. Ball was questioned extensively regarding social maladjustment vs. emotional disability. Dr. Ball persuasively established that with Student's "disability package," it was highly unlikely that Student's conduct on May 9, 2025, was related only to social maladjustment. Dr. Ball established that to reach such a granular and nuanced determination, at a minimum it would require Parent interview, Student interview, and information from Student's psychiatrist regarding what type of bipolar disorder he has and how it manifests. Field did not engage in any of these endeavors.

Additionally, Student's 2024 triennial evaluation considered Student's teacher, Whitehair's, rating scales and information he provided regarding similar intentional and callous behaviors of Student. Yet, the assessor specifically determined there was no indication that Student presented with social maladjustment based on scales of emotional disturbance which contained questions designed specifically to identify characteristics of social maladjustment.

Student met his burden of proof that his conduct on April 15, and May 9, 2025, for which he was disciplined, was caused by or had a direct and substantial relationship to Student's multiple disabilities. Student prevailed on Issue 1(a).

As Student prevailed on Issues 1(a) and 1(b) as to Orcutt's May 5, 2025 manifestation determination, Student proved Orcutt conducted inappropriate manifestation determinations on May 5, and 14, 2025. Thus the issue of whether

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Orcutt conducted an inappropriate manifestation determination on May 14, 2025, by failing to consider all relevant information would not impact Student's requested remedies. Therefore, Issue 1(b) as to Orcutt's May 14, 2025, manifestation determination is not reached.

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 1(a):

Orcutt conducted an inappropriate manifestation determination at the May 5, and 14, 2025 manifestation determination meetings by inaccurately determining Student's conduct was not related to his disability.

Student prevailed on Issue 1(a).

ISSUE 1(b):

Orcutt conducted an inappropriate manifestation determination review on May 5, 2025, by failing to consider all relevant information. It was not necessary to reach Issue 1(b) as to whether Orcutt failed to consider all relevant information because Student prevailed on Issue 1(a).

Student prevailed on Issue 1(b).

REMEDIES

Student met his burden on both issues in this case. As a remedy, Student requests a reversal of Orcutt's manifestation determination. Student requests an order that he be returned to the placement from which he was removed as the result of his conduct on April 15, and May 9, 2025. Student requests Orcutt fund an independent functional behavior assessment. Lastly, Student requests compensatory educational services.

An ALJ may order that a special education student be returned to his or her original placement if the ALJ determines that the conduct was a manifestation of the student's disability. (20 U.S.C. § 1415(k)(3)(B)(ii)(I); 34 C.F.R. 300.532(b)(2)(i).)

Section 1415(k)(3) does not limit a hearing officer from awarding other equitable remedy to craft appropriate relief. (20 U.S.C. § 1415(k)(3); *Parents of Student W. v. Puyallup School Dist. No. 3* (9th Cir. 1994) 31 F.3d 1489, 1497.)

Student's request for compensatory educational services is denied. Student failed to provide any legal authority for the requested remedy of compensatory services if a Student is successful in an appeal of a manifestation determination. This ruling, however, does not prevent Student from arguing in the non-expedited hearing that he was entitled to compensatory education for an alleged FAPE violation.

Student's request to be returned to the placement from which he was removed as the result of his suspension for his April 15 and May 9, 2025 conduct is not possible as Student transitioned to middle school from elementary school at the end of the 2024-2025 school year. On May 23, 2025, Orcutt convened an IEP team meeting during which the team agreed that Student needed a transition back to a general education

campus. Therefore, Orcutt is ordered to hold an IEP team meeting before the start of the 2025-2026 school year, to create a plan to transition Student back to a general education middle school campus.

Had Orcutt accurately determined Student's conduct on April 15, and May 9, 2025, to be a manifestation of his disability, Orcutt would have been required to review Student's behavior intervention plan, and modify it, as necessary, to address Student's behavior, and return Student to the placement from which he was removed, unless Parents and Orcutt agreed to change Student's placement as a part of the modification of Student's behavior intervention plan. (20 U.S.C. § 1415(k)(1)(f)(ii) and (iii); (34 C.F.R. 300.350(f)(1)(ii).) However, in this case, Student's maladaptive behavior has progressed over the last year.

Accordingly, as an appropriate equitable remedy, Student's request for Orcutt to fund an independent functional behavior assessment is appropriate. An IEP team meeting must be held to review the independent functional behavior assessment. Given the timing of this Decision and the proximity to the new school year, this will result in two separate IEP team meetings.

ORDER

1. Orcutt is ordered to convene an IEP team meeting before the start of the 2025-2026 school year to develop a plan to transition Student back to a general education middle school campus.

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2. Orcutt is ordered to fund an independent functional behavior assessment, by a nonpublic agency of Student's choice, without delay. The cost of the assessment shall not exceed \$5,000.
3. Orcutt is ordered to convene an IEP team meeting to review the results of the independent functional behavior assessment. Orcutt must also pay for the independent assessor to attend the IEP team meeting in which the assessment results are reviewed.

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.

RITA DEFILIPPIS

Administrative Law Judge

Office of Administrative Hearings