

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

QM, a minor, by and through his Guardian Ad Litem, v. Kern High
School District

QM v. Kern High School District · No. 1:24-cv-01273-JLT-CDB · Decided November 17, 2025

SUMMARY

The United States District Court for the Eastern District of California reviews an expedited administrative decision concerning a student with disabilities who was expelled by the Kern High School District after making a false active-shooter report and terrorist threats. The court affirms the administrative law judge’s determination that the conduct was not a manifestation of the student’s disabilities and was not caused by the District’s failure to implement his Individualized Education Program.

OPINION

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DISTRICT COURT 9 EASTERN DISTRICT OF CALIFORNIA 10 11 | QM, a minor, by and
through his Guardian Ad | Case No. 1:24-cv-01273-JLT-CDB Litem, i. 12 REDACTED
MEMORANDUM Plaintiff, DECISION AND ORDER AFFIRMING 13 ADMINISTRATIVE
DECISION Vv. 14 CLERK TO ENTER JUDGMENT AND KERN HIGH SCHOOL DISTRICT,
CLOSE THE CASE 15 Defendant.

14-DAY DEADLINE 16 17 18 I. INTRODUCTION 19 WHE. was a 16-year-old high school,
special education! student in March 2024 and attended 20 | SS. which was one of the schools
within the Kern High School District.* On 21 | HE, the defendant expelled him after an incident in
which he made terrorist threats. (Doc. 1 at 2- 22 | 3.) HJ challenged the expulsion by filing a due
process complaint with the California Office of 23 4 1 HB contends that he is disabled due to his
Attention Deficit Hyperactivity Disorder(“ADHD”), Autism Spectrum Disorder (“ASD”), and
Disruptive Mood Dysregulation Disorder (“DMDD”), which cause him to struggle in peer 25
relationships, to act without thinking, and to behave inappropriately such as by making empty
threats as a way to impress his classmates and to try to connect with them.

(Doc. 1 at 2, 7: see also AR 1001-02); 34 C.F.R. § 300.114(a)): Educ. 6 Code § 56040.1. JJ
contends that his additional diagnoses of Oppositional Defiant Disorder (“ODD”) and Intennittent
Explosive Disorder (“IED”) are more accurately diagnosed as ASD. See Doc. 45 at 6 n.1 citing
Administrative Record (“AR) 326-27, 254, 1002-03: 1832. 27 4H lived within the boundaries of
the Kern High School District, which is a Local Education Agency responsible for providing a

Fair and Appropriate Public Education (“FAPE”) to students with disabilities who reside within its 28 | boundaries.

(Doc. 1 at 16); 20 U.S.C. § 1401(19); 34 CFR. § 300.28(a); Educ. Code § 56026.3.] eee I II IIE DEINE IIE IIE IE III IS IS GEES IIR NEE 1 | Administrative Hearings. OAH Case No. 2024060613. The hearing on the due process complaint 2 | occurred on an expedited basis, after which, the OAH Administrative Law Judge Tiffany Gilmartin 3 | upheld his expulsion. 4 Through his his father and guardian ad litem, J. JJ brings this action as an appeal from 5 | the education due process hearing and pursuant to the the Individuals with Disabilities Education Act 6 | (“IDEA”).

20 U.S.C. § 1415(4)(2)(A).? (Doc. 1.) J seeks review of the OAH decision as to Issue 7 | 1(b), clammung that on April 4, 2024, the District erroneously determined that bis 8 | behavior was not a manifestation of his disabilities, and asserting that: (1) the behavior was caused 9 | by, or had a direct and substantial relationship to, his disability; or (2) the behavior was a direct result 10 | of the District’s failure to implement IPs Individual Education Plan.

(Doc. 1 at 19 n. 4; AR 27); 11 | 34 C.F.R. § 300.530(e). 12 MB seeks relief including: (1) reversal of ALJ’s expedited decision as to Issue 1(b), and an 13 | order finding that District violated the IDEA, 20 U.S.C. § 1400 et seq.*, by failing to determine that 14 | Ps behavior on MM. was a manifestation of his disabilities, (2) injunctive relief 15 | requiring District to cure its IDEA violations,° (3) reasonable attorneys’ fees and costs incurred for 16 | the underlying administrative proceeding and this action, and (4) additional relief as the Court 17 | determines appropriate.

(Doc. 1 at 20-21, citing 20 U.S.C. § 1415(D(2)(A); 20 ULS.C. § 18 | 1415(4)(3)(B).° 19 The District contends that the underlying administrative record and expedited decision in OAH 20 | Case No. 2024060613 speak for themselves, and the decision is supported by law and fact (Doc. 21 21 | at 4) and should be affirmed in full under the IDEA (Doc. 20 at 2).

The District seeks as relief that: 22 23 320 U.S.C. § 1415(i)(2)(A) gives “any party aggrieved by the findings and decision made” in an administrative due process hearing “the right to bring a civil action [for judicial review]... in any State court of competent jurisdiction or in 74 | @ district court of the United States, without regard to the amount in controversy.” * California’s implementation of the IDEA is codified at California Education Code §§ 56000 et seq.

25 3s claim for injunctive relief includes: determining that Js behavior on NE, was a manifestation of his disabilities, convening an IEP meeting for [JJ regarding his transition back to school, reversing the expulsion, expunging school records regarding discipline and expulsion related to the J incident, returning JJ to his pre-disciplinary placement, and training District staff to comply with the law. ® An expedited due process complaint is made pursuant to 34 CFR §§ 300.530 and 300.532 and challenges, inter alia, 27 discipline meted out to a disabled student that changes the student’s placement.

An expedited hearing can also be requested for a manifestation determination that the student's offending conduct was or was not caused by his or her disability. See 34 CFR § 300.530(e).¹ (1) HJ take nothing by way of the federal complaint, (2) the federal complaint be dismissed with prejudice, and (3) the District recovers its attorneys' fees and expenses incurred herein, and such other and further relief as the Court deems just and proper.

(Doc. 20 at 7-8.) For the reasons discussed below, the Court AFFIRMS the ALJ's decision in full. II. FACTUAL BACKGROUND GM attended the Panama-Buena Vista Union School District ("P-BVUSD") from kindergarten to eighth grade.

In 2018, while J was in the fourth grade, he received his initial IEP based in part on his severe social skills needs including struggles with self-control, difficulty working in small groups, and attention seeking behaviors. (Doc. 1 at 7.)

In 2019, P-BVUSD transitioned HM from the IEP to a Rehabilitation Act of 1973 Section 504 disability accommodation plan.² Later that same year, a private assessment confirmed {J met the Diagnostic Statistical Manual criteria for autism. (Doc. 1 at 8.) Gs social and behavioral symptoms persisted at PPBVUSD.

In 2021, while in the eighth grade, IJ was suspended for writing a "hit list" of other students and for making inappropriate comments. P-BVUSD conducted a Manifestation Determination Review ("MDR") hearing and found the behavior was caused by fs disability, and that he was again eligible for an IEP, based on Other Health Impairment ("OHI").

At that time, Jj had difficulty with self-control, being impulsive, and making inappropriate comments. (Doc. 1 at 9-12.) The IEP offered individual counseling where jj would work on "self-management," i.e. his ability to "regulate his emotions, thoughts, and behaviors in the school setting." (Doc. 1 at 12.) During the remainder of IPs eighth grade year, he was disciplined for making inappropriate comments and noises.

P-BVUSD, at this second MDR, found the behaviors were caused by his disabilities, specifically his impulsiveness. (Ud.) [ERBPs IEP was amended with new social skill goals and a Behavior Intervention Plan ("BIP") that focused on attention getting verbal aggression and threats. (Doc. 1 at 13.) When (ij matriculated to in the fall of 2022, the District continued the IEP implemented by P-BVUSD. (/d.)

Jj was the subject of three disciplinary MDR's in high school prior to the J incident in his sophomore year. (Doc. 1 at 14.) Though the District 7 Section 504, as amended. 29 U.S.C. §§ 794 et. seq. eee I III EINE IIE III IRE IRIE ISIE ES III IT 1 found all three of these prior incidents were not caused by, and did not have a direct and substantial relationship to, Ps

disability, the District nonetheless found two of the three prior incidents were 3 | manifestations of his disabilities because they resulted from the District's failure to implement 4 | BPs IEP.

(7d) 5 On SE, just hours prior to the subject incident resulting in expulsion, IPs IEP 6 | team held an annual meeting. The IEP team noted that Js behaviors had slightly improved. 7 | Still, the IEP team found that Jj needed the IEP and the BIP, which was updated for behavioral 8 | incidents including "making threats, sending/showing inappropriate images and statements, and 9 | appropriate use of technology[.]" particularly "when peers are present" and during 10 | "unstructured/down time[.]" (Doc.

1 at 15; see also AR 618.) JPs father JJ consented to the 11 | March 20, 2024 IEP goals and objectives. (AR 626-28.) 12 Late in the afternoon of MJ. as junior varsity baseball practice ended, J. a 13 | member of the team, remained in the dugout for clean-up duty pursuant to his BIP. (AR 641-42, 14 | 1285-86, 1289, 1625-26.) Two other students remained nearby.

Jd. While the baseball coach 15 | departed momentarily to gather up nearby clean-up equipment (AR 1286-87), Jj opened the 16 | backpack of a student who was on the field running an exercise and removed the other student's cell 17 | phone. (Doc. 1 at 16; AR 477, 641-42, 916. 1286, 1478, 1626.) J called 911 and identified 18 | himself as an 8-year-old active shooter at a different District campus, i. and 19 | stated that he had shot and killed four people.

Jd. 20 The coach returned and dismissed the team. (AR 1289.) Jj ran off in a different direction 21 | than he normally went to be picked up. (AR 1291.) Law enforcement responded to both 22 | and x. (AR 1290. 1566-67.) a. which had activities ongoing, 23 | went into lockdown. Jd. Jj was arrested later on the evening of J for misdemeanor 24 | filing of a false police report and then released back to his parents.

(AR 927, 1017-18, 1486.) 25 | was suspended for five days on March 22, 2024, for making a terrorist threat against a school official 26 | or school property. (Doc. 45 at 11 citing Educ. Code § 48900.7; AR 630-31.) Then, on June 26, 27 | 2024, J was expelled. (/d. citmg AR 681.) 28 | /// een ee I II IIE IIE NEI IIE IIE IIR IS IS GEE III IEE 1 II. PROCEDURAL HISTORY 2 On April 4, 2024, District convened an MDR regarding ys J behavior.

(AR 3 | 641-58, 1023-34, 1834); 20 U.S.C. § 1415(k)(1)(E); 34 C-F.R. § 300.530. The MDR team was tasked 4 | with determining whether Js behavior in the incident of J was: (1) caused by or 5 | directly and substantially related to his disability; or (2) directly caused by District's failure to 6 | implement his IEP.* Jd. 7 District School Psychologist, Kacy McCalla prepared and presented the Manifestation 8 | Determination Recommendation.

(AR 641-48.) McCalla reviewed [Ps records including the 9 | incident report prepared by the District; all the witness statements; fs disciplinary history; 10 | HPs IEP placement and services; is transcript and school schedule; parent input; teacher 11 | mput; IEP provider input; formation

regarding J residing in District databases Synergy and 12 | Cyrus; the private evaluation for autism conducted by Ps outside clinician Dr. Garcia; and P- 13 | VBUSD psychoeducational evaluations conducted in 2018 and 2022.

(AR 1629-38.) 14 McCalla concluded that the J) behavior was not caused by Ps disability and 15 | did not have a direct and substantial relationship to his disability and was not the direct result of the 16 | District's failure to implement fs IEP. (AR 648.) McCalla found ys 17 | behavior appeared to be: 18 [D]deliberate, as opposed to impulsive, as he retrieved a teammate's cell phone from his bag, dialed 911, then made a false statement that people had been shot at a local high 19 school.

He sent text messages to 911 as well. It is this examiner's recommendation that the behavior of "made terroristic threats" was not caused by nor had a direct and 20 substantial relationship to his disability. Per records in Synergy and Siras, [J] was receiving the agreed upon services and supports per his IEP; therefore, it is this 21 examiner's recommendation that the conduct in question was not a direct result of the district's failure to implement the IEP.

23 | (AR 648.) 24 The MDR team reviewed and discussed McCalla's report. (AR 1636-38.) The MDR team, 25 | except IPs parents, concluded that the J behavior was not a manifestation of 26 | EPs disabilities, i.e. that the behavior was not directly and substantially related to fs ADHD- The MDR team included Js parents, general education teacher Tyus Thompson, case manager Mickey Padilla, scho psychologist Kacy McCalla, Assistant Principal Teddy Armijo, program specialist Kelli Wells, mental health clinician 28 Katherine Graves, behaviorist Tamika Henry, and school nurse Carri Rohrbach.

See Doc. 1 at 17. ee I III IIE III III IRE IRIE ESSE ESI ED 1 | related impulsivity or his social skills deficits, or any failure of the District to implement his IEP. 2 | The MDR team, except Js parents, agreed with McCalla's recommendation that the [J 3 | BM behavior resulted from Jk deliberate wrongful conduct in violation of school rules. (Doc. 1 4 | at 17; AR 648, 650, 1505,1569, 1674.)

5 On June 14, 2024, JJ filed with the OAH the noted special education due process expedited 6 | complaint in Case Number 2024060613. (Doc. 1 at 18; AR 1-34.) Jj raised two sets of claims: a 7 | first set of expedited claims alleging the April 4, 2024, MDR and Js expulsion violated IDEA, 8 | and a second set of non-expedited claims alleging post-suspension denial of FAPE.

Ud.) The OAH 9 | bifurcated the claims and only the first set (expedited claims) went to hearing. (AR 128-42); see 10 | also 20 U.S.C. § 1415(k)(3)(A)(B); 34 C-F.R. § 300.532(c)(d). 11 The ALJ held the hearing in OAH Case No. 2024060613, by videoconference, on July 9-12, 12 | and 15, 2024. (Doc. 1 at 19; AR 924, 967, 1204, 1446, 1612, 1795) The ALI tried the following 13 | Expedited Issues: 14 Issue 1(a): Did Kern High School District fail to conduct an appropriate

manifestation determination review on April 4, 2024, by failing to review all relevant information in 15 BEM 's file.

16 Issue 1(b): Did Kern High School District fail to conduct an appropriate manifestation determination review on April 4, 2024, by erroneously determining that IPs conduct 17 on was not a manifestation of his disability. 18 | (Doc. 1 at 19.)?° 19 BM called 14 witnesses including: Jj and Ps mother I. his expert educational and 20 | school psychologist Dr. Jason Degtyarev, District school psychologist Kacy McCalla, District mental 21 | health clinician Kyla Beed, District school behaviorist Tamika Henry, District mental health clinician 22 | Katherine Graves, District JV baseball coach Daniel Ruiz, District dean of JJ Stefanie Bye, 23 | District special education case manager Mickey Padilla, District assistant principal Teddy Armijo, 24 | District general education teacher Tyus Thompson, District program specialist Kelli Wells, and 25 | District psychologist Madonna Linayo.

(AR 1200, 1442, 1609, 1791, 1978.) J introduced 44 26 | exhibits. (AR 1971-72.) 27 ° The parties settled the second set of (non-expedited) claims in August 2024. See Doc. 1 at 18-19. 28 | 1° Iccue 1(a) is not part of the instant appeal. See Doc. 1 at 19-21. 1 The District called 13 witnesses, including Js above witness (except Degtyarev and 2 | Linayo), and District Police Officer Elizabeth Erakat.

(AR 1200, 1442, 1609, 1791, 1978.) The 3 | District introduced 40 exhibits. (AR 691-923.) 4 On July 24, 2024, the ALJ issued her 24-page, expediated decision, upholding the District's 5 | April 4, 2024 MDR, finding that Js EJ behavior was not a manifestation of his 6 | disability, and denying Js requests for relief. (Doc. 1 at 19; Doc. 1-1 at 1-25; AR 924-50.) as to 7 | Issue 1(b), the ALJ found that the MDR team did not err in finding the JJ incident was 8 | not a manifestation of IPs disability.

(Doc. 1-1 at 24-25; AR 937-38.) The ALJ concluded that 9 | HM failed to carry his burden on appeal, and that: 10 The evidence established that the manifestation determination review team considered all relevant information in Ps file.

The evidence further established that 1] conduct on i, 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 12 not the result of Kern High's failure to implement his IEP. 13 | (AR 946.) This action followed. 14 IV. STANDARDS OF DECISION 15 This action is brought pursuant to 20 U.S.C. § 1415(4)(2)(A), which provides that a party 16 aggrieved by the findings and decision of a due process hearing conducted by a state educational 17 agency has a right to bring a civil action in either state or district court.

In any such action, the court: 18 (i) shall receive the records of the administrative proceedings; 19 (ii) shall hear additional evidence at the request of a party; and 20 (iii) basing its decision on the

preponderance of the evidence, shall grant such relief as 1 the court determines is appropriate. 22 | 200US.C.A. § 1415((2)(C). 23 The court reviews the decision of the hearing officer de novo, giving due weight to the hearing 24 | officer's judgments regarding education policy.

See Bd. of Educ. of Hendrick Hudson Central Sch. 25 | Dist. v. Rowley, 458 U.S. 176, 206 (1982) (“[T]he provision that a reviewing court base its decision 26 | on the “preponderance of the evidence’ is by no means an invitation to the courts to substitute their 27 | own notions of sound educational policy for those of the school authorities which they review”); Ojai 28 1 | Unified Sch.

Dist. v. Jackson, 4 F.3d 1467, 1471-72 (9th Cir.1993) (district court's authority under § 2 | 1415(e) plainly suggests less deference than is conventional in the review of agency actions); Adams 3 | v. State of Oregon, 195 F.3d 1141, 1145 (9th Cir.1999) (recognizing that a court should give “due 4 | weight to the hearing officer's administrative proceedings”); N.B. v. Hellgate Elementary Sch.

5 | Dist., 541 F.3d 1202, 1212 (9th Cir. 2008) (same); Capistrano Unified Sch. Dist. v. Wartenberg, 59 6 | F.3d 884, 892 (9th Cir.1995) (“The district court's independent judgment is not controlled by the 7 | hearing officer's recommendations, but neither may it be made without due deference” to them 8 | because this is what Congress intended in enacting 20 U.S.C. § 1415); Gregory K. v. Longview Sch.

9 | Dist, 811 F.2d 1307, 1311 (9th Cir. 1987) (“How much deference to give state educational agencies 10]... is a matter for the discretion of the courts”). A court must be particularly deferential to a hearing 11 | officer’s findings where they are “thorough and careful,” Union Sch. Dist. v. Smith, 15 F.3d 1519, 12 | 1524 (9th Cir. 1994), or where they “are based on credibility determinations of live witness 13 | testimony.” J.S. v. Shoreline Sch.

Dist., 220 F.Supp.2d 1175, 1184 (W.D. Wash. 14 | 2002) (citing Amanda J. ex rel. Annette J. v. Clark County Sch. Dist., 267 F.3d 877, 887-89 (9th Cir. 15 | 2001). “Complete de novo review of the administrative proceeding is inappropriate.” Van Duyn v. 16 | Baker Sch. Dist. 5J, 502 F.3d 811, 817 (9th Cir. 2007). 17 At the administrative hearing, the party seeking relief has the burden of proving that the school 18 | district failed to comply with the IDEA.

Schaffer ex rel. Schaffer v. Weast, 546 U.S. 49, 62 19 | (2005) (“The burden of proof in an administrative hearing challenging an IEP is properly placed 20 | upon the party seeking relief”). On review in district court, the burden of proof is on the party 21 | challenging the administrative ruling. Z.M. ex rel. Sam M. v. Capistrano Unified Sch. Dist., 556 F.3d 22 | 900, 910 (9th Cir.

2009) (citing Clyde K. v. Puyallup Sch. Dist., No. 3, 35 F.3d 1396, 1399 (9th Cir. 23 | 1994)), superseded by statute as stated in L.M., 556 F.3d at 910, (“In an action for judicial review of 24 | an administrative decision, the burden of persuasion rests with the party challenging the ALJ's 25 | decision[.]”). 26 “In matters alleging a procedural violation, a hearing officer may find that a child did not 27 | receive a free appropriate public education only if the procedural inadequacies (I

impeded the child's 28 | right to a free appropriate public education; (II) significantly impeded the parents' opportunity to 1 | participate in the decision making process regarding the provision of a free appropriate public 2 | education to the parents' child; or (III) caused a deprivation of educational benefits.” 20 U.S.C. § 3 | 1415(H)(3)(E)a); see also R.B., ex rel.

F.B. v. Napa Valley Unified School Dist., 496 F.3d 932, 937 4 | (9th Cir. 2007) (quoting W.G. v. Bd. of Trustees of Target Range Sch. Dist. No. 23, 960 F.2d 1479, 5 | 1484 (9th Cir. 1992)), superseded by statute as stated in D.O. By and Through Waiker v. Escondido 6 | Union School District, 59 F.4th 394, 409 (9th Cir. 2023) (“A child is denied a FAPE only when the 7 | procedural violation result[s] in the loss of educational opportunity or seriously infringe[s] the 8 | parents' opportunity to participate in the IEP formation process.”).

9 Review of an administrative record is generally limited to the record before the administrative 10 | body. Wartenberg, 59 F.3d, at 891. The district court must affirm if in its independent judgment, a 11 | preponderance of the evidence supports the hearing officer's findings and conclusions. Id. at 892. 12 V. ANALYSIS 13 BM alleges that the ALJ erred and abused her discretion in deciding Issue 1(b) because her 14 | decision was not thorough and careful, that: (1) she ignored significant testimony, including the 15 | testimony of parents, (2) she ignored significant documentary evidence, including P- 16 | BVUSD's assessments and MDR's which found that very similar threats made by J were caused 17 | by his disabilities, (3) she relied almost fully on the testimony of two witnesses, Ms. Henry and Ms. 18 | Graves, while ignoring that their testimony could not be reconciled with Js educational records, 19 | and (4) she did not conduct the hearing and base her decision on the controlling legal standard.

(Doc. 20 | 1 at 9, 19-20; Doc. 50 at 3-4.) 21 HM alleges the ALJ made erroneous credibility determinations, including an adverse 22 | determination as to IPs expert, Dr. Jason Degtyarev. (Doc. 1 at 20; Doc. 50 at 9-10.) 23 | alleges that the ALJ did not reach conclusions on all the issues raised in his due process complaint, 24 | including his allegation within Issue 1(b) that the MDR team failed to consider whether the behavior 25 | was caused by disability symptoms other than impulsivity, or was caused by District's failure to 26 | umplement his BIP. (/d.)

The District denies Js allegations. (Doc. 20 at 4.) 27| A. IDEA Statutory Framework 28 Congress enacted the IDEA “to ensure that all children with disabilities have available to them 1 | a free appropriate public education that emphasizes special education and related services designed 2 | to meet their unique needs and prepare them for further education...” 20 U.S.C. § 1400(d)(1)(A); 3 | □□□ 556 F.3d, at 909.

The IDEA provides federal funds to help state and local agencies educate 4 | children with disabilities while conditioning the funds on compliance with specific goals and 5 | procedures. 20 U.S.C. § 1412; Rowley, 458 U.S., at 179-80 (describing the origin and primary 6 | provisions of IDEA); Hoeft v. Tucson Unified Sch. Dist., 967 F.2d 1298, 1300 (9th Cir. 1992) 7 | (“Federal

funding is conditioned upon state compliance with the IDEA's extensive substantive and 8 | procedural requirements.”) 9 A FAPE is defined as “special education and related services that... are provided in 10 | conformity with the [IEP] required under section 1414(d)” of the IDEA.

20 U.S.C. § 1401(9). 11 | “Parents participate along with teachers and school district representatives in the process of 12 | determining what constitutes a “free appropriate education’ for each disabled child.” Hoeft, 967 13 | F.2d, at 1300.

The IEP is the “centerpiece” of IDEA's “education delivery system” for children with 14 | disabilities. *Honig v. Doe*, 484 U.S. 305, 311 (1988). An IEP is a written statement for each child 15 | that is developed, reviewed, and revised annually. 20 U.S.C. § 1414 (d)(1)(A)G@).

The IEP must 16 | include: (1) a statement of the child's present levels of academic achievement and functional 17 | performance, (2) a statement of measurable annual goals, cluding academic and functional goals, 18 | (3) a description of how the child's progress toward meeting the annual goals will be measured, (4) a 19 | statement of the special education and related services to be provided to the child, (5) an explanation 20 | of the extent, if any, to which the child will not participate with nondisabled children in the regular 21 | class, (6) the projected date for the beginning of services and modifications, and (7) the anticipated 22 | frequency, location, and duration of the services and modifications.

Jd. 23 The IDEA provides that where a special education student is suspended for disciplinary 24 | reasons for more than ten days, the school district must conduct a manifestation determination to 25 | decide whether the conduct at issue was a manifestation of the student’s disability. 20 U.S.C. § 26 | 1415(k)(1)(E); 34 C.F.R. § 300.536(a)(1).

To make this determination, members of the student’s 27 | IEP team meet to review the student’s educational file. 20 U.S.C. § 1415(k)(1)(E)(a); 34 C.F.R. § 28 | 300.530(e)(1). The parents, and relevant members of the IEP Team, review all relevant information 10 1 | in the student’s file to determine if: (1) the conduct in question was caused by, or had a direct and 2 | substantial relationship to, the child’s disability, or (2) the conduct in question was the direct result of 3 | the district's failure to implement the student’s IEP - if either prong is met, then the student’s conduct 4 | shall be determined to be a manifestation of the child's disability.

20 U.S.C. § 1415(kK)(1)(E)G@)(a1). 5 The term “relevant information” includes the student’s “IEP, any teacher observations, and any 6 relevant information provided by the parents[.]” 20 U.S.C. § 1415(kK)(1)(E)(i). If the review team 7 | determines that (1) the conduct in question was caused by, or had a direct and substantial relationship 8 to, the student’s disability; or (2) the conduct was the direct result of the district's failure to 9 | implement the student’s IEP, then the student’s conduct “shall be determined to be a manifestation of 10 | the child's disability.” 20

U.S.C. § 1415(k)(1)(E)(1); see also 34 C.F.R. § 300.530(e)(2); *Doe v. 11 | Maher*, 793 F.2d 1470, 1480 n. 8 (9th Cir.

1986) (in a case arising under the Education of All 12 | Handicapped Children Act, 20 U.S.C. § 1400(b), a direct and substantial relationship to child's 13 | handicap requires the handicap significantly impairs the child's behavioral controls and excludes 14 | conduct that bears only an attenuated relationship to the child's handicap). 15 If the review team determines that the student's conduct was a manifestation of the student's 16 | disability, then the district is required to conduct a functional behavioral assessment, implement a 17 | new or review an existing behavioral intervention plan, and return the student to the placement from 18 | which the student was removed.

20 U.S.C. § 1415(k)(1)(F); 34 C.F.R. § 300.530(£). In contrast, if 19 | the review team determines that the student's conduct was not a manifestation of the student's 20 | disability, then the district may apply the same disciplinary procedures that apply to children without 21 | disabilities. 20 U.S.C. § 1415(kK)(1)(C); 34 C-F.R § 300.530(c). 22 The IDEA further provides that the parent of a student with a disability may appeal the 23 | manifestation determination by requesting an administrative due process hearing.

20 U.S.C § 24 | 1415(k)(3)(A); 34 C.F.R. § 300.532(a), (c). The ALJ hearing the dispute may order a change in 25 | placement of the student or return the student to the placement from which she was removed. 20 26 | U.S.C. § 1415(kK)(3)(B)(a1); 34 C.F.R. § 300.532(b)(2). 27] B. ALJ'S Decision Entitled to Substantial Deference 28 BB argues the ALJ's decision should not be accorded deference because it is not "thorough 11 eee IIE EOIN RI III IIE (ESSIEN 1 | and careful," and fails to address all issues or disregards relevant evidence presented at the hearing.

2 | (Doc. 45 at 16; see section V C, post.) As discussed above, the Court is to apply a modified de novo 3 | standard of review to the appropriateness of a special education placement under the IDEA. *Ashland 4 | Sch. Dist. v. Parents of Z.M. R.J.*, 588 F.3d 1004, 1108-09 (9th Cir. 2009). While "less deference 5 | than is conventional in the review of agency decisions" is afforded to an IDEA administrative 6 | decisions, *Kerkam v. McKenzie*, 862 F.2d 884, 887 (D.C.

Cir. 1988), "courts must give due weight to 7 | judgments of education policy|,]" *Ojai Unified Sch. Dist.*, 4 F.3d at 1472 (quoting *Gregory K.*, 811 8 | F.2d, at 1311). "The court, in recognition of the expertise of the administrative agency, must consider 9 | the findings carefully and endeavor to respond to the hearing officer's resolution of each material 10 | issue." *Gregory K.*, 811 F.2d, at 1311 (quoting *Town of Burlington v. Dep't of Educ.*, 736 F.2d 773, 11 | 792 (1st Cir.

1984)), *aff'd*, 471 U.S. 359 (1985). When applying the modified de novo standard, the 12 | court assigns deference to the administrative decision when it is careful, thorough, impartial, and 13 |

sensitive to the complexities of the case. *Cnty. Of San Diego v. Cal. Special Educ. Hearing Office* 14 | [San Diego], 93 F.3d 1458, 1466-67 (9th Cir. 1996); *Ojai*, 4 F.3d, at 1476.

15 A court may “treat a hearing officer’s findings as thorough and careful when the officer 16 | participates in the questioning of witnesses and writes a decision containing a complete factual 17 | background as well as a discrete analysis supporting the ultimate conclusions.” *R.B.*, 496 F.3d, at 18 | 942. “After consideration, the court is free to accept or reject the findings in part or in whole.” 19 | *Gregory K.*, 811 F.2d, at 1311.

Though a court has “discretion to reject the administrative findings 20 | after carefully considering them, [a court is] not permitted simply to ignore the administrative 21 | findings.” *San Diego*, 93 F.3d, at 1466. “A court reviews findings of fact for clear error, even if 22 | those findings are based on the administrative record.” *R.B.*, 496 F.3d, at 937.

23 Here, the Court finds the ALJ’s findings of fact and determinations regarding credibility and 24 | weight of evidence to be thorough, careful, impartial, and reliable, and entitled to deference.!! (See 25 | *Doc. 1-1*; section V C, post.)

The ALJ presided over a hearing lasting five days spread over two 26 | weeks. (/d.) The administrative record totals nearly 2000 pages. The ALJ actively and fully 27 | managed and participated in the hearing, engaging counsel and witnesses, asking questions, and 28 any findings of fact that are deemed to be conclusions of law are incorporated as such. 12 ee I III IEEE RII III IIR (ESSE ESSERE Ee 1 | ruling on evidentiary issues as they arose. (/d.)

As noted, the ALJ heard testimony from 14 2 | witnesses for JJ and 13 witnesses for District; and admitted and considered 44 exhibits for 3 | and 40 exhibits for District. (AR 621-923, 1971-72.) 4 The ALJ issued a reasoned decision spanning 24 pages that cited the appropriate legal 5 | standards, identified burdens of proof, carefully and thoroughly considered and weighed the 6 | evidence, and explained her findings and conclusions with well supported factual findings and 7 | complete, well-reasoned, and thoughtful analysis.

(*Doc. 1-1*); see also 20 U.S.C. § 1400 et. seq.; 34 8 | CFR. § 300.1 et seg.; *Educ. Code*, § 56000 et seqg.; *Cal. Code Regs.*, tit. 5, § 3000 ef seq.); see also 9 | *R.B.*, 496 F.3d, at 942: cf *MLC. by & through MN. v. Antelope Valley Union High Sch. Dist.*, 858 10 | F.3d 1189, 1194-95 (9th Cir. 2017) (ALJ not “thorough and careful” where he failed to address all 11 | issues and disregarded some of the evidence presented at the hearing).

Therefore, the Court affords 12 | substantial deference to the ALJ’s findings and conclusions.” In any event, the Court finds the 13 | record preponderates in support of the ALJ’s decision on Issue 1(b). (See section V C, post.) 14|C.

The Record Preponderates in Support of the ALJ's Decision Affirming the District's 15 | April 4, 2024 Manifestation Determination 16 BEB argues the ALJ erred in upholding the MDR team's determination on Issue 1(b) that 17 | Es behavior was not a manifestation of his disability. (Doc. 1 at 19-21; Doc. 45 18 | at 6.) 19 Under the March 20, 2024 IEP, fs disabilities were OHI for ADHD and an outside 20 | diagnosis of ASD.

The noted symptoms of Jf's ADHD were inappropriate verbal statements and 21 | negative comments towards peers, impulsive behaviors in the classroom, and trouble focusing or 22 | remaining on-task. (See section V C 1 a, post.)

The noted symptoms of ASD included the inability 23 | to relate socially with others and inappropriate interactions with others. (/d.) The record reflects that 24 | EEPs noted alternative diagnoses were best explained by ASD and were considered by the MDR 25 | team and the ALJ on that basis. Ud.)

The Court finds that the ALJ's reasoned decision upholding 26 | the District's MDR properly applies the controlling legal standards and is supported by a 27 The ALJ's factual statements in her decision constitute the written findings of fact required by the IDEA and state law. 28 | See Doc. 1-1 at 4 citing 20 U.S.C. § 1415(h)(4); Educ. Code, § 56505(e)(5). 13 een IIE EOIN II III IIR ISIS ESSIEN 1 | preponderance of evidence in the administrative record, as discussed below.

2 1. The ALJ Reasonably Found §)'s EM Behavior was not Directly and 3 | Substantially Related to his Disabilities 4 a. Disability-Related Impulsiveness 5 GM argues the ALJ erred by upholding the MDR team's finding that his 6 | behavior was not directly and substantially related to his disability on the grounds it was not 7 | impulsive behavior. (Doc. 45 at 13-17.)

According to the Ninth Circuit, such a manifestation is 8 | present where the disability "significantly impairs [Js] behavioral controls" and not where the 9 | conduct "bears only an attenuated relationship" to [the Js] disability. Maher, 793 F.2d, at 1480 10 | 0.8. 11 Here, the Court finds Jj has not carried his burden on appeal. Particularly, the Court finds 12 | that a preponderance of the evidence supports the hearing officer's findings and conclusions that 13 | Es EE behavior was not caused by or directly and substantially related to his 14 | disability-related impulsiveness, as discussed below.

Wartenberg, 59 F.3d, at 892. 15 (1) Hs Special Education and Disciplinary History was Before the 16 | MDR Team 17 BM argues the April 4, 2024 MDR ignored documentary evidence in the record including his 18 | prior behaviors and disciplinary incidents, which contradicted the MDR team findings and 19 | conclusions that he did not act impulsively on NM. (Doc. 45 at 19.)

20 The record reflects that the District's school psychologist, Kacy McCalla, prepared a 21 | Manifestation Determination Report in the course of which she reviewed [fs special education 22 | and education file including prior diagnosis; grades; P-BVUSD and District IEP, disciplinary and

23 | MDR history and documents; a summary of the J incident; parental input; teacher 24 | input; and provider input.

(AR 641-48; see also AR 1095-96, 1624-25.) The record further reflects 25 | that McCalla did not meet with Jj Cd.) 26 McCalla focused her report on symptoms of disability that JJ historically presented in the 27 3 The Court finds that [J's argument on appeal that his procedural rights under IDEA were violated is co-extensive 28 | with his substantive arguments.

See Doc. 50 at 4. 14 ee I III IRENE RII III II IRIE (ESSE ESS ISSIR EE 1 | educational setting, i.e. impulsivity, difficulty relating to others socially, difficulty focusing, and 2 | inappropriate actions with others.* (Jd.) McCalla concluded that the J behavior, 3 | which she determined involved a number of steps, demonstrated a deliberate planned behavior rather 4 | than an impulsive act.

(AR 1669-75.) 5 The ALJ observed evidence that McCalla's report was thorough and complete and included a 6 | review of Js academic, behavioral, disciplinary, and IDEA records including IEP, discipline and 7 | MDRs. (Doc. 1-1 at 7-11.)

As noted, the MDR team had before it IEP, disciplinary, and 8 | MDR history at P-BVUSD and at J.:«PRNPs P-BVUSD IEP's and 504 Plans reflected a 9 | history of his disabilities as manifesting in some communication and behavior control symptoms and 10 | impulsivity, and social skill needs. (AR 256-314.) At age 11 years, Jj received a diagnosis from 11 | a private provider, Dr. Garcia, of ASD level 1, mild impairment in social interactions and moderate 12 | impairment in restricted and repetitive behaviors, which diagnosis, according to Dr. Garcia, 13 | encompassed [fs ADHD impulsivity and other diagnoses.

(AR 325-26.) Dr. Garcia observed 14 | Hs high average intellectual functioning. (AR 327.) 15 As noted, Jj had multiple disciplinary events in P-BVUSD, two of which resulted in 16 | MDR's. [if had a 504 Plan MDR relating to his creating of a "hit list" of other students, which the 17 | MDR team determined to be related to Js disabilities. (AR 350-56.) Jj then was placed back 18 | on an IEP based on a disability eligibility category of OHI, based in turn on his limited alertness 19 | adversely affecting his educational performance, off-track behavior, distraction with social 20 | mteractions, and impulsiveness.

(AR 389.) Jj was provided with a BIP for aggressive and 21 | threatening behavior or sexual statements to peers (AR 437). Jf had an IEP MDR later in junior- 22 | high school relating to inappropriate comments at school, which were found to be disability related. 23 | (AR 451-52.) 24 At EE. EJ continued on the JEP and BIP including for disability-related behavior 25 | regulation problems and impulsivity, particularly arising when he was unmonitored.

(AR 498-629.) 26 | HM had at least 12 disciplinary referrals at JJ prior to the instant J
□□□□□□□□ 27 | (AR 476-88, 642.) Three of these prior disciplinary events went to MDR, and

involved: threats to 28 | gm concedes that his ADHD is “primarily characterized by impulsivity[.]” Doc. 45 at 6. 15 1 | staff, bringing a lighter to school and starting a fire with it, and bringing a knife to school.

(AR 524- 2 | 30; 557-71; 573-86.) All of these MDR’s were found to involve a series of steps that were planned 3 | and thought out and not related to Js disability-related impulsivity. (/d.) Still, two of the three 4 | MDR’s found [is behavior was the result of the District’s failures to implement J.’s IEP, and 5 | thus a manifestation of his disability. (AR 524-30; 557-71; 573-86.)

6 The April 4, 2024 MDR team reviewed and discussed McCalla’s MDR report regarding the 7 | BR behavior. The MDR team members other than Ps parents, found the J 8 | EE behavior was not caused by, or directly and substantially related to J’s disability. (AR 650- 9 | 51.)

The ALJ observed the evidence deomnstrated that the MDR team by and large was [REDACTED] 10 | with Ps IEP, disciplinary, and MDR history at even apart from 11 | McCalla’s MDR report. (See Doc. 1-1 at 11-12; section V C 1 a (2-4), post.) 12 (2) GI Could Control his Behavior and not Act Impulsively 13 BB argues the MDR team and the ALJ ignored Ps pre- MDR’s, 14 | particularly the two MDR’s that occurred while Jj attended P-BVUSD, which he contends found 15 | nearly identical threats to be manifestations of his disability - directly contradicting the April 4, 2024 16 | MDR which the ALJ upheld.

(Doc. 45 at 13-14; id. at 20 citing AR 350-56, 450-51, 524-27, 938.) 17 | However, as discussed above, the record demonstrates that McCalla’s MDR report considered the P- 18 | BVUSD MDR’s and the MDR team considered the report.

Moreover, Jj fails to demonstrate the 19 | P-BVUSD MDR’s provide the factual detail and analysis necessary to sustain a finding that they 20 | presented threats “nearly identical” to Js MI behavior. (AR 350-56, 451-52.) Jy 21 | has not made any sufficient proffer that the April 4, 2024 MDR determination is inconsistent with or 22 | contradicts the PPBVUSD MDR’s.

Notably, the ALJ made no finding about the previous MDR’s. 23 | (Doc. 1-1 at 16.) 24 The record otherwise includes sufficient evidence that not all of JP’s behaviors were 25 | disability-related, and that the J behavior was not disability-related. (See section V C 26 | 1 a3, post); Maher, 793 F.2d, at 1470 n. 8. When acting out, Jj did not always act impulsively 27 | and without an understanding of the social cues, rules and consequences.

(See e.g., AR 1081-84; 28 | 1182-83,1521, 1648-49, 1824, 1847-48); cf Downey Unified Sch. Dist., Case Nos. 2022120336 & 16 ene II EOE II III IIR ISIS) EIS III EE 1 | 2022120719, 123 LRP 6997, *3 (OAH Jan. 23, 2023) (a factually distinguishable case where ALJ 2 | Gilmartin found the Ps behavior to be impulsive given the mability to regulate emotions and 3 | behavior.)° 4 For example, J’s mother Jj conceded that over the four years preceding the OAH 5 | hearing, J had demonstrated the ability to control his behavior.

(AR 1081.) Js mental health 6 | clinician, Kyla Beed, who had worked with Jj for approximately 1.5 years, testified that Jy 7 | understood the consequences of his behavior, at times engaged in deliberate inappropriate behavior 8 | (AR 1131, 1144), and did so on J (AR 1136-37), involving “step after step after step.” 9 | (1165.) IPs mental health clinician, Ms. Graves, a service provider on [fs IEP and a trusted 10 | adult for him, testified that though Ps predominant disability-related symptom is impulsivity, 11 | HM still could control his behavior in school (AR 1496-1520); that J understands when he 12 | engages in inappropriate behavior, and does so willingly (AR 1532-33), and did so on 13 | BH.

(AR 1533.) District assistant principal of instruction Teddy Armijo, who attended at least 14 | three of Js prior MDR’s, testified that Jj understands consequences and is constantly pushing 15 | the envelope. (AR 1563-82.) [Ps baseball coach, Daniel Ruiz, testified that he never observed 16 | HJ act impulsively. (AR 1306.) Ps general education teacher and cross-country coach, Tyus 17 | Thompson, testified that Jj did not act impulsively (AR 1343-44), and that he had seen yy 18 | control his behavior (AR 1357).

19 BEB appears to concede as much, that his disciplinary and MDR history includes incidents 20 | where his behavior was not symptomatic of his disability, where he knew “right from wrong” and did 21 | not act impulsively. (See Doc. 45 at 21; AR 524-27, 557-60, 578, 1853.) Significantly, the March 22 | 20 2024 IEP reflects that 7s behavior over the preceding several month had been improving, 23 | reasonably supporting fs ability to control behavior.

(AR 625.) [Ps suggestion that his 24 | developmental age is much younger than his peers (Doc. 50 at 11) is unsupported by the record and 25 | there is not a reason to find otherwise. (See Doc. 50 at 11 citing AR 254, 1898, 1903.) 26 Finally, as to the extent of Js prior MDR’s, which were admitted into the record (AR 349- 27 15 The Court grants District’s unopposed request for judicial notice.

(Doc. 49-1 at 2; Fed. R. Evid. 201; E.S. v. Konocti 28 | Unified School Dist., 2010 WL 4780257, at *3 (N.D. Cal. Nov. 16, 2010). 17 1 | 51, 431-55, 528-38, 556-71, 572-86, 729-33) along with witness testimony thereon (AR 1630-35, 2 | 1641-42, 1649-60, 1759-68), the ALJ reasonably distinguished the prior disability-related behavior, 3 | and was not required to make any findings thereon.

(AR 938.) 4 (3) The i Behavior was not Impulsive 5 BB argues his I behavior was an impulsive prank meant to impress and gain 6 | the attention of his peers on the JV baseball team. (Doc. 1 at 2; Doc. 45 at 9.) However, the record 7 | demonstrates with credible evidence, that JJ acted in a calculated and opportunistic manner on 8 | and not impulsively. (AR 641-42, 916, 923, 1286, 1478, 1525-28, 1626, 1669-70); 9 | see also Vasherese v. Laguna Salada Union School District, 211 F.Supp.2d 1150, 1157-1158) (N.D.

10 | Cal. 2001) (hearing officer did not err by considering the testimony of all witnesses and making a 11 | reasonable judgment based thereon and student's educational records). J? s 12 | behavior involved multiple steps interwoven with falsehoods that were thought out, followed by 13 | flight from the scene, which was motivated by a fear of being caught.

For example, during the 911 14 | call J falsely identified himself as another student, an eight-year-old, stated the incident occurred 15 | at a different District campus, and departed practice by an unusual route and in a hurry. (AR 477, 16 | 641-42, 883, 916. 1286, 1478, 1626.)

As discussed above, Js three District MDR's preceding the 17 | mstant April 4, 2024 MDR found his threatening and inappropriate behavior not to be caused by or 18 | directly and substantially related to his disability. (See section V C 1 a (1), ante.) 19 The District personnel who were part of the April 4, 2024 MDR team, were well qualified in 20 | their respective fields; most had previous familiarity with JJ including his IEP and needs in social 21 | skills and attention seeking behavior and lack of boundaries; and those attending the OAH hearing 22 | were forthcoming in their testimony.

(See generally AR 739-771; 937.) J does not contest the 23 | ALJ's finding that five of the eight Kern High members of Js April 4, 2024, manifestation 24 | determination review team also participated in J?'s November 7, 2023, MDR; and that Tamika 25 | Henry, Ps behaviorist, and Kelli Wells, program specialist, attended all four of [js 26 | MDR's and all of Js annual IEP team meetings since Jj matriculated at I during the 27 | 2022-2023 school year.

(See AR 933, 1581; Docs. 45, 50.) Nor does J contest the ALJ's finding 28 | that Katherine Graves, mental health clinician, attended both Ps March 20, 2024, IEP 18 1 | team meeting and the April 4, 2024, manifestation determination review. (AR 934; Docs. 45, 50.) 2 The MDR team members reviewed McCalla's MDR report and recommendation including the 3 | relevant records and historical information therem, and then considered the J) s I 4 | behavior.

As discussed below, the District MDR team members testimony preponderated in support 5 | of the MDR team determination. Cf P. by & through Yamin B. v. Bella Mente Montessori Acad., 6 | 2023 WL 4908833, at *2 (S.D. Cal. Aug. 1, 2023), report and recommendation adopted, 2023 WL 7 | 11835242 (S.D. Cal. Aug. 8, 2023) (In context of terrorist threats to commit a school shooting - ALJ 8 | found school district's MDR failed to comply with the IDEA where the MDR team relied entirely on 9 | the pre-written draft report prepared by the school psychologist - predetermining the outcome); Jay 10 | F. v. William S. Hart Union High Sch.

Dist., 2017 WL 6549911, at *7 (C.D. Cal. Aug. 2, 2017), 11 | affd, 772 F. App'x 578 (9th Cir. 2019) (ALJ not through and careful in affirming MDR finding that 12 | student's pre-planned threatening behavior was not a manifestation of disability where the MDR 13 | team did not review the student's relevant history and lacked data necessary to create and IEP).

14 For example, District behavioral specialist Henry, herself a service provider on fs TEP 15 | since his enrollment at I. testified that Ps primary disability-related behavior was 16 | impulsivity, and that in the months prior I. EJ had shown improvement in this 17 | regard. (AR 1375-1403.) Henry testified that during her years of classroom observation of J. she 18 | never saw him behave in an impulsive manner.

(AR 1404.) Henry testified that Jj recognized 19 | good and bad behaviors and willfully chose between them. (AR 1425.) 20 Hs mental health clinician Graves, a trusted adult for him, testified that Jj exhibited 21 | antisocial-type behaviors that were not a function of this disability (AR 1525); and that 22 | appeared to enjoy making people uncomfortable and upset (id.).

Graves testified that Js I 23 | EEE behavior did not have to do with his disability but rather was thought out and opportunistic. 24 | (AR 1527.) 25 District program specialist Kelli Wells testified that she attended all of Jf/s IEP's; that she 26 | did not give deference to McCalla's conclusion regarding the J incident; and that she 27 | independently reached her own conclusion that Jj thought through his behavior on J 28 | HE and was not impulsive.

(AR 1718-43.) District psychologist Madonna Linayo testified that she 19 ene III IEE II III IIR ESI ESI EE 1 | had prepared Js three prior MDR's for the District, and agreed with the April 4, 2024 MDR 2 | team (of which she was not a member) that the multiple steps taken by Jj during the J 3 | EM incident were not indicative of impulsive behavior. (AR 1748-84.)

4 The ALJ's reasonably accorded significant weight to the testimony of Henry and Graves, who 5 | were established providers for Jj and people he trusted. (AR 941-943.) The ALJ found their 6 | testimony credible and clearly reasoned evidence that Js EN behavior demonstrated 7 | acalculated thought out plan—which was intentional and opportunistic—and not impulsive 8 | behavior.

(See AR 1374-1439, 1496-1558; see also AR 315-31, 367-91, 437-42, 513-18, 547-52, 9 | 593-98, 603-28; cf AR 1869-1968.) The ALJ reasonably found the testimony of Graves that □□□ 10 | behavior was not expected of someone with autism, and that she had observed JJ engage in anti- 11 | social behavior, to be knowledgeable, thoughtful, and consistent with the evidence.

(AR 943.) 12 Additionally, the record demonstrates that the external stimuli, which historically had triggered 13 | impulsive behaviors in J (e.g., peer approval: a lack of structure: a lack of supervision and 14 | monitoring), all were absent during the J behavior.

For example, the weight of 15 | credible evidence in the record supports a finding that none of the JV baseball team members 16 | suggested to Jj that he call 911, or were aware JJ was making the 911 call. (AR 880-87.) This 17 | evidence on balance also shows that only two players were 1n or near the dugout at the time of the 18 | 911 call (AR 1232), and they both were upset by Ps 911 call (AR 1232).

19 Finally, the ALJ reasonably could reject Js suggestion that the persuasive weight of 20 | McCalla's MDR report and recommendation was diminished on grounds that: (1) McCalla was not 21 | accorded access to J prior to the MDR (AR 1624-25; see also Doc. 50 at 1505), and (2) McCalla 22 | considered the later disproven allegation that JJ texted 911 during his J behavior 23 | (AR 159, 648, 916; 1228-30).

J has not pointed to evidence that he was denied the opportunity to 24 | participate in the April 4, 2024 MDR and subsequent OAH hearing. Relatedly, the ALJ reasonably 25 | found that: 26 [T]he inclusion of the allegation Jj additionally sent text messages to 911 was not fatal. Dean of Student Behavior and Supports at JJ High School Stefanie Bye 27 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- 28 making process. 20 1 | (AR 935). 2 (4) Testimony of Js Parents Ij and i 3 WEB argues the ALJ erred by failing to mention, and by implication failing to consider, his 4 | parent's testimony regarding [fs disability-related symptoms, including anecdotes illustrating his 5 | impulsivity and social skills deficits at school and at home.

(Doc. 45 at 13-14, 19.) Contrary to 6 | Es argument, the record reflects that his parents spoke at the April 4, 2024 MDR expressing their 7 | view that he acted impulsively. (AR 646; see also AR 1356.) For example, at the OAH proceeding 8 | Es mother, I, testified to his impulsivity, need for peer approval, and trouble understanding 9 | social cues. (AR 1001-02.)

Jf also testified that J indicated to her that he was encouraged to 10 | contact 911 by one of the other gj. (AR 1018.) IPs father, J, testified at the OAH hearing 11 | to Ps general impulsivity and social deficits, and to his view that JJ acted impulsively on 12 | (AR 1801-64.) 13 The Court finds that Jj has not carried his burden of showing the ALJ failed to consider his 14 | parents' testimony.

The ALJ had the parents' testimony before her and any credibility and weight 15 | determinations, express and implicit, based thereon, are entitled to substantial deference, for the 16 | reasons stated. (See section V BC, ante.)

The ALJ engaged the parents and asked questions — 17 | suggesting her consideration of their testimony individually and together was careful and reasonable. 18 | (AR 1000-1102, 1177-95, 1801-64.) J has not proffered authority that the ALJ was required to 19 | discuss each piece of evidence in the record.

As discussed above, the IDEA framework generally 20 | contemplates a hearing officer will "hear, and make a determination regarding," the appeal. 20 21 | U.S.C. § 141509(3)(B)Q); 34 C.F.R. § 300.532(b)(1). The noted record demonstrates that the ALJ 22 | did so here. 23 In any event, J does not point to testimony by his parents that proves disability-related 24 | behavior on.

The ALJ reasonably could find Js testimony to be speculative, 25 | equivocal, based upon generalizations raised by Js disability, and not well grounded in the 26 | factual record. (AR 1801-64.) At times, JJ testimony contradicted the facts in the record 27 | regarding the 911 call.

For example, Jj testified to his understanding, unsupported in the record, 28 | that the phone Jj took during the J incident was “visible” to J, and thus an 29 | external stimulus to impulsive action. (See AR 1850-51.) 30 Similarly, the ALJ reasonably could find Js testimony regarding [Js impulsive versus 31 | purposeful behavior to be equivocal, not well grounded on the facts of the J incident, 32 | and to an extent supportive of the MDR team’s findings that JJ could and did regulate his negative 33 | behavior based upon whether he was being supervised and observed and by whom.

(AR 1000-1102, 34 | 1177-95.) Additionally, the ALJ reasonably could find that Jj failed to show his parents were 35 | denied the opportunity to participate in the April 4, 2024 MDR. For example, though jj testified 36 | that the April 4, 2024 MDR lasted 30-45 minutes and that only the school psychologist and mental 37 | health clinician spoke (AR 1023), later in her testimony [J acknowledged that she did speak at 38 | that MDR team meeting and made a statement about Js behavior being impulsive (AR 1032).

39 | HJ suggested her hesitance to participate in that MDR team meeting because she felt whatever she 40 | might say would not have made a difference. (AR 1088.) [Ps father Jj testified to his 41 | participation in the April 4, 2024 MDR, where he advocated that Jj acted impulsively on 42 | BR. (AR 1800-64.)

For example, Jj testified that Ps autism was discussed at the April 15 | 4, 2024 MDR, in the context of Dr. Garcia’s noted opinion that autism best accounted for and 16 | subsumed ffs other diagnoses and symptoms, and [J joined this discussion. (//d.) 17 (5) Testimony of Js Expert. Dr. Degtyarev 18 GM argues the ALJ improperly discounted and dismissed the testimony of his expert, Dr. 19 | Jason Degtyarev, despite Degtyarev’s specialized expertise and thorough analysis of Ps 20 | disability.

(Doc. 45 at 13-14, 23-25.) JJ points to Degtyarev’s “professional expertise and analysis 21 | [as] consistent with well-established principles in educational psychology.” (//d. citing AR 684-86, 22 | 1018, 1869-76.) JJ points out that Degtyarev interviewed J. met with Ps parents, and 23 | conducted a comprehensive file review of Js records. (Doc. 45 at 23-24 citing AR 635, 642, 24 | 940, 1018, 1876, 1901.)

The ALJ found Degtyarev’s testimony to be speculative and unreliable, a 25 | “contortionist act of circular testimony and logical fallacies.” (Doc. 1-1 at 18-21; see also AR 1868- 26 | 1968.) 27 The Court accords substantial deference to the ALJ weighing of Degtyarev’s testimony, for the 28 | reasons stated.

The Court also finds significant evidence in the record supporting the ALJ's decision 22 ene II EE II III IIE ISSIR ESI EE 1 | to afford Degtyarev's opinions little weight. For example, though Degtyarev testified to his 2 | qualifications as a school and educational psychologist with 19 years of practice experience, 3 | Degtyarev demonstrated limited knowledge of Jj and the April 4, 2024 MDR team meeting and 4 | determination.

The AJL reasonably questioned Degtyarev's only fleeting familiarity with Jj in 5 | and out of the classroom, and with the factual record. For example, Degtyarev was not present at the 6 | MDR, and interviewed jj for only an hour, and interviewed [fs parents for only an hour and 7 | one-half. (AR 1869-78.)

The AJJ also observed Degtyarev's characterization of the BIP's 8 | supervision element as requiring [J be "closely monitored at all times," when the BIP required 9 | only "supervision and intermittent proximity;" Degtyarev uncorroborated statement that Jj was 10 | "prompted by his peers" to make the 911 call; and Degtyarev's opinion, ungrounded in authority and 11 | the factual record, that Js 911 call was "silly[.]" (Doc.

1-1 at 18; AR 1885-86, 1890.) 12 The ALJ reasonably could credit the testimony of Js trusted adults, Graves and Henry, that 13 | the BIP's supervision element required only periodic check-in, such that J was being supervised 14 | by JV base coach Ruiz on NN. (See e.g., AR 634-39, 1376-77, 1395-96, 1410, 1467, 15 | 1499, 1528-29.)

The record further reflects that Js peers did not prompt and/or by their presence 16 | or conduct, cause J impulsively to make the 911 call. (See e.g., AR 634-39, 880-87; see also 17 | 940, 1015-18, 1285-86, 1289, 1481, 1525-26, 1665, 1887, 1903, 1935-37, 1956-58.) Jj concedes 18 | that "[a]n expert's lack of direct observation of a J in the school setting can support an ALJ's 19 | decision to discount the expert's credibility[.]" (/d. citing N.B.

541 F.3d, at 1212.) J makes no 20 | showing that Degtyarev observed him in the school setting. 21 Degtyarev's discussion of fs manifested disability is not well grounded in scientific theory 22 | or the factual record. Degtyarev could not recall all the symptoms of ADHD, and did not look at the 23 | kinds of symptoms Jj presented. (AR 1893-94.) Though Degtyarev went on to explain that in 24 | general ASD and ADHD together raise "brain-based self-regulation" issues that can cause a failure 25 | "to register social reactions in the moment[.]" and that the frequency of impulsivity in someone with 26 | ASD and ADHD should decrease over time, he did not provide any significant analysis of such 27 | matters on the facts of this case.

(AR 1898-1904.) 28 Significantly, in discussing Is EN behavior, Degtyarev ignored the absence of 23 een eee II IEEE II III IIR ISIS ESI EE 1 | evidence of external stimuli (peer approval and an unstructured and unmonitored environment), 2 | which historically triggered Js impulsive behavior. (AR 1905-28.) Degtyarev's opinion that 3 | even in the absence of such external stimuli,

J could act impulsively based upon “internal 4 | reinforcement” reasonably could be seen by the ALJ as inherently contradictory, speculative, and 5 | unsupported by scientific authority and the factual record.

(AR 1933-40.) The same goes for 6 | Degtyarev’s further opinions that: (1) Ps EJ behavior must have been impulsive 7 | because [J ended up alienating himself from his teammates (AR 1905-28), and (2) the April 4, 8 | 2024 MDR determination was errant because it differed from Js prior MDR’s and “disabilities 9 | don’t disappear like that.” (AR 1924.) Degtyarev’s apparent suggestion thereby, that all behavior by 10 | a disabled J is disability-related, is unsupported by authority and runs counter to Maher.

See 793 11 | F.2d, at 1480 0.8. 12 GH ’s further argument that the ALJ’s reference in her expedited decision to Columbine, 13 | Parkland, Uvalde, and Sandy Hook, which were matters not raised at the hearing or otherwise in the 14 | record, was inflammatory such to demonstrate the ALJ’s bias against Degtyarev, is unpersuasive. 15 | (See Doc. 45 at 26; Doc. 1-1 at 18.)

This bias argument is undeveloped and unsupported in the 16 | factual record. Furthermore, the ALJ’s comment, viewed in context, was not inappropriate given the 17 | noted evidence in the record that JJ could regulate his behavior to make people uncomfortable, as 18 | by the instant 911 call.

Therefore, the administrative record does not compel the conclusion that the 19 | ALJ clearly erred by affording little weight to the testimony of Degtyarev. See *Amanda J.*, 267 F.3d, 20 | at 889. 21 b. Disability-Related Social Skill Deficits 22 BEM argues the ALJ erred by upholding the MDR team’s determination notwithstanding 23 | evidence that his J behavior was a disability-related manifestation of: his social skills 24 | deficits (Doc.

45 at 7, 13-18 citing AR 257, 323-24, 605, 715, 1820-21, autism-related challenges 25 | including social impairments and a strong desire for peer approval (id. citing AR 434-35, 438, 441, 26 | 516, 610, 1001, 1010, 1700, 1823), difficulty interpreting body language and social cues (id. citing 27 | AR 303, 316, 326, 406, 1708, 1922, 1943), verbal and nonverbal communication challenges (id.

28 | citmg AR 327, 1001), and struggles with maintaining eye contact and understanding social cues (id.). 24 eee I II IE IIE III EIU ESI, ERS IIIS EN mee 1 | Particularly, J argues the MDR teain ignored his autism-related cognitive rigidity and inability to 2 | forecast consequences (Doc. 45 at 10 citing AR 641-48; see also Doc. 50 at 6-8), which he contends 3 | cause him trouble recognizing when his behaviors offend and push people away—compounded by 4 | his acting quickly without thinking.

(Doc. 45 at 7 citing AR 348, 471, 504, 543, 718-19, 831, 1164, 5 | 1172, 1695, 1699). However, the ALJ reasonably could find the MDR teain had before it and 6 | considered js noted disabilities

including ASD, ADHC, and alternative diagnoses encompassed 7 | thereby. (See section V C 1 a, ante.)

For example, the [J JEP/BIP that was approved 8 | just hours before the 911 call included goals for addressing Js social, emotional, and behavioral 9 | needs. (/d.) Furthennore, the ALJ reasonably observed that IDEA speaks to a {Ps disabilities 10 | rather than disability related needs. (Doc.1-1 at 14-16.)

The record is consistent with this 11 | observation. For example, District behavioral specialist Henry testified that the behaviors included 12 | in a BIP are not necessarily related to or a function of the IEP disability. (AR 1410.) 13 In any event, the ALJ reasonably found that Is EN behavior was not a result 14 | of his social skill deficits, but it was a deliberate and calculated behavior, for the reasons discussed 15 | above.

(Doc. 1-1 at 17-21; section V C 1 a, ate.) JS expert Degtyarev conceded that □□□□ 16 | ASD diagnosis found only mildly impaired social mteractions and peer relations, leaving Jj with 17 | some ability to read social cues and engage his peers appropriately. (AR 1944.) Degtyarev agreed 18 | that J has “some control to a degree over his behavior,” albeit Degtyarev went on to equivocate 19 | that, “I see him as very stimulus bound and typical of ADHD and to a degree autism, and so in that 20 | sense there is a lack of control, especially when he's dysregulated emotionally[.]” (AR 1952-53; see 21 | also 1954-56).

Therefore, the ALR also reasonably found {Ps disability-related social skill 22 | deficits did not cause and were not directly and substantially related to his jug behavior. 23 2. The ALJ Reasonably Found Ps gag Behavior was not the Direct 24 | Result of the District's failure to Implement the IEP 25 GB alleges in his complaint in this court, that the ALJ erred by upholding the MDR team 26 | finding that his jg behavior was not the direct result of the District's failure to 27 | implement his IEP.

(Doc. 1 at 19.) The record reflects the ALJ upheld the MDR team finding that 2° | zs EE Conduct was not the direct result of the District's failure to implement his 25 nnn ee II ENE II III IIR ISIS ESI EE EI 1 | IEP. (Doc. 1-1 at 21-24.) Particularly, the ALJ found that JV baseball coach Ruiz maintained 2 | supervision over Jj at the time of the 911 call and that even if he had not, the 911 call was not a 3 | behavior the BIP was meant to address.

(Doc. 1-1 at 22-24.) Jj has not argued the failure to 4 | implement claim on appeal, and concedes the issue, at least implicitly.^{1°} (See Docs. 45, 50.) 5 In any event, the ALJ reasonably could uphold the MDR team's determination that Jj was 6 | receiving all agreed upon IEP services at the time of the J incident (See AR 650, 658), 7 | and that the J behavior was not the direct result of the District's failure to mmplement 8 | the IEP (id.).

For example, JV baseball coach Ruiz had received and was aware of Jf?s IEP/BIP 9 | prior to the J incident (AR 773-82; 1285; see also AR 1529), and had implemented 10 | requirements thereunder (AR 944-45; 1287). Degtyarev’s testimony is not a reason to find otherwise. 11 | For example, Degtyarev was unaware the Ruiz had assigned Jj an after-practice job as required by 12 | the IEP.

(AR 1957.) Degtyarev also mischaracterized the IEP’s supervision proximity requirement, 13 | as discussed above.’ (See Doc. 1-1 at 22-23; AR 1957-59: section V C 1 a (5), ante.) 14|D. Attorneys’ Fees 15 BM seeks an award of prevailing party attorneys’ fees pursuant to 20 U.S.C. § 1415@)(3)(B). 16 | (Doc. 1 at 20.)

The Court has discretion to award reasonable attorneys’ fees in actions brought under 17 | IDEA. 20 U.S.C. § 1415(4)(3); 34 C-F.R. § 300.517; Educ. Code § 56346(f). Parents are prevailing 18 | parties if they “succeed [] on any significant issue in litigation which achieves some of the benefit 19 | [they] sought in bringing the suit.” AZ.C. by & through MN, 858 F.3d, at 1201 (citing Park v. 20 | Anaheim Union High Sch.

Dist., 464 F.3d 1025, 1034 (9th Cir. 2006)). J is not the prevailing 21 | party in this appeal and is not entitled to attorneys’ fees, for the reasons stated. 22 The District seeks to recover its attorneys’ fees incurred herein. (Doc. 20 at 7-8.)

The Court 23 | has discretion to award reasonable attorney’s fees to a prevailing local education agency, but only in 24 | circumstances the Court finds are not present here. 20 U.S.C. § 1415()(3) (B)(@)(DD). The Court 25 | does not find that the complaint initiating this action was frivolous, unreasonable, or without 26 16 MN does argue the District’s failure to supervise in proximity, in the context of whether his behavior was caused or 27 | related to his disability, as discussed above.

See section V C 1, ante. 17 Degtyarev later characterized “intermittent proximity” to require “(J has you in sights, knows you’re nearby... that 28 | person is coming in and checking in.” AR 1960. 26 eee ee I IE IIE III III IIE ESS III EE 1 | foundation, or that it became so during its pendency. /d. Nor does the Court find that this action was 2 | brought for any improper purpose.

Jd. Consequently, the District is not entitled to attorney’s fees, for 3 | the reasons stated. Sealing 5 The Court is issuing this order under seal. However, it is not convinced that it should remain 6 | sealed. Thus, within 14 days, counsel SHALL file a joint document setting forth specifics as to why the 7 | order should remain sealed and why it cannot be redacted and then be filed on the public docket. □□ □□□□ 8 agree that redaction is appropriate, they SHALL submit a draft copy of this order with the proposed 9 | redactions made, along with their joint statement.

If they fail to respond within 14 days, the Court will 10 } understand that they agree that sealing is not required, and the Court will unseal the order. 11 VI. CONCLUSIONS 12 The district cout must affinn the administrative decision if in its independent judgment, a 13 | preponderance of the evidence supports the hearing officer’s findings and conclusions.

In its 14 | independent judgment, the Court finds that a preponderance of the evidence in the administrative 15 | record supports the ALJ's July 24, 2024 findings and conclusions on appealed Issue 1(b). Thus, the 16 | Court ORDERS: 17 1.

The ALJ's July 24, 2024 Expedited Decision on appeal is AFFIRMED in FULL. 18 2. GMs request for prevailing party attorneys' fees on the administrative appeal is 19 | DENIED. 20 3. The District's request for prevailing local education agency attorney's fees incurred 21 | herein is DENIED. 22 4.

The Clerk is DIRECTED to enter judgment in favor of the District and close this case. 23 5. Within 14 days, counsel SHALL file a joint statement addressing whether this order 24 | should remain sealed. (Headnote E.) If they fail to do so, the Court will unseal this order thereafter. 25 26 IT IS SO ORDERED. TED STATES DISTRICT JUDGE 28 27