

**STATE OF CONNECTICUT  
DEPARTMENT OF EDUCATION**

Student v. Manchester Board of Education

Appearing on behalf of the Student: Parent, *pro se*

Appearing on behalf of the Board Alyce Alfano, Esq.  
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Appearing before: Melinda A. Powell, Esq.

**FINAL DECISION AND ORDER**

**ISSUE:**

Was the Student's behavior a manifestation of the Student's disability?

**PROCEDURAL HISTORY:**

The Student initiated this expedited special education due process matter on March 18, 2019. The Hearing Officer was appointed on March 19, 2019. A Prehearing Conference was convened on March 22, 2019. The issue for the hearing was identified by the Hearing Officer and no objections were raised by the parties.

A hearing was held on April 12, 2019.

Board exhibits 1-5 were admitted into the record in full by consent. The Parent agreed to use the Board exhibits in lieu of submitting any additional exhibits. The due process complaint was entered into the record as HO-1.

The following witnesses were called by the Parent: Student's Special Education Teacher (Spec. Ed. Teacher), a School Social Worker (Soc. Worker), a Regular Education Teacher (Reg. Ed. Teacher) and the School Psychologist (School Psych.). The Board called the Assistant Principal (Asst. Prin.), the Guidance Director (Guidance Dir.), and Supervisor for Pupil Personnel (Sup. Pupil Pers.)

All motions and objections not previously ruled upon, if any, are hereby denied and/ or overruled. To the extent there was conflicting testimony, the Hearing Officer finds the testimony of the witnesses cited herein more credible than witness testimony not relied upon.

To the extent that the procedural history, summary, and findings of fact actually represent conclusions of law, they should be so considered, and vice versa. *Bonnie Ann F. v. Calallen Independent School District*, 835 F. Supp. 340 (S.D. Tex. 1993); *SAS Institute Inc. v. H. Computer Systems, Inc.*, 605 F. Supp. 816 (M.D. Tenn. 1985).

### **STATEMENT OF JURISDICTION:**

This matter was heard as a contested case pursuant to the Individuals with Disabilities Education Act (“IDEA”), 20 United States Code § 1400 *et seq.* and related regulations, Conn. Gen. Stat. § 10-76h and related regulations, and in accordance with the Connecticut Uniform Administrative Procedure Act, Conn Gen. Stat. §§ 4-176e to 4-178 inclusive, § 4-181a and § 4-186.

### **FINDINGS OF FACT:**

After considering all the evidence submitted by the parties, including documentary evidence and the testimony of witnesses, I find the following facts:

1. The Student is eligible for special education under the category of Emotional Disturbance (ED). (B-5)
2. The Student is a seventeen-year-old, tenth-grade student attending Manchester Public Schools. (B-5)
3. In October 2016, as part of his triennial review, a psycho-educational evaluation was completed. (B-1)
4. The evaluator, a school psychologist, noted that since at least 2013 the Student had a significant history of severe behavior problems in school. (B-1). In 2016, a psychiatric evaluation was conducted. The Parent reported no significant behavioral problems outside of school, while teachers reported significant behavior problems in school. He was diagnosed with Attention Deficit Hyperactivity Disorder, Combined Type and Oppositional Defiant Disorder. Teachers and the evaluator endorsed symptoms of depression. Educational planning recommendations included preferential seating, multimodal instruction, checks for understanding and attention, consistent and clear behavior expectations, such as encouragement of taking responsibility for his actions. (Id.)
5. On January 26, 2019, the Manchester Police Department arrested the Student in the community and charged him with Carrying a Dangerous Weapon, Assault in 2<sup>nd</sup> degree with a Firearm and Criminal Mischief in the 2<sup>nd</sup> Degree. (B-3)
6. On January 27, 2019, the Police Department advised the Board of the incidents pursuant to Conn. Gen. Stat. Section 10-233h, which requires the police to report arrests of any students for any felony, Class A misdemeanor or Conn. Gen. Stat. Section 53-206c (Brandishing a Facsimile Firearm). (Id.) The referral stated, “[Student] and (3) other Juveniles were fighting with (2) male juveniles. One of the unidentified females with [Student] pulled out a taser. [Student] and another male with him pulled out BB guns and began shooting at the other (2) juvenile males. One of the (2) males was hit with BB in [the] hand and they shot

out a car window. [Student] and one of the females,[], were [the] only ones identified. Neither of them would cooperate with the investigation.” (Id.)

7. The Student received a 10 day out of school suspension from February 27, 2019 through March 12, 2019, and was recommended for expulsion, based on an alleged violation of Board Policy 5144, which states, “A principal must recommend expulsion proceedings in all grades kindergarten to twelve, inclusive, whom the administration has reason to believe off school grounds, possessed a firearm....” (B-4)
8. A manifestation determination review (“MDR”) PPT meeting was held on March 11, 2019. A manifestation determination checklist was completed, asking the following: (1) did the behavior have a direct and substantial relationship to the Student’s disability?; and (2) was the IEP implemented? (B-5) The PPT determined the behavior was not a manifestation of the Student’s disability. (Id.) The IEP had been implemented properly. (Id.) The Assistant Principal, the School Psychologist, the Supervisor for Pupil Personnel and the Counselor agreed with this conclusion at the time of the meeting. (Test. Asst. Prin., School Psych., Sup. Pupil Pers., Guidance Dir.) The Parents, Special Education Teacher, Social Worker and Regular Education Teacher did not agree with the other members. (Test. Special Ed. Teacher, Social Worker, Reg. Ed. Teacher)
9. The PPT members’ knowledge of the facts of the conduct was limited to the summary of the incident in the police referral that had been sent to the school. The police report was not provided to the members. (Test. Special Ed Teacher) The summary, however, was read to the members. (Id.)
10. At the hearing, the Board’s position was that the behavior at issue was “possession of” the BB gun. The Board’s letter outlining the recommended disciplinary consequence of expulsion explicitly cites possession of a weapon as the predicate code of conduct violation. (B-4) The possession of the weapon was the conduct under review at the MDR PPT meeting. (Id.)
11. The Assistant Principal based her decision at the MDR on details told to her by the Student that the Student had taken a BB gun with him to another student’s house. For this reason, she believed that the Student’s conduct was planned (rather than impulsive). This information was not provided or reviewed at the MDR PPT. That information was not contained in the summary of the police report. Therefore, the Hearing Officer will not credit this opinion because those details were not presented at the meeting.
12. Other members of the PPT agreed that the Student’s involvement in an altercation with peers, as described in the police referral letter, was a manifestation of his disability. They opined that the Student’s difficulties with peer relations and/ or impulsivity was the cause of the incidents described in the police report. In so doing, they did not consider the question of whether the *possession* of the firearm was a manifestation of emotional disturbance. (Test. Social Worker, Reg. Ed. Teacher, Spec. Ed. Teacher)
13. The Special Education Teacher did not understand that the conduct in question was the possession of a BB gun. If she had understood that fact, she would have analyzed whether the

Student's possession was as a result of an impulse, such as taking the BB gun from a friend, or whether the possession was planned. She did not know whether the Student and another person each had BB guns or whether the Student was simply present while the other person had possession. (Test. Spec. Ed. Teacher)

14. The Social Worker had limited knowledge regarding the Student's educational records and was not familiar with the psychoeducational evaluation. (Test. Soc. Worker)
15. The Regular Education teacher had limited knowledge of the Student because he attended her class on only a few days. (Test. Reg. Ed. Teacher)
16. The School Psychologist and Guidance Director's opinions regarding the lack of causation between the Student's disability and conduct were more persuasive. The School Psychologist analyzed the most recent psychoeducational evaluation at the MDR PPT meeting and found that the Student was able to engage in volitional, intentional conduct. (Test. School Psych.) The Student self-reported that he chooses to act in certain ways when he gets bored. (B-1). The Student is aware of the difference between appropriate and inappropriate behavior. (B-1)
17. The Guidance Director's opinion, which focused on the possession of the weapon, and knowledge of emotional disturbance, was that the Student's actions were planned, not impulsive. (Test. Guidance Dir.)

### **CONCLUSIONS OF LAW:**

1. Title 20 United States Code section 1415(k) and title 34 Code of Federal Regulations, part 300.530, et seq., govern the discipline of special education students. A student receiving special education services may be suspended or expelled from school as provided by federal law. If a special education student violates a code of student conduct, the local educational agency may remove the student from his/her educational placement to an appropriate interim alternate educational setting, another setting, or suspension for not more than 10 school days (to the extent such alternatives are applied to children without disabilities.) (20 U.S.C. § 1415(k)(1)(B); 34 C.F.R. § 300.530(b)(1).) A local educational agency is required to provide services during periods of removal to a child with a disability who has been removed from his/her current placement for 10 days or less in the school year, if it provides services to a child without disabilities, who is similarly removed. (34 C.F.R. § 300.530(d)(3).) If a special education student violates a code of conduct and the local educational agency changes the educational placement of the student for more than 10 days, the local educational agency must meet the requirements of section 1414(k).
2. Within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or (II) if the conduct in question was the direct result of

the local educational agency's failure to implement the IEP. (20 U.S.C. § 1415(k)(1)(E); 34 CFR § 300.530(e)(1)-(2))

3. Parents and local educational agencies may request an expedited due process hearing of claims based upon a disciplinary change of educational placement under section 1415(k). An expedited hearing must be conducted within 20 school days of the date an expedited due process hearing request is filed, and a decision must be rendered within 10 school days after the hearing ends. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2)).
4. The category "emotional disturbance" is defined under federal regulations, 34 C.F.R. § 300.8(c)(4)(i) (2010), as "a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree that adversely affects a child's educational performance, including:
  - An inability to learn that cannot be explained by intellectual, sensory or health factors.
  - An inability to build or maintain satisfactory interpersonal relationships with peers and teachers.
  - Inappropriate types of behavior or feelings under normal circumstances.
  - A general pervasive mood of unhappiness or depression.
  - A tendency to develop physical symptoms or fears associated with personal or school problems.
5. A BB gun is a "firearm" and "dangerous weapon" under state law. Conn. Gen. Stat. §§ 53a-3 (19), 53-206; *State v. Grant*, 294 Conn. 151 (2009).
6. The MDR is conducted by the district, the parent, and relevant members of the IEP team (as determined by the parent and the district). 34 CFR § 300.530 (e). The appropriate members were present at the Student's MDR PPT meeting.
7. The Parent's argument that the MDR decision is determined by majority rule is rejected. While parents have the right to invite additional participants to the MDR, they do not have the right to veto a district's choice of team members or the MDR team's determination that the child's misconduct is unrelated to his disability. *Fitzgerald v. Fairfax County Sch. Bd.*, 50 IDELR 165 (E.D. Va. 2008). The school district may make the final decision; the decision is not made by a tally or formal vote of the members present even if most members hold the opinion that the behavior was a manifestation. *Id.*
8. The Student's disability under the IDEA is emotional disturbance, which generally requires behavior to affect educational performance, and Parents reported no conduct or behavior issues outside of the school setting. The conduct at issue was the possession of a firearm in the community setting. (Findings of Fact #4, #5) The Student made a poor, but intentional, choice by obtaining and possessing a firearm, which was not significantly related to his disability. (Findings of Fact #16, #17)

**ORDER:**

May 14, 2019

Final Decision and Order 19-0429

1. The Student's behavior was not a manifestation of the Student's disability.
2. The decision of the PPT at the manifestation determination review meeting is affirmed.