

ILLINOIS STATE BOARD OF EDUCATION  
SPECIAL EDUCATION DUE PROCESS HEARING

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SPECIAL EDUCATION  
SERVICES

IN THE MATTER OF

[REDACTED]

v.

[REDACTED]

)  
) ISBE CASE NO. 2010-0225  
)  
) Linda Mastandrea  
) Impartial Due Process  
) Hearing Officer

**Decision and Order  
Jurisdiction**

This matter is before the undersigned hearing officer for a due process hearing pursuant to the Individuals with Disabilities Education Improvement Act ("IDEA 2004"). 20 U.S.C. 1400 et seq. (2004). This hearing officer has jurisdiction pursuant to 20 U.S.C. 1415 et seq. (2004), 34 CFR 300.532, 105 ILCS 5/14-8.02a and 8.02b et seq., and 23 Il. Adm. Code 226.600 et seq.

**Procedural History**

An expedited due process request was filed by the parents on January 5, 2010, received by the District on January 6, 2010. The District sent the request to ISBE, where it was received on January 7, 2010. The hearing officer received notice of appointment on January 8, 2010 and contacted the parties on January 13 and 14, 2010. A resolution session was scheduled for and held on January 19, 2010 followed by a status teleconference on January 20, 2010 wherein it was determined that no issues were resolved and the case would proceed to expedited due process hearing.

The hearing was convened on January 25, 2010 at the [REDACTED] [REDACTED]. The hearing was reconvened on January 26, 2010 and concluded that afternoon. The District was represented by [REDACTED] and [REDACTED] of [REDACTED] and the Student was represented by [REDACTED] and paralegal [REDACTED] of [REDACTED].

**Issues Presented and Remedies Requested**

1. Whether the student's behavior resulting in the recommendation of expulsion was a manifestation of his disability; and
2. Whether expulsion was proper as a result.

**Student's Requested Remedies**

1. A determination be made that the student's behavior was a manifestation of his disability; and
2. That the expulsion proceedings be dismissed.

**District's Requested Remedies**

1. A finding that the student's behavior was not a manifestation of his disability; and,
2. A determination made that the expulsion was proper.

**Witnesses**

Following are the witnesses who were present and offered testimony in this case.

1. [REDACTED], Associate Superintendent for Student Services
2. [REDACTED] Dean of Students
3. [REDACTED] Special Education Teacher and Case Manager
4. [REDACTED] School Psychologist
5. [REDACTED] School Social Worker

6. [REDACTED] Parent
7. [REDACTED] Private Psychologist

### Documents Offered Into Evidence

Both parties presented extensive binders of documents into evidence, the District binder containing Tabs 1-14 and pages 1-213. The Parents binder containing Tabs 1-25 and pages 1-314. All documents contained therein were received and accepted into evidence except for Parents 280 which is hereby excluded.

### Burden of Proof

As the moving party, the parents have the burden of proof. *Schaeffer v. Weast*, 126 S.Ct. 528 (2005).

### Finding of Facts

1. Student is a 17 year old junior at [REDACTED] where he has been since he was a freshman. He was found eligible for special education services in the 2<sup>nd</sup> grade as a student with a specific learning disability (SLD). (Parent 144; District 136). He was diagnosed with ADHD in approximately 2<sup>nd</sup> grade and put on medication at that time. He was found to have central auditory processing disorder in 2000. (Parent 144; District 136). More recently student was found eligible as a student with Other Health Impairments (OHI) as a result of bipolar disorder and ADHD. He is noted to also experience anxiety, depression, and poor executive functioning.
2. Student takes several medications daily, including Strattera, Lithium, Lamictal, Klonazepam and Seroquel. He was previously on Abilify, but the doctor changed it to Seroquel.
3. His parents adopted Student and brother as infants, and both parents work outside the home.
4. Student attended [REDACTED] for grades K-8, and evidenced difficulty with transitions as well as with attending school as early as when he was entering 6<sup>th</sup> grade. (Parents 145; [REDACTED])

### IEPs, Testing and Reviews

5. Student had an IEP at [REDACTED] developed in August, 2007 where he was found eligible under the category of Specific Learning Disability. (Parent 37).
6. Student has exhibited difficulties with his reading comprehension, lack of written organization, test performance, math computation and reasoning throughout his high school career. (Parent 40).
7. Since his first IEP was developed for high school Student has exhibited weakness in coping with stressful and anxiety inducing situations which has impacted his ability to respond appropriately to those situations in either an academic or social setting. (Parent 40, 53), and in the area of self advocacy. (Parent 47).
8. At annual review in March, 2008, Student remained eligible under the category of Specific Learning Disability (SLD) (Parent 63). Along with other deficits, Student continued to exhibit weakness in coping positively with stressful and anxiety inducing situations. (Parent 66). Student continued to work on self advocacy and improving problem solving skills (Parent 73-74; 79-80).
9. In May, 2008, Student continued to be eligible under the category of Specific Learning Disability (SLD). (Parents 104), and was also found eligible under the category of Other Health Impairment (OHI) for both ADHD and bipolar disorder. (Parent 109). Student was taking several medications, including: Lithium 600 mg 2/day, Strattera 40 mg/day, Klonopin .5 mg. daily, Lamictal 75 mg 2/day, Benadryl 50 mg/PRN and EpiPen and Alavert PRN for seasonal and nut allergies. (Parent 99, 145; [REDACTED])
10. Student was found to be in the low average range of cognitive ability, with low processing speed, and low working memory. (Parents 101). Student was reported to have difficulties being prepared and staying on task. He was not participating in class, had to be redirected often, wasn't doing his assigned work, and was disorganized. (Parents 101, Parents 133-134).
11. A Social Developmental Study was conducted by School Social Worker [REDACTED] on 4/24/08, and as part of the study, The Behavior Assessment System for Children, 2<sup>nd</sup> edition, Self Report Adolescent (BASC-SRP-A) was given to student himself. Student reported becoming irritable quickly, difficulty regulating his moods and exhibiting self control when faced with adversity. (Parents 147; District 139).

12. Psychological testing was conducted by ██████████ in May, 2008. The WISC-IV and WIAT-II were administered. On the WISC-IV, Student's verbal comprehension, perceptual reasoning and working memory indices were low average and processing speed was very low. No full scale IQ was presented; ██████████ instead noted the test scores were "not a good estimate of actual ability." (Parents 140-143; District 132-135). ██████████ noted that student had difficulty understanding social conventions, difficulty with visual abstract reasoning and working memory, and low processing and coding scores. (Parents 140-143; District 132-135).
13. In the WIAT-II, student's Word Reading was in the 19<sup>th</sup> percentile, Reading Comprehension was noted as 6<sup>th</sup> or 7<sup>th</sup> grade when read to; Numerical Operations were 85 with calculator, in the 18<sup>th</sup> percentile, mathematical reasoning was below the 1<sup>st</sup> percentile and listening comprehension in the 2<sup>nd</sup> percentile. (Parents 140-143; District 132-135).
14. At Student's 2/23/09 IEP annual review, School Social Worker Wood reported that Student was making good progress, and recommended school social work services be discontinued at that time. (Parents 174). She noted that school social work services would remain available to student. (Parents 174).
15. At that review, Student was described by many of his teachers as easily distracted, in need of help to focus, experiencing problems staying on task, not using class time well, failing to complete assignments, unmotivated, experiencing behavioral issues and having problems with test taking. (Parents 174).
16. At the next IEP review on August 17, 2009 additional goals were added, including in the areas of problem solving skills (Parent 186; District 098); test taking anxiety (Parent 188; District 100-101); organizational skills (Parent 190; District 102); note taking skills (Parent 193; District 103); and self advocacy (Parent 199-201; District 109-111). Student's grades remained poor, 4 D's and 1 B (Parents 212; District 123), Student was reported to have a high anxiety level and was seeing a therapist weekly. (Parents 213; District 124). Team agreed that since student was not using accommodations available to him, a plan would be structured to ensure the accommodations were provided rather than having them available only on request. (Parents 213; District 124).
17. The next review took place November 3, 2009, which was an IEP review and MDR relative to a disciplinary incident that took place October 7, 2009. (Parents 229; District 091). Parents signed consent to allow school to reevaluate student on 11/3/09 (District 087-88). Parents agreed to a 45 day IAES at ██████████. (Parents 224; District 080-081). The District recommended keeping Student there past the end date of the 45 day IAES; parents opposed that suggestion. (Parent 226; District 082).
18. As of 11/3/09 student was earning D's in math and history, a B in reading, 74% in Autos and 50% in physical science. (Parents 227; District 083).

#### Behavioral Incidents

19. Mother testified that Student experienced bullying several times while a Student at ██████████ including being egged while at a ██████████ football game in the fall of 2009, having his car keyed with the words "fuck you", being called "Daisy" by others in Autos class and then other students as well, being hit in the head with balls by ██████████ and other students in PE class while he was already out in a dodge ball game, and then being pushed into the locker, the urinal and having garbage smeared on him and his backpack after PE.
20. Student was involved in an altercation with another student that same day, which resulted in a 45 day IAES agreed to by parents; the conduct was found to be a manifestation of his disability.
21. ██████████ testified that she was aware there were reports Student was bullied. She and Dean ██████████ knew that Student reported "fuck you" was keyed on his car on 8/31/09 but that surveillance tapes were reviewed and there was no evidence to support Student's car was keyed at ██████████. She admitted on cross that Student's car was found to be out of range of the video cameras in the parking lot.
22. ██████████ also testified that she was aware of the egging incident, and that Dean ██████████ talked to a group of boys about it. She testified that ██████████ was implicated in the egging.
23. ██████████ testified that she and Dean ██████████ were aware of Student being called Daisy as of about 9/21/09. Several boys in Autos class began calling him Daisy when the instructor misread his name on his paper. Dean ██████████ met with the students and called the parents.
24. ██████████ also testified that there was no evidence Student was pushed into the locker or urinal, or had garbage smeared on him that day after the PE class; however she admitted that she only passed Student briefly in the hall that day, and was busy dealing with the "victim" ██████████. She also admitted that she didn't go into the locker room at that time.

25. While out of school on the 45 day IAES, Student was home on November 23, 2009. He sent a message on Facebook to another [REDACTED] student, [REDACTED], wherein Student wrote "when I come back to school I'm going to look for u and kill u." [REDACTED] responded via Facebook email writing "dude you keep saying that shit u aren't coming back to school." [REDACTED] instant messaged Student asking him "Why did u say that on Facebook?" Student instant messaged [REDACTED] back telling him to call him and providing him with his cell phone number.
26. Student's Mother testified that [REDACTED] called Student's cell phone while they were at the grocery store together that evening. She asked Student who was on the phone, he said [REDACTED] and Mother proceeded to listen to the phone conversation which lasted approximately 1 minute and 49 seconds.
27. Mother testified that Student said to [REDACTED] "I need to ask you a question. Why did you bully me? What did I ever do to you?" and [REDACTED] said "I don't know man, I'm sorry." She testified that Student did not say "I should have beat your ass" as [REDACTED] reported to school officials, and that if he had she would have punished him.
28. Mother testified that Student is a good kid who has suffered a lot, missing school and peer interactions. She testified that he did an impulsive thing and didn't think it through when he saw [REDACTED] picture on Facebook.
29. [REDACTED] reported the incident to Dean [REDACTED] who used a computer in her office to login to his Facebook account and print the message history. [REDACTED] reported to [REDACTED] that in the phone conversation after 11/23/09, Student told him to watch his mail because his parents were going to get a lawyer and sue him. [REDACTED] met with [REDACTED] 7 or 8 times regarding this incident as well as the incident in PE class. [REDACTED] admitted that she jointly wrote and typed a document describing the November 23, 2009 incident with [REDACTED] in her office. [REDACTED] accessed Student's Facebook page somewhere around 10 times after 11/23/09 through other students' accounts.
30. [REDACTED] testified she was unaware of any of the bullying incidents, until [REDACTED] told her about them. She testified she talked to [REDACTED] on September 3, 2009 and that the Early Intervention Team, social worker and counselor, met to discuss it, that they didn't see Student being bullied, and they spoke to teachers and none of them saw it. Even if none of the teachers they spoke to were aware of the bullying, [REDACTED] and [REDACTED] had been apprised of Student's reports of bullying.
31. [REDACTED] testified that she became aware of reported bullying when she read Student's files in preparation for the 11/3/09 MDR but did not propose counseling or talk to anyone about the bullying. She further testified that as of the 1/5/10 meeting she was aware of the reported bullying in the locker room on 10/7/09, but that there was "no evidence Student was physically assaulted." On cross examination she admitted that she didn't know how there could be evidence of bullying on October 7 when staff didn't know it had occurred until January 5, 2010 at the time when Student's attorney reported it to the team.
32. [REDACTED] testified she became aware of reported bullying when either [REDACTED] or [REDACTED] told her about it. She testified that she didn't talk to Student about any of the reported incidents. She also testified that Student's IEP didn't reflect any social work minutes for that semester, but that that would not preclude her from providing service or talking to Student. She did not suggest social work or counseling in response to learning about any of the incidents.

#### **Expulsion Recommendation and Meetings 12/17/09 and 1/5/10**

33. Student was recommended for expulsion after the 11/24/09 incident with [REDACTED] based on a violation of school policy:

[REDACTED] policy 7:190 Student Discipline  
Grounds for Disciplinary Action

The grounds for disciplinary action, including those described more thoroughly later in this policy, apply whenever the student's conduct is reasonably related to school or school activities including but not limited to:

4. Anywhere, if the conduct interferes with, disrupts, or adversely affects the school environment, school operations, or an educational function, including but not limited to conduct that may reasonably be considered to: (a) be a threat or an attempted intimidation of a staff member; or, (b) endanger the health or safety of students, staff or school property.

#### Prohibited Student Conduct

The school administration is authorized to discipline students for disobedience or misconduct including but not limited to:

9. Engaging in hazing or any kind of aggressive behavior that does physical or psychological harm to another or any urging of other students to engage in such conduct. Prohibited conduct includes any use of violence, force, noise, coercion, threats, intimidation, fear, harassment, bullying, hazing or other comparable conduct. (District 144).

34. A Manifestation Determination Review was scheduled by the District, and held over two days, 12/17/09 and 1/5/10. On 12/17/09 Student's father and attorney attended. Attorney objected to lack of notice that the meeting was for an MDR. (Parent 233-34; District 056-057)
35. Three different notifications were given for the 12/17/09 IEP meeting. The first, dated 11/24/09 indicates the purpose of the meeting will be to, among other things, consider relatedness of the disability to disciplinary code violations. (Parent 254; District 077). The 11/24/09 parent notification of conference was faxed to student's attorney [REDACTED] on December 2, 2009 (District 078-079). The second and third notifications, both dated 12/7/09 do not include considering relatedness of the disability as one of the meeting purposes. (Parents 249, 251, 252, 253; District 076).
36. At the 12/17/09 meeting, reports of the [REDACTED] psychologist [REDACTED] as well as [REDACTED] Intern Therapy Student were reviewed, as well as a draft Functional Behavior Analysis and Behavior Intervention Plan created. Parents provided three pages of psychological test scores from [REDACTED] who was not present at the meeting. (Parent 233; District 056)
37. Student attended 9 hours out of 23 days of placement at South Campus. (Parent 233; District 056). During his time at [REDACTED] saw student a handful of times, for two individual sessions, one family meeting and 1 ½ group therapy sessions. (Parents 240; District 063). Student reported a history of verbal ridicule and bullying from peers at school. [REDACTED] noted that Student hadn't exhibited any physically aggressive behaviors on [REDACTED]. Student reported that school reminded him of the hospital and it was uncomfortable to not know anyone there. [REDACTED] discussed ways to increase his comfort level including asking for the teacher's assistance or help from staff, requesting to see his therapist or utilizing coping skills. (Parents 240; District 063).
38. The team discussed placement. Parents proposed a half day at [REDACTED] and half day at [REDACTED]. District opposed this suggestion based on student's identified difficulty with transitions. District recommended private therapeutic day program working toward transition back to mainstream high school. (Parents 234; District 057).
39. The meeting and the expulsion hearing were both continued to January 5, 2010, with the MDR at 9 a.m. and the expulsion hearing taking place immediately following at 10 a.m. (Parents 234; District 057).

#### The January 5, 2010 IEP Meeting

40. A Parent Notification of Conference was sent 12/18/09 for the 1/5/10 meeting, which indicates as one purpose to consider relatedness of disability to disciplinary code violations. (Parents 279; District 051).
41. Two different IEP Conference Summary Reports appear in evidence, both dated 1/5/10. They reflect different meeting purposes and different dates when procedural safeguards were provided (10/29/09 and 1/5/10), and one contained meeting attendee signatures, the second did not. (District 027-28; Parent 255-256). In spite of the conflicting documentation in evidence, there is no actual dispute that one purpose of the meeting of 1/5/10 was to convene a manifestation determination review. In addition to conducting the MDR, an IEP was developed, a functional behavioral analysis was conducted and a behavior intervention plan was developed.

42. Goals and objectives for Student included goals related to self advocacy and problem solving, and developing and improving organizational skills along with addressing specific academic areas. (Parents 258-266; District 30-38). The 1/5/10 IEP provides for placement in a therapeutic day program, with 2200 mpw of special education services, 30 mpw individual counseling and 90 mpw group counseling. (Parents 270; District 042). Parents do not agree with this placement. (Parents 271; District 043).
43. In the Functional Behavioral Assessment (FBA) completed for the 1/5/10 meeting, target behaviors ranged from refusing to work in class, harassing another student in class, pretending to strangle himself, and punching another student. (Parents 272; District 044)
44. It was noted that "student will make irrational and impulsive decisions that affect himself, peers and staff during structured and non structured times and incidents occur in both structured and non structured environments." (Parents 272; District 044), and that he will make impulsive decisions when prompted to complete tasks he doesn't want to do, when he is frustrated with peers or a particular social situation or when being noncompliant. (Parents 272; District 044). Further it is noted that "student makes irrational and impulsive decisions in an attempt to control and avoid circumstances in the classroom." (Parents 272; District 044). Similarly, on the Behavior Intervention Plan, (BIP) student is noted to react "impulsively and irrationally in attempt to control and avoid circumstances in the classroom which leads to verbal and physical altercations." (Parents 273-74; District 045-046).

**Manifestation Determination Review**

45. The final task of the meeting on January 5, 2010 was to conduct a Manifestation Determination Review.
46. During the MDR on 1/5/10, it was reported that Student sent a private Facebook message to [REDACTED] "when I come back to school I am going to look for u and kill u for giving me hell". [REDACTED] responded to Student via Facebook email "dude u keep saying that shit and ur not going to come to school". [REDACTED] next sent an instant message (IM) to Student saying "why did you say that on Facebook?" Student responded via IM "call me, here's my number XXX-XXX-XXXX" and [REDACTED] then called Student. (Parent 275; District 047).
47. [REDACTED] reviewed the disciplinary incident of 11/23/09 and student's history of disciplinary referrals. While she noted that [REDACTED] made multiple attempts to contact family to provide student with due process without success (Parents 276; District 048), at hearing, Parent testified that they refused contact with the district based on the advice of their attorney who was handling the criminal charges pending against Student.
48. At the MDR, Student's attorney reported that Student had been subject to both verbal and physical bullying. He also reported that student was humiliated that he didn't fight back. (Parents 276; District 048)
49. Parents provided test scores from [REDACTED] who provided a report and summary for the team on both the test scores and her assessment of Student's behavior and its relatedness. (Parents 275; District 047). She found the behavior was related to his disabilities. (Parents 276; District 048).

**November 2009 Psychological Testing**

50. During the interim between the 11/3/09 and 12/17/09 meetings, Dr. Grandt had conducted intellectual, academic and cognitive testing of student. The results follow:

**Wechsler Adult Intelligence Scale-IV**

<b><u>Index and Subtest</u></b>	<b><u>Scaled Score</u></b>	<b><u>%</u></b>	<b><u>Qualitative Description</u></b>
Verbal Comprehension Index	78	7	Borderline
Perceptual Reasoning Index	88	21	Low Average
Working Memory Index	83	13	Low Average
Processing Speed Index	62	1	Extremely Low
Full Scale IQ	74	4	Borderline

**Woodcock Johnson III**

<u>Subtest</u>	<u>Scaled Score</u>	<u>%</u>
Basic Reading	77	6
Broad Reading	70	2
Math Calculation	53	<1
Broad Math	53	<1
Academic Skills	71	3

**Comprehensive Test of Phonological Processing**

<u>Subtest</u>	<u>Scaled Score</u>	<u>%</u>
Phonological Awareness Composite Score	85	16
Rapid Naming Composite	85	16

**Gray Oral Reading Test**

<u>Subtest</u>	<u>Scaled Score</u>	<u>%</u>
Reading Fluency	1	<1
Oral Reading Quotient	58	<1

**Test of Written Language 4<sup>th</sup>**

<u>Subtest</u>	<u>Scaled Score</u>	<u>%</u>
Contextual Conventions	9	37
Story Construction	7	16

**Woodcock Johnson III**

<u>Subtest</u>	<u>Scaled Score</u>	<u>%</u>
Processing Speed	48	<1
Working Memory	63	1
Short Term Memory	80	9 <sup>th</sup>
Cognitive Efficiency	63	1
Cognitive Fluency	73	4

**Test of Orthographic Competence**

<u>Subtest</u>	<u>Scaled Score</u>	<u>%</u>
Conventions	72	3
Spelling Speed	65	1
Sight Spelling	5	5
Word Choice	9	37
Spelling Accuracy	85	16
Orthographic Ability	71	3

**Delis Kaplan Executive Functioning System**

<b>Trail Making Test</b>	<b>Scaled Score</b>	<b>%</b>
Number Sequencing	10	50
Letter Sequencing	11	63
Letter Number Switching	1	<1
<b>Tower</b>	<b>Scaled Score</b>	<b>%</b>
Total Achievement Score	10	50
Mean First Time Move	9	37
Time Per Move Ratio	9	37
Move Accuracy Ratio	12	75
Rule Violations Per Item Ratio	10	50

51. [REDACTED] gave a presentation to the team explaining Student's scores, his deficit areas, and her clinical opinion that Student's behavior on 11/23/09 was a manifestation of his disability.
52. The District responded by stating that student took a series of steps requiring intentional choices in order to send the Facebook message. He had to log in, search for the person with whom he wanted to communicate, note that he wanted to send a private message, type and send message. (Parents 276; District 048).
53. The team voted immediately after [REDACTED] presentation and determined that Student's behavior was not a manifestation of his disabilities. Student was recommended for expulsion at the hearing that immediately followed the MDR. The School Board confirmed that recommendation at their meeting that same week.
54. [REDACTED] and [REDACTED] all testified at hearing that the length of the manifestation determination review was around 30 minutes. [REDACTED] and [REDACTED] all testified that they listened to [REDACTED] report, which was estimated to last about 20 minutes. All admitted that they did not ask her any questions or for any clarifications.
55. At hearing, [REDACTED] testified that he hadn't met, taught, tested or served Student, and that the first meeting he attended related to Student was the 12/17/09 meeting. Similarly, [REDACTED] School Psychologist, testified that she had never met, evaluated or observed Student. While both were aware of all of Student's disabilities, neither could fully express how his disabilities affected him in education or social settings or in relation to being bullied. [REDACTED] testified that she listened to [REDACTED] at the MDR meeting explain her findings and her test scores, but that it "didn't change her opinion" that the Facebook incident was not a manifestation of Student's disabilities.
56. [REDACTED] testified that there was definitely a plan that went into Student's actions on 11/23/09. That he had to decide whether to send a public or private message, type and send the message, then decide to IM the student. Similarly, [REDACTED] testified that given the fact that there were 6 weeks from the time Student last saw [REDACTED] and the 11/23/09 incident, it was clear this was a planned action and not a manifestation.
57. [REDACTED] special education teacher, testified she had known Student about 1 ½ years, that she had taught him in self contained math and English last year, and prep study skills this year. She testified that Student's ADHD affected his ability to remain focused, stay attentive and on task and that he is impulsive. The ADHD affects his ability to gain information from his lessons and to learn, he needs constant redirection. She had no opinion on how it affected him in social settings or in relation to bullying. She understood that executive functioning deficits related to Student's ability to be organized, to plan, to use time management. That these deficits impacted his self advocacy. He had trouble remembering homework and assignments. She said it affected him in the social setting by affecting his ability to plan or make plans. She didn't think it had anything to do with his reaction to bullying. She testified that his mood disorder caused extreme ups and downs in his behavior, which triggers in the education setting by causing him to react impulsively, speak inappropriately and walk out of class. She testified that no triggers were present that she knows of when Student made the Facebook posting to [REDACTED]. She also testified that she didn't remember if [REDACTED] said anything about what triggered him. She testified that if a peer sets him off, his mood disorder would cause him to react inappropriately, he was impulsive and had no coping skills. Similar to [REDACTED] testified that the fact that there were six weeks from the time Student last saw [REDACTED] to the time of the 11/23/09 Facebook incident, there was no trigger to do something impulsive.

58. [REDACTED] school social worker testified she knew Student about 2 ½ years, that she had done individual social work and counseling with him freshman year and discharged him February of sophomore year. She testified that she discontinued social work services with him at parents request; however, IEP notes indicate that [REDACTED] herself recommended that social work minutes be discontinued. (Parents 174). She testified that Student had a hard time making decisions and takes time to process and figure things out.
59. She testified that Student's ADHD caused him a hard time with homework, being on task, poor organization, and that he struggles not just in school but all environments. She testified that Student's ADHD caused him to be inattentive, tired, and distracted and unable to plan. She testified that Student had great deficits in the executive functioning area, that he had a hard time planning, staying organized getting assignments done or engaging in self advocacy.
60. [REDACTED] testified that Student's bipolar disorder caused him to have a hard time with temper, depression, inability to problem solve or think of consequences at the time. She testified that his mood becomes dysregulated at times, for example if he is asked to do something he doesn't want to do, he reacts inappropriately and immediately. Wood also testified that she agreed the six week time frame between Student and [REDACTED] last contact meant that Student had planned and thought out the action he took on Facebook on 11/23/09.
61. At hearing, [REDACTED] testified that she had been Student's licensed clinical psychologist since he was in the 6<sup>th</sup> grade. She has worked with children and young adults with autism, ADHD, bipolar disorder, learning disabilities, depression and anxiety. She has attended 35-40 IEP meetings for a variety of reasons, and is currently providing individual therapy to about 35 active clients. At the time she started meeting with Student, he was diagnosed with anxiety disorder NOS and mood disorder NOS in addition to the ADHD and executive functioning deficits he had previously been diagnosed with. She testified that he was diagnosed with bipolar disorder in 2007 while at Northwest Community Hospital.
62. She testified that Student's ADHD affects him in his inability to sustain attention, focus, concentration and impulsivity. It can happen in school or at home. It can cause him to do something now and not recognize the consequences until later, such as goofing around in class or getting frustrated and reacting to doing homework.
63. She testified that executive functioning looks at higher order functioning and processing ability, frontal lobe issues, not intellect or academics. She testified that research shows the frontal lobe does not mature until the mid 20's. She testified that executive functioning also deals with the lack of inhibitions or the inability to stop or put the brakes on. It affects the ability to "shift" from one task to another, such as going from English to math work in class. She testified that emotional regulation is an issue for him, that he can hit and go through the ceiling and floor of emotions within minutes.
64. [REDACTED] also testified that Student's cognitive executive functions are affected. Getting started, initiating, working memory, planning and organization of materials, monitoring what he's doing. Interacting with others, she testified that he doesn't recognize or respond to normal social cues. His processing speed is slow, his cognitive fluency, storing and retrieval of information is affected. Because of his slow processing speed, he has difficulty with language retrieval as well, making it difficult to participate in class.
65. [REDACTED] also testified that Student has very low self esteem, motivation, drive and depression which affects all his executive function areas as well. That Student showed anger and irritability and some insomnia, associated with mood disorder.
66. She testified that the bipolar disorder made it difficult for Student to manage his emotions, his cognition shifts and changes rapidly, his anger and irritability affect things he does, the way he acts out and how he perceives things. He has anxiety related to peers and the academic environment and is concerned with being perceived differently and not fitting in. His anxiety and frustration build during the day which spills over into the home. His executive functioning intervenes with his mood disorder and ADHD.
67. [REDACTED] testified she is in regular contact with [REDACTED], the psychiatrist regarding Student's condition and any needed reevaluation of medications. She is in touch with him about once a week.
68. In session, Student talks with her about school concerns and struggles, and peer interactions. He talked to her about the bullying last September with the egging and keying of his car as well as when the kids called him Daisy in Autos class. He also described what happened in the locker room after PE the day he was hit in the head with balls and then pushed into the locker and the urinal.
69. [REDACTED] testified that it isn't uncommon for someone like Student not to talk about being bullied. He wants to be like everyone else and doesn't grasp how low his cognition is. He wants to belong, and to fit

in. The incident in the locker room caused him to be embarrassed, ashamed and scared, which he played it over and over in his mind. He keeps things in until he can't take it anymore and then "the flood gates open", which is part of the emotional dysregulation.

70. [REDACTED] testified that she got a release to speak to the school after Student told her about the bullying, she called and left a message for [REDACTED] and ultimately spoke to her September 3, 2009. She told her what Student had reported to her, and recalls that [REDACTED] told her she would talk to Student and discuss a safe teacher he could go to and that teachers would be more present in the halls to prevent bullying.
71. Regarding the 11/23 Facebook incident, Student told her he had gone on to check his profile, status and mail, saw the photo of [REDACTED] in his friends list, who had been one of the students bullying him in the locker room. He became extremely angry, frustrated and upset. He became dysregulated and responded in an impulsive way sending the email message.
72. [REDACTED] testified that in her clinical opinion, she did not find the Facebook message sent by Student to be a valid threat, did not find that Student intended actual harm to [REDACTED] and as such did not feel compelled to report it. She further testified that had she found Student's conduct presented a valid threat she would have reported it.

### Expulsion Proceedings

73. An expulsion hearing was held on 1/5/10, and the Board of Education met subsequent to that hearing and student was expelled for gross misconduct and violation of Policy 7:190 Student Discipline, for the remainder of the 2009-2010 school year and the entire 2010-2011 year. (Parents 17; District 140).
74. Superintendent Schuler sent a letter and a copy of the report from the expulsion hearing to the parents (District 140-205)
75. Present at the hearing in support of expulsion were [REDACTED] [REDACTED] Dean of Students, [REDACTED] dean of Students, [REDACTED] and [REDACTED] attorney for the district. In support of the student were [REDACTED] father, [REDACTED] mother and [REDACTED] attorney for the student. (District 145-146).
76. As part of the Expulsion packet prepared by District, student discipline records were included. (District 167-170). Student was disciplined for using his cell phone in school a couple of times, being disruptive in class, getting into verbal altercations with fellow students, and leaving campus. The only incident involving physical harm is the October 7 incident involving the punch to a fellow student; that incident was previously determined to be a manifestation of student's disability.

### Conclusions of Law:

When a special education student is suspended for disciplinary reasons for more than ten days, federal law requires that the appropriate members of the IEP team meet to determine whether her conduct was a manifestation of his disability. (20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e).) The team is required to answer two questions: (1) Was the student's conduct caused by, or did it have a direct and substantial relationship to her disability; and (2) Was the student's conduct a direct result of the district's failure to implement the student's IEP? (20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).) If the answer to either question is yes, then the student's conduct is deemed a manifestation of his disability and the district may not remove the child from her current placement. 20 U.S.C. § 1415(k)(1)(E)(ii); 34 C.F.R. § 300.530 (f).

In [REDACTED] Student had ADHD and ODD, had problems with attention, discipline, focus, and direction. He experienced mood shifts and was unable to self regulate at times. His disciplinary incidents were minor until the day when Student threatened to head butt a teacher, had her trapped against a wall, and became increasingly agitated and out of control until police were called. Student was recommended for expulsion and a manifestation determination was held. In that case, the Hearing Officer found a direct and substantial relationship between both of Student's disabilities and his acts against the teacher, and overturned the District's finding that Student's actions were not a manifestation of his disability. 47 IDELR 278 Swansea Public Schools, Mass. State Ed. Agency, April 4, 2007

Parent and District provided case law for the hearing officer's review. In *Reeths-Puffer Schools Mich, State Ed. Agency 52 IDELR 274* February 9, 2009, Student was eligible as a student with both SLD and OHI, as he was diagnosed with ADHD. Student brought a knife to school and was suspended. He told the police officer that he didn't intend to use it, that he wanted it for protection. The MDR was convened, and determined that his possession of the knife was not a manifestation of his specific learning disability nor of his ADHD. The parents argued that student demonstrated impulsive actions, immature behavior and poor judgment such that he often does not understand and appreciate the consequences of his decisions and actions across different settings and at different times throughout his life. The hearing officer found immaturity and poor judgment to be not necessarily connected to ADHD, though he recognized that impulsivity was a recognized characteristic of ADHD. The ALJ found that impulsivity will not excuse a deliberate or obvious violation of a school's code of conduct so long as the student was able to fully comprehend the potential consequences of his or her actions, and upheld the manifestation determination.

While instructive, I don't find this case particularly persuasive. The Student's treating psychologist testified at length and presented the same information to the MDR team on January 5, 2010, about Student's executive functioning deficits in addition to his mood disorder and his ADHD. Even if impulsivity were the only factor to be considered in whether or not Student's conduct was a manifestation of his disability, this case does not apply to the facts of the present case. Student did not engage in a deliberate violation of the school's code of conduct in that he did not fully comprehend the potential consequences of his actions. He did not understand that he could be suspended or expelled, nor did he intend to carry out the threat. Further, virtually all the District's witnesses testified to Student's difficulties with or inability to plan as part of the effects of his disabilities. This runs counter to District's assertions that Student planned the threat against [REDACTED] and intended the consequences.

In *Murrietta Valley Unified School District, Ca. State Ed. Agency 53 IDELR 108*, May 14, 2009, Student was eligible for special education services due to multiple disabilities. Student was suspended after peeking under the stalls in the girls' restroom. The MDR was convened and it was determined that Student's conduct was not a manifestation of his disabilities. Student was recommended for expulsion. The hearing officer determined that the members of the MDR team were instructed by the school psychologist who led the meeting to consider only the student's speech and language disabilities and not his other disabilities such as his cognitive impairments and intellectual disabilities. The hearing officer reversed the decision of the MDR team and ordered the student returned to his prior placement.

In *Fulton County School District, Ga. State Ed. Agency 49 IDELR 30* July 11, 2007 the Student was diagnosed with ADHD and OHI. He had inability to sustain attention, distractibility, weak organizational skills, stubbornness and refusal to participate in class. In class one day, he verbally threatened to kill the teacher, and was suspended. At the MDR school staff considered whether ADD impaired his ability to understand the impact of his behavior, even though the District psychologist said all his diagnoses should be considered. They found that it was not a manifestation of his disabilities. Parent appealed based on the theory that District erred in failing to consider all student's disabilities in the manifestation determination. The Hearing Officer determined that The LEA, parent and all relevant members of the IEP team were required to review all relevant information in the file including the IEP, any teacher observations and any relevant information provided by the parents to determine if the conduct in question was caused by or had a direct and substantial relationship to the child's disability. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. §300.530 (e)(1).)

Similarly, Student in the present case is diagnosed with SLD and OHI, has difficulty paying attention, poor organizational skills, fails to participate in class, is easily distractible and can experience severe ups and downs in moods with an inability to self regulate. He exhibits poor executive functioning, which includes difficulty with or an inability to plan. The members of the MDR team that evaluated whether or not Student's behavior was a manifestation of his disability failed to fully comprehend the nature of his disabilities, as testified to at hearing. Further, they ignored the credible information provided by [REDACTED] his treating psychologist, who actually knew and treated student, and had the most insight into his disabilities. Finally, District's testimony at hearing that Student thought this event out, planned it and executed it from beginning to end is simply unsupportable. District witnesses all testified to the fact that

student has difficulty with or an inability to plan as a result of his disabilities. [REDACTED] testified that difficulties with planning are one of the characteristics related to executive functioning deficits as well as student's other disabilities.

Therefore, the District's manifestation determination was in error.

**It is Ordered That:**

1. The District's determination that Student's behavior on 11/23/09 was not a manifestation of his disabilities is reversed.
2. Student is ordered returned to [REDACTED]. The IEP team is ordered to convene and determine an appropriate plan of services and supports for Student no later than ten days from the date of this order.
3. Student's expulsion is ordered reversed, and his educational records are to be expunged of all references to that expulsion.

**Right to File Civil Action**

This decision is binding on the parties unless a civil action is timely commenced. Any party to this hearing aggrieved by this final decision has the right to commence a civil action with respect to the issues presented in the hearing. Pursuant to ILCS 5/14-8.02a(i), that civil action shall be brought in any court of competent jurisdiction within 120 days after a copy of this decision is mailed to the parties.

The undersigned Hearing Officer certifies that she served copies of the aforesaid Decision and Order upon Parents and District, through counsel, and the Illinois State Board of Education at their stated addresses by depositing same with the United States Postal Service at Chicago, IL via certified mail, with postage prepaid before 6:00 p.m. on February 4, 2010.

Dated this 4th day of February, 2010



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LINDA MASTANDREA  
HEARING OFFICER

**CERTIFICATE AND AFFIDAVIT OF DELIVERY BY CERTIFIED MAIL**

The undersigned hereby certifies that the attached Expedited Hearing Decision and Order was delivered via certified mail to the parties at the addresses listed herein on February 4, 2010:

[REDACTED]

[REDACTED]  
Due Process Coordinator  
Illinois State Board of Education  
100 North First Street  
Springfield, IL 62777-0001

*Linda Mastandrea*

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