IN THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA

[redacted], by and through [redacted], and [redacted].,	:	
Petitioners,	:	**Docket No.: [redacted]**
v.	:	**[redacted]-OSAH-DOE-CPEXP-147-Howells**
SOCIAL CIRCLE CITY SCHOOLS,	:	
Respondent.	:	

FINAL DECISION

I. Introduction

The Georgia Department of Education received a Due Process Hearing Request ("Complaint") on November 9, 2021. That Complaint was forwarded to this administrative court on November 10, 2021. In the Complaint, Petitioners sought an expedited hearing to appeal the manifestation determination made on November 8, 2021.

The parties participated in an early resolution session on November 10, 2021; however, they were unable to resolve this matter. The hearing was originally scheduled for December 10, 2021. However, after the parties agreed to participate in mediation, this matter was briefly stayed. The mediation was conducted on December 7, 2021, but the parties were unable to resolve the matter. A pre-hearing telephone conference was held on December 9, 2021. During the conference, the parties notified the court that they required two days to conduct the hearing. Accordingly, the hearing was conducted on December 17 and December 30, 2021. Ms. [redacted], [redacted]'s mother, appeared pro se and represented the Petitioners. Regan Sauls, Esq. represented the Respondent, Social Circle City Schools (or the "SCCS").

II. Findings of Fact

1.

Petitioner [redacted]. is twelve years old. He is eligible for special education services under the eligibility category of "Other Health Impairment" based on his diagnosis of Attention Deficit Hyperactivity Disorder ("ADHD"). (Ex. R-3.)

2.

Between June 2017 and approximately May 2020, [redacted]. was on medication for his ADHD. He began attending classes virtually in March 2020 due to the pandemic. Because the medication was causing problems with [redacted].'s appetite and because he was attending classes virtually, [redacted]'s mother allowed [redacted]. to stop taking the medication. Prior to November 2020, [redacted]. primarily resided with his mother. After an incident during which [redacted]. inappropriately rubbed his genitals against his younger brother, his mother wanted [redacted]. to live with his father. However, at the time, [redacted]'s father refused due to concerns that [redacted]. may perpetrate sexual acts on his stepsister. As a result, [redacted]. went to live with his uncle in [redacted]. (Testimony of [redacted]; Ex. P-8.)

3.

[redacted]. lived with his uncle from late November 2020 until March 2021. He continued to attend virtual classes through [redacted] Middle School in [redacted] County. In February 2021, [redacted]. was seen by a Mayo Clinic physician, who, in preparation for [redacted].'s return to the physical classroom restarted [redacted]. on 30 mg of Vyvanse. (Testimony of Renaldo Blocker; Testimony of [redacted]; Ex. R-3.)

4.

In March 2021, [redacted].'s father sought and was granted temporary emergency custody of [redacted]. He has been in his father's custody since that time. On April 1, 2021, the IEP team met to discuss [redacted].'s IEP. [redacted].'s mother attended the meeting virtually. At that time, she was concerned about [redacted].'s reading comprehension and lack of focus. [redacted]'s April 1, 2021 IEP contained two reading goals; one for fluency and rate, and another for comprehension. It does not contain any behavioral goals and [redacted]. did not a Behavior Intervention Plan ("BIP"). (Ex. R-3.)

5.

In September 2021, [redacted]'s father enrolled [redacted]. in [redacted] Middle School, as a seventh grade student, for the 2021-2022 school year. [redacted].'s mother, Ms. [redacted], and his father, [redacted], attended the September 28, 2021 IEP Meeting. During the meeting, Mr. [redacted] told the team that [redacted]. was currently taking 25mg of Atomoxetine a day. Ms. [redacted] stated that his medication may need to be adjusted. Both parents expressed concerns about [redacted]. failing his classes, missing assignments, and having to be redirected constantly. They were also concerned about his lack of focus and his ability to complete his make-up assignments. The team agreed that [redacted]. continued to meet the eligibility for Other Health Impairment. (Testimony of [redacted]; Ex. R-2.)

6.

During the September 28, 2021 IEP meeting, [redacted].'s teachers reported that he is friendly, social, respectful, and willing to help others. However, he is easily distracted and struggles to complete his assignments. (Ex. R-2.)

7.

The September 28, 2021 IEP contains three reading goals; one for fluency and rate, and two for comprehension. It does not include any behavioral goals and [redacted]. did not require a BIP.[1] Additionally, the IEP does not contain specialized transportation.[2] (Ex. R-2.)

8.

On November 4, 2021, [redacted]. received a discipline referral after another student [redacted]. reported that [redacted]. pulled a gun on him at the bus stop and threatened to kill him. Dr. Patty McCain, Assistant Principal of [redacted] Middle School brought [redacted]. to her office and asked him if he had anything on him that he should not. [redacted]. stated, "no." When [redacted]. emptied his bookbag, there was a toy airsoft gun and a vape charger. [redacted]. stated that he forgot the toy gun was in his bookbag and that some other kid gave him the vape charger, but he would not provide a name of the other kid. [redacted]. told Dr. McCain that [redacted]. said some things to him and that he pretended to point a gun at [redacted].'s chest using his fingers in the shape of a gun. (Testimony of Patty McCain; Ex. R-7.)

9.

Based on statements from several witnesses, Dr. McCain concluded that [redacted]. pulled out the toy gun on [redacted]. at the bus stop. Later that afternoon, it was reported that [redacted]. pulled the toy gun out on the bus. Dr. McCain subsequently viewed the video from the bus, where she observed [redacted]. pulling the toy gun out from his pants and pointing it at the student next to him. As a result of Dr. McCain's investigation, it was determined that [redacted]. violated the student code

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[1] Ms. [redacted] acknowledges that she did not seek any interventions for impulsive behavior during the September 28, 2021 IEP meeting. Nor did she request a BIP. (Testimony of Ms. [redacted].)

[2] [redacted]'s April 1, 2021 IEP for [redacted] Middle School in [redacted] County contained specialized transportation because he was re-zoned to [redacted] Middle School, due to high enrollment at [redacted] Middle School. (Ex. R-3.)

of conduct by engaging in disorderly conduct, threatening another student, and bringing unapproved items to school (i.e., the toy gun and the vape charger). (Testimony of Patty McCain; Exs. R-5, R-7, P-10.)

10.

Because [redacted]. has an IEP, Dr. McCain contacted Dr. Christina Sneed, Director of Special Education for SCCS, to schedule a Manifestation Determination meeting. The meeting was scheduled for November 8, 2021, at 9:00 a.m., at [redacted] Middle School. Mr. [redacted], [redacted]., Dr. McCain, Tequilia Perkins ([redacted]'s case manager), Dr. Sneed, Amber Fitzgibbon, [redacted].'s math and science teacher, Student Resource Officer Campbell, and Student Resource Officer Trevino, attended the meeting in person. Ms. [redacted] attended the meeting virtually. The purpose of the meeting was to determine if [redacted].'s behavior that violated the code of conduct was: (1) caused by or had a direct and substantial relationship to his disability; or (2) a direct result of the school system's failure to implement [redacted].'s IEP. (Testimony of Dr. McCain; Testimony of Ms. [redacted]; Ex. R-5.)

11.

During the meeting, the attendees reviewed [redacted].'s IEP, his grades, his attendance, teacher observations, [redacted].'s most recent evaluation, his medical diagnosis, and the parents' concerns. [redacted].'s teachers had not observed impulsive behavior in the classroom, only inattentiveness. [redacted] had not previously threatened anyone. During the September 28, 2021 IEP team meeting, no concerns about verbal aggression or bringing a weapon to school were raised. [redacted]. did not have a BIP or a behavior contract. Both Ms. [redacted] and Mr. [redacted] provided input at the Manifestation Determination meeting. The information discussed at the Manifestation Determination meeting indicated that [redacted]. did not have a history impulsive or

aggressive behavior. Rather, [redacted]. was well-mannered and respectful. His disability presented as inattentiveness, resulting in his teachers having to redirect him. The attendees of the Manifestation Determination meeting, except for Ms. [redacted], decided that [redacted].'s behavior on November 4, 2021 was not caused by his disability, it did not have a direct and substantial relationship to his disability, and it was not caused by a failure to implement his IEP. Ms. [redacted] disagreed. She believed his conduct was related to his disability.[3] (Testimony of Dr. McCain; Testimony of Dr. Sneed; Ex. R-5

12.

After the Manifestation Determination meeting, a school disciplinary hearing was conducted on November 10, 2021. As a result, [redacted].'s placement was changed to the alternative school through the end of the school year. Instead of attending the alternative school, [redacted].'s parents asked if he could continue to attend virtual classes and SCCS agreed. (Testimony of Patty McCain; Testimony of Christina Sneed.)

13.

Amber Fitzgibbon is [redacted].'s math and science teacher. She is a general education teacher. She is aware of [redacted].'s IEP and she is aware that he does not have a BIP. Ms. Fitzgibbon does not believe [redacted]. needs a BIP. In her classes, [redacted]. is slightly unfocused, fidgety, and he sometimes gets off task. Otherwise, he is a good student. (Testimony of Ms. Fitzgibbon.)

14.

Ms. Fitzgibbon attended the Manifestation Determination meeting. She agreed with the attendees that [redacted].'s behavior on November 4, 2021 was not caused by his disability or by a failure to implement the IEP. Ms. Fitzgibbon has never seen behavior issues with [redacted]. He is

[3] Ms. [redacted] testified that during the Manifestation Determination meeting, she did state that [redacted]. has impulsivity issues, but she did not go into detail. (Testimony of Ms. [redacted].)

generally quiet, and sometimes unfocused or inattentive. Ms. Fitzgibbon has never seen [redacted]. act aggressively. Ms. Fitzgibbon acknowledges that she is not an expert on ADHD; however, she has taught several students with ADHD. She has also taught students with impulsivity issues. In her opinion, she did not consider [redacted].'s behavior on November 4, 2021, as impulsive. Rather, it appeared that he planned out the behavior. (Testimony of Ms. Fitzgibbon.)

15.

Patrick Kennedy is the school psychologist for Social Circle City Schools. He did not attend the manifestation determination. Nor has he met or evaluated [redacted]. He has, however, reviewed [redacted]'s current IEP and the IEP that proceeded it. He has also reviewed the 2017 Psychological Report from [redacted] County and the manifestation determination document. (Testimony of Patrick Kennedy.)

16.

Students with ADHD can have inattentiveness, lack of focus, hyperactivity, and impulsivity. However, students with ADHD may or may not have impulsive behavior. Impulsive behavior is something that happens in the moment. The student reacts suddenly without planning. Some examples of impulsive behaviors are when a student may tell a teacher to shut up after the teacher said something to the student or when a student hits someone after the person said something. When a student has strong impulsive tendencies, it is readily apparent. (Testimony of Patrick Kennedy.)

17.

In Mr. Kennedy's opinion, it is difficult to pin [redacted].'s behavior on impulsivity. [redacted].'s decision to put the airsoft gun in his book bag, take it to school, and pull it out appears to be planned behavior. [redacted]. does not have a BIP. Additionally, impulsivity is not something that has

been addressed in [redacted].'s IEPs. While there were some concerns about impulsivity raised in the 2017 Psychological Report, those concerns were mostly identified by Ms. [redacted]. On the evaluation, she rated [redacted].'s inattention and impulsivity as high. His teacher rated [redacted].'s inattention and hyperactivity as mildly elevated. (Testimony of Patrick Kennedy.)

18.

While Ms. [redacted] has concerns over [redacted]. having four office referrals since the beginning of the school year and a drop in his grades, it is not necessarily related to his disability. Many things can affect a student's grades and behavior. For example, a change of school from sixth to seventh grade and a change in custody can affect a student's grades and behavior. (Testimony of Patrick Kennedy.)

19.

Anna Ingram is a licensed professional counselor. She began seeing [redacted]. in July 2020 for issues related to his ADHD as well as family issues. Ms. Ingram testified that when [redacted]. decided to take the toy gun to school it was an impulsive action. She believed it to be impulsive because when she asked [redacted]. why he did it, he said he did not think about it. [redacted]. admitted to Ms. Ingram that he threatened a student. When she asked [redacted]. why he threatened the other student, [redacted]. said it was a "spur of the moment thing." Ms. Ingram believes that impulsivity caused [redacted]. to act and to speak. Ms. Ingram is aware that [redacted]. was charged with not only bringing the airsoft gun to school, but also showing the gun multiple times and making multiple threats. She did not ask [redacted]. about every time he acted whether he stopped to think about what he was doing. (Testimony of Ms. Ingram.)

20.

When Ms. Ingram began seeing [redacted]. in July of 2021, he had not threatened to kill another student, he had not brought a toy gun to school, and he had not brought a vape product to school. The only impulsive behaviors reported to Ms. Ingram was an instance in which [redacted]. was caught engaging in inappropriate sexual activity with a sibling and perhaps going out without asking. Ms. Ingram agreed that going through a custody dispute could impact a middle school student. She also agreed that changing middle schools can impact a middle school student. (Testimony of Ms. Ingram.)

21.

Ekom Essien is a licensed professional counselor. Ms. [redacted] asked Mr. Essien to be an expert witness in this litigation.[4] Specifically, she wanted to know if impulsivity would cause [redacted]. to bring an airsoft gun to school. Mr. Essien met with [redacted]., Ms. [redacted], and Mr. [redacted]. He conducted telephone interviews with [redacted]'s sixth grade math teacher, Ashley Roberson, and one of his fourth grade teachers, Catrina Doomes. He reviewed a psychosexual evaluation conducted on May 10, 2021, a psychosexual evaluation conducted on August 8, 2021, a [redacted] Middle School IEP, a Social Circle School Disciplinary Report, and a police report. Additionally, [redacted].'s parents provided information. (Ex. P-8; Testimony of Ekom Essien.)

22.

Mr. Essien asked [redacted].'s sixth grade math teacher, Ashley Roberson, Mr. [redacted] Ms. [redacted] and [redacted]. to complete rating scales using the BRIEF2. Ms. Roberson rated [redacted].'s impulsivity as a three (3) out of ten (10), with ten (10) being very impulsive. [redacted] completed a

[4] Mr. Essien interviewed [redacted]., Ms. [redacted], Mr. [redacted], and two of his former teachers. He reviewed documents and administered the Behavior Rating Inventory of Executive Functioning 2nd Ed. (BRIEF2). The interviews were conducted on December 13, December 15, and December 20, 2021. His report is dated December 22, 2021. (Ex. P-8.)

self-report form. His infrequency validity scale score was in the 99th percentile, which raised questions about his atypical response style.[5] Mr. Essien conducted a follow up interview with [redacted]., in which he concluded that issues related to attention and some difficulty with reading contributed to his response style. [redacted].'s rating showed an elevated inhibit scale score which indicates he experiences difficulty resisting impulses and considering consequences before acting. During the time [redacted]. spent in Mr. Essien's office, he did not see [redacted]. exhibit any impulsive behavior. (Ex. P-8; Testimony of Ekom Essien.)

23.

Both parents were asked to complete the parent rating form. All of Mr. [redacted]'s validity scores were within the normal limits. On Mr. [redacted]'s rating of [redacted].'s executive function, none of the scores were clinically significant. In contrast, Ms. [redacted]'s rating of [redacted].'s executive functioning was clinically significant on all scales. The majority of the scores were above the 90th percentile, with the inhibit scale falling in the 99th percentile. This could be indicative of an attempt to "fake bad." Both Ms. Roberson and Mr. [redacted]l's ratings were similar. (Ex. P-8; Testimony of Ekom Essien.)

24.

Notwithstanding the validity concerns and the differences in the ratings among Mr. [redacted], Ms. [redacted], and Ms. Roberson, [redacted].'s former math teacher, Mr. Essien concluded that "[a]ll of the data collected in this report suggested that [[redacted].'s] behavior is the overt manifestation of his psychological problems."[6] Mr. Essien acknowledged that he is not familiar

[5] A high score on a validity rating raises an alarm. It makes one wonder what other questions the person may have answered inaccurately. (Testimony of Patrick Kennedy.)

[6] When asked to what behavior he was referring, Mr. Essien stated that he was referring to [redacted]. bringing the airsoft gun to school. (Testimony of Mr. Essien.)

with IDEA or the standard used in making a manifestation determination. Additionally, he did not speak to any of [redacted].'s current teachers. (Testimony of Ekom Essien; Ex. P-8.)

25.

Much of the information disclosed to Mr. Essien was not disclosed to SCCS. For example, SCCS was unaware of [redacted].'s past history of taking his grandfather's gun and shooting it into the ground. Nor was SCCS aware that [redacted]. had been previously suspended for burning paper in his elementary school bathroom. SCCS was not aware of the inappropriate sexual contact between [redacted]. and his sibling or of the two subsequent psychosexual evaluations. (Testimony of Christina Sneed; Testimony of Ekom Essien; Ex. P-8.)[7]

26.

Based on the information reported to him, Mr. Essien included Conduct Disorder in his list of diagnoses. To make this diagnosis, Mr. Essien relied on the report of the [redacted]. engaging in inappropriate sexual behavior with his sibling, his history of stealing, and his history of setting fires. However, Mr. Essien acknowledged that according to the DSM-5, to make the diagnosis of conduct disorder, the qualifying criteria must have occurred within the last year. He further acknowledged that he did not have any reports of [redacted]. stealing or setting a fire within the last year. Mr. Essien also agreed that he had not seen a previous diagnosis of Conduct Disorder in any of the materials he reviewed. (Testimony of Ekom Essien; Ex. P-8.)

27.

In her Complaint, Ms. [redacted] stated that a combination of a change in medication, a change in environment, relaxed supervision, and a change in custody contributed to [redacted].'s

[7] Ms. [redacted] admitted that she did not disclose information about the inappropriate sexual contact between [redacted]. and his sibling or the psychosexual evaluations to the school. She did not do so because she did not want the information to be public. (Testimony of Ms. [redacted].)

behavior. At the hearing, Ms. [redacted] continued to believe that [redacted].'s actions on November 4, 2021, were impulsive behaviors related to his ADHD. She believes that if a student says that he does not know why he did something, it is an indicator that the behavior is impulsive. (Testimony of Ms. [redacted].)

III. CONCLUSIONS OF LAW

1.

The pertinent laws and regulations governing this matter include IDEA, 20 U.S.C. § 1400 et seq.; federal regulations promulgated pursuant to IDEA, 34 C.F.R. § 300 et seq.; and Georgia Department of Education Rules, Ga. Comp. R. & Regs. 160-4-7-.01. -.21.

2.

Petitioners bear the burden of proof in this matter. Schaffer v. Weast, 546 U.S. 49 (2005); Ga. Comp. R. & Regs 160-4-7-.12(3)(l); Ga. Comp. R. & Regs. 616-1-2-.07(1). The standard of proof is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

3.

Under IDEA, students with disabilities have the right to a free appropriate public education ("FAPE"). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. Comp. R. & Regs. 160-4-7-.02(1)(a). "The purpose of the IDEA generally is 'to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living . . . .'" C.P. v. Leon County Sch. Bd., 483 F.3d 1151 (11th Cir. 2007), quoting 20 U.S.C. § 1400(d)(1)(A).

4.

If a student with a disability commits a violation of a school district's code of conduct, and the school district seeks the child's removal for more than ten consecutive school days, the district must conduct a manifestation determination to determine whether the misconduct is a manifestation of the child's disability. See 34 C.F.R. § 300.536. As part of the manifestation determination, the local educational agency, the parents, and relevant members of the child's IEP team must "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 if the conduct in question was (1) caused by, or had a direct and substantial relationship to, the child's disability, or (2) the direct result of the local educational agency's failure to implement the child's IEP. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).[8] A manifestation determination review must be conducted within ten days of any decision to change the placement of a child with a disability as a result of a code of conduct violation. 34 C.F.R. § 300.530(e).

5.

If after a manifestation determination the misconduct is determined to have been caused by or have a direct and substantial relationship to the student's disability or is the direct result of the school district's failure to implement the child's IEP, then the school must return the student to the original placement unless the parents and the school district agree otherwise.

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[8] "The manifestation determination team typically does not determine the facts of the incident for which an eligible student is subject to discipline." Bristol Twp. Sch. Dist. v. Z.B., No. 15-4604, 2016 U.S. Dist. LEXIS 4626 at *14 (E.D. Pa. Jan. 14, 2016). Rather, that is the purpose of the school disciplinary hearing. Porter v. Ascension Par. Sch. Bd., 393 F.3d 608, 624 (5th Cir. 2004); see also Danny K. v. Dep't of Ed., No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS at *39-40 (D. Hi. Sept. 27, 2011) (concluding that the role of the manifestation determination team is not to determine the facts of what actually happened; rather, it was "to determine whether the actions leading to [the] [s]tudent's potential suspension – as determined by the [educational agency's] investigation – were a manifestation of an eligible disability or of the [educational agency's] failure to implement the [] IEP.")

See 34 C.F.R. § 300.530(e), (f). However, if the student's conduct is determined not to be a manifestation of the disability, then "school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. . . ." 34 C.F.R. § 300.530(c).

6.

Additionally, if the removal constitutes a change of placement, the regulations provide that the child's IEP Team determines both the interim alternative educational setting for services and the appropriate educational services "to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child's IEP." 34 C.F.R. §§ 300.530(d)(1)(i). If the administrative law judge finds that the child's misconduct was a manifestation of his disability, the administrative law judge can return the child to placement from which the child was removed. 34 C.F.R. § 300.532(b)(2)(i).

7.

Here, SCCS complied with the requirements for a manifestation determination. It reviewed the relevant information in [redacted].'s file, [redacted].'s most recent IEP and his previous IEP, the most recent psychological evaluation, his teachers' observations, and information provided by the parents. While Ms. [redacted] stated that [redacted]. had impulsivity issue, she failed to provide any detail. She did not tell the team about several incidents in the past, including [redacted]. taking his grandfather's gun and firing it into the ground. She did not tell the team about [redacted].'s inappropriate sexual conduct with his sibling or the subsequent psychosexual evaluations. Nor did she tell the team about [redacted].'s history of starting fires.

8.

[redacted].'s IEPs did not have behavioral goals. He did not have, and according to one of his teachers, did not require a BIP. [redacted].'s disability manifested itself as lack of focus and inattention. His teachers did not observe impulsive behavior.

9.

The nature of [redacted].'s behavior appeared to be planned. He decided to put an airsoft gun and a vape charger in his backpack, he brought these items to school, he pulled the airsoft gun out at the bus stop and threatened to kill a student, and he subsequently pulled it out of his pants and pointed it at a student on the bus, on more than one occasion. Fitzgerald v. Fairfax Co. Sch. Bd., 556 F. Supp. 2d 543 (E.D. Va. 2008) (court held that child bringing paintball gun to school, firing paintballs at the school, leaving the school to obtain supplies, and returning to the school to again fire paintballs at the school was not impulsive behavior caused by his disability); Danny K. v. Dep't of Educ., No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS 111066, at *50 (D. Haw. Sep. 27, 2011) (concluding that conduct of setting off a firework in school bathroom not a manifestation of child's ADHD diagnosis because the conduct required planning and sustained attention).

10.

The court was not persuaded by the testimony of Ms. Ingram, [redacted].'s counselor. Ms. Ingram testified that she believed [redacted].'s decision to bring the airsoft gun to school was impulsive because when she asked him why he did it, he told her that he did not think about it. [redacted]. admitted to her that he made threats to another student or students. When Ms. Ingram asked [redacted]. why he did it, he told her it was a spur of the moment thing. Based on his statements, Ms. Ingram believed that impulsivity caused [redacted]. to act and speak. Ms. Ingram acknowledged

that [redacted]. was charged with threatening a student multiple times and showing the airsoft gun multiple times. She did not ask him whether he stopped to think each time he acted. Ms. Ingram did not offer any opinion or testimony regarding [redacted].'s decision to bring the vape charger to school.

11.

The undersigned found the testimony and conclusions of Mr. Essien to be lacking in credibility. Although he acknowledged that there were some validity problems with [redacted].'s self report and Ms. [redacted]'s ratings, it appears he nevertheless relied on them to form his conclusions.[9] If he had not relied, at least in part, on their ratings, he would not have been able to conclude that "[a]ll of the data collected in this report suggest that [[redacted]'s] behavior is the overt manifestation of his psychological problems." In fact, it appears that he relied on the ratings of [redacted]. and Ms. [redacted] more than the ratings of [redacted].'s father, with whom [redacted]. had lived with for the ten months prior to Mr. Essien's administration of the BRIEF2. None of Mr. [redacted]'s ratings were clinically significant. While Mr. Essien did not provide much specificity regarding the ratings of [redacted].'s former teacher Ashley Roberson, he did state that her ratings were similar to Mr. [redacted]'s. Thus, out of the four ratings conducted by [redacted]. (i.e., his self-report), Ms. [redacted], Mr. [redacted], and Ms. Roberson, the only ratings that appear to have been clinically significant were the one's that had validity problems. Furthermore, Mr. Essien diagnosed [redacted]. with a Conduct Disorder, despite acknowledging that he did not have dates for two of the criteria he relied upon and that the DSM-5 requires that the behaviors must have been present within the previous twelve months. In other words, he made this diagnosis without following the diagnostic criteria of the DSM-5.

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[9] He did so even though he acknowledged that Ms. [redacted]'s excessively high ratings "could be indicative of an attempt to fake bad."

12.

Finally, when asked to what "behavior" he was referring in his conclusion that "[.'s] behavior [was] an overt manifestation of his psychological problems," Mr. Essien stated that it was the bringing of the airsoft gun to school. Thus, his conclusion is limited to that behavior. Apparently, he disregarded any reports of . making threats and did not address . showing the gun at the bus stop or bringing the vape charger to school.

13.

Neither Ms. Ingram nor Mr. Essien considered all of the behaviors that occurred on November 4, 2021. When all of the behaviors are considered, it is difficult to conclude that each behavior was an impulse. Rather, when considered together, it is more likely that .'s behaviors were planned as opposed to impulsive. For these reasons, the Petitioners' failed to prove by a preponderance of the evidence that .'s behavior was caused by or had a direct and substantial relationship to his disability, or that it was the direct result of SCCS's failure to implement his IEP.[10]

IV. DECISION

Based on the foregoing Findings of Fact and Conclusions of Law, SCCS's manifestation determination is **AFFIRMED**.

SO ORDERED, this 18th day of January, 2021.

Stephanie M. Howells

STEPHANIE M. HOWELLS
Administrative Law Judge

[10] None of the witnesses offered an opinion that .'s behaviors were the direct result of SCCS's failure to implement his IEP.