

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

JUL 1 2019

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JAY F.; et al.,

Plaintiffs-Appellees,

v.

WILLIAM S. HART UNION HIGH
SCHOOL DISTRICT,

Defendant-Appellant.

No. 17-56328
18-55205

D.C. Nos.
2:16-cv-05117-TJH-GJS
2:16-cv-05226-TJH-GJS
2:17-cv-00479-TJH-GJS

MEMORANDUM*

JAY F.; et al.,

Plaintiffs-Appellants,

v.

WILLIAM S. HART UNION HIGH
SCHOOL DISTRICT,

Defendant-Appellee.

No. 17-56418

D.C. Nos.
2:16-cv-05117-TJH-GJS
2:16-cv-05226-TJH-GJS
2:17-cv-00479-TJH-GJS

Appeal from the United States District Court
for the Central District of California
Terry J. Hatter, District Judge, Presiding

Argued and Submitted June 13, 2019
Pasadena, California

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

Before: WARDLAW, BYBEE, and OWENS, Circuit Judges.

William S. Hart Union High School District (Hart) and Student and Parents (together, Family) cross-appeal from the district court’s decision that Hart violated the Individuals with Disabilities Education Act (IDEA) by disciplining Student—a person with a social-emotional disability—for misconduct arising from that disability. Hart also appeals from the district court’s order awarding attorneys’ fees to Family. As the parties are familiar with the facts, we do not recount them here. We affirm.¹

1. The district court did not clearly err in finding that Student’s January 27 misconduct was a manifestation of his disability based on Student’s documented extensive history of threatening behavior stemming from his disability. *See L.J. v. Pittsburg Unified Sch. Dist.*, 850 F.3d 996, 1002 (9th Cir. 2017) (“The district court’s findings of fact are reviewed for clear error, even when the district court based those findings on an administrative record.”). In addition, the district court did not abuse its discretion by not deferring to the Administrative Law Judge’s resolution of this issue, which the district court deemed not “thorough and careful.” *See M.C. v. Antelope Valley Union High Sch. Dist.*, 858 F.3d 1189, 1194 (9th Cir. 2017) (“We can accord some deference to the ALJ’s factual findings, but only

¹ We also grant the motion of Council of Parent Attorneys and Advocates and the California Association for Parent/Child Advocacy for leave to file a brief as amici curiae.

where they are thorough and careful, and the extent of deference to be given is within our discretion.” (citation omitted)). Finally, Hart failed to argue before the district court that Family waived its right to challenge the January 27 manifestation determination, so we decline to consider this argument on appeal. *See Baccei v. United States*, 632 F.3d 1140, 1149 (9th Cir. 2011).

2. In affirming the district court’s finding that Student’s January 27 misconduct was a manifestation of his disability, we also affirm the district court’s expungement of Student’s expulsion and suspended expulsion agreement resulting from the January 27 misconduct. Therefore, we need not decide the impact of the April 2015 suspended expulsion agreement on Student’s rights under the IDEA because it is expunged and legally obsolete.

3. Hart also argues that the district court erred by not remanding the matter to Hart to discipline Student for his August 2015 misconduct after Hart belatedly determined it was not a manifestation of his disability. We decline to reach this issue because Hart failed to raise it in the district court. *See id.*

4. The district court did not abuse its discretion in awarding dialectical behavioral therapy as relief for Hart’s violations of the IDEA, which authorizes district courts to “grant such relief as the court determines is appropriate.” 20 U.S.C. § 1415(i)(2)(C)(iii). The award was “appropriate in light of the purpose of the [IDEA]” to “provide handicapped children with a free appropriate public

education which emphasizes special education and related services designed to meet their unique needs.” *Sch. Comm. of Town of Burlington v. Dep’t of Educ. of Mass.*, 471 U.S. 359, 369 (1985) (citation omitted).

5. The district court did not abuse its discretion in awarding attorneys’ fees to Family. The district court did not clearly err in its related factual determinations. *See Beauchamp v. Anaheim Union High Sch. Dist.*, 816 F.3d 1216, 1220 (9th. Cir. 2016). In addition, the district court sufficiently explained the bases for its fee award. *See id.* at 1224 (“The district court must provide a concise but clear explanation of its reasons for the fee award.” (citation omitted)). Finally, the district court properly applied the test for calculating attorneys’ fees under *Hensley v. Eckerhart*, 461 U.S. 424, 436–37 (1983).

6. We need not reach Family’s cross-appeal because we affirm the district court’s decision on the merits in its entirety.

AFFIRMED.

United States Court of Appeals for the Ninth Circuit

Office of the Clerk
95 Seventh Street
San Francisco, CA 94103

Information Regarding Judgment and Post-Judgment Proceedings

Judgment

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)

Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)

(1) A. Purpose (Panel Rehearing):

- A party should seek panel rehearing only if one or more of the following grounds exist:
 - ▶ A material point of fact or law was overlooked in the decision;
 - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
 - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

B. Purpose (Rehearing En Banc)

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

(2) Deadlines for Filing:

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- *See* Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

(3) Statement of Counsel

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at www.ca9.uscourts.gov under *Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at www.ca9.uscourts.gov under *Forms*.

Attorneys Fees

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at www.ca9.uscourts.gov under *Forms* or by telephoning (415) 355-7806.

Petition for a Writ of Certiorari

- Please refer to the Rules of the United States Supreme Court at www.supremecourt.gov

Counsel Listing in Published Opinions

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter **in writing within 10 days** to:
 - ▶ Thomson Reuters; 610 Opperman Drive; PO Box 64526; Eagan, MN 55123 (Attn: Jean Green, Senior Publications Coordinator);
 - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
Form 10. Bill of Costs**

Instructions for this form: <http://www.ca9.uscourts.gov/forms/form10instructions.pdf>

9th Cir. Case Number(s)

Case Name

The Clerk is requested to award costs to (*party name(s)*):

I swear under penalty of perjury that the copies for which costs are requested were actually and necessarily produced, and that the requested costs were actually expended.

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Principal Brief(s) (<i>Opening Brief; Answering Brief; 1st, 2nd, and/or 3rd Brief on Cross-Appeal; Intervenor Brief</i>)	<input style="width: 60px; height: 20px;" type="text"/>	<input style="width: 60px; height: 20px;" type="text"/>	\$ <input style="width: 60px; height: 20px;" type="text"/>	\$ <input style="width: 60px; height: 20px;" type="text"/>
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