**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

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 **DECISION**

**STUDENT v. NORWOOD PUBLIC SCHOOLS**

**BSEA # 2503348**

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**BEFORE**

**HEARING OFFICER**

**ALINA KANTOR NIR**

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**MELISSA R. MURRAY, ATTORNEY FOR NORWOOD PUBLIC SCHOOLS**

**BRETT SABAAG, ATTORNEY FOR NORWOOD PUBLIC SCHOOLS**

**BRIAN DEZURICK, ATTORNEY FOR PARENT**

**THOMAS MELA, ATTORNEY FOR PARENT**

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Norwood Public Schools BSEA # 2503348**

**DECISION**

This decision is issued pursuant to the Individuals with Disabilities Education Act (20 USC 1400 *et seq*.), Section 504 of the Rehabilitation Act of 1973 (29 USC 794), the state special education law (MGL c. 71B), the state Administrative Procedure Act (MGL c. 30A), and the regulations promulgated under these statutes.

This matter comes to the BSEA on Parent’s *Expedited Hearing Request* received on September 13, 2024, seeking a Bureau of Special Education Appeals (BSEA) Order to reverse and vacate a manifestation determination entered on September 6, 2024 regarding a disciplinary incident that occurred on May 29, 2024.

A hearing was held on September 30, 2024, before Hearing Officer Alina Kantor Nir, via a hybrid format which included in-person and virtual participation, at the joint agreement of the parties. All parties were represented by counsel. Those present for all or part of the in-person proceedings, at 14 Summer Street in Malden, Massachusetts, or via Zoom, were:

Mother

Brian Dezurick Attorney for Parent

Thomas Mela Attorney for Parent

Dr. Julie Weieneth, Ph.D. Staff Psychologist, Achieve New England

Dr. Laura Reis, M.D. Medical Director and Physician, Beth Israel Lahey Health

 Primary Care

Melissa Murray Attorney for Norwood Public Schools

Brett Sabaag Attorney for Norwood Public Schools

Lori Cimeno Director of Student Services, Norwood Public Schools

Caitlin Nottebart Special Education Teacher, Norwood High School

Daniel Deluca Special Education Department Chair and Team Chair,

 Norwood High School

Rory Cartland School Counselor, Norwood High School

Janine Solomon Observer, Massachusetts Advocates for Children

Julian Vallen Observer, Massachusetts Advocates for Children

Kate Davey Observer, Assistant Special Education Director, Norwood Public Schools

Melissa Lupo Court Reporter

The official record of the hearing consists of documents submitted by Parent and marked as Exhibits P-1 to P-26; documents submitted by Norwood Public Schools (Norwood or the District) and marked as Exhibits S-1 to S-8; approximately 1 day of oral testimony and argument; and a single volume transcript produced by a court reporter. The parties requested an opportunity to make written closing arguments, and said request was granted.[[1]](#footnote-2) The parties submitted their written closing arguments on October 7, 2024.

**RELEVANT PROCEDURAL HISTORY:**

The current decision is issued following a previous decision relative to the same parties issued by Hearing Officer Amy Reichbach on August 29, 2024, to wit: *Norwood Public Schools and Helena*, BSEA # 2501731 (hereafter, August 2024 Decision). In it, she concluded that Parent had met her burden to prove that Norwood violated its child find obligations and that Norwood unlawfully excluded Student from school in May 2024, because the District had knowledge (pursuant to the deemed to have knowledge standard of the IDEA at the time of the behavior precipitating the disciplinary action) that Student was a child with a disability and was therefore entitled to a Manifestation Determination Review (MDR) prior to imposition of discipline beyond 10 school days.

Hearing Officer Reichbach found however, that the District should have the opportunity to conduct the MDR in the first instance, and she declined Parent's request to make a manifestation determination on the evidence before her at that time. She further concluded that Norwood had not met its burden to prove that its exclusion of Student was lawful, notwithstanding her eligibility for special education, pursuant to the “special circumstances” exception in the IDEA for dangerous behavior. In relevant part, Hearing Officer Reichbach ordered Norwood , to convene an MDR no later than September 6, 2024, a date that was five business days from the issuance of the August 2024 Decision (hereafter, August 2024 Order).

In the instant Decision, I am bound by the doctrines of res judicata and collateral estoppel.[[2]](#footnote-3) I therefore have considered the August 2024 Decision and take administrative notice of Hearing Officer’s Reichbach’s factual findings, legal conclusions, and orders. I also rely on said Decision for purposes of providing relevant background information and guidance herein, and make factual findings based thereon where relevant and appropriate.

**ISSUES IN DISPUTE[[3]](#footnote-4):**

The following issues are in dispute[[4]](#footnote-5):

1. Whether the manifestation determination review (MDR) Team was properly constituted.
2. Whether the MDR Team considered “all relevant information” in accordance with 20 U.S.C. § 1415(k)(1)(E)(i) and 34 C.F.R. § 300.530(e)(1) regarding Student’s disability(ies) and conduct on May 29, 2024.
3. Whether the behavior on May 29, 2024 was a manifestation of her disability; and,
4. If the answer to  questions (1) or (2) is “no,” then what is the proper remedy?
5. If the answer to  question (3) is “yes,” then what is the proper remedy?

**FACTUAL FINDINGS:**

Background:

1. Student is a 15-year-old, 10th grade resident of Norwood, Massachusetts. Until May 29, 2024, she attended Norwood High School. Student has not yet been found eligible for special education, although she is protected by the IDEA’s discipline provisions per the conclusions in the August 2024 Decision. (Reis, Cimeno, S-1)
2. In November 2023, Student was diagnosed by her physician, Laura Reis, with Attention Deficit Hyperactivity Disorder (ADHD) - Predominantly Inattentive Type. (Reis, Weieneth, P-15, P-18) Student has a history of trauma resulting from domestic violence. (Reis, Weieneth, P-1)
3. Prior to beginning at Norwood High School in the fall of 2023, Student attended school in a different community in Massachusetts. (S-8) There, Student had no disciplinary referrals or conduct issues, and her grades ranged from Bs to Fs. There is no mention of any disability or past trauma in Student’s records from her prior public school. (P-3, P-4, P-6, P-7, P-8, P-9, P-10, P-16, S-8)
4. Throughout the 2023-2024 school year, Student struggled consistently with failing grades in English, Algebra and Physical Science. (P-3, P-4, P-6, P-7, P-8, P-9, P-10, P-16)
5. Prior to May 29, 2024, Student had no major disciplinary referrals in Norwood. With one exception, any referrals were limited to missing class, being tardy to class, or not reporting to detention. On one occasion, she was disrespectful and caused a classroom disruption. (S-2)
6. On May 29, 2024, Student was issued a disciplinary offense notice alleging “Fighting” and was subject to an emergency temporary removal from school. Specifically, the allegation was that a peer

“followed [Student] to their lunch table, spoke to them and walked away. [Student] followed the [peer] from her lunch table, and the [peer] swore at [Student]. [Student] then proceeded to grab the other student’s hair from behind and the two students fought, requiring four staff members to separate them. One of the staff members was injured while attempting to separate [Student and peer].” (P-11)

1. Following a Principal's Hearing on June 3, 2024, Student was expelled from Norwood High School. (P-12, P-13, P-14)
2. Student’s expulsion was overturned by the Superintendent of Norwood Public Schools on July 26, 2024, and her discipline was reduced to serving a suspension through the conclusion of Term 1 of the 2024-2025 school year. (P-19)
3. In the August 2024 Decision, issued following a hearing on the merits, Hearing Officer Reichbach ordered the District, in relevant part, to conduct a Manifestation Determination Review within 5 business days of the date of said Decision. (P-21)

Manifestation Determination Review:

1. On Wednesday, September 4, 2024, Norwood’s 2024-2025 school year began. (S-6)
2. On September 6, 2024, Norwood convened a Manifestation Determination Review (MDR) Team. (S-1)
3. The following statement by Principal Hugh Galligan was read to the MDR Team:

“[A]t approximately 11:57 AM [on May 29th, 2024] [a]nother student followed [Student] to her lunch table. Student got up and followed that student back to the lunch line. The other student swore at [Student]. [Student] grabbed her hair from behind and dragged her to the ground. The students fought requiring 4 staff members to break up the fight. A staff member was injured when [Student] refused to separate. Once separated, [Student] attempted to move back towards the other student. [Student] pushed another staff member multiple times, swearing at him repeatedly. The staff member was able to get [Student] to leave the cafeteria and go outside. Student [then while outside] spoke to someone on the phone, making threats about the other student, yelling and swearing repeatedly. [Student] then attempted to run to the front of the building and began banging on the front glass repeatedly swearing and yelling.... Several minutes later, [Student] attempted to run around the building and go back to the dining hall from the rear entrance of the building. The school resource officer instructed her to stop and she continued to advance. Eventually [Student] moved towards the street and left with her guardian.

…Considered during [Principal Galligan’s] decision making process were the surveillance videos and comments made by [Student] during the principal’s hearing in which she stated that she decided to follow the other student from the table because she did not want to back down from [the other student] and [the other student] had been giving two other students trouble from the beginning of the year. She stated, ‘I had to do something.’ When asked if she knew she was going to fight the student when she stood up from the table, she answered ‘yes,’ indicating to [Principal Galligan] that the action was calculated at the time.” (Cimeno, Cortland, Deluca, Nottebart, P-26, S-1)[[5]](#footnote-6)6

1. Present at the MDR were the following people: Parent, Rory Cortland, School Counselor, Dan Deluca, Special Education Department Head, Caitlin Nottebart, Special Education Teacher, Lori Cimeno, Director of Special Education, Brett Sabbag, Attorney for Norwood, Kate Davey, Assistant Director of Special Education, Brian Dezurick, Attorney for Parent, and Dr. Reis, Physician. Dr. Reis participated remotely. (S-1)
2. Student did not attend the MDR. (S-1) School staff present at the MDR testified that this was unusual. (Cimeno, Cortland, Nottebart, Deluca)
3. Dr. Weieneth was not present at the MDR. (S-1)
4. None of Student’s teachers from the previous school year were present at the MDR. (Cimeno)
5. No witnesses from the May 29 incident attended the MDR. (S-1)
6. At the MDR, the Team reviewed the August 2024 Decision, Student’s disciplinary record, which reflected no prior infractions, “a little” of Student’s academic record, the videos of the incident, an undated letter by Dr. Laura Reis provided to the District on or about June 2024, and a report dated July 22, 2024, by Suhal Shah, D.O., provided by Parent at the MDR, for the Team’s consideration. The Team discussed the fact that Student had not taken her medication on May 29 as well as the manifestations of ADHD-Predominately Inattentive Type. Student’s school file contained no information relative to Student having any history of trauma. (Cimeno, Cortland, Nottebart, Deluca, S-1, S-8)
7. The surveillance videos reviewed by the MDR Team demonstrate that approximately 10 seconds elapsed between the time that Student got up from the table to follow her peer to the time that she pulled the peer’s hair. Student took approximately 12 steps when following her peer to the lunch line. When separated from the peer by 3 school staff, Student sidestepped a teacher who was hurt and lying on the cafeteria floor and proceeded to pursue the peer. (P-24) Approximately 4 minutes after the start of the fight, Student, who at this point had left the cafeteria and was outside the building, attempted to reenter the building. As the doors were locked, she banged on the glass doors before being stopped by the School Resource Officer. (P-25)
8. The MDR meeting lasted for an hour and a half. School staff testified that, in their experience, this was “one of the longest” MDR meetings they had ever attended. (Cimeno, Cortland, Nottebart, Deluca)
9. The MDR meeting was “interactive,” and the family, through its Attorney, had an opportunity to present all of their information in a “fair” manner. (Cimeno, Cortland, Nottebart, Deluca)
10. Rory Cortland is Student’s school counselor. She works with many students with ADHD and has participated in a professional development during the previous year on strategies for working with students with ADHD. In her role as school counselor, Ms. Cortland spoke to Student twice during the 2023-2024 school year. Student did not raise any concerns during these interactions. Ms. Cortland also spoke to Parent in January 2024. At that time, Parent did not voice any concerns regarding past trauma, medication refusal, difficulties at home, or struggles with attention. (Cortland)
11. Dr. Reis is Student’s primary care physician. Dr. Reis has been a physician for 15 years. She has extensive experience diagnosing children and adolescents with ADHD. (Reis, P-22) Dr. Reis has not observed Student at school or spoken to school staff about Student’s presentation at school. (Reis)
12. In November 2023, Dr. Reis diagnosed Student with ADHD-Predominantly Inattentive Type based on Parent and Student reports regarding Student’s symptoms[[6]](#footnote-7). These symptoms included difficulty focusing, attention drifting, inability to sit and complete homework, and difficulty with organization and keeping track of tasks. According to Dr. Reis, students with ADHD-Predominantly Inattentive Type have problems not only with attention but also with impulse control. (Reis)
13. Dr. Reis opined that stimulant medication is most effective in treating ADHD because it works on the frontal lobe of the brain which controls executive functioning, organization, and impulse control. For Student, Dr. Reis prescribed Student Concerta, low dose, on about January 2024, as it is her practice to begin with a low dose and watch for side effects. However, as Student did not return to see Dr. Reis in the time period between January and May, Dr. Reis did not have an opportunity to increase Student’s dose, and, as such, Student was not taking a therapeutic dose of Concerta on May 29, 2024. (Reis)
14. Student did not take her medication the morning of May 29, 2024. (Weieneth, Reis, P-18)
15. According to Dr. Reis, stimulants only work on the days on which they are taken. They have no effect the following day. Therefore, if Student did not take her Concerta on May 29, 2024, she did “not have the benefit of the medicine.” (Reis)
16. According to Dr. Reis, the MDR meeting was disorganized and difficult to follow. School staff asked her “a few” questions. She was expecting “more straight-forward” questions about how ADHD affects the brain and decision-making. Instead, they asked more “conjecture-type questions”. Dr. Reis was unclear what type of information the Team was looking for from her. (Reis)
17. Lori Cimeno is the current Director of Student Services in Norwood. She has served in this role for 6 years. She first met Student at the BSEA Hearing held before Hearing Officer Reichbach. (Cimeno) According to Ms. Cimino, at the MDR, the school-based team asked Dr. Reis many questions. For instance, she asked Dr. Reis why information about Student’s past trauma was not presented to Norwood earlier[[7]](#footnote-8), and whether all students, not just students with disabilities, are less reactive to what is around them when in a heightened state. (Cimeno) Ms. Nottebart asked Dr. Reis why it was “taking so long” to find a therapeutic medication for Student. (Nottebart) Ms. Cortland also testified that the majority of the time at the MDR was spent by the Team posing, and Dr. Reis answering, questions. (Cortland)
18. At the MDR, Dr. Reis presented information about Student’s diagnosis of ADHD-Predominantly Inattentive Type.[[8]](#footnote-9) (Cimeno, Cortland) According to Ms. Cortland, Dr. Reis spoke in generalities at the MDR, but she did not provide definite answers. For instance, Dr. Reis stated that ADHD “could” make one unable to respond to directions. (Cortland)
19. Following the May 29, 2024 incident, Dr. Reis sent an undated letter to the District on or about June 2024 indicating that Student’s conduct on May 29 was “out of character” and she had “never seen or heard of any aggressive or impulsive behaviors” from Student. Moreover, without “adequate treatment,” such as medication, ADHD can “contribute to impulsive or reactive behaviors.” (P-15)
20. In her testimony, Dr. Reis stated that ADHD “contributed” to the May 29 incident, because “given the right circumstances and provocation”, ADHD “comes into play” and makes impulse control difficult even if Student had no past similar incidents. In addition, Student was not taking her medication, and the medication was not at a therapeutic dose even on days when she was taking it. Trauma too was a contributing factor because trauma makes it “harder to control reactions and impulses.” Further, according to Dr. Reis, the duration of the incident was “still within the realm of impulse.” It is unclear whether Dr. Reis provided this information to the MDR Team. (Reis)
21. In June 2024, Dr. Reis referred Student to a psychiatrist, Dr. Suhal Shah, because she felt Student’s case needed additional attention. According to Dr. Shah’s July 22, 2024 report,[[9]](#footnote-10) he “spent over half of a total 60 minutes face to face with [Student] in counseling.” Student reported to Dr. Shah that she had been “very irritable and stressed lately.” Student bites or scratches herself to “control her actions when she is angry.” According to Dr. Shah, a “series of life stressors seem to have brought [Student] to this point. When [she] was 10[] her parents went through a divorce that mom report[ed] as ‘really bad’ and involving … [domestic violence].” Parent endorsed "3 years of non-stop [stressful] situations." Dr. Shah concluded that “dealing with these and other signiﬁcant life stressors as someone with ADHD may further have exacerbated the negative impact of these experiences and [Student’s] sense of self-worth.” Dr. Shah diagnosed Student with ADHD - Unspecified, Anxiety Disorder- Unspecified, Depressive Disorder – Unspecified. (P-18)[[10]](#footnote-11)
22. Via a vote, the MDR Team concluded that the conduct subject to discipline was not a manifestation of Student’s disability. (S-1)
23. Caitlin Nottebart is a special education teacher at Norwood High School. She has extensive experience working with students with ADHD. She participated in the MDR on September 6, 2024. Ms. Nottebart had never met Student. (Nottebart) Ms. Nottebart did not find Student’s behavior to be a manifestation of her disability because there was no pattern of such behavior and she did not observe impulsivity in the video recordings of the incident. (Nottebart)
24. Daniel Deluca is the Special Education Chair at Norwood High School and the Department Chair for grades 6-12. Mr. Deluca has extensive experience working with students with ADHD and those with social/emotional disabilities. He has not worked with Student, nor has he met her. Mr. Deluca participated in the MDR on September 6, 2024. Mr. Deluca testified the MDR was one of the longest he has ever attended and it was “very” interactive with “lots of questions.” Mr. Deluca found Student’s behavior to be a manifestation of her disability even though he was not “100 percent sure”, but he “gave [Student] the benefit of doubt.” He testified that he has worked with children with ADHD who have “more outbursts” although “usually” they are not “as intense” as the one had by Student. Mr. Deluca did not find Student’s behavior to be impulsive; rather he believed she was dysregulated due to her ADHD. His “hesitancy” in finding the behavior a manifestation was based in it not being a “repeated behavior.” (Deluca)
25. Ms. Cimeno testified that she did not believe the conduct was a manifestation of Student’s disability based on the available information, as presented to her at the MDR meeting. (She noted that in advance of the MDR Parent had signed a consent for Norwood to evaluate Student and the school psychologist had reached out to Parent to schedule the evaluation, however testing had yet to begun at the time of the MDR as Parent had requested to reschedule the testing.) In her view, Student’s actions that day indicated an intent, a plan, and intentional decision-making. (Cimeno)
26. Ms. Cortland testified that she did not find the conduct to be a manifestation of Student’s disability because Student had no similar incidents in the past. In addition, Student’s conduct did not seem reactive; rather, it appeared that she was pursuing the other student even after staff got involved. The fact that Student continued to pursue the other student by attempting to get into the building from outside did not reflect impulsivity. (Cortland)
27. Of all school-based MDR attendees, only Ms. Cortland had any personal experience with Student prior to May 29, 2024. (Cimeno)
28. School staff were not told how to vote nor were they pressured to vote a certain way at the MDR. (Cimeno, Cortland, Nottebart, Deluca)
29. Dr. Julie Weieneth is a neuropsychologist working at Achieve New England. Student was referred to her by Parent’s attorney. Dr. Weieneth has a master’s degree and Ph.D. in child clinical psychology. Prior to working at Achieve New England she worked in several therapeutic day programs as a staff psychologist. (Weieneth, P-23)
30. Dr. Weieneth evaluated Student on September 16, 2024, after the MDR, and her findings and conclusions were therefore not available to the MDR Team. Dr. Weieneth did not review any information from Norwood Public Schools or Student’s prior public school district as part of her evaluation. According to Dr. Weieneth, while a school report is helpful when making an ADHD diagnosis, it is not essential. (Weieneth)
31. During Dr. Weieneth’s interview with Parent, Parent reported that Student, on at least one occasion, threw things during an argument. Student also bit her arm when she could not self-regulate. (Weieneth)
32. At Hearing, Dr. Weieneth testified that the hallmark of ADHD is inattention, impulsivity and hyperactivity but other deficits can complicate those symptoms. Most students with ADHD have difficulty inhibiting behavior (i.e., demonstrate difficulty to stop, think, and act) which impacts other areas of functioning. A student with ADHD is already vulnerable, and having past trauma adds a “layer” of complication to a student’s cognitive profile. Trauma changes how one perceives the world. Student, for instance, perceives the world as unsafe. Trauma can increase the severity of ADHD symptoms, even when trauma was experienced, as in Student’s case, several years ago when her Parents underwent a difficult divorce, and she witnessed domestic violence. (Weieneth)
33. In Dr. Weieneth’s opinion, Student’s ADHD, particularly given her trauma history, inhibited Student’s behavior throughout the entirety of her behavior on May 29, 2024 until she was able to calm down. Student’s conduct on May 29, 2024 was an impulsive reaction resulting from her ADHD. According to Dr. Weieneth, Student was experiencing significant stress in 9th grade, and she responded impulsively due to a “major provocation.” The “provocation” was the peer coming up to Student’s table and saying something that Student found provocative. Student’s rising from the table and following the peer are all part of one impulsive action. In other words, Student’s ADHD “led to an impulsive decision” that then “brought her down this path” where she could not inhibit her response, or to stop and think. Student’s conduct was an “instrumental aggression” in response to a provocation. That she did not have such behaviors in the past does not negate the relationship between her ADHD and the conduct. Rather, Student suffered a “total frontal lobe shutdown.” The incident was the result of a “buildup of stressors and a severe provocation.” Even when told to stop by staff, Student continued to be in fight or flight mode, and she could not calm down until she felt safe. That Student was unmedicated on the day of the incident made her vulnerabilities even more pronounced. According to Dr. Weieneth, Student’s ability to process the event afterwards does not negate the impulsiveness of her action at the time. (Weieneth)
34. Dr. Weieneth was not present at the MDR. (Weieneth)

**DISCUSSION:**

1. *Legal Standards*

The Individuals with Disabilities Education Act (IDEA) was enacted "to ensure that all children with disabilities have available to them a free appropriate public education" (FAPE).[[11]](#footnote-12) In part, FAPE requires compliance with the procedural protections embedded in IDEA.[[12]](#footnote-13) These procedural benefits serve a dual purpose; they provide for meaningful parental participation and they ensure each eligible child receives a FAPE.[[13]](#footnote-14)

The IDEA provides a specific process by which a school may change the placement of a child with a disability who violates the school's code of conduct. Pursuant to 34 CFR 300.530(b), school districts may remove a child with a disability who violates a code of student conduct for not more than 10 consecutive or cumulative school days in a school year. However, for disciplinary removals beyond this timeframe, 20 U.S.C. §1415(k)(1)(E) and 34 CFR 300.530(e), entitled “manifestation determination”, charge districts with the responsibility to meet and undertake a manifestation review prior to implementing any potential further discipline. The meeting must be attended by the parent, a representative from the school, “and relevant members of the child's IEP Team (as determined by the parent and the [school]).”[[14]](#footnote-15) At the meeting, the “MDR 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.”[[15]](#footnote-16)

The purpose of such a manifestation review is to determine: (1) “if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability” or (2) “if the conduct in question was the direct result of the local education agency's failure to implement the IEP.”[[16]](#footnote-17) This decision is commonly known as a “manifestation determination.”[[17]](#footnote-18) If the MDR Team answers both questions in the negative, “the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner and for the same duration in which the procedures would be applied to children without disabilities.”[[18]](#footnote-19) Pursuant to 20 U.S.C. §1415(k)(1)(F)(i) and (ii), if the behavior was a manifestation of the student’s disability the IEP Team must conduct a functional behavioral assessment and implement a behavioral intervention plan, however, if the IEP Team had previously developed a behavioral intervention plan for the student, the plan must be reviewed and modified as needed to address the problem behavior. Excepting “special circumstances”[[19]](#footnote-20), the student must return to the placement from which he was removed unless the parent and the school district agree to a change in placement as part of a modification of the student’s behavioral intervention plan.[[20]](#footnote-21) Finally, upon making a decision to take disciplinary action, a school district must notify the parent of the decision, and provide the parent with the procedural safeguards granted under this section of the IDEA, including the right to appeal before the BSEA.[[21]](#footnote-22)

In a due process proceeding, the burden of proof is on the moving party.[[22]](#footnote-23) If the evidence is closely balanced, the moving party will not prevail.[[23]](#footnote-24) In the instant case, as the moving party, Parent bears this burden.[[24]](#footnote-25)

1. *Application of Legal Standard:*

The fundamental issues in dispute are listed above. After careful consideration of the evidence before me, the legal standards delineated above, and the thoughtful arguments of counsel, I conclude as follows:

1. Any Procedural Error In The Composition Of The MDR Team Was Harmless.

Pursuant to 34 CFR 300.530(e), the MDR must be conducted by the district, the parent, and relevant members of the IEP team, as determined by the parent and the district. In determining who the “relevant members of the IEP team” are at least two BSEA Hearing Officers have found that the MDR Team should comprise individuals who possess “personal knowledge” [[25]](#footnote-26) or “first-hand information”[[26]](#footnote-27) of Student.[[27]](#footnote-28)

Here, other than Ms. Cortland, no MDR Team member had personal knowledge of Student. In fact, even though the statute clearly directs the team to consider “any teacher observations”[[28]](#footnote-29), none of Student’s teachers was present, nor were any staff members who personally observed the incident.

Nevertheless, “a contextual reading of the § 1415(k) language, together with the related DOE regulations and guidance, makes clear that under § 1415(k) the LEA and parents ‘determine’ IEP and MDR team members as follows: The LEA determines and designates the school personnel to serve on these teams and the parents ‘determine’ any additional team members they may wish to invite.”[[29]](#footnote-30) As such, even if the District did not invite multiple staff members with “personal knowledge” of Student, Parent had the right and the opportunity to determine any additional team members, including Student’s teachers from the previous school year, and Dr. Weieneth, and invite them to attend. In fact, Parent was aware of and exercised this right by including her personal representatives as well as Dr. Reis in the MDR.

In addition, although the First Circuit has yet to opine on this issue, in *Fitzgerald v. Fairfax Cnty. Sch. Bd.*, 556 F. Supp. 2d 543 (E.D. Va. 2008), the District Court in Virginia examined whether the IDEA requires MDR Team members to include persons who had both (i) served in those roles in one of the child's previous IEP meetings, and (ii) personally knew the child. The Court concluded that the “IDEA does not so require…. [T]he § 1415(k) language stating that only relevant members of the IEP team need attend an MDR hearing does not support the proposition that each MDR committee member must know the student personally; rather, each committee member must serve some purpose pertinent to the MDR.”[[30]](#footnote-31) Similarly, in *Gloria V. v. Wimberley Indep. Sch. Dist.*, No. 1:19-CV-951-RP, 2021 WL 770615 (W.D. Tex. Jan. 5, 2021), *report and recommendation adopted in part sub nom. Gloria V. v. Wimberley Indep. Sch. Dist.*, No. 1:19-CV-951-RP, 2021 WL 769663 (W.D. Tex. Feb. 26, 2021), *aff'd*, No. 21-50349, 2022 WL 636406 (5th Cir. Mar. 4, 2022), the Court found that

“it is undisputed that a general education teacher … is a mandatory member of an IEP team. However, Section 1415(k) does not name specific individuals who must make a manifestation determination concerning a disabled child. Rather, it defines the MDR's attendees as the [local education agency], the parent, and relevant members of the IEP Team (as determined by the parent and the [local education agency].  This plain language reveals that [t]he MDR committee is ... a *subset* of a disabled child's IEP team. That is, an MDR team could consist of the entire IEP team, or, at the parent's and local education agency's discretion, a fraction of the whole IEP team.”[[31]](#footnote-32)

Nevertheless, given the totality of the circumstances in the instant matter, and bearing in mind the conduct at issue did not take place in the classroom but rather in the unstructured cafeteria, the fact that only one MDR team member who was familiar with Student (i.e., Ms. Cortland) was present at the MDR does not rise to the level of substantive denial of a FAPE. Even assuming, *arguendo*, that the Team was not properly constituted, here, as discussed below, such procedural defect was harmless error. Under IDEA, not every procedural violation by a school district amounts to a denial of FAPE. Specifically, a Hearing Officer may find that a child did not receive a FAPE only if the procedural inadequacies impeded the child's right to a FAPE; significantly impeded the parent's opportunity to participate in the decision-making process regarding the provisions of a FAPE to the parent's child; or caused a deprivation of educational benefits.[[32]](#footnote-33)

Here, Parent, through her attorney, had significant input into the meeting. Not only was Dr. Reis an active attendee who provided significant information to the Team, but the Team also considered the report of Dr. Shah, which was first provided to Norwood at the MDR meeting. By all accounts, this report was reviewed and considered, as was Dr. Reis’s substantial input into the discussion of the MDR Team.

Furthermore, in reviewing Student’s conduct history, which was also reviewed by the MDR Team, I find it highly unlikely that any instructional staff member from the 2023-2024 school year could have provided the MDR Team with any description of behaviors similar to those exhibited on May 29. There is no reason to believe that the MDR outcome would have changed if Student’s teachers or witnesses to the incident had participated in the meeting. Moreover, under the specific circumstances of this case, as the incident was video recorded, the MDR Team reviewed the video(s) and all ancillary documents, the incident did not take place in the classroom, and Student’s conduct history was minimal and not reflective of the May 29 incident, I do not find the omission of witnesses or teachers to be significant. The MDR team had sufficient information to consider the specific circumstances of the incident and the alleged conduct.[[33]](#footnote-34)

Therefore, Parents’ meaningful participation and Student’s right to a FAPE were not impacted, and Student was not deprived of educational benefits, since, as will be explained below, the MDR Team correctly concluded that Student’s behavior was not a manifestation of her disability. As such, Parent did not meet her burden on this claim.

1. The MDR Team Considered “All Relevant Information” In Accordance With 20 U.S.C. § 1415(K)(1)(E)(I) And 34 C.F.R. § 300.530(E)(1) Regarding Student’s Disability(ies) And Conduct On May 29, 2024.

According to the District, the only disability that required consideration by the MDR Team was “ADHD.” Yet this assertion is contrary to the law which requires the MDR Team to consider all “all relevant information” before it in accordance with 20 U.S.C. § 1415(k)(1)(E)(i) and 34 C.F.R. § 300.530(e)(1), including all information about any of Student’s disabilities.[[34]](#footnote-35)

Although Parent asserts that Dr. Shah’s and Dr. Reis’s opinions were not afforded due credit by the Team, I find that such assertion lacks merit. By all accounts, the District considered Dr. Shah’s report, including information about Student’s past trauma.[[35]](#footnote-36) Moreover, Dr. Reis was present for the extensive MDR meeting, and I credit the testimony of Ms. Cimeno, Ms. Cortland, Ms. Nottebart, and Mr. Deluca that Dr. Reis was questioned at length by the Team. That Dr. Reis found the questioning not to be what she expected does not negate the interactive nature of the MDR Team process. Further, the MDR Team also considered Dr. Reis’s letter (P-15), provided to the District on or about June 2024, with regard to Student’s conduct on May 29, 2024, as well as her Health Information reports of November 2022 and 2023 (P-2 and P-5). Dr. Reis and Dr. Shah’s reports and letter were the only “medical assessment-like” information contained in Student’s record at the time of the MDR meeting. Since Student had not yet undergone any school or private evaluations at the time of the MDR, no such information was available for the Team’s consideration on September 6, 2024.

I found school staff credible in their testimony that all available and relevant information was considered and discussed. Parent offered no evidence to the contrary. Although Student’s “file” included minimal conduct history, and none of Student’s teachers were in attendance, all grades and behavioral history that was available in Student’s file was reviewed.[[36]](#footnote-37) In addition, new information provided by Dr. Reis verbally during the MDR and by Dr. Shah’s report were considered by the MDR Team, even if the Team did not ultimately agree with their conclusions.[[37]](#footnote-38) Moreover, the Team could not review, and cannot be responsible for not reviewing, information, such as that provided by Dr. Weieneth’s testimony, unavailable to it at the time of the MDR. As such, Parent did not meet her burden on this claim.

1. Student’s Behavior On May 29, 2024 Was Not A Manifestation Of Her Disability.

Parents contend that for the purposes of this issue, the Hearing Officer must consider not only information that was available to the MDR Team on September 6, 2024, but also information not available to the MDR Team on that date, such as the testimony of Dr. Julie Weieneth, who conducted a neuropsychological evaluation of Student on September 16 and 17, 2024, subsequent to the MDR. The District asserts that the testimony of Dr. Julie Weieneth is not relevant as her observations and findings were not available to the MDR Team on September 6, 2024 (in fact, her neuropsychological evaluation had not even been conducted on this date).

The IDEA regulations state that the MDR must involve a review of "all relevant information in the [child's] file, including the child's IEP, any teacher observations, and any relevant information provided by the parents."[[38]](#footnote-39)  The “relevant information” that must be considered for the purposes of a manifestation determination is, therefore, information already available to the MDR Team or that is made available at the MDR. It is inconsistent with the IDEA to make the MDR Team responsible for considering information not yet available.[[39]](#footnote-40) Moreover, 20 U.S.C.A. § 1415(k)(3)(A) “allows the parent of a child with a disability who disagrees with any decision regarding … the manifestation determination … [to] request a hearing.” My authority under 20 U.S.C.A. § 1415(k)(3)(B) is to “hear, and make a determination regarding, an appeal requested under subparagraph (A).”

Hence, here, as the Hearing Officer, my “determination” is limited to ruling on “the manifestation determination” made at the MDR, and I am limited in my review to “all the relevant information” that was available to the MDR Team, not information made available afterwards.[[40]](#footnote-41) Hence, I place no weight on the clinical findings, observations, recommendations or diagnoses of Dr. Weieneth relative to Student, as such were not available to the MDR Team on September 6, 2024, and I consider her testimony only to the extent that it supports any information that was available to the Team at the time of the MDR.

Based on the information available to the MDR Team, I find that it properly concluded that Student’s disability of ADHD-Predominantly Inattentive Type, even as it was compounded by past trauma, did not “cause or ha[ve] a direct and substantial relationship” to her disability.

The record reveals that manifestations of ADHD including Predominantly Inattentive Type, may include poor impulse control and trouble with behavior inhibition. (Reis) However, the use of such global approach is not permissible or appropriate in making a MDR determination. Rather, a specific Student/incident-centered analysis is required.[[41]](#footnote-42) In that context, I place significant weight on the evidence that Student’s past conduct and behaviors showed no such or similar manifestations of her disability.[[42]](#footnote-43) Such behaviors were neither reported to Dr. Reis at the time she made her diagnosis, nor were they observed by the prior public school District or Norwood school staff. Indeed, Dr. Reis testified that when she diagnosed Student with ADHD, Student’s ADHD manifested as lack of sustained attention and disorganization. I note that all Parent had reported to Dr. Reis in the fall of 2023 was that when dysregulated and angry, Student did not aggress against others but rather she bit her own arm. This information became available to the MDR Team via Dr. Shah’s report. Moreover, only a couple of weeks after the incident, Dr. Reis herself wrote to the school expressing how “out of character” the fight was for Student who before had “never” before acted aggressively or impulsively. Even Mr. Deluca, who voted that Student’s behavior was a manifestation, did so only to “give Student the benefit of the doubt”, but he did not find Student’s behavior to be impulsive and was hesitant about finding a manifestation as Student’s behavior was not a “repeated behavior.” Furthermore, as discussed *infra*, based on a review of the circumstances of the May 29, 2024 incident, I do not find that it represented a single impulsive act of aggression, as suggested by Dr. Reis.

I note, furthermore, that even if Student’s ADHD had been compounded by life stressors, it is unclear why significant, prior life stressors, such as her parents’ “difficult” divorce and witnessing domestic violence, her own academic difficulties in her prior public school district, and her transition to a new school system at the start of the 2023-2024 school year, did not result in any previous “provocations” that elicited the same aggressive response as that demonstrated on May 29, 2024.

I place little weight on Student not having taken her Concerta the morning of May 29, 2024. Dr. Reis testified that even when Student did take Concerta, the dose was not at a therapeutic level, and, therefore, I conclude that Student’s behavior when taking it would not be significantly different than her behavior when she did not take it.

Because Dr. Shah did not testify at Hearing, I place less weight on his report. Moreover, his conclusion that “dealing with [] signiﬁcant life stressors as someone with ADHD may further have exacerbated the negative impact of these experiences and [Student’s] sense of self-worth” is equivocal, and not specific to Student’s behavior on May 29, 2024.

Moreover, even if I accept Dr. Reis’s (and Dr. Weieneth’s) testimony that the peer’s statement at the lunch table was a “triggering event” which resulted in a “shutdown”, then it is unclear why Student did not react with aggression immediately when the peer was speaking to her at the lunch table or when the peer first got up and turned to leave. Instead, Student’s “instrumental aggression” did not take place for another 10 seconds during which Student was able to walk 12 steps behind the peer while keeping her hands safely to herself. Only at the lunch line, after a second engagement with the peer, did Student react physically. In addition, Student continued to pursue the peer even after being physically separated from her by staff. She even sidestepped a staff member who was lying on the floor to do so, and she continued to pursue the peer 4 minutes later when she attempted to reenter the building from the outside.

Even if I could find, which I do not, that Student’s rise from the lunch table and her “pulling [the peer’s] hair” to be one single impulsive act of “instrumental aggression”, as Dr. Reis (and Dr. Weieneth) suggested, Student’s subsequent engagement in and attempts at aggression are far more tenuous, made even more attenuated by the statement of the Principal that Student made a phone call in the midst of this episode. As such, Parent failed to show by a preponderance of the evidence that Student’s conduct was caused by or had a direct and substantial relationship to her ADHD disability (even as impacted by Student’s prior history of trauma).

I note, however, that pursuant to 603 CMR 53.02, “[n]o long-term suspension shall extend beyond the end of the school year in which such suspension is imposed." As Student’s long-term suspension was imposed during the 2023-2024 school year, it may not extend into the 2024-2025 school year, and Student must be returned to school immediately.

**ORDER**:

Parent has failed to meet her burden in this matter. The conclusion of the MDR Team that Student’s conduct was not a manifestation of her disability was proper.

So Ordered,

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir, Hearing Officer

Date: October 8, 2024

COMMONWEALTH OF MASSACHUSETTS

BUREAU OF SPECIAL EDUCATION APPEALS

EFFECT OF BUREAU DECISION AND RIGHTS OF APPEAL

# Effect of the Decision

20 U.S.C. s. 1415(i)(1)(B) requires that a decision of the Bureau of Special Education Appeals be final and subject to no further agency review. Accordingly, the Bureau cannot permit motions to reconsider or to re-open a Bureau decision once it is issued. Bureau decisions are final decisions subject only to judicial review.

Except as set forth below, the final decision of the Bureau must be implemented immediately. Pursuant to M.G.L. c. 30A, s. 14(3), appeal of the decision does not operate as a stay. Rather, a party seeking to stay the decision of the Bureau must obtain such stay from the court having jurisdiction over the party’s appeal.

Under the provisions of 20 U.S.C. s. 1415(j), “unless the State or local education agency and the parents otherwise agree, the child shall remain in the then-current educational placement,” during the pendency of any judicial appeal of the Bureau decision, unless the child is seeking initial admission to a public school, in which case “with the consent of the parents, the child shall be placed in the public school program.” Therefore, where the Bureau has ordered the public school to place the child in a new placement, and the parents or guardian agree with that order, the public school shall immediately implement the placement ordered by the Bureau. *School Committee of Burlington v. Massachusetts Department of Education*, 471 U.S. 359 (1985). Otherwise, a party seeking to change the child’s placement during the pendency of judicial proceedings must seek a preliminary injunction ordering such a change in placement from the court having jurisdiction over the appeal. *Honig v. Doe*, 484 U.S. 305 (1988); *Doe v. Brookline*, 722 F.2d 910 (1st Cir. 1983).

# Compliance

A party contending that a Bureau of Special Education Appeals decision is not being implemented may file a motion with the Bureau of Special Education Appeals contending that the decision is not being implemented and setting out the areas of non-compliance. The Hearing Officer may convene a hearing at which the scope of the inquiry shall be limited to the facts on the issue of compliance, facts of such a nature as to excuse performance, and facts bearing on a remedy. Upon a finding of non-compliance, the Hearing Officer may fashion appropriate relief, including referral of the matter to the Legal Office of the Department of Elementary and Secondary Education or other office for appropriate enforcement action. 603 CMR 28.08(6)(b).

# Rights of Appeal

Any party aggrieved by a decision of the Bureau of Special Education Appeals may file a complaint in the state superior court of competent jurisdiction or in the District Court of the United States for Massachusetts, for review of the Bureau decision. 20 U.S.C. s. 1415(i)(2).

An appeal of a Bureau decision to state superior court or to federal district court must be filed within ninety (90) days from the date of the decision. 20 U.S.C. s. 1415(i)(2)(B).

# Confidentiality

In order to preserve the confidentiality of the student involved in these proceedings, when an appeal is taken to superior court or to federal district court, the parties are strongly urged to file the complaint without identifying the true name of the parents or the child, and to move that all exhibits, including the transcript of the hearing before the Bureau of Special Education Appeals, be impounded by the court. See *Webster Grove School District v. Pulitzer Publishing*

*Company*, 898 F.2d 1371 (8th. Cir. 1990). If the appealing party does not seek to impound the documents, the Bureau of Special Education Appeals, through the Attorney General's Office, may move to impound the documents.

Record of the Hearing

The Bureau of Special Education Appeals will provide an electronic verbatim record of the hearing to any party, free of charge, upon receipt of a written request. Pursuant to federal law, upon receipt of a written request from any party, the Bureau of Special Education Appeals will arrange for and provide a certified written transcription of the entire proceedings by a certified court reporter, free of charge.

1. Pursuant to 34 CFR § 300.532(c)(2), an expedited due process hearing must occur within 20 school days of the date that the due process complaint requesting the hearing is filed, and the Hearing Officer must make a determination within 10 school days after the hearing. Furthermore, pursuant to BSEA Hearing Rule IV(a), an expedited hearing may not be postponed. See *Dispute Resolution Procedures under Part B of the Individuals with Disabilities Educ. Act (Part B)*, 61 IDELR 232 (OSEP 2013) (a hearing officer may not extend the timelines for making a determination in an expedited due process hearing); see also*Letter to Snyder, 67 IDELR 96*  (OSEP 2015) (expedited timeline is mandatory). Therefore, in the instant matter, the allowance of opportunity to submit written closings will not affect the decision issuance date. [↑](#footnote-ref-2)
2. See *Gonzalez-Pina v. Rodriguez,* 407 F.3d 425, 429 (1st Cir. 2005). [↑](#footnote-ref-3)
3. Parent’s Hearing Request included the following issue, beyond those stated above: Whether Norwood violated the August 2024 Order by failing to conduct an expedited evaluation of Student, and/or by refusing to allow Student to return to school at the start of the 2024-2025 school year? At the Hearing, the District objected to this issue being adjudicated at that time, asserting that if Parent wanted a compliance ruling relative to the August 29, 2024 Order, then Parent should seek such from Hearing Officer Reichbach. As Parent agreed to address this issue at a later time, this Decision will not make any findings of fact or conclusion of law relative to it. [↑](#footnote-ref-4)
4. In Norwood’s *Response to Parent’s Hearing Request*, the District asserts that the sole issue for determination in this hearing is: ‘Whether [Student’s] behavior on May 29, 2024, was a manifestation of Student’s disability(ies). Norwood objected to Issues #1 and 2, as delineated herein, asserting that they were not raised in the Hearing Request. Parent responded that she raised these issues when seeking “any and all other remedies determined to be appropriate pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et. Seq., 34 C.F.R. part 300; M.G.L. c. 71B, 603 C.M.R. Section 28.00, Section 504 of the Rehabilitation Act of 1972, 29 U.S.C. §794, 34 C.F.R. Part 104.” As I stated on the record at Hearing, Norwood’s objection is overruled. First, both parties presented evidence at Hearing relative to the composition of the MDR Team and the review of information during the meeting. Furthermore, for the purpose of administrative efficiency, it would be a waste of resources not to examine the District’s alleged substantive and procedural violations during the MDR at the same hearing. Although I did not note this on the record during the Hearing, in her *Expedited Hearing Request*, Parent also raised the issue of whether the Team gave proper consideration to the evaluation of Dr. Suhal Shah. As such, I find it appropriate to address Issues #1 and 2 in this Decision. Further, while BSEA Hearing Rule II(c)(3)(f) provides that when “expedited status is requested, a Hearing Officer will consider which issues, if any, meet the criteria above, and will schedule only those issues on an expedited track, both issues also meet this standard. [↑](#footnote-ref-5)
5. 6 Omitted in this statement is Principal’s Galligan’s recitation of the procedural due process provided to Student prior to her suspension. [↑](#footnote-ref-6)
6. Dr. Reis explained that although school reports are helpful in making an AHDH diagnosis, they are not required to make a diagnosis, especially with an older child who can reliably self-report. (Reis) [↑](#footnote-ref-7)
7. On August 1, 2023 and again on November 22, 2023, Dr. Reis completed the Massachusetts School Health Record for Student but did not note any history of trauma. (P-2, P-5) [↑](#footnote-ref-8)
8. This was Dr. Reis’s first MDR. [↑](#footnote-ref-9)
9. Dr. Shah did not testify at Hearing. [↑](#footnote-ref-10)
10. Although Dr. Shah mentioned in his report that Dr. Reis was concerned about a possible autism spectrum diagnosis, Dr. Reis testified that she did not consider this a “top concern” nor did she make this diagnosis for Student. (Reis) [↑](#footnote-ref-11)
11. Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 (d)(1)(A). [↑](#footnote-ref-12)
12. See 20 U.S.C. §1415(f)(3)(E)(ii); 34 CFR 300.513(a)(2). [↑](#footnote-ref-13)
13. See *Honig v. Doe*, 108 S.Ct. 592, 298 (1998) (“Congress repeatedly emphasized throughout the [IDEA] the importance and indeed the necessity of parental participation in both the development of the IEP and any subsequent assessments of its effectiveness); see *Bd. of Educ. v. Rowley*, 102 S.Ct. 3034, 3050 (1982) (“Congress placed every bit as much emphasis on compliance with procedures giving parents and guardians a large measure of participation in every stage of the administrative process . . . as it did upon the measurement of the resulting IEP against a substantive standard”). [↑](#footnote-ref-14)
14. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1). [↑](#footnote-ref-15)
15. *Id.* [↑](#footnote-ref-16)
16. 20 U.S.C. § 1415(k)(1)(E)(i)(I)–(II); 34 C.F.R. § 300.530(e)(1)(i)–(ii). I note that the question of whether “the conduct in question was the direct result of the local education agency's failure to implement the IEP” is irrelevant in the instant appeal. [↑](#footnote-ref-17)
17. 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e). [↑](#footnote-ref-18)
18. 20 U.S.C. § 1415(k)(1)(C); *see* 34 C.F.R. § 300.530(c) . Exceptions delineated in both the statute and the regulations are not relevant in this matter. [↑](#footnote-ref-19)
19. 34 CFR 300.530 (g) provides that school personnel may remove a child to an Interim Alternative Educational Setting (IAES) for not more than 45 school days without regard to whether the behavior is determined to be a manifestation of the child's disability in “special circumstances” where the student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the jurisdiction of a state educational agency or a local educational agency; knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA; or has inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of an SEA or an LEA. Here, I take administrative notice of Hearing Officer’s Reichbach’s conclusion that Norwood had not met its burden to prove that its exclusion of Student was lawful under these “special circumstances” exceptions. [↑](#footnote-ref-20)
20. See 20 U.S.C. §1415(k)(1)(F)(iiii). [↑](#footnote-ref-21)
21. See 20 U.S.C. §1415(k)(1)(H). [↑](#footnote-ref-22)
22. See *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 62 (2008);  see also 71 Fed. Reg. 46,723 through 46,724 (2006) (if the parent disputes the results of an MDR concluding the conduct was not a manifestation of a student’s disability, the parent would bear the burden of showing that the child's misconduct was a manifestation of his disability). [↑](#footnote-ref-23)
23. *Id*. (places the burden of proof in an administrative hearing on the party seeking relief). [↑](#footnote-ref-24)
24. *Id*. [↑](#footnote-ref-25)
25. *Peabody Public Sc*hools, BSEA # 2304801 (Berman, 2023) (because most of the attendees at the MDR would have had limited personal knowledge of Student, the Hearing Officer questioned whether the MDR was procedurally adequate and properly constituted). [↑](#footnote-ref-26)
26. *In Re: Student v. Boston Public Schools and Ivy Street School,* BSEA # 1604894 (Figueroa, 2016) ("Since it appears that the MDR disregarded critical information, may not have properly discussed valuable information before them, and lacked first-hand information about [the Student] and his disabilities (with the exception of [one service provider]), one cannot conclude that the Team reached the correct conclusion”). [↑](#footnote-ref-27)
27. See *Thompson Sch. Dist. R2-J*, 70 IDELR 168 (SEA CO 2017) (absence of MDR team members who had personal knowledge of a student with ADHD and autism and his unique social and emotional needs led the team to incorrectly conclude that his statements concerning school shootings were unrelated to his disabilities); see also *Highlands County Sch. Bd*., 115 LRP 27365 (SEA FL 2015) (by holding an MDR without a general education teacher, an exceptional student education teacher, and a behaviorist, and not considering much more than a parent's opinion, this district's MDR resulted in "fundamentally flawed" and "unfair" results). [↑](#footnote-ref-28)
28. 34 CFR 300.530(e). [↑](#footnote-ref-29)
29. *Fitzgerald v. Fairfax Cnty. Sch. Bd*., 556 F. Supp. 2d 543, 554 (E.D. Va. 2008). [↑](#footnote-ref-30)
30. *Id*. at 555–56. The Virginia Court explained that “[t]he analysis leading to this conclusion begins with noting that § 1415(k) does not name specific individuals who must make a manifestation determination concerning a disabled child, but instead defines the attendees as ‘the local education agency, the parent, and relevant members of the IEP Team.’ § 1415(k)(1)(E)(i).” *Id*. at 552–53. [↑](#footnote-ref-31)
31. Internal quotations and citations omitted. The IEP Team includes “individuals who have knowledge or special expertise regarding the child”. 34 CFR 300.321(a). I note, however, that in *Gloria V.,* in contrast to the instant matter, the “MDR consisted of several [school] employees who were also familiar with [the student] on both an academic and behavior level*.* Here, only Ms. Cortland was familiar with Student from the school-based team. [↑](#footnote-ref-32)
32. See 34 CFR 300.513 (a)(2). [↑](#footnote-ref-33)
33. Cf. *Bristol Twp. Sch. Dist. v. Z.B.*, No. 15-CV-4604 (SRD), 2016 WL 161600, at \*4 (E.D. Pa. Jan. 14, 2016) (“[t]he manifestation determination team typically does not determine the facts of the incident for which an eligible student is subject to discipline”); *Danny K. v. Dep't of Educ.*, No. 11-CV-25 (ACK), 2011 WL 4527387, at \*12 & n.20 (D. Haw. Sept. 27, 2011) (“Plaintiffs cite no authority, and the Court has found none, to suggest that a manifestation determination team must review the merits of a school's findings as to how a student violated the code of student conduct.... [T]he IDEA was not intended to provide disabled students an additional avenue with which to challenge a school's underlying findings of misconduct”). [↑](#footnote-ref-34)
34. See *Roseville Joint Union High Sch. Dist*., 113 LRP 44610 (SEA CA 2013) (where the district knew of student’s new bipolar diagnosis made after the conduct which gave rise to the disciplinary process, district violated IDEA when it neglected to discuss the diagnosis, the student's suicidal ideation, or his hospitalization at the MDR*);* see also *Alianza Academy*, 112 LRP 19744 (SEA UT 2012) (because an LEA must review all of the pertinent information pertaining to a child before it decides whether his misconduct "was caused by or had a direct relationship to" his disability, where student's IEP stated that his disability was SLD, where his guardians pointed to student’s recent ADHD and Asperger Syndrome diagnosis, the MDR Team properly considered and discussed these two potential disabilities and their possible impacts on student's behavior before reaching their ultimate decision). [↑](#footnote-ref-35)
35. In contrast, see *Sch. Bd. of the City of Norfolk v. Brown*, 769 F. Supp. 2d 928, 947 (E.D. Va. 2010) (“as the Hearing Officer noted, the most egregious procedural violation was the failure to consider the psychiatric report which was generated as a result of Student's admission to the Virginia Psychiatric Center, which was a direct consequence of the behavioral incident at issue at the MDR. The IDEA requires the MDR team to consider ‘all relevant information’ and certainly a psychiatric evaluation based upon the subject disciplinary incident would be relevant to the determination of whether the conduct leading to that disciplinary incident was a manifestation of Student's disability”). [↑](#footnote-ref-36)
36. See *Danny K. v. Dep't of Educ., Hawai'i*, No. CIV. 11-00025 ACK, 2011 WL 4527387, at \*14 (D. Haw. Sept. 27, 2011) (no evidence presented that an assessment that was in Student's file was not reviewed before or during the manifestation determination review hearing). [↑](#footnote-ref-37)
37. See *Alianza Academy*, 58 IDELR 299 (SEA UT 2012) (because charter school “discussed” and “considered” the impact of the student's potential disabilities, the hearing officer concluded that the charter school's manifestation determination was appropriate). [↑](#footnote-ref-38)
38. 34 CFR 300.530(e) (emphasis added). [↑](#footnote-ref-39)
39. See *Letter to Nathan,* 73 IDELR 240 (OSEP 2019) (noting that there is no exception to the IDEA's manifestation determination review timeline that permits a district to wait to hold the MDR until after an IDEA evaluation or initial IEP meeting, and, as such, the MDR team in such situations may conduct its review and consider available information about the student); see also *Mineral Wells Indep. Sch. Dist.*, [123 LRP 32087](https://www.specialedconnection.com/LrpSecStoryTool/servlet/GetCase?cite=123+LRP+32087)(SEA TX 08/11/23) (finding that a post-MDR diagnoses by independent evaluators did not invalidate an MDR conducted months earlier as "[n]o one had any concept of the latent determination in [the independent educational evaluation] that Student has [autism] and ADHD" especially where the district had no reason to suspect the student had additional disabilities). [↑](#footnote-ref-40)
40. In her closing argument, Parent points to *Richland Sch. Dist. V. Thomas P.*, 32 IDELR 233 (D. Wisc. 2000) in which the court concluded that “[u]nder the terms of the IDEA, it was not improper for the ALJ to consider evidence of the student’s attention deficit disorder even though the student was not diagnosed with such disorders until after the district’s manifestation determination” and that “manifestation determinations… are by their nature retrospective, not prospective.” However, a closer reading of *Richland* demonstrates that the court’s finding related to the obligation of the MDR Team to consider more than “the disability ‘identified by the school district.’” The court states, “I find that the ALJ did not commit an error of law in concluding that he could consider evidence concerning P.'s diagnosis of ADD and dysthymia even though that evidence was not before the IEP Team during its manifestation determination. Having reached this conclusion, it is unnecessary to decide whether the school district had ‘knowledge’ of P.'s ADD and mood disorder ….” Hence, it is what the MDR Team “had knowledge of” that the court finds relevant to its inquiry. [↑](#footnote-ref-41)
41. See *Bristol Twp. Sch. Dist.*, 2016 WL 161600, at \*9 (finding that the MDR Team took an impermissible “global approach” when it fatally “considered [the student's] behavior in light of what is typical for students with ADHD rather than giving ‘specific consideration’ to whether the behavior arose from, or was substantially related to, [that student's] particular disability and manifestation”); see also *Gloria V.*, 2021 WL 770615, at \*17 (parent did not show by a preponderance of the evidence that the MDR was conducted with “a fatal level of generality” even though “there were discussions during the MDR regarding what a typical student with ADHD would do. However, the crux of the MDR Team's opinion, based on all of the information available to them, was that B.V.'s specific action at issue – stealing an ATV – would at least require some sort of planning for execution. … This occurred after the MDR Team had discussed B.V.'s past actions and diagnoses, including his ADHD-attributed impulsivity, for well over two hours”); *Fairfax Cnty. Sch. Bd.*, 556 F. Supp. 2d at 561–62 (where student’s anxiety was the “primary basis for his disability classification,” and his evaluations “described his headaches and school absences, but noted no social problems,” the hearing officer correctly concluded that the student “simply made a bad decision” when “planning and executing” the paintball shooting incident); *District of Columbia Pub. Schs*., 115 LRP 16949 (SEA DC 2015) (although school staff hadn't observed a new student with ADHD and SLD engage in violent behavior, a previous behavioral incident and evaluation report showed that fighting and resisting police were characteristic of the student's disability profile). [↑](#footnote-ref-42)
42. See *Gloria V.*, 2021 WL 770615, at \*17 (although the school district is required to make a decision based on the specific student's "past actions and diagnoses" and too high a level of generality may be impermissible, the MDR Team had discussed B.V.'s past actions and diagnoses, including his ADHD-attributed impulsivity, for well over two hours before deciding the underlying theft was not caused by B.V.'s ADHD); see also *N. E. Indep. Sch. Dist. v. N.B.,* No. SA-10-CA-37-H, 2011 WL 13272730, at \*3 (W.D. Tex. Feb. 25, 2011) (because “the cafeteria incident share[d] many similarities with the October 2 incident, which was determined to be a manifestation of N.B.'s disability,” the hearing officer correctly found the behavior to be a manifestation of the student’s disability); *In re: Student with a Disability*, 78 IDELR 294 (SEA WI 2021) (based on all relevant evidence, including the parent's input, details of the district's investigation, teacher observations, and the implementation of IEP services, the team properly determined that the teen's behavior didn't "mirror his typically impulsive behaviors" and was not a manifestation of his disability); see also *In re: Student with a Disability*, 12-060, 59 IDELR 150 (SEA NY 2012) (finding of manifestation was not incorrect where, although the MDR Team did not consider every part of the Student’s file, it considered the pertinent information such as the child's disciplinary reports, his IEP, and feedback from teachers and his parents, all of which suggested that inattention, not aggression, was the student's problem area, and the student's fight was "out of sync" with what the Team knew about him); *Suwannee County School Board*, 21-0522EDM, 121 LRP 28620 (SEA FL 2021) (although the student struggled with self-regulation and peer conflict, and the student's disability contributed in some degree, the district followed IDEA procedures for conducting an MDR and properly determined that the student made a willful choice, instigated a fight, sought out the other student, and behaved unlike incidents in the past and the misconduct wasn't related to the student's disability); *Liberty 53 Sch. Dist*., 117 LRP 26090 (SEA MO 2017) (where the student’s ADHD caused him to become anxious and overwhelmed by schoolwork but did not include impulsivity, the MDR team correctly found that the student's ADHD-related anxiety played no role in his decision to bring a weapon to school to fight his peer). In contrast, see *San Diego Unified School District*, 2009060881, 52 IDELR 301 (SEA CA 2009) (where evidence confirmed the student's ADHD-related impulsivity, the impact of his medication, and the fact that he had not taken it, the IEP team should have concluded that the student’s involvement in a drug sale was directly related to his ADHD). [↑](#footnote-ref-43)