**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

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**DECISION**

**STUDENT v. ATLANTIS CHARTER SCHOOL**

**BSEA #2510159**

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**BEFORE**

**HEARING OFFICER**

**ALINA KANTOR NIR**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **PARENT, PRO SE**

**STACEY DEDIAN, ATTORNEY FOR ATLANTIS CHARTER SCHOOL**

**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Atlantis Charter School BSEA # 2510159**

**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 before the Bureau of Special Education Appeals (BSEA) on Parent’s March 20, 2025 *Expedited Hearing Request* seeking a BSEA Order to reverse and vacate a manifestation determination entered on March 7, 2025, regarding a disciplinary incident that occurred on March 3, 2025.

A hearing was held on April 7, 2025, before Hearing Officer Alina Kantor Nir, via a virtual platform. Parent was *pro se*. Atlantis Charter School (Atlantis or the District) was represented by counsel. Those present for all or part of the proceedings were:

Mother

Chris Biener, RN School Nurse, Atlantis

Jessica Lee, M.Ed. Special Education Director, Atlantis

Tayla Nichols Dean of Students, Atlantis

Stacey Dedian Attorney for Atlantis

Patty Duhnam Court Reporter

The official record of the hearing consists of documents submitted by Parent and marked as Exhibits P-1 to P-6 and P-8[[1]](#footnote-2); documents submitted by Atlantis and marked as Exhibits S-1 to S-7[[2]](#footnote-3); approximately 1 day of oral testimony and argument; and a single volume transcript produced by a court reporter. Parent declined to provide an opening statement or a closing argument. The District presented its oral closing argument on April 7, 2025, and the record closed on same date.

**ISSUE IN DISPUTE:**

Whether Student’s behavior on March 3, 2025 was a manifestation of her disability of Type 1 Diabetes.

**FACTUAL FINDINGS:**

1. Student is a 10th-grade resident of New Bedford, Massachusetts, attending Atlantis. She was diagnosed with Type 1 Diabetes when she was 11 years old. (Mother, S-1, S-5) Student is a “ball of energy.” She “moves a lot” and “talks a lot.” (Biener) She is described as a “good kid.” (Biener, Nichols)
2. Student struggles to manage her diabetes. (Mother, Biener) She “waits longer than she should” to adjust her insulin. (Biener) She is followed by an endocrinologist she sees yearly and by a nurse educator she sees more frequently. (Mother)
3. Christopher Biener, RN, is the school nurse. He sees Student at least once per day because he checks in with her and tries to educate her when she struggles to manage her diabetes. (Biener) According to Mr. Biener, Student does not need to “correct” her blood sugar when she comes to his office; rather, she comes to see him to avoid being in class. (Biener)
4. Tayla Nichols is the Dean of Students at Atlantis for grades 9 and 10. She has formed a relationship with Student. Ms. Nichols opined that Student felt comfortable confiding in her and did so frequently, often seeking her out. (Nichols)
5. The District’s cell phone policy is that students lock their phones in YONDR pouches upon arriving in school. This policy is explained to students and is also shared with parents. (Nichols) Because Student relies on her iPhone for her Type 1 Diabetes monitoring, she has access to her YONDR pouch which is not locked, instead utilizing a Velcro closure. (Nichols)
6. On April 3, 2024, the District proposed a 504 Plan for Student in response to her medical diagnosis of Type 1 Diabetes. Accommodations included the following[[3]](#footnote-4):
	1. Point teacher will email [Parent] on Friday afternoon about Student's makeup work from classes, as needed.
	2. Extra time as needed to make up missed work due to medically related absences
		1. No more than 5 school days to make up the work.
	3. Free access to water and bathroom
	4. Is allowed to have [iPhone in] Velcro YONDR pouch for medical access
	5. Student will not be penalized for absences related to her medical treatment with doctor's notes
		1. In-Class Medical Procedure
			1. “LOW" for Student is less than 70 on her device.[[4]](#footnote-5)
			2. Student will no longer need to come down to the nurse if she is “Low".
			3. Student states she is "Low"
			4. Student will show teacher her monitor is reading 70 or below.
			5. Student will be given fruit snacks or juice box.
			6. Student will stay in class and re[-]check her sugar in 15 minutes.
			7. If Student’s [sic] reading is less than 70, repeat the process and give fruit snack/juice box. (S-1)
7. Student frequently tries to leave class, “walk around,” and spend time outside the classroom. (Nichols, Biener) Student’s 504 Plan allows her to access the bathroom but no other parts of the building without permission. (Nichols, Mother)
8. According to Ms. Nichols, Student frequently does not put her phone in the Velcro YONDR pouch, stating, instead, that she forgot it in her locker. (Nichols)
9. Student’s “In-Class Medical Procedure” was included in the 504 Plan to ensure that Student maximizes her time in the classroom. (Mother, Biener) The 504 Plan which Parent signed enables Student to monitor her own blood glucose without having to leave class or go to the school nurse. This ensures that she does not miss instruction unnecessarily. (Biener)
10. Student monitors her blood sugar through LIBRE, a Continuous Glucose Monitoring device (CGM), available on her iPhone. She has access to her iPhone for this purpose. (Mother, Biener) She can set alarms on her phone to inform her if her blood sugar is too low or too high, and is able to self-administer corrections to her blood sugar in class. (Biener) Student should not be accessing her phone for texting or social media during school hours. (Mother, Nichols, S-7)
11. There has been an ongoing conflict between Student and Peer I due to a “shift in friendship dynamic.” (Mother, Nichols) There was a Safety Plan in place for Student and Peer I with an “Effective Date: 2/26/2025 [and an] End Date: 6/18/2024 [sic]”[[5]](#footnote-6) indicating the following[[6]](#footnote-7):

“• A no-contact policy will be in effect between [Student] & [Peer I] during all aspects of the school day until further notice.

• Students are not to approach one another under any circumstances, on school grounds, or during school sponsored events or activities, and must maintain a distance of 6ft from one another at all times.

• Beginning with arrival in the morning, students are not to verbally or nonverbally communicate with one another at any point. Staff on duty during the morning will be made aware of this safety plan.

• Hallway class transitions will be closely monitored by staff. Students are not to communicate with one another during class transitions nor is each student allowed to go into classes that are not their academic classroom during transitions.

• Students will not be paired up in group activities and will not be seated near each other within the classroom.

• This safety plan includes using "third parties", or mutual friends, as a communication tool at any time. This includes restrictions in talking to peers about the other student, or verbalizing any vague or implied comments regarding the other student. Neither party should send a "friend" or peer to communicate with the other party on their behalf.

• Students will refrain from any non-verbal communication with one another, such as hand motions, staring, threatening body posture, etc.

• Students will proceed with their respective dismissal routine (walker, pick-up, after school club, etc.) without any verbal or non-verbal communication with one another.

• Students are encouraged to refrain from any electronic or social media contact with one another.

• Students are not to sit at the same table for lunch and must remain at least 6 feet apart during lunch. Students will also remain 6 feet apart during assemblies or school sponsored activities.

• Students are to report any incident(s) that violate the safety contract directly to the School Adjustment Counselor, Dean of Students, or Principal.

• All parties must adhere to confidentiality in regards to this safety plan.” (Nichols, P-2, P-3)

1. According to Parent, the Safety Plan was never signed, sent home, or implemented. This lack of implementation precipitated the incident on March 3, 2025. (Mother) In contrast,, Ms. Nichols testified that her “counterpart” (Mr. Kazeem Adediran), Dean of Students for grades 11 and 12, reviewed the Safety Plan with Student and “sent it home.” (Nichols) Student also acknowledged that there was a Safety Plan in place for her and Peer I. (P-8)
2. During the last week of February 2025, Student was overheard by staff relating an incident where Parent confronted Peer I at the mall the prior weekend. Ms. Nichols spoke to Student about “leav[ing] [the issue] outside of school” as Peer I was not attending school that week.[[7]](#footnote-8) (Nichols)
3. On the morning of March 3, 2025, Peer I sent Student a series of texts including a ‘headtap’ emoji and an emoji of a gun. (Mother, P-5, P-8)[[8]](#footnote-9)
4. Student’s blood sugar was above 300 between 9AM and 12PM on March 3, 2025. (Mother, P-6) According to Parent, when Student’s blood sugar is high, she becomes irritable and “snippy.” Student also feels very thirsty and needs to urinate often. (Mother)
5. Thomas Keyes is Student’s English teacher. According to Mr. Keyes, on March 3, 2025, Student came to class with a reusable steel water bottle. Student and Student’s friend (hereinafter, Peer II)

“were noticeably more rambunctious than usual, triggering [Mr. Keyes] to pay a little more attention to them. Both were talking about what I presumed to be a girl (but definitely a student), who was not in my class, ‘running their mouth over the weekend.’ The girls were trying to use code language …, but it was clear something was going on…. Early in the class, [another student (hereinafter, Peer III)] opened the door asking if she could talk to Student and signaled to her that something was going on [the] phone but was trying to be discreet.” (S-2, S-7)

1. Mr. Keyes denied Peer III’s request to speak to Student, and Peer III left. Student then promptly asked to use the restroom. The request was denied because Mr.Keyes "could not allow that as [Student] just had another student asking for her and insinuating something about a phone." Student “then announced that the other student had [Student’s] phone and that is what she assumed that the interruption of class was about. She then asked, ‘Can I fill up my water bottle, then?’" Mr. Keyes told Student he “could not allow her to do so at the moment but if she waited 5 minutes, [he] would allow her to fill up her water bottle.” (P-8, S-2, S-7)
2. Parent testified that Student had left her phone in the bathroom and needed it to monitor her blood glucose. Hence, she requested to go to the bathroom. (Mother)
3. Student waited, and after five minutes, Student asked if she could go fill up her water bottle. According to Mr. Keyes, because Student had complied with his “request to wait as well as trying to follow her 504 plan, I allowed her to go even with the situation going on”. (S-2, S-7)
4. According to Student, she received texts from Peer I while she was in the bathroom. (P-8)
5. According to Parent, Student was already irritable and agitated from her high blood sugar when she received the texts. (Mother)
6. A few moments later, the classroom door opened slightly and quickly, [Peer III] then stood up and sprinted out of the room.” Mr. Keyes “immediately got up and went to the door, assuming they went to the bathroom, [he] looked that way first and then back down the other end of the hallway where [he] saw [Peer IIII] and [Peer II] running down the hallway. [Mr. Keyes] then promptly called … the main office to signal them about the situation.” (S-2, S-7)
7. According to Student, she did not go down to fight Peer I. She went downstairs to “watch her friend.” (P-8)
8. In the video recording of the incident, Student was on the third floor of the school building. Student and two peers emerged from the female bathroom. (S-7, P-8) They ran down the hall, and Student opened the door to her classroom slightly. Another student (Peer II) ran out, and the four girls ran down the hall and off the screen. Mr. Keyes emerged from the classroom and looked down the hall. The video continued on the first floor, where the four students appeared walking down the hall to the main office. Peer I and an adult female entered the screen and stood next to a door.[[9]](#footnote-10) Words were exchanged, and Student visibly spoke to Peer I. Peer I made a lunging movement toward Student; she was held back by the adult female (Peer I’s Mother) and additional school staff. One of the students attempted to get to Peer I but was held back by the adults. Student continued to exchange words with Peer I’s Mother. Student and the remaining two peers exited off the screen. (Nichols, Lee, P-8, S-7)
9. Student is “pass blocked” from accessing the bathroom while her friends are there. It is unclear how they were all able to be there together. (Nichols)
10. None of the students involved had permission to be in the bathroom and were “skipping class.” (Nichols, P-8)[[10]](#footnote-11)
11. An emergency removal of Student was executed on the day of the incident. (P-1, P-8) Ms. Nichols testified that Student was “frustrated and elevated” following the incident (Nichols) and was also upset that evening. (Mother) Her blood sugar was at 400 that evening. (Mother, P-6)
12. Mr. Biener testified that Student’s blood glucose levels on March 3 were not atypical for Student. He has not previously seen Student get agitated, irritable, or aggressive when her blood sugar gets high. Student’s “baseline” is very energetic. (Biener)
13. According to Mr. Biener, having Student wait five minutes to access the bathroom is “not catastrophic.” She needs to access it in “a timely manner.” There are situations when she might need to “wait.”(Biener)
14. Ms. Nichols testified that Student had to go “down one hallway, another hallway, and three flights of stairs” to get to Peer I. (Nichols) She was surprised to see Student next to the main office as it was not a “passing period.” (Nichols)
15. Student has not had a significant disciplinary history. She had one disciplinary incident earlier during the school year which was unrelated to the instant matter. The behavior at issue during that incident was not aggressive in nature. (Nichols)
16. On March 4, 2025, a disciplinary hearing was held for Student by Mr. Adediran, with Parent present. Student was found to have violated the code of conduct by “skipping class, inciting other students to create a disturbance and violation of the safety plan, [and] assault.” (P-1, P-8)
17. On March 7, Student was issued an 8-day suspension in addition to the 2 days served for the emergency removal. (Nichols, P-1)
18. Also on March 7, 2025, a manifestation determination review (MDR) was held.[[11]](#footnote-12) (Lee, S-3)
19. Jessica Lee is the District’s Director of Special Education and Civil Rights Coordinator. She witnessed the incident on March 3 because she was bringing Peer I and Peer I’s Mother into the main office for a meeting. She also chaired Student’s MDR. (Lee)
20. The MDR Team reviewed the description of the behavior subject to disciplinary action, evaluation and diagnostic results, information from Parent, Student and school staff, and Student’s 504 plan accommodations. The Team determined that the conduct in question was not caused by, and did not have, a direct and substantial relationship to Student's disability of diabetes or to the school's failure to implement her 504 Accommodations Plan. Student had not previously gotten aggressive when her “sugars were off.” Student’s actions were planned: “Student had gone to the bathroom, when she had been given permission to get a water. She went into the bathroom where there were other students and then left the bathroom with those students. She then knocked on her classroom door to alert another student in the class and then went down to the first floor of the building from the [third] floor to seek out the [Peer I].” (Nichols, Lee, S-3)
21. At the MDR meeting, Parent argued that Student’s behavior was directly related to her diabetes. According to Parent, Student's “blood sugar was high and therefore she was checking her phone and saw text messages from the other student. When Student's blood sugar is high she becomes agitated and that is what caused her to react.” She also “shared that there [had] been outside issues with Student and Peer I] and the school [was] aware. [Peer I] was sending Student messages that were antagonizing her prior to her going down[stairs].” (Lee, S-7)
22. The MDR Team reviewed Student’s 504 Plan noting that there “was nothing noted for what should happen if Student is high.” The school nurse in attendance indicated that if Student’s blood sugar is high, Student “should drink water and if needed come down to the nurse’s office.” It was also recommended that a 504 meeting be scheduled to update the 504 Plan to include what should happen if Student's blood sugar was high. (Lee, S-3)
23. On March 7, 2025, the Team reconvened to review the 504 Plan. Parent was in attendance. (S-4)
24. On March 11, 2025, the Team proposed a 504 Plan with the following adjustments:

"Student can come down to the nurse if her level is [high]

‘High’ - BG is over 300 mq/dl when she arrives at school, BG over 300/mg/dl for more than 3hrs, [or] BG is higher than designated [t]arget level and a correction dose is needed.” (S-4, S-6)

1. Student served her suspension and returned to school on March 17, 2025. [[12]](#footnote-13) She has had no behavioral issues since her return. (Nichols, Parent, P-1)

**DISCUSSION:**

1. *Legal Standards*

The term "manifestation determination review" does not appear in the Section 504 regulations. However, with a few notable exceptions not applicable in the instant matter, the disciplinary rules and procedures of Section 504 mirror those of the Individuals with Disabilities Education Act (IDEA).[[13]](#footnote-14) In addition, the Office of Civil Rights (OCR) has interpreted Section 504 as requiring an MDR before disciplinary "changes in placement.”[[14]](#footnote-15) According to OCR, "a significant change in placement" triggering an MDR occurs when a student with a disability is suspended or expelled for more than 10 consecutive school days in a single school year.[[15]](#footnote-16) An MDR is conducted in substantially the same way, regardless of whether the student is IDEA-eligible or covered only under Section 504.[[16]](#footnote-17)

Hence, within 10 school days of a decision regarding the disciplinary removal of a child with a disability from school, the district must conduct an MDR. During the MDR, the MDR team must review all relevant information in the student's file, including the 504 Plan, any teacher observations, and any relevant information provided by the parents, to determine if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or if the conduct in question was the direct result of the local educational agency's failure to implement the 504 Plan.[[17]](#footnote-18) The determination of whether a student's misconduct is related to her disability must be made by people knowledgeable about the student, the meaning of the evaluation data, and Section 504 procedures, and should include the parent.[[18]](#footnote-19)

If, as a result of an MDR, it is decided that the student's misconduct was not related to his disability, then the district may discipline the student with a disability the way it would discipline nondisabled students.[[19]](#footnote-20) If the district determines that the student's misconduct is caused by his disability, the student must be returned to his current educational placement. The district must then conduct a functional behavioral assessment and either implement a new behavioral intervention plan or revise the existing behavior intervention plan. Additionally, if the behavior was the result of an implementation failure, the district must remedy those missteps.[[20]](#footnote-21)

In a due process proceeding, the burden of proof is on the moving party.[[21]](#footnote-22) If the evidence is closely balanced, the moving party will not prevail.[[22]](#footnote-23) In the instant case, as the moving party, Parent bears this burden.[[23]](#footnote-24)

1. *Application of Legal Standards:*

The fundamental issue in dispute is set out above. After careful consideration of the evidence before me and the legal standards delineated *supra*, I conclude that Parent has not met her burden.

In the instant matter, the MDR Team[[24]](#footnote-25) concluded that Student’s behavior was not a manifestation of her disability. Parent claims that not only was Student’s behavior directly related to her Type I Diabetes, but also that the District failed to implement Student’s 504 Plan and/or Safety Plan, and that, therefore, the determination of the Team must be reversed. I examine each of Parent’s claims separately.

The MDR Team must review "all relevant information in the [child's] file, including the child's [504 Plan], any teacher observations, and any relevant information provided by the parents."[[25]](#footnote-26)  Here, Parent informed the MDR Team at the MDR meeting on March 7, 2025 that Student's “blood sugar was high and therefore she was checking her phone and saw text messages from the [Peer I].” She also indicated that “[w]hen Student's blood sugar is high[,] she becomes agitated[,] and that is what caused her to react [in the way that she did].” In response, the school-based Team asserted that Student’s 504 Plan specifically addressed the appropriate reaction to Student having low blood sugar but was silent as to high blood sugar, and that the Team had no information suggesting that Student suffered from high blood sugar.

The “relevant information” that must be considered for the purposes of a manifestation determination is information already available to the MDR Team or that is made available at the MDR. [[26]](#footnote-27) As such, Student’s MDR Team was required to review the information offered by Parent at the MDR regarding Student’s high blood sugar despite Atlantis having had no prior information regarding same.

The obligation to review such information does not, however, obligate the Team to adopt the information presented on face value, especially in the absence of probative supporting evidence. In the instant matter, Mr. Biener testified that Student was “not great” at managing her diabetes, and her sugar spikes on March 3 were not atypical. However, the Student had not previously acted similarly when her blood sugar was high. This testimony was corroborated by Ms. Nichols who testified that Student has not acted in this manner before and that Student’s only other disciplinary infraction was utterly different in nature.

While I find credible Parent’s testimony that Student becomes “irritable” or “snippy” when her blood sugar is high, Parent failed to demonstrate how Student’s behavior on March 3 was a manifestation of irritability, rather than a planned response to an ongoing peer conflict. Student’s actions were deliberate, not reactive or impulsive. As such, I find that the MDR Team properly concluded that Student’s conduct on March 3, 2025 did not cause or have a direct and substantial relationship to her Type 1 Diabetes.

Nor can I find that the District failed to implement Student’s 504 Plan. This Plan was limited to accommodations for missing school, making up assignments, and monitoring low blood sugar. There is no evidence that Student was not allowed to use her iPhone to monitor her blood sugar. That Mr. Keyes insisted that Student wait five minutes before allowing her to leave class to get water was reasonable in light of the specific circumstances[[27]](#footnote-28), and did not violate Student’s 504 Plan which offered her “free access to water and bathroom.” Even if I could find that Atlantis failed to implement Student’s 504 Plan by delaying Student’s access to water or the bathroom, Parent did not present any evidence to show that the five-minute delay resulted in Student’s conduct, and Mr. Biener testified that it is not “catastrophic” for Student to wait to access water or the bathroom.

Nor did Parent demonstrate that Atlantis failed to implement Student’s Safety Plan. I note first that Student’s Safety Plan is not part of her 504 Plan. In addition, to a large extent, Student’s Safety Plan imposes conditions on both Student’s (and Peer I’s) behavior (i.e., Student and Peer I should refrain from any electronic or social media contact with one another)[[28]](#footnote-29). Atlantis’s obligations were restricted to monitoring hallway class transitions and ensuring that Student and Peer I (who had not been in school during the last week of February including on March 3) were not paired up in group activities and were not seated near each other within the classroom. Here, Student and Peer I were not paired up or seated next to each other. Nor did the incident occur during a transition time. As such, I cannot find that the District failed to implement Student’s Safety Plan.

Therefore, I find that Parent has failed to meet her burden in this matter.

**ORDER**:

Parent has failed to meet her burden of proof on her claims in this matter. The conclusion of the MDR Team that Student’s conduct was not a manifestation of her disability, or the result of non-implementation of her 504 Plan, was correct.

So Ordered,

By the Hearing Officer,

/s/ Alina Kantor Nir

Alina Kantor Nir, Hearing Officer

Date: April 9, 2025

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. P-8 is an audio recording. [↑](#footnote-ref-2)
2. S-7 is a video recording. [↑](#footnote-ref-3)
3. These accommodations are included here verbatim. [↑](#footnote-ref-4)
4. When Student’s blood sugar is low, she needs to access insulin, a glucose tablet or juice. (Mother, Biener) [↑](#footnote-ref-5)
5. The Safety Plan includes no signatures. [↑](#footnote-ref-6)
6. The provisions of the Safety Plan are included here verbatim. [↑](#footnote-ref-7)
7. Peer I was out of school due to an unrelated disciplinary issue. (Nichols, Lee) [↑](#footnote-ref-8)
8. According to Ms. Nichols, she was made aware of these communications during the suspension hearing. Since then, she has contacted the Fall River Police Department. (Nichols) [↑](#footnote-ref-9)
9. Peer I was not attending school at this time. She came to school that day to attend her own manifestation determination hearing. (Lee, Nichols) [↑](#footnote-ref-10)
10. It is unclear how all these students ended up in the bathroom together in light of the fact that there were “pass blocks” on all of them. [↑](#footnote-ref-11)
11. In attendance were Parent; Student; Jessica Lee, Special Education Director/Civil Rights Director; Daniel Bossolt, Principal; Thomas Keyes, Classroom Teacher; Tayla Nichols, Dean of Students; Chris Biener, RN, School Nurse; Ana Medeiros-Santos, School Psychologist; Ashley Gillis, BCBA; and Anthony Simmons, Guidance/504 Chair. (Lee, S-3) [↑](#footnote-ref-12)
12. According to Parent, Student is still trying to make up her work. (Parent, P-4) [↑](#footnote-ref-13)
13. See 34 C.F.R. § 104.36 (requiring public schools to establish a system of procedural safeguards “with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services” to include “notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person’s parents or guardian and representation by counsel, and a review procedure.” Compliance with the procedural safeguards of [the Individuals with Disabilities in Education Act (“IDEA”)] is one means of meeting this requirement”); see *Doe v. Osseo Area Sch. Dist.,* ISD No. 279, 296 F. Supp. 3d 1090, 1097 (D. Minn. 2017) (noting that a district can satisfy its Section 504 obligations by providing a Section 504 student the same disciplinary protections that are available to IDEA-eligible students); see also *OCR Memorandum—Long–Term Suspension of Expulsion of Handicapped Students*, 307 IDELR 05 (OCR 1988) (under Section 504, prior to implementing an exclusion that constitutes a significant change in placement, the first step is to determine “whether the misconduct is caused by the child's handicapped condition”); *Prince William Cty. (VA) Pub. Schs*., 68 IDELR 286 (OCR 2016) (“When a significant change in placement is for disciplinary reasons, the first step in the reevaluation is to determine whether the student's disability caused the misconduct.”) [↑](#footnote-ref-14)
14. See 34 CFR 104.35 ; see also *Dunkin (MO) R-V Sch. Dist.*, 52 IDELR 138 (OCR 2009) (interpreting the Section 504 regulations at 34 CFR 104.35 to require a manifestation determination prior to a suspension of more than 10 days); *Polk County (Fla.) Pub. Schs*., 122 LRP 9434 (OCR 01/07/22) (resolving allegations that a Florida public charter school failed to conduct an MDR prior to suspending a 10th-grader with ADHD for 16 days in violation of ADA Title II and Section 504); *Fort Larned (KS) Unified Sch. Dist*. 495, 124 LRP 42847 (OCR 04/19/24) (finding that a district may have discriminated against a middle-schooler with an undisclosed disability when it failed to conduct an MDR before suspending him for 10 days). [↑](#footnote-ref-15)
15. See *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). [↑](#footnote-ref-16)
16. As such, in this Decision, I will refer to the obligations of Atlantis with regard to Student’s MDR within the context of Section 504 and IDEA. [↑](#footnote-ref-17)
17. See 34 CFR 300.530 (e); see also *Pitt County (NC) Schs*., 64 IDELR 223 (OCR 2014) (finding that an MDR team erred by failing to consider a student's recent oppositional defiant disorder diagnosis or his psychological report); *Hallettsville (TX) Indep. Sch. Dist*., 123 LRP 10949 (OCR 01/30/23) (concluding that a Texas district likely conducted an improper MDR when it failed to consider information about the child's disability and made its determination based solely on observations from the day of the incident). [↑](#footnote-ref-18)
18. *Newton County (GA) Sch. Dist.,* 116 LRP 1171 (OCR 2015). [↑](#footnote-ref-19)
19. See, for example, *West Haven (CT) Bd. of Educ.,* 74 IDELR 265 (OCR 2018) (concluding that because the MDR team found the student's inappropriate touching of classmates was not a manifestation of his disability, the district did not violate Section 504 by imposing a long-term suspension). [↑](#footnote-ref-20)
20. *Questions and Answers: Addressing the Needs of Children with Disabilities and IDEA's Discipline Provisions*, 81 IDELR 138 (OSERS 2022). [↑](#footnote-ref-21)
21. 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-22)
22. *Id*. (places the burden of proof in an administrative hearing on the party seeking relief). [↑](#footnote-ref-23)
23. *Id*. [↑](#footnote-ref-24)
24. There are no allegations in the instant matter that the Team was not properly constituted. [↑](#footnote-ref-25)
25. 34 CFR 300.530(e). [↑](#footnote-ref-26)
26. 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-27)
27. Peer III asked Mr. Keyes to have Student leave class, Student requested a bathroom break immediately thereafter, and, when denied, Student asked to fill her water bottle. [↑](#footnote-ref-28)
28. I found credible Ms. Nichols’s testimony that Student was aware of the content of the Safety Plan as Student acknowledged same during the suspension hearing. [↑](#footnote-ref-29)