**COMMONWEALTH OF MASSACHUSETTS**

**DIVISION OF ADMINISTRATIVE LAW APPEALS**

**BUREAU OF SPECIAL EDUCATION APPEALS**

**In Re: Student v. Atlantis Public Schools BSEA #2510159**

**RULING ON ATLANTIS CHARTER SCHOOL'S**

**MOTION FOR SUMMARY JUDGMENT**

**AND**

**MOTION TO DISMISS**

This matter comes before the Hearing Officer on *Atlantis Charter School’s Motion to Dismiss and Motion for Summary Judgment*[[1]](#footnote-1) (*Motions*) filed with the Bureau of Special Education Appeals (BSEA) by Atlantis Charter School (Atlantis or the District) on March 26, 2025 . Specifically, according to the District,

“Parent here is seeking acknowledgment that [Student] did the right thing, which is not in the purview of remedies that the BSEA is able to provide. In addition, the Parent is seeking ‘acknowledgment that the 504 plan is not being followed.’ [Student’s] 504 plan is for her medical needs and supporting accommodations, which include accommodations for make-up work when she is absent for medical reasons. None of this is related to a disciplinary, behavioral incident.”

Furthermore, Atlantis argued that Parent “has not set forth any specific facts showing that there is sufficient evidence and a genuine issue for hearing,” and, therefore, the District is entitled to judgment as a matter of law.[[2]](#footnote-2)

On March 29, 2025, Parent submitted her *Response to the Motion* with seven supporting exhibits, arguing against dismissal and/or summary judgment.[[3]](#footnote-3)

As neither party requested a hearing on the *Motions,* and, because neither testimony nor oral argument would advance the Hearing Officer's understanding of the issues involved, this Ruling is issued without a hearing, pursuant to Bureau of Special Education Appeals Hearing Rule VII(D).

For the reasons set forth below, the District’s *Motions* are DENIED.

**I. FACTUAL BACKGROUND AND RELEVANT PROCEDURAL HISTORY:**

The following facts are derived from the pleadings and exhibits submitted by the parties. Where a factual dispute exists, I construe it in favor of Parent as the party opposing the *Motions*.[[4]](#footnote-4)

1. Student is currently a 10th-grade student attending Atlantis Charter School.
2. Student is diagnosed with Type 1 Diabetes. She is on a 504 Accommodation plan. Her accommodations include the following[[5]](#footnote-5):
	1. Point teacher will email mom Friday afternoon about Student 's make up work from classes, as needed.
	2. Extra time, as needed, to make up missed work due to medically related absences. No more than 5 days to make up the work.
	3. Free access to water and bathroom.
	4. Is allowed to have a velcro YONDR pouch for medical access. (Note: this allows Student to have access to her phone with her to check her sugar levels. All other students are not allowed to have phones, which are all placed in a locked YONDR pouch, in class.)
	5. Student will not be penalized for absences related to her medical treatment with doctor's notes.
	6. In Class Medical procedure:
		1. "Low" for Student is less than 70 on her device. (Student no longer needs to go to nurses' office if she is "low".
		2. Student states she is "low".
		3. Student will show her teacher her monitor is reading 70 or below.
		4. Student will be given fruit snacks or juice box.
		5. Student will stay in class and recheck her sugar in 15 minutes.
		6. If still less than 70, repeat the process and give fruit snacks and juice box.
3. According to the District, on March 2[[6]](#footnote-6), 2025, Student asked to use the restroom but was denied. She then asked if she could fill up her water bottle. The teacher asked her to wait for five minutes out of concern that another student was outside of the room waiting for Student. Student waited and asked again. The teacher allowed her to go. Student left the classroom. A few minutes later, the door opened, and Student’s friend sprinted out of the room. The teacher saw the friend and another student running down the hallway. He alerted the front office of the situation.
4. According to Parent, Student was checking her phone to monitor her hyperglycemia. Another student “was repeatedly texting her to come find her and fight her, and then sent [Student] a ‘headtap’ along with an emoji of a gun- which means I will shoot you (Student) in the head.” Student went to fill her water bottle, “checked her sugar, and utilized [the] bathroom where her friends were and they saw the message [the other student had] sent and they all made their way to the first floor.”
5. Following a 2-day emergency removal, a suspension hearing was held. Student was found to have incited/attempting to incite other students to create a disturbance. The proposed suspension was the two-day emergency removal (already served) and eight days out-of-school suspension.[[7]](#footnote-7)
6. On March 7, 2025, a Manifestation Determination meeting was held. The Team determined that Student's behavior was not a manifestation of her disability. Parent disagreed, asserting that, because Student experiences "highs" in which she “experiences ‘irritability and anger,’" the conduct was a manifestation of Student 's Type I Diabetes.
7. According to Atlantis, “this was the first the school had ever heard of any “’highs’ of [Student’s] blood sugars.” The 504 plan specifically addresses "lows". In addition, Student had her phone only as a tool to check her sugars, and should not have been texting or checking Instagram on her phone, as this is a violation of school rules. Moreover, there is no documentation indicating Student’s sugars were high prior to the disciplinary incident, nor was there any time after the incident where Student alerted someone that her blood sugar was too high.
8. Also on March 7, 2025, Student’s 504 Team convened and reviewed Student’s 504 Plan. No changes were made to the plan.
9. On March 20, 2025, Parent filed a Hearing Request alleging that the District erred in its manifestation determination. Parent also asserted that Student did not have an “active safety plan [i]n place” despite having “requested the safety plan and a plan dated June 202[4] was emailed to [to her] without any signatures.” Further, “[Student] was not skipping class. She has free range to utilize bathroom and bubbler for water, which she was excused from class to do.” According to Parent,

“Hyperglycemia is known to cause irritability and anger, as well as increased thirst and urination· hence why [Student] was utilizing the bathroom and bubbler per her 504 plan. The school did not take [Student]'s reports of [the other student’s] bullying seriously- did not put a safety plan in place and then suspended her violating a nonexistent safety plan. Furthermore, the school is supposed to have a point teacher to contact me weekly with missed work, which never happens. [Student] reached out to all her teachers multiple times to obtain works [sic] and only a few were accommodating. Her fashion teacher had a packet made up and gave [it] to [a staff member] to let [Student] know, and she was never notified. Her [] teacher continues to penalize [her] for attendance grade whether she has an excused absence or not. [Student]'s education is being compromised.”

1. For relief, Parent requested the following: “Acknowledgement of [Student] attempting to do to the right thing and report this student and then being penalized when this student continued to harass and bully her, threatening to shoot her in the head. Acknowledgement [sic] that her 504 plan [i]s not being followed. Provide the support [Student] needs.”
2. On March 20, 2025, Parent’s Hearing Request was found to meet the standard for an expedited hearing pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. section 1415, and Hearing Rule II C of the Hearing Rules for Special Education Appeals. An expedited hearing is scheduled for April 7, 2025.

**II. LEGAL STANDARDS AND DISCUSSION:**

1. Legal Standards Relative to Manifestation Determination Reviews

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) 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]).”[[8]](#footnote-8) At the meeting, the “MDR Team” “must review all relevant information in the student's file, including the child's IEP [or 504 Plan], any teacher observations, and any relevant information provided by the parents.”[[9]](#footnote-9)

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.”[[10]](#footnote-10) This decision is commonly known as a “manifestation determination.”[[11]](#footnote-11) 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.”[[12]](#footnote-12) 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”[[13]](#footnote-13) not here applicable, 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.[[14]](#footnote-14) 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.[[15]](#footnote-15)

1. Motion to Dismiss

Pursuant to Rule XVII (A) and (B) of the Hearing Rules and 801 CMR 1.01(7)(g)(3), a hearing officer may allow a motion to dismiss if the party requesting the hearing fails to state a claim upon which relief can be granted. These rules are analogous to Rule 12(b)(6) of the Federal Rules of Civil Procedure. As such, hearing officers have generally used the same standards as the Courts in deciding motions to dismiss for failure to state a claim. To survive a motion to dismiss, there must exist “factual ‘allegations plausibly suggesting (not merely consistent with)’ an entitlement to relief.”[[16]](#footnote-16) The hearing officer must take as true “the allegations of the [hearing request], as well as such inferences as may be drawn therefrom in the plaintiff’s favor.”[[17]](#footnote-17) These “[f]actual allegations must be enough to raise a right to relief above the speculative level.”[[18]](#footnote-18)

20 U.S.C. § 1415(b)(6) grants the Bureau of Special Education Appeals (BSEA) jurisdiction over timely filed complaints by a parent/guardian or a school district "with respect to any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child."[[19]](#footnote-19) In Massachusetts, a parent or a school district, "may request mediation and/or a hearing at any time on any matter[[20]](#footnote-20) concerning the eligibility, evaluation, placement, IEP, provision of special education in accordance with state and federal law, or procedural protections of state and federal law for students with disabilities.”[[21]](#footnote-21) A parent of a student with a disability may also request a hearing on any issue involving the denial of the free appropriate public education guaranteed by Section 504 of the Rehabilitation Act of 1973….”[[22]](#footnote-22) However, the BSEA "can only grant relief that is authorized by these statutes and regulations, which generally encompasses orders for changed or additional services, specific placements, additional evaluations, reimbursement for services obtained privately by parents or compensatory services."[[23]](#footnote-23)

Here, the District argues that the relief that Parent seeks is not one the BSEA can grant. However, the District’s argument that the relief that Parent seeks is not within “the purview of remedies that the BSEA is able to provide” is unpersuasive. Complaints filed by pro se parties must be construed liberally.[[24]](#footnote-24) As explained by the First Circuit Court of Appeals, “[t]he policy behind affording pro se plaintiffs liberal interpretation is that if they present sufficient facts [to state a claim], the court may intuit the correct cause of action, even if it was imperfectly pled.”[[25]](#footnote-25) This principle aligns with “[o]ur judicial system [, which] zealously guards the attempts of pro se litigants on their own behalf” while not ignoring the need for compliance with procedural and substantive law.[[26]](#footnote-26) In the instant matter, Parent filed her Hearing Request to challenge the manifestation determination made by the District and sought the following relief: “Acknowledgement of [Student] attempting to do to the right thing and report this student and then being penalized when this student continued to harass and bully her, threatening to shoot her in the head. Acknowledgement that her 504 plan [i]s not being followed. Provide the support [Student] needs.” Construing her pleading liberally, as I am required to do, I find that Parent has asserted a claim for which relief may be granted. Specifically, she seeks a finding that Student’s behavior was a manifestation of her disability and that the conduct in question was the direct result of the District's failure to implement the 504 Plan. Such relief is within the authority of the BSEA. As such, Parent’s claims survive, and the District’s *Motion to Dismiss* is DENIED.

3. Motion for Summary Judgment

Pursuant to 801 CMR 1.01(7)(h), summary decision may be granted when there is "no genuine issue of fact relating to all or part of a claim or defense and [the moving party] is entitled to prevail as a matter of law." In determining whether to grant summary judgment, BSEA hearing officers are guided by Rule 56 of the Federal and Massachusetts Rules of Civil Procedure, which provides that summary judgment may be granted only if the "pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law."[[27]](#footnote-27) A genuine dispute as to a material fact exists if it is a fact that "carries with it the potential to affect the outcome of the suit" and it is disputed such that "a reasonable [fact-finder] could resolve the point in the favor of the non-moving party."[[28]](#footnote-28) The moving party bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to the party opposing summary judgment.[[29]](#footnote-29)

In response to a motion for summary judgment, the opposing party "must set forth specific facts showing that there is a genuine issue for trial."[[30]](#footnote-30) To survive this motion and proceed to hearing, the adverse party must show that there is "sufficient evidence" in his favor that the fact finder could decide for him.[[31]](#footnote-31) In other words, the evidence presented by the non-moving party "must have substance in the sense that it [demonstrates] differing versions of the truth which a factfinder must resolve at an ensuing trial."[[32]](#footnote-32) The non-moving party's evidence will not suffice if it is comprised merely of "conclusory allegations, improbable inferences, and unsupported speculation."[[33]](#footnote-33)

In the instant matter, in order for me to grant summary judgment in favor of the District, there must first and foremost exist "no genuine issue of fact relating to all or part of a claim or defense."[[34]](#footnote-34) As the moving party, the District bears the burden of proof, and all evidence and inferences must be viewed in the light most favorable to Parent.[[35]](#footnote-35) The District has not met its burden in this instance.

The District argues that Parent “has not set forth any specific facts showing that there is sufficient evidence and a genuine issue for hearing.” Specifically, Atlantis asserts that although Parent

“believes that [Student’s] blood sugar was high, [] there is no evidence or information other than the belief of the Parent that [Student’s] blood sugar was high and was the cause for her aggressive behavior. In addition, there is no documentation provided to the school by her doctor indicating that high sugar levels were a concern for [Student]. In fact, the issue was that her sugar levels would be low, which is addressed in her 504 Plan.”

As such, according to the District, “Parent's assertion here is mere speculation. Other than the parent's belief, there was no evidence, and there is no evidence that the behavior was a manifestation of [Student]'s disability, which is Diabetes.”[[36]](#footnote-36) In response[[37]](#footnote-37), Parent submitted a “CGM reading from that day”

Here, a genuine dispute exists as to whether fluctuations in Student’s blood sugar levels resulted in the conduct at issue, a fact that is material in this matter. That there was no prior “documentation provided to the school by her doctor indicating [concerns regarding] high sugar levels” is not dispositive as the IDEA regulations state that the MDR must involve a review of "all relevant information in the [child's] file, … and any relevant information provided by the parents."[[38]](#footnote-38)  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. As such, the District was required to consider the information provided by Parent regarding high blood sugar even if this was novel information presented to the Team at the time of the manifestation hearing. As such, whether Student’s blood sugar fluctuated in such a way as to cause the conduct in question remains in dispute and cannot be determined without a hearing.

The District also argues that Student’s “504 plan is for her medical needs and supporting accommodations, which include accommodations for make-up work when she is absent for medical reasons. None of this is related to a disciplinary, behavioral incident.” On the other hand, Parent asserts that Student’s safety plan and 504 Plan were not being followed. These are also disputed issues of material fact that can only be decided by a hearing on the merits. Therefore, the District’s Motion for Summary Judgment must be DENIED.

**III. ORDER:**

The District’s Motion to Dismiss is DENIED. The District’s Motion for Summary Judgment is DENIED as well.

So Ordered,

/s/ Alina Kantor Nir
Alina Kantor Nir

Date: March 31, 2025

1. On March 26, 2025, Atlantis Charter School filed *Atlantis Charter School’s Response to Parent's Hearing Request and Motion for Summary Judgment.* In it, Atlantis Charter School asserted that the relief Parent seeks is not such that may be granted by the Hearing Officer. As such I construe the District’s pleading as a Motion to Dismiss as well as a Motion for Summary Judgment. [↑](#footnote-ref-1)
2. The District did not submit any exhibits in support of its *Motions*. [↑](#footnote-ref-2)
3. In her *Response to the Motion*, Parent disputes the findings of the suspension hearing. However, the BSEA has no authority to challenge the decision of the principal in a disciplinary hearing, only the decision of the manifestation determination review team. See *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-3)
4. *Blank v. Chelmsford Ob/Gyn, P.C.,* 420 Mass. 404, 407 (1995); See *Anderson v. Liberty Lobby, Inc*. 477 U.S. 242, 252 (1986). [↑](#footnote-ref-4)
5. These are taken verbatim from the District’s Response to the Hearing Request. Only Student’s name has been omitted. [↑](#footnote-ref-5)
6. According to Parent, the incident took place on March 3, not March 2. [↑](#footnote-ref-6)
7. According to Atlantis, Student had one prior suspension earlier in the year. [↑](#footnote-ref-7)
8. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1). [↑](#footnote-ref-8)
9. *Id.* [↑](#footnote-ref-9)
10. 20 U.S.C. § 1415(k)(1)(E)(i)(I)–(II); 34 C.F.R. § 300.530(e)(1)(i)–(ii). [↑](#footnote-ref-10)
11. 20 U.S.C. § 1415(k)(1)(E); 34 C.F.R. § 300.530(e). [↑](#footnote-ref-11)
12. 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-12)
13. 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.” As no “special circumstances” have been alleged in this matter, 34 CFR 300.530 (g) is not applicable here. [↑](#footnote-ref-13)
14. See 20 U.S.C. §1415(k)(1)(F)(iiii). [↑](#footnote-ref-14)
15. See 20 U.S.C. §1415(k)(1)(H). [↑](#footnote-ref-15)
16. *Iannocchino v. Ford Motor Co.,* 451 Mass. 623, 636 (2008) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 557 (2007)). [↑](#footnote-ref-16)
17. *Blank,* 420 Mass. at 407. [↑](#footnote-ref-17)
18. *Golchin v. Liberty Mut. Ins. Co.*, 460 Mass. 222, 223 (2011) (internal quotation marks and citations omitted). [↑](#footnote-ref-18)
19. See 34 C.F.R. §300.507(a)(1). [↑](#footnote-ref-19)
20. Limited exceptions exist that are not here applicable. [↑](#footnote-ref-20)
21. 603 CMR 28.08(3)(a).  [↑](#footnote-ref-21)
22. See 29 U.S.C. 794 (Section 504 of Rehabilitation Act); 34 CFR 104, *et seq.* [↑](#footnote-ref-22)
23. *In Re: Georgetown Pub. Sch.*, BSEA #1405352 (Berman, 2014). [↑](#footnote-ref-23)
24. See *Ahmed v. Rosenblatt*, 118 F.3d 886, 890 (1st Cir. 1997). [↑](#footnote-ref-24)
25. *Id*. [↑](#footnote-ref-25)
26. *Id*. [↑](#footnote-ref-26)
27. 801 CMR 1.01(7)(h). [↑](#footnote-ref-27)
28. *French v. Merrill*, 15 F.4th 116, 123 (1st Cir. 2021); see *Maldanado-Denis v. Castillo-Rodriguez,* 23 F.3d 576, 581 (1st Cir. 1994). [↑](#footnote-ref-28)
29. See *Anderson v. Liberty Lobby, Inc*. 477 U.S. 242, 252 (1986). [↑](#footnote-ref-29)
30. *Anderson*, 477 U.S. at 250. [↑](#footnote-ref-30)
31. *Id*. at 249. [↑](#footnote-ref-31)
32. *Mack v. Great Atl. & Pac. Tea Co.,* 871 F.2d 179, 181 (1st Cir. 1989).  [↑](#footnote-ref-32)
33. *Medina-Munoz v. R.J. Reynolds Tobacco Co.,* 896 F.2d 5, 8 (1st Cir. 1990). [↑](#footnote-ref-33)
34. 801 CMR 1.01(7)(h). [↑](#footnote-ref-34)
35. Anderson, 477 U.S. at 252. [↑](#footnote-ref-35)
36. The District cites to *Medina-Munoz*, 896 F.2d at 8. [↑](#footnote-ref-36)
37. I note that only Parent submitted exhibits in support of her pleading. The District provided no exhibits in support of its *Motion*. [↑](#footnote-ref-37)
38. 34 CFR 300.530(e) (emphasis added). [↑](#footnote-ref-38)