

II. FINDINGS OF FACT

A. Background

1.

Petitioner [REDACTED] was enrolled as an eleventh-grade student at [REDACTED] for the 2022-2023 academic year. Petitioner [REDACTED] is [REDACTED]'s mother. (Testimony of [REDACTED]; Exhibits P-1, P-3, R-1.)³

2.

On April 20, 2022, a psychoeducational evaluation was completed to assess [REDACTED]'s cognitive functioning, non-verbal cognitive abilities, visual motor integration, and academic abilities. She was found eligible for special education services under the eligibility categories of Other Health Impairment, based on a diagnosis of attention deficit hyperactivity disorder (“ADHD”), and Specific Learning Disability. (Exhibits P-1, P-3, R-1; see Ga. Comp. R. & Regs. 160-4-7-.05 (Appendix g).)

3.

On October 13, 2022, an Individualized Education Program (“IEP”) meeting was convened to formulate an IEP for [REDACTED]. The IEP team consisted of [REDACTED] Heidi Shook, special education teacher; Terita Chavis,⁴ special education teacher; Jeanne Andres, general education teacher; Kevin Barnes, general education teacher;⁵ Elizabeth Glisson, general education teacher; Errol Thame, general education teacher; Miriam Jackson, general education teacher; and Linnea Tilley, Student Support Facilitator. [REDACTED]'s levels of academic achievement and functional performance,

³ Exhibits P-1 and R-1 refer to the identical document and P-3 is an IEP also contained in both exhibits.

⁴ Ms. Chavis is certified as a special education teacher, but currently works as a general education teacher.

⁵ The minutes indicate that Mr. Barnes was not in attendance.

as well as the services the District would provide, were set forth in an IEP. (Testimony of [REDACTED] Testimony of Heidi Shook, Testimony of Terita Chavis; Exhibits P-1, P-3, R-1.)

4.

The IEP detailed the services that the District would provide to A.Y in a Transition Service Plan including:

Transition IEP Goal(s)	Transition Activities/Services
During the next twelve (12) months [REDACTED] will implement at least three strategies []to improve academic performance in all academic areas.	[REDACTED] will: 1.) Attend intervention classes or study sessions. 2.) Discuss strategies to improve academic performance with case manager or teacher[.]
Given information regarding careers, [REDACTED] will develop a written realistic career goal related to owning her own business.	[REDACTED] will: 1.) Identify business opportunities. 2.) For each business, list the qualifications needed to become employed (education level, skills needed, job outlook, etc.) 3.) Print out all information found on computer, enter information in chart, and share with case manager and family.

Based on the services provided, the IEP also identified measurable annual academic goals for [REDACTED] for example, that she would be able to use systematic strategies to accurately solve math problems.⁶ (Exhibits P-1, P-3, R-1.)

5.

The IEP included one goal in the area of Emotional/Social/Behavior: “Given a situation, [REDACTED] will display productive school behavior by remaining on task and working independently, improving [from] 0% to 80%[.]” Based on the finding that [REDACTED] exhibited behavior impeding her

⁶ Academic goals would be supported by accommodations such as small group instruction, extended time, frequently monitored breaks, preferential seating, tests read orally and chunking of assignments.

academic progress, the IEP also incorporated a Behavioral Intervention Plan (“BIP”).⁷ (Testimony of [REDACTED] Exhibits P-1, P-3, R-3.)

6.

The BIP identified one target behavior: “student refuses to comply by refusing to complete independent work tasks.” Intervention strategies included “[t]eacher proximity, front of classroom seating, positive phone calls home, providing student positive reinforcers, non-verbal cues for redirection, and clear verbal instructions have all been used with varying degrees of success.” As an alternative to the target behavior, the BIP identified the following goals: “uses learned self-monitoring techniques, expresses herself verbally and non-verbally using cues to communicate her feeling and issues, and the use of appropriate classroom behavior during independent work time.” An Action Plan included as follows: Step 1- Verbal redirection, Step 2- Removal to alternate location/appropriate conference, Step 3- Discipline referral. (Exhibits P-1, P-3, R-3.)

B. February 6, 2023, Incident

7.

Christopher Burns is a teacher at [REDACTED] and has been an educator for twenty-two years. According to Mr. Burns, on February 6, 2023, he observed [REDACTED] in a school hallway having a heated conversation with another student. Mr. Burns approached [REDACTED] and began to move her away from the other student. While Mr. Burns was holding her, [REDACTED] threw the contents of her cup at the other student. In return, the student threw a bottle at [REDACTED] but its contents splashed onto Mr. Burns. Mr. Burns let go of [REDACTED] and the exchange escalated into a physical

⁷ According to Ga. Comp. R. & Regs. 160-4-7-.21(7), a BIP is a plan for a child with disabilities, included in the IEP when appropriate, which uses positive behavior interventions, supports and other strategies to address challenging behaviors and enables the child to learn socially appropriate and responsible behavior in school and/or educational settings.

altercation involving several other students. Mr. Burns again attempted to remove [REDACTED] from the scene, but he let go of her a second time so that he could assist another student who was involved in the fighting. Thereafter, [REDACTED] rejoined the altercation. After reviewing a video of the incident, school administrators determined that [REDACTED] had reengaged in the altercation after having been removed on several occasions. (Testimony of Christopher Burns, Testimony of Eldread Nunnally.)

8.

Dr. Eldread Nunnally is the Assistant Principal of [REDACTED]. He receives behavior referrals from teachers and staff. Generally, his interactions with [REDACTED] have been positive. On occasion [REDACTED] has violated school rules by arriving late to class or skipping class, but he does not consider these to be serious violations. (Testimony of Eldread Nunnally.)

9.

After the altercation, the District charged [REDACTED] with a violation of the District's Code of Conduct and issued a Notice of Suspension and Disciplinary Hearing for a Level 3.4 Offense – Excessive Physical Contact. This offense carried a penalty of a minimum 18-week expulsion and referral to an alternative school. As required by the IDEA, prior to the Disciplinary Hearing the District scheduled an MDR to determine whether [REDACTED]'s behavior was a manifestation of her disability. (Testimony of Eldread Nunnally; Exhibit R-6.)

C. Manifestation Determination Review

10.

The MDR was held on February 27, 2023, via Zoom. The MDR team included [REDACTED] Dr. Teresa Harvey, the District's representative and an MDR facilitator; and two members of [REDACTED]'s

IEP team, Heidi Shook and Terita Chavis. (Testimony of Teresa Harvey, Testimony of Heidi Shook; Exhibits P-1, R-1, R-5.)

11.

Heidi Shook is a special education teacher and Department Chair at [REDACTED]. She is [REDACTED]'s case manager and a member of her IEP team. In that capacity Ms. Shook checks in with [REDACTED]'s teachers and provides her with support, if needed. She noted that [REDACTED] was a respectful and helpful student, who interacted appropriately with her peers. (Testimony of Heidi Shook.)

12.

According to Ms. Shook, at the outset of the MDR, a school administrator, Mr. Tucker, presented information to the MDR review team regarding the incident. After hearing about the incident, the MDR team reviewed [REDACTED]'s IEP and then "heard from mom." Ms. Shook does not recall [REDACTED]'s father, Mr. [REDACTED], asking to speak at the MDR. (Testimony of Heidi Shook.)

13.

The MDR team found that nothing in [REDACTED]'s educational file reflected aggressive behavior. Generally, she was respectful, helpful and interacted appropriately with her peers, although Ms. Shook did recall that [REDACTED] and Coach Barnes had been "bumping heads." Ms. Shook is aware that [REDACTED] underwent a psychoeducational evaluation on April 20, 2022, but does not recall reviewing any psychological information. (Testimony of Heidi Shook.)

14.

The MDR team also determined that the behavior was not due to the failure to comply with [REDACTED]'s IEP because neither the IEP or BIP targeted aggressive behavior. (Testimony of Heidi Shook.)

15.

During the MDR, [REDACTED] asserted that [REDACTED] had been diagnosed with oppositional defiant disorder (“ODD”).⁸ Although [REDACTED] maintained that [REDACTED] had been diagnosed with ODD, Ms. Shook noted that this diagnosis was not in her educational file nor was the MDR team presented with any documentation reflecting an ODD diagnosis. (Testimony of Heidi Shook.)

16.

Terita Chavis has been an English teacher at [REDACTED] since 2014. [REDACTED] is in her class this semester, and she is a member of [REDACTED]’s IEP team. Ms. Chavis is certified as a special education teacher, but currently works as a general education teacher. (Testimony of Terita Chavis.)

17.

At the MDR, Mr. Tucker spoke about the underlying incident. Ms. Chavis recalled that the MDR team considered [REDACTED]’s background, including her categories of eligibility and diagnosis of ADHD. Next, the MDR team reviewed [REDACTED]’s IEP, BIP and the services she receives. In Ms. Chavis’s opinion, [REDACTED]’s BIP targets her failure to complete her work. Ms. Chavis noted that [REDACTED] offered her input at the MDR. (Testimony of Terita Chavis.)

⁸ “Children with ODD are uncooperative, defiant, and hostile toward peers, parents, teachers, and other authority figures. They are more troubling to others than they are to themselves. . . . Many children tend to disobey, argue with parents, or defy authority. . . . They also interfere with learning and school adjustment.” Dowling v. Limestone Cnty. Bd. of Educ., No. 5:18-cv-00373-MHH, 2022 U.S. Dist. LEXIS 218489, at *23 n.9 (N.D. Ala. Dec. 5, 2022) (citation omitted). A diagnosis of ODD can be relevant to the eligibility category Emotional and Behavioral Disorder. The Georgia Department of Education’s definition for Emotional and Behavioral Disorder is set forth in Ga. Comp. R. & Regs. 160-4-7-.05. The IDEA’s terminology for the same category is “serious emotional disturbance” or “emotional disturbance.” See 34 C.F.R. § 300.8(c)(4)(i).

18.

Dr. Teresa Harvey is a retired educator and former school principal. Dr. Harvey holds a bachelor's degree in special education and a doctorate in educational leadership. She has been a part-time MDR facilitator for six years and has conducted over four hundred MDR sessions. (Testimony of Teresa Harvey.)

19.

Prior to an MDR, Dr. Harvey reviews a student's IEP, including a BIP, psychoeducational evaluations, and any disciplinary reports in a student's educational file. At the MDR, she begins the meeting with introductions and then states the purpose of the MDR. Dr. Harvey will ask if a parent has been provided parental rights, and in this instance confirmed that [REDACTED] had received a copy. (Testimony of Teresa Harvey.)

20.

[REDACTED] brought people to the MDR on her daughter's behalf, including [REDACTED]'s father. Additionally, both the District and [REDACTED] had legal representation at the meeting. (Testimony of Teresa Harvey, Testimony of [REDACTED] Exhibits P-1, R-1.)

21.

Dr. Harvey asked [REDACTED]'s attendees (the "attendees") to introduce themselves. Dr. Harvey recalls that [REDACTED] was given the opportunity to speak but she doesn't recall her saying that [REDACTED] had an ODD diagnosis. Dr. Harvey also the attendees if anyone had any questions or something to add, but no one replied to her question. The record does not indicate that the attorneys for the parties made any statements during the MDR. (Testimony of Teresa Harvey.)

22.

At the conclusion of the MDR, Dr. Harvey presented two questions to the members of the MDR team: 1) whether ██████'s behavior was a manifestation of her disability or 2) if her behavior was the result of the District's failure to adhere to the IEP. Dr. Harvey, Heidi Shook and Terita Chavis concluded that ██████'s conduct was a "choice behavior" and not the result of her disability or the school's failure to implement the IEP. In reaching this determination, the team noted that her IEP and BIP did not reflect that ██████ had behavioral issues, but chiefly addressed her need to remain on task and work independently. The MDR team also found that nothing in ██████'s educational file reflected aggressive behavior. In opposition, ██████ maintained that ██████'s conduct was a manifestation of her disability. Dr. Harvey did not ask Mr. ██████ to respond to the questions. Dr. Harvey testified that she did not pose these questions to Mr. ██████ because he had "dropped off the call." Following this determination, the school proceeded to a disciplinary hearing and imposed punishment for a Level 3.4 offense. (Testimony of Teresa Harvey, Testimony of Heidi Shook; Exhibit R-5.)

D. Petitioners' Claims

23.

Petitioners assert that the MDR meeting "was not conducted in the right way, and all of ██████'s disabilities were ignored and push[ed] to the side." Specifically, the Petitioners maintain that the 1) the composition of the MDR team was improper because the District did not include members of the IEP team who were familiar with ██████'s behavior; 2) the MDR team should not have discussed the details of the underlying incident; 3) the MDR team failed to consider ██████'s diagnoses of ODD, ADHD and her emotional, social and behavioral needs; 4) ██████'s BIP was improper; 5) the Petitioners' attendees should have been permitted to vote as to whether ██████'s

conduct was a manifestation of her disability; and 6) [REDACTED] was not provided with her parental rights at the MDR.⁹ The District denies the Petitioners' allegations. (See Court File.)

1. MDR Team Composition

24.

Kevin Barnes is one of [REDACTED]'s teachers at [REDACTED] and a member of her IEP team. The Petitioners contend that the MDR team was improper because the District failed to include Mr. Barnes, who could have provided relevant information regarding her behavior. (Testimony of Kevin Barnes, Testimony of [REDACTED])

25.

[REDACTED] was a student in Mr. Barnes's Human Anatomy class in the fall of 2022. In December 2022, [REDACTED] met with Mr. Barnes and another member of [REDACTED]'s IEP team. According to Mr. Barnes, the meeting concerned [REDACTED]'s failure to complete her assignments. [REDACTED] testified that potential behavioral interventions for [REDACTED] were proposed. Mr. Barnes stated that it was possible behavioral interventions were discussed at the meeting but recalls that "we talked more about disrespect and getting her to make up work." He acknowledged that he has observed [REDACTED] exhibit defiant behavior: she used profanity in his class, would not put her phone away when asked to do so, missed assignments, came to class late and/or skipped class. (Testimony of Kevin Barnes, Testimony of [REDACTED]; Exhibit P-4.)

26.

[REDACTED] testified that when she broached adding Mr. Barnes to the MDR team, "I was denied." Specifically, she was told by Dr. Linda Buck, the special education director for the District; Ms.

⁹ The Complaint also stated that the District had failed to comply with Petitioners' request for an evaluation, but the Petitioners did not pursue this claim at the hearing. (See OSAH Form 1.)

Tilley, [REDACTED]'s student support facilitator and a member of her IEP team; and [REDACTED] administrators that she would not be permitted to add him to the MDR team. (Testimony of [REDACTED])

2. Details of Underlying Incident

27.

All the MDR team members agree that at the outset of the MDR they were presented with information about the infraction. [REDACTED] contends that disclosing the details of the underlying incident during the MDR was unlawful. (Testimony of [REDACTED] Testimony of Teresa Harvey, Testimony of Terita Chavis, Testimony of Heidi Shook.)

3. MDR Team Failed to Consider Relevant Information

28.

[REDACTED] and [REDACTED] testified that [REDACTED] has been diagnosed with, and takes medication for, ODD. [REDACTED] asserts that [REDACTED]'s ODD triggered her misconduct because it causes her to make emotional decisions and not follow directions. She claims that the MDR team failed to allow her to provide relevant information about [REDACTED]'s ODD diagnosis. (Testimony of [REDACTED] Testimony of [REDACTED])

29.

Dr. Linda Buck is the special education director for the District. She testified that [REDACTED] did not have an ODD diagnosis in her special education file, nor was there any indication that she was taking medication to treat the ODD. (Testimony of Linda Buck.)

30.

[REDACTED] has been a student in the Clayton County School District, and recently transferred to the District. [REDACTED] argued that the ODD diagnosis should be in [REDACTED]'s special education file but claimed that the District had not maintained [REDACTED]'s file correctly. Dr. Buck acknowledged that

there are times that the District may not receive complete records from another school district. However, since the District updates a student's IEP yearly, she indicated that older information from another school district might not be useful. (Testimony of [REDACTED] Testimony of Linda Buck; see Exhibits P-1, P-3, R-1.)

31.

The Petitioners maintain that they brought psychological records to the MDR reflecting [REDACTED]'s diagnosis and its impact on her behavior. They assert that they were not permitted to present the records for the MDR team's consideration. (Testimony of [REDACTED] Testimony of [REDACTED])

32.

At the due process hearing, the Petitioners presented summary notes documenting her treatment at Southern Behavioral Healthcare P.C. from 2012-2013 ("summary notes"). The summary notes indicate that the practice saw [REDACTED] from 2012-2013. (Exhibit P-2.)¹⁰

33.

[REDACTED] was born on June 29, 2006. In 2012, when [REDACTED] was five years old, the summary notes reflect that ADHD causes her to be "impulsive" with poor "social judgement."¹¹ On August 13, 2013, the summary notes state that [REDACTED] is "poorly compliant with rules." The final summary note, dated October 10, 2013, indicates that she has become more compliant with rules and regulations. None of the summary notes reflect an ODD diagnosis. (Exhibit P-2.)

¹⁰ Although the District objected to the admission of the summary notes, [REDACTED] testified that the summary notes previously had been added to [REDACTED]'s educational records.

¹¹ Some of the summary notes written by Ruth Pickney, P.A.-C utilize male gendered pronouns, but identify [REDACTED] as the patient. (Exhibit P-2.)

34.

█ testified that she could have provided additional documentation to the MDR team, including prior IEPs and BIPs, and documentation of an ODD diagnosis. However, the Petitioners did not present these materials, or any documentation that █ had an ODD diagnosis, at the due process hearing. (Testimony of █)

35.

According to the Petitioners, they brought approximately fourteen attendees, and legal counsel, to the MDR to address █'s ODD diagnosis and/or her emotional/social/behavioral needs. █ maintains that none of the attendees were permitted to speak during the MDR proceedings: Dr. Harvey "did not let me provide evidence of my daughter's disability as it pertains to ODD." Specifically, the Petitioners identified █'s aunt, █, her elementary school counselor, Michelle Williams, her treating psychologist, Dr. Howard Russell, her father Mr. █ and her stepmother, █ as attendees who were prevented from providing the panel with relevant information. (Testimony of █ Testimony of █ Testimony of █)

36.

█ testified that she wanted to present information from Michelle Williams, who performed █'s initial psychoeducational testing in 2012 and remained her counselor throughout elementary school. █'s treating psychologist, Dr. Howard Russell, performed a psychoeducational evaluation 2020, and currently provides therapy to █ According to █ Dr. Russell could have offered information to the MDR team regarding her ODD diagnosis. The Petitioners maintain that █'s father and stepmother¹² were present but not permitted to participate. (Testimony of █)

¹² Although █ maintained that █'s stepmother was a member of the IEP team, this assertion is not supported in the record.

37.

█. noted that multiple people came to the MDR because they “wanted to tell their side of it versus the school.” Other than █., none of the individuals who had attended the MDR in support of █ testified at the due process hearing. (Testimony of █.)

38.

The Petitioners argue that the MDR team’s failure to consider the aforementioned records and the potential input from the above-listed attendees prevented the Petitioners from providing relevant information concerning █’s ADHD, diagnosis of ODD, and her emotional, social and behavioral needs. (Testimony of █)

4. BIP

39.

The Petitioner’s Complaint asserts that “The IEP team ignored that fact I sent out an email in November to have [█]s BIP cover her behavioral issues. I was told it will be taken care of and never [heard] anything back.” The evidence did not demonstrate that the IEP team ever received this request from the Petitioners or discussed revising █’s BIP to address aggressive behavior. (Testimony of Linnea Tilley, Testimony of Heidi Shook.)

5. Participation in MDR Review

40.

Additionally, █ maintains that all of the attendees were prepared to speak but complains that “nobody I brought to the meeting was asked any questions as it pertained to my daughter.”

█'s father, Mr. █ attended the MDR. █ faulted Dr. Harvey for failing to ask Mr. █ if █'s behavior was a manifestation of her disability or the result of the District's failure to adhere to the IEP. █ testified that when she asked Dr. Harvey "can all parties that were part of the IEP team that I invited speak," she was told by Dr. Harvey "I can allow four responses." Mr. █ is a member of █'s IEP team. (Testimony of █ Exhibits P-1, R-1.)¹³

41.

Ms. Chavis testified that Dr. Harvey asked Mr. █ if he had anything to say but did not ask him to vote as to whether █'s conduct was a manifestation of her disability. Dr. Harvey denies that she prevented Mr. █ from participating. She recalls that he "dropped off the Zoom" before the vote was taken. █'s IEP team held a meeting on February 27, 2023, the date of the MDR, to amend her IEP. The IEP meeting minutes detail the MDR proceedings. Listed as IEP team members were the members of the MDR team Theresa Harvey, Heidi Shook, and Terita Chavis. Additionally, █ and █'s father, Mr. █, were listed as team members in attendance. (Testimony of Teresa Harvey, Testimony of Terita Chavis; Exhibits P-1, R-1.)

42.

█ attended the MDR because she believed that she would be able to vote as to whether █'s behavior was a manifestation of her disability. However, she was not given the opportunity to participate. If she had been able to participate, D.W. would have voted with █ that █'s conduct was a manifestation of her disability. (Testimony of D.W.)

6. Parental Rights

¹³ Although the District contends that the Petitioners did not identify this claim in the Complaint, the Petitioners' Complaint states "[t]he meeting consisted of about 14 people and one person who stood in the GAP for █ was asked the question and 3 Henry County School representatives." Given that the parties agree that Mr. █ attended the MDR, but did not participate, the undersigned finds the Complaint provided fair notice of this claim to the District.

43.

The evidence demonstrates that [REDACTED] was provided with a copy of her parental rights. (Testimony of Teresa Harvey; Exhibit R-1.)

III. CONCLUSIONS OF LAW

1.

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

2.

Under IDEA, students with disabilities have the right to a free appropriate public education (“FAPE”). 20 U.S.C. § 1412(a)(1); 34 C.F.R. §§ 300.1, 300.100; Ga. Comp. R. & Regs. 160-4-7-.02(1)(a). “The purpose of the IDEA generally is ‘to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment and independent living’” C.P. v. Leon Cnty. Sch. Bd., 483 F.3d 1151, 1152 (11th Cir. 2007) (quoting 20 U.S.C. § 1400(d)(1)(A)). [REDACTED] qualifies for services under the IDEA. See Ga. Comp. R. & Regs. 160-4-7-.05(a).

3.

If a student with a disability commits a violation of a school district’s code of conduct, and the school district seeks the child’s removal for more than ten consecutive school days, the district must conduct a manifestation determination to determine whether the misconduct is a manifestation of the child’s disability. See 34 C.F.R. § 300.536. As part of the manifestation determination, the local educational agency, the parents, and relevant members of the child’s IEP team must “review all relevant information in the student’s file, including the child’s IEP, any

teacher observations, and any relevant information provided by the parents” to determine if the conduct in question was (1) caused by, or had a direct and substantial relationship to, the child’s disability, or (2) the direct result of the local educational agency’s failure to implement the child’s IEP.” 20 U.S.C. § 1415(k)(1)(E)(i). A manifestation determination must be conducted within ten days of any decision to change the placement of a child with a disability as a result of a code of conduct violation. 34 C.F.R. § 300.530(e)(5).

4.

If, after a manifestation determination the misconduct is determined to have been caused by, or have a direct and substantial relationship to the student's disability, or is the direct result of the school district’s failure to implement the child’s IEP, then the school must return the student to the original placement unless the parents and the school district agree otherwise. See 34 C.F.R. §§ 300.530(e) & (f), 300.536.¹⁴ However, if the student’s conduct is determined not to be a manifestation of the disability, then “school personnel may apply the relevant disciplinary procedures to children with disabilities in the same manner and for the same duration as the procedures would be applied to children without disabilities. . . .” 34 C.F.R. § 300.530(c).

5.

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

¹⁴ In circumstances involving weapons, drugs, or serious bodily injury, the statute still allows schools to unilaterally remove a student to an interim educational setting for up to forty-five days without first holding a manifestation determination. 34 C.F.R. § 300.530(g).

6.

The Petitioners maintain that the District violated IDEA in finding that A. [REDACTED] misconduct was not caused by, or did not have a direct and substantial relationship to, her disability.¹⁵ They also allege that the District has failed to comply with IDEA's procedural requirements.

7.

Substantively, the materials reviewed at the MDR support the conclusion that A. [REDACTED] made a deliberate choice to engage in the misconduct. The IEP's stated goals and corresponding interventions address her academic issues. Neither [REDACTED]'s IEP or her educational records indicate that [REDACTED] had demonstrated aggressive behavior at school. To the extent that [REDACTED]'s behavior is an issue, the BIP reflects that she needs to attend to and complete her work.

8.

The undersigned now turns to the Petitioners' procedural claims. In essence, the Petitioners argue that procedural errors before and during the MDR denied them the opportunity to demonstrate that [REDACTED]'s conduct was related to her disability. To obtain relief for a procedural violation of the IDEA, the Petitioners must demonstrate that these procedural violations: 1) impeded the child's right to a free appropriate public education; 2) significantly impeded the parents' opportunity to participate in the decision-making process regarding the provision of a free appropriate public education to the parents' child; or 3) caused the child a deprivation of educational benefits. 20 U.S.C. § 1415(f)(3)(E)(ii); see Weiss by and through Weiss v. Sch. Bd. of Hillsborough Cnty., 141 F.3d 990, 994 (11th Cir. 1998) (procedural defect must impact child's right to FAPE).

9.

¹⁵ The Petitioners did not present evidence or argument that the misconduct was the direct result of the District's failure to implement the child's IEP.

The Petitioners first argue that they should have been permitted to add Mr. Barnes, a member of ██████'s IEP team, to the MDR team. ██████ testified that she had requested that Mr. Barnes be added to the MDR team, but she was told by Dr. Buck, the special education director for the District; Ms. Tilley, ██████'s student support facilitator and a member of her IEP team; and ████████████████████ administrators that she could not do so. The District did not rebut this claim.

10.

An MDR team must include a parent of the child, a representative from the school, “and relevant members of the child’s IEP Team (as determined by **the parent** and the [school]).” 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1) (emphasis supplied). Thus, IDEA grants both the District and the parent the right to choose which members of the child’s IEP team may be included on the MDR team. While parents are not entitled to “veto” the District’s choices, “the parents may determine whom they wish to invite in addition to those designated by the school and the LEA.” Fitzgerald v. Fairfax Cnty. Sch. Bd., 556 F. Supp. 2d 543, 552 (E.D. Va. 2008). The District’s denial of ██████'s request to add Mr. Barnes to the MDR team violated 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1).

11.

The Petitioners next contend that the District erred by disclosing the details of the underlying incident during the MDR. This argument is unpersuasive. While it would be improper for the MDR team to determine if ██████'s behavior violated the District’s Code of Conduct, the purpose of the MDR is determine whether her conduct was a manifestation of her disabilities. See, e.g., Danny K. v. Dep’t of Educ., No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS 111066, at

*41-42 n.20 (D. Haw. Sep. 27, 2011) (“If Plaintiffs wished to challenge Defendant’s finding that Student set off the firework, they should have followed Defendant’s typical procedures for contesting findings of student misconduct. Again, the IDEA was not intended to provide disabled students an additional avenue with which to challenge a school’s underlying findings of misconduct.”). Without knowing what happened during the incident, the MDR team would not have had sufficient information to determine whether [REDACTED]’s conduct was a manifestation of her disability. Bristol Twp. Sch. Dist. v. Z.B., No. 15-4604, 2016 U.S. Dist. LEXIS 4626, at *34 (E.D. Pa. Jan. 14, 2016) (MDR team did not have enough relevant information about underlying incident to conduct appropriate MDR).

12.

The IDEA mandates that the MDR team 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.” 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1). The Petitioners assert they were prevented from providing relevant information to the MDR team.

13.

Pretermitted whether 34 CFR § 300.530 requires that the relevant information provided by the parents must be in the child’s educational file, the Petitioners claim that they were unable to submit documents to the MDR team, including summary notes detailing [REDACTED]’s treatment at Southern Behavioral Healthcare P.C. from 2012-2013. The Petitioners presented these summary notes at the due process hearing.

14.

The summary notes indicate that the practice stopped treating [REDACTED] when she was six years old. Although the summary notes reflect that [REDACTED] had behavioral issues in elementary school due

to her ADHD, they do not contain an ODD diagnosis. Given that the information in the summary notes was more than a decade old, and that [REDACTED] had undergone a psychoeducational evaluation in 2022, these records would not have provided the MDR team with relevant information as contemplated by 20 U.S.C. § 1415(k)(1)(E)(i). See Sch. Bd. of the City of Norfolk v. Brown, 769 F. Supp. 2d 928, 947 (E.D. Va. 2010) (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). Additionally, although the Petitioners claim that they were prevented from submitting further documentation at the MDR reflecting a conduct disorder, they did not present any of this documentation at the due process hearing and thus did not meet their burden to demonstrate that the information would have been relevant.

15.

[REDACTED] and [REDACTED] also brought approximately fourteen attendees, and legal counsel, to the MDR. The Petitioners identified [REDACTED]'s aunt, [REDACTED], her elementary school counselor, Michelle Williams, her treating psychologist, Dr. Howard Russell, [REDACTED]'s father, and her stepmother as attendees who were prevented from providing the panel with relevant information. The Petitioners maintained that the attendees were present to provide information about [REDACTED]'s ODD diagnosis and/or her emotional/social/behavioral needs but had not been permitted to speak during the MDR proceedings.

16.

Before the MDR team reached its conclusion, Dr. Harvey testified that she had asked all the attendees if they had anything to offer, and no one had responded. The undersigned finds Dr. Harvey's testimony that she asked the attendees if they had something to add, but that no one requested to speak, credible.

17.

In any event, the Petitioners did not meet their burden to demonstrate that the attendees would have provided relevant information at the MDR. Save ██████, none of the attendees testified at the due process hearing. ██████'s testimony did not suggest that she had relevant information to provide but confirmed that she had attended the MDR because she believed that she would be able to vote as to whether ██████'s behavior was a manifestation of her disabilities.

18.

The Petitioner's Complaint also asserts that "The IEP team ignored that fact I sent out an email in November to have [█████]s BIP cover her behavioral issues. I was told it will be taken care of and never [heard] anything back." The Petitioner's argument is unavailing. First, the Petitioners offered insufficient evidence that they had requested a BIP. Moreover, while the MDR team must determine whether the District implemented ██████'s IEP, the law does not require that it review the IEP itself. See LeMus v. D.C. Int'l Charter Sch., No. 20-cv-3839 (RCL), 2023 U.S. Dist. LEXIS 51870 at *38 (D.D.C. Mar. 27, 2023) (MDR team not required to determine adequacy of IEP).

19.

Finally, ██████ contends that the District erred by failing to ask her attendees if ██████'s conduct was a manifestation of her disability. To the contrary, the District is correct that only the MDR team may participate in this determination; IDEA does not permit parents to "stack the deck' against the [District] by inviting several individuals who would vote consistently with the parents' views" Fitzgerald, 556 F. Supp. 2d at 558 (citations omitted); 20 U.S.C. § 1415(k)(1)(E)(i).

20.

Nonetheless, to the extent that the Petitioners argue that the District should not have excluded Mr. ■ from the MDR, they are correct. Under 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. § 300.530(e)(1), an MDR team must include the parents of the child. IDEA is clear that Mr. ■ was entitled to participate in this determination.

21.

Parental participation is fundamental to IDEA. See Schaffer, 546 U.S. at 53 (“The core of the statute, however, is the cooperative process that it establishes between parents and schools.”) Although witnesses testified that Mr. ■ was given the opportunity to speak at the MDR, but declined to do so, both parties agree that he was not asked: 1) whether ■’s behavior was a manifestation of her disability or 2) if her behavior was the result of the District’s failure to adhere to the IEP. The undersigned credits ■’s testimony that Mr. ■ was present when the District posed these questions and that she was told that the District “could allow four responses.”

22.

The undersigned finds this procedural violation, as well as the District’s failure to allow ■ to add a member of the IEP team to the MDR team, troubling. However, the Petitioners must demonstrate that these violations of IDEA’s procedural rules “**significantly** impeded the parents’ opportunity to participate in the decisionmaking process regarding the provision of a free appropriate public education to the parents’ child” 20 U.S.C. § 1415(f)(3)(E)(ii)(II) (emphasis added). In this case, Mr. ■ had the opportunity to speak at the MDR but declined to do so. Cf. Leigh Ann H. v. Riesel Indep. Sch. Dist., 18 F. 4th 788, 801 (5th Cir. 2021). Moreover, even if he had participated in the ultimate decision made at the MDR, given that the District’s participants were unanimous that ■’s conduct was not a manifestation of her disability, the District still

would have prevailed. Although parental participation is pivotal, this does not mean that IDEA mandates that parents must consent to a school district's action in disciplining a student. "Put differently, the IDEA is designed to ensure parental participation in decisions regarding their disabled child, but it does not ordinarily require parental consent such that parents may usurp or otherwise hinder [a District's] authority to educate and discipline disabled children." Fitzgerald, 556 F. Supp. 2d at 551.

23.

Similarly, if Mr. Barnes had been on the MDR team, it would not have changed the outcome of the proceedings. Although [REDACTED] had been disrespectful, the evidence demonstrated that he had never observed her exhibit aggressive behavior; his primary concern was that skipping class and neglecting to do her work was affecting her academic progress. The undersigned does not find that this procedural violation denied [REDACTED] FAPE. See Fitzgerald, 556 F. Supp. 2d at 559 ("[P]laintiffs have set forth no reason why they believe the outcome of [the] MDR may have been different if the 2005 IEP had also been reviewed.").

IV. DECISION

The Petitioners did not demonstrate that [REDACTED]'s misconduct was a manifestation of her disability. Although the Petitioners proved that the District made procedural errors in contravention of 20 U.S.C. § 1415(k), none of the identified violations merit action under 20 U.S.C. § 1415(f)(3)(E)(ii). Accordingly, the District's action is **AFFIRMED**.

SO ORDERED, this 12th day of April, 2023.

Ronit Walker

RONIT WALKER
Administrative Law Judge

