

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA**

<p>█████ by and through █████ and █████ Petitioners,</p> <p>v.</p> <p>COBB COUNTY SCHOOL DISTRICT, Respondent.</p>	<p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p> <p>:</p>	<p>Docket No. █████</p> <p>█████ OSAH-DOE-CPEXP-33-Kennedy</p>
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**FINAL DECISION**

**For** █████ **and** █████  
█████ (█████'s Father)

**For Respondent:**  
Laurance J. Warco, Esq.  
Jessica Coleman, School Representative

**I. INTRODUCTION**

Petitioner █████ is an 8<sup>th</sup>-grade student who lives within the Cobb County School District. He is eligible for services under the Individuals with Disabilities Education Improvement Act of 2004 (“IDEIA”). █████ began his 8<sup>th</sup> grade school year enrolled at █████ Middle School where his education was governed by an Individual Education Program (IEP) and Behavior Intervention Plan (BIP).

On or about October 5, 2023, Respondent determined that █████ violated the student code of conduct and imposed a ten (10) day out-of-school suspension as a disciplinary measure. Respondent subsequently held a Manifestation Determination Review (MDR) meeting on October 17, 2023. At the MDR, Respondent concluded that █████'s behavior that resulted in the suspension was not a manifestation of his disability. Petitioners then filed this Due Process Complaint with the Georgia Department of Education to dispute the MDR team’s decision.

Petitioners assert that ██████'s conduct on October 5, 2023, was caused by, or had a direct and substantial relationship to, his disability and that Respondent did not adequately consider his disability and his recent medication changes when conducting the MDR.

For the reasons set forth below, and based on the evidence presented at the hearing, the court concludes that Petitioners have not met their burden to prove that ██████'s conduct was caused by, or had a direct and substantial relationship to, ██████'s disability, and/or that the conduct in question was the direct result of Respondent's failure to implement ██████'s Behavior Intervention Plan. 34 CFR 300.530(e).

## **II. PROCEDURAL HISTORY**

Petitioners filed a Due Process Hearing Request form with the Georgia Department of Education on October 23, 2023, to dispute Respondent's determination following a MDR meeting held October 17, 2023, that ██████'s actions on October 5, 2024, were not a manifestation of his disability. A hearing was initially scheduled for November 20, 2023. At the parties' joint request, the hearing was continued to December 4, 2023, to allow the parties additional time to hold a second early resolution meeting. Subsequently, at the parties' joint request and with the understanding that a continuance would not adversely impact ██████ because the 10-day suspension imposed following the MDR had already been completed and he had returned to school, the hearing was continued to January 25-26, 2024, to allow Petitioners an opportunity to subpoena witnesses and to submit additional exhibits for consideration. At the conclusion of the hearing on January 26, 2024, the Court directed the parties to submit written closing arguments and Respondent requested an opportunity to receive the transcript prior to submitting the written closing arguments. Volume 1 of the transcript was received on February 13, and Volume 2 of the transcript was received on February 20, 2024. On March 8, 2024, Respondent filed its written

closing argument. The following day, March 9, 2024, the record closed upon receipt of Petitioners written closing argument.

### III. FINDINGS OF FACT<sup>1</sup>

1.

█████ (D.O.B. 6/30/2010) was an 8th grade student enrolled at █████ Middle School within Cobb County School District at the time of the incident at issue in this matter.<sup>2</sup> (*Tr. 231; Petitioner's Exhibit 2 at p. 1 of 18*).

2.

█████ is described by Dr. M█████ T█████, his maternal aunt, as “very gregarious, friendly, he likes to make friends. He’s a jokester. A little bit of a prankster. He loves dogs. And he loves spending time with his family.” (*Tr. 153-154*). His interests include basketball, video games, peer socialization, gym activities, music, and dancing. (*Respondent's Exhibit 5*).

3.

█████ has a complex diagnostic profile that includes prior diagnoses of Autism Spectrum Disorder (ASD), Intermittent Explosive Disorder, and Attention Deficit Hyperactivity Disorder (ADHD). (*Tr. 13-14; Petitioner's Exhibit 2 at pp. 3, 4 and 10*).

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<sup>1</sup> Petitioner’s Exhibits 4 and 5 are not admitted after consideration of Petitioner’s request to admit what appears to be an appointment summary from September 7, 2023, by Dr. Ho, and what appears to be a letter dated November 29, 2017 from The Children’s Hospital in New Jersey. The Court had reserved ruling to consider Respondent’s objections to admission of the exhibits based on authenticity and hearsay grounds.

<sup>2</sup> It is the court’s understanding that █████ may not have been attending █████ Middle School at the time the hearing took place. Rather, on January 8, 2024, Petitioners submitted a request with Respondent for hospital homebound services through February 19, 2024. (*Tr. 23*) However, the record is not clear whether the request for hospital homebound services was approved or what █████’s current placement was at the time of the hearing.

4.

Respondent has determined that [REDACTED] is eligible to receive special education services under the primary eligibility category of Autism, secondary eligibility category of Emotional Behavior Disorder (EBD) and third eligibility category of Other Health Impairment (OHI). In determining the eligibility categories, [REDACTED]'s IEP team determined that it would be in his best interest to have Autism as the primary eligibility category because "it is not possible to objectively separate which emotionality concerns are coming from social deficits related to Autism and which are coming from [REDACTED]'s diagnosed anxiety." (*Tr. 232, 305-306; Petitioner's Exhibit 2 at pp. 3, 10, 17 and 18 of 18; Respondent's Exhibit 3 at pp. 22 and 31 of 31; Respondent's Exhibits 5 and 6*).

5.

[REDACTED] is under the care of psychiatrist Dr. Vincent Ho, who has been treating [REDACTED]'s disruptive behaviors and his ADHD, and who helps manage deficits caused by his autism. (*Tr. 12-14; Petitioner's Exhibit 1*)

6.

[REDACTED]'s disabilities have impacted his life in a variety of ways, including causing difficulty in regulating emotions. "[E]motional dysregulation is a constant threat" for [REDACTED] whereby he can switch "very quickly from being okay to not okay" because his disabilities affect his ability to appropriately respond to changes, the environment, and situations. [REDACTED] has been known to be impulsive and to exhibit disruptive behaviors such as running and knocking on the doors of neighbors. He is unable to reciprocate socially and is unable to process situations. Dr. Ho has also noted that, [REDACTED]'s "emotion liability has been extreme over the last few years" to the extent that he has had to be restrained at home when he gets upset quickly from very rapid mood changes to

wanting to break windows. (*Tr. 13-14, 20, 25, 33*). Dr. T [REDACTED] has also noted that [REDACTED] has had some difficulty regulating his emotions, adhering to boundaries, and has social communication and sensory challenges as well. (*Tr. 154*).

7.

Within the school environment, based on a Behavior Assessment for Children, Third Edition, Teacher Rating Scales administered on October 25, 2022, and considered at a January 23, 2023, eligibility review meeting, [REDACTED]'s teachers Ms. Wicker and Ms. Martin both indicated clinically significant scores for aggression from argumentative behavior. (*Respondent's Exhibit 3, at pp. 11 and 26 of 31*)

8.

Additionally, behaviors that were typically observed by staff at his prior school, Awtrey Middle School, during 7<sup>th</sup> grade, included refusal to follow directions or refusal to complete work, elopement, and inappropriate verbal comments. He received 18 discipline referrals during the Fall 2022/Spring 2023 school year prior to January 12, 2023, for incidents involving classroom disruption, elopement, insubordination, physically and verbally aggressive behaviors including minor altercations with other students, and profanity/offensive language. (*Petitioner's Exhibit 6 at p. 6 of 18; Respondent's Exhibit 3*). In April 2023, when [REDACTED]'s mother completed a parent interview connected with a Functional Behavioral Analysis (FBA) being completed by Respondent, she noted her concerns to include elopement with frustration and avoidance, explosive tantrums, and very picky eating. The identified problem behaviors for purposes of the FBA completed in 7<sup>th</sup> grade were unresponsive, insubordination, disruptive, work not done,

inappropriate language, verbal harassment, verbally inappropriate, and elopement. (*Respondent's Exhibit 5*).

9.

According to Dr. Ho, ██████'s diagnostic profile includes behaviors associated with “aggression, emotional dysregulation, impulsivity, and low frustration intolerance.” Dr. Ho has prescribed mood stabilizers/atypical antipsychotic medication to treat ██████'s disruptive behavior, his exhibited aggression at home, and his outbursts, in an attempt to change his behaviors. Medication changes were implemented in late September/early October to find the right balance to assist ██████<sup>3</sup> Dr. Ho opined that the medication changes “*probably* leant to ██████ being more dysregulated at times.” (*Tr. 14-15; Petitioner's Exhibit 1*) (*emphasis added*). He further opined that he believed it was highly likely that the medication changes “*probably* were at the very hard of what made things worse for him” and “that it's *very likely* the medications were at the heart of changing his behavior.” (*Tr. 18-19; Petitioner's Exhibit 2 at p. 6*) (*emphasis added*).

10.

Dr. Ho changed ██████'s mood-stabilizer/antipsychotic from Abilify to Latuda, and his antidepressant from Lexapro to Zoloft. According to Dr. Ho, these medication changes make ██████ vulnerable to being more emotional and can put him at risk of being more aggressive. (*Tr. 15; Petitioner's Exhibit 1*) Dr. Ho doesn't understand how Respondent “can parse out one moment

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<sup>3</sup> It appears medication changes were also made during 7<sup>th</sup> grade that “resulted in shifts in behaviors” and “impacted his emotionality,” but no clear or detailed description was given regarding what kind of shift in behavior or impact occurred except perhaps an increase in disengagement and decrease willingness to learn or attend to tasks. (*Petitioners' Exhibit 6 at pp. 16-17 of 18*)

from [an individual with spectrum issues] general personal nature and – and biologic instability and – and say, well, that moment is just fine.” (Tr. 27).

11.

Petitioner’s education is governed by an IEP. As part of the IEP, the parties completed a FBA and developed a BIP. (*Petitioner’s Exhibit 2 and 6; Respondent’s Exhibits 3, 5 and 6*)

12.

As noted above, ██████ began his 7<sup>th</sup> grade school year at Awtrey Middle School. While there, he was placed in the Autism Bridge Small group setting. On February 1, 2023, he transferred to ██████ Middle School’s EBD small group setting. An FBA report was completed on May 1, 2023. The FBA notes ██████ has a BIP that targets refusal, classroom disruption, and elopement. It further notes that ██████ had five (5) MDR meetings during the school year, four (4) of which resulted in the behavior being found to be a manifestation of ██████’s disability. During the third MDR, the team agreed there was a need for an updated FBA, which presumably resulted in the FBA and BIP completed May 1, 2023. (*Respondent’s Exhibit 5*).

13.

The BIP developed May 1, 2023, provides the strategies that are to be implemented when the targeted behaviors occur. The BIP provides that staff is to “look for and be mindful of pre-cursor actions that might indicate significant frustrations and intervene with quick strategies, modeling, proximity, and support.” It further indicates that precursor behaviors can include, but are not limited to, picking fingers, lack of eye contact, totally shutting down with very short verbal responses, and becoming visually irritable and/or anxious. If an elopement incident occurs, staff

should not run or chase after him but should move quickly and keep him within eyesight and have only one staff member engage with him. Additionally, staff is not to negotiate with him but instead, using a calm, neutral tone, should provide a first/then statement of direction using clear, concise language to give [REDACTED] one direction to follow such as “Go back inside,” or “Go to your classroom.” The direction should be given every 1 to 2 minutes with no other verbal interaction occurring until [REDACTED] is back in the school building. (*Respondent’s Exhibit 6*).

14.

Neither the FBA nor the BIP identified physical aggression towards individuals as a behavior that needed to be addressed, meaning it was not a previously identified behavior of concern that [REDACTED] had repeatedly engaged in that required an intervention plan. (*Tr. 141, 143, 145, 150, 151; Respondent’s Exhibits 3, 5 and 6*). Instead, Petitioner’s targeted behaviors identified in his BIP included refusal, class disruptions, and elopement. Targeted behaviors are not necessarily the only behaviors that hinder “a student from having a successful day” but are the top identified causes based on data obtained from observation that cause the student’s “day to be negative as opposed to positive.” (*Tr. 61-63, 139-140, 144; Respondent’s Exhibits 3 and 6*). [REDACTED] tends to exhibit poor impulse control when escalated, and he also engages in escape behaviors through elopement, and engages in behaviors that disrupt his learning and the learning of others. (*Respondent’s Exhibit 3*) He also tends to get loud and physically disruptive when upset such as slamming his hand on the table, or he may cry or shut down and/or refuse to speak. (*Petitioner’s Exhibit 6 at p. 5 of 18; Respondent’s Exhibit 3 at pp. 20 and 26*). Additionally, his 7<sup>th</sup> grade teachers reported a significant reduction in his ability to use language when he becomes dysregulated, and it was noted that there is an emotional piece keeping him from adequately using language when he is dysregulated. (*Respondent’s Exhibit 3 at p. 22 and 25 of 31*).



15.

Despite physical aggression towards others not being noted as a targeted behavior, on October 5, 2023, [REDACTED] was involved in an incident with Dana O'Brien, a program support specialist, and Registered Behavior Technician employed by Respondent. (*Tr. 47-50; Petitioner's Exhibit 3; Respondent's Exhibit 9*)

16.

In her position with Respondent, Ms. O'Brien "travels across the county and serves multiple students across multiple settings," including students with autism and emotional behavior disorders. Her "specialty is aggressive behaviors, sometimes violent behaviors." (*Tr. 39, 40*). In her 16 years of working in this field, she has determined there is a difference between being in a state of dysregulation and simply choosing to be disruptive. (*Tr. 59*). According to Ms. O'Brien, there "is a difference in the time that a student can make a rational decision," the student is in control when regulated and not in control when dysregulated. (*Tr. 68*). For example, when a student is dysregulated "they are probably also highly incapable of hearing" directions from staff members. However, "when they're calm . . . they're very aware . . . and [t]hey know where they're supposed to go and what they're supposed to do. And they just make a different choice," as opposed to if there's a trigger and escalation in which case they probably need time and space because if the staff member tries to provide directions at that point the student is not going to hear the direction. (*Tr. 69-70*).

17.

In August or September 2023, Ms. O'Brien was assigned to assist the Core classroom that [REDACTED] attended at [REDACTED] Middle School. After a brief period, Ms. O'Brien began going to the classroom

specifically to help [REDACTED] “manage his behaviors because they were very aggressive.” She worked with [REDACTED] daily for five weeks implementing his BIP. She observed that he exhibited “[a] lot of elopement” and “[a] lot of physical aggression, which was closed fist punching, open hand slapping across the face, stabbing with pens and pencils.” His aggression was “towards adults [to whom] he was very aggressive.” (*Tr. 41-42, 54-57, 66*). She also noted that he “was very, very disruptive to the entire classroom and when he would elope out of the building, he would then become disruptive to the school . . . [k]nocking on doors. Banging on doors. Kicking on walls. Banging on the lockers. Just anything to be disruptive” but she did not believe that he was dysregulated when engaging in these behaviors. Instead, she believed he engaged in these behaviors to try to impress other people and to just be disruptive because he had decided he wanted to get out of undesired work or tasks. (*Tr. 57-58*). She noticed these behaviors, of both physical disruptions and physical aggression toward adults, prior to the incident that occurred on October 5, 2023, that is at issue in this case. (*Tr. 66*).

18.

In Ms. O’Brien’s opinion, [REDACTED]’s elopement behaviors are sometimes a manifestation of his disability when it occurs in an escalated state, but other times it is not a manifestation of his disability when he calmly elopes and says I’m leaving. (*Tr. 44*).

19.

Certain triggers or intercedences for [REDACTED]’s aggressive behaviors included other students in the classroom who “would kind of set [him] off but a lot of times, [REDACTED] just decided that he was not going to sit in class. He did not want to do his work and so it usually began with verbal aggression . . . and then it would increase into elopement and then once the direction was given to go back to

class, is normally when his physical aggression would start.” (Tr. 42). Ms. Devin Young, [REDACTED]’s core classroom teacher and case manager, did not observe physical aggression towards people but, rather, observed that “[REDACTED] is very impulsive in the language he uses,” he seeks peer attention, he becomes upset and escalated when asked to do work, he would threaten peers and adults, and he would elope from class. (Tr. 80). Regarding his ability to complete work, [REDACTED] “had to do work with one-on-one so that he would be able to do things” and they “had gotten up to ten minutes of work at a time with a ten-minute break.” (Tr. 80).

20.

Ms. O’Brien observed on October 5, 2023, that [REDACTED] became upset at something another student was being told to do and he eloped from the school building. (Tr. 47-48).

21.

While outside, [REDACTED] slapped Ms. O’Brien. She implemented his BIP regarding elopement and he subsequently returned to the classroom. After returning to the classroom, Ms. O’Brien had a conversation with [REDACTED] went through all the strategies, and went through the BIP and then [REDACTED] sat at a back table and began a preferred task on the computer for 15 to 20 minutes during which time he appeared calm “and was just being appropriate.” (Tr. 48, 49). Then, “out of nowhere” [REDACTED] decided he wanted to leave the classroom. Ms. O’Brien told [REDACTED] she did not need him to leave the room and directed him to have a seat and that is when things “spiraled.” (Tr. 49).

22.

In response to being blocked from leaving the classroom for a second time, [REDACTED] picked up a pencil and stabbed Ms. O’Brien in the hand and back. (Tr. 49). He then eloped from the classroom and calmly walked down the hallway and to the front office, while Ms. O’Brien followed behind

█ asking him to return to the classroom. (*Id.*) █ made a u-turn in the hallway and entered a nearby conference room. According to Ms. O'Brien, during this entire time, █ was not yelling or screaming but instead remained calm. (*Tr. 49-50*).

23.

Once inside the conference room, Ms. O'Brien considered █ to be "very calm," he is not yelling, he is "just moving the little board up and down." (*Tr. 50*). Ms. O'Brien once again directed █ to return to the classroom but █ responded that he was not going back to [f'ing] class and that if she did not get out of his [f'ing] face he would punch her in her [f'ing] face. (*Id.*). She again directed him to return to class and five seconds later █ closed fist punched Ms. O'Brien in the face. (*Id.*). About ten seconds later Ms. O'Brien again directed █ to return to class and he then stated that he had told her he was going to [f'ing] punch her and he did. (*Tr. 47, 50*). Ms. O'Brien continued to instruct █ to return to the classroom and eventually he did. (*Tr. 50*). From Ms. O'Brien's perspective, █ was not dysregulated when he eloped from the classroom the second time nor when he was in the conference room where the incident occurred and because he was not dysregulated "he had complete control over everything he was doing from the moment he stood up from that – that back table." (*Tr. 9, 16, 52, 57, 188, 189, 250, 252, 253*). She opined he was not dysregulated because after working with him on a daily basis for several weeks<sup>4</sup> she observed that "when █ is truly dysregulated, he is screaming and yelling and running," and "sometimes crying," while the "regulated █ who also can be verbally and physically aggressive, just makes a decision." (*Tr. 52-53, 56, 58-59*).

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<sup>4</sup> Ms. O'Brien testified she worked with █ on a daily basis for almost five weeks; however, Ms. Young testified that █ was either absent or suspended for several days from the end of August/early September to October 5, such that "the most amount of time [she] spent with █ in a group of days was maybe two weeks." (*Tr. 56, 89*)

24.

According to a letter from Principal Shannon Kiger addressed to [REDACTED]'s mother dated October 6, 2023, the following events occurred that led to Respondent imposing a 10-day out-of-school suspension from October 9, 2023, through October 20, 2023, for violating Student Code of Conduct Section II, Paragraph R, Subsection 10b:

On October 5, 2023, [REDACTED] eloped from his classroom and exited the school building. While outside, [REDACTED] open-handed hit a district employee in the face and elbowed her in the right side of her chest. When [REDACTED] returned to the classroom, he proceeded to take a pen from the teacher's desk and stab the employee in the back and once in the right hand. He then pushed and shoved her because she was blocking the doorway of the classroom. A second district employee attempted to block him and the pen broke, cutting her hand on the plastic. Her finger was bent in an unnatural position in the process. After eloping a second time, [REDACTED] went to several areas within the school, one of which was a conference room, [REDACTED] was asked repeatedly to return to the classroom but refused. During his time in the conference room, [REDACTED] closed fist punched the district employee in the right side of the face. Additionally, he refused to get on the bus at the end of the day so his parents were called and his father picked him up.

*(Tr. 47; Petitioner's Exhibit 3; Respondent's Exhibit 9).*

25.

Principal Kiger explained that, [REDACTED] was charged with violation of the student code of conduct under the description of physical violence without harm (Section 10b) even though Ms. O'Brien was injured because Cobb County's threshold for physical harm is very high and refers to harm that requires hospitalization. According to Principal Kiger, Ms. O'Brien was harmed because she was punched in the face and had a black eye and was stabbed twice in the hand and the back, but she did not require hospitalization. *(Tr. 192-193).* Ms. O'Brien did not require stitches for where

the pen or pencil was used but according to Principal Kiger it did result in a puncture wound, and the day after the incident Ms. O'Brien's "eye was kind – was blackish . . . and very – it was tender to the touch." (*Tr. 194-195*).

26.

Following the incident, the parties participated in an IEP meeting on October 10, 2023, to complete an Annual Review and Transition Plan. At that time, the parties agreed to provide [REDACTED] with more support and implemented a modified schedule. (*Petitioner's Exhibit 2 at p. 1 of 18; Respondent's Exhibit 9*).

27.

A need identified in the IEP developed at the October 2023 IEP meeting states that he "uses verbal/physical disruptions and inappropriate verbal interactions with peers to avoid non-preferred activities and gain peer attention." (*Petitioner's Exhibit 2 at pp. 4 and 10 of 18*).

28.

[REDACTED]'s October 2023 IEP further notes that, "[w]hen dysregulated, he may lose the ability to use language to express his needs in an acceptable manner" and that he "requires implementation of daily behavioral supports and social skills instruction on attending to academic tasks, teacher requests, and making positive peer connections." Moreover, at times [REDACTED] "may even engage in inappropriate behaviors that can be describe [sic] as refusal to complete tasks, elopement, and/or classroom disruption including physical/verbal disruptions and/or verbal peer interactions." (*Petitioner's Exhibit 2 at p. 4 of 18; Tr. 143-144*).

29.

The following behavioral goals were included in the October 2023 IEP:

- When precursor behaviors appear, [REDACTED] will appropriately ask for a break instead of eloping the situation; moving from an average of 3 times per day to 1 time per day by the time of the next annual review.
- When in the classroom, [REDACTED] will refrain from verbal and or physical disruptions or verbal interactions with peers as identified by the BIP; moving from an average of 17 times per day to 10 times per day by the time of the next annual review.
- When given directives, [REDACTED] will decrease instances of refusal behavior, as defined in his Behavior Intervention Plan; moving from an average of 2 times per day to 1 time per day by the time of the next annual review.

*(Petitioner's Exhibit 2 at p. 7 of 18).*

30.

[REDACTED]'s targeted behaviors as noted in his October 2023 IEP and BIP appear to continue to be refusal, class disruption, and elopement. *(Petitioner's Exhibit 2 at pp. 12-13 and 18 of 18; Tr. 143-144).*

31.

The October 2023 IEP team discussed the continuum of settings in the general education classroom from no support to supportive services and direct services and determined that [REDACTED] requires more intensive support. Accordingly, the IEP team discussed small group settings and concluded that the IRR setting does not provide sufficient supports but that his current placement (CORE small group classroom) provides him with the support he requires to address academics and obtain the necessary behavioral supports. The team further discussed a modified day schedule with support of a Board-Certified Behavior Analyst (BCBA) or Registered Behavior Technician (RBT) to

address intensive behaviors for four weeks and then reconvene to determine if the CORE small group classroom is still appropriate. (*Petitioner's Exhibit 2 at pp. 15 and 18 of 18*). Subsequently, on January 8, 2024, Petitioners submitted a request with Respondent for hospital homebound services through February 19, 2024. (*Tr. 23*)

32.

The October 2023 IEP further provides that [REDACTED] will be provided 90 minutes of behavioral services daily in a small group setting. (*Petitioner's Exhibit 2 at p. 15 of 18*).

33.

A week after the IEP meeting was held, on October 17, 2023, Respondent conducted an MDR meeting to discuss the incident that led to the imposition of a 10-day out-of-school suspension. (*Respondent Exhibit 9*). Among those present at the MDR were:

- [REDACTED] [REDACTED]'s mother (*Respondent's Exhibit 9*)
- Dr. M [REDACTED] T [REDACTED], [REDACTED]'s maternal aunt, who holds a masters and doctorate in clinical psychology, and who is the CEO and founder of a local non-profit. (*Tr. 153, 157-158*)
- Devin Young, [REDACTED]'s core classroom teacher and case manager, who had knowledge of [REDACTED]'s behavior in her classroom. (*Tr. 80, 82, 83, 88*)
- Jennifer White, a program support specialist for Respondent, who is experienced in behavior management, social and emotional management of students, and designing appropriate supports in the classroom and who is familiar with [REDACTED] (*Tr. 124, 132, 133, 135, 136, 138*)
- Shannon Kiger, Principal of [REDACTED] Middle School (*Tr. 177, 184; Respondent's Exhibit 9*)



- Virginia (Ginny) Armour, Support and Services Administrator for Respondent as well as Respondent's Local Educational Agency Representative, who served as the final decision-maker at the MDR meeting. (*Tr. 190-191, 228-230*).

34.

At the MDR meeting, Principal Kiger read the referral aloud, and Ms. Armour reviewed ██████'s most recent IEP, including his BIP, and his most recent evaluation. The team also conducted a brief review of ██████'s behavioral history, and Ms. Armour reviewed the referral for a second time. Additionally, the team reviewed ██████'s eligibility for special education services and his prior disciplinary records, and Ms. White provided her knowledge of the incident based on her conversation with Ms. O'Brien. Thereafter, the team discussed whether the October 5, 2023, incident was a manifestation of ██████'s disability. (*Tr. 94, 147, 148, 181-182, 245-246, 282-283; Petitioner's Exhibit 2; Respondent's Exhibits 3, 6 and 9*).

35.

The information that Ms. White relayed to the team at the MDR was that, ██████ was not dysregulated and had asked appropriately for a break and a break was granted before leaving the class and that there were no precursor behaviors and/or incidents to incite this physical aggression/assault. She also told the team that ██████ told Ms. O'Brien while outside, after he eloped, that he was going to punch her in the face and then after he punched her, he stated that he told her he was going to punch her in the face. (*Tr. 247-248; Respondent's Exhibit 9*).

36.

Ms. Armour pointed out that this was the first major physical incident ██████ had demonstrated this school year. Ms. Keiger referred to an incident involving physical aggression/assault that

occurred at a prior environment where it was determined the incident was not a manifestation of his disability; however, ██████'s mother pointed out that the prior incident occurred at a different school and different environment. (*Respondent's Exhibit 9*).

37.

During the MDR, ██████'s mother explained that she does not excuse ██████'s behavior but believes that the behavior at issue was due to his ADHD and current medication. Dr. T ██████ and ██████'s mother also asked clarifying questions. (*Respondent's Exhibit 9*).

38.

At the MDR meeting, Ms. Young opined that the incident as described was not a manifestation of ██████'s disability because based on the information presented ██████ was not dysregulated at the time the incident occurred. (*Tr. 86-87, 97-99, 114, 118-119; Respondent's Exhibit 9*). Regarding a prior incident where the team had determined that his actions were a manifestation of his disability Ms. Young explained that ██████ was dysregulated during that incident but, on this occasion, it appeared he was not dysregulated and, instead, "had gotten to the point where he was able to make a conscious decision and – make that choice rather than it being something he couldn't necessarily control." (*Tr. 86-87, 91-92, 114, 118-119*). Ms. Young opined that "██████ is capable of making choices, especially, when de-escalated" because when he is deescalated and calm, he is in control of decisions and, in this instance, was able to state his intentions prior to acting on them making it less likely that punching Ms. O'Brien was an impulsive act rather than a deliberate choice. (*Tr. 83, 86-87, 118-119*). For Ms. Young, she knew when ██████ was getting dysregulated because he would start "stating things to [her] disrespectfully, or you know, insubordinately, that's how [she] knew he was getting more and more dysregulated." (*Tr. 91*).

Ms. White also opined that [REDACTED]'s behavior was not a manifestation of his disability because she believed that this type of physical aggression had not been exhibited previously in the school setting. Although [REDACTED] had exhibited a pattern of physical disruption, i.e. swiping something off a desk or banging on a wall, he had not previously exhibited physical aggression toward a teacher at [REDACTED] Middle School.<sup>5</sup> She also based her decision on the information provided at the meeting that [REDACTED] was calm and able to converse at the time of the incident compared to times when he has engaged in other behaviors that occurred when he was dysregulated due to his disability. When [REDACTED] is dysregulated, it is easily observed both visually and auditorily. For example, he might make statements “leave me alone with a raised voice” or he would be “physically escalated” and “you could see those anxiety pieces coming out from him.” The way you can tell he is dysregulated is “body language, level of tone of voice. Just what’ he’s saying. How he’s saying it. He might be a lot more argumentative, or he might use profanity or just trying to, like, walk away and like get, you know, trying to say, you need to get out of my face, and he’ll walk to the other direction, or he’ll walk over to his friends and not want to listen to the person talking to him. But it is very -- a lot of vocal – vocalizations of, you need to leave me alone. Go away. I’m not talking to you.”

*(Tr. 125-131, 138, 143-144, 148, 149; Respondent’s Exhibit 9)*

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<sup>5</sup> Other behaviors that Ms. White has typically observed [REDACTED] exhibit include “[r]efusal, not wanting to complete a work or not wanting to follow direction. That verbal refusal, I’m not going to do this. Leave me alone” and “when he would get upset it would be more of a wanting to just kind of argue back and forth of not wanting to do what – the task was given.” There were also elopements where he would get up and walk out, and verbal disruptions by “talking to his friends when the teacher’s trying to instruct.” *(Tr. 136-137)*

40.

Principal Kiger also found that [REDACTED]'s behavior was not a manifestation of his disability because she believed he was regulated at the time it occurred based on the information presented at the MDR meeting. (*Tr. 177, 181-183, 188; Respondent's Exhibit 9*) She had participated in a prior MDR meeting regarding behavior exhibited by [REDACTED] where the team determined the behavior was a manifestation of his disability but in that instance his behavior occurred while he was in a dysregulated state whereas in the incident that occurred on October 5, 2023, Ms. O'Brien provided a statement that [REDACTED] was calm and, thus, was considered regulated at the time of the incident. (*Tr. 188-189*).

41.

Ms. Armour wrote the MDR report, which included a description of the incident based on the discipline referral that had been entered into the school's portal. (*Tr. 243, 246, 260, 261; Respondent's Exhibit 9*). Since there was not a consensus regarding the determination of whether [REDACTED]'s behavior was a manifestation of his disability because the school employees found it was not while [REDACTED]'s mother and aunt believed it was, Ms. Armour served as the ultimate decision-maker. (*Tr. 244-245, 249; Respondent's Exhibit 9*). Based, in part, on the information presented at the MDR meeting indicating that [REDACTED] was not dysregulated at the time of the incident and also that physical aggression had not been previously exhibited, Ms. Armour determined that his behavior was not a manifestation of his disability. (*Tr. 244, 247-248, 251, 252, 266, 269, 271, 283*). In reaching this decision, Ms. Armour considered the characteristics of his disabilities and opined that any medication changes that [REDACTED] had recently undergone did not appear to have any apparent effect on his behavior that could have caused physical aggression. (*Tr. 266*). She had

also considered that [REDACTED] had been observed to engage in physical disruptions such as throwing books, hitting his hands on the table, stomping his feet, or getting upset and leaving the classroom when dysregulated but that he had not engaged in violent physical aggression before. She also considered the fact that the BIP was recent, written in May 2023, and did not include physical aggression, which suggests that it was not a characteristic of [REDACTED]'s behaviors that was impacting his education that needed to be addressed. (*Tr.* 262). Ultimately, Ms. Armour wondered, “why did he leave regulated . . . and then get to the point where he hit the – hit the person in the face and then before and after had – able to verbalize because our students that are dysregulated . . . I would assume that – that the speech and language would not be present.” (*Tr.* 249-250). Ms. Armour primarily focused on the fact that they had not previously seen the level of physical aggression exhibited on October 5, 2023. (*Tr.* 250, 261-262, 278, 290). The part that Ms. Armour found that was different from other behaviors exhibited by [REDACTED] was “saying I’m going to hit you in the face and then hitting the face and then saying I said I was going to hit you in the face.” She found that she had not seen that kind of communication from him before, which indicates to her that he was in a regulated state because when [REDACTED] is upset he does not talk, he does not communicate back and forth. From her experience and knowledge, the staff that has worked with [REDACTED] knows when he is not happy, when he is anxious or upset because it is obvious, and those things did not appear to be present at the time the incident at issue occurred according to the data presented at the MDR. (*Tr.* 281-282; *Respondent’s Exhibit 9*). Instead, “he seemed like he was coherent enough to say, hey, I’m going to hit you in the face.” (*Tr.* 283).

42.

The parties have participated in two other MDR meetings, one that occurred in September 2023 and one that occurred after the MDR at issue in this matter. In both of those MDRs, it was

determined that ██████'s behavior was a manifestation of his disability. Those determinations were based on consideration of ██████'s IEP and BIP and the behaviors being considered characteristics that ██████ struggles with because of his disabilities. (*Tr. 234, 252-253*).

43.

██████'s mother filed a due process hearing request on October 23, 2023. Her due process hearing request indicates concerns regarding Identification and the provision of a Free and Appropriate Public Education (FAPE). Specifically, Petitioners raised concerns that at the October 17, 2023, MDR meeting Respondent failed to consider ██████'s complex medical profile and the known recent medication changes he was undergoing. Petitioners also asserted that ██████ suffers from multiple disabilities that impact his behavior and drives manifestations. Finally, Petitioners raised concerns that Respondent's staff stated they "felt" his behavior was not associated with his disabilities and, thus, based their decision on feelings rather than proper consideration of his disabilities and medication changes. (*OSAH Form 1*)

44.

After Petitioners filed their due process hearing request, Jessica Coleman, Respondent's Executive Director of Special Education Compliance and GNETS Director for the area, reviewed the request and handled Respondent's response. (*Tr. 169; 297*). She listened to the recording of the MDR meeting, reviewed ██████'s eligibility report, his IEP, FBA and BIP, and ultimately agreed with the determination that the incident was an intentional act and was not a manifestation of his disability. (*Tr. 319-320, 322*). She found that ██████'s evaluations indicated his dysregulation stemmed from his autism and EBD disabilities, but that those who were present and familiar with ██████ stated he was not dysregulated at the time of the incident. (*Tr. 314, 318, 319, 332, 333, 334,*

335). Ms. Coleman also opined that, ██████'s ADHD diagnosis did not play a factor in the behavior at issue because his ADHD manifests itself in inattention rather than physical aggression. Moreover, she opined based on her review of the records that the physical aggression that occurred was not an impulsive act, in part, because he talked about it, did it, then talked about it again. (*Tr. 309, 310*). She believes that the MDR team primarily were focused on the regulation and dysregulation and the pattern of behavior of physical aggression, which could be related to ██████'s disabilities of autism and EBD. (*Tr. 310*). However, based on the data presented at the MDR, Respondent's staff believed that ██████ asked for a break and that suggested to Ms. Coleman that he was regulated at the time. (*Tr. 314; Respondent's Exhibit 9*).

45.

According to Ms. Coleman, when considering the MDR, one piece for consideration is regulated versus dysregulated, and the other piece is that this was the first major incident of physical aggression so there was not a pattern of behavior related to physical aggression to determine that the behavior was connected to his disability. (*Tr. 318*). Ms. Coleman explained that when we are dysregulated, we can't think and act and feel and do all those normal typical human responses in the same way. (*Tr. 319*). She further explained that when you're dysregulated, you are not able to speak in the same way, when you are in a heightened state you can't always get your words together, your thoughts don't come together. (*Tr. 319*). ██████'s IEP discusses his emotionality and when he gets dysregulated there are behaviors that he exhibits such as elopement, class disruptions, and inappropriate language. (*Tr. 321*). In addition to considering the identified manifestations noted in ██████'s IEP, Ms. Coleman explained that with students who have autism and EBD, you have to determine if the behavior is emotionally based because not all behaviors occur due to a disability, some occur as a natural course of everything. So, school staff must

consider if there is a pattern of behavior because if it is seen as a pattern, then the school staff sees “that it’s that significant intense duration or frequency of behaviors connected to the emotionality, to the – to the EBD.” (*Tr. 321*). Ms. Coleman concluded that this incident was different from the others because of the regulation piece and because it was not a pattern of behavior. She found that he was very clear about what he was going to do; he wanted to leave the building and so he was just doing that to get out of the building. (*Tr. 321-322*). Ms. Coleman also found that [REDACTED] was very intentional about saying what he was doing by threatening someone. According to Ms. Coleman, when you are dysregulated, when it is your disability, you don’t connect I’m going to do this action to hurt you to get you away. (*Tr. 322*). Students with autism and EBD when they have those behaviors, typically, you’re just in the way of them trying to get out and get to what they’re trying to do and that was not him. He was being very intentional saying I’m going to do this, I did it, see I told you and was doing it to get her out of his space so he could go do what he wanted to do. (*Tr. 322-323*). She also believes that he was not dysregulated in the classroom when he used a pen/pencil to stab Ms. O’Brien. He was trying to get her to move out of the way and if she didn’t, he was going to do that action to try to get her to move out of the way. He was intentionally trying to leave and trying to find ways to do that. (*Tr. 323*). This contrasts with what his profile suggests, that when he is dysregulated, he’s just running, so Ms. Coleman believes [REDACTED] wouldn’t have stopped to pick up a pencil or a pen to stab Ms. O’Brien to be able to get out. Instead, he would have just gone and barreled through her. (*Tr. 323-324*).

46.

Ms. Coleman explained that the question for the MDR team is, “did his autism or EBD or ADHD cause him to physically punch somebody” and is there a straight link of this behavior happened because of this disability and the disability was the overwhelming reason why this happened.



Basically, does all his disability-related information say that he's going to physically punch somebody whether he's regulated or dysregulated. (*Tr.* 325). It's about, do we know, based off the information we have, that this caused this. In this case, there was no direct link to say that [REDACTED] punched Ms. O'Brien because of his autism, or his EBD or his ADHD. (*Tr.* 326). Ms. Coleman further explained that Respondent does not discount [REDACTED]'s behaviors and Respondent has addressed the behaviors both inside and outside of the IEP, but Respondent's staff simply does not believe that the incident at issue was caused by his disability, in part, because a behavior that occurs one time does not provide any documented information that it has a direct and substantial link to his disability, to show it is connected to autism, or EBD or ADHD. (*Tr.* 333, 335-336). Respondent's staff uses [REDACTED]'s disability-based information to decide about his conduct and [REDACTED] has exhibited other behaviors that are consistent with his FBA and eligibility report, but his records did not include any information that physical aggression is a behavior that manifests itself for [REDACTED] (*Tr.* 336; *Respondent's Exhibits 5 and 6*).

47.

Petitioners raised concerns that the school representatives were unable to explain how they could rule out the possibility that the October 5, 2023, incident was a manifestation of his challenges that were indicated on the IEP. (*Tr.* 155). Dr. T [REDACTED] found that Respondent's responses to questions raised at the MDR were not based on clinically sound reasoning. (*Id.*). She explained that "we can be struggling internally, but externally we are presenting different. And so, therefore, triggers and antecedents to behaviors are not always going to be recognized." (*Id.*). She further explained that she takes exception to Respondent's reasoning that simply because [REDACTED] made a comment of what action he was going to take prior to taking that action, i.e. I'm going to f-ing punch you in the face, that that means it "was not a manifestation of his challenges and his disabilities as stated

on the IEP. And, in fact, it could be that he was emotionally dysregulated” because [REDACTED] has low frustration tolerance and high impulsivity and “acts without thinking oftentimes.” (Tr. 155-156). According to Dr. T [REDACTED], for the school to base its decision on [REDACTED] appearing calm is faulty reasoning and not clinically sound because it’s based on the external, but you can internally be dysregulated and experiencing heightened anxiety that no one sees. (Tr. 156). Moreover, although we may typically look for patterns, with [REDACTED]’s complex diagnostic profile there are going to be outliers and it’s our responsibility to get together as a team to say, okay we haven’t seen this before but let’s think about this and how we can best help him. (Tr. 156-157). Medication changes also could have affected [REDACTED] (Tr. 157). Dr. T [REDACTED]’s main concern is it wasn’t ruled out that this was a manifestation of his disability. (Tr. 159-160). Finding it’s not a manifestation because it didn’t happen before, because there was no external trigger they could identify, and because he said he was going to do it before he did it are not reasons clinically to say it’s not associated with his disability. (Tr. 161). Dr. T [REDACTED] believes that Respondent never acknowledged the critical issues pertaining to [REDACTED]’s medication adjustment and his diagnostic profile as it’s associated with his disability. (Tr. 165).

48.

Mr. G’s concerns primarily revolve around the possibility of bias against [REDACTED] by Respondent’s staff due to Petitioners filing a complaint against [REDACTED] Middle School with the Georgia Department of Education regarding an elopement incident that occurred whereby [REDACTED] left the school without Respondent’s staff being aware that he had left school grounds. (Tr. 202-203). Mr. G. also is concerned that Respondent’s staff made a determination that [REDACTED]’s behavior was not a manifestation of his disability because he appeared regulated; however, Mr. G. described an incident that occurred at home when [REDACTED] was quiet, and so presumably regulated because he

wasn't being loud, yet he took a piece of glass and made superficial cuts on his stomach and told his parent's there's something wrong with his head, which suggests that [REDACTED] can be dysregulated even when he appears calm. (*Tr.* 201-202).

#### IV. CONCLUSIONS OF LAW

1.

Petitioners bear the burden of proof in this matter. Ga. Comp. R. & Regs. 160-4-7-.12(3)(n) (“The party seeking relief shall bear the burden of persuasion with the evidence at the administrative hearing.”). The standard of proof on all issues is a preponderance of the evidence. Ga. Comp. R. & Regs. 616-1-2-.21(4).

2.

This Court’s review is limited to the issues Petitioners raised in their due process complaint. 20 U.S.C. § 1415(f)(3)(B); 34 C.F.R. § 300.511(d); Ga. Comp. R. & Regs. 160-4-7-.12(j); see also Co. of San Diego v. Ca. Special Educ. Hearing Office, 93 F.3d 1458, 1460 (9th Cir. 1996); B.P. v. New York City Dept. of Educ., 841 F. Supp. 2d 605, 611 (E.D.N.Y. 2012). In this matter, the issue raised in the due process complaint is a dispute regarding Respondent’s determination that [REDACTED]’s behavior on October 5, 2023, that resulted in a 10-day out-of-school suspension was not a manifestation of his disability. In their closing argument, Petitioners raise two concerns as to why they believe the Court should overturn Respondent’s determination that the behavior at issue was not a manifestation of [REDACTED]’s disability. First, Petitioners assert that Respondent “applied a narrow and rigid set of criteria” to determine whether [REDACTED]’s actions were due to his diagnoses, and Respondent “failed to consider additional factors such as [REDACTED]’s medication management and clinically observed traits of individuals with [REDACTED]’s mental health condition.” Second, Petitioners “believe there may have been bias in the MDR decision making process” because of a formal

complaint Petitioners filed with Cobb County School District and the Georgia Department of Education against [REDACTED] Middle School the month prior to the incident at issue. Accordingly, the relief requested by Petitioner is “reconsideration of the school’s decision to suspend [their] son for 10 days as this was not made in [REDACTED]s] best interest.” (See Proposed Resolution to Alleged Violations Section of the October 23, 2023, Special Education Due Process Hearing Request Form).

3.

A change in placement of a child with a disability occurs when the removal is for more than 10 consecutive school days, or when the child has been subjected to a series of removals that constitute a pattern because (1) the series of removals total more than 10 school days in a school year, and (2) the child’s behavior is substantially similar to the child’s behavior in previous incidents, and (3) based on consideration of additional factors such as the length of each removal, the total amount of time the child has been removed and the proximity of the removals to one another. 34 C.F.R. § 300.536(a). In this matter, the parties did not fully address whether the 10-day out-of-school suspension at issue constituted a change in placement, but it appears Respondent considered that it was a change in placement by holding a MDR meeting on October 17, 2023. See 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. 300.530(e)(1); See also 34 C.F.R. § 300.536.

4.

When the placement of a child with disabilities is to be changed because of a violation of a school district’s code of student conduct, the school has ten school days to conduct a manifestation determination. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. 300.530(e)(1); See also 34 C.F.R. § 300.536. The manifestation determination committee must include the LEA, the parent or legal

guardian, and relevant members of the child’s IEP team. The committee must review all relevant information, including the IEP, 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 whether the conduct was a direct result of Respondent’s failure to implement the student’s IEP. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. 300.530(e)(1)(i), (ii); See e.g., Kristina C. v. Klein Indep. Sch. Dist., 124 LRP 3961 (S.D. Tx. 2024) (finding student with autism and ADHD who brought a clay cutter to school did not exhibit a behavior that was a manifestation of his disability, and that school was required to make its manifestation determination based on his past actions and diagnoses).

5.

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. 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).

6.

“The manifestation determination team typically does not determine the facts of the incident for which an eligible student is subject to discipline.” Bristol Twp. Sch. Dist. v. Z.B., No. 15-4606 2016 U.S. Dist. LEXIS 4626 (E.D. Pa. Jan. 14, 2016). Rather, that is the purpose of the school

disciplinary hearing. Porter v. Ascension Par. Sch. Bd., 393 F.3d 608, 624 (5<sup>th</sup> Cir. 2004); See also Danny K. v. Dep't of Educ., No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS 111066 (Haw. Sep. 27, 2011) (role of manifestation determination team is not to determine the facts of what happened; rather it is to determine whether the actions leading to the student's potential suspension, as determined by the educational agency's investigation, were a manifestation of an eligible disability or the educational agency's failure to implement the IEP).

7.

In this matter, Respondent complied with the procedural requirements in conducting the MDR. Respondent held the manifestation determination within ten school days of the proposed disciplinary action suspending ██████ from school as required, and included the LEA, ██████'s parent and the relevant members of his IEP team. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. 300.530(e)(1); Fitzgerald v. Fairfax County Sch. Bd., 556 F. Supp. 2d 543, 552 (E.D. Va. 2008). See also 34 C.F.R. § 300.536. Additionally, Respondent complied with the requirement to have the committee review all relevant information, including the IEP, 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, his disability, or whether the conduct was a direct result of Respondent's failure to implement his IEP. 20 U.S.C. § 1415(k)(1)(E)(i); 34 C.F.R. 300.530(e)(1)(i). In addition to reviewing ██████'s IEP and relevant information provided by ██████'s family, the manifestation determination committee also reviewed relevant records from ██████'s file including the referral, his BIP, his most recent evaluation, his behavioral history, his prior disciplinary records, and information provided by Ms. White regarding statements made by Ms. O'Brien about the incident. During the discussion held by the committee, both ██████'s mother and his maternal aunt asked clarifying questions and ██████'s mother shared information from her

perspective that the behavior occurred because of [REDACTED]'s ADHD and current medication changes. Based on the evidence presented at the hearing in this matter, the Court concludes that [REDACTED]'s mother had an opportunity for meaningful participation at the October 17, 2023, MDR even though she ultimately disagreed with Respondent's staff's determination that the behavior in question was not a manifestation of his disability. *See generally* Gloria V. v. Wimberley Indep. Sch. Dist., No. 1:19-CV-951-RP, 2021 U.S. Dist. LEXIS 37387 (W.D. Tex. Jan. 5, 2021) (even with general education teacher not present at MDR, school did not impede parent's participation and appropriately considered information to reach determination). As the Fitzgerald court held, "parents have a right to participate and be heard in the MDR hearing, but these proceedings may become adversarial, as parents may well disagree with the school's decision to discipline their child." 556 F. Supp. 2d at 558. Thus, if consensus cannot be reached after the MDR, the school district must make the decision, and the parents' recourse is to appeal that determination, as they have in this case. Id. See also 34 C.F.R. § 300.532.

8.

"A manifestation determination is by its very nature retrospective, for it looks back at the child's behavior and attempts to determine if the child's disability impaired his ability to understand and control his behavior." Richland Sch. Dist. v. Thomas P., No. 00-C-0139-X, 2000 U.S. Dist. LEXIS 15162, at \*27 (W.D. Wisc. May 24, 2000). Manifestation determination review teams "must do more than consider a student's disability 'in light of what is typical for students with [the disability].'" J.H. v. Rose Tree Media Sch. Dist., No. 17-4766, 2018 U.S. Dist. LEXIS 157803, at \*8 (E.D. Pa. Sept. 17, 2018) (quoting Bristol Twp. Sch. Dist. v. Z.B., 2016 U.S. Dist. LEXIS 4626 (E.D. Pa. 2016)). "In other words, MDRs must 'consider the specific circumstances of the incident and the alleged conduct.'" Id. However, as noted above, the MDR team's role is not to review

the merits of the disciplinary tribunal's findings of whether and how a student violated the code of conduct but is to determine only whether the conduct in question as determined by the school's investigation was a manifestation of the student's disability. Danny K. v. Dep't of Educ., No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS 111066, at \*40 (D. Haw. Sept. 27, 2011).

9.

In this matter, the MDR team discussed the October 5, 2023, incident based on the school's investigation of what transpired, and the MDR team engaged in a discussion of whether the conduct in question was a manifestation of his disability. *Compare* Bristol Twp. Sch. Dist. v Z.B., No. 15-4604, 2016 U.S. Dist. LEXIS 4626 (E.D. Pa. Jan 14, 2016) (manifestation determination team failed to consider the specific circumstances regarding what occurred during the incident and, instead, only considered that student had engaged in "aggressive assault behavior"). Despite the team incorrectly believing that ██████ had appropriately requested a break and had been given a break before the incident at issue occurred, the Court concludes, based on the evidence presented, that the team appropriately considered ██████'s disability-related behaviors as identified in his records and specifically his IEP, his BIP, and his behavioral history, as well as information Ms. Young had obtained from talking with Ms. O'Brien that ██████ from her perspective was calm, as well as information that ██████ shared during the meeting regarding medication changes and her belief that the behavior was related to ██████'s ADHD. During the MDR meeting there was reference made to a prior incident where ██████ engaged in physical aggression at a previous environment, but no details were provided at the hearing in this matter to determine whether the circumstances of each incident were sufficiently similar to consider if there may be a trigger or antecedent that may cause more severe behaviors than what has typically manifested before. Instead, the record in this matter lacks sufficient evidence to establish that ██████'s behavior in



physically punching Ms. O'Brien and verbalizing his intentions both before and after his conduct was a manifestation of his disability.

10.

The conduct at issue in this matter is ██████'s verbalization that he intended to punch Ms. O'Brien in the face if she did not leave him alone, and then following through with the physically aggressive act of punching Ms. O'Brien, and then articulating that he had warned her he was going to do so and had done what he had threatened.<sup>6</sup> This conduct was not conduct that had been previously identified as behaviors ██████ exhibited that required strategies and interventions for Respondent's staff to help try to prevent the behavior from occurring or to at least manage it. Thus, it was not what ██████'s disability-related behaviors typically look like based on observations from Respondent's staff and even Dr. Ho who described physically disruptive behaviors such as running and knocking on doors or wanting to break windows. *See Kristina C. v. Klein Indep. Sch. Dist.*, 124 LRP 3961 (S.D. Tx. 2024) (hearing officer correctly determined act was not a manifestation of student's disability where exhibited behavior was different than the signs of his disabilities that he previously exhibited); *See also Gloria V. v. Wimberley Indep. Sch. Dist.*, No. 1:19-CV-951-RP, 2021 U.S. Dist. LEXIS 37387, at \*26 (W.D. Tex. Jan. 5, 2021), citing H.R. 779, 108<sup>th</sup> Cong. At 224-25 (2004) (in conducting an MDR, a MDR Team is to "analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability"). Nevertheless, Petitioners assert that even if the behavior had not been previously identified it could be a new behavior resulting from changes in ██████'s

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<sup>6</sup> There is no evidence in the record to support Principal Kiger's assertion in her October 6, 2023, letter that a second district employee sustained a cut to her hand from the plastic of a broken pen or that she had their finger bent in an unnatural position in the process while attempting to block ██████ from eloping from the classroom the second time. (*Petitioner's Exhibit 3*)

medication or evolution of the ways that his disabilities manifest themselves. However, at the time of the incident at issue, [REDACTED] was able to converse and articulate his intentions, which contradicts the evidence in the record that when [REDACTED] is dysregulated or not in control he typically shuts down and/or is unable to verbalize and communicate. Moreover, although [REDACTED] had undergone recent medication changes there is insufficient evidence in the record that [REDACTED]'s overall behaviors at school, home, and other environments had changed to indicate an increase in physically aggressive behaviors towards others to establish that the behavior was caused by or was substantially related to his disability. Gloria V., supra. Dr. Ho testified about [REDACTED]'s difficulties with emotional regulation, aggression and low frustration intolerance, and he explained that [REDACTED]'s medication changes make him vulnerable to being more emotional and can put him at risk of being more aggressive, but there is insufficient evidence to establish that [REDACTED] was dysregulated at the time of the incident or that the medication caused changes in his behavior across environments to indicate it was a manifestation of his disability. Gloria V., supra.; Compare Richland Sch. Dist. v. Thomas P., No. 00-C-0139-X, 2000 U.S. Dist. LEXIS 15162, (W.D. Wisc. May 24, 2000) (psychologist credibly and persuasively testified that on the night in question student wasn't thinking about the consequences, was acting impulsively, and his ability to control his behavior was impaired.)

11.

Based on the record in this matter, Petitioners have not met their burden to prove that the October 5, 2023, incident was caused by or had a direct and substantial relationship to his disability of Autism, ADHD or Emotional Behavior Disorder. Based on the evidence presented, [REDACTED] for unknown reasons, decided he wanted to elope from his classroom for a second time that day. He then chose to enter a conference room and advised Ms. O'Brien who was instructing him to return

to the classroom that he was going to hit her and then did so and then stated that he had warned her he was going to do it. There is insufficient evidence that [REDACTED]'s actions in the conference room that led to his 10-day out-of-school suspension were impulsive in nature or were caused by or had a direct and substantial relationship to his disability, or that it occurred due to a failure to implement his IEP.

12.

Petitioners argue that [REDACTED] was dysregulated the day of the incident as evidenced by his eloping from the classroom, which is a targeted behavior of his BIP. They further argue that even though [REDACTED] may have appeared calm for 15 to 20 minutes while in the classroom performing a preferred task after the first elopement, he never reached a state of fully being regulated after the first elopement as evidenced by the fact that he eloped a second time shortly after returning to the classroom. Although it is possible he was dysregulated, Petitioners have not presented sufficient evidence to show that he was dysregulated. [REDACTED] used profanity and was insubordinate which are behaviors he has exhibited previously when dysregulated, but Ms. O'Brien's undisputed testimony indicated that [REDACTED] was calm when he walked down the hall and into the conference room and that he did not exhibit the behaviors she has previously observed and that are noted in his records when he is dysregulated such as yelling, screaming, being physically disruptive, shutting down, or having difficulty communicating. *See C.D.v. Atascadero Unif. Sch. Dist.*, 123 LRP 17679, 83 IDELR 80 (C.D. Cal. 2023).

13.

There is no evidence that [REDACTED]'s behavior was a direct result of Respondent's failure to implement his IEP. To the contrary, Ms. O'Brien discussed the first elopement with [REDACTED] after he returned

to the classroom and was de-escalated, and she further complied with ██████'s IEP by following him after he left the classroom the second time and keeping him within eyesight but not chasing after him, and by providing clear, concise language of one direction to follow, that being to return to the classroom.

14.

Finally, Petitioners have not established that Respondent's determination was based on a bias against Petitioners rather than an examination and discussion of the information presented at the MDR meeting. There is no evidence that Respondent's staff had predetermined the outcome or that they failed to review relevant information in his records and information provided by his family or that they failed to hold a discussion about the incident. *Compare* Sch. Bd. of the City of Norfolk v. Brown, 769 F. Supp.2d 928 (E.D. Va. 2010) (school district approached MDR with a closed mind, parent was denied participation, and no meaningful discussion took place).

#### V. ORDER

Based on the foregoing findings of fact and conclusions of law, the court concludes that Petitioners have not met their burden and that there is insufficient information in the record to prove that ██████'s actions on October 5, 2023 that led to a 10-day out-of-school suspension were caused by or had a direct and substantial relationship to his disability, or was the result of a failure to implement his IEP. Accordingly, Petitioners' request for relief is **DENIED**.

**SO ORDERED**, this 8<sup>th</sup> day of April, 2024.

Ana Kennedy

Ana Kennedy  
Administrative Law Judge

