

BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS  
STATE OF GEORGIA

████ BY AND THROUGH █████  
Petitioner,

v.

ATLANTA INDEPENDENT SCHOOL  
SYSTEM, A/K/A ATLANTA PUBLIC  
SCHOOL SYSTEM,  
Respondent.

Docket No.: █████  
████ OSAH-DOE-CPEXP-60-Teate

FINAL DECISION

I. Introduction

Petitioner █████ by and through her mother, █████ filed a Due Process Hearing Request pursuant to the Individuals with Disabilities Education and Improvement Act (IDEA) on November 29, 2023, contesting Respondent's determination that █████'s alleged violation of the school's code of conduct was not a manifestation of her disability or a direct result of the school's failure to implement her IEP.<sup>1</sup> The matter was referred to the Office of State Administrative Hearings (OSAH) as an expedited case pursuant to 34 C.F.R. § 300.532(c).

An evidentiary hearing was held before the undersigned administrative law judge on January 5, 2024. Currey Hitchens, Esq. represented Petitioner and MaryGrace Kittrell, Esq. represented Respondent.

Having carefully reviewed and considered the evidentiary record, as well as the arguments of both parties, the undersigned **AFFIRMS** the Respondent's action.

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<sup>1</sup> Petitioner also cited various violations of the IDEA on the part of Respondent that did not pertain to the manifestation determination and resultant change in placement. Upon Respondent's notice of insufficiency, these claims were dismissed without prejudice pursuant to 34 C.F.R. § 300.508(d).

## II. Findings of Fact

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1. █ is a student in the Atlanta Independent School System (AISS). She attended █ █ a school in the AISS, from 2020 to 2023. *Testimony of Chinnetta Buford-Duffie; Testimony of █ Exs. J-1, R-1, P-4, J-2, R-3, P-6.*

2. █ began her ninth grade year at █ School in the midst of the COVID-19 pandemic and resultant lockdown. Therefore, her initial classes were conducted virtually. She returned to in-person classes during the 2021-2022 school year. *Testimony of █ Testimony of Buford-Duffie.*

### *The Psychological Evaluation*

3. Concerned with █'s academic difficulties, █ referred her for a psychological evaluation. This evaluation was conducted by Memuna Kondeh, Ed. S., Certified School Psychologist, on March 11-12, 2021. *Exs. J-11, R-15, P-2.*

4. Per the evaluation report, █ reported that █ was diagnosed with Attention Deficit Hyperactivity Disorder – Inattentive Type. *Exs. J-11, R-15, P-2.*

5. As part of the psychological evaluation, Ms. Kondeh administered the Behavior Assessment for Children, Third Edition (BASC-3), “an objective rating system used to diagnose emotional and behavior disorders in children” and “a comprehensive measure of adaptive and problematic behaviors.” To complete the BASC-3, Ms. Kondeh obtained responses from █ and “Ms. McIntyre,”<sup>2</sup> █'s math teacher at the time. *Exs. J-11, R-15, P-2.*

6. On the BASC-3, Ms. McIntyre reported “at risk” ratings for █ on the Hyperactivity, Aggression, and Conduct Problems subscales. Ms. Kondeh noted that Ms. McIntyre’s rating on Hyperactivity subscale indicated that █ had “the tendency to be overly active when compared to

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<sup>2</sup>Based on other documentation in the record, this likely refers to Ariel McIntyre. *Ex. R-17.*

other students her age.” The score on the Aggression subscale indicated that ■■■ “is argumentative when denied her own way and defiant towards her teachers.” Finally, the at-risk rating on the Conduct Problems subscale suggested “difficulties with accountability, rule-compliance, personal responsibility, and cooperativeness with behavioral expectations.” However, Ms. Kondeh wrote, “scores in the ‘at-risk’ range indicate the presence of problems that may require treatment but do not warrant a formal diagnosis.” *Exs. J-11, R-15, P-2.*

7. Both Ms. McIntyre and ■■■ provided elevated ratings in the areas of “anger control,”<sup>3</sup> developmental social disorders,<sup>4</sup> emotional self-control,<sup>5</sup> “executive functioning,”<sup>6</sup> “negative emotionality,”<sup>7</sup> and “resiliency”<sup>8</sup> on the BASC-3. Ms. McIntyre reported clinically significant scores in the areas of anger control, emotional self-control, executive function, negative emotionality, and resiliency. ■■■ reported scores in the at-risk range in these areas, with the exception of executive functioning, in which she reported clinically significant scores. *Exs. J-11, R-15, P-2.*

8. Ms. Kondeh also administered the Behavior Rating Inventory of Executive Function, Second Edition (BRIEF-2), “objective rating scale systems used to assess aspects of executive functioning in children.” The BRIEF-2 was also completed using responses from ■■■ and Ms. McIntyre. On the BRIEF-2, “‘potentially clinically elevated’ and ‘clinically elevated’ scores indicate a substantial difficulty.” Scores on the BRIEF-2 are grouped into three composite scales: The Behavioral Regulation Index, the Emotional Regulation Index, and the Cognitive Regulation Index.<sup>9</sup> *Exs. J-11, R-15, P-2.*

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<sup>3</sup> According to the evaluation report, anger control is “[t]he tendency to become irritated quickly and impulsively coupled with the inability to regulate affect and self-control.” *Exs. J-11, R-15, P-2.*

<sup>4</sup> “Behaviors characterized by deficits in social skills, communication, interests, and activities.” *Exs. J-11, R-15, P-2.*

<sup>5</sup> “The ability to regulate one’s affect and emotions in response to emotional changes.” *Exs. J-11, R-15, P-2.*

<sup>6</sup> “The ability to control behavior by planning, anticipating, inhibiting, or maintaining goal-directed activity and by reacting appropriately to environmental feedback in a purposeful, meaningful way.” *Exs. J-11, R-15, P-2.*

<sup>7</sup> “The tendency to react in an overly negative way to changes in everyday activities or routines.” *Exs. J-11, R-15, P-2.*

<sup>8</sup> “The ability to access internal and external support systems to alleviate stress and overcome adversity.” *Exs. J-11, R-15, P-2.*

<sup>9</sup> The Cognitive Regulation Index is not relevant to this matter.

9. The Behavioral Regulation Index “captures the child’s ability to regulate and monitor behavior effectively.” In the area of “inhibition,” ■■■ and Ms. McIntyre rated ■■■ in the potentially clinically elevated range, “suggesting that ■■■ may have difficulty resisting impulses and . . . considering consequences before acting.” They also gave ■■■ scores in the potentially clinically elevated to clinically elevated range in the area of “self-monitoring,” indicating that “she may not be aware of her behavior and the impact it has on her social interactions with others.” *Exs. J-11, R-15, P-2.*

10. With respect to the Emotion Regulation Index, which concerns “a child’s ability to regulate emotional responses,” ■■■ and Ms. McIntyre rated ■■■ in the clinically elevated range. ■■■ and Ms. McIntyre also scored ■■■ in the clinically elevated range in the area of “emotional control,” suggesting that ■■■ may struggle to modulate or regulate her emotions. *Exs. J-11, R-15, P-2.*

11. Overall, Ms. Kondeh noted concerns with ■■■s “ability to self regulate [sic] at a basic level, resist impulses, adjust well to changes in the environment, people, plans, or demands, get going on tasks, activities, and problem-solving approaches, sustain working memory, be appropriately cautious in her approach to tasks and check for mistakes, and keep materials and her belongings reasonably well organized.” *Exs. J-11, R-15, P-2.*

12. During the evaluation, ■■■ completed the Conners’ 3 – Self Report, in order to obtain her own assessment of her behavior. ■■■ reported “high average” to “very elevated” scores in most areas. She indicated that “she struggles to sit still, has trouble learning new material and completing difficult tasks, has trouble paying attention to details for long periods of time, loses track of what she is supposed to do, gets distracted by things going on around her and has trouble concentrating.” She also noted that she had poor control of her anger. *Exs. J-11, R-15, P-2.*

13. In sum, with respect to ■■■s behavior, Ms. Kondeh noted “concerns” with ■■■s ability to self-regulate at a basic level, resist impulses, adjust well to changes in the environment, people, plans, or demands, get going on tasks, activities and problem-solving approaches, sustain working memory,

be appropriately cautious in her approach to tasks and check for mistakes and keep materials and her belongings reasonably well organized.” She noted that ■■■ “appear[ed] to be exhibiting characteristics normally associated with children who have an Attention-Deficit Hyperactivity Disorder (ADHD).” She provided a list of recommendations to address ■■■’s visual-spatial difficulties, the academic effects of ADHD, difficulties with mathematics, and reported difficulties with executive functioning. *Exs. J-11, R-15, P-2.*

14. Ms. Kondeh’s recommendations to address difficulties with executive functioning appear specifically oriented to ■■■’s reported deficits in planning, organizing, strategizing, focusing and sustaining attention, and self-regulating behavior. For example, she suggested “[u]se of a calendar to map out and plan long-term goals and task” and “co-operative learning groups or peer tutoring for the child.” Ms. Kondeh prescribed no accommodations to address aggressive behavior. *Exs. J-11, R-15, P-2.*

#### *Eligibility Determination and Individualized Education Programs*

15. ■■■ and AISS met to discuss ■■■’s potential eligibility for special education services on May 12, 2021. ■■■ Kristina Garner, a general education teacher; Dr. Pinder, SST Chair; Chinnetta Buford-Duffie, Special Education Lead Teacher; and Ms. Kondeh were present at this meeting. *Ex. R-1.*

16. At the meeting, Ms. Kondeh reviewed the results of the psychological evaluation. Based on the report, the team determined that ■■■ was eligible for special education services under the categories Specific Learning Disability and Other Health Impaired. *Ex. R-1.*

17. A team comprised of ■■■ Ms. Buford-Duffie, two general education teachers, a special education teacher, and Ms. Kondeh met on May 20, 2021 to develop ■■■’s Individualized Education Program (IEP). *Exs. J-1, R-1, and P-4.*

18. On the initial IEP, ■■■’s primary exceptionality was listed as Specific Learning Disability, with Other Health Impairment as her secondary exceptionality. The IEP indicated ■■■ had a diagnosis of

ADHD – Inattentive Type, for which she took medication. *Exs. J-1, R-1, and P-4.*

19. The initial IEP called for █ to receive supports and accommodations to address academic concerns. It did not provide for interventions to address behavior. *Exs. J-1, R-1, and P-4.*

20. On September 15, 2021, █'s IEP was amended to include a reading comprehension goal.<sup>10</sup> *Exs. R-3, P-6.*

21. █'s IEP team convened on March 2, 2022 to discuss “behavior concerns.” The team obtained █'s consent for evaluation in order to conduct a functional behavior assessment and draft a behavior intervention plan. *Ex. R-4.*

22. █'s IEP was amended to include behavior-related goals. Specifically, the IEP called for █ to “utilize a self-regulation strategy to de-escalate with no more than two verbal/nonverbal cues” and “independently complete an assignment/task, and ask for assistance, if needed” when presented with a “non-preferred task.” Per the amended IEP, █ was to maintain regular attendance and be on time 80% of the time. The amended IEP called for █'s teachers to use a token economy to reinforce desired behaviors. *Exs. R-4, R-5.*

23. The meeting minutes from an IEP meeting on May 16, 2023 indicate that █ expressed concern with █'s “attendance and the accuracy of her tardies and total days missed.” There is no indication of a new diagnosis or mention of a mood disorder. *Ex. J-9, R-9, P-18.*

24. █'s most recent IEP, developed September 28, 2023, includes no mention of a mood disorder. *See Ex. R-11.* According to the meeting minutes, the only concerns expressed by █ and █ pertained to additional time needed to complete essays, timely submission of assignments, attendance, and completion of non-preferred assignments. *Ex. R-11.* █ also requested that █'s special education teacher and case manager be changed. *Id.*

25. In █'s behavior intervention plan, which was included in her September 28, 2023 IEP, her

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<sup>10</sup> It appears this change was made without a meeting of the IEP team by agreement of AISS staff members and █

problematic behavior is described as “Escape/Avoidance – █ gives up quickly and disengages from difficult and challenging tasks.” The plan describes the behavior in more detail as follows: “When █ gives up quickly and disengages from difficult and challenging tasks, she becomes defiant by talking back, yelling, profanity, leaving classroom.” The plan calls for staff members to speak to █ in “a calm, respectful voice, allowing [her] time to respond before repeating the request,” allowing mental breaks, shortening tasks, or allowing her to choose the order of tasks, among other intervention strategies. *Ex. R-11.*

26. █'s IEP also calls for her to be assigned a one-to-one paraprofessional. *Ex. R-11.* This paraprofessional was assigned to address █'s elopement behaviors. Originally, the paraprofessional was in close proximity to █ on a regular basis. However, as time went on, and the school observed improvement in █'s ability to independently transition to her classes, the paraprofessional had less contact with █. █ reportedly agreed to this arrangement whereby she had less frequent contact with the paraprofessional. *Testimony of Buford-Duffie; Testimony of Allen.*

27. Overall, the IEP team met on May 12, 2021, May 20, 2021, March 2, 2022, May 18, 2022, March 1, 2023, May 16, 2023, and September 28, 2023. On all of her IEPs—with the exception of her most recent IEP, which does not include a “Medical Limitations/Concerns” section—█'s diagnosis is listed as “ADHD – Inattentive Type” or “ADHD.” None of her IEPs document a diagnosis of mood dysregulation disorder or ADHD - Impulsive Type and no such diagnoses are mentioned in the minutes of any IEP meeting. *See Exs. P-4, P-7, P-8, P-9, P-11, P-16, P-18, P-21, R-1, R-4, R-5, R-6, R-7, R-8, R-9, R-11.*

#### █'s Behavior

28. Several behavioral incidents are documented in █'s disciplinary history. *See Exs. P-28, R-12.*

29. █ reportedly engaged in physical altercations with other students on January 25, 2022 and August 13, 2022. *Ex. P-28.* According to Dr. Tameka Allen, Dean of Students for █

School's Senior Academy, these were "mutual fights," meaning that both students simultaneously attacked each other. *Testimony of Dr. Allen.*

30. On August 11, 2023, [REDACTED] reportedly followed another student into the stairwell, screaming at her and asking her to come into the bathroom and fight. Dr. Allen intervened during this incident, directing [REDACTED] away from the other student and against a wall. [REDACTED] School implemented a "stay away agreement" as a result of this incident, by which [REDACTED] agreed to avoid contact with the other student involved in the incident. *Ex. R-12; Testimony of Dr. Allen.*

31. On August 30, 2023, [REDACTED] reportedly left campus and walked to Publix during school hours. As a result, she received one day of in-school suspension. *Ex. R-12; Testimony of Dr. Allen.*

32. On September 5, 2023, [REDACTED] allegedly violated the above-mentioned stay away agreement by approaching the student and screaming obscenities at her. *Ex. R-12; Testimony of Dr. Allen.*

33. Following the three disciplinary incidents in 2023, staff members of [REDACTED] School and [REDACTED] conducted a "problem-solving meeting" on September 11, 2023. They discussed the disciplinary incidents, [REDACTED]'s behavior intervention plan, and additional behaviors, such as phone usage in class. Documentation of the meeting includes the following entry: "[REDACTED] was asked about prior interventions [REDACTED] is participating in such as counseling. She stated that she would not like to disclose this information with the team at this time." *Exs. P-19, R-16, J-12; Testimony of Buford-Duffie.* At the hearing, [REDACTED] testified that she declined to provide the information because she had already provided it to [REDACTED] School. *Testimony of [REDACTED]*

34. Dr. Allen testified that, the above incidents notwithstanding, she witnessed an overall improvement in [REDACTED]'s behavior. *Testimony of Allen.*

35. Rob Richardson, a grade-level school counselor for 10<sup>th</sup> and 12<sup>th</sup> grade students at [REDACTED] School, testified that, despite the above-described behavioral infractions, [REDACTED]'s behavior had improved since her freshman and sophomore years. Mr. Richardson, who provided to counseling to



█ on an individual basis, testified that █ developed the ability to self-regulate and deescalate conflicts over time, such that his counseling session with █ became less frequent. *Testimony of Richardson.*

36. Chinnetta Buford-Duffie, Special Education Lead Teacher at █ School, also testified that █'s behavior had improved since she started at █ School. She testified that █'s behavior intervention plan was primarily designed to address her elopement, not physical aggression. She testified that she observed no impulsivity, and opined that █'s history of physical altercations was typical of teenagers. *Testimony of Buford-Duffie.*

37. Amani Abdur-Rahman was █'s special education teacher during the 2022-2023 school year. Regarding █'s behavior, she testified that █ “would go from zero to ten” quickly, whereupon it would be difficult to calm her back down. She testified that she observed aggressive behavior, such as “lunging.” She further testified that █ would throw things and “curse [her] out.” According to Ms. Abdur-Rahman, this behavior occurred frequently, sometimes three times per week. She testified that she was concerned for the safety of █ other students, and herself at the time. *Testimony of Abdur-Rahman.*

38. In an email sent on September 13, 2022, █ wrote of an incident involving an alleged threat against █ by other students. *Ex. P-12.* She asked to discuss the matter, along with “updated reports [she] gave to Ms. Buford-Duffie from Chris 180 related to [█]s] diagnosis. . . .” *Id.* Ms. Buford-Duffie, Mr. Richardson, and Amani Abdur-Rahman, █'s teacher at the time, were listed as recipients of the email. *Id.* Only Ms. Abdur-Rahman responded. *Id.*

39. In an email sent on January 27, 2023, █ wrote that █'s attitude at home was “not good.” She reported that █ was “angry all the time” and could become verbally abusive. She wrote that █ received counseling services at Chris 180 and took medications for ADHD and “her mood.” Mr. Richardson and Ms. Buford-Duffie are listed among the recipients of this email. *Ex. P-14.* From the

record, it does not appear that either recipient replied or acknowledged receipt. *Id.*

40. At the hearing, neither Ms. Buford-Duffie nor Mr. Richardson recalled receiving documentation generated by Chris 180. *Testimony of Buford-Duffie; Testimony of Richardson.*

*October 6, 2023 Incident*

41. On October 6, 2023, [REDACTED] entered her second period classroom and, apparently, began verbally engaging with another student, with whom she had had a “falling out.” Carlisia Price, an integrated special education teacher at [REDACTED] School, was in the classroom at the time and observed the interaction. Concerned that it could escalate into a more heated confrontation, Ms. Price approached [REDACTED]’s desk and began talking to her. At one point, [REDACTED] stood up and “started swinging,” hitting Ms. Price in the hand and on her right eye, causing injury. *Testimony of Price; Exs. R-12, R-13, and R-14.*

42. Ms. Price had been [REDACTED]’s teacher since July 2023. Prior to the incident, Ms. Price had never witnessed [REDACTED] exhibit physically aggressive behavior; in Ms. Price’s experience, [REDACTED]’s misbehavior had been limited to “off-task behavior.” She had no reason to expect a physical attack from [REDACTED]. *Testimony of Price.*

43. [REDACTED]’s paraprofessional was not present in the classroom at the time of the incident. *Testimony of Price.*

*Manifestation Determination Review*

44. On October 18, 2023, staff members of [REDACTED] School, [REDACTED] and [REDACTED] met via video conference to conduct a manifestation determination review for the purpose of determining whether [REDACTED]’s conduct on October 6, 2023 was (1) caused by, or had a direct and substantial relationship to, [REDACTED]’s disability or (2) a direct result of the school’s failure to implement the IEP. Dr. Allen, Ms. Buford-Duffie, Mr. Richardson, [REDACTED] and [REDACTED] attended this meeting. Other attendees included Almena Mayes, general education teacher; Mark Mayfield, special education teacher; Dr. Nicklaus Khan, Special Education Coordinator, AISS; Dr. Juliet Karanja-Pinder, Dean of Student Support

Services; and Terrence Nagurney, school psychologist. *Exs. R-13, R-14.*

45. The manifestation determination review team reviewed [REDACTED]'s psychological evaluation, behavior record, current IEP, and behavior intervention plan, as well as a description of the October 6 2023 incident. *Exs. R-13, R-14.* It also sought the input of [REDACTED] and [REDACTED] Staff members of [REDACTED] school also invited the input of [REDACTED] and [REDACTED] *Ex. R-14.*

46. During the review meeting, Mr. Nagurney reviewed the psychological evaluation report for the other team members. After explaining the evaluation report, he opined that there was not a connection between the documented diagnoses—specific learning disability and ADHD – Inattentive Type—and the incident. *Ex. R-14.*

47. The majority of the review team concluded that (1) the conduct was not caused by or directly and substantially related to [REDACTED]'s disability and (2) the conduct in question was not caused by school's failure to implement [REDACTED]'s IEP. [REDACTED] disagreed with this determination. *Exs. R-13, R-14.*

48. [REDACTED] indicated that [REDACTED] had a diagnosis of a mood dysregulation disorder, that she was receiving psychiatric services from Chris 180, and that she had recently been prescribed a medication to address impulsivity, though she had not yet started taking it. She indicated that she could obtain the diagnostic information from [REDACTED]'s psychiatrist. She asked that the meeting be terminated and reconvened at a later date so that documentation regarding the mood dysregulation disorder diagnosis could be considered. *Ex. R-14.*

#### *Testimony of Terrence Nagurney*

49. Terrence Nagurney is a school psychologist with the AISS. He has been employed as a school psychologist for fifteen years. He has an undergraduate degree in psychology, and obtained a Master of Education degree in school psychology from Georgia State University. He also earned an Educational Specialist degree in school psychology from GSU. He has conducted hundreds of evaluations and attended hundreds of special education eligibility meetings. He also regularly attends

manifestation determination reviews. At the hearing, he was qualified as an expert in assessments and evaluations of students with disabilities. *Testimony of Nagurney.*

50. Mr. Nagurney testified that there are three types of ADHD: (1) Inattentive, (2) Hyperactive/Impulsive, and (3) Combined. Inattentive type, he explained, is characterized by distractibility and difficulty staying on task. Individuals with ADHD – Hyperactive/Impulsive type, by comparison, may act without thinking, behave rashly, and exhibit fidgeting and restlessness. According to Mr. Nagurney, ADHD – Inattentive type does not cause one to get into physical altercations. *Testimony of Nagurney.*

51. The documentation available to the manifestation determination review team, including the psychological evaluation, indicated that [REDACTED] had ADHD – Inattentive type. *Testimony of Nagurney.*

52. In Mr. Nagurney’s experience, a student’s eligibility category will not be revisited during a manifestation determination review. He further indicated that extensive documentation is required in order to pursue another category of eligibility, and that a new psychological evaluation would probably be required. *Testimony of Nagurney.*

53. Mr. Nagurney opined that the manifestation determination review team’s decision was correct based on the information available at the time. *Testimony of Nagurney.*

#### *Documentation of Other Diagnoses*

54. At the hearing, Petitioner introduced records from Chris 180, [REDACTED]’s counseling provider. According to one record, dated September 6, 2022, [REDACTED] has a diagnosis of disruptive mood dysregulation disorder. The document indicates [REDACTED] was diagnosed by Shakirra Jones, who did not appear or provide testimony at the hearing. *Ex. P-5.*

55. Samantha Nouri is a licensed social worker and mental health therapist at Chris 180.<sup>11</sup> She has provided [REDACTED] with therapy since August 2022, and meets with her on a biweekly to weekly basis. Ms.

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<sup>11</sup> [REDACTED] waived the privilege protecting communications between therapist and client for purposes of the hearing.

Nouri was not involved in the decision to diagnose [REDACTED] with disruptive mood dysregulation disorder.  
*Testimony of Nouri.*

56. At the request of [REDACTED] Ms. Nouri prepared a statement for the manifestation determination review team. This statement, which Ms. Nouri prepared with the assistance of her supervisor, states that [REDACTED] has a “trauma disorder,” and that her conduct on October 6, 2023 was a manifestation of this trauma disorder. This statement is dated November 6, 2023; it was generated after the manifestation determination review meeting. *Ex. P-34; Testimony of Nouri.*

57. Ms. Nouri testified that disruptive mood dysregulation disorder is characterized by irritability, changes in mood, outbursts, and anger. At Chris 180, [REDACTED]’s treatment goals included managing anger and reducing incidents of physical altercations. *Testimony of Nouri.*

58. Ms. Nouri was not tendered or qualified as an expert witness at the hearing. *Testimony of Nouri.*

59. Ms. Abdur-Rahman testified that she received [REDACTED]’s email with the documentation of the mood dysregulation disorder diagnosis. However, her testimony was vague and equivocal; she recalled “read[ing] about” the diagnosis, possibly in [REDACTED]’s psychological evaluation, and indicated that she “probably” learned of it from a report submitted by [REDACTED]. She also claimed to have recommended a functional behavior assessment for [REDACTED] though such a recommendation is not documented in the meeting minutes. *Testimony of Abdur-Rahman.*

60. With the exception of Ms. Abdur-Rahman, no [REDACTED] School staff member recalled [REDACTED] or [REDACTED] bringing a diagnosis of a mood disorder to their attention prior to the manifestation determination review, or requesting a change in eligibility to reflect a category of emotional and behavioral disorder. *Testimony of Abdur-Rahman; Testimony of Allen; Testimony of Buford-Duffie; Testimony of Richardson.*

61. [REDACTED] testified that [REDACTED] had a diagnosis of a mood disorder, which she repeatedly brought to the AISS’s attention. According to [REDACTED] she would typically bring these records to the school and

deliver them to a staff member, such as Ms. Buford-Duffie, in person. *Testimony of* [REDACTED]

62. On January 31, 2023, [REDACTED] signed a “School Authorization for Release of Information” authorizing Chris 180 to provide [REDACTED]’s medical records to [REDACTED] School. *Ex. P-15.* [REDACTED] testified that she provided this document to Mr. Richardson and Ms. Buford-Duffie in person. *Testimony of* [REDACTED]

63. Regarding [REDACTED]’s eligibility category, [REDACTED] testified that she had mentioned changing the category to emotional and behavioral disorder, but that school staff members indicated the school would be unable to accommodate a child eligible for special education services under the emotional and behavioral disorder category. *Testimony of* [REDACTED] Ms. Buford-Duffie disputed this in her testimony, averring that [REDACTED] School could, and did, service students with emotional and behavioral disorders. *Testimony of Buford-Duffie.*

64. [REDACTED] asserted that she requested [REDACTED] to be reevaluated “many times.” *Testimony of* [REDACTED] Her requests are not documented in meeting minutes or elsewhere in the record. *See Exs. P-4, P-7, P-8, P-9, P-11, P-16, P-18, P-21, R-1, R-4, R-5, R-6, R-7, R-8, R-9, R-11.* She opined that it was “obvious” that her daughter had ADHD – Impulsive type. *Testimony of* [REDACTED]

65. [REDACTED] testified that she wanted the manifestation determination review decision to be overturned because she needed her daughter to go to her zone school and continue dual enrollment. *Testimony of*

[REDACTED]

### 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 County Sch. Bd.*, 483 F.3d 1151 (11th Cir. 2007) (quoting 20 U.S.C. § 1400(d)(1)(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); 34 C.F.R. § 300.530(e)(1).<sup>12</sup> A manifestation determination review 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).

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

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<sup>12</sup> “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. 15-4604, 2016 U.S. Dist. LEXIS 4626 at \*14 (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 (5th Cir. 2004); *see also Danny K. v. Dep’t of Ed.*, No. 11-00025 ACK-KSC, 2011 U.S. Dist. LEXIS at \*39-40 (D. Hi. Sept. 27, 2011) (concluding that the role of the manifestation determination team is not to determine the facts of what actually happened; rather, it was “to determine whether the actions leading to [the] [s]tudent’s potential suspension – as determined by the [educational agency’s] investigation – were a manifestation of an eligible disability or of the [educational agency’s] failure to implement the [ ] IEP.”)

original placement unless the parents and the school district agree otherwise. *See* 34 C.F.R. § 300.530(e), (f). 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. Additionally, if the removal constitutes a change of placement, the regulations provide that the child’s IEP Team determines both the interim alternative educational setting for services and the appropriate educational services “to enable the child to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in the child’s IEP.” 34 C.F.R. §§ 300.530(d)(1)(i). If the administrative law judge finds that the child’s misconduct was a manifestation of his or her disability, the administrative law judge can return the child to placement from which the child was removed. 34 C.F.R. § 300.532(b)(2)(i).

6. In the present case, the Court concurs with the determination that ██████’s conduct during the October 6, 2023 incident was not a manifestation of her disability. The overwhelming majority of the information in ██████’s file identifies her disability as ADHD – Inattentive type. Mr. Nagurney testified that this diagnosis does not cause one to engage in physical violence, such as what transpired on October 6, 2023. From 2020 to the date of the incident, ██████’s need for behavior intervention stemmed primarily from elopement and off-task behavior. Although there are indications of anger and aggression in the psychological evaluation and elsewhere in the record, the testimony and documentation concerning ██████’s behavior indicates that this primarily manifested as verbal defiance, resistance to non-preferred tasks, and disengagement. Her behavior intervention plan was designed to address this conduct, not a propensity toward physical violence. Though some fights with her peers are noted in her disciplinary history, there is no indication of impulsive violence caused by her diagnoses.



7. The Court is not convinced that the AISS was in possession of records documenting [REDACTED]'s diagnosis of a mood disorder, such as a trauma disorder or disruptive mood dysregulation disorder. Petitioner presented insufficient evidence that the AISS actually received this information. Other than Ms. Abdur-Rahman, whose testimony the Court does not find to be credible or persuasive, no AISS staff member recalled receiving such information. The emails sent by [REDACTED] are insufficient to establish that the AISS received documentation of [REDACTED]'s diagnosis. Nor does the authorization for release of records from Chris 180, standing alone, establish that the AISS actually received the documentation. [REDACTED]'s educational records, including the minutes from IEP meetings, do not mention information pertaining to new diagnoses or suggestions of emotional and behavioral disorder.

8. Similarly, [REDACTED]'s claims that she sought eligibility for [REDACTED] under the emotional and behavioral disorder category are not corroborated with documentary evidence. [REDACTED]'s educational records include no mention of a request for a new evaluation or change in eligibility category, though [REDACTED]'s input and objections are frequently noted.

9. However, even assuming that the AISS possessed information of the new diagnosis from Chris 180, and considering the totality of evidence presented at the hearing, the Court finds insufficient evidence of a causal relationship between such a diagnosis and the conduct at issue. Petitioner presented no evidence of a direct and substantial relationship between the conduct and mood dysregulation disorder, or a similar diagnosis. Indeed, Petitioner presented no expert testimony, let alone testimony to establish the manifestations of [REDACTED]'s diagnoses. In the absence of such information, the Court cannot conclude that [REDACTED]'s conduct was a product of disruptive mood dysregulation disorder, or any other diagnosis.


10. Finally, the Court concludes that the conduct was not the direct result of the school district's failure to implement [REDACTED]'s IEP. Petitioner argues that [REDACTED] School did not implement [REDACTED]'s accommodations to the letter. Specifically, it argues, [REDACTED] School did not follow through

with a token economy, or ensure that a one-to-one paraprofessional accompanied [REDACTED]. Even accepting this as true, the Court does not conclude that [REDACTED]'s conduct was a “direct result” of these lapses. These accommodations were put into place to address [REDACTED]'s off-task behavior and elopement. They were not designed to ensure [REDACTED] did not engage in physical altercations. Thus, the Court is not persuaded that diligent implementation of these services would have had any effect on [REDACTED]'s conduct on October 6, 2023.

#### IV. Decision

Based on the foregoing findings of fact and conclusions of law, the Court agrees with the determination that [REDACTED]'s conduct was not a manifestation of her disability or a direct result of the school's failure to implement her IEP. Therefore, Respondent's action is **AFFIRMED**.

**SO ORDERED**, this 18<sup>th</sup> day of January, 2024.

  
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Steven W. Teate  
Administrative Law Judge

