

*This is a redacted version of the original decision. Select details have been removed from the decision to preserve anonymity of the student. The redactions do not affect the substance of the document.*

## **Pennsylvania Special Education Due Process Hearing Officer**

### **Final Decision and Order**

#### **Closed Hearing**

**ODR No. 27887-22-23**

**Child's Name:**

O.R.

**Date of Birth:**

[redacted]

**Parent:**

[redacted]

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**Hearing Officer:**

Joy Waters Fleming, Esq.

**Date of Decision:**

May 8, 2023

## **INFORMATION AND PROCEDURAL HISTORY**

The Student (Student)<sup>1</sup> is a [redacted] student enrolled in the [redacted] grade in a District (Academy). The Student is eligible for special education programming as a child with a specific learning disability (SLD) and Other Health Impairment (OHI) and is entitled to procedural protections under the Individuals with Disabilities Education Act (IDEA), Section 504 of the Rehabilitation Act (Section 504), and the regulations implementing those statutes.<sup>2</sup> In February 2023, the Student brought [a weapon] to school and discharged it. A manifestation determination review concluded that the Student's conduct was not caused by, nor did it have a direct and substantial relationship to a disability or due to a failure to implement the IEP.

The Parent filed this complaint and requested an expedited due process hearing with allegations that the District failed to conduct an appropriate manifestation determination. In so doing, the Parent contended that the District failed to ensure that the Student was not discriminatorily excluded from school due to a manifestation of disability and a FAPE denial occurred in violation of the IDEA.

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<sup>1</sup> In the interest of confidentiality and privacy, Student's name, gender, and other potentially identifiable information are not used in the body of this decision. All personally identifiable information, including the details on the cover page, will be redacted prior to the decision's posting on the website of the Office for Dispute Resolution in compliance with its obligation to make special education hearing officer decisions available to the public pursuant to 20 U.S.C. § 1415(h)(4)(A) and 34 C.F.R. § 300.513(d)(2).

<sup>2</sup> 20 U.S.C. §§ 1400-1482. The federal regulations implementing the IDEA are codified in 34 C.F.R. §§ 300.1 – 300. 818. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 14.101 – 14.163 (Chapter 14). Section 504 is found at 29 U.S.C. § 794. The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11.

As relief, the Parent sought an Order correcting the Student's records to indicate that the February 8 incident was substantially and directly related to or caused by the Student's disabilities and directly related to the failure to implement the IEP, an Order maintaining the Student's placement at the Academy, and attorneys' fees.<sup>3</sup> In response, the District maintained that its manifestation determination was appropriate, an alternative education disruptive youth (AEDY) placement under the IDEA was not sought, and permission to reevaluate the Student was issued to the Parent.

For the following reasons, the Parent has established by a preponderance of the evidence that the manifestation determination held by the District regarding the Student was not in compliance with the IDEA.

## **ISSUE**

Was the determination that the Student's involvement in a February 8, 2023, incident was not a manifestation of a disability appropriate?

## **FINDINGS OF FACTS**

The findings of fact, incorporate the joint stipulations developed by the parties. Reference to the joint stipulations is followed by (JS).<sup>4</sup>

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<sup>3</sup> In the Complaint, the Parent requested relief and sought an Order maintaining the Student's placement at the Academy, an independent educational evaluation (IEE), an Order for an IEP and NOREP for Student's continued placement at the Academy, and attorneys' fees. The relief request was amended as reflected above. Attorney's fees cannot be granted through this administrative due process hearing.

<sup>4</sup> In addition to the Joint Stipulations of Fact, (JS) the parties also submitted joint exhibits. J-1 through J-33 were admitted into the hearing record. Parent exhibits, P-1 and P-7 were also admitted. The District's objection to P-3 was sustained. The objection to P-7 was overruled. (N.T. 533-534)

## **FINDINGS OF FACTS**

1. The [Student] is a [redacted] student at [REDACTED] who receives special education and related services. (JS-)
2. [REDACTED] is [STUDENT'S] [PARENT] and IDEA parent. (JS-)
3. From [redacted], [STUDENT] was a student in [Redacted] district. (JS)
4. [Student] was first found eligible for special education and related services on October 20, 2017, when [Student] was a [redacted] grade student in [Redacted] district under the disability categories of Specific Learning Disability and Other Health Impairment.
5. From [redacted], [STUDENT] was a student at [Redacted] Charter School. (JS)
6. [STUDENT] completed [redacted] grade at [REDACTED] "Charter School". (JS)

### **2020-2021-[redacted] Grade-Charter School**

7. During the 2020-2021 school year, the Student attended the Charter School. (J-2)
8. [Student] was reevaluated on 9/20/2020, and [ ] continued to be eligible under the disability categories of Specific Learning Disability and Other Health Impairment. (JS)
9. On September 29, 2020, the Student's Charter School issued its reevaluation report (RR). (J-2)

10. The 2020 reevaluation was the last time that [Student] was reevaluated, although a reevaluation is pending with a signed Permission to Reevaluate dated April 21, 2023. (JS)
11. The 2020 Re-Evaluation did not include current classroom observations due to remote learning because of the COVID-19 pandemic. (JS)
12. The 2020 Re-Evaluation did not include a Functional Behavior Assessment. (JS)
13. The 2020 RR summarized information from an RR conducted in 2017 and included new assessments of achievement and social-emotional functioning. (J-2)
14. Parent input in the RR included concerns about information retention, math skills, getting help, being very forgetful, excuses and rebuttals, and insecurity causing social problems. The Parent further indicated the Student was socially very aggressive, had terrible short-term memory, defiant and argumentative, retaining information is a serious struggle, overly forgetful, scatter brained, which affected academic and social life. (J-2, p. 2)
15. In 2020, the Parent reported concerns in the home with the Student's impulsivity, lying, distractibility, disobedience, restlessness/fidgets, forgetfulness with everything, and excuses for everything. (J-2)
16. On the Woodcock Reading Mastery Assessment, the Student demonstrated grade-appropriate skills for basic reading, slightly advanced skills for reading comprehension and strength in oral reading. On the KeyMath diagnostic assessment, the Student demonstrated limited skill in all areas of math measured. On the WIAT-III, the Student's current reading skills, both basic skills (word recognition and decoding) and comprehension, were grade

appropriate. In math, the Student's performance indicated a learning disability and eligibility for specially designed instruction. (J-2)

17. On the BASC-3, the Parent rated the Student in the clinically significant range for hyperactivity, aggression, conduct problems, depression, atypicality, and functional communication. On the Conners Rating Scale, the Parent rated the Student in the markedly atypical range for all areas measured; inattention, Hyperactivity/impulsivity, learning problems, executive functioning, aggression/defiance, and peer relations. (J-2)
18. The RR concluded that the Student continued to meet the criteria as a child with a primary disability of a specific learning disability and secondary disability of other health impairment (OHI) and receive specially designed instruction. (J-2, p. 21)
19. The 2020 RR recommendations to the IEP team for consideration included learning support to strengthen math problem-solving and calculation skills. The RR recommended hands-on learning, including repetition of material and directions to support attention needs. Counseling to practice social skills or participation in a social skills group was also recommended. (J-2, p.21)

### **2021-2022 School Year-[redacted] Grade-Charter School**

20. [STUDENT] completed [redacted] grade at [redacted] Charter School. (JS)
21. The October 2021 IEP did not indicate that the Student exhibited behaviors that impeded learning. The IEP slated for implementation provided math goals with related SDI and thirty minutes of monthly counseling. (J-3, p. 21-24)

### **2022-2023 School Year-[redacted] Grade-The Academy**

22. [STUDENT] began [redacted] grade as a student [REDACTED] s/he remains currently. (JS)
23. The Student is diagnosed with Attention-Deficit/Hyperactivity Disorder (ADHD), Oppositional Defiance Disorder (ODD), and Depression. The Student is prescribed medication and receives medication management and outpatient therapy. (J-18)
24. No reevaluation was completed in Fall 2022. (JS)
25. [REDACTED] "Academy" is a criteria based admission school within the [REDACTED] District, which requires students to audition, demonstrate strong grades, exhibit exemplary attendance, and achieve certain PSSA scores. (JS)
26. During the 2022-2023 school year, the Student was enrolled in the District Academy as a child eligible for special education and related services with primary disability of SLD and a secondary category of OHI (ADHD). (J-31)
27. A sign at the school entrance the students use has a photograph of prohibited items. A can of pepper spray is depicted on the sign. The vestibule of the entrance has a box where prohibited items can be discarded without penalty to the student. The entrance is staffed with a scanner and two school police officers. (J-31; N.T. 110, 239-240, 245)
28. On August 16, 2022, in anticipation of the Student's enrollment at the District Academy, the Parent emailed the school and expressed concern about "a larger deficit in ...overall intellectual abilities and comprehension skills". The Parent requested that Student receive more than just math help in the IEP and "wanted to be sure that I had the opportunity to request a further evaluation from the school or any

other agency that I'd need to do it through." The District responded to the Parent seeking clarification whether a "new, full reevaluation" was sought. (J-4, p.2-3; N.T. 273-275, 336-338)

29. On August 28, 2022, the Parent emailed the District and provided the previous year's IEP. In the email, the Parent looked forward to a new IEP, expressed a psychiatric referral would take time and indicated "at some point," I would like [Student] to get reevaluated because of concerns of deficits and the inability to keep up with what is going on around and comprehend the obvious. (J-4 ,p. 3; N.T. 340-341)
30. On September 1, 2022, the District emailed the Parent, acknowledged receipt of the Student's IEP and indicated a case manager would be in touch. (J-4; N.T. 47, 53)
31. On September 8, 2022, the District issued a NOREP to provide comparable services to the Student. (J-5; N.T. 344-345)
32. On September 22, 2022, the IEP team met to develop programming. The IEP contained parent input of concerns for reading and math, the inability to stay on task, impulsiveness, misunderstanding written directions, decision-making, accountability for wrongdoing, and peer social relationships. The Parent advised the team that Student received medication for ADHD. (J-8, p. 8)
33. The September IEP offered goals related to math and post-secondary transition. SDI included preferential seating, modified assignments, prompting, frequent checks, and extended time. The Parent requested that counseling services not be included in the IEP. (J-8; N.T. 53-54, 57, 84, 363, 381)
34. On September 23, 2022, the Parent, through a NOREP, approved the Student's placement of itinerant learning support. (J-9)



35. In September 2022, during the school day, the school held a town hall meeting to discuss behavioral expectations. During the town hall, weapons that are prohibited in the building, including pepper spray, were discussed. The Student was present in school the day the town hall meeting was held. (N.T. 214-217, 237, 501, 527)
36. In September 2022, the Student's learning support teacher met with the Parent to discuss needs and create a new IEP. The learning support teacher also served as the Student's cheerleading coach. (N.T. 31, 36)
37. The learning support teacher observed Student to be scattered and disorganized. (N.T. 36,42)
38. The January 2023 IEP progress report indicated the Student made steady progress toward goals. (J-11; N.T. 92)
39. In January 2023, the Student requested band aids from the Dean of Students. The Dean referred the Student to the school counselor. Although the Student maintained the scratches and healing scabs were from a cat, the counselor, suspected self-harm, photographed the cuts and called the Parent. The counselor provided mental health information to the Parent. The Parent indicated the treating therapist would be contacted. The counselor notified the Principal and the Student's learning support teacher. (N.T. 374-375, 384)
40. [Student] was in possession of [a weapon] at approximately 8:50 AM on February 8, 2023, during [ ] Advisory class at the Academy. (JS)
41. The Student brought the [weapon] from home and [discharged] it in a classroom. The nurse treated [redacted]. The teacher reported [redacted]. (J-13, J-14, p. 1; N.T. 324-326)
42. The Student provided a written statement, reviewed by a family member before it was submitted to the District that admitted to

possessing the [weapon] and bringing it to school for protection while traveling to and from school. The Student later indicated the [incident] was an accident and thought it was perfume. (J-14, p.20; N.T. 509-510)

43. [Student]'s grandmother, [REDACTED], picked [STUDENT] up from school on February 8, 2023.
44. The February 8, 2023, behavior detail report prepared by the Dean of Students indicated two behavioral incidents. The first incident referenced possession of a weapon, with no injury. The second incident referenced reckless endangerment with no injury. The resolution indicated referral for disciplinary transfer and a three-day out-of-school suspension. (J-13)
45. An Invitation was issued on February 10, 2023, for a manifestation determination to be held on February 14, 2023 at 8:00 AM. (JS)
46. Prior to the February 8, 2023, incident, [Student] had never been suspended, referred for a disciplinary transfer, or expelled from any school. (JS)
47. While at the Academy [redacted], [Student] has never been referred for any Level 1, 2, 3, 4, or 5 intervention, except for the February 8, 2023, incident. (JS)
48. On February 14, 2023, the District conducted a manifestation determination review (MDR)/reinstatement meeting. (J-18)
49. Before participating in the MDR, the case manager reviewed the Student's 2020 RR, behavioral history and current IEP to determine if behavior goals were present that related to the incident. (N.T. 66-67, 70-74, 102, 181-183)

50. In preparation for the MDR, the special education teacher and school psychologist reviewed Student's Charter School RR, previous and current IEP and discussed the identified disabilities. (N.T 63, 290)
51. The draft manifestation determination form was completed by the special education teacher before the manifestation determination meeting, as the District's document system does not allow the creation of a partial document. (J-18; N.T. 95-96)
52. The manifestation determination form indicated the Student had diagnoses of ADHD, ODD and depression and demonstrated significant difficulty with inattention, hyperactivity/impulsivity, executive function, aggression/defiance, and peer relations. (J-18, p.4)
53. The document handed out during the meeting was typed and printed out with the answer "No" filled in for each of the questions "Was the conduct caused by, or did it have a direct and substantial relationship to the child's disability?" and "Was the conduct a direct result of a failure to implement the IEP?" (JS; N.T. 95-96, 303)
54. The document that was handed out during the meeting was typed and printed out with the answer "Agree" checked for each member of the IEP team. (JS)
55. The people who attended the meeting on February 14, 2023, at 8:00 AM were [redacted], Parent; [Student] [redacted], Special Education Case Manager; [redacted], Regular Education Teacher; [redacted], School Counselor; [redacted], Dean; [redacted], School Psychologist; [redacted], Principal; and [redacted], Special Education Teacher. (JS)
56. During the MDR, the special education teacher, who led the meeting, briefly described the Student's disabilities at the beginning of the meeting, including concerns related to executive functioning and

- impulsivity. Although all meeting participants were invited to provide input, the special education teacher was the only staff to talk about student's disabilities during the meeting. The Parent and Student both provided input (N.T. 67-68, 70-71, 74, 102, 223-224, 249-250)
57. The special education teacher knew of the Student's diagnoses of ODD, depression and ADHD but did not know medication was prescribed. (71, 74)
  58. The school psychologist participated in the MDR virtually, never met the Student, did not provide information during the meeting, and did not know that Student took medication for depression and ADHD. (N.T. 290-291)
  59. The school counselor that attended the MDR knew the Student but did not contribute during the meeting and participated to support staff and the Student. (N.T. 377, 392)
  60. The case manager that participated in the MDR never met the Student, did not speak with anyone to become familiar with the disabilities at issue, did know of diagnoses for ODD, depression and ADHD but did not know medication was prescribed. (N.T. 182-183)
  61. The MDR form indicated the Student brought [a weapon] to school and [discharged] it inside the classroom by the doorway. The Student indicated [the weapon] was carried because public transportation was used to and from school. The Student reported thinking the [weapon] was perfume. (J-18, p.5)
  62. The manifestation determination form prepared by the special education teacher and school psychologist, with the pre-checked boxes, presented at the meeting as a draft document was finalized

after participants were given the opportunity for questions and comments. (J-18; N.T. 93, 97, 248, 303-304)

63. The MDR form originally indicated the Parent and Dean of students disagreed with the conclusions reached through the MDR and the form was changed to reflect that position. The Dean indicated the registered disagreement was inaccurate. (J-18, J-20 p.14; N.T. 103-104 )
64. [The Parent] did not sign any document during or immediately after the meeting on February 14, 2023. (JS)
65. On February 14, 2023, the District referred the Student to a student assistance program (SAP) for a clinical interview to determine possible behavioral, mental health, and/or substance use issues. (J-17)
66. A new document was printed on February 15, 2023, with the "Disagree" box checked for [Parent] and [Dean of Student]; all meeting participants signed this document. (JS)
67. [Dean of Students] has now clarified that she did not intend to disagree with the decision. (JS)
68. The final MDR form of February 15, 2023, indicated all team members, with the exception of the Parent and Student, agreed that the Student's conduct was not caused by or had a direct and substantial relationship to the child's disability or was caused by a direct result of a failure to implement the IEP. (J-18, p. 14)
69. [The Parent] requested mediation on February 20, 2023, due to her disagreement with the manifestation determination decision. (JS)
70. In her mediation request on February 20, 2023, [the Parent] attached a one-page statement explaining why she believed the February 8, 2023, incident was a manifestation of [Student]'s disabilities. (JS)

71. A NOREP was issued on February 23, 2023, proposing a change of placement for disciplinary reasons. (JS)
72. IEP Team meetings occurred on the following dates during the current school year: 09/22/2022 – IEP team meeting [,] 02/14/2023. (JS)
73. [The Parent] filed an Expedited Due Process complaint on April 6, 2023. A Permission to Re-Evaluate was issued on April 13, 2023. (JS)
74. The District filed an Answer on April 14, 2023. (JS)

## **DISCUSSION and CONCLUSION OF LAW**

### **General Legal Principles**

While the IDEA does not address the burden of proof in due process hearings, the U.S. Supreme Court held in *Schaffer v. Weast*, (2005) that the party seeking relief bears the burden of persuasion. Thus, if the parent disputes the results of a manifestation determination review (MDR), the parent would bear the burden of showing that the child's misconduct was a manifestation of the disability. 71 Fed. Reg. 46,723 through 46,724 (2006). However, that may not be the case if a state statute places the burden on the district. See, e.g., *R.S. v. Somerville Bd. of Educ.*, (D.N.J. 2011); and *M.P.G. v. New York City Dep't of Educ.*, (S.D.N.Y. 2010).

Special education hearing officers, in the role of fact-finders, are also charged with the responsibility of making credibility determinations of the witnesses who testify. See *J. P. v. County School Board*, 516 F.3d 254, 261 (4th Cir. Va. 2008); see also *T.E. v. Cumberland Valley School District*, 2014 U.S. Dist. LEXIS 1471 \*11-12 (M.D. Pa. 2014); *A.S. v. Office for Dispute*

Resolution (Quakertown Community School District), 88 A.3d 256, 266 (Pa. Commw. 2014). This hearing officer found each of the witnesses who testified to be generally credible as to the facts. The District took exception to the Hearing Officer's refusal for it to recall two witnesses, both dedicated professionals who I believe testified credibly and with candor. The request was made to impeach the credibility of the Parent who testified that after the MDR, both witnesses communicated disagreement with the manifestation determination and were "doing what they were told." That allegation was refuted by a third MDR participant that no directive regarding the manifestation determination findings was dictated to District staff.

In the relatively few instances that there were contradictions, those are attributed to lapses in memory or recall, or to differing perspectives, rather than an intention to mislead; and in any event, credibility was not determinative on any issue. The weight accorded the evidence, however, was not equally placed.

### **IDEA DISCIPLINARY PRINCIPLES**

The IDEA provides a number of protections when a local educational agency (LEA) seeks to impose discipline on a student with a disability. Specifically, when an eligible student is facing a change in placement for disciplinary reasons, a meeting must convene to determine whether or not the conduct in question was a manifestation of the student's disability:

#### (E) Manifestation determination

(i) In general. Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP team (as determined by the parent and the local educational agency) shall 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—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP. 20 U.S.C. § 1415(k)(1)(E)(i) (*italics added*); see also 34 C.F.R. § 300.530(e).

If it is determined that the conduct in question had either the causal relationship with the disability or was a result of the failure to implement the child's IEP, the conduct "shall be determined to be a manifestation of the child's disability." 20 U.S.C. § 1415(k)(1)(E)(ii); see also 34 C.F.R. § 300.530(e)(2).

If the conduct is determined to be a manifestation of the child's disability, the LEA must take certain other steps which generally include returning the child to the placement from which he or she was removed. 20 U.S.C. § 1415(k)(1)(F); see also 34 C.F.R. § 300.530(f). By contrast, if the team determines that the behavior which resulted in discipline was not a manifestation of the student's disability, the LEA may apply the same disciplinary procedures applicable to all children without disabilities, except that children with disabilities must continue to receive educational services necessary to provide a free, appropriate public education (FAPE). 20 U.S.C. §§ 1415(k)(1)(C) and (D); 34 C.F.R. §§ 300.530(c) and (d).

Section 504 of the Rehabilitation Act also requires manifestation determinations prior to the imposition of any disciplinary change of placement in order to ensure that schools carefully consider a child's disability and its impact prior to the administration of disciplinary measures. The purpose of this review is to ensure that the disciplinary change of



placement is not discriminatory against the student based on their disability. See 34 CFR § 104.1.

### **Parent's Claims**

The Parent contends that the manifestation determination review (MDR) that occurred in response to the February [incident] was inappropriate on multiple grounds. In support of this argument, the Parent asserted numerous reasons, accompanied by a detailed list of proposed factual findings as the basis to invalidate the team's decision. However, the lens through which my analysis must occur is limited to the consideration the team gave two questions. First, whether the [incident] was substantially and directly related to or caused by the Student's disabilities; second, whether the incident was directly related to a failure to implement the Student's IEP. The uncontested facts have established that this eligible [redacted]-grade Student brought [a weapon], a contraband item, to school, dispensed it in a classroom, and received a three-day out-of-school suspension. Although the interpretation of events preceding and succeeding that event are contested, the resolution of this dispute must focus on the two fundamental questions presented to the team tasked with conducting the manifestation review (MDR). Based on the hearing record, for the following reasons, the team improperly addressed both questions.

First, the District failed to sufficiently review available information concerning the Student's disabilities before determining that the Student's behavior was not a manifestation of the disability. The MDR team included the school Principal, the Student and Parent, a school psychologist, Student's special and regular education teachers, a case manager, the Dean of Students, and the guidance counselor. <sup>5</sup> Student's special education

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<sup>5</sup> All MDR team members with the exception of the Student and regular education teacher testified during the due process hearing.

teacher was assigned the task of conducting the review meeting. The evidence has established that the team members lacked the necessary understanding of the Student's disabilities and how they presented during the school day. Although a properly constituted team for purposes of the MDR was present, and all indicated they reviewed Student's file, their testimony indicated they were unaware of critical factors, which in my view, rendered their final determination invalid.

The hearing evidence revealed that the manifestation determination team failed to adequately consider the Student's mental health treatment information during its review. The manifestation determination form indicated the Student had diagnoses of ADHD, ODD and depression. Although no one from the team requested a release or obtained information from the Student's treating therapist or psychiatrist, the mental health concerns were documented in the Student's educational file and known to the review team members. This information that Student was under the care of a medical professional, prescribed medication for ADHD and depression, and had recently engaged in an episode of self-harm through cutting, were available to the team. Unfortunately, this information was not considered during the MDR because key team decision-makers were unaware of these details.

As a result, there was no evidence that the review team considered the impact of the Student's prescribed medications and self-harming during the manifestation determination. One team member testified that the Student was prescribed medication but could not recall its purpose, and others were unaware that medication was needed and prescribed. Since these critical factors were included in the Student's file but unknown to the team, they were not discussed in the context of the MDR. Without this knowledge, particularly regarding Student's compliance with the medication regimen, possible side effects, and dosage concerns, the team could not fully

assess the relationship between the Student's treatment for the identified disability (OHI)(ADHD) and other emotional concerns and the behavioral incident. A more in-depth review of Student's medications, including side effects, how long the medication is expected to control ADHD symptoms and how Student reacted to negative stimuli when the drug begins to lose its effectiveness, was considered here. Those details may have guided the District toward a more reasoned and truly individualized determination concerning whether Student's behavior during the February incident was related to disability. It is far from certain that Student's behavior during the February incident was related to Student's disability by virtue of missed or incomplete dosing, but it was a lapse of proper procedures during this manifestation determination review not to consider that possibility. Absent this knowledge of the Student's mental health treatment that included prescribed medications, the team was not adequately informed, and their consideration of the key questions posed was fatally compromised.

Next, the evidentiary record was persuasive that the MDR team failed to adequately consider the nexus between the Student's disabilities and the separate disciplinary infractions. The [redacted] incident resulted in two separate behaviors and disciplinary events, one related to possession of a weapon and the other reckless endangerment. In the first, the Student took the [weapon] from the home and in the second, dispensed it in a classroom. Both actions could be regarded as thoughtless and impulsive. The record disclosed that although some manifestation determination review team members were familiar with the Student's educational records, they did not fully consider the relationship question as it specifically pertained to this Student. The manifestation determination form, presented at the meeting, indicated the Student had diagnoses of ADHD, ODD and depression and also demonstrated significant difficulty with inattention, hyperactivity/impulsivity, executive function, aggression/defiance, and peer relations. How the

Student's disabilities influenced poor decision-making was not adequately explored by this MDR team. It has been established that the MDR team did not sufficiently review the information available regarding prescribed medications for the Student's disabilities. However, with the information they did review, an appropriate deliberation on the initial question of whether the incidents were caused by or had a direct and substantial relationship to the child's disability fell short. The case manager, an MDR team member, never met the Student, did not speak with anyone to become familiar with Student's disabilities but reviewed some educational documentation beforehand and had awareness of the IEP goals and diagnoses but not the prescribed medication. He recalled a discussion about impulsivity, but his testimony was inconclusive as to whether the team related and discussed the impact of this behavior on the [redacted] incident. The school Principal, also a credible witness, casually knew the Student but her testimony was not helpful regarding the actual discussions that occurred during the meeting. The school psychologist never met the Student and testified that she did not speak during the meeting but reviewed documentation and spoke with other team members before the meeting. The school counselor previously met the Student but testified she did not contribute much during the meeting and indicated her participation was for staff and Student support. The Dean of Students knew the Student as the math teacher and participated in discussion with staff before the MDR. During the MDR she recalled the special education teacher leading the meeting, the Student and Parent speaking, and the school psychologist contributing, contradicting that witnesses' own testimony. Again, this witness, credible like the other District staff, did not recount a team discussion, during the meeting, about the impact of the Student's disabilities as related to the [redacted] incident.

The MDR meeting was led by the special education teacher, who knew the Student educationally and served as a cheerleading coach. During

testimony, most participants agreed that this teacher briefly described the Student's disabilities at the beginning of the meeting but was the only staff to talk about Student's disabilities during the meeting. Although the proposed findings outlined in the draft manifestation determination form were discussed at the meeting, and the participants were provided the opportunity for questions and comments, no meaningful discussion occurred regarding the connection between the Student's disabilities and the [redacted] incident. Most could not recall whether a specific discussion occurred about the relationship between the Student's impulsivity and distractibility, both traits of Student's presentation of ADHD and the behavioral incident. There is no evidence that the manifestation determination team reviewed any records at the meeting; the evidence suggests that the sole information presented was the limited amount shared by the special education teacher as coordinator.

In addition to the relationship between a student's behavior and disabilities, the MDR team should have considered whether the incidents directly resulted from the failure to implement the IEP. The evidence adduced at the hearing indicated this consideration did not sufficiently occur. This analysis was necessary because the Student's identified OHI disability and attendant medical diagnoses of ODD and depression had an emotional component. Although this Student did not have a history of school-based behavioral infractions, the Student's explanation of the events and the known mental health components should have resulted in a more considered discussion related to IEP implementation. The evidence of record merely indicated questions were asked, but no comprehensive discussion ensued. It was incumbent on the team to at least explore, with all team members, whether an IEP implementation issue contributed to the behavioral issues that resulted in the suspension.

Much of the testimony focused on Student's attendance at town hall meetings where school rules and behavioral expectations were explained to the student body. During the town hall, weapons and items prohibited in the building, including pepper spray, were discussed. In addition to the town hall meetings, the entrance to Student's school contained a sign with a photograph of prohibited items, including pepper spray. In my view, these factors are unrelated to the issue that must be resolved at this time. The issue is not whether the District made the Student aware of the school rules or right from wrong. The issue is whether the team adequately considered whether Student's disabilities prevented or interfered with the ability to comply with the established rules.

Finally, the Parent alleged that the District refused multiple requests for a reevaluation prior to the disciplinary incident on February 8, 2023.<sup>6</sup> This contention is unsupported by the record in this matter. An email exchange occurred with the Parent regarding Student's educational needs. However, the Parent merely indicated, "I would love to develop a new IEP for ... at some point, I would like to get [ ] reevaluated." The District properly understood that Parent was requesting to proceed with an IEP meeting, reserving her ability to request a reevaluation for some later date. Under the plain terms of the IDEA, "general expressions of concern" do not "constitute a 'parental request for evaluation.'" In this case, Parent's general statements of concern and intent to request a reevaluation "at some point" did not constitute a parental request for reevaluation. *A.B. through Katina B. v. Abington School District*, 841 F.App'x 392, 396 (3d Cir. 2021) (quoting *B.K. ex. rel. Stephen K. and Lisa K. v. Abington School District*, 696 F.3d 233, 247, n. 5 (3d Cir. 2012)); see also, *Bernardsville Board of Education v. J.H. ex. rel. J.H.*, 42 F.3d 149, 156-158, n. 14 (3d Cir. 1994).

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<sup>6</sup> On April 13, 2023, the District issued a permission to reevaluate the Student.

Based on the foregoing findings of fact and for the above reasons, this hearing officer concludes that the District's manifestation determination must be reversed, and Student must remain in the District Academy.

## **ORDER**

AND NOW, this 8th day of May 2023, in accordance with the foregoing findings of fact and conclusions of law, it is hereby ORDERED as follows.

1. The District's determination made on February 15, 2023, that Student's conduct on February 8, 2023 was not a manifestation of Student's disability was erroneous and is REVERSED.

2. Within three school days of the date of this decision, the District shall invite the Parent to a meeting to consider whether Student's IEP should be revised.

3. Student shall remain at the Academy.

4. Within five school days of the date of this decision, if not already accomplished, the District shall provide the Parent with a permission to reevaluate form. The reevaluation should include a functional behavioral assessment (FBA).

It is FURTHER ORDERED that any claims not specifically addressed by this decision and order are DENIED and DISMISSED.

/s/ Joy Waters Fleming, Esquire

*Joy Waters Fleming*

HEARING OFFICER  
ODR File No. 27887-22-23