

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 Hearing Officer **Final Decision and Order**

HEARING

ODR File Number:

22952-19-20

Child's Name:

C.J.

Date of Birth:

[redacted]

Parent:

[redacted]

Counsel for Parent

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Hearing Officer:

Charles W. Jelley Esq.

Date of Decision:

12/16/2019

INTRODUCTION AND OVERVIEW OF CLAIMS

The Student, (hereafter Student), is in middle school in the Mechanicsburg Area School District (District). The Student is eligible to receive specially-designed instruction, as a person with an Other Health Impairment" (OHI) as defined in the Individuals with Disabilities Education Act (IDEA). As such, the Student is entitled to certain procedural protections afforded to children with disabilities who are subject to discipline or a change in placement for more than ten school days.

In reviewing the record, the testimony of every witness, and the content of each admitted exhibit were thoroughly considered in issuing this decision.¹ In this case, as explained in greater detail below, Parents failed to present ample, persuasive, or preponderant evidence to establish sufficient facts that the behavior(s) that led to the regular education disciplinary proceedings and ultimately resulted in the Student's expulsion was either a manifestation of Student's ADHD combined type medical diagnosis or the Student's IDEA eligible OHI disability. Accordingly, for all of the following

¹ In the interest of confidentiality and privacy, Student's name and gender, and other potentially identifiable information, are not used in the body of this decision. The identifying information appearing on the cover page of and elsewhere in this decision will be redacted prior to posting on the website of the Office for Dispute Resolution as part of 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). The applicable Pennsylvania regulations are set forth in 22 Pa. Code §§ 15.1 – 15.11 (Chapter 15). 20 U.S.C. §§ 1400-1482. Citations to the record in this Decision shall be to the Notes of Testimony (N.T.); Parent Exhibits (P-) followed by the exhibit number; School District Exhibits (S-) followed by the exhibit number; and Hearing Officer Exhibits (HO-) followed by the exhibit number.

reasons set forth below, the Parent has failed to establish a violation of the IDEA.

ISSUE

Did the District conduct an appropriate manifestation determination review of the Student's actions, misconduct and disability? If, not should the Student be returned to the regular and special-education setting?

FINDINGS OF FACT

1. The most recent school district evaluation of the Student's needs, strengths and circumstances is dated March 2, 2017 (N.T. pp.6-12).
2. The evaluation report notes the Student is diagnosed with attention deficit hyperactivity disorder (ADHD) combined type. The report notes the Student displays signs of metacognition processes deficits, along with executive functioning deficits (N.T. pp.6-12). The Parties agree the Student's ADHD combined type profile meets the criteria for IDEA identification as a person with an IDEA classification of other health impairment (OHI) (N.T. pp.14-15).
3. After the Parties accepted the March 2017 evaluation report, the Parties on March 7, 2017, moved forward and jointly developed and approved an Individual Educational Program (IEP). On the same date, the District offered and the Parents approved a Notice of Recommended Educational Placement (NOREP) that called for the Student to receive learning support in a District building (N.T. pp.6-12).
4. On [date], the Student was involved in a school incident, at which time the Student punched another student.[redacted] (N.T. pp.6-12).
5. The District, after conducting an initial review of the alleged assault, responded by sending the Student home for the rest of that day. It

was the Parents' understanding and the District agrees that the Student would be suspended for a minimum of three school days (N.T. pp.6-12, S-6, 7, 8, 9, 10, 11).

6. On or about October 7th, 2019, by letter and a telephone call, the family received notice of an informal regular education disciplinary hearing and a manifestation determination review (MDR). The MDR meeting and the informal regular education hearing were scheduled for October 8th, 2019 (N.T. pp.6-12). The letter noted the MDR review would happen first, followed by the regular education informal disciplinary hearing. (N.T. pp.6-12).
7. Sometime during the MDR meeting, the teacher provided the Parents with a copy of their IDEA procedural safeguards (N.T. pp.6-12, N.T. 99, S-3, 4). After the MDR meeting, the special education teacher emailed the Parents another copy of the procedural safeguards. *Id.*
8. The relevant members of the Student's IEP team, including the Parents, the special education teacher, the local education agency (LEA) representative, the guidance counselor and a school psychologist, then participated in a face-to-face MDR discussion of the alleged violation of the code of conduct (N.T. pp.6-12).
9. After reviewing the Student's then-current educational records on file like the IEP, updated present levels, the most recent reevaluation report, and after completing the Pennsylvania Department of Education (PDE) nine (9) question MDR worksheet the MDR team concluded, and over the Parents' objection, confirmed the assault was not a manifestation of the Student's ADHD combined type or OHI disability (N.T. pp.6-12, N.T. pp.99-119, N.T. pp.143-144, S-6, S-7, S-8, S-9, S-10, S-11).

10. More specifically the MDR review team after completing the MDR nine (9) question review, over the Parents' objections, confirmed the assault on the peer, was not causally related to or had direct and substantial relationship to the Student's IDEA OHI or medical ADHD combined type disability (N.T. pp.6-12, N.T. pp.28-84, S-5). The MDR team, over the Parents' objection, also confirmed that the assault was not a consequence of the District's failure to implement the then-current IEP. *Id.*
11. During the MDR review, the Parents for the first time, disclosed the results of a March 21, 2019, community-based medical, behavioral health evaluation. The March 21, 2019, community based behavioral evaluation, was completed without input from or knowledge of the special education teacher, the LEA or the psychologist. The writing shared during the MDR review, by the Parent, indicated that the treating medical examiner concluded the following:

"[Redacted] is a [redacted] year old [redacted] who has been struggling with ADHD, ODD, Anxiety, Social Difficulties and possible OCD symptoms for a while. [Redacted] was taking medication from [Redacted] PCP, for it was that helpful. [Redacted] saw a psychologist once but was never involved in individual therapy. [Redacted] has an IEP in school, which was hard for [Redacted] family to get for [Redacted]. [Redacted] has pretty good grades with [Redacted] IEP. [Redacted] struggles making and keeping friends. [Redacted] doesn't see [Redacted] friends outside of school much but has some friends in school. [Redacted] isn't involved in extracurricular activities. [Redacted] has trouble with defiance at home. [Redacted] always says [Redacted] is "bored." [Redacted] argues a lot with [Redacted] siblings. [Redacted] is clingy with

[Redacted] and [Redacted] has to sleep in the same room with [Redacted] [Redacted] or [Redacted] gets scared. [Redacted] older [Redacted] has depression and anxiety. Also, many of [Redacted] cousins have ADHD and Autism Spectrum Disorder. There are some heart problems that run in both [Redacted] mother and father's side of the family. Diagnosis: (F90.2) ADHD (attention deficit hyperactivity disorder), combined type (primary encounter diagnosis) (F41.0) Panic disorder (F40.10) Social anxiety disorder (F93.0) Separation anxiety (F91.3) Oppositional defiant disorder, School avoidance (F81.0) Developmental reading disorder." (P-1). The treating examiner's notes did not list the individuals who provided the input that supported the examiner's medical assessment, conclusions and opinions (P-1). But for the ADHD diagnosis, the Student's then-current school records do not match up with the treating examiner's conclusions (P-1)."

12. Nowhere in the March 2019 report, provided on October 8, 2019, did the treating clinician conclude or infer aggressive behavior, like fighting, was linked to or causally connected to any of the Student's then disclosed medical conditions of ADHD combined type or IDEA OHI disability (P-1). Although the Parents also informed the MDR team the Student was seeing a community-based therapist, the name of the therapist or any reports from the therapist were shared as part of the MDR review, the expulsion or the post expulsion IEP meetings (P-1, N.T. pp.1-226, S-7, S-8, S-9, S-10, S-11, S-12, S-13, S-14, S-15, S-16, S-17, S-18, S-19, S-20).
13. On October 15, 2019, the District issued an updated prior written notice, which confirmed the date and time of the face-to-face regular

education formal hearing and the MDR team meeting that occurred on October 8, 2019 (N.T. pp.6-12).

14. Although the Student attempted to return to school on [date], upon returning to the school building the staff directed by the school District administration advised the Student to go home pending the results of the upcoming expulsion hearing (S-6, S-7, S-8, S-9, S-10, S-11, N.T. pp.1-226).
15. On October 16, 2019, the Parents filed a Pennsylvania Department of Education (PDE) Division of Compliance, complaint contending the Student was being excluded from school-based upon a violation of the IDEA's special circumstances disciplinary standards (N.T. pp.6-12).
16. As a consequence of the PDE Complaint, a PDE special education advisor called the District and sent an email to the school District dated October 18, 2019. The email advised the District that the Student's misconduct, as understood by the adviser, did not meet the IDEA special circumstances requirements for a 45-day interim alternative educational placement outside of the District (N.T. pp.6-12). At no time did the District contend or seek to apply the IDEA special circumstances 45-day discipline rules. The PDE advice to the MDR review team and/or the District was not otherwise applicable to the actual facts in dispute as found by the MDR team (N.T. pp.1-221, S-6, S-7, S-8, S-9, S-10, and S-11).
17. Aware of the PDE email advice, the District on October 18, 2019, issued prior written notice to the Parents scheduling a regular education face-to-face expulsion hearing (N.T. pp.6-12, S-6, S-7, S-8, S-9, S-10, and S-11).
18. On October 22, 2019, based upon a single phone call, with a District employee, the District unilaterally decided and communicated to the

Parents pending further action by the School Board, that the Student should not return to school pending Notice of Expulsion (N.T. pp.6-12, S-6, 7, 8, 9, 10, 11).

19. After receiving written notice of a regular education expulsion hearing, on [date], a sub-committee of the School Board held a hearing and took evidence on the peer-on-peer assault (N.T. pp.6-12). After that face-to-face hearing, the disciplinary subcommittee of the School Board filed a report with the full school board recommending an expulsion (N.T. pp.6-12, N.T. pp.6-12, N.T. pp. 183-184, S- #6, S-8, 9, 10, 11).
20. While awaiting the public School Board vote on the proposed expulsion, on October 30, 2019, the District and the Parents, after issuing prior written notice, met to formulate a new IEP (N.T. pp.155-158).
21. Unable to reach an agreement on the contents of a new IEP/placement outside of the District, the Parents, on November 4, 2019, filed an expedited due process Complaint challenging the results of the manifestation determination with the Office for Dispute Resolution (S-1).
22. On or about November 7, 2019, before the instant expedited due process hearing and the School Board expulsion vote, the Parents requested and the District agreed to review the Student's school nursing records. The summary of the school nursing records indicates that during the 2018-2019 school year, the Student visited the nurse 52 times, at which time the Student complained of headaches. The nursing records also note that during the 2019-2020 school year, the Student visited the school nurse five times, for headaches (N.T. pp.6-12). The records from the expedited due process hearing do not link or

causally connected the assault to the Student's IDEA OHI disability; the ADHD combined diagnosis, the headaches, or the failure to implement the then-current IEP (N.T. pp.1-226).

23. On November 11, 2019, the Parties participated in another IEP meeting and a resolution session. Despite the best efforts of both Parties, the Parties were not able to reach an agreement about the nature of the Student's behavior, the Student's needs, a proposed IEP, or a new placement outside of the District. Although the District issued a permission to reevaluate (PTRE), the Parents refused to consent to a reevaluation of the Student's educational needs and circumstances (N.T. pp.185-187, S-#21, S-12, 13, 14, 15, 16, and 22).
24. Absent agreement on the contents of a new IEP, the District issued a prior written notice in the form of a NOREP and repeated the request to reevaluate the Student. [redacted] , (S-6, S-7, S-8, S-9, S-10, and S-11).
25. On [date], the Board voted to expel the Student (N.T. pp.6-12, S-9).
26. As of the date of the due process hearing, the School Board Secretary had not yet executed or mailed a formal finding of expulsion to the Parents or the Student. Although the Student has not yet received formal notice of the expulsion, the Student has not been allowed back into the school and the District has not yet provided and the Student has not yet received any regular or special education services or specially-designed instruction in the home or elsewhere (N.T. pp.6-12, N.T.pp.181-186).
27. As of the date of the IDEA expedited due process hearing, the Parents have not agreed to a reevaluation of the Student's unique needs or circumstances (N.T. pp.1-221).

28. On December 13, 2019, the Parties presented closing arguments to this hearing officer by telephone. Prior to the closing arguments, the Parties were invited to share relevant case law for consideration in this final Decision. Neither Party provided this hearing officer with applicable case law (N.T. *passim*). The record is now closed and the dispute is ripe for a Decision.

DISCUSSION AND CONCLUSIONS OF LAW

General Legal Principles

Generally speaking, the burden of proof consists of two elements: the burden of production and the burden of persuasion. It is important to recognize that the burden of persuasion lies with the party seeking relief. *Schaffer v. Weast*, 546 U.S. 49, 62 (2005); *L.E. v. Ramsey Board of Education*, 435 F.3d 384, 392 (3d Cir. 2006). Consequently, in this case, because Parents challenged the appropriateness of the District's actions concerning the MDR review, the Parents were required to establish that the District's manifestation determination conclusion was wrong. Accordingly, the burden of persuasion, in this case, rests with the Parents who requested this administrative hearing. The outcome in an IDEA expedited due process hearing is determined by a preponderance of the evidence.

Credibility Determinations

Special education hearing officers, as the fact-finder, are 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); *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 to be generally

credible, testifying to the best of his or her recollection concerning the circumstances relevant to decide the narrow issue presented; the testimony was essentially quite consistent as a whole. As a result of the testimony, this hearing officer can now draw inferences, make findings of fact and conclusions of law.

Procedural History And Claims Made

The Parent's Due Process Complaint, filed on November 4, 2019, challenges the District's MDR team's determination that the Student's violation of the District's code of conduct was not a manifestation of the Student's OHI/ADHD combined disability. Pursuant to the IDEA and its applicable regulations, the Parents had the right to challenge any District decision regarding a change in placement for disciplinary reasons in an expedited due process hearing. 20 U.S.C. § 1415(k)(3); 34 C.F.R. §§ 300.532(a) and (c). In short, the Parents contend and the District denies any procedural due process issues like a lack of prior written notice or any substantive violations of the IDEA.

Procedural Safeguards And A Free Appropriate Public Education

The IDEA provides procedural safeguards for children with disabilities and their parents concerning the provision of a free, appropriate public education. 20 U.S.C. § 1415(a). One such procedural safeguard is the opportunity for any party to present a complaint "concerning any matter relating to the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to such child" or set forth any alleged violation. 20 U.S.C. § 1415(b)(6)(A)-(B). Another subset of the procedural safeguards applies when school personnel decides to order a change in placement for a child with a disability who violates a school district's code of student conduct. See 20 U.S.C. §1415(k). In such

circumstances, school personnel may remove a child with a disability from his/her current placement to an appropriate interim alternative educational setting, or suspend the student for not more than ten school days, to the extent such alternatives are applied to children without disabilities. 20 U.S.C. § 1415(k)(1)(B). If the school personnel seek to order a change in placement that would exceed ten school days, which is at issue here and the behavior that gave rise to the violation of the school district's code of conduct is determined not to be a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child with the disability, in the same manner, and for the same duration, as they would be applied to a child without disabilities with certain statutory exceptions not otherwise at issue here. 20 U.S.C. § 1415(k)(1)(C); 22 Pa Code Chapter 12 *et seq.* Importantly, the IDEA "manifestation determination" decision must be made within ten school days of any decision/discussion to change the placement of a child with a disability because of a violation of a code of student conduct. 20 U.S.C. § 1415(k)(1)(E).

The Manifestation Determination Review

When a local educational agency decides to change a special education student's educational placement for more than ten (10) days as a result of a violation of a student code of conduct, the local educational agency, the parent and relevant members of the IEP team shall review all relevant information to determine whether the child's violation was a manifestation of the child's disability. 20 U.S.C. §1415(k)(1)(E); 34 C.F.R. § 300.530(e). IDEA 2004 revised the manifestation determination review decision-making process. First, the 2004 Amendments dropped "the behavior subject to disciplinary action" verbiage in IDEA 1997 and instead focused on "the conduct in question" in light of the student's alleged "violation of code of student conduct." Second, the 2004 Amendments redefined the minimum

membership of the manifestation determination team by mandating only the district representative, the parent, and other "relevant members," rather than the full IEP team complete the MDR process. Third, the 2004 Amendments directed the MDR team to discuss student-specific data. The team should consider "all relevant information" in the student's file. IDEA 2004 dropped several previous requirements, including the specification of "diagnostic and evaluation results," the IEP accompanying reference to "and placement," and noticeably revised the "observations of the child" requirement instead focusing on "any teacher observations." The fourth change concerns the required criteria for the manifestation determination decision making. The emphasis now "is no longer on the appropriateness of the IEP and placement as formulated and implemented," but rather on the causal link between a lack of implementation and the causal link between the disability and behavior in question. IDEA 2004 placed a narrow standard on the analysis of the student's behavior focusing on causation, which — unlike the previous 1997 correlation standard; therefore, the above changes narrow the manifestation analysis. The addition of a direct and substantial relationship' language emphasizes definitional repetition of causation standard, akin to the "substantial factor" test for causation in the common law of negligence, and the alternative, which concerns the implementation rather than the appropriateness of the IEP, is similarly keyed to causation." See, *The New Legal Requirements for Manifestation Determinations Under the IDEA*, Perry Zirkel, NASP Communiqué, Vol. 35, #1 (September 2006), along with the *Comments to 2006 IDEA Regulations*, 71 Fed. Reg. 46720 *et seq.*

Simply stated if the manifestation determination team determines the Student's misconduct is not a manifestation of the Student's disability or is not due to the failure to implement the Student's IEP, then the local educational agency/district may use its regular education school disciplinary

procedures to address the violation of the student code of conduct in the same way as the disciplinary procedures would be applied to the Student's non-disabled peers. 20 U.S.C. § 1415(k)(1)(C); 34 C.F.R. § 300.530(c); See, *Honig v. Doe*, 484 U.S. 305 (1988). With these guiding principles in mind, I will now review the facts, circumstances, claims, defenses and applicable law.

Analysis And Conclusions

The Parents' Idea-Centered Disability-Related Impulsivity And Procedural Due Process Arguments Are Unavailing

It merits mention at the outset that the Parents did not challenge the facts and circumstances leading up to how the assault happened, the assault itself, or the Student's conduct after the assault. The record is uncontested that on [date], the Student [redacted] punched and hit the peer [redacted]. None of the witnesses testified, including the Parents, that the Student was in an extreme emotional state at the time of the assault, in the moments before or after the assault. None of the witnesses, including the Parents, testified that the Student was unaware of the anticipated consequences for violating the code of conduct, or on that particular day, due to an intervening causal event, the Student could not self-regulate their behavior. I find it noteworthy that nothing in the Student's then-current educational records, the school nurse's file, or discipline records corroborate the Parents' contentions that the Student's actions were impulsive, disability-related, causally related to the Student's executive functioning deficits or the District's failure to implement the then-current IEP. These unproven facts topple the Parents' argument that the Student's actions were impulsive or a manifestation of the Student's disability. While I may agree with the Parents that the Student has executive functioning and organizational deficits, and while I also agree the Student is a person with an OHI, that said, nothing in

the IEP, the present levels, the March 2017 RR or the record developed by the Parents contradicts the MDR team's findings.

In *Sequoia Union High School District*, 17 LRP 11723 (March 30, 2017), the hearing officer noted that "Whether a student's misconduct is caused by a disability often depends on whether the conduct was impulsive. Evidence of planning, or that the student was thinking about the conduct well before it occurred, may demonstrate that the misconduct was not disability-related." In *Sequoia*, like here, after reviewing the intrinsic and extrinsic evidence, the record is preponderant that the Student planned and executed the assault in a deliberative thought out fashion. The Parents never challenged the fact that the Student walked up to peer [redacted] and [redacted], [and] Student assaulted the peer. [redacted] Therefore, like *Sequoia*, I now find the assault was not at all impulsive; instead, I find the record is preponderant that the Student made a conscious deliberative choice. The absence of any evidence that the Student ever engaged in any remotely similar incidents at school, in the past, and for most parts is generally well-behaved is a telltale fact that the assault was not an impulsive manifestation of the Student's OHI or ADHD combined type disability. See also, *J.M. v. Liberty Union High Sch. Dist.*, 117 LRP 20084(N.D. Cal. 05/16/17) (district did not violate Section 504 when it expelled a high schooler with ADHD who had an altercation with a classmate). Accordingly, absent preponderant proof I now find that the MDR was substantively complete, sufficient and appropriate; therefore, the Parent's substantive IDEA claims are rejected as stated.

The Parents' Procedural Due Process Claims Are Misplaced

As for the Parents' procedural due process challenges, the record is preponderant that the decision to use laptop computers to review the Student's updated educational records, rather than provide paper copies of

the records to the MDR team did not interfere, in any way, with the Parents' participation in the MDR process. The District's witnesses cogently explained, and the Parents did not offer preponderant evidence to the contrary, that the manner in which the MDR worksheet was reviewed, discussed and ultimately completed was prejudicial. First, while the full complement of the Student's IEP team was not present, the special education teacher provided the MDR team with updated input from the regular education teachers. The updated present levels of educational performance indicated that the Student, with specially-designed instruction, was able to learn and self-regulate.

Second, contrary to the Parents' argument, the District's psychologist, the special education teacher and the special education supervisor/LEA cogently explained how the MDR team sought out, considered each MDR team member's input and at the same time gave some weight to the Parents' MDR input. As the MDR questions were read aloud, the MDR team openly discussed the team members', including the Parents' input, about the Student's OHI/ADHD combined type diagnosis, and how the OHI/ADHD diagnosis affected the Student's learning, behavioral self-control and social interaction skillset. Simply stated, the Parents failed to produce preponderant evidence of how reading aloud the MDR worksheet questions rather than giving everyone a paper copy of the MDR worksheet interfered with the Parents' participation in the MDR review process, denied the Student a FAPE or resulted in a loss of educational benefit.

As for the contention that the Parents did not have the then-current IEP and therefore were not able to follow along or participate; the mother's testimony corroborated the special education teacher's statements that the teacher, well in advance of the MDR meeting provided the mother, with a paper copy of the then-current IEP and the teacher's IEP snapshot. The mother's testimony also corroborated the teacher's testimony that the

special education teacher sat next to the mother and helped the mother understand and otherwise facilitated the mother's participation in the MDR review process. The record is equally preponderant that at the end of the MDR meeting, when the Parents asked, the District agreed to give the Parents additional time to review the completed paper copy of the MDR worksheet. Finally, the record is abundantly clear that the special education teacher at the meeting and by email after the MDR meeting gave the Parents their procedural safeguards. At no time after the MDR meeting, or at the follow-up IEP meetings or at the expulsion hearing, did the Parents offer additional facts, circumstances, or any third party input, like a completed third party medical evaluation that otherwise contradicts the MDR team's findings. This combination of persuasive supporting facts undercuts the Parents' argument that the District failed to provide the Parents with a copy of the then-current IEP, the MDR worksheet, failed to consider the Parents' input or honor the request for additional time to review MDR worksheet; hence, the record facts do not support the parental procedural due process arguments or claims. Therefore, I now find that when the extrinsic and intrinsic evidence, including the mother's testimony, is viewed as an integrated whole, the Parents' procedural due process challenges are unsound.

The Student's Previously Undisclosed Community Based Behavioral Health Diagnoses Were Considered During The MDR Meeting

I disagree with the Parents that the District flat out refused to discuss the previously undisclosed community behavioral health diagnoses. While the Student's private community based behavioral evaluation occurred in the spring of 2019, neither the special education teacher, the psychologist nor the LEA were ever told about or made aware of the third-party evaluation, prior to the MDR process. While it is black letter law that the District must

give due weight to private evaluations, in this instance, the fact that the MDR team did not have a completed report leads me to conclude that to the extent practicable, the District did give some limited weight to the Parents' disclosure of the Student's out of school behavioral health circumstances. I reach this conclusion noting that once the medical diagnoses were shared with the MDR team, the MDR team members cogently explained how and why they gave the Parents' input some limited weight. After giving the Parents' input some weight, the District quickly responded and issued what seems to be a comprehensive PTE, which I note on its face includes a request to conduct a psychiatric evaluation. While the community based medical examiner's use of the International Classification of Diseases (ICD) is probative of a medical condition, the examiner's overall findings fail to explain, link or causally connect the Student's March 2019 ICD medical diagnoses to an IDEA disability, or an unmet educational, behavioral or social need for specially-designed instruction.² Therefore, I now find the medical examiner's uncorroborated ICD diagnostic conclusions insufficient evidence to support the Parents' circumstantial claims of a manifestation of either a new or previously unrecognized disability, need, or circumstance. Therefore, taking into account these unique circumstances, noting the medical report merits additional IDEA testing and assessment, I now find, in

² The International Classification of Diseases (ICD-11) is a global categorization system for physical and mental illnesses published by the World Health Organization (WHO). The ICD-11 is a revised version of the ICD-10 and the first update to be developed and published in two decades. ... The new version of the ICD was released on June 18, 2018 as a preliminary version that is expected to be approved at the World Health Assembly in 2019 and then used as the official reporting system by member states beginning January 1, 2022. ... The ICD-11 also covers medical diseases in addition to mental disorders. Finally, there are specific differences in the way different disorders are treated between the two bodies of categorization. For example, attention-deficit hyperactivity disorder (ADHD) was only just added to the ICD-11 (was not in the ICD-10), while it has long been diagnosed in North America according to the DSM-5." See, Overview of the ICD-11 for Mental Health, written by Arlin Cuncic, Updated on April 15, 2019. Published at Verywell Mind.

light of the instant circumstances, the MDR team gave the report sufficient weight during the MDR process. Simply stated, this combination of facts, circumstances and events necessitates a finding that the Parent failed to establish either a procedural due process or a substantive violation of the IDEA. Hence the Parents' intertwined claims are rejected.

CONCLUSIONS

It is clear to this hearing officer that the MDR team carefully deliberated whether the Student's peer-on-peer assault was causally related to a manifestation of the Student's disability or a failure to implement the IEP. The record convincingly establishes that the District members of the team discussed the Student's OHI and ADHD combined diagnosis, the implementation of the then-current IEP, the discipline record, the most recent RR, and the updated present levels.

After becoming aware of and familiar with the Student's then-current educational records, the MDR team made an informed decision about the Student's needs, circumstances and how the Student's disability/behaviors adversely affected the Student's education, self-control and learning. The evidence is preponderant that the District completed a thorough, comprehensive and complete MDR review of the Student's disability and non-disability related misconduct. Accordingly, I now find that the Parents failed to produce preponderant proof of an IDEA MDR team violation. Therefore I now conclude the MDR team's findings, over the Parents' objection, must be affirmed; an appropriate Order follows.

ORDER

AND NOW, this 16th day of December 2019, in accordance with the foregoing findings of fact and conclusions of law, it is hereby **ORDERED** as follows.

1. The District's MDR review was appropriate, sufficient and comprehensive.
2. The MDR team's determination is **AFFIRMED**. The behavior in question was not a manifestation of the Student's IDEA OHI disability or ADHD combined type diagnosis.
3. The Parents' substantive and procedural due process claims, as stated, are dismissed.
4. It is **FURTHER ORDERED** that any claims not specifically addressed by this Decision and Order are **DENIED** and **DISMISSED WITH PREJUDICE**.

Charles W. Jelley, Esq. LL.M.

ODR File No. 22952-19-20