

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

█,

Petitioner,

vs.

Case Nos. 15-3619EDM  
15-3946EDM

DUVAL COUNTY SCHOOL BOARD,

Respondent.

\_\_\_\_\_ /

FINAL ORDER

A final hearing was held in this case before █  
█, an Administrative Law Judge of the Division of  
Administrative Hearings ("DOAH"), on August 25, 2015, in  
█.

APPEARANCES

For Petitioner: Petitioner, pro se  
(Address of Record)

For Respondent: Kelly Hebden Papa, Esquire  
Office of General Counsel  
117 West Duval Street, Suite 480  
Jacksonville, Florida 32202

STATEMENT OF THE ISSUES

The issues for determination in this proceeding are:

(1) whether Petitioner's ("the Child") conduct on █  
█, that constitutes a violation of the student code of  
conduct, was a manifestation of █ disability; and (2) whether  
the Child's conduct on █, that constitutes a

violation of the student code of conduct, was a manifestation of [REDACTED] disability.

PRELIMINARY STATEMENT

On [REDACTED], Duval County School Board ("Respondent") conducted a Manifestation Determination Review, at the conclusion of which the team determined that Petitioner's [REDACTED], acts of misconduct did not constitute manifestations of [REDACTED] disability. On [REDACTED], Petitioner, dissatisfied with the team's decision, filed a request for an expedited due process hearing. The request was forwarded to DOAH the next day, assigned DOAH Case No. 15-3619EDM, and assigned to Administrative Law Judge Jessica E. Varn. The final hearing was scheduled for [REDACTED].

On [REDACTED], Respondent conducted a Manifestation Determination Review, at the conclusion of which the team determined that Petitioner's [REDACTED], acts of misconduct did not constitute manifestations of [REDACTED] disability. On [REDACTED], [REDACTED], Petitioner, dissatisfied with the team's decision, filed a request for an expedited due process hearing. The request was forwarded to DOAH the same day, assigned DOAH Case No. 15-3946EDM, and assigned to Administrative Law Judge Jessica E. Varn.

On [REDACTED], Judge Varn issued an Order consolidating DOAH Case Nos. 15-3619EDM and 15-3946EDM for all further

proceedings. On [REDACTED], Petitioner filed a motion to recuse Judge Varn. On [REDACTED], Petitioner's recusal motion was granted, and the consolidated cases were transferred to the undersigned for all further proceedings

The final hearing was held, as scheduled, on [REDACTED]. At the conclusion of the final hearing, the parties stipulated to submitting proposed final orders 14 days after the filing of the transcript. The final hearing Transcript was filed on [REDACTED]. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript.

The parties timely filed Proposed Final Orders, which were considered in preparing this Final Order. Unless otherwise indicated, all rule and statutory references are to the version in effect at the time of the alleged violation.

For stylistic convenience, the undersigned will use [REDACTED] pronouns in the Final Order when referring to the Child. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to the Child's actual gender.

#### FINDINGS OF FACT

1. The Child is currently [REDACTED] years old. [REDACTED] is a student who qualifies for exceptional student education ("ESE"). [REDACTED] documented exceptionality is [REDACTED]

[REDACTED].

2. During the [REDACTED] school year, the Child was in [REDACTED] grade and attended School A, a public [REDACTED] school in [REDACTED].

3. At all times material, the Child's Individual Educational Plan ("IEP") provided for numerous accommodations and/or modifications such as: allowing [REDACTED] [REDACTED] for assignments and tests, [REDACTED] [REDACTED] for assignments and tests, providing [REDACTED] during assignments, providing an [REDACTED] [REDACTED], and [REDACTED], [REDACTED] and/or [REDACTED] directions.

4. One of the Child's listed accommodations was the use of "[REDACTED]." Said accommodation was to be provided in the general education classroom. [REDACTED], who bears the title of supervisor of Exceptional Education Student Services Support Team Office for [REDACTED], credibly described [REDACTED], for the Child, to mean [REDACTED] [REDACTED] [REDACTED] and [REDACTED].

Additionally, [REDACTED] can include [REDACTED] [REDACTED] an [REDACTED] in [REDACTED] [REDACTED] as a reminder to the student to [REDACTED] engage in [REDACTED] activity. Although [REDACTED] [REDACTED] may be indicated for transitional services [REDACTED] the classroom, the same was not indicated on the Child's IEP.

5. The Child's IEP does not and has not included a [REDACTED]. The Child's "Present Level of Performance," as

documented in the [REDACTED], IEP, documented that the Child's behavior is "[REDACTED]" and that [REDACTED] is a "[REDACTED] [REDACTED]." It was further noted that the child is a "very friendly and social person with [REDACTED] peers and maintains positive peer relationships." The same IEP documented that, "[d]ue to the effects of [REDACTED] disability, [the Child] has [REDACTED] [REDACTED] and [REDACTED]," and that [REDACTED] has [REDACTED] [REDACTED].

[REDACTED], Manifestation Determination Meeting

6. On [REDACTED], the Child received a school discipline referral. The [REDACTED] form, drafted by Assistant Principal [REDACTED], documents that the [REDACTED] was due to a "[m]ajor school disruption in the cafeteria-student fighting another student." The form indicates that said [REDACTED] [REDACTED] Student Code of Conduct Codes 3.19 and 3.03.<sup>1/</sup>

7. The [REDACTED], discipline referral form documents that the Child was referred to an [REDACTED] [REDACTED] for three days, [REDACTED] [REDACTED]. The form further documents that the Child may return to school on [REDACTED].<sup>2/</sup>

8. A [REDACTED] from School A, in [REDACTED], does not constitute a "change in placement," which would necessitate a manifestation determination. See Fla. Admin. Code R. 6A-6.03312(1)(a). The record evidence fails to present sufficient

evidence for the undersigned to find that prior to the [REDACTED], incident, the Child had been [REDACTED] that, in addition to the [REDACTED] documented on the [REDACTED] form, cumulated to more than ten school days in a school year, which would necessitate a manifestation determination. Id.

9. Nevertheless, on [REDACTED], Respondent notified the Child's parents of a "Conduct Review" meeting to be held on [REDACTED]. Said notification is not part of the evidentiary record, and, therefore, the undersigned is unable to determine what information was provided to the parents in the notification. The only evidence on this point is contained in email correspondence by and between [REDACTED] and the Child's [REDACTED]. In said correspondence, Respondent refers to the proposed meeting in some circumstances as a "Conduct Review" and in some circumstances as a "Conduct Review/Manifestation Determination." Respondent's Exhibit 12, a document entitled "Manifestation Determination," dated [REDACTED], provides that the "purpose of Manifestation Determination Meeting" is "Code Offense(s)."<sup>3/</sup> The specific code offenses listed are those that arose as a result of the [REDACTED], incident.

10. At the parent's request, the [REDACTED], meeting was rescheduled to [REDACTED]. Ultimately, the Conduct Review/Manifestation Determination meeting proceeded as

scheduled. The participants of the meeting (hereinafter the "MD team") included: the Child and [REDACTED] parents; [REDACTED], a behavioral specialist and the EESS<sup>4/</sup> designee; [REDACTED], school psychologist; Assistant Principal [REDACTED]; [REDACTED], ESE liason; [REDACTED], ESE specialist; [REDACTED], supervisor of Exceptional Education Student Services Support Team Office for Secondary Schools; [REDACTED], general education and intensive reading teacher; [REDACTED], ESE inclusion teacher; and Resource Officer [REDACTED].

11. At the [REDACTED], meeting, the MD team reviewed the following information: (1) the Child's IEP(s); (2) the Child's [REDACTED], psychoeducational evaluation report; (3) the Child's cumulative folder; (4) teacher statements; (5) disciplinary/behavioral records; and (6) the subject incident referral.

12. A review of the statements provided by the Child's teachers support the position that the Child [REDACTED] present with [REDACTED] issues. Indeed, [REDACTED], the Child's basic education teacher, noted that "[a]lthough [the Child] is [REDACTED], [the Child] is not a [REDACTED] in the classroom. On occasion [REDACTED] keeps [REDACTED] for [REDACTED]."

Similarly, [REDACTED], the Child's ESE teacher, noted as follows:

[The Child] is a happy sociable young [REDACTED].  
[REDACTED] often gets distracted by peers but is easily redirected. In class [the Child] has

always been respectful and using [sic] proper grammar—ma'am. [The Child] gets along with [redacted] peers and there is mutual respect. [The Child] helps them when possible and vice versa.

13. The Child's disciplinary referrals prior to the misconduct in question are described below. On [redacted], the Child received a referral for [redacted]. [redacted]. The Child received a [redacted]. On October 14, 2014, the Child received a referral for "[redacted] [redacted]." The Child was reassigned to an [redacted] [redacted]. On November 14, 2014, the Child received a referral for [redacted] with another student causing a major school disruption. The evidence is unclear as to what sanction the Child received.<sup>5/</sup> Finally, on [redacted], the Child received a referral for [redacted], and [redacted] clothing—[redacted]. The Child was requested to perform "[redacted]"; however, [redacted] the discipline. The referral indicates that when the Child's [redacted] was contacted regarding this matter, the [redacted] replied, "I don't give a [redacted] how you take it [redacted]." The final disposition called for an ISSP.

14. At the conclusion of the [redacted], meeting, the team members, excluding the Child and [redacted] parents, concluded that the conduct in question (the incident on [redacted]) was not caused by, or had a direct and substantial relationship



to, the child's disability, [REDACTED], and that the conduct in question was not the direct result of Respondent's failure to implement the IEP.

15. At the final hearing, Respondent's witnesses credibly and uniformly testified that, based on their review of the information available at the [REDACTED], meeting, the Child's conduct on [REDACTED], was not a manifestation of [REDACTED] disability, [REDACTED], and not the direct result of Respondent's failure to implement the IEP.

16. The Child's parents, for their part, established that [REDACTED], the Child's reading teacher for the [REDACTED] school year, [REDACTED] conduct an interview with the Child in a one-to-one setting to evaluate or discuss with [REDACTED] "on a personal level" whether the Child's behavior had [REDACTED]. Similarly, they established that [REDACTED] did not speak with the Child in a one-to-one setting and that [REDACTED] had not met the Child prior to the meeting. [REDACTED] presented un rebutted testimony, however, that [REDACTED] [REDACTED] speak with the Child because [REDACTED] parents would not permit the same.

[REDACTED] through [REDACTED]

17. Due to the evidentiary presentation, the record is exceedingly unclear. It appears, however, that at some point after the initial [REDACTED] noted on the referral form,

Respondent made a decision to change the placement of the Child [REDACTED] to an [REDACTED] or [REDACTED]. Again, due to the evidentiary presentation, it is unclear when this decision was made, by whom, or for what duration this change in placement was proposed.

18. Ostensibly, aggrieved by this decision, the Child's parents sought an administrative review of the placement decision pursuant to section 1003.53(5), Florida Statutes. On March 30, 2015, a chapter 120 administrative review was held, but not concluded, with a Duval County School Hearing Officer ("HO") regarding the Child's alleged conduct of [REDACTED]. Thereafter, the HO attempted to continue the hearing; however, the Child's parents [REDACTED] to [REDACTED] meet with the HO. Accordingly, the HO issued [REDACTED] final order on [REDACTED].

19. The HO's final order supported the charges presented by the school. The final order recommended that the Child [REDACTED] be placed in an [REDACTED], but rather, be returned to School A on a "[REDACTED]."

20. The recommended [REDACTED] provided that should the Child commit a [REDACTED] I or [REDACTED] or accumulate [REDACTED] under the Student Code of Conduct, the same would result in a [REDACTED]. A violation of

the contract would result in [REDACTED] to the HO for assignment to an [REDACTED] school.

21. In correspondence dated [REDACTED], [REDACTED], Duval County Chief of Schools for K-12 Education, advised the Child's parents that Respondent was accepting the HO's recommendation; however, Respondent deemed it appropriate to also [REDACTED] the Child for [REDACTED] [REDACTED] due to [REDACTED] role in the [REDACTED], Code 3.19 infraction. Said correspondence advised the Child's parents that "a Manifestation Hearing must now take place to review [the Child's] Individual Education Plan and determine the timing of the suspension." (emphasis added). The parents were advised that the Manifestation Hearing would occur on April 23, 2015, and that their attendance would be required.<sup>6/</sup>

22. Running parallel to this tortured backdrop, the Child [REDACTED] to [REDACTED] [REDACTED]. On January 29, 2015, the Child received a referral for "[REDACTED] [REDACTED]" and being [REDACTED]. [REDACTED] was assigned to [REDACTED] for two days. The following day, the Child received a referral for [REDACTED] [REDACTED]. On April 16, 2015, the Child received a referral for [REDACTED] [REDACTED]. This, coupled with an apparent cellular phone violation on [REDACTED], resulted in a

"Saturday detention." When the Child ██████ to attend the Saturday detention, ██████ received another referral, which resulted in a ██████ to begin on April 28, 2015.

██████████, Manifestation Determination

23. Pursuant to the discipline referral form dated April 28, 2015, the Child was ██████ at the track/PE. When located, the Child advised that ██████ had permission from Coach ██████. A conference with Coach ██████ revealed the Child's statement was ██████. The referral form documents that a conference was held, and the Child was assigned to ██████ for ██████.

24. Apparently, however, the ██████, incident escalated upon the Child's ██████ arrival at School A. Respondent's Exhibit 12 documents that, upon the Child's ██████ arriving at School A, ██████ became ██████ to Dean ██████. Apparently, the Child left the office and then returned. Upon return, the child grabbed ██████ from behind and shoved ██████ into a wall, face first. The School Resource Officer ("SRO") observed the incident and ██████ the Child. ██████, thereafter, presented to the hospital.

25. As a result of this escalation, the Child was assigned a Code 3.12 violation for ██████ resulting in ██████. 7/ ██████, was the last day the Child attended School A.

26. Respondent scheduled a "conduct review/manifestation meeting" regarding the [REDACTED], incident for [REDACTED]. At the parents' request, the meeting was rescheduled and conducted on [REDACTED].

27. Respondent's Exhibit 12, a document entitled "Manifestation Determination," dated [REDACTED], provides that the "purpose of Manifestation Determination Meeting" is "Code Offense(s)." The MD team included: [REDACTED], a behavioral specialist and the EESS designee; [REDACTED], school psychologist; [REDACTED], assistant principal; [REDACTED], ESE liason; [REDACTED], general education and intensive reading teacher; [REDACTED], ESE specialist; [REDACTED], supervisor of Exceptional Education Student Services Support Team Office for Secondary Schools; and [REDACTED], ESE teacher. The evidentiary record reflects that the Child's parents also attended the meeting, however, they left the meeting prior to its conclusion.

28. At the [REDACTED], meeting, the members reviewed the following information: (1) the Child's IEP(s); (2) the Child's [REDACTED], psychoeducational evaluation report; (3) the Child's cumulative folder; (4) teacher statements; (5) disciplinary/behavioral records; (6) the subject incident referral; and (7) CCR#9150122915.<sup>8/</sup>

29. The following notations are contained within the "Recommendations" section of the above-noted Manifestation Determination form:

[The Child] has [REDACTED] for academics. The IEP has been reviewed 3x since November to add additional accommodations and adjust services. [He/She] has [REDACTED], [REDACTED] and [REDACTED]. [He/She] has a [REDACTED] GPA the last nine weeks. Teachers indicate that [he/she] was mostly [REDACTED] in most of [his/her] classes class [sic]. [He/She] was [REDACTED] in groups and participating as a peer. They did state they had to prompt [him/her] [REDACTED]. [REDACTED]. Additionally [he/she] was [REDACTED] redirected. [He/She] is not attending [School A] at this time. DCPS is requiring placement at [REDACTED] [REDACTED] due to [the Child's] violations ([REDACTED] Saturday detention, and receiving additional [REDACTED] violations) of a [REDACTED] Contract.

Teacher indicates [he/she] is on task during group work. [He/She] is a [REDACTED] on the school team and plays [REDACTED].

[The parents] came to the meeting however indicated they did not receive information concerning the 3.12 referral. School indicated that the parent was notified of the referral the day of the incident. Multiple attempts to inform the parent of this incident have been made. The team offered them a copy of the referral. The [sic] refused a copy of the referral. [The parents] left the meeting.

30. At the conclusion of the [REDACTED], meeting, the team members, excluding the Child's parents, concluded that the conduct in question (the incident on [REDACTED]) was not caused by, or had a direct and substantial relationship to, the

child's disability, [REDACTED], and that the conduct in question was not the direct result of Respondent's failure to implement the IEP.

31. At the final hearing, Respondent's witnesses credibly and uniformly testified that, based on their review of the information available at the [REDACTED], meeting, the Child's conduct on [REDACTED], was not a manifestation of [REDACTED] disability, [REDACTED], and not the direct result of Respondent's failure to implement the IEP.

32. The Child's parents, for their part, established that F [REDACTED] was unaware that the Child was on the [REDACTED] contract. Additionally, the Child's attendance in [REDACTED] class began to [REDACTED] in March 2015.

33. Respondent conducted a "single incident" Functional Behavior Assessment ("FBA") in preparation for the May 26, 2015, meeting.<sup>9/</sup> Respondent made multiple attempts thereafter to receive consent from the Child's parents to perform a FBA and to develop a Behavior Intervention Plan ("BIP"). The informed consent notified the parents that the IEP team had determined the need for a FBA and a BIP to address the behavioral needs of the Child.

34. On [REDACTED], such consent was provided in the student's folder in the guidance office. On [REDACTED], Respondent issued a meeting participation form to the Child's

parents. The form indicated that the purpose of the meeting was an addendum to the IEP and the development of a FBA. The parents were notified that if this date was inconvenient, to provide additional dates and times.

35. After receiving no response, in [REDACTED], Respondent again attempted to obtain consent from the Child's parents and have a meeting to review the Child's IEP and conduct a FBA in [REDACTED]. Again, however, the Child's parents refused to provide the requisite consent or attend. In correspondence from the Child's [REDACTED] to Respondent dated [REDACTED], the [REDACTED] stated reason for failing to move forward with the IEP/FBA meeting was "due to inaccurate (falsified) documents in the student's records." [REDACTED] elaborated that, "[a] meeting cannot be held to discuss a student's behavior or alleged statements from the administration when it is based on [REDACTED] and [REDACTED]."

#### CONCLUSIONS OF LAW

36. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. See § 1003.57(1)(c), Fla. Stat.; Fla. Admin. Code R. 6A-6.03311(9)(u); and Fla. Admin. Code R. 6A-6.03312(7).

37. The Child's parents bear the burden of proof with respect to each of the claims raised in the Complaint. Schaffer v. Weast, 546 U.S. 49, 62 (2005); Dep't of Educ., Assistance to



States for the Education of Children with Disabilities, 71 Fed. Reg. 46724 (Aug. 14, 2006) (explaining that the parent bears the burden of proof in a proceeding challenging a school district's manifestation determination).

38. In enacting the Individuals with Disabilities Act ("IDEA"), Congress sought to "ensure that all children with disabilities have available to them a free appropriate public education that emphasized special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living." 20 U.S.C. § 1400(d)(1)(A); Phillip C. v. Jefferson Cnty. Bd. of Educ., 701 F.3d 691, 694 (11th Cir. 2012). The statute was intended to address the inadequate educational services offered to children with disabilities and to combat the exclusion of such children from the public school system. 20 U.S.C. §§ 1400(c)(2)(A)&(B). To accomplish these objectives, the federal government provides funding to participating state and local educational agencies, which is contingent on the agency's compliance with the IDEA's procedural and substantive requirements. Doe v. Alabama State Dep't of Educ., 915 F.2d 651, 654 (11th Cir. 1990).

39. Parents and children with disabilities are accorded substantial procedural safeguards to ensure that the purposes of the IDEA are fully realized. See Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley, 458 U.S. 176, 205-06 (1982). Among

other protections, parents are entitled to examine their child's records and participate in meetings concerning their child's education; receive written notice prior to any proposed change in the educational placement of their child; and file an administrative due process complaint "with respect to any matter relating to the identification, evaluation, or educational placement of [their] child, or the provision of a free appropriate public education to such child." 20 U.S.C. §§ 1415(b)(1), (b)(3), & (b)(6).

40. School districts have certain limitations on their ability to remove disabled children from their educational placement following a behavioral transgression. Specifically, the IDEA provides that where a school district intends to place a disabled child in an alternative educational setting for a period of more than ten school days, it must first determine that the child's behavior was not a manifestation of his disability. 20 U.S.C. § 1415(k)(1)(C). Pursuant to the IDEA's implementing regulations, "[o]n the date on which the decision is made to make a removal that constitutes a change of placement of a child with a disability because of a violation of a code of student conduct, the LEA must notify the parents of that decision, and provide the parents the procedural safeguards notice described in § 300.504." 34 C.F.R. § 300.530(h).

41. The necessary inquiry is set forth in 20 U.S.C.

§ 1415(k)(1)(E), as follows:

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.

42. If the local educational agency, the parent, and relevant members of the IEP team determine that either subclause (I) or (II) of clause (i) is applicable, the conduct shall be determined a manifestation of the child's disability. 20 U.S.C. § 1415(k)(1)(E)(ii). If the conduct is deemed a manifestation of the child's disability, the student must be returned to the educational placement from which he or she was removed. 20 U.S.C. § 1415(k)(1)(F)(iii). Additionally, if no BIP was in place at the time of the misconduct, the school district is obligated to "conduct a functional behavioral

assessment, and implement a [BIP] for such child." 20 U.S.C. § 1415(k) (1) (F) (i).

43. If the behavior that gave rise to the violation of the school code is determined not to be a manifestation of the child's disability, the school district may apply the relevant disciplinary procedures in the same manner and duration as would be applied to children without disabilities. 34 C.F.R. § 300.530(c). The child, however, must continue to receive education services so as 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. Additionally, the child must receive, as appropriate, a FBA, and behavioral intervention services and modifications, that are designed to address the behavior violation so that it does not recur. 34 C.F.R. §§ 300.530(d) (i) and (ii).

██████████, Manifestation Determination

44. Returning to the Child's parents' Complaint in Case ██████████, they do not contend that the misconduct in question was a manifestation of the Child's disability, but rather, that the Child was simply ██████████ of the misconduct.

Indeed, their Complaint ultimately requests that "the manifestation determination simply be overturned based on the fact that the allegations made on the Petitioner's referral is [REDACTED]." Additionally, the Child's parents aver that Respondent [REDACTED] to provide them with all of the witness statements prior to the meeting. Finally, it is averred that, at the [REDACTED], meeting, they were precluded from playing a [REDACTED] in question ostensibly to demonstrate the Child's [REDACTED] culpability.

45. Addressing the Child's parents' claim that the team [REDACTED] to properly consider the merits of the underlying conduct in question, the undersigned rejects this contention. See Danny K. v. Dep't of Educ., 2011 U.S. Dist. LEXIS 111066 (D. Haw. 2011) (holding that there is no authority to suggest that a manifestation determination team must review the merits of a school's findings as to how a student violated the conduct of student conduct as such a requirement would essentially deputize manifestation determination teams, and in turn, [administrative law judges] as appellate deans of students).

46. The Child's parents' procedural allegations are likewise [REDACTED]. Section 1415(k) (1) (E) (i) does not require each member (which would include the parents) to read before the meeting every piece of information in the student's file. "All the statute requires is that, before reaching a manifestation

determination, the team must review the information pertinent to that decision, including the child's IEP, [REDACTED] teachers' comments, and any information provided by the parents. And this review clearly may occur before or during the course of an MDR hearing." Fitzgerald v. Fairfax Cnty. Sch.Bd., 556 F. Supp. 2d 543, 559 (E.D. Va. 2008). Thus, even assuming, arguendo, that the Child's parents presented sufficient evidence to establish they [REDACTED] receive all of the witness statements prior to the actual hearing, same does not constitute a procedural violation as there is no evidence that those statements were not available to them at the hearing.

47. Similarly, the Child's parents claim that the team [REDACTED] to play a video clip of the alleged incident [REDACTED] to a procedural violation. As discussed in the preceding paragraphs, the team's function is not to determine [REDACTED] or [REDACTED] of the underlying conduct in question, but rather to determine, whether said conduct (as determined by the school's investigation) was a manifestation of the Child's disability or of Respondent's failure to implement the IEP.

48. In summary, the undersigned concludes that the Child's parents [REDACTED] to demonstrate that Respondent failed to conduct an appropriate manifestation determination review concerning the conduct that occurred on [REDACTED].

[REDACTED], Manifestation Determination

49. The undersigned construes the Child's parents' Complaint in [REDACTED] as setting forth the following allegations: 1) prior to the [REDACTED] meeting, the Child's parents had not received the disciplinary referral packet, witness statements, and the Child's records; 2) due to the lack of said information, the parents requested rescheduling the meeting, which was denied; 3) the team members were not witnesses to the conduct in question; 4) the team did not solicit information from the Child or [REDACTED] parents prior to the meeting "to find out if there were any changes in behavior or other concerns"; 5) the alleged victim, [REDACTED], of the conduct in question was not present at the meeting; and 6) [REDACTED] [REDACTED] to "utilize proximity control" as noted in the Child's IEP.

50. Allegations 1, 2, and 4 are rejected for the reasons noted above in the previous section. The Child's parents [REDACTED] to present any evidence that the team [REDACTED] to provide them with access to the same information relied upon by the team during the course of the meeting. Additionally, they [REDACTED] to present any evidence that Respondent precluded them from presenting any relevant information. To the contrary, the record evidence established that Respondent had, on several occasions, endeavored to obtain the parents' consent and conduct meetings to obtain

additional information regarding the Child's behavior, only to be [REDACTED] by the parents.

51. Allegations 3 and 5 are rejected as there is no requirement that the relevant members of the IEP team must have witnessed the alleged misconduct in question or that Respondent produce the alleged victim of the misconduct in question at a manifestation determination review. 20 U.S.C. § 1415(k)(1)(E)(i).

52. Finally, allegation 6 is construed as asserting that the misconduct in question was a direct result of Respondent's failure to implement the proximity control accommodation contained in the Child's IEP. This allegation is wholly without merit. As discussed above in the Findings of Fact, proximity control was an accommodation in the Child's IEP to assist the Child in staying on task in the classroom. Even if one could construe this accommodation as applying to the Child elsewhere on the school campus, there is absolutely no evidence that a [REDACTED] to [REDACTED] the same directly resulted in the misconduct in question. Indeed, the misconduct in question allegedly occurred in close proximity to the Child's [REDACTED], the alleged victim was [REDACTED], an employee of Respondent, and the alleged incident occurred within view of the school's SRO, who [REDACTED] the Child. It is hard to imagine a setting in which the Child could be under greater proximity control.



ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that:

1. Petitioner's conduct on [REDACTED], was not a manifestation of [REDACTED] disability.

2. Petitioner's conduct on [REDACTED], was not a manifestation of [REDACTED] disability.

3. Respondent may apply the relevant disciplinary procedures in the same manner and duration as would be applied to children without disabilities. The Child, however, must continue to receive education services so as to enable [REDACTED] to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting the goals set out in [REDACTED] IEP.

4. All other requests for relief are denied.

DONE AND ORDERED this 19th day of October, 2015, in Tallahassee, Leon County, Florida.

**S**

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TODD P. RESAVAGE

Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 19th day of October, 2015.

ENDNOTES

<sup>1/</sup> The Duval County Public Schools Code of Student Conduct for the 2014-2015 school year was not admitted into evidence by either party. The undersigned does not make any findings of fact regarding the codes at issue, but notes for the record that the online version of said code provides the following: Code 3.19, Major Dispute or Altercation, is a Major Offense-Level III, and is defined as "the willful act of participating in a disruption involving physical contact, with multiple participants in a major dispute or altercation." For a first offense, the intervention is listed as "10 days of OSS and refer the student for consideration to hearing office." Code 3.03, Striking a School District Employee or Agent, is a Major Offense-Level III, and is defined as "intentionally pushing or striking another person against the will of another; or throwing of an object at a school district employee or agent." For a first offense, the intervention is listed as "10 days of OSS and refer the student for consideration to hearing office."

<sup>2/</sup> It is unclear from the record whether the Child actually attended the ATOSS during the above-referenced dates. Correspondence from Addison Davis, Chief of Schools, K-12 Education, dated April 20, 2015, provides that, "[i]t is my understanding that [the Child] has already served three (3) days of out-of-school suspension . . . ."

<sup>3/</sup> The same document provides a box to be checked if the purpose of the Manifestation Determination meeting is for "suspensions over 10 days resulting in a change in placement." That box is not checked.

<sup>4/</sup> Although not defined in the record, the undersigned assumes EESS stands for Exceptional Education Student Services.

<sup>5/</sup> As originally drafted, the referral form indicates that the Child was to attend ATOSS for three days; however, the underlying charge was changed to a lesser infraction. Thus, it is unclear as to what disciplinary sanction was imposed, if any.

<sup>6/</sup> Based on the available record, it appears that Respondent notified Petitioner of the scheduled meeting via certified and regular mail, as well as hand-delivery. The instant Complaint does not assert any claims regarding said scheduled meeting. Additionally, no evidence was presented for the undersigned to find whether the Child actually served the ten-day suspension.

<sup>7/</sup> The actual disciplinary referral is not part of the evidentiary record.

<sup>8/</sup> The record fails to establish what incident corresponds with CCR#9150122915.

<sup>9/</sup> The single incident FBA was not admitted as an exhibit at the final hearing.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

This decision is final unless, within 90 days after the date of this decision, an adversely affected party:

- a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or
- b) brings a civil action in the appropriate district court of the United States pursuant to 20 U.S.C. § 1415(i)(2), 34 C.F.R. § 300.516, and Florida Administrative Code Rule 6A-6.03311(9)(w).