

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

**,

Petitioner,

Case No. 21-0522EDM

vs.

SUWANNEE COUNTY SCHOOL BOARD,

Respondent.

FINAL ORDER

An impartial hearing was held in this matter on March 10, 2021, by Zoom Conference, before Todd P. Resavage, an Administrative Law Judge of the Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Beverly Oviatt Brown, Esquire
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For Respondent: Matthew Joseph Carson, Esquire
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STATEMENT OF THE ISSUES

The issues for determination in this proceeding are whether Petitioner's conduct on January 26, [REDACTED], that constitutes a violation of the student code of conduct, was a manifestation of Petitioner's disability; and, if so, whether Respondent's determination that the conduct was not a manifestation of

Petitioner's disability violates Section 504 of the Rehabilitation Act of 1973 (Section 504).

PRELIMINARY STATEMENT

On February 4, [REDACTED], Respondent conducted a Section 504 Manifestation Determination Review (MDR), at the conclusion of which the manifestation determination team (MDT) determined that Petitioner's January 26, [REDACTED], behavior (fighting) was not caused by or did not have a direct or substantial relationship to Petitioner's disability; and that the behavior was not the direct result of a failure to implement Petitioner's Section 504 Student Accommodation Plan (Section 504 Plan). Petitioner's [REDACTED] was dissatisfied with the MDT's decision and, on February 11, 2021, filed with Respondent a request for an expedited hearing (Complaint). The Complaint was forwarded to DOAH on February 12, 2021, and assigned to the undersigned for all further proceedings.

Petitioner's Complaint alleges Respondent committed violations of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. § 1400, and Section 504. On February 25, 2021, the undersigned conducted a telephonic status conference with counsel for the parties. Respondent requested the undersigned preside over the Section 504 claims in this proceeding. Additionally, the parties represented that they desired to bifurcate this proceeding whereby the Section 504 claims would be heard first at an impartial hearing, and, if required, a subsequent due process hearing would be scheduled with respect to the IDEA claims. Accordingly, an Order Bifurcating Proceedings was issued on February 25, 2021.

The impartial hearing was noticed for and conducted on March 10, 2021. At the conclusion of the hearing, the parties stipulated and agreed to submit proposed final orders within two weeks after the filing of the Transcript. The

Transcript was filed on March 24, 2021. The identity of the witnesses and exhibits and the rulings regarding each are as set forth in the Transcript.

On April 7, 2021, Respondent filed an unopposed motion for a two-day extension of time to file proposed final orders. The motion was granted on the same day. 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 misconduct and manifestation determination.

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

FINDINGS OF FACT

1. Petitioner is currently [REDACTED] years-old and in [REDACTED] grade.
2. In August [REDACTED], Petitioner transferred from [REDACTED] County, Florida, and enrolled in Respondent's school district.
3. In Suwannee County, Petitioner was initially enrolled in an alternative school in [REDACTED], Florida. Pursuant to the alternative school "Completion Contract," the alternative school "is designed to provide students with excessive academic and/or discipline issues, a one-time opportunity to prove they can become successful tradition [sic] students at [School A]." It is undisputed that Petitioner enrolled in the alternative school on the basis of multiple prior disciplinary referrals from her prior public school in [REDACTED] County. School A is a public school in Respondent's school district comprised of students from [REDACTED] through [REDACTED] grade.
4. On August 19, [REDACTED], Petitioner was referred for a Section 504 meeting to determine if he was eligible for a Section 504 Plan. Pursuant to the

evidentiary record, at the meeting, the Section 504 Committee reviewed and considered family input, grade reports, standardized tests and other tests, teacher/administrator input, medical evaluations/diagnoses, and disciplinary records and referrals.

5. The Committee determined that Petitioner had a mental impairment. Specifically, the Committee documented Petitioner's impairments as [REDACTED], [REDACTED], and [REDACTED]. The Committee further concluded that the impairments substantially limit a major life activity and that Petitioner needed Section 504 services in order for his educational needs to be met as adequately as those of nondisabled peers.

6. The Committee's decision further documented the following:

The student is eligible under Section 504, and will receive a Section 504 accommodation plan that governs the provision of a free appropriate public education to the student. The student will receive manifestation determination, procedural safeguards, periodic Re-Evaluation or more often as needed, as well as the nondiscrimination protections of Section 504.

7. On the same date, the Section 504 Plan was drafted for Petitioner. The Section 504 Plan identified two needs and accommodations to address those needs. Specifically, Petitioner's needs were documented as "work on appropriate responses to others," and "frequent breaks as needed." The accommodations were documented as "respond appropriately to adult on camera (and peers)," and "work as much as possible allowing opportunity for breaks when feeling anxious." Finally, the Section 504 Plan documented that "[a]s [Petitioner] transitions back to a brick and mortar setting from hybrid, we will discuss the need for further behavior contract or goals to be implemented."

8. Petitioner remained at the alternative school until October 28, [REDACTED]. Petitioner avers that during his time at the alternative school, he had a successful experience, both academically and behaviorally. No evidence was presented to the contrary.

9. Upon completion at the alternative school, Petitioner enrolled in School A. [REDACTED], Petitioner's math teacher at School A, credibly testified that Petitioner would demonstrate, at times, defiant behavior in the classroom and struggled to follow the basic rules of class. On January 6, [REDACTED], Petitioner received a disciplinary referral from [REDACTED] for defiance and insubordination. Petitioner was required to serve two days of in-school suspension as a result.

10. The day following this disciplinary incident, on January 7, [REDACTED], a meeting was held concerning the incident by School A staff, as well as Petitioner, and his grandmother and aunt. School A staff in attendance included [REDACTED], School Counselor; [REDACTED]¹; and [REDACTED], Assistant Principal (AP). Petitioner's [REDACTED] and [REDACTED] testified that, at that time, School A personnel were unaware that Petitioner had a Section 504 Plan. This testimony was contradicted by the testimony of [REDACTED], and the undersigned finds that the better evidence supports a finding that School A personnel were aware of Petitioner's Section 504 Plan.

11. An additional meeting was scheduled for January 12, [REDACTED], to review and revise Petitioner's Section 504 Plan. During this meeting, the following was documented on the Section 504 Plan:

[Petitioner] has a diagnosis of [REDACTED] and [he] is currently receiving counseling through [REDACTED]. [He] has difficulty trusting adults. [He] gets [REDACTED] very easily. [He] does not like to be called out in front of [his] peers. [He] needs positivity and positive attention. [He] is on new medication and other medications have been increased. The team

¹ [REDACTED] position is unclear from the record.

reviewed accommodation plan and made additions to the accommodations. Part of the additions was that [Petitioner] be allowed to come to guidance or the front office [REDACTED] when [he] is feeling overwhelmed and stressed.

12. The revised January 12, [REDACTED], Section 504 Plan identified Petitioner's needs as "[d]iagnosis [REDACTED], [REDACTED], and [REDACTED]." The accommodations were listed as follows: preferential seating; flexible setting and scheduling; extra time with classwork, homework, and tests; reduce distractions; breaks as needed; repeat, clarify, and check for understanding of directions; verbal encouragement; and to allow Petitioner to come to guidance or front office for a time out period when stressed, as needed.

13. [REDACTED] credibly testified that Petitioner utilized the accommodation of coming to the guidance or front office on several occasions. AP [REDACTED] credibly testified that, Petitioner and Petitioner's [REDACTED] were advised that Petitioner could come and see him in the front office if feeling overwhelmed, stressed, or needed assistance.

14. AP [REDACTED] credibly described an instance where, on January 25, [REDACTED], another student reported to [REDACTED] that Petitioner wanted to fight the student. AP [REDACTED] then facilitated a meeting between Petitioner and the other student and the situation appeared to be amicably resolved. Unfortunately, Petitioner became involved in an altercation, more fully described below, with the other student's sibling the following day.

15. Petitioner's [REDACTED] testified that prior to going to school on January 26, [REDACTED], Petitioner advised [REDACTED] that he did not want to go to school because "[he] was having a problem with some [students]s and [he] didn't want to get in trouble." Petitioner's [REDACTED] further testified that "Petitioner knew before [he] went to school that the other student wanted to fight him." Notwithstanding, Petitioner did attend school that day.

16. On January 26, [REDACTED], Petitioner, during lunch in the cafeteria, engaged with another student, resulting in a physical fight. The incident is

succinctly memorialized in a January 28, [REDACTED], letter from School A Principal [REDACTED] to Ted Roush, Superintendent of Suwannee County Schools, as follows:

[Petitioner], an [REDACTED] grade student at [School A] was suspended 10 days beginning January 27, [REDACTED], for Fighting (SESIR)(Level III). This student was physically fighting another student in the [School A] Cafeteria. [Petitioner] resisted and continued fighting while I was trying to remove [him] from the cafeteria. At the door, [Petitioner] punched me in the chest while screaming obscenities to the student [he] was fighting and me.

Pursuant to School Board Policy #5.12, I am recommending expulsion of [Petitioner] for the remainder of the [REDACTED]-[REDACTED] school year, and all of the [REDACTED]-[REDACTED] school year.

17. Following the incident, on February 4, [REDACTED], an MDR was conducted. The MDT included Petitioner's [REDACTED] and [REDACTED], Petitioner's legal counsel (via Zoom conference), as well as [REDACTED] Manna; [REDACTED] Ph.D., School Psychologist; [REDACTED], Director of Student Services; [REDACTED] [REDACTED], Assistant Superintendent for Administration and Safety and Security Director; and [REDACTED].

18. The documented purpose of the meeting was to determine whether, in relation to the behavior subject to disciplinary action (the January 26, [REDACTED], incident), the behavior was caused by or had a direct or substantial relationship to Petitioner's disability or the direct result of a failure to implement the Section 504 Plan. The school-based members of the MDT ultimately concluded the behavior did not fall into either of the two categories.

19. In reaching this conclusion, the school based members of the MDT credibly testified that they reviewed, individually or collectively, the following: educational and disciplinary records from Suwannee and [REDACTED]

County; attendance records; video camera footage of the incident; Petitioner's grades; Section 504 Plans; written statements from students and witnesses; conversations with personnel from the alternative school concerning Petitioner's behavior; and records from [REDACTED]. With the exception of the video camera footage,² the evidence supports a finding that the above-items were discussed with all members at the MDR.³

20. Academically, at the time of the MDR, Petitioner received two As, one D, and two Fs. His attendance rate at School A was [REDACTED] percent.

21. The evidence establishes that Petitioner began receiving services from [REDACTED] in elementary school for behavioral concerns. On November 19, [REDACTED], Petitioner was [REDACTED] following an incident where he ingested methamphetamine. He began psychiatric services in January [REDACTED].

22. Medical records from [REDACTED] reveal that, on or about February 7, [REDACTED], Petitioner was [REDACTED] and treated [REDACTED] following an allegation that he threatened to stab two students with a pencil. Specifically, it was reported that, after the alleged incident, after arriving home he obtained a knife, punched the window, and threatened to kill himself. He was admitted to [REDACTED] and stabilized with [REDACTED], and with [REDACTED], and [REDACTED]. He was discharged on February 10, [REDACTED].

23. On March 20, [REDACTED], a bio-psychosocial evaluation conducted at [REDACTED] documented the following:

² The video footage was provided to Petitioner's counsel subsequent to the meeting.

³ Petitioner's [REDACTED] testified that [REDACTED] was not provided with anything at the MDR; however, the undersigned cannot discern from the record whether Petitioner's counsel was provided a copy of the items reviewed prior to or during the meeting.

[Petitioner] was [REDACTED] in late [REDACTED] and began psych services in Jan. [REDACTED]. [He] has difficulty in interpersonal relationships, anger, depression, and has recently transferred schools due to constant referrals and difficulties with school staff and peers. [Petitioner] is recommended for [REDACTED] outpatient to include individual, family, and group therapy along with [REDACTED] services for approximately 3-6 months. Length and intensity of services to be based on client's progress, assessed by treating provider on an ongoing basis. Focus of treatment to utilize evidence-based interventions to improve functioning and increase positive outcomes.

24. The evaluation further documented Petitioner's diagnoses as follows:

Based on the following symptoms ([REDACTED], [REDACTED], [REDACTED]) and meeting the criteria of [REDACTED], [REDACTED], diagnosis of [REDACTED], [REDACTED], without mention of [REDACTED] is given. Based on [REDACTED], [REDACTED], a diagnosis of [REDACTED] is given. Based on [REDACTED], [REDACTED], a diagnosis of [REDACTED] is given.

25. In a medication management progress note dated March 26, [REDACTED], Petitioner initially denied having anger issues but subsequently stated he "sometimes does get angry." Under the "[e]vents reported" section of the subjective complaints, it was noted "arguments with peers at school."

26. Petitioner continued with treatment at Meridian as the year progressed. Progress notes from [REDACTED] in October and November [REDACTED], provide, *inter alia*, that Petitioner was denying any [REDACTED], [REDACTED]-

██████████, ████████████████████, or ████████████. Petitioner was still receiving services from ██████████ at the time of the subject incident. It is undisputed that Petitioner takes medication to assist with his known diagnoses and that the medications are monitored and frequently changed.

27. The record evidence provided additional detail concerning the January 26, ██████████, altercation. ██████████ Manna, who witnessed part of the altercation, and viewed other parts from video-camera footage, credibly testified that Petitioner was observed leaving one corner of the cafeteria to go to the complete other side, approach a group of students, and engage a particular student in conversation. The conversation lasted approximately 30 seconds and became heated. A cafeteria worker observed the escalation and solicited assistance from Principal ████████████████████.

28. The unrefuted evidence establishes that when Principal ████████████████████ arrived between the two students, Petitioner began to attempt to strike the other student. Principal ████████████████████ then attempted to separate the combatants by removing Petitioner from the cafeteria. After 45 seconds to a minute, Principal ████████████████████ had managed to get Petitioner to the door, whereupon Petitioner struck Principal ████████████████████ in the chest with a closed fist. Petitioner was ultimately taken outside where he continued to attempt re-entry, threaten the student, and utter profanities.

29. Having reviewed the above-noted materials and discussed the details of the incident, the school-based members of the MDT determined, as noted above, that Petitioner's behavior and conduct was not a manifestation of his disability or failure to implement his Section 504 Plan.

30. ████████████████████, testified that having reviewed the available information, ██████████ believed that Petitioner instigated the fight, and that the behavior appeared to be a willful choice as opposed to an impulsive behavior. Accordingly, ██████████ opined that Petitioner's misconduct was not a manifestation of his disability. ████████████████████ testified that in reaching ██████████ decision, "this just did not seem to be the characteristics of those diagnoses that he had

exhibited through all those different settings, through those different times.” AP ██████ explained that ██████ did not believe that punching an administrator was part of Petitioner’s disability or related to it.

31. ██████ explained that ██████ decision was primarily based on the willfulness of Petitioner’s actions and the opportunities to disengage, if he so desired. From the camera footage, ██████ observed Petitioner walk clear across the cafeteria to initiate or engage with the other student; observed the passage of approximately 30 seconds prior to Petitioner throwing the first punch; and observed the additional passage of time prior to striking Principal ██████.

32. At hearing, Petitioner presented the testimony of ██████. ██████ obtained ██████ Ph.D. in School Psychology in 2013 and has been a licensed psychologist since 2014. ██████ works as a professor at the University of North Florida and also has a part-time private practice. ██████ was retained by Petitioner to offer an opinion on whether the conduct in question was a manifestation of Petitioner’s disabilities.

33. ██████ testified that ██████ has never met Petitioner and was not provided with a copy of the Section 504 Plan. ██████ did, however, review records from ██████; discipline records from ██████ County; Petitioner’s report card; limited medical records; the MDR findings report; expulsion paperwork; a prior ██████; and a letter from a counselor.

34. ██████ ultimate opinion is that the January 26, ██████, incident was a manifestation of Petitioner’s disability. She testified that students with ██████ often present with the following characteristics: hyperactivity; impulsivity; difficulties with sustaining focus; and difficulties with inhibition. Because of some of these self-regulating difficulties, ██████ students sometimes have ██████. For a subset of these ██████ students, ██████ testified that the self-regulation difficulties and

impulsivity can combine to create behavior difficulties that present as aggression or acting out, noncompliance, and argumentativeness.

35. ██████ opined that Petitioner has “pretty consistent” behavior linked to impulsivity and difficulties with inhibition. She also notes that ██████ records discuss Petitioner continuing to have difficulty with self-regulation and coping. ██████ also noted the records documenting Petitioner’s ██████.

36. In support of the position that the subject incident was a manifestation of Petitioner’s disability, ██████ opined that Petitioner is a youth who is struggling with regulating himself and has a history of peer conflict. ██████ further believes these issues are directly related to Petitioner’s diagnoses and ██████ treatment goals for Petitioner.

37. ██████ was questioned whether, in ██████ opinion, a student with ██████ could ever get into a fight and the conduct not be a manifestation of his ██████. ██████ did not answer the question directly, but opined, in essence, that ██████ never abates and certain triggers can exacerbate other triggers, and result in unwanted conduct down the line, temporally.

38. When questioned whether it was possible that Petitioner was in control of his own actions and that his actions were not a result of or in any way related to his disability on January 26, ██████, ██████ testified that ██████ thought it was “highly unlikely, but it is possible.” ██████ opined that with respect to Petitioner, “I don’t feel like this was a one-off blip for [Petitioner].”

39. ██████ possesses the requisite education, training, and experience to render the above-noted opinions. ██████ findings and opinions with respect to Petitioner’s underlying diagnoses and common characteristics of ██████ are credited. ██████ opinion that Petitioner’s conduct was a manifestation of his disability is found less persuasive due to ██████ lack of personal familiarity with Petitioner.

40. The undersigned finds that Petitioner's conduct in question was not caused by, or had a direct and substantial relationship to, Petitioner's disability.

41. The undersigned finds that the conduct in question was not the direct result of Respondent's failure to implement the Section 504 Plan.

CONCLUSIONS OF LAW

42. Congress passed Section 504 to protect the civil rights of individuals with disabilities by prohibiting disability discrimination. Pursuant to Section 504's implementing regulations, School Boards are required to establish procedural safeguards with respect to the "identification, evaluation, or educational placement" of students with disabilities who "need or are believed to need special instruction or related services." 34 C.F.R. § 104.36.

43. The procedural safeguards must include "notice, an opportunity for the parents or guardian of the [student] to examine relevant records, an impartial hearing with opportunity for participation by the [student's] parents or guardian and representation by counsel, and a review procedure." *Id.* "Compliance with the procedural safeguards of [the IDEA] is one means of meeting the requirement; however, it is not required." *Id.*

44. Unlike due process hearings under the IDEA, which, pursuant to section 1003.57(c), Florida Statutes, must be conducted by an ALJ from DOAH, there is no statutory authority requiring ALJs to preside over Section 504 impartial hearings. Pursuant to section 120.65(6), Florida Statutes, however, DOAH "is authorized to provide administrative law judges on a contract basis to any governmental entity to conduct any hearing not covered by [section 120]." Thus, if such a contract exists, and if requested by the School Board, DOAH may assign an ALJ to preside over an impartial hearing regarding Section 504 claims concerning the Student's

“identification, evaluation, or educational placement.” Such a practice was followed in this matter.

45. Section 504 does not specifically address discipline, and the term “manifestation determination” does not appear anywhere in the regulatory language of Section 504. Notwithstanding, consistent with 34 C.F.R. § 104.36, Respondent has chosen to follow the procedural safeguards of the IDEA when making decisions about disciplinary consequences for a student eligible for a Section 504 Plan, and, therefore, the undersigned will use the analysis relative to the IDEA in resolving the pending issue.

46. 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 10 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).

47. The necessary inquiry is set forth in 34 C.F.R. § 300.530(e), as follows:

Manifestation determination.

(1) 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 LEA, the parent, and relevant members of the child's [504 MDR Team] (as determined by the parent and the LEA) must review all relevant information in the student's file, including the child's [Section 504

Plan], 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 LEA's failure to implement the [Section 504 Plan].

(2) The conduct must be determined to be a manifestation of the child's disability if the LEA, the parent, and relevant members of the child's [Section 504 MDR] Team determine that a condition in either paragraph (e)(1)(i) or (1)(ii) of this section was met.

(3) If the LEA, the parent, and relevant members of the child's [Section 504 MDR] Team determine the condition described in paragraph (e)(1)(ii) of this section was met, the LEA must take immediate steps to remedy those deficiencies.

48. Generally, 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. 34 C.F.R. § 300.530(f)(1). Additionally, if a BIP was not 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. *Id.*

49. 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).

50. In conducting an MDR, an MDT is to “analyze the child's behavior as demonstrated across settings and across time when determining whether the conduct in question is a direct result of the disability.” *Gloria V. v. Wimberley*

record reflects that Petitioner: (1) knew of and anticipated a potential conflict with the student prior to attending school; (2) without invitation or prompting, walked clear across the cafeteria to engage the other student; (3) had sufficient time and warning to deescalate; (4) waited until Principal [REDACTED] arrived on the scene to throw the first punch; and (5) continued to engage in the plan of fighting the other student even when Principal [REDACTED] was attempting to remove him from the cafeteria.

55. In summary, the undersigned concludes that Petitioner made a bad decision to engage another student in a physical altercation, and this decision and resulting act was not caused by, or had a direct and substantial relationship to, Petitioner's disability.

56. To the extent that Petitioner contends Respondent committed procedural violations in conducting the MDR, the same is addressed below. Petitioner appears to contend that the MDR was deficient in that not all members of the MDT reviewed all "relevant information" in Petitioner's student file. Petitioner also argues in his Proposed Final Order that "the caretaker and relative were denied full participation in providing information at the MDR by not having the student statements and video footage the team reviewed....."

57. In the context of the IDEA, it is well established that a procedural error does not automatically result in a denial of a free appropriate public education (FAPE). *See G.J. v. Muscogee Cty. Sch. Dist.*, 668 F.3d 1258, 1270 (11th Cir. 2012). Instead, it is only when the procedural flaw impedes the child's right to FAPE, significantly infringes the parents' opportunity to participate in the decision-making process, or causes an actual deprivation of educational benefits, that a substantive violation occurs. *Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516, 525-26 (2007).

58. In *Fitzgerald v. Fairfax County School Board*, 556 F. Supp. 2d 543, 559 (E.D. Va. 2008), the court addressed, *inter alia*, an MDT's duty with

respect to the phrase “review all relevant information in the student's file.” Specifically, the court noted the following:

As an initial matter, plaintiffs cite no authority for the proposition that all MDR committee members must review every piece of information in the student's file before an MDR hearing. Rather, the statute requires that the MDR committee “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 make its manifestation determination. § 1415(k)(1)(E)(i). This language does not require each member 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, his teachers' comments, and any information provided by the parents. And this review clearly may occur before or during the course of an MDR hearing.

59. Here, Petitioner failed to present sufficient evidence that the MDT did not review the information pertinent to the manifestation determination decision.

60. As a matter of fundamental fairness, all members of the MDT should have access to the information that forms the basis of an MDR decision. To the extent Petitioner contends that Petitioner's ██████████ and ██████ were not provided student statements and video footage, said claim does not, however, rise to the level of a substantive violation. The evidence supports the allegation that Petitioner, through counsel, was not provided a copy of the video camera footage of the incident until after the MDR hearing. There is no evidence, however, that this delay would have in any way affected the outcome of the MDR decision.

61. With respect to the witness statements, Petitioner failed to present sufficient evidence that the same was not discussed at the MDR or that they

were denied access to the same. Additionally, Petitioner failed to present any evidence that the statements, if in Petitioner's possession and control at the time of the MDR, would have resulted in a different determination.

62. In summary, to the extent Petitioner has sufficiently raised a procedural challenge to the Section 504 MDR, the undersigned concludes that Petitioner failed to meet its burden of showing the same resulted in a substantive violation of Section 504.

ORDER

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

1. Petitioner's conduct on January 26, [REDACTED], was not caused by, or had a direct and substantial relationship to, Petitioner's disability.
2. Petitioner's conduct on January 26, [REDACTED], was not the direct result of Respondent's failure to implement the Petitioner's Section 504 Plan.
3. Respondent may apply the relevant disciplinary procedures in the same manner and duration as would be applied to students without disabilities.

DONE AND ORDERED this 23rd day of April, 2021, in Tallahassee, Leon County, Florida.



TODD P. RESAVAGE
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 23rd day of April, 2021.

COPIES FURNISHED:

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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).