

**BEFORE THE
ALABAMA STATE DEPARTMENT OF EDUCATION**

E.P.,)	
)	
Petitioner,)	
)	SPECIAL EDUCATION CASE NO.
v.)	24-201
)	
S.C.B.O.E.)	
)	
Respondent.)	

HEARING DECISION

This matter is before the undersigned Hearing Officer as Petitioner [Student]. (“Petitioner” or [“Student”]) appeals the [S.C.B.O.E.] (“the Board’s”) determination that [Student’s] disciplinary infraction was neither a manifestation of [student’s] disability nor the direct result of any alleged failure to implement [student’s] Individualized Education Program (“IEP”) (collectively, the “Manifestation Determination”). For the reasons set out below, the undersigned upholds the Board’s Manifestation Determination.

I. Procedural History

This matter was filed by the Petitioner, [Student], on December 6, 2024 and was assigned to this Hearing Officer by the Alabama State Department of Education on the same day. Petitioner’s request for due process invoked the Stay Put protections of the Individuals With Disabilities Education Improvement Act (“IDEA”), 20 U.S.C. U.S.C. §1400, et seq. At all times relevant to this action Petitioner was a resident of said county and thereby eligible to receive IDEA services from the District under the disability category of Other Health Impaired (“OHI”). Petitioner is a student and attending [School].

In the Complaint against the District the Petitioner is (1) appealing the Board’s December 2, 2024, Manifestation Determination; and (2) raising claims of a denial of Free and Appropriate Public Education (“FAPE”) under the Individuals with Disabilities in Education Act (“IDEA”). An expedited hearing was held on January 14, 2025, to receive evidence and live testimony from Petitioner and the Board (collectively, “the Parties”) regarding the Board’s Manifestation Determination.

A. January 14, 2025, Expedited Hearing

At the hearing, Petitioner called five witnesses:

1. [], Assistant Principal at [School] ;
2. [], Special Education Teacher at [School] ;
3. [], [Student’s] Mother;
4. [], [Student’s] Father; and
5. [Student]

The Board subsequently called two additional witnesses:

1. [], [Content Area] at [School] and
2. [], Program Specialist for the Board’s Student Services Department.

I. FACTUAL BACKGROUND

1. [Student’s] IEP

[Student] is a [grade level] grade student enrolled at [School]. (hereinafter referred to as the “School”). [Student] has had an IEP since April of 2024, for which [student] was deemed eligible in the area of Other Health Impairment (“OHI”) based on a diagnosis of Attention Deficit Hyperactivity Disorder (“ADHD”). (Tr. 28:7-11, 298:2-4). [Student] previously had a Section

504 plan to provide accommodations for [student's] ADHD. (Tr. 28:7-15, PX1 at SCBE 077-109).

[Student's] mother, referred [student] for an assessment for special education eligibility. (PX1 at SCBE 119-125). The Referral for Evaluation indicated that "the parent shared that she is concerned with [Student's] ADHD-[student] can't focus and stay on task, [student's] grades have suffered." (PX 1, SCBE 119). The behavioral concerns indicated in the referral paperwork were [characteristics]. (PX1, SCBE 119). "[Characteristic]" is on the checklist of behavioral concerns on the referral paperwork but was not noted for [Student]. (PX1, SCBE 119). Upon [student's] referral, a Board psychometrist administered the Conners ADHD assessment, which reflected clinically significant scores of [characteristics] from two or more raters. (PX1, SCBE 047). [Student] also had elevated scores for [characteristics]. (PX1, SCBE 047). The OHI impact statement in [Student's] eligibility paperwork reflected that [student] "displays [characteristics]. [Student's] inability to [characteristic] impacts [student's] ability to receive the content needed to apply the skills to grade-level content and complete grade level assignments with success." (PX1, SCBE 049).

During [student's] [grade level] grade year, [Student] had two disciplinary incidents involving [infraction] during class:

11/16/2023: The teacher reported that [Student] became frustrated during a game in math class and [action].

4/17/2024: The teacher reported that during a group project [Student] [action].

(PX1, SCBE 169-171).

In the IEP student profile, the Parent noted:

[Student] enjoys school; works best when it's extremely quiet; states that [Student] is easily frustrated and has difficulty working with peers; states that [Student] is unaffected by change and things don't bother [student]; and as for [student's]

disciplinary incidents in [grade level] grade, that when peers continue to agitate [student], [student] will only take so much and will respond in a negative way. [Student] displays needs in [student's] ability to self-regulate [student's] emotion.

(PX1, SCBE 216).

In the portion noting academic, developmental, and functional needs of the student, the IEP identifies two areas of need:

1. Behavior (task-completion): Based on observations and grades, [Student] displays needs in turning [student's] work in/submitting work. ... Due to [Student's] inability to stay focused for longer periods of time, this impacts [student's] ability to receive the instruction needed to be successful with understanding and completion of [student's] work.
2. Behavior (positive interactions): Based on observations and discipline referrals, [Student] displays needs in positive interactions with [student's] peers. It has been noted that [Student] in the state of being upset, will use profanity towards [student's] peers.

(PX1, SCBE 217). To address these two areas of need, [Student's] IEP has two behavioral goals: a task completion goal and a goal for emotional self-regulation. (PX1, SCBE 219-220). The second goal (the "Self-Regulation Goal") states: "By April 2025, when [Student] becomes upset, frustrated, or angry, [student] will use a self-regulation/coping strategy (movement break, deep breathing, quiet space break etc.) to avoid engaging in unexpected behavior toward [student's] peers, with one reminder, on 4 out of 5 opportunities, as measured by observation and documentation." (PX1, SCBE 219). [Student's] progress on both goals is assessed based on data collection. (PX1, SCBE 219-220). The data collected on the goals is admitted as PX1 SCBE 479-480, with certain columns blown up to a greater size and admitted as PX6.

[Student's] IEP includes special education with direct instruction from [student's] special education teacher through research-based strategies in coping skills to assist with anxiety, frustration, and positive peer interaction by teaching a variety of strategies through modeling, roleplaying, and guided practice, as well as direct instruction on on-task behavior. (PX1, SCBE

221). The IEP sets forth miscellaneous services, including inclusion support to assist with task completion and positive peer interactions. (PX1, SCBE 221). The IEP also states that [Student] will receive incidental teaching for on-task behaviors and research-based strategies from the special education teacher in the general education and resource classrooms by modeling, role-playing, and providing opportunities for practice. (PX1, SCBE 221). The IEP also reflects a number of accommodations, including the following: small group testing and tests to be read aloud when the material exceeds [Student's] reading level and reading is not being assessed. [Student] may also retake assessments (on Gold category) on which [student] scores below 60; the higher of the two assessments will be taken for the final grade. (PX1, SCBE 222).

[Student's] special education teacher, [], and general education teacher, [], both testified that [Student's] progress towards [student's] two IEP goals are tracked through the data collection marked as PX 1 379-380 and PX 6. They also testified that [student's] IEP's services and accommodations are being implemented. (Tr. 168:18-23; 285:2-23). [Special Education Teacher's] role as case manager is to ensure [Student's] IEP is implemented with anyone who works with [student], including [student's] general education teachers, support staff, etc. (Tr. 123:19-124:12). [Special Education Teacher] sees [Student] daily during Academic Enhancement and she is in constant contact with other Special Education staff members in the inclusion classes with [Student], who ensure [student] is attending to task completion and also giving [student] examples of how to interact with [student's] peers. (Tr. 129:23-130:16).

[Content Area Teacher] testified that [Student] receives frequent checks for comprehension; directions read aloud; verbal prompting; positive reinforcement; extra time to complete assignments. (Tr. 285:2-23). She also testified that [Student] receives support from [Content Area Teacher] as well as [student's] paraeducator through modeling, reteaching, and

providing extra practice. (Tr. 286:7-287:21). [Content Area Teacher] testified that she has not seen [Student] becoming frustrated, upset, or angry, in her class and therefore the behaviors underlying the Self-Regulation Goal have not been a significant issue. (Tr. 228:23-230:10). Similarly, [Special Education Teacher] testified that during her time as [Student's] case manager, while [student's] IEP has been fully implemented, the primary concern "of the teachers ha[s] been [student's] task completion this school year." (Tr. 183: 6-11).

While Petitioner's counsel noted in the hearing that the specific provision of those services are not documented in the data collection (PX6), the IEP does not reflect a requirement for data collection on the administration of [Student's] services, the way it notes a requirement for data collection of the goals themselves. (PX1, SCBE 219-222; Tr. 124:6-12, 140:2-141:18, 151:12-22).

2. The Disciplinary Incident and Manifestation Determination Review Meeting

On November 21, 2024, [Student] brought [item], to school. (PX1, SCBE 228). This incident first came to the School administration's attention when a student reported seeing [item] in the [gender] bathroom on the morning of November 21. (Tr. 98:13-99:14). Although the School administrators and SRO could not initially determine who had brought it, a student emailed [Assistant Principal], on the evening of November 21, reporting seeing [Student] with [item]. (Tr. 99:11-14). [Assistant Principal] then reviewed surveillance footage (Ex. R1) to substantiate that student's report, interviewed students seen on the footage, and took student statements. (Tr. 99:15-21; PX 1 at SCBE 228-232). [Student] admitted bringing the [item], and [student] gave a statement as follows:

I got a [item] and brought it to school because someone told me to. I did not know [details].

(PX1, SCBE 228).

[Student's] possession of the [item] at School violated the Board's Student Code of Conduct Paragraph 401.1, [violation], which sets forth that "[s]tudents ... in possession of ... [specific items] are not permitted to be on school property ..." (PX 2, SCBOE Code of Conduct, p. 12). Punishment for a Class IV violation committed on school premises includes suspension and assignment to [location], the Board's alternative school. (PX 2, SCBOE Code of Conduct, p. 13).

[Student] was given due process and a 40-day alternative school placement was recommended for the infraction, which is a typical disciplinary assignment for [infraction]. (Tr. 23:22-24:6; 349:15-22). After receiving due process, [Student] was sent home on Friday, November 22, 2024. On December 2, 2024 (the first Monday after the Thanksgiving holiday), a Manifestation Determination meeting was held to consider whether [Student's] behavior was a manifestation of [student's] disability, or else was a direct result of the Board's failure to implement [student's] IEP. (PX1, SCBE 037-042). The Manifestation Determination Review ("MDR") meeting met the requirements of Alabama Administrative Code 290-8-9-.09 (2)(c). (See PX3). It was held within ten school days of the decision to change [Student's] placement (PX1, SCBE 037-042). The MDR team included [], Student Services Program Specialist; [], general education teacher; [], special education teacher; [], Assistant Principal; and [Student's] parents. (SCBE 041). [Student Services Program Specialist] facilitated the meeting and completed the MDR form (PX 1, SCBE 037-042). The MDR team reviewed [Student's] eligibility records, [student's] IEP, [student's] discipline record, [student's] grades, the underlying infraction in this instance, and at the team meeting, received input from [Student's] teachers and parents. (Tr. 296:4-297:19).

Prior to the meeting, [Student Services Program Specialist] input information into the form from [Student's] IEP, eligibility records, and the underlying disciplinary infraction. During the meeting, the team collectively answered a number of questions. The MDR team first considered several threshold questions, for which a "YES" answer would allow the Board under the law to make a placement change regardless of whether the infraction was a manifestation. (Tr. 110:10-21, 306:2-5). The MDR team answered one of those questions "YES" – "Did the student knowingly [infraction]?" (Tr. 300:1-5). The MDR parents noted their disagreement in the meeting that [Student] had knowingly [infraction]. (Tr. 300:1-15). This disagreement is inconsequential, as the MDR team continued through the rest of the analysis to make a substantive manifestation determination. (Tr. 301:9-11).

The MDR team determined that the IEP accurately assessed the student's needs. (Tr. 171:13-17, SCBE 037-042). As [Student Services Program Specialist] testified, the IEP assessed [Student's] areas of weakness as reflected in [student's] eligibility paperwork, and the IEP is written based off that assessment. (Tr. 308:4-22; SCBE 039). With regard to the IEP's two behavior goals, the team discussed that task completion was an issue as evidenced by [student's] grades. (Tr. 308:13-15). As for the Self-Regulation Goal, the teachers present in the MDR meeting "didn't seem to think [student] was having problems in peer interactions..." (Tr. 308:23-309:5). [Content Area Teacher] and [Special Education Teacher] reported that this "did not seem to be an issue, that [student] seemed to do fairly well in terms of relating to others." (Tr. 310:13-18). [Student Services Program Specialist] recalled that the word "typical" was used in the meeting in describing how [Student] related to [students] peers. (Tr. 310:13-18; 233:1-6).

Next, the MDR team considered whether [Student] has demonstrated the ability to follow class and school rules. The team determined that [student] has done so, given [student's] lack of

discipline infractions this school year. (Tr. 311:14-21). Next, the team considered whether [Student] “act[s] in a socially acceptable way,” looking at whether [student] is having for the most part typical peer-to-peer interactions,” and the team “all seemed to agree that [student] was able to control [themselves] and act in a socially acceptable way.” (Tr. 311:22-312:7). The team agreed [student] showed “adequate communication skills” and “expressed needs,” i.e., “I’m hungry, I have a stomach ache, I forgot my shoes at home.” (Tr. 312:8-15). Lastly, [Student] showed that [student] could ascertain that “different things have different levels of consequence.” (Tr. 312:16-313:5). [Student Services Program Specialist] recalled that the group was in consensus that [Student] could do all of these things, and if there had been any disagreement, [Student Services Program Specialist] would have noted it on the form. (Tr. 314:21-315:2, 317:6-20). Next, the MDR team considered whether the student’s “disability impairs [student’s] ability to understand the impact and consequences of [student’s] behavior subject to the disciplinary action.” (Tr. 316:3-19). Although [Student] and [student’s] Parents contend that [student] was unaware the [item was an issue] until [student] already had it at School (Tr. 16:11-16, 21:11-15)), in the MDR meeting, [Student] conveyed in the meeting that [student] knew [item] was not appropriate for [student’s] age. (Tr. 340:12-15). [Student’s] statement also notes that once [student] saw [details], [student] left it because [student] “did not want to get in trouble.” (PX1, SCBE 228). [Student] additionally indicated that [student] knew the [details] and [student] was not supposed to have it. (Tr. 340:12-341:8; see also PX1, SCBE 228).

The two critical questions for the Manifestation Determination are 1) whether [Student’s] conduct was a manifestation of [student’s] disability, and 2) whether [Student’s] conduct was the direct result of the Board’s failure to implement [student’s] IEP. (PX1, SCBE 037-42). For the first question, the MDR team concluded that [Student’s] conduct was not a manifestation of

[student's] ADHD because it was not the type of behavior generally symptomatic of ADHD (or of [Student's] own concerning behaviors reflected in [student's] eligibility paperwork and IEP) – [characteristics]. (Tr. 318:9-16). As [Student Services Program Specialist] testified, in this case, [Student] said [student] was asked to bring the [item]; “[student] had the opportunity to go home, make a decision about whether ... to bring said item to school and then actually go get the item, put it in [student's] stuff, and bring it to school, so that removes a factor of impulsivity.” (Tr. 318:17-319:1). “As far as executive function, a lot of that relates to follow through and staying on task about being able to follow a plan. [Student] followed it from A to B.” (Tr. 319:2-5). “Then, as far as inattention, my understanding is ... the item that was asked for is exactly what was brought so [student] paid enough attention to detail to know [student] got the right item.” (Tr. 319:6-10). As far as [Student's] Self-Regulation Goal, the concerning behavior assessed in [student's] IEP is for “unexpected behavior toward [student's] peers” that may occur when [student] is “upset, frustrated or angry.” (Tr. 126:1-127:16). With regard to this infraction, there is no evidence that [Student] “was angry so [student] was bringing something to a peer, or frustrated so [student's] bringing, nor was it unexpected...[student] was asked for something and followed through and did it.” (Tr. 320:1-12). [Assistant Principal], [Student Services Program Specialist], [Content Area Teacher], and [Special Education Teacher] all testified that the whole MDR team, including the Parents, agreed in the MDR meeting that [Student's] infraction was neither caused by nor had a substantial relationship with [student's] ADHD. (Tr. 317:21 -318:7; 242:9-14).

As for the second question, the MDR team determined that [Student's] conduct was not “a direct result of the District's failure to implement the IEP” because based on the information and data gathered from [Student's] teachers, “they were following that IEP.” (Tr. 320:21-321:17). As noted above, [Special Education Teacher] and [Content Area Teacher] both of whom were on the

MDR team, testified that [Student's] IEP was being implemented to fidelity. (Tr. 140:15-141:1, 320:21-321:8). [Student Services Program Specialist] did not recall anyone in the meeting expressing any concern that the IEP was not being implemented. (Tr. 320:21-321:17).

Accordingly, the MDR team determined that [Student's] act of bringing the [item] to School was not a manifestation of [student's] ADHD and that it was not the direct result of any failure by the Board to implement [student's] IEP. (PX1, SCBE 040).

II. RELEVANT STATUTORY AND CASE LAW

Congress enacted the IDEA because Congress found that children with disabilities “were either totally excluded from schools or [were] sitting idly in regular classrooms awaiting the time when they were old enough to ‘drop out.’” *Bd. of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176, 179 (1982) (bracketed text in *Rowley*) (quoting H.R. REP. NO. 94-332, at 2 (1975)). The IDEA ensures that “children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.” 20 U.S.C. § 1400(d)(1)(A).

Under the IDEA, a “child with a disability” may be a child with an intellectual or learning disability or a child with a serious emotional disturbance or a health impairment who, by virtue of the disability, “needs special education and related services.” 20 U.S.C. § 1401(3)(A). Under the IDEA, a “free appropriate public education” is:
special education and related services that—

- (A) have been provided at public expense, under public supervision and direction, and without charge;
- (B) meet the standards of the State educational agency;

- (C) include an appropriate preschool, elementary school, or secondary school education in the State involved; and
- (D) are provided in conformity with the individualized education program required under section 1414(d) of this title.

20 U.S.C. § 1401(9)(A)-(D). “Special education” means “specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability.” 34 C.F.R. § 300.39(a)(1).

Turning to placement, a school district must educate a child with a disability in the “least restrictive environment” or LRE. The LRE requirement compels a local educational agency to “ensure that ... [t]o the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are nondisabled[.]” An IEP team must determine and identify in a student’s annual IEP the student’s LRE for the academic year.

Finally, with respect to student discipline, when a school district decides “to change the placement of a child with a disability because of a violation of a code of student conduct,” the child’s IEP team must conduct a manifestation determination review or MDR. 20 U.S.C. § 1415(k)(1)(E)(i). The team must “review all relevant information in the student’s file, including the child’s IEP, any teacher observations, and any relevant information provided by the parents to determine—(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 IEP.” 20 U.S.C. § 1415(k)(1)(E)(i).

If the team determines that “the conduct was a manifestation of the child’s disability,” then the child’s IEP team either must “conduct a functional behavioral assessment, and implement a behavioral intervention plan” or, if the child already has a behavioral intervention plan, must review the plan and “modify it, as necessary, to address the behavior” and “return the child to the

placement from which the child was removed.” 20 U.S.C. § 1415(k)(1)(F). If the team determines that the conduct was not a manifestation of the child’s disability, then the child may proceed through the disciplinary process that governs children without a disability. 20 U.S.C. § 1415(k)(1)(C).

Consequently, this Hearing Officer has to understand the nature of “the conduct in question” which is an integral part of the manifestation determination. *Sampson Cnty. Bd. of Educ. v. Torres*, 717 F. Supp. 3d 474, 488 (E.D.N.C. 2024). Notably, by its plain terms, the statute is worded broadly, requiring consideration of “all relevant information” and “any relevant information provided by the parents,” and it does not restrict the MDR team to considering only the description or findings already made by any disciplinary personnel or investigation. *Id.*

In addition, the IDEA does not restrict the Hearing Officer to adopting the description of the “conduct in question” already made by the MDR team, or by a disciplinary official, upon review in a due process hearing. *Id.* Indeed the statute directs the ALJ to make “a decision ... on substantive grounds” and it gives the parties “the right to present evidence and confront, cross-examine, and compel the attendance of witnesses.” 20 U.S.C. §§ 1415(f)(3)(E)(i) and (h)(2). Notably, the statute does not carve out the “conduct in question” as a topic on which the parties have no “right to present evidence.” *Id.* § 1415(h)(2). Where the statute requires a determination whether “the conduct in question was caused by” a disability, *id.* § 1415(k)(1)(E), it follows that the ALJ properly may consider underlying facts bearing upon the description of the conduct in question, if it is relevant to the manifestation determination review.

III. STATEMENT OF ISSUES

The January 14, 2025, hearing in this due process matter was an expedited review of the Board’s Manifestation Determination that 1) [Student’s] conduct was not a manifestation of

[student's] disability and 2) [student's] conduct was not a direct result of any failure by the Board to implement the IEP. As the party seeking relief in this matter, Petitioner has the burden of proof to show by a preponderance of the evidence that the Manifestation Determination was incorrect and should be overturned. *Schaffer v. Weast*, 546 U.S. 49 (2005); Ala. Admin. Code § 290-8-9.08(9)(c).

IV. PETITIONER'S ARGUMENTS

During the hearing in this case, [Assistant Principal] testified that he was present at the MDR for the Petitioner. (HT, p. 27). The only documents the MDR team reviewed and considered was the IEP and it was less than twenty (20) pages. (HT, p. 25). Petitioner's entire education file was not reviewed by the team. (HT, p. 25). Video evidence of the Petitioner concerning the code of conduct violation was not reviewed. (HT, p. 25). The MDR review team did not review Ala. Code. §290-8-9 concerning disciplinary action to be taken when a student has an IEP. (HT, p. 53). Data concerning Petitioner's goals and whether the goals were being implement were not reviewed. (HT, p. 69-70). Updated medical records on Petitioner were not reviewed. (HT, p. 79-80).

The Alabama Uniform Incident Offense report prepared by the School Resource Officer ("SRO") was also not reviewed by the MDR team. *Id.* Program Specialist for the District, [Student Services Program Specialist] testified that 85% of the MDR review document was completed prior to the meeting with Petitioner's parents. (HT, p. 327).

Also importantly, Petitioner only had an IEP for eight (8) months prior to the alleged violation of the code of conduct which incepted in April 30, 2024. (HT, p. 28, 30). [Assistant principal] conceded that Petitioner was moved from a 504 plan to an IEP because [student] was having difficulty with [social skills]. (HT, p. 29-33). [Student] had disciplinary incidents at school

where [student] [actions]. (HT, p. 34-38, 39). It was discussed at the MDR that Petitioner had trouble [action]. (HT, p. 40-41). [Student] had these behavior goals in [student's] IEP to assist [student] in [having social skills]. (HT, p. 29-30).

[Assistant Principal] believed that Petitioner's IEP was being implemented at the MDR meeting. (HT, p. 65-66). However, data concerning Petitioner's goals and whether the goals were being implement was not reviewed. (HT, p. 69-70). [Assistant principal] conceded that data collection was required to substantiate Petitioner's behavior goals. (H.T., p. 90-91). The data determines if progress is being made with Petitioner's behavior goals. (HT, p. 86-88). Data also determines whether or not Petitioner's IEP is being implemented appropriately. (HT, p. 88, lines 9-23). It would naturally be the first thing the MDR team reviewed. (HT, p. 90). However, he has not seen the data and the MDR team did not review it at the meeting. (HT, p. 84-85).

Notwithstanding, the MDR review document contained errors concerning the code of the conduct violation with which Petitioner was charged by the District. (HT, p. 43-44; 50-51). The prepared form asked the MDR review team, "Did the student *knowingly* [action]?" (emphasis added); (HT, p. 43-44). District representatives responded, "Yes," but it was noted that the "Parents disagree." *Id.*

[Assistant Principal] conceded that at the time of the MDR review he did not know [classification of item] pursuant to the IDEA or the Alabama Administrative Code 290-8-9. (HT, p. 51-53). The MDR review team did not review the definitions in Ala Code §290-8-9 or IDEA. (HT, p. 53). It was not discussed whether [] pursuant to applicable law. *Id.* He did not know if [] pursuant to the IDEA. (HT, p. 51). The MDR could have rephrased the question to include [] but did not. (HT, p. 333-334).

[Assistant Principal] testified that he performed the investigation concerning the code of conduct violation involving the Petitioner and provided the information to the SRO. (Hearing Transcript (“HT”), p. 22). The SRO prepared the Alabama Uniform Incident Offense Report. (HT, p. 17-18). The narrative states in part that [Student] admitted to [action]. (HT, p. 19). [Student] was not issued a citation because the [item], nor was [student] [action]. (HT, p. 20). There was no indication in the SRO’s report that [Student] knew [facts] before [student] brought it to school. (HT, p. 21). Consequently, [Assistant Principal] nor [Principal] reported to the SRO that [Student] knew the [facts] prior to bringing it to school. (HT, p. 23). Ultimately, they decided to change [Student’s] educational placement to [Location] alternative school. (HT, p. 24).

Notwithstanding, Petitioner’s conduct in question aka, [action] to school had a direct and substantial relationship to [student’s] disability. (HT, p. 214). District representatives testified that students bring items from home and give them to other students to improve relationships or have positive peer to peer interactions. (HT, p. 74-75).

Students have brought money and gift cards to school. (HT, p. 75). Petitioner had previously brought the amount of \$300.00 to school and gave it to other students in an effort to improve or gain friendships. (HT, p. 197).

In this case, Petitioner was advised by the student whom [student] brought the [item] that if [student] did not bring it, [peer] would not be [student’s] friend. (HT, p. 214-215). Petitioner wants to develop friendship with other [gender] students because [student] perceives that they do not like [student] because [student] likes, “weird stuff” which they do not like. (HT, p. 214). [Student] tries to develop friendships with them anyway. *Id.*

Aside from the testimony above, whether Petitioner’s conduct at issue was caused by and had a direct and substantial relationship to [student’s] disability can be substantiated through

[student's] IEP. One of [student's] behavior goals in [student's] IEP states, "Based on observations and discipline referrals, [Student] displays needs in positive interactions with [student's] peers." (*See*, Petitioner's IEP, Bates, 24-35, specifically Behavior Goal, p. 30). Moreover, under functional needs of the student it states, "Based on observations and discipline referrals, [Student] displays needs in positive interactions with [student's] peers. It has been noted that [Student], in the state of being upset, will [action] toward [student's] peers. Based on conversations about the incident, [student] will admit to it although not (sic) display remorse for [student's] actions. Due to [Student's] inability to function in the school environment appropriately, this carries over into the academic setting and impact [Student] and the learning of others around [student]." *Id.* at Bates 25-26.

V. LEGAL ANALYSIS

1. Petitioner Has Not Met Her Burden of Showing by A Preponderance of the Evidence That the Infraction Was A Manifestation of [Student's] Disability.

The evidence and testimony introduced at the hearing does not meet the preponderance of the evidence standard to show that [Student's] behavior in bringing the [item] to school was a manifestation of [student's] ADHD. The behavior concerns reflected in [Student's] eligibility paperwork and addressed in [student's] IEP are [characteristics]. (PX1, SCBE 016-18). [Student's] and [student's] Parents' account of the infraction was that a peer asked [student] to bring the [item] to School, and in an effort to become that student's friend, [Student] went home, found the [item], and later brought it to School. (PX1, SCBE 228; Tr. 193:2-8, 214:23-215:16). This behavior does not indicate [characteristics]. (PX1, SCBE 216-223).

While Petitioner points to language in [Student's] IEP that [student] has "needs in positive interactions with [student's] peers," (PX1, SCBE 220), that language is referring to a need to manage "[actions]" as referenced in the IEP's Self-Regulation Goal. (PX1, SCBE 220). With

regard to [Student's] act of bringing the [item], there is no evidence that [Student] was angry or frustrated, nor was the conduct unexpected. (Tr. 320:1-12, PX1 SCBE 220). [Student's] act of bringing the [item] to School is easily distinguishable from [student's] use of unexpected profanity when becoming upset towards classmates in class, and nothing in [student's] eligibility paperwork nor [student's] IEP reflects behavior concerns about trying to please or befriend peers in a manner atypical for [grade level] graders. To the contrary, [Student's] teachers testified that [student] has friends, they observe typical social interactions between [student] and [student's] classmates, [Student] herself testified that [student] has friends and a friend group. (Tr. 224:2-6; Tr. 160:8-16, 184:5-10).

Petitioner and the Parent insist [Student] did not know [detail], but this does not change the result. [Student] wrote in [student's] statement that [student's] mom had told [student] not to [action]. (PX1, SCBE 228). Petitioner has offered evidence that the [item] was confusing, but [student] has not offered evidence that any misunderstanding by [Student] of the [item] was a result of [student's] ADHD. The Parents testified that [Student] knows the difference between right and wrong. (Tr. 207:12-14). [Student's] statement that [action]. (PX1, SCBE 228). [Student] has further indicated [student] [acknowledgement] (and thus can appreciate the consequences involved with possessing it): "I left [item] in the bathroom because [details]. I did not want to get in trouble. So I left it." (PX1, SCBE 228). Moreover, the Board's policy prohibits [action]; it does not require knowing [behavior]. (PX 2, SCBOE Code of Conduct, p. 12).

Nor has Petitioner established that [Student's] behavior was a manifestation of some other undiagnosed disability such as autism. While the Parents testified that they see characteristics in [Student] that remind them of a relative with an autism diagnosis, [Student] [themselves] does not have a diagnosis, concerns of autism are not reflected in [student's] eligibility paperwork or

[student's] IEP, and [student's] teachers all testified that they have not observed indicators of autism in [student's] behavior in class or in [student's] social interactions. (Tr. 187:13-19, 238:7-10, 322:2-13; 323:19-20). In any event, whether [Student] has not been properly evaluated or diagnosed with autism is a child find question and is not before the undersigned for purposes of the January 14 hearing appealing the Manifestation Determination. If Petitioner wants to argue this issue in the second phase of this case on a substantive IDEA violation, [Petitioner] may do so at a later time.

For these reasons, Petitioner has not met their burden of showing that [Student's] act of bringing the [item] to School was a manifestation of ADHD.

2. The Petitioner Has Not Met Her Burden of Showing That the Infraction Was the Direct Result of Any Failure by the Board to Implement the IEP.

Next, the Petitioner has not met [Petitioner's] burden of showing by a preponderance of the evidence that [Student's] act in bringing the [item] to School was the "direct result" of any alleged failure by the Board to implement the IEP. (Tr. 83:8-17, 235:9-23, 242:16-243:3, 320:21-321:13, 324:5-8). The Board offered evidence that the IEP was implemented to fidelity, and in the MDR meeting, the team reviewed the IEP and received input from [Special Education Teacher] and [Content Area Teacher] about its implementation. (Tr. 140:15-141:1, 320:21-321:8). In the January 14 hearing, [Special Education Teacher] explained the data collection for the IEP goals, which monitors [Student's] progress towards [student's] goals. Both [Special Education Teacher] and [Content Area Teacher] offered testimony that [Student] receives direct instruction in [Special Education Teacher's] class and also receives paraeducator support in [student's] general education classes as laid out in the IEP. (Tr. 180:5-17; 228:10-22; 230:14-17; 255:-7-12; PX1, SCBE 220-222). Both teachers also testified that [Student] has not become [characteristics] in their classes,

so resulting unexpected behavior (as targeted by the Self-Regulation Goal) has not been a significant issue. (Tr. 183:12-23; 229:20-230:21; 247:10-248:13).

In the hearing, Petitioner offered evidence that the services associated with [Student's] Self-Regulation Goal were not documented as part of the data collection and inferred that this indicates the services were not properly implemented. (Tr. 142:11-143:15). While the Parties might dispute whether such data collection is a necessary component of IEP implementation, for purposes of this MDR appeal and expedited hearing, Petitioner has not shown by a preponderance of the evidence that [Student's] act of bringing the [item] to School was the direct result any alleged failure to implement the goals and services associated with the Self-Regulation Goal (or the task completion goal, for that matter). The Self-Regulation Goal serves to help [Student] develop strategies to manage [actions]. (PX1, SCBE 221). To the extent those strategies have not been implemented to fidelity, [Student's] act of going home, identifying the [item], placing it in [student's] bag, and bringing it to school to provide to a classmate, is not alleged to have occurred as a result of unexpected behavior when becoming [actions]. (Tr. 320:1-12). Thus, [student's] act cannot have been the direct result of any alleged failure to implement [student's] services involving strategies that target unexpected behavior during class. To the extent Petitioner is claiming a substantive denial of FAPE on this point, [Petitioner] can raise it in the second phase of this due process matter. For the purpose of this decision, because Petitioner has not met [Petitioner's] burden of showing [Student's] infraction was the "direct result" of any alleged implementation failure, the undersigned will not overturn the Board's Manifestation Determination on this basis.

VI. CONCLUSION

1. Specific Findings

For the reasons set forth above, the undersigned upholds the Board's determination that [Student's] conduct was not a manifestation of [student's] disability and was not the direct result of a failure by the Board to implement the IEP.

2. Appeal Rights

Any party dissatisfied with this decision may bring an appeal pursuant to 20 U.S.C. § 1415(e)(2) and/or Alabama Administrative Code 290-8-9.08(9)(c)(15C) and must file notice of intent to file a civil action with all other parties within thirty (30) calendar days of the receipt of this decision. Thereafter, a civil action must be initiated within thirty (30) days of the filing of the notice of intent to file a civil action.

3. Remaining Issues in This Case and Avenues for Review of [Student's] Disciplinary Assignment

This Hearing Decision does not dispose of this due process matter entirely, as Petitioner's substantive claims of IDEA violations based on a denial of FAPE remain pending before the undersigned. The undersigned will set a status conference in short order to determine next steps on the remaining claims in Petitioner's due process complaint.

Lastly, although Petitioner and [student's] Parents testified that [Student] was struggling in in-school suspension pending the outcome of this expedited hearing and they were concerned about implementation of [student's] IEP during an alternative school placement, those issues fall outside the narrow scope of the review of the Manifestation Determination. Nevertheless, this Hearing Decision also does not fully exhaust Petitioner's avenues for appeal of the alternative school assignment. As referenced in the January 14 hearing, Petitioner has appealed the disciplinary assignment to the Board pursuant to the new state legislation Ala. Code § 16-1-14 (Tr.

349:2-14), and [Petitioner] will subsequently have an opportunity to appeal the assignment (if upheld by the Board) to the [S.C.] Juvenile Court under that state law. (Ala. Code § 16-1-14). This order simply upholds the Board's determination that [Student's] infraction was neither a manifestation of [student's] ADHD nor the direct result of any alleged failure to implement [Student's] IEP.

DONE and ORDERED this 24th day of January, 2025.

/s/P. Michael Cole

P. MICHAEL COLE
Hearing Officer
P. Michael Cole, LLC
P.O. Box 1800
Athens, Alabama 35612

VII. CERTIFICATE OF SERVICE

I hereby certify that a copy of this Decision has been forward to the following individuals by Certified Mail with postage prepaid and return receipt requested properly addressed as well as by electronic mail on this the 24th day of January 24, 2025.

1. Honorable Shane T. Sears
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/s//P. Michael Cole

P. Michael Cole
Due Process Hearing Officer