

*IN RE* [REDACTED],

STUDENT

[REDACTED]

[REDACTED],

PARENTS

v.

PRINCE GEORGE'S COUNTY

PUBLIC SCHOOLS

BEFORE RICHARD O'CONNOR,

ADMINISTRATIVE LAW JUDGE,

THE MARYLAND OFFICE

OF ADMINISTRATIVE HEARINGS

OAH No.: MSDE-PGEO-OT-24-05565

### **DECISION**

STATEMENT OF THE CASE  
ISSUES  
SUMMARY OF THE EVIDENCE  
FINDINGS OF FACT  
DISCUSSION  
CONCLUSIONS OF LAW  
ORDER

#### **STATEMENT OF THE CASE**

On February 27, 2024, [REDACTED] and [REDACTED] (Parents) filed a due process complaint with the Office of Administrative Hearings (OAH) on behalf of [REDACTED] [REDACTED] (Student), alleging a violation of section 1415(k)(1)(E) of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C.A. §§ 1400-1419 (2017),<sup>1</sup> by determining that the Student's behaviors prior to manifestation determination reviews (MDR) on February 15, 2024, were not a manifestation of the Student's disability.

---

<sup>1</sup> U.S.C.A. is an abbreviation for United States Code Annotated. All references to Title 20 of the U.S.C.A. will be to the 2017 bound volume.

The complaint also asserts claims under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.A. § 794 (2018) (Section 504), for the Prince George's County Public School's (PGCPS) alleged failure to provide available interventions, failure to include certain individuals in the Student's individualized education program (IEP)/Section 504/MDR teams, obstructing the Parents' participation in IEP/Section 504 proceedings, and retaliating against the Parents by banning their advocate from an MDR meeting.<sup>2</sup>

The complaint includes a list of requested remedies, as follows:

1. Clear the Student's record of all disciplinary action.
2. Reinstate the Student's last agreed-upon IEP.
3. Amend the IEP to place the Student at a private day school with a trained behavior aide for support.
4. Email the Student's complete scholastic records to the Parents and their advocate and provide a list of the names and locations of those who have accessed the records.
5. Require the PGCPS to contract with a licensed special educator of the Parents' choosing to oversee all aspects of the Student's special education services.
6. Replace the Student's current IEP/Section 504/MDR team with professional licensed staff with proven track records of providing needed supports to Black male students with disabilities, including a psychologist, a positive behavior interventions and supports specialist, and a therapist.
7. Compensatory education.
8. Any other appropriate remedies.

On March 4, 2024, the parties attended the required resolution session, and on March 7, 2024, notified the OAH that they did not resolve their dispute. On March 8, 2024, I conducted a video pre-hearing conference. Darnell L. Henderson, General Counsel, represented the PGCPS, and the Parents participated on behalf of the Student. I issued a Pre-Hearing Conference Report and Order on March 14, 2024.

---

<sup>2</sup> The complaint additionally alleges violations of the Americans with Disabilities Act, 42 U.S.C. § 12101 (2013), but that statute does not relate to education, and alleged violations cannot be heard in a proceeding under the IDEA.

On March 15, 2024, the PGCPS filed a Motion to Dismiss Certain Claim[s] or in the Alternative for Summary Decision; Motion *In Limine* to Bar Use of Illegally Recorded Conversations (Motion). On March 20, 2024, the Parents filed a Response to the Motion. I heard argument on the Motion before beginning the hearing on the merits and ruled as follows:

1. The request to dismiss the Parents' claims under Section 504 was denied because the OAH has a delegation from the PGCPS to hear such claims, dated November 2, 1998, which has never been revoked or modified.

2. The request to dismiss the Parents claims regarding discipline of the Student on grounds of *res judicata* was denied.

3. To the extent that the Complaint requests revocation of Principal [REDACTED] professional certificate as an educator issued by the Maryland State Department of Education (MSDE), the request to acknowledge that I have no authority to revoke professional certificates or take personnel actions was granted.

4. To the extent that the complaint makes tort claims, the request to acknowledge that I have no authority to hear such claims was granted.

5. The motion *in limine* to bar illegally recorded conversations was held sub curia until such time as any recorded conversations were offered as evidence.

I held the hearing on March 20, March 21, March 22, April 2, April 3, and April 4, 2024, by videoconference.<sup>3</sup> Code of Maryland Regulations (COMAR) 28.02.01.20B(1)(b). The Parents<sup>4</sup> were unrepresented but were accompanied and advised by Dr. [REDACTED], their educational advocate. William C. Fields, Associate General Counsel, represented the PGCPS.

---

<sup>3</sup> The proceedings on April 4, 2024, were limited to submissions of the parties' written closing arguments.

<sup>4</sup> [REDACTED] attended only the first day of the hearing. Any mention of a Parent (in the singular) refers to [REDACTED].

Because the complaint involves a manifestation determination review, this is an expedited hearing as a matter of law and must be completed within twenty school days of the filing of the complaint. 34 Code of Federal Regulations (C.F.R.) § 300.532(c)(2) (2022).<sup>5</sup> “School day means any day, including a partial day that children are in attendance at school for instructional purposes.” *Id.* § 300.11(c)(1). The complaint was filed on February 27, 2024; the following day, February 28, 2024, was the first school day of the twenty-day time frame for the hearing. School continued in session on February 29 and March 1, then recessed for three days for the weekend and a professional development day on March 4, 2024, so the fourth school day was March 5, 2024. School continued in session through March 22, 2024, with that date being the seventeenth school day after the filing of the complaint. After the weekend of March 23 and 24, spring break began on March 25, 2024, and continued through April 1, 2024. April 2, 2024, was a half-day of school for students, making that the eighteenth day under the above definition of a school day. April 3 and 4, 2024, were the nineteenth and twentieth school days, respectively, and the hearing was completed on the latter date.

Expedited decisions must be issued within ten school days after the hearing concludes. 34 C.F.R. § 300.532(c)(2). The PGCPS schools and offices were closed on April 6, 7, and 10, 2024; I therefore must issue a decision by April 19, 2024.

Procedure is governed by the contested case provisions of the Administrative Procedure Act; the Education Article of the Annotated Code of Maryland; the MSDE procedural regulations; and the Rules of Procedure of the OAH. Md. Code Ann., Educ. § 8-413(e)(1) (2022); Md. Code Ann., State Gov’t §§ 10-201 through 10-226 (2021 & Supp. 2023); COMAR 13A.05.01.15C; COMAR 28.02.01.

---

<sup>5</sup> Unless otherwise noted, all citations to the C.F.R. are to the 2022 bound volume.

## ISSUES

Determining the issues to be decided in this case was exceptionally difficult, partially because of the very broad allegations in the complaint. From the pre-hearing conference, argument on the Motion, argument on the PGCPS's motion for judgment at the close of the Parents' case, and evidence produced as the hearing progressed, I determined that the following issues were presented:

1. Whether the PGCPS denied the Student a free appropriate public education (FAPE) under the IDEA by determining at two MDRs on February 15, 2024, that the Student's behaviors resulting in discipline were not a manifestation of his disability. A question related to this issue is whether the Student's actions that led to discipline were caused by the PGCPS's failure to implement his Section 504 Plan.

2. Whether the PGCPS denied the Student a FAPE under Section 504 by failing to provide the Student with reasonable and available services to accommodate his disability.

3. Whether the PGCPS denied the Parents an opportunity to meaningfully participate in the IEP or MDR processes.

4. Whether the PGCPS denied the Student a FAPE by failing to invite to meetings all required members of the Student's IEP or MDR teams.

5. Whether the PGCPS retaliated against the Parents by not permitting their educational advocate to participate in the IEP or MDR processes.

6. If the PGCPS failed to provide a FAPE, what is the appropriate remedy?

## SUMMARY OF THE EVIDENCE

### Exhibits

The Parents, as permitted by the Pre-Hearing Conference Report and Order, electronically filed seventeen pre-marked proposed exhibits. Their status is as follows:

- Parents Ex. 1. Not offered.
- Parents Ex. 2. Not offered.
- Parents Ex. 3. Not offered (duplicate of Parents Ex. 2).
- Parents Ex. 4. Not offered.
- Parents Ex. 5. Not offered (duplicate of Parents Ex. 12).
- Parents Ex. 6. Not offered.
- Parents Ex. 7. Not offered.
- Parents Ex. 8. Not offered.
- Parents Ex. 9. Not offered.
- Parents Ex. 10. Not offered.<sup>6</sup>
- Parents Ex. 11. Section 504 Plan, October 17, 2023.  
Admitted into evidence.
- Parents Ex. 12. Functional Behavioral Assessment (FBA) Summary Report, May 26, 2022.  
Admitted into evidence.
- Parents Ex. 12a.<sup>7</sup> Functional Behavioral Assessment (FBA) Fillable Form, December 12, 2023.  
Admitted into evidence.
- Parents Ex. 15.<sup>8</sup> Not offered.
- Parents Ex. 16. Résumé of [REDACTED].  
Admitted into evidence.

---

<sup>6</sup> This exhibit is the complaint filed on February 27, 2024, which is part of the case file.

<sup>7</sup> The Parents' list of exhibits includes three marked as 12a. This is the first such exhibit; the second is the same information in a garbled format, and the third appears to be identical to the first but is copied sideways.

<sup>8</sup> No Parents Exhibits 13 or 14 were identified or listed.

The PGCPS filed a binder of nineteen proposed exhibits. Their status is as follows:

- PGCPS Ex. 1. Not offered.<sup>9</sup>
- PGCPS Ex. 2. Amended IEP, September 2, 2022.  
Admitted into evidence.
- PGCPS Ex. 3. Prior Written Notice, September 2, 2022.  
Admitted into evidence.
- PGCPS Ex. 4. Notification of Student's Suspension, September 20, 2023; Notification of Student's Suspension, October 24, 2023; Notification of Student's In-School Suspension, September 21, 2023; Notification of Student's Suspension, December 13, 2023; Notification of Student's Suspension, January 24, 2024; Notification of Student's Suspension, February 7, 2024; graph of Minor Incidents per School Day, undated; narratives of Incidents, December 11 and 13, 2023; graph of Referrals per School Day, undated; narratives of Incidents, November 8, 2023, to January 23, 2024.  
Admitted into evidence.
- PGCPS Ex. 5. Section 504 Team Meeting Minutes, January 4, 2024; [Student] manifestation meeting record, February 15, 2024; Section 504 Manifestation Determination Review Form, February 15, 2024; another Section 504 Manifestation Determination Review Form, February 15, 2024; Section 504 Team Meeting Minutes, February 15, 2024.  
Pages 100-116 of this exhibit were admitted into evidence; pages 97-99 and 117-121 were not offered.
- PGCPS Ex. 6. Not offered.
- PGCPS Ex. 7. Prior Written Notice, November 27, 2023.  
Admitted into evidence.
- PGCPS Ex. 8. Not offered.
- PGCPS Ex. 9. Notice of IEP Team Meeting, February 2, 2024.  
Admitted into evidence.
- PGCPS Ex. 10. Emails from [REDACTED] to the Parents, February 8, February 28, and March 8, 2024.  
Admitted into evidence.
- PGCPS Ex. 11. Not offered.
- PGCPS Ex. 12. Child Find Referral, February 20, 2024.  
Admitted into evidence.

---

<sup>9</sup> This exhibit is also the complaint.

- PGCPS Ex. 13. Notice of No Assessment Needed, February 20, 2024.  
Admitted into evidence.
- PGCPS Ex. 14. Prior Written Notice, February 21, 2024.  
Admitted into evidence.
- PGCPS Ex. 15. PGCPS Office of Appeals decision, February 27, 2024.  
Admitted into evidence.
- PGCPS Ex. 16. Not admitted.
- PGCPS Ex. 17. Not offered.
- PGCPS Ex. 18. Résumé of [REDACTED].  
Admitted into evidence.
- PGCPS Ex. 19. Résumé of [REDACTED].  
Admitted into evidence.

### Testimony

The Parents both testified and presented testimony from [REDACTED], accepted as an expert in special education, the IEP process, discipline of students with disabilities, and progress monitoring.

The PGCPS presented testimony from [REDACTED], [REDACTED] – Special Education Compliance, accepted as an expert in special education; and [REDACTED], principal of [REDACTED] ([REDACTED]), accepted as an expert in school administration.

### **FINDINGS OF FACT**

Based upon the evidence presented, I find the following facts by a preponderance of the evidence:

1. The Student is thirteen years old and is in the seventh grade at J [REDACTED], a PGCPS school.
2. Before enrolling at J [REDACTED] for the 2023-2024 school year, the Student attended [REDACTED], also a PGCPS school.



3. The Student is disabled by [REDACTED] ([REDACTED]).
4. Some of the Student's typical behaviors are distractibility, impulsivity, difficulty maintaining focus, a desire to constantly move, including by leaving his seat and leaving class, becoming vocal at inappropriate times, asking many questions, avoidance of schoolwork, and difficulty interacting appropriately with peers and some teachers.
5. The Student previously received special education services under an IEP that was last amended on September 2, 2022.
6. At the IEP team's request, the PGCPSS completed a functional behavioral assessment (FBA) of the Student on May 26, 2022.
7. On or about August 31, 2022, the Parents revoked their consent for the Student to receive special education services.
8. On or about September 2, 2022, the PGCPSS stopped providing special education services to the Student.
9. On October 17, 2023, the Parents and [REDACTED] personnel developed a Section 504 Plan for the Student. The accommodations in the plan are as follows:
  - The Student will keep a journal or log of assignments. The teacher will remind the student to document assignments.
  - The Student will be given preferential seating – near instruction and in an area that reduces distractions (as needed).
  - The teacher will give non-verbal cues to redirect the Student when he is off-task.
  - The teacher will provide prompts to help the Student refocus on tasks; the teacher will also check for understanding.
  - The teacher will redirect the Student privately, one-on-one, instead of in front of the class.
  - The Student will be allowed to come to a trusted adult (peer mediator, student advocate, etc.) to check in at 9:45 and 4:00. If the student advocate is absent, the peer mediator will complete the check-in.
10. The PGCPSS completed another FBA of the Student on December 12, 2023, and recommended that a behavior intervention plan (BIP) be developed for the Student.

11. The Student previously had a BIP, but it was terminated in January 2021 because all school instruction was being provided virtually.

12. On October 24, 2023, the Parents requested in writing that the Student's IEP from September 2022 be reinstated and that he receive special education services at [REDACTED].

13. The PGCPS denied the request to reinstate the 2022 IEP and took the position that the Student's eligibility for special education services must be determined anew.

14. The IEP team convened on November 17, 2023. In attendance were the Parent, [REDACTED] (the Parents' advocate), [REDACTED], [REDACTED], and other PGCPS personnel. [REDACTED] facilitated the meeting.

15. The meeting became contentious and chaotic and went well beyond its allotted time. [REDACTED] repeatedly interrupted the PGCPS participants, yelled at them, and insulted them. The meeting facilitator, [REDACTED], muted [REDACTED] microphone at times, but [REDACTED] told [REDACTED] to unmute the microphone at least once.

16. The IEP team was unable to determine the Student's eligibility or develop an IEP for the Student. The next IEP meeting was scheduled for February 20, 2024.

17. The IEP team met on February 20, 2024, and determined that the Student is eligible for special education services. The team did not develop an IEP for the Student but referred the Student to Child Find and decided that no additional assessments were necessary.

18. The Parent told PGCPS staff that she wanted to wait until an IEP was developed before meeting to discuss a BIP for the Student.

19. The Student, meanwhile, was having behavioral issues at [REDACTED], as follows:

- On September 20, 2023, the Student was suspended for three days for continuous school disruption.
- On September 21, 2023, the Student received a two-day, in-school suspension for continued classroom disruption.
- On October 24, 2023, the Student was suspended for three days for sexual misconduct.

- On December 13, 2023, the Student was suspended for ten days for sexual misconduct.

20. Because the December 13, 2023 incident led to a ten-day suspension, an MDR was required before the suspension could be implemented. The MDR meeting occurred on January 4, 2024; the Parents and ██████ attended. By majority vote, with the Parents and ██████ disagreeing, the MDR team found that the Student's behavior was neither a manifestation of his disability nor caused by the PGCPs's failure to implement the Student's Section 504 Plan.<sup>10</sup>

21. ██████ was disruptive, argumentative, and hostile during the meeting on January 4, 2024.

22. On January 5, 2024, ██████ began the process of banning ██████ from participating in future school-based meetings by submitting to PGCPs security services a proposed stay-away order.

23. ██████ followed up on January 31, 2024, after receiving no response from security services, whereupon security services provided a ban letter dated February 1, 2024. ██████ needed approval from the area office before she could send the letter. Approval was received on February 14, 2024, and the letter banning ██████ from PGCPs property and participating in PGCPs meetings was sent by email that day.

24. The PGCPs has a Student Handbook that includes a code of conduct. Among other things, the code of conduct prohibits computer or internet misuse and physical attacks on peers or staff.

25. On January 24, 2024, the Student, while in class, used another student's computer to visit a website showing how to load a gun. He told classmates that he had access to guns. The Student received a three-day suspension for this incident.

---

<sup>10</sup> This MDR decision is not part of the complaint in this case.

26. On February 6, 2024, the Student banged another student's head into a wall, causing injury. The assault occurred in the sixth-grade hallway or a classroom, which is on the opposite side of the building and on a different floor from the Student's seventh-grade area. On February 7, 2024, the Student received a ten-day suspension and was recommended for expulsion for this incident.

27. An MDR meeting convened on February 15, 2024, to decide whether the Student's actions on January 24, 2024, and February 6, 2024, were manifestations of his disability.

28. The meeting was virtual. The Parent attended, and [REDACTED] joined by linking through the Parent's phone, i.e., both the Parent and [REDACTED] participated through one phone.

29. The PGCPS attendees were [REDACTED]; [REDACTED], school counselor and the Student's case manager; [REDACTED], science teacher; [REDACTED], technology teacher; [REDACTED], assistant principal; [REDACTED], school counseling instructional specialist; [REDACTED], school nurse; [REDACTED], student advocate and crisis intervention resource teacher; [REDACTED], classroom teacher; [REDACTED], pupil personnel worker; and [REDACTED], school counseling instructional supervisor.

30. In making the manifestation determinations, the participants considered the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5); the Student's cumulative file that included attendance, disciplinary, and academic information; the FBA of the Student; information about the disciplinary infractions from teachers and other students; and information from the Parents.

31. The MDR team did not reach a consensus on either of the disciplinary infractions. As to the computer misuse incident, none of the PGCPs personnel found that it was a manifestation of the Student's disability or caused by failure to implement his Section 504 Plan. The Parent disagreed and stated that it was a manifestation and had been caused by the PGCPs's failure to implement the Section 504 Plan.

32. The same result occurred for the decision regarding the assault on the sixth-grade student. None of the PGCPs personnel found that it was a manifestation of the Student's disability or caused by failure to implement his Section 504 Plan. The Parent disagreed and stated that it was a manifestation and had been caused by the PGCPs's failure to implement the Section 504 Plan.

33. The decision of the MDR meeting, by majority vote, was that neither the Student's computer misuse on January 24, 2024, nor the Student's assault on another student on February 6, 2024, was a manifestation of the Student's disability.

34. During the MDR meeting, PGCPs staff sometimes muted [REDACTED] to maintain decorum. This had the result of also muting the Parent. The muting was not lengthy or extensive and did not prevent the Parent from making her views known or providing information.

35. On February 21, 2024, the PGCPs Office of Appeals conducted an expulsion conference upon [REDACTED] proposal that the Student be expelled.

36. On February 27, 2024, a PGCPs Office of Appeals hearing officer found that the Student had committed a physical attack on another student on February 6, 2024, and imposed a suspension of twenty days, rather than expulsion, as a sanction.

37. At the time of this hearing, the Student was again attending [REDACTED].

## DISCUSSION

### The Manifestation Determinations

The standard of proof in this case is a preponderance of the evidence. COMAR 28.02.01.21K(1). To prove an assertion or a claim by a preponderance of the evidence means to show that it is “more likely so than not so” when all the evidence is considered. *Coleman v. Anne Arundel Cnty. Police Dep’t*, 369 Md. 108, 125 n.16 (2002).

The burden of proof rests on the party seeking relief. *Schaffer ex rel. Schaffer v. Weast*, 546 U.S. 49, 56-58 (2005). The status quo at present is that the Student’s behaviors on January 24 and February 6, 2024, have been determined not to be manifestations of his disability. The Parents are seeking to overturn those determinations and bear the burden of establishing that the Student’s computer misuse and assault were manifestations of the Student’s [REDACTED].

A threshold question is whether the IDEA applies to the Student’s situation. At the time of the disciplinary violations and the MDR meeting, the Student had not been found eligible for special education services and did not have an IEP. However, the Parents and the PGCPs had begun the IEP process with a meeting on November 17, 2023.

Title 34, section 300.534 of the C.F.R. provides, in relevant part:

- (a) General. A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated a code of student conduct, may assert any of the protections provided for in this part if the public agency had knowledge (as determined in accordance with paragraph (b) of this section) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred.
- (b) Basis of knowledge. A public agency must be deemed to have knowledge that a child is a child with a disability if before the behavior that precipitated the disciplinary action occurred—
  - (1) The parent of the child expressed concern in writing to supervisory or administrative personnel of the appropriate educational agency, or a teacher of the child, that the child is in need of special education and related services;
  - (2) The parent of the child requested an evaluation of the child pursuant to §§ 300.300 through 300.311; or

(3) The teacher of the child, or other personnel of the LEA, expressed specific concerns about a pattern of behavior demonstrated by the child directly to the director of special education of the agency or to other supervisory personnel of the agency.

34 C.F.R. § 300.534(a), (b).

The Student had a Section 504 Plan in place at the time of the behavior in question, and the Parents had requested that the Student be provided with special education. The Student meets the criteria of the above regulation, and proceeding under the IDEA is proper.

For students with disabilities who violate the code of conduct or school rules, the IDEA authorizes school administrators to impose short-term disciplinary removals from the student's current placement, such as an out-of-school suspension of ten days or less. 34 C.F.R.

§ 300.530(b)(1). In such circumstances, the student with a disability may be disciplined the same as his non-disabled peers. *Id.* § 300.530(c). If a student with a disability is going to be suspended for more than ten consecutive days or has accumulated more than ten days of disciplinary removals in the same school year, it is considered a change in placement, and the local educational agency (LEA) must convene an MDR meeting within ten school days of the disciplinary removal. *Id.* § 300.530(e)(1).

During the MDR meeting, the Parents and “relevant members of the IEP Team<sup>11</sup> (as determined by the parent and the LEA) 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.” *Id.* The purpose of the MDR meeting is to determine “if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability” or “if the conduct in question was the direct result of the LEA's failure to implement the IEP.”<sup>12</sup> *Id.*

---

<sup>11</sup> The Student, as stated previously, does not currently have an IEP. One IEP meeting had occurred before the MDR, on November 17, 2023.

<sup>12</sup> In this case, the second question would be whether the Student's conduct was the direct result of the PGCP's failure to implement the Section 504 Plan.

If the MDR team determines that a student's behavior that resulted in the disciplinary removal was a manifestation of the student's disability, the LEA must conduct an FBA (if not already conducted) and implement a BIP, or if a BIP already exists, review and revise the existing BIP. *Id.* § 300.530(f)(1). Except under special circumstances, the student must be returned to his previous educational placement, unless the Parent and the LEA agree to a change of placement as part of the modification of the BIP. *Id.* § 300.530(f)(2). If the behavior was not a manifestation of the student's disability, then the student may be disciplined to the same extent as his non-disabled peers. COMAR 13A.08.03.08H(1).

Parental rights regarding disciplinary removals are established by the IDEA and its implementing regulations. Under the IDEA, parents may file an expedited due process complaint if they disagree with the student's placement during the disciplinary removal, with the MDR decision, or with the interim alternative educational setting. 34 C.F.R. §300.532(a). At an expedited due process hearing on these issues, the administrative law judge may:

- (i) Return the child with a disability to the placement from which the child was removed if the hearing officer determines that the removal was a violation of § 300.530 or that the child's behavior was a manifestation of the child's disability;
- or
- (ii) Order a change of placement of the child with a disability to an appropriate interim alternative educational setting for not more than 45 school days if the hearing officer determines that maintaining the current placement of the child is substantially likely to result in injury to the child or to others.

*Id.* § 300.532(b)(2).

To prevail on this issue, the Parents must show that the decisions made at the two MDRs on February 15, 2024, were incorrect. The Parents presented very little relevant evidence in their attempt to meet this burden of proof.



A major deficiency in the Parents' case was failure to link the Student's violations of the code of conduct to any established symptoms of [REDACTED]. The Parents and [REDACTED] testified about the Student's typical actions that may be related to his A [REDACTED], such as distractibility, impulsivity, difficulty maintaining focus, leaving his seat and leaving classes, becoming vocal at inappropriate times, asking many questions, avoidance of schoolwork, and difficulty interacting appropriately with peers and some teachers. None of these witnesses, however, are experts in [REDACTED] [REDACTED], the Parents' expert in special education, testified that the Student's leaving class, disrupting class, and impulsivity are symptoms of [REDACTED], and that the Student's impulsivity led him to access the inappropriate website about guns. Although [REDACTED] has well-established expertise in special education and has undoubtedly worked with many students experiencing [REDACTED], I do not find that she is qualified to give an opinion on the symptoms of [REDACTED] in seventh-grade pupils.

The Parent and [REDACTED] testified that the Student underwent a neuropsychological (or possibly only psychological) evaluation in 2021, which was provided to the PGCPs for consideration. The evaluation may have provided some insight into how the Student's [REDACTED] manifests, but neither party produced it as evidence. Similarly, the testimony and documentation concerning the MDR meeting on February 15, 2024, show that the team consulted the DSM-5 about [REDACTED] and its symptoms. The DSM-5 is a widely accepted source of descriptions and explanations of mental disorders and their symptoms. The Parents could have produced it as evidence to show that the symptoms of [REDACTED] dovetail with the actions for which the Student was disciplined, if that were the case. But again, neither party offered the DSM-5 as evidence.

The Parents did not contend that the Student's accessing the firearms website was somehow innocent or appropriate; they argued that, as [REDACTED] testified, it was caused by the Student's impulsivity, which is a symptom of [REDACTED].

The Parents did, however, strongly contest the PGCPS's characterization of the Student's attack on the sixth grader as an assault or a violation for which the Student should face discipline.

The Parents both testified that the Student is playful and physical and engages in "roughhousing" and "horseplay." After the incident in the sixth-grade area occurred, the Student was taken to the office, where he wrote a statement saying that he only grabbed the other boy by the shirt and did not bang his head into the wall, and that he was "just joking." Apparently, the Student provided essentially the same narrative to his Parents, and they have adopted it wholeheartedly, alleging that the injury resulted from an accident.

No statements by any witnesses to the incident were introduced into evidence, nor did any eyewitnesses testify. Nevertheless, the PGCPS's documentation of the assault establishes that it was more serious than the Student and his Parents allege. The attack occurred in the sixth-grade area of the school, either in a classroom or a hallway.<sup>13</sup> According to [REDACTED], this area is on the opposite side of the school from the Student's seventh-grade area, and on a different floor. The Student had no reason to be in the sixth-grade section.

Information from other students and the teacher in the sixth-grade classroom was considered at the MDR meeting. Their descriptions depicted the Student as coming into the classroom, grabbing the victim, and banging the victim's head into the wall. The sixth-grade student was taken to the nurse, [REDACTED], who participated in the MDR meeting. There is no doubt that the victim suffered an injury from the attack, described as either a concussion or head trauma. He was sent home and received medical attention at an emergency facility.

---

<sup>13</sup> The written descriptions of the incident almost all indicate that the Student came into the sixth-grade classroom and committed the assault, but there is one mention of it, in the Office of Appeals decision, occurring in a hallway.

By a preponderance of the evidence, I find that the Student's assault on the sixth-grade peer was a violent unprovoked attack that resulted in injury to the victim. I reject the Parents' contention, based on information they received from the Student, that the assault was mere horseplay, joking, or accidental. The Student deliberately banged the victim's head into a wall, for no apparent reason.

The record contains no evidence that establishes, or even hints, that committing a physical assault against an innocent victim is a symptom of [REDACTED]. For such an act to be considered a manifestation of disability, the Parents would need to prove that the Student was unable, because of [REDACTED], to suppress his desire to attack and injure the other student. The Parents' evidence is devoid of anything that remotely suggests such a possibility.

Concerning the Parents' position that the Student's [REDACTED] caused him to act impulsively when accessing the website instructing how to load a gun, I reach the same conclusion. Despite the lack of evidence on the issue, I recognize that ADHD can cause impulsive actions that are done without regard for consequences. But the Parents presented no convincing evidence that the Student's [REDACTED] made him powerless to resist the impulse to access a clearly inappropriate website while in the classroom.

I conclude, therefore, that neither the Student's misuse of technology on January 24, 2024, nor his physical assault on February 6, 2024, were manifestations of the Student's disability. The remaining question on this issue is whether either was caused by the PGCP's failure to implement the Student's Section 504 Plan.

The Section 504 Plan is in evidence as Parents Exhibit 11, and its provisions are spelled out in Finding of Fact 8, above. Of the six accommodations listed, the Parents presented evidence on two: the Parent testified that the Student made one entry in his journal, then lost it.

[REDACTED] took no action, thereby failing to implement this accommodation.

The Parent also testified that the Student's science teacher, [REDACTED], told her that the Student sits wherever he wants in her class, thus making the preferential seating accommodation impossible. The Parent does not seem to have raised these points at the MDR meeting. The remaining four accommodations were not specifically discussed in the testimony and were not the subject of any complaints by the Parents. However, the Parents testified at some length that they had been deprived of relevant "data," which may mean they expected more information about when and how the Section 504 Plan accommodations were implemented and whether they were effective.

Be that as it may, the Parents did not produce any evidence linking an alleged failure to implement the accommodations to the Student's violations of school rules. In other words, there is no indication that failure to implement the journal accommodation, for example, caused the Student to access the inappropriate website or assault a peer. The MDR team correctly determined that the Student's behavior did not result from the PGCP's failure to implement the Section 504 Plan, and the evidence before me supports the same conclusion.

In summary, the Parents have failed to prove that the Student's conduct on January 24, 2024, and February 6, 2024, was a manifestation of his disability. Specifically, the Parents have not provided sufficient evidence to establish that accessing the gun-related website on January 24, 2024, or that assaulting another student on February 6, 2024, were caused by the Student's [REDACTED]. Nor have the Parents proved that those violations resulted from the PGCP's failure to implement the Student's Section 504 Plan.

Additionally, I find no evidence that the PGCP denied the Parents an opportunity for meaningful participation in the MDR process. The Parent attended the meeting on February 15, 2024, and presented information about the Student and the incidents being considered.

██████████ linked to the meeting through the Parent's phone and provided input.<sup>14</sup> There is no indication in the record that the Parent was denied an opportunity to participate.

### **The Section 504 Plan**

The Complaint alleges that the PGCPs denied the Student a FAPE under Section 504 by failing to provide the Student with reasonable and available services to accommodate his disability. The Parents bear the burden of proof concerning this aspect of the complaint.

Section 504 of Public Law 93-112, enacted on September 26, 1973 (the Rehabilitation Act of 1973), states: "No otherwise qualified handicapped individual in the United States . . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." The term "program or activity" includes a "local educational agency." 29 U.S.C.A. § 794(b)(2)(B) (2018).

Regulations promulgated under the Rehabilitation Act of 1973 require the following: "A recipient that operates a public elementary or secondary education program or activity shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the person's handicap." 34 C.F.R. § 104.33(a). An "appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of §§ 104.34, 104.35, and 104.36." *Id.* § 104.33(b)(1). Establishing an IEP is one way to meet this standard. *Id.* § 104.33(b)(2).

---

<sup>14</sup> ██████████ had received the letter banning her from meetings by email the previous day.

Failure to provide a FAPE to a disabled student can trigger a claim of discrimination under the Rehabilitation Act. *Brennan v. Regional School Dist. No. 1 Bd. of Educ.*, 531 F.Supp. 2nd 245, 278 (D. Conn. 2008). An LEA “shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily.” 34 C.F.R. § 104.34(a).

Unlike an IEP developed in accordance with the IDEA, there are no specific requirements for a Section 504 Plan except to prevent the Student from being discriminated against because he is handicapped. The Student in this case is disabled but does not have an IEP. The PGCPS’s obligation is to provide a FAPE to the Student, but, without an IEP, the methods for doing so are not clearly defined by the Rehabilitation Act of 1973.

As previously set forth, the accommodations in the Students Section 504 Plan are:

- The Student will keep a journal or log of assignments. The teacher will remind the student to document assignments.
- The Student will be given preferential seating – near instruction and in an area that reduces distractions (as needed).
- The teacher will give non-verbal cues to redirect the Student when he is off-task.
- The teacher will provide prompts to help the Student refocus on tasks; the teacher will also check for understanding.
- The teacher will redirect the Student privately, one-on-one, instead of in front of the class.
- The Student will be allowed to come to a trusted adult (peer mediator, student advocate, etc.) to check in at 9:45 and 4:00. If the student advocate is absent, the peer mediator will complete the check-in.

Except for the Parent’s testimony that the journal accommodation was a failure and the preferential seating did not seem to be available in one class, the Parents presented no evidence that the above accommodations were inadequate. What was obvious from the Parents’ testimony was that they wanted more – different professionals who could intervene to manage the Student’s behavior and enrollment in Life Skills, a positive behavior interventions and supports program, or something similar.

The Parents complained that the Student's FBA had not been implemented, but an FBA is merely an assessment that determines whether a BIP is needed. In this case, the PGCPS did recommend a BIP for the Student, but the Parent would not attend a BIP meeting until an IEP was in place, with the result that the Student does not have the BIP that he needs.

Another missing evidentiary link in the Parents' presentation is how any alleged deficiencies in the Section 504 Plan and its implementation are affecting the Student's education. The evidence establishes that the main obstacle to the Student's making reasonable academic progress is his bad behavior, which, in turn, causes him to miss many days of school because he is often suspended. The Student is smart and can do the work when he chooses to, but his grades in the second quarter of this school year were very poor.

One must remember that the Section 504 Plan has been in place only since October 17, 2023, around the same time that the Student's serious disciplinary problems began. He had received two suspensions in September for classroom disruptions. A week after the Section 504 Plan began, he was suspended for three days for sexual misconduct. Then on December 13, 2023, he received a ten-day suspension after a female student complained to a teacher that the Student was grabbing her breasts and buttocks and would not stop when she told him to. This incident led to an MDR on January 4, 2024, but the Student's behavior continued to escalate, culminating in the request for expulsion on February 7, 2024.

Obviously, the Section 504 Plan was ineffective in regulating the Student's behavior. But this does not mean that it was defective or improperly implemented. The Parents apparently agreed with the plan on October 17, 2023, which placed most of the responsibilities on PGCPS staff, not on the Student or the Parents.

Looking at the totality of the evidence, I do not believe that any Section 504 Plan that kept the Student in the general population, as contemplated by section 104.34 of Title 34 of the C.F.R., would have succeeded. The PGCPS and the Parents formulated a plan that had a good chance of success, but the Student thwarted it by continuing his disruptive behavior. The function of this decision is not to speculate about what might have worked for the Student; it is to determine whether the PGCPS denied the Student a FAPE by devising an inadequate Section 504 Plan or failing to implement the plan. I find that the Parents have not proved that the PGCPS failed in either respect.

### **The IEP Process**

The Parents' complaint alleges that PGCPS has unlawfully denied the Parents meaningful participation in the IEP process after they asked that special education services be reinstated for the Student at [REDACTED]. The Parents, as the complaining party, bear the burden of proof on this issue.

The nature of the Parents' complaint puts it somewhat outside the usual methods of analysis, since the IDEA and federal and State regulations dictate a LEA's obligations when an initial request or referral is made. 20 U.S.C.A. § 1414(a)(1); 34 C.F.R. § 300.301; COMAR 13A.05.01.06. The Parents contend that their request is not for an initial evaluation – they want the IEP that was in effect until September 2, 2022, reinstated. They argue that since the Student already has a Section 504 Plan, he is identified as disabled and is automatically eligible for special education services.

The PGCPS's position is that it must determine whether the Student currently meets the eligibility standards for special education, i.e., if he has a disability that adversely impacts his access to the curriculum without additional services, supports, or accommodations.



In other words, the PGCPS considers the present situation as identical to an initial evaluation because the IEP from more than a year ago may not be valid and cannot simply be reinstated.

On December 1, 2008, the Office of Special Education and Rehabilitative Services, United States Department of Education, published in the Federal Register revised regulations under Part 300, Title 34, of the C.F.R. The publication included a review of comments received concerning the proposed regulations and discussions of the agency's position on those comments. Applicable to the situation that exists in this case, the Office stated the following:

Comment: Some commenters requested that the Department clarify the procedures to be followed when a parent provides consent for special education and related services after previously revoking consent (re-enrollment), including whether re-enrollment would be considered an initial evaluation that would trigger the 60-day or other State-imposed evaluation timeline. Another commenter expressed concern about the expenditure of resources toward a "new" initial evaluation and IEP for a student for whom consent for special education and related services has been revoked and then granted again.

Discussion: If a parent who revoked consent for special education and related services later requests that his or her child be re-enrolled in special education, an LEA must treat this request as a request for an initial evaluation under § 300.301 (rather than a reevaluation under § 300.303). However, depending on the data available, a new evaluation may not always be required. An initial evaluation, under § 300.305, requires a review of existing evaluation data that includes classroom based, local, or State assessments, and classroom based observations by teachers and related services providers. On the basis of that review and input from the child's parents, the IEP Team and other qualified professionals must identify what additional data, if any, are needed to determine whether the child is a child with a disability, as defined in § 300.8, and the educational needs of the child. Therefore, a public agency may not always have to expend resources on a "new" initial evaluation.

73 F.R. 73014-15 (2008). The above hypothetical is exactly what happened in this case.

The Parent complained many times during the hearing that she requested special education services for the Student "last summer" but as of the conclusion of the hearing they were still not available.

The Parents revoked their consent for the Student to receive special education services on August 31, 2022, while the Student was attending [REDACTED]. The Student has not received those services since September 2, 2022. The Parent maintains that she requested resumption of special education services at a meeting with [REDACTED] and another staff member in August 2023. [REDACTED] testified that no such request was made at that time, and that the first time the Parents requested that the IEP be reinstated was in an email of October 24, 2023, which was not presented as evidence. The evidence on this point is meager, but Maryland regulations require that that a referral for special education services be in writing. COMAR 13A.05.01.04A(1). The written request occurred on October 24, 2023, and an IEP meeting was scheduled for November 17, 2023.

That meeting was held but was unsuccessful and accomplished essentially nothing. The attendees included the Parent; [REDACTED]; [REDACTED]; [REDACTED], the meeting facilitator; [REDACTED]; [REDACTED], school psychologist; [REDACTED], school counselor; [REDACTED], school counselor; [REDACTED], occupational therapist; [REDACTED], classroom teacher; and [REDACTED], crisis intervention resource teacher.<sup>15</sup>

The primary reason for the meeting's lack of success was the Parents' advocate, [REDACTED]. Although this was an IEP meeting, [REDACTED] at first insisted that the PGCPSS was required to hold an MDR regarding the Student's suspensions. [REDACTED] tried to explain that this was incorrect, since the Student had been suspended for eight days, and ten days were necessary to trigger an MDR. [REDACTED] and the Parent did not accept this explanation and continued to argue the point.

---

<sup>15</sup> This may not be a complete list. It is gleaned from witness testimony, the Prior Written Notice of November 27, 2023, and a screenshot of the meeting that was part of the complaint.

Next, [REDACTED] argued that the PGCPS must reinstate the 2022 IEP because the Parents had requested it and regulations required it. The school system took the position that the Student's eligibility for special education services must be determined anew under the Child Find provisions. A long argument ensued on this point and the meeting became contentious. [REDACTED] muted [REDACTED] microphone at least once in an attempt to maintain order, but [REDACTED] instructed her to unmute the microphone.

These arguments and disagreements went on long past the scheduled time for the meeting to end. It started at 10:30 a.m. and finally ended at 1:20 p.m. because [REDACTED] staff had to return to their duties. The result of the meeting was that the Student's eligibility for special education services was not decided and no proposals for an IEP were discussed.

The next IEP meeting occurred on February 20, 2024. The long delay between meetings was not explained at the hearing, and the evidence did not include any descriptions or summaries of the meeting.<sup>16</sup> PGCPS Exhibits 12 and 13 show that the IEP team found the Student eligible for special education services, referred him to Child Find, and determined that no additional assessments were needed. As of the date of this hearing, an IEP for the Student had not been completed.

The Parents have not identified any statute, regulation, or case law that mandates reinstatement of a previous IEP upon the Parents' request. The PGCPS's procedures were those suggested by the Office of Special Education and Rehabilitative Services in the Federal Register. The PGCPS properly treated the Parents' request as one for an initial evaluation. It attempted to undertake an evaluation based on the available data at the meeting on November 17, 2023, but the attempt was sabotaged by the Parents' advocate, [REDACTED].

---

<sup>16</sup> The complaint, although filed with the OAH on February 27, 2024, appears to have been written and distributed to the PGCPS and several other agencies on February 20, 2024. It contains no mention of the meeting on February 20, 2024.

There is no evidence that the delay between then and the February 20, 2024, meeting was attributable to any actions by the PGCPS. The matter has played out as envisioned by the Office of Special Education and Rehabilitative Services: the IEP team was able to determine eligibility based on the available data and input from the team members, and no further assessments are needed. The Student will receive special education services as soon as an IEP is developed.

The Parents have not met their burden of proof on this issue. The PGCPS correctly followed the applicable regulations after receiving the Parents' written request on October 24, 2023. The Parents are not entitled to have the previous IEP reinstated upon request, and the failure of the meeting on November 17, 2023, is attributable to the Parents' advocate. The Parent participated in both IEP meetings. In short, the Parents have presented no evidence that the PGCPS denied the Parents meaningful participation in the IEP process or took any action to delay or hinder that process.

### **The IEP and MDR Teams**

The Parents complained that the PGCPS failed to include necessary members in the Student's IEP team and MDR meeting team at several meetings.<sup>17</sup> The Parents bear the burden of proving this allegation and, if proven, that the failure deprived the Student of educational benefit. 34 C.F.R. § 300.513(a)(2).

The Student's IEP process began with the meeting of November 17, 2023. Title 34, section 300.321(a) of the C.F.R. sets forth the required members of an IEP team, as follows:

- General. The public agency must ensure that the IEP Team for each child with a disability includes—
- (1) The parents of the child;
  - (2) Not less than one regular education teacher of the child (if the child is, or may be, participating in the regular education environment);
  - (3) Not less than one special education teacher of the child, or where appropriate, not less than one special education provider of the child;

---

<sup>17</sup> The complaint included the same allegation for Section 504 Plan meetings, but the Parents presented no evidence concerning any Section 504 Plan meetings, and I granted the PGCPS's motion for judgment on that issue at the close of the Parents' case-in-chief.

- (4) A representative of the public agency who—
  - (i) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities;
  - (ii) Is knowledgeable about the general education curriculum; and
  - (iii) Is knowledgeable about the availability of resources of the public agency.
- (5) An individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in paragraphs (a)(2) through (a)(6) of this section;
- (6) At the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and
- (7) Whenever appropriate, the child with a disability.

*Id.* § 300.321(a).

I had some difficulty determining the complete roster of attendees at the November 17 meeting, but the evidence shows that at least the following individuals participated: the Parent; [REDACTED]; [REDACTED]; [REDACTED], the meeting facilitator; [REDACTED]; [REDACTED], school psychologist; [REDACTED], school counselor; [REDACTED], school counselor; [REDACTED], occupational therapist; [REDACTED], classroom teacher; and [REDACTED], crisis intervention resource teacher.

The presence of the Parent and [REDACTED] satisfies paragraphs (1) and (6) above. [REDACTED] is a regular education teacher of the Student present according to paragraph (2). The Student was not receiving special education services at the time of the meeting, so satisfying paragraph (3), requiring a special education teacher of the child, was not possible. However, [REDACTED], the Instructional Specialist for Special Education Compliance, meets the requirements of paragraph (4) and is knowledgeable about the special education services and resources available for the Student. [REDACTED], the school psychologist, would certainly be able to interpret the results of evaluations under paragraph (5).

The above-listed attendees meet the IEP team requirements of section 300.321(a). The PGCPs did not commit a procedural violation when it assembled the Student's IEP team.

The makeup of an MDR meeting is nowhere set forth with the same particularity as is that of an IEP team. Section 300.530(e)(1) states that “the LEA, the parent, and relevant members of the child’s IEP Team (as determined by the parent and the LEA)” must review relevant information in the Student’s file at the meeting. *Id.* § 300.530(e)(1).

As stated in Findings of Fact 28 and 29, the attendees at the MDR of February 15, 2024, were the Parent, [REDACTED], [REDACTED]; [REDACTED], who was the Student’s case manager; [REDACTED], science teacher; [REDACTED], technology teacher; [REDACTED], assistant principal; [REDACTED], school counseling instructional specialist; [REDACTED], school nurse; [REDACTED]; [REDACTED] pupil personnel worker; and [REDACTED], school counseling instructional supervisor. The Parent, [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were part of the Student’s IEP team and had attended the IEP meeting on November 17, 2023.

[REDACTED], the Parents’ expert, testified that the MDR team should have included an occupational therapist, a school psychologist, and a behavior support specialist to interpret available data and information. The Parent testified that [REDACTED] emailed a list of attendees to her prior to the meeting and noted that no school psychologist was on the list.

There is no evidence that the Parents requested additional participants for the MDR meeting or voiced any complaints about the makeup of the MDR team before or during the meeting. At this point in the manifestation proceedings, the Parents have the burden of proving that failure to include certain individuals in the MDR meeting made the team’s conclusions invalid or negatively impacted the Student’s education.

The Parents have failed to produce evidence of how the presence of an occupational therapist, school psychologist, and or behavior support specialist would have changed the determinations made at the meeting or affected the Student's education. I find that the makeup of the MDR team on February 15, 2024, was not a procedural violation under the IDEA and did not negatively impact the Student's education.

### **Retaliation**

A persistent theme throughout the hearing was the Parents' allegation that they were denied an opportunity to meaningfully participate in the IEP and MDR processes because the PGCPs retaliated against their advocate, [REDACTED], by muting her microphone and banning her from meetings. The Parents bear the burden of proving this allegation of improper procedures and, if proven, that the failure deprived the Student of educational benefit. 34 C.F.R. § 300.513(a)(2).

The Parents have the right to participate meaningfully in the IEP process and the manifestation determination process. *Id.* §§ 300.322, 300.530(e)(1). There is no doubt that the PGCPs did, at times, mute [REDACTED] microphone and banned her from participating in meetings as of February 14, 2024. The reasons for these actions were the subject of testimony from [REDACTED] and [REDACTED].

[REDACTED] testified about the IEP meeting of November 17, 2023, which she attended. She testified that her expectations of an IEP meeting, based on thirty-seven years of experience, are that the team members will act with decorum, allow others the opportunity to speak, be mindful of the purpose of the meeting, collaborate to achieve positive outcomes, and present and share information respectfully. [REDACTED] stated that the November 17 meeting was the "most contentious, unproductive, and dehumanizing" that she has ever experienced.

According to [REDACTED], [REDACTED] insisted that the PGCPS reinstate the Student's previous IEP without going through an evaluation process. When the PGCPS declined, [REDACTED] yelled at PGCPS staff and would not allow [REDACTED] or other PGCPS personnel to talk. [REDACTED] told the staff they were not qualified to make decisions and had no business being in their jobs. [REDACTED] also insisted that the PGCPS was required to make a manifestation determination because of the Student's prior suspensions. [REDACTED] testified that she tried to explain why an MDR was not required, but [REDACTED] interrupted her and told her she did not know what she was talking about.

Ultimately, the IEP team was essentially unable to discuss the Student because [REDACTED] prevented PGCPS personnel from talking by being bellicose, argumentative, and disrespectful. [REDACTED], the meeting facilitator, muted [REDACTED] microphone at least once during the meeting in an attempt to maintain decorum. [REDACTED] testified that she directed [REDACTED] to unmute the microphone because she felt that [REDACTED] should be able to participate in the meeting. However, the meeting lasted almost three hours before the facilitator ended it because nothing was being accomplished.

When cross-examining [REDACTED], the Parent tried to elicit testimony that [REDACTED] was yelling and talking over people because she could not hear the proceedings very well. [REDACTED] strongly disagreed with that characterization.

[REDACTED], the principal of [REDACTED], testified about the IEP meeting on November 17, 2023, and the MDR meetings of January 4 and February 15, 2024, all of which she attended. [REDACTED] testified in general about [REDACTED] demeanor at the meetings but did not delineate exactly what occurred at each meeting, as she was unable to recall.



██████████ stated that ██████████ comments, decorum, and behavior were not “conducive to the process” and “created a hostile environment.” She described ██████████ as irate and shouting at times and testified that ██████████ called one staff member a bully. ██████████ stopped a meeting on one occasion because ██████████ interrupted her and others and cut them off when they were trying to speak. ██████████ testimony mirrored ██████████ by saying that ██████████ told PGCPs they did not know what they were doing and were not equipped to handle a child like the Student. ██████████ called the PGCPs personnel “a bunch of Black women” who were failing the Student.

After the MDR meeting on January 4, 2024, ██████████ started the process of banning ██████████ from future meetings, which has been described previously. The ban letter went out by email on February 14, 2024, but ██████████ joined the meeting on February 15 by linking through the Parent’s phone. ██████████ reminded ██████████ that she was forbidden from participating, but the minutes of the meeting indicate that ██████████ could be heard “screaming in the background.” PGCPs Ex. 5. ██████████ was muted at times, but that had the effect of also muting the Parent and was not a viable option.

After ██████████ and ██████████ testified, the PGCPs rested, whereupon the Parents requested that they be allowed to call ██████████ as a rebuttal witness, proffering that her testimony would be that she did not act as described by the PGCPs’s witnesses. I did not allow the rebuttal testimony, ruling that the issue of ██████████ behavior at the meetings was well known before the hearing from the documents exchanged by the parties, and there was no reason why the Parents could not have called ██████████ to testify in their case-in-chief. *See, e.g., Riffey v. Tonder*, 36 Md. App. 633, 645 (1977).

On this issue, the evidence establishes that [REDACTED] substantially derailed the efforts of the Parents and the PGCPS to provide accommodations and services for the Student. She was undoubtedly acting with the Student's best interests in mind and with a desire to ensure that the Parents' rights were not violated. Her participation in the IEP and MDR processes had the opposite effect, however, fostering an environment of animosity between the parties and causing significant delays. The actions of PGCPS of muting her microphone occasionally and banning her from future meetings were necessary responses and were not retaliation against the Parents.

### **CONCLUSIONS OF LAW**

Based upon the foregoing Findings of Fact and Discussion, I conclude as a matter of law the following:

1. The PGCPS did not deny the Student a free appropriate public education under the IDEA by determining at two manifestation determination reviews on February 15, 2024, that the Student's behaviors resulting in discipline were not a manifestation of his disability. 34 C.F.R. § 300.530(e).
2. The Student's computer misuse on January 24, 2024, and assault on another student on February 6, 2024, were not manifestations of his disability. 34 C.F.R. § 300.530(e).
3. The PGCPS did not deny the Student a free appropriate public education under Section 504 of the Rehabilitation Act of 1973 by failing to provide the Student with reasonable and available services to accommodate his disability. 29 U.S.C.A. § 794(a) (2018); 34 C.F.R. § 104.33(a).
4. The PGCPS did not deny the Parents an opportunity to meaningfully participate in the IEP or MDR processes by refusing to reinstate the Student's IEP from 2022. 20 U.S.C.A. § 1414(a)(1); 34 C.F.R. § 300.301; COMAR 13A.05.01.06; 73 F.R. 73014-15 (2008).

5. The PGCPS did not deny the Student a free appropriate public education by failing to invite to meetings all required members of the Student’s IEP or MDR teams. 34 C.F.R. § 300.513(a)(2).

6. The PGCPS did not retaliate against the Parents by not permitting their educational advocate to participate in the IEP or manifestation determination review processes. 34 C.F.R. §§ 300.322, 300.530(e)(1).

**ORDER**

I **ORDER** that the due process complaint filed herein by the Parents on February 27, 2024, be, and is hereby, **DENIED** and **DISMISSED**.

April 15, 2024  
Date Decision Issued

Richard O’Connor  
Administrative Law Judge

ROC/sh  
#210898

**REVIEW RIGHTS**

A party aggrieved by this final decision may file an appeal within 120 days of the issuance of this decision with the Circuit Court for Baltimore City, if the Student resides in Baltimore City; with the circuit court for the county where the Student resides; or with the United States District Court for the District of Maryland. Md. Code Ann., Educ. § 8-413(j) (Supp. 2023). A petition may be filed with the appropriate court to waive filing fees and costs on the ground of indigence.

A party appealing this decision must notify the Assistant State Superintendent for Special Education, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, MD 21201, in writing of the filing of the appeal. The written notification must include the case name, docket number, and date of this decision, and the court case name and docket number of the appeal.

The Office of Administrative Hearings is not a party to any review process.

**Copies Mailed To:**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**IN RE** [REDACTED],

**STUDENT**

[REDACTED]

[REDACTED],

**PARENTS**

**v.**

**PRINCE GEORGE'S COUNTY**

**PUBLIC SCHOOLS**

**BEFORE RICHARD O'CONNOR,**

**ADMINISTRATIVE LAW JUDGE,**

**THE MARYLAND OFFICE**

**OF ADMINISTRATIVE HEARINGS**

**OAH No.: MSDE-PGEO-OT-24-05565**

**FILE EXHIBIT LIST**

The Parents filed seventeen pre-marked proposed exhibits. Their status is as follows:

- Parents Ex. 1. Not offered.
- Parents Ex. 2. Not offered.
- Parents Ex. 3. Not offered (duplicate of Parents Ex. 2).
- Parents Ex. 4. Not offered.
- Parents Ex. 5. Not offered (duplicate of Parents Ex. 12).
- Parents Ex. 6. Not offered.
- Parents Ex. 7. Not offered.
- Parents Ex. 8. Not offered.
- Parents Ex. 9. Not offered.
- Parents Ex. 10. Not offered.
- Parents Ex. 11. Section 504 Plan, October 17, 2023.  
Admitted into evidence.

- Parents Ex. 12. Functional Behavioral Assessment (FBA) Summary Report, May 26, 2022. Admitted into evidence.
- Parents Ex. 12a. Functional Behavioral Assessment (FBA) Fillable Form, December 12, 2023. Admitted into evidence.
- Parents Ex. 15. Not offered.
- Parents Ex. 16. Résumé of [REDACTED]. Admitted into evidence.

The PGCPS filed a binder of nineteen proposed exhibits. Their status is as follows:

- PGCPS Ex. 1. Not offered.
- PGCPS Ex. 2. Amended IEP, September 2, 2022. Admitted into evidence.
- PGCPS Ex. 3. Prior Written Notice, September 2, 2022. Admitted into evidence.
- PGCPS Ex. 4. Notification of Student's Suspension, September 20, 2023; Notification of Student's Suspension, October 24, 2023; Notification of Student's In-School Suspension, September 21, 2023; Notification of Student's Suspension, December 13, 2023; Notification of Student's Suspension, January 24, 2024; Notification of Student's Suspension, February 7, 2024; graph of Minor Incidents per School Day, undated; narratives of Incidents, December 11 and 13, 2023; graph of Referrals per School Day, undated; narratives of Incidents, November 8, 2023, to January 23, 2024. Admitted into evidence.
- PGCPS Ex. 5. Section 504 Team Meeting Minutes, January 4, 2024; [REDACTED]. manifestation meeting record, February 15, 2024; Section 504 Manifestation Determination Review Form, February 15, 2024; another Section 504 Manifestation Determination Review Form, February 15, 2024; Section 504 Team Meeting Minutes, February 15, 2024. Pages 100-116 of this exhibit were admitted into evidence; pages 97-99 and 117-121 were not offered.
- PGCPS Ex. 6. Not offered.
- PGCPS Ex. 7. Prior Written Notice, November 27, 2023. Admitted into evidence.
- PGCPS Ex. 8. Not offered.

- PGCPS Ex. 9. Notice of IEP Team Meeting, February 2, 2024.  
Admitted into evidence.
- PGCPS Ex. 10. Emails from [REDACTED] to the Parents, February 8, February 28, and  
March 8, 2024.  
Admitted into evidence.
- PGCPS Ex. 11. Not offered.
- PGCPS Ex. 12. Child Find Referral, February 20, 2024.  
Admitted into evidence.
- PGCPS Ex. 13. Notice of No Assessment Needed, February 20, 2024.  
Admitted into evidence.
- PGCPS Ex. 14. Prior Written Notice, February 21, 2024.  
Admitted into evidence.
- PGCPS Ex. 15. PGCPS Office of Appeals decision, February 27, 2024.  
Admitted into evidence.
- PGCPS Ex. 16. Not admitted.
- PGCPS Ex. 17. Not offered.
- PGCPS Ex. 18. Résumé of [REDACTED].  
Admitted into evidence.
- PGCPS Ex. 19. Résumé of [REDACTED].  
Admitted into evidence.