

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

\*\* ,

Petitioner,

vs.

Case No. 18-2322EDM

BRADFORD COUNTY SCHOOL BOARD,

Respondent.

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FINAL ORDER

A final hearing was held in this case before S. Diane Cleavinger, an Administrative Law Judge of the Division of Administrative Hearings (DOAH), on [REDACTED] [REDACTED], [REDACTED], in Starke, Florida.

APPEARANCES

For Petitioner: [REDACTED] [REDACTED] [REDACTED], Esquire  
Three Rivers Legal Services, Inc.  
Suite 220  
3225 University Boulevard South  
Jacksonville, Florida 32216

For Respondent: [REDACTED] [REDACTED] [REDACTED], County Attorney  
Bradford County, Florida  
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STATEMENT OF THE ISSUES

The issues for determination in this proceeding are:

(1) whether the Student's conduct on [REDACTED] [REDACTED], [REDACTED], that constitutes a violation of the Student Code of Conduct, was a

manifestation of [REDACTED] disability; and (2) whether the [REDACTED] County School Board (Respondent or District) failed to provide a free appropriate public education (FAPE) between [REDACTED] [REDACTED] through [REDACTED] [REDACTED], [REDACTED], after it [REDACTED] the Student with no services.

PRELIMINARY STATEMENT

On [REDACTED] [REDACTED], [REDACTED], Respondent conducted a Manifestation Determination Review (MDR), at the conclusion of which the team determined that Petitioner's act of misconduct that occurred on [REDACTED] [REDACTED], [REDACTED], did not constitute a manifestation of [REDACTED] disability. Petitioner's [REDACTED] relative and parent were dissatisfied with the team's decision, and, on [REDACTED] [REDACTED], [REDACTED], filed a request for an expedited due process hearing. The request for hearing was forwarded to DOAH.

On [REDACTED] [REDACTED], [REDACTED], an Expedited Case Management Order was issued, establishing deadlines for a sufficiency review, as well as for a mandatory resolution session. On [REDACTED] [REDACTED], [REDACTED], counsel for Petitioner filed a Notice of Appearance, in addition to a Status Report and Request for a Brief Extension of time, detailing that Petitioner had retained counsel the day prior, needed time to prepare for hearing and that Respondent agreed to the extension. That same day, on [REDACTED] [REDACTED], [REDACTED], an Order Granting Extension of Time was entered, requiring the resolution session to be held on or before [REDACTED] [REDACTED], [REDACTED].

On [REDACTED], [REDACTED], counsel for Petitioner filed a Joint Request for a Further Extension of Time, seeking additional time for the resolution session to take place. An Order Granting Extension of Time was entered on [REDACTED], [REDACTED], requiring the resolution session be held on or before [REDACTED], [REDACTED].

On [REDACTED], [REDACTED], Petitioner and Respondent jointly filed a Motion to Request Abeyance and Extend Due Process Timelines to conduct evaluations and conclude ongoing resolution discussions. An Order Placing Case in Abeyance was entered on [REDACTED], [REDACTED], requiring the parties to file a status report by [REDACTED], [REDACTED].

On [REDACTED], [REDACTED], an Amended Expedited Request for Due Process Hearing was filed by counsel for Petitioner. The amended Complaint added the issue that Respondent failed to provide a FAPE to Petitioner when it failed to provide services after [REDACTED] Petitioner with no services.

A telephonic status conference was held on [REDACTED], [REDACTED]. On [REDACTED], [REDACTED], the hearing was scheduled for [REDACTED], [REDACTED], to be held in [REDACTED], Florida. Prior to the hearing, both parties agreed to digitally record the hearing in lieu of a court reporter.

The hearing was held as scheduled with all parties present. During the hearing, Petitioner presented the testimony of nine witnesses and introduced Exhibits 1 through 11 into evidence.

Respondent presented the testimony of one witness but did not introduce any exhibits into evidence.

At the conclusion of the final hearing, the post-hearing schedule was discussed. Based on that discussion and to allow for time to have the digital recording transcribed, the date for the parties to file proposed final orders was tentatively established for [REDACTED], [REDACTED].

On [REDACTED], [REDACTED], counsel for Petitioner filed a Motion to Amend Pleadings to Conform with the Evidence Presented at Due Process, seeking to include violations of Child Find. The motion was denied.

The final hearing Transcript was filed on [REDACTED], [REDACTED]. Thereafter, after discussion with the parties, an Order Memorializing Deadlines for Proposed Orders and the Final Order was entered on [REDACTED], [REDACTED]. The Order established that the parties shall file their proposed final orders by [REDACTED], [REDACTED], with the final order to follow by [REDACTED], [REDACTED].

Petitioner filed [REDACTED] Proposed Final Order on [REDACTED], [REDACTED]. However, Respondent filed an Emergency Motion for Extension of Time, requesting an extension of time to file its proposed final order to and including [REDACTED], [REDACTED]. The motion was granted. Thereafter, Respondent filed its Proposed Final Order on [REDACTED], [REDACTED].

Both parties' Proposed Final Orders were considered in preparing this Final Order. Unless otherwise noted, citations to the United States Code, Florida Statutes, Florida Administrative Code, and Code of Federal Regulations are to the current codifications. Finally, for stylistic convenience, the undersigned will use [REDACTED] pronouns in this Final Order when referring to Petitioner. The [REDACTED] pronouns are neither intended, nor should be interpreted, as a reference to Respondent's actual gender.

FINDINGS OF FACT

1. At the time of hearing, the Student was [REDACTED] years old and in the [REDACTED] grade. [REDACTED] has a gift for [REDACTED] as recognized by [REDACTED] participation and performance in [REDACTED] class. Additionally, [REDACTED] is a Student who qualifies for a 504 plan based on [REDACTED] documented [REDACTED] ([REDACTED]).

2. The evidence demonstrated that the Student's [REDACTED] manifested in the Student as [REDACTED] [REDACTED], [REDACTED] [REDACTED], [REDACTED] [REDACTED] (both [REDACTED] and [REDACTED] in class), [REDACTED], [REDACTED], [REDACTED] [REDACTED] [REDACTED] ([REDACTED] [REDACTED] and [REDACTED]), [REDACTED] to class, [REDACTED] and [REDACTED] and [REDACTED]. The evidence also demonstrated that school personnel were aware of the Student's behaviors described above.

3. During the [REDACTED]-[REDACTED] school year, Petitioner received Level [REDACTED] scores on the [REDACTED] [REDACTED] [REDACTED] and [REDACTED] [REDACTED] [REDACTED] [REDACTED] ( [REDACTED] ) tests. During the [REDACTED]-[REDACTED] school year, when the Student was a [REDACTED] grader in a public [REDACTED] school at School [REDACTED] in [REDACTED] County, Florida, Petitioner's test scores and grades began to drop. The grade [REDACTED] and [REDACTED] [REDACTED] scores from the previous school year concerned the Student's [REDACTED] relative who then contacted the school to see what could be done to improve the Student's performance. Based on several discussions and eventual 504 plan meeting, the Student was found eligible for a 504 plan around [REDACTED] [REDACTED], [REDACTED].

4. At all times material, the Student's 504 plan provided for numerous accommodations and or modifications in a general education setting such as: [REDACTED] for [REDACTED] and [REDACTED], [REDACTED] [REDACTED] to avoid [REDACTED] [REDACTED], [REDACTED] as needed, [REDACTED] as needed, and [REDACTED] as needed. Notably, no [REDACTED] or [REDACTED] examination was done for the 504 plan. In fact, no such examinations were completed by the School Board during the pendency of this case.

5. On [REDACTED] [REDACTED], [REDACTED], while at lunch and seated with [REDACTED] peers from [REDACTED], the [REDACTED] made several statements that were construed as [REDACTED] toward school property and students. The statements included references to [REDACTED] [REDACTED] the school and

getting someone to [REDACTED] [REDACTED] or [REDACTED] [REDACTED] students who were seated at the table with [REDACTED]. [REDACTED] also lightly [REDACTED], [REDACTED] or [REDACTED] the [REDACTED] students, even after [REDACTED] asked [REDACTED] to stop. The Student claimed that [REDACTED] was joking at the time [REDACTED] made the statements in a hypothetical manner, prefacing [REDACTED] with the phrase "[REDACTED] [REDACTED] . . . ." The evidence did not show that the Student had the immediate ability to carry out [REDACTED] alleged threats.<sup>1/</sup> However, the statements were highly upsetting to the two or three [REDACTED] students who, while [REDACTED], reported the Student's conduct to the [REDACTED] teacher, [REDACTED], and school administrative staff.

6. The day of the incident, an investigation was completed by the [REDACTED] [REDACTED] teacher with law enforcement present. The [REDACTED] relative was present for at least part of the investigation. An immediate [REDACTED]-day [REDACTED] suspension was imposed on the Student. The [REDACTED] and [REDACTED] process was initiated. Additionally, law enforcement gave the [REDACTED] relative the option of the Student being involuntarily committed, under the [REDACTED], or going to a [REDACTED] facility. The [REDACTED] relative felt it was better to involuntarily commit the Student. As a consequence, the Student was committed for a brief period, but ultimately discharged since [REDACTED] was not a danger to [REDACTED] or [REDACTED].

7. The evidence showed that the Student had never engaged in [REDACTED] or [REDACTED] previous to [REDACTED], [REDACTED]. The evidence also showed that the Student had not been disciplined for serious violations of the Student Code of Conduct prior to that date. More importantly, the better expert testimony provided at the hearing demonstrated that the Student's conduct was [REDACTED] and related to the [REDACTED] and [REDACTED] [REDACTED] caused by the Student's [REDACTED]. Additionally, the better expert testimony demonstrated that the Student is not a danger to [REDACTED] or [REDACTED].

8. The Student's conduct on [REDACTED], [REDACTED], resulted in a school discipline referral for a Level [REDACTED] [REDACTED], "[REDACTED] [REDACTED] school and students," in violation of the Student Code of Conduct, [REDACTED], [REDACTED]. The result of the referral was an immediate [REDACTED] [REDACTED] for [REDACTED] days with referral for possible [REDACTED] for up to a [REDACTED]. A meeting with the [REDACTED], of an undetermined date, was to occur prior to the Student's removal, albeit it was unclear if the removal referred to the [REDACTED] or [REDACTED]. The letter also, in a somewhat confusing manner, referenced that a "manifestation hearing" would be held on [REDACTED], [REDACTED], to determine whether the Student's conduct was a manifestation of the Student's disability. Notably, the notice to the [REDACTED]



referencing the [REDACTED] from Principal [REDACTED] was issued prior to a manifestation determination review being held.

9. On [REDACTED], [REDACTED], the MDR meeting proceeded as scheduled. The participants of the MDR meeting (hereinafter the MDR team) included among other people: the Student; the Student's [REDACTED] relative; [REDACTED], assistant principal and local education agency designee; [REDACTED], guidance counselor; [REDACTED], Principal, member of the expulsion review committee; an exceptional student education designee; [REDACTED], [REDACTED], [REDACTED] general education teacher; and [REDACTED], [REDACTED] teacher. The assistant superintendent (AS) also attended the manifestation determination meeting and was also on the expulsion review committee. The evidence was not clear as to whether the AS participated in the MDR meeting.

10. The evidence demonstrated that there were some people present at the MDR meeting who were familiar with the Student. Notably, the evidence demonstrated that there was no person, with the exception of [REDACTED]. [REDACTED], present at the meeting, who was sufficiently familiar with [REDACTED] and its manifestation in students in general or this Student in particular. The guidance counselor had little to no relevant input or knowledge about [REDACTED]. Other teachers were not familiar with [REDACTED]. The evidence was clear that the [REDACTED], who had a supervisory role over the other committee members, believed discipline should be imposed and was

not impartial. ■ informed the ■ relative that ■ opinion and contribution to the meeting was not relevant in making a determination regarding whether the Student's conduct was a manifestation of ■ disability.

11. As such, the better evidence demonstrated that the MDR team was not formed so as to provide a competent or impartial decision on whether the Student's conduct was or was not a manifestation of ■ disability. Further, the evidence was unclear on what information the committee reviewed, apart from the subject of the incident, the 504 plan and 504 accommodations. The review included the use of the wrong, albeit similar, form for a manifestation review of a 504 plan student. In fact, the question asked of the committee was whether the Student's conduct was a manifestation of ■ disability or whether ■ was a "■ ■." The committee did not discuss ■ and its manifestation in any comprehensive manner. Ultimately, the committee determined that the Student's conduct was not a manifestation of ■ disability. However, the evidence demonstrated that the review by the committee was inadequate and did not support its finding that the Student's conduct was not a manifestation of the Student's disability.

12. Further, the evidence demonstrated that the 504 plan was not implemented with fidelity. In at least one class, the preferential seating provided by the teacher was to place the

Student in a seat in the back of the room where ■ was allowed by the teacher to ■ so as not to ■ the class by talking or engaging in other ■ behavior.

13. As a result of the MDR team's decision, the Student, through Respondent's disciplinary process, was ■ with no services for one year. The lack of services lasted from ■ to ■, ■, and was a clear violation of Section 504 of the Civil Rights Act. The violation was admitted by Respondent. However, Petitioner is entitled to compensatory education for the period of time educational services were not provided. More importantly, because the MDR team's determination was inadequate and because the better evidence showed that the Student's conduct on ■, ■, was a manifestation of ■ disability, the Student should immediately be returned to the placement ■ was in prior to ■ expulsion.

#### CONCLUSIONS OF LAW

14. DOAH has jurisdiction over the subject matter of this proceeding and of the parties thereto. See § 120.65, Fla. Stat.

15. Petitioner bears the burden of proof with respect to each of the claims raised in the Complaint. Schaffer v. Weast, 546 U.S. 49, 62 (2005); Dep't of Educ., Assistance to States for the Educ. of Child. with Disab., 71 Fed. Reg. 46724 (Aug. 14, 2006)(explaining that the parent bears the burden of proof in a

proceeding challenging a school district's manifestation determination).

16. This action arises under Section 504 of the Civil Rights Act, since the Student herein has not been determined eligible under the Individuals with Disabilities Education Act (IDEA) and does not have an Individualized Education Plan (IEP), but only has a 504 plan. Because Section 504 is in the first instance a nondiscrimination statute, it prohibits districts from disciplining students more harshly than nondisabled students solely based on disability. Thus, the federal rules promulgated under Section 504 govern this case.

17. Specifically, 34 C.F.R. § 104.35 is the federal rule addressing discipline of students with disabilities. Marshall County (KY) Sch. Dist., 20 IDELR 556 (OCR 1993). In general, the rule prohibits a district from changing the placement of a student with disabilities without conducting appropriate evaluations. As such, school districts have certain limitations on their ability to remove disabled children from their educational placement following a behavioral transgression.

18. Historically, under the IDEA the process for determining if a Student's misconduct is related to a disability has been referred to as the MDR. The MDR is a key step in the discipline process under IDEA, because it impacts the type of discipline the district can impose on the Student and whether the

district may remove the Student from [REDACTED] current placement because of a code of conduct violation.

19. The term "manifestation determination" does not appear in the regulatory language of Section 504 or 34 C.F.R. § 104.35. However, the Office of Civil Rights (OCR), the agency with enforcement authority over Section 504, interprets Section 504 and 34 C.F.R. § 104.35 as requiring a manifestation determination review in connection with disciplinary actions that constitute a significant change in placement for students with disabilities.

20. Further, OCR has determined that an exclusion from school of more than 10 consecutive school days constitutes a change in placement. See Dunkin (MO) R-V Sch. Dist., 52 IDELR 138 (OCR 2009); Green (OH) Local Sch. Dist., 116 LRP 31198 (OCR 2016); Mason v. Bd. of Educ.-Howard Cnty. Pub. Sch. Sys., 56 IDELR 14 (D. Md. 2011); South Harrison Cnty. (MO) R-II Sch. Dist., 51 IDELR 110 (OCR 2008)(the fact that a [REDACTED]-grader received services under Section 504, not the IDEA, did not relieve a Missouri district of its duty to conduct an MDR); Kalamazoo (MI) Pub. Sch. Dist., 50 IDELR 80 (OCR 2007)(a district should have conducted an MDR for a student with [REDACTED] who was suspended for 22 days over seven months). But see Centennial Sch. Dist. v. Phil L., 50 IDELR 154 (E.D. Pa. 2008)("Although students qualifying under the Rehabilitation Act are afforded some procedural protections -- namely, a Section 504 hearing --

they are not afforded the specific protection of a 'manifestation determination' under the IDEA." ).

21. However, as discussed above, MDR procedures under Section 504 are, like other placement decisions, subject to the requirements of 34 C.F.R. § 104.35, as interpreted by OCR, albeit those MDR procedures are less specific than and may differ from the IDEA's procedures described at 34 C.F.R. § 300.530(e), relating specifically to MDRs.<sup>2/</sup>

22. Further, as a general rule, the suspension and expulsion of students with disabilities have been treated the same way under both the IDEA and Section 504 since OCR has determined that the same protections available to students classified as students with disabilities under the IDEA are available to students classified as students with disabilities under Section 504, except for students who have a disability solely by virtue of alcoholism or drug addiction.

23. As indicated, the procedure for a MDR under Section 504 should conform to the requirements for evaluations and placement decisions under 34 C.F.R. § 104.35. Under that rule, such procedures require consideration of information from a variety of sources, such as people knowledgeable about the child's disability and needs, the evaluation data, and the placement options. Information should be recent enough to afford an understanding of the Student's current behavior. See Springfield

(MA) Pub. Schs., 54 IDELR 102 (OCR 2009)(a district's MDR did not satisfy Section 504 because some parties knowledgeable about the Student did not attend, participants did not examine vital information from a variety of sources, and the parent did not receive notice of procedural safeguards); Pitt Cnty. (NC) Schs., 64 IDELR 223 (OCR 2014)(an MDR for a student with [REDACTED] was not valid where the district refused to consider a new psychological report diagnosing the Student with ODD); DeKalb Cnty. (GA) Sch. Dist., 8 GASLD 122 (OCR 2015)(a district agreed to review the way it handles MDRs under Section 504 after OCR determined that it may not have considered all of the applicable medical documentation before deciding that the Student's misconduct was not a manifestation of [REDACTED] disability).

24. Further, an MDR team must consider a broad range of data that competent professionals would require and relevant information that is recent enough to afford an understanding of the Student's behavior, such as a psychological evaluation. See Quincy (WA) Sch. Dist. No. 144-101, 52 IDELR 170 (OCR 2009)(a district violated Section 504 when the MDR team failed to consider a pending physician's assessment regarding a suspected link between the Student's aggressive behavior and medicine [REDACTED] was taking for [REDACTED]); Broward Cnty. (FL) Schs., 64 IDELR 23 (OCR 2013)(a district resolved allegations that it failed to consider all information about the Student's disability before

expelling [REDACTED] from school); Pitt Cnty. (NC) Schs., 64 IDELR 223 (OCR 2014)(an MDR team erred by only reviewing the Student's grades, behavior, and disciplinary record while not considering [REDACTED] recent [REDACTED] diagnosis or [REDACTED] psychological report before determining that [REDACTED] behaviors were unrelated to a disability).

25. Additionally, OCR has found that the determination of whether a Student's misconduct is related to [REDACTED] disability must be made by people knowledgeable about the meaning of the evaluation data. This may be the same group that makes placement decisions. See Quincy (WA) Sch. Dist. No. 144-101, 52 IDELR 170 (OCR 2009); OCR Memorandum, 16 IDELR 491 (OCR 1989). See also, e.g., Metro-Nashville (TN) Pub. Schs., 66 IDELR 289 (OCR 2015)(a district resolved allegations that a principal, rather than an MDR team, made the decision about whether a middle school Student's behavior was a manifestation of [REDACTED] disability).

26. OCR has also indicated that a MDR team should include a parent. Mobile Cnty. (AL) Sch. Dist., 353 IDELR 378 (OCR 1989) (the execution of the district's suspension policy by the principal violated Section 504 to the extent that the determination of whether the Student's behavior was a manifestation did not include the parent); Newton Cnty. (GA) Sch. Dist., 9 GASLD 22 (OCR 2015)(a district's exclusion of a [REDACTED] from the meeting effectively denied the [REDACTED] a meaningful opportunity to participate).



27. The MDR team also must include individuals who are knowledgeable regarding Section 504 procedures. See, e.g., Greenville (TX) Indep. Sch. Dist., 113 LRP 27897 (OCR 2013) (district team members' statements that the district's disciplinary code "supersedes 504," the assistant principal's assertions that the meeting was a formality, and the team members' failure to apply appropriate standards all demonstrated that the attendees were ill-equipped to properly determine whether the Student's conduct was a manifestation of a disability).

28. Further, the MDR's decision should not be predetermined or influenced by supervisory team members who have already imposed discipline. See Prince William Cnty. (VA) Pub. Schs., 68 IDELR 286 (OCR 2016)(although a case manager's email suggested that ■■■ assumed there was no link between a ■■■-grader's disability and a crime ■■ allegedly committed, OCR nevertheless found that the Virginia district did not predetermine the MDR's outcome).

29. Because an exclusion of more than 10 consecutive school days is considered a "significant change in placement" under 34 C.F.R. § 104.35, a district may not exclude a student beyond 10 days unless it conducts an MDR and finds that the student's conduct is not related to ■■■ disability. See Honig v. Doe, 559 IDELR 231 (U.S. 1988); S-1 v. Turlington, 552 IDELR 267 (5th Cir.

1981); OSEP Memorandum 95-16, 22 IDELR 531 (OSEP 1995); Dunkin (MO) R-V Sch. Dist., 52 IDELR 138 (OCR 2009). If a student's misconduct is not related to ■■■ disability, the district may discipline the student as it does the general education population, including suspending the Student for more than 10 consecutive school days. However, if the MDR reveals that the student's conduct was a manifestation of a disability, the student generally cannot be expelled or suspended for the conduct beyond the 10th day.

30. Under the IDEA, if the MDR team determines that the conduct is not related to a disability, the district must continue to provide educational services so as to enable the student to continue to participate in the general education curriculum, although in another setting, and to progress toward meeting IEP goals. 34 C.F.R. § 300.530(d)(1)(i). There is no such requirement under Section 504. See Millcreek Twp. (PA) Sch. Dist., 16 IDELR 741 (OCR 1989). However, while continuation of services is not mentioned, Section 504 has certain requirements for districts making placement decisions for students with disabilities. Specifically, when a disciplinary removal constitutes a change in placement, 34 C.F.R. § 104.35 requires districts to consider whether a student's new placement is appropriate and will provide FAPE, given the student's disability-related needs. See Grossmont (CA) Union High Sch.



33. In this case, the evidence demonstrated that Petitioner was a student with a disability, who by reason of a suspension and expulsion was denied educational services in the least restrictive environment. The evidence further demonstrated that Respondent failed to conduct an appropriate MDR concerning the Student's conduct that occurred on [REDACTED], [REDACTED], since the MDR team, as a whole, did not sufficiently understand [REDACTED]; did not review relevant information from multiple sources, including the [REDACTED] discharge; and did not review psychological input. Additionally, the caretaker relative was denied full participation in providing information at the MDR, and the Student's 504 plan was not implemented with fidelity. Further, the better evidence demonstrated that the Student's misconduct on [REDACTED], [REDACTED], was a result of [REDACTED] disability.

ORDER

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

1. Petitioner's conduct on [REDACTED], [REDACTED], was a manifestation of the Student's disability.

2. Petitioner is entitled to compensatory education for the time period from [REDACTED] through [REDACTED], [REDACTED], in the amount of [REDACTED] hours per day for every school day occurring during that time.

3. Petitioner shall be returned to the school ■ was attending prior to ■ removal therefrom and must continue to receive educational services so as to enable the Student to continue to participate in the general education curriculum, including band, and to progress towards meeting the Student's educational goals.

DONE AND ORDERED this 31st day of October, 2018, in Tallahassee, Leon County, Florida.

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DIANE CLEAVINGER  
Administrative Law Judge  
Division of Administrative Hearings  
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Filed with the Clerk of the  
Division of Administrative Hearings  
this 31st day of October, 2018.

ENDNOTES

<sup>1/</sup> In general, the purpose of a MDR hearing is to review the manifestation decision made by the MDR team. The purpose of the hearing is not to challenge the accuracy of the specific act for which a student is being disciplined. In general, challenges to the specific act for which a student is being disciplined, and whether that act occurred, can only be made in a disciplinary hearing provided for in the school's student code of conduct or Board rules. See Danny K. v. Dep't of Educ., 2011 U.S. Dist. LEXIS 111066 (D. Haw. 2011)(holding that there is no authority to suggest that a MDR team must review the merits of a school's findings as to how a student violated the conduct of student

conduct as such a requirement would essentially deputize MDR teams, and in turn, [administrative law judges] as appellate deans of students). However, schools should be particularly careful in concluding hypothetical statements made by students are in fact threats that meet the definition of an assault or threat for purposes of section 1006.13(3)(b), Florida Statutes, establishing a zero tolerance policy for threats made by students involving a school. Further, schools should be cognizant of the fact that the above-referenced statutory section has not been incorporated into federal law governing students with disabilities.

<sup>2/</sup> While 20 U.S.C. § 1415(k)(1)(E), addressing MDR decisions for students under the IDEA, is not applicable when a student is eligible for services only under Section 504, the IDEA law and regulations are instructive on the issue since OCR has determined that a similar process should occur for 504 purposes. As such, 20 U.S.C. § 1415(k)(1)(E) provides as follows:

Manifestation determination.

(i) In general. Except as provided in subparagraph (B), within 10 school days of any decision to change the placement of a child with a disability because of a violation of a code of student conduct, the local educational agency, the parent, and relevant members of the IEP Team (as determined by the parent and the local educational agency) shall review all relevant information in the student's file, including the child's IEP, any teacher observations, and any relevant information provided by the parents to determine—

(I) if the conduct in question was caused by, or had a direct and substantial relationship to, the child's disability; or

(II) if the conduct in question was the direct result of the local educational agency's failure to implement the IEP.

COPIES FURNISHED:

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[REDACTED]

NOTICE OF RIGHT TO JUDICIAL REVIEW

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

a) brings a civil action in the appropriate state circuit court pursuant to section 1003.57(1)(c), Florida Statutes (2014), and Florida Administrative Code Rule 6A-6.03311(9)(w); or

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